PART VI—TREATMENT OF CERTAIN CORPORATE INTERESTS AS STOCK OR INDEBTEDNESS

Sec.
385. Treatment of certain interests in corporations as stock or indebtedness.

AMENDMENTS

1969—Pub. L. 91–172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613, added part heading and analysis of sections.

§ 385. Treatment of certain interests in corporations as stock or indebtedness

(a) Authority to prescribe regulations

The Secretary is authorized to prescribe such regulations as may be necessary or appropriate to determine whether an interest in a corporation is to be treated for purposes of this title as stock or indebtedness (or as in part stock and in part indebtedness).

(b) Factors

The regulations prescribed under this section shall set forth factors which are to be taken into account in determining with respect to a particular factual situation whether a debtor-creditor relationship exists or a corporation-shareholder relationship exists. The factors so set forth in the regulations may include among other factors:

(1) whether there is a written unconditional promise to pay on demand or on a specified date a sum certain in money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest,

(2) whether there is subordination to or preference over any indebtedness of the corporation,

(3) the ratio of debt to equity of the corporation,

(4) whether there is convertibility into the stock of the corporation, and

(5) the relationship between holdings of stock in the corporation and holdings of the interest in question.

(c) Effect of classification by issuer

(1) In general

The characterization (as of the time of issuance) by the issuer as to whether an interest in a corporation is stock or indebtedness shall be binding on such issuer and on all holders of such interest (but shall not be binding on the Secretary).

(2) Notification of inconsistent treatment

Except as provided in regulations, paragraph (1) shall not apply to any holder of an interest if such holder on his return discloses that he is treating such interest in a manner inconsistent with the characterization referred to in paragraph (1).

(3) Regulations

The Secretary is authorized to require such information as the Secretary determines to be necessary to carry out the provisions of this subsection.

(Added Pub. L. 91–172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613; amended Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 101–239, title VII, § 7208(a)(1), Dec. 19, 1989, 103 Stat. 2337; Pub. L. 102–486, title XIX, § 1936(a), Oct. 24, 1992, 106 Stat. 3032.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–486 added subsec. (c).

1989—Subsec. (a). Pub. L. 101–239 inserted ''(or as in part stock and in part indebtedness)'' before period at end.

1976—Subsec. (a). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 1936(b) of Pub. L. 102–486 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to instruments issued after the date of the enactment of this Act [Oct. 24, 1992].''

REGULATIONS NOT TO BE APPLIED RETROACTIVELY

Section 7208(a)(2) of Pub. L. 101–239 provided that: ''Any regulations issued pursuant to the authority granted by the amendment made by paragraph (1) [amending this section] shall only apply with respect to instruments issued after the date on which the Secretary of the Treasury or his delegate provides public guidance as to the characterization of such instruments whether by regulation, ruling, or otherwise.''

[PART VII—REPEALED]

[§ 386. Repealed. Pub. L. 100–647, title I, § 1006(e)(8)(A), Nov. 10, 1988, 102 Stat. 3401]

Section, added Pub. L. 98–369, div. A, title I, § 75(a), July 18, 1984, 98 Stat. 594; amended Pub. L. 99–514, title XVIII, § 1805(c)(1), Oct. 22, 1986, 100 Stat. 2810, related to transfers of partnership and trust interests by corporations.

EFFECTIVE DATE OF REPEAL

Repeal 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 an Effective Date of 1988 Amendment note under section 1 of this title.

[§§ 391 to 395. Repealed. Pub. L. 94–455, title XIX, § 1901(a)(55), Oct. 4, 1976, 90 Stat. 1773]

Section 391, acts Aug. 16, 1954, ch. 736, 68A Stat. 131; Sept. 2, 1958, Pub. L. 85–866, title I, § 22(a), 72 Stat. 1620, related to effective date of section 301 et seq. of this title.

Section 392, act Aug. 16, 1954, ch. 736, 68A Stat. 131, related to effective date of section 331 et seq. of this title.

Section 393, act Aug. 16, 1954, ch. 736, 68A Stat. 132, related to effective date of section 351 et seq. of this title.

Section 394, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to effective date of section 381 et seq. of this title.

Section 395, act Aug. 16, 1954, ch. 736, 68A Stat. 133, related to special rules for application of this subchapter.

EFFECTIVE DATE OF REPEAL

Repeal effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

Subchapter D—Deferred Compensation, Etc.

Part
I. Pension, profit-sharing, stock bonus plans, etc.
II. Certain stock options.
III Rules relating to minimum funding standards and benefit limitations.[1]

[1] Period editorially supplied.

Part

AMENDMENTS

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

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

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

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

AMENDMENTS

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

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

SUBPART A—GENERAL RULE

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Requirements for qualification

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

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

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

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

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

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

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

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

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

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

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

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

(D) INTEGRATED DEFINED BENEFIT PLAN.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) REQUIRED DISTRIBUTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(H) TEMPORARY WAIVER OF MINIMUM REQUIRED DISTRIBUTION.—

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

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

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

(III) an individual retirement plan.

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

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

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

(10) OTHER REQUIREMENTS.—

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

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

(B) TOP-HEAVY PLANS.—

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

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

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

(II) which meet the requirements of section 416.

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

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

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

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

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

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

(i) any defined benefit plan,

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

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

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

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

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

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

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

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

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

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

(F) CROSS REFERENCE.—For—

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

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

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) ASSIGNMENT AND ALIENATION.—

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

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

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

(i) the order or requirement to pay arises—

(I) under a judgment of conviction for a crime involving such plan,

(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

(III) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person,

(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a),

(II) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of such subtitle, or

(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

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

(D) SURVIVOR ANNUITY.—

(i) IN GENERAL.—The survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if—

(I) the participant terminated employment on the date of the offset,

(II) there was no offset,

(III) the plan permitted commencement of benefits only on or after normal retirement age,

(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(ii) DEFINITION.—For purposes of this subparagraph, the term ''minimum-required qualified joint and survivor annuity'' means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

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

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

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

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

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

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

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

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

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

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

(17) COMPENSATION LIMIT.—

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

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

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

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

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

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

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

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

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

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

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

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

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

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

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

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

(i) 50 employees of the employer, or

(ii) the greater of—

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

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

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) DIVERSIFICATION OF INVESTMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(31) DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—

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

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

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

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

(B) CERTAIN MANDATORY DISTRIBUTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A),

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

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

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

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

(i) any increase in benefits,

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who—

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

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

[3] So in original.

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

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

(D) INVESTMENT OPTIONS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

(ii) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

(I) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

(II) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

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

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

(ii) EXCEPTION FOR CERTAIN ESOPS.—Such term does not include an employee stock ownership plan if—

(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and

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

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

(iv) ONE-PARTICIPANT RETIREMENT PLAN.—For purposes of clause (iii), the term ''one-participant retirement plan'' means a retirement plan that on the first day of the plan year—

(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(II) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(F) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) DEFINITIONS.—For purposes of this subparagraph, the term—

(I) ''controlled group of corporations'' has the meaning given such term by section 1563(a), except that ''50 percent'' shall be substituted for ''80 percent'' each place it appears,

(II) ''employer corporation'' means a corporation which is an employer maintaining the plan, and

(III) ''parent corporation'' has the meaning given such term by section 424(e).

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

(i) APPLICABLE INDIVIDUAL.—The term ''applicable individual'' means—

(I) any participant in the plan, and

(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

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

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

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

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

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

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

(i) RULES PHASED IN OVER 3 YEARS.—

(I) IN GENERAL.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, subparagraph (C) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

(II) EXCEPTION FOR CERTAIN PARTICIPANTS AGED 55 OR OVER.—Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

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

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

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

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

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

(b) Certain retroactive changes in plan

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

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

For purposes of this section—

(1) Self-employed individual treated as employee

(A) In general

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

(B) Self-employed individual

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

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

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

(2) Earned income

(A) In general

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

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

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

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

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

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

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

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

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

[(B) Repealed]

(C) Income from disposition of certain property

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

(3) Owner-employee

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

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

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

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

(4) Employer

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

(5) Contributions on behalf of owner-employees

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

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

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

(6) Special rule for certain fishermen

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

(d) Contribution limit on owner-employees

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

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

(f) Certain custodial accounts and contracts

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

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

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

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

(g) Annuity defined

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

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

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

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

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

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

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

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

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

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

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

(i) Certain union-negotiated pension plans

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

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

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

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

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

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

(k) Cash or deferred arrangements

(1) General rule

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

(2) Qualified cash or deferred arrangement

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

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

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

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

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

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

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

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

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

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

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

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

(3) Application of participation and discrimination standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) 3 percent, or

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

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

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

(4) Other requirements

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

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

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

(i) Tax-exempts eligible

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

(ii) Governments ineligible

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

(iii) Treatment of Indian tribal governments

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

(C) Coordination with other plans

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

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

(5) Highly compensated employee

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

(6) Pre-ERISA money purchase plan

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

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

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

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

(7) Rural cooperative plan

For purposes of this subsection—

(A) In general

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

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

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

(B) Rural cooperative defined

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

(i) any organization which—

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

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

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

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

(iv) any organization which—

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

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

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

(C) Special rule for certain distributions

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

(8) Arrangement not disqualified if excess contributions distributed

(A) In general

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

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

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

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

(B) Excess contributions

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

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

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

(C) Method of distributing excess contributions

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

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

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

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

For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as

[6] So in original.

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

(F) Cross reference

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

(9) Compensation

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

(10) Distributions upon termination of plan

(A) In general

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

(B) Distributions must be lump sum distributions

(i) In general

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

(ii) Lump-sum distribution

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

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

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

(11) Adoption of simple plan to meet nondiscrimination tests

(A) In general

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

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

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

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

(B) Contribution requirements

(i) In general

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

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

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

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

(ii) Employer may elect 2-percent nonelective contribution

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

(iii) Administrative requirements

(I) In general

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

(II) Notice of election period

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

(C) Exclusive plan requirement

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

(D) Definitions and special rule

(i) Definitions

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

(ii) Coordination with top-heavy rules

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

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

(12) Alternative methods of meeting nondiscrimination requirements

(A) In general

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

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

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

(B) Matching contributions

(i) In general

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

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

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

(ii) Rate for highly compensated employees

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

(iii) Alternative plan designs

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

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

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

(C) Nonelective contributions

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

(D) Notice requirement

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

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

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

(E) Other requirements

(i) Withdrawal and vesting restrictions

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

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

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

(F) Other plans

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

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

(A) In general

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

(B) Qualified automatic contribution arrangement

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

(C) Automatic deferral

(i) In general

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

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

(ii) Election out

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

(I) to not have such contributions made, or

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

(iii) Qualified percentage

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

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

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

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

(IV) 6 percent during any subsequent plan year.

(iv) Automatic deferral for current employees not required

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

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

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

(D) Matching or nonelective contributions

(i) In general

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

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

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

(ii) Application of rules for matching contributions

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

(iii) Withdrawal and vesting restrictions

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

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

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

(iv) Application of certain other rules

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

(E) Notice requirements

(i) In general

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

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

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

(ii) Timing and content requirements

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

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

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

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

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

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

(1) In general

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

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

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

(2) Defined contribution plan

(A) In general

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

(i) the base contribution percentage, or

(ii) the greater of—

(I) 5.7 percentage points, or

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

(B) Contribution percentages

For purposes of this paragraph—

(i) Excess contribution percentage

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

(ii) Base contribution percentage

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

(3) Defined benefit plan

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

(A) Excess plans

(i) In general

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

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

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

(III) benefits are based on average annual compensation.

(ii) Benefit percentages

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

(B) Offset plans

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

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

(ii) benefits are based on average annual compensation.

(4) Definitions relating to paragraph (3)

For purposes of paragraph (3)—

(A) Maximum excess allowance

The maximum excess allowance is equal to—

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

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

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

(B) Maximum offset allowance

The maximum offset allowance is equal to—

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

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

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

(C) Reductions

(i) In general

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

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

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

(ii) Basis of reductions

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

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

(D) Offset plan

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

(5) Other definitions and special rules

For purposes of this subsection—

(A) Integration level

(i) In general

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

(ii) Limitation

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

(iii) Level to apply to all participants

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

(iv) Multiple integration levels

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

(B) Compensation

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

(C) Average annual compensation

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

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

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

(D) Final average compensation

(i) In general

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

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

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

(ii) Limitation

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

(E) Covered compensation

(i) In general

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

(ii) Computation for any year

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

(iii) Social security retirement age

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

(F) Regulations

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

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

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

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

(6) Special rule for plan maintained by railroads

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

(m) Nondiscrimination test for matching contributions and employee contributions

(1) In general

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

(2) Requirements

(A) Contribution percentage requirement

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

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

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

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

(B) Multiple plans treated as a single plan

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

(3) Contribution percentage

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

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

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

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

(4) Definitions

For purposes of this subsection—

(A) Matching contribution

The term ''matching contribution'' means—

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

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

(B) Elective deferral

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

(C) Qualified nonelective contributions

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

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

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

(5) Employees taken into consideration

(A) In general

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

(B) Certain nonparticipants

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

(C) Special rule for early participation

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

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

(A) In general

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

(B) Excess aggregate contributions

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

with respect to any plan year, the excess of—

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

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

(C) Method of distributing excess aggregate contributions

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

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

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

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

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

(7) Treatment of distributions

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

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

(B) Exclusion of employee contributions

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

(8) Highly compensated employee

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

(9) Regulations

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

(10) Alternative method of satisfying tests

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

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

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

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

(11) Additional alternative method of satisfying tests

(A) In general

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

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

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

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

(B) Limitation on matching contributions

The requirements of this subparagraph are met if—

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

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

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

(12) Alternative method for automatic contribution arrangements

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

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

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

(13) Cross reference

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

(n) Coordination with qualified domestic relations orders

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

(*o*) Cross reference

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

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

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

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

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

REFERENCES IN TEXT

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

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

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

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

AMENDMENTS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(i) any organization which—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(A) officers,

''(B) shareholders, or

''(C) highly compensated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsec. (a)(10)(B). Pub. L. 97–248, § 240(b), added subpar. (B).

Subsec. (a)(17), (18). Pub. L. 97–248, § 237(b), struck out pars. (17) and (18) which related, respectively, to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), and a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d).

Subsec. (a)(24). Pub. L. 97–248 added par. (24).

Subsec. (c)(1). Pub. L. 97–248, § 238(d)(1), amended par. (1) generally, substituting in heading ''Self-employed individual treated as employee'' for ''Employee'', adding subparagraph headings, and substituting provisions defining ''employee'' and ''self-employed individual'', for provisions defining ''employee''.

Subsec. (c)(2)(A). Pub. L. 97–248, § 238(d)(2), added cl. (v).

Subsec. (d). Pub. L. 97–248, § 237(a), redesignated pars. (9) to (11) as (1) to (3), respectively. Former pars. (1) to (7), which related to trusts created or organized before or after October 10, 1962, contributions under the plan, benefits under the plan for employees, contributions or benefits under the plan, limitations pursuant to the plan, applicability of requirements of subsec. (a)(4) of this section, and distributions under the plan, respectively, were struck out.

Subsec. (j). Pub. L. 97–248, § 238(b), struck out subsec. (j) which related to general requirements, regulation guidelines, applicable percentage, certain contributions and benefits not taken into account, definitions, and special rules with respect to defined benefit plans providing benefits for self-employed individuals and shareholder-employees.

Subsecs. (*l*), (*o*). Pub. L. 97–248, § 249(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (*o*).

1981—Subsec. (a)(17). Pub. L. 97–34, § 312(b)(1), designated provision relating to the annual compensation of each employee as subpar. (A), and in subpar. (A) as so designated, substituted ''$200,000'' for ''$100,000'', and added subpar. (B).

Subsec. (a)(22). Pub. L. 97–34, § 338(a), inserted ''(other than a profit-sharing plan)'' and substituted ''if'' for ''If'' and ''such plan'' for ''said plan''.

Subsec. (a)(23). Pub. L. 97–34, § 335, substituted ''409A(h), except that in applying section 409A(h) for purposes of this paragraph, the term 'employer securities' shall include any securities of the employer held by the plan'' for ''409A(h)(2)''.

Subsec. (d)(4). Pub. L. 97–34, § 312(e)(2), inserted provision making subpar. (B) inapplicable to any distribution to which section 72(m)(9) applies.

Subsec. (d)(5). Pub. L. 97–34, § 314(a)(1), inserted provision making subpar. (C) inapplicable to a distribution on account of the termination of the plan.

Subsec. (e). Pub. L. 97–34, § 312(c)(2), substituted ''for such taxable year exceeds $15,000'' for ''for all such years exceeds $7,500''.

Subsec. (j). Pub. L. 97–34, § 312(c)(3), (4), substituted in par. (2)(A) ''$100,000'' for ''$50,000'' and in par. (3) inserted provision that for purposes of this paragraph, a change in the annual compensation taken into account under subpar. (A) of subsec. (j)(2) be treated as beginning a new period of plan participation.

1980—Subsec. (a)(2). Pub. L. 96–364, §§ 208(e), 410(b), inserted provisions relating to applicability to multiemployer plans and return of contributions made by a mistake of law or fact, or return of withdrawal liability payment.

Subsec. (a)(4). Pub. L. 96–605, § 225(b)(1), substituted ''section 410(b)(3)(A)'' for ''section 410(b)(2)(A)''.

Subsec. (a)(12). Pub. L. 96–364, § 208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (a)(20). Pub. L. 96–222, § 101(a)(14)(E)(iii), substituted ''makes a qualifying rollover distribution (determined as if section 402(a)(5)(D)(i) did not contain subclause (II) thereof) described in section 402(a)(5)(A)(i) or 403(a)(4)(A)(i)'' for ''makes a payment or distribution described in section 402(a)(5)(i) or 403(a)(4)(i)''.

Subsec. (a)(21). Pub. L. 96–222, § 101(a)(7)(L)(i)(V), substituted ''a tax credit employee stock ownership plan'' for ''an ESOP''.

Subsec. (a)(22)(B). Pub. L. 96–222, § 101(a)(9), substituted ''are securities'' for ''as securities''.

Subsec. (a)(23). Pub. L. 96–605, § 221(a), added par. (23).

Subsec. (d)(3)(B). Pub. L. 96–605, § 225(b)(2), substituted in cl. (i) ''section 410(b)(3)(A)'' for ''section 410(b)(2)(A)'' and in cl. (ii) ''section 410(b)(3)(C)'' for ''section 410(b)(2)(C)''.

1978—Subsec. (a)(5). Pub. L. 95–600, § 152(e), inserted provision that for purposes of determining whether one or more plans of the employer satisfy the requirements

of section 410(b)(4), an employer may take into account all simplified employee pensions to which only the employer contributes.

Subsec. (a)(21). Pub. L. 95–600, §141(f)(3), substituted ''ESOP'' for ''employee stock option plan which satisfies the requirements of section 301(d) of the Tax Reduction Act of 1975'' and ''section 48(n)(1)'' for ''subsection (d)(6) or (e)(3) of section 301 of the Tax Reduction Act of 1975''.

Subsec. (a)(22). Pub. L. 95–600, §143(a), added par. (22).

Subsecs. (k), (*l*). Pub. L. 95–600, §135(a), added subsec. (k) and redesignated former subsec. (k) as (*l*).

1976—Subsec. (a). Pub. L. 94–455, §§803(b)(2), 1901(a)(56), 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' in pars. (5), (11), and (14), substituted references to Sept. 2, 1974, for references to the enactment of the Employee Retirement Income Security Act of 1974 in pars. (12), (13), (15), and (19), added par. (21), and inserted reference to par. (20) in provisions following par. (21), such addition of reference to par. (20) duplicating amendment by Pub. L. 94–267, §1(c)(2).

Pub. L. 94–267, §1(c)(2), substituted ''(19), and (20)'' for ''and (19)''.

Subsec. (a)(20). Pub. L. 94–267, §1(c)(1), added par. (20).

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

Subsec. (f). Pub. L. 94–455, §1505(b), inserted reference to contracts (other than life, health, or accident, property, casualty, or liability insurance contracts) issued by an insurance company qualified to do a business in a State and struck out ''or his delegate'' after ''Secretary''.

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

1974—Subsec. (a). Pub. L. 93–406, §1021(a)(2), inserted provision that paragraphs (11), (12), (13), (14), (15), and (19) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of this section.

Subsec. (a)(3). Pub. L. 93–406, §1016(a)(2)(A), substituted provisions referring simply to a plan of which the trust is a part and the satisfaction by that plan of the requirements of section 410 (relating to minimum participation standards) for provisions referring to a trust, trusts, or trust or trusts and annuity plan or plans designated by the employer as constituting parts of a plan intended to qualify under subsec. (a) and spelling out the requisite coverage of the plan.

Subsec. (a)(4). Pub. L. 93–406, §1022(a), struck out provisions referring to persons whose principal duties consist in supervising the work of other employees and inserted provisions directing the exclusion from consideration of employees described in section 410(b)(2) (A) and (C).

Subsec. (a)(5). Pub. L. 93–406, §§1012(b), 1016(a)(2)(B), inserted provisions covering the determination of whether two or more plans of an employer satisfy the requirements of par. (4) when considered as a single plan and substituted ''shall not be considered discriminatory within the meaning of paragraph (4) of section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''shall not be considered discriminatory within the meaning of paragraph (3)(B) or (4)''.

Subsec. (a)(7). Pub. L. 93–406, §1016(a)(2)(C), substituted provisions referring simply to the satisfaction by the plan of which a trust is a part of the requirements of section 411 (relating to minimum vesting standards) for provisions spelling out in detail the conditions which the plan had to satisfy in order that the trust forming part of that plan constitute a qualified trust under this section.

Subsec. (a)(10)(A). Pub. L. 93–406, §§1022(b)(1), 2001(e)(4), inserted reference to section 410 in provisions preceding cl. (i) and substituted ''subsection (e)'' for ''subsection (e)(3)(A)'' in cl. (ii).

Subsec. (a)(11). Pub. L. 93–406, §1021(a)(1), added par. (11).

Subsec. (a)(12). Pub. L. 93–406, §1021(b), added par. (12).

Subsec. (a)(13). Pub. L. 93–406, §1021(c), added par. (13).

Subsec. (a)(14). Pub. L. 93–406, §1021(d), added par. (14).

Subsec. (a)(15). Pub. L. 93–406, §1021(e), added par. (15).

Subsec. (a)(16). Pub. L. 93–406, §2004(a)(1), added par. (16).

Subsec. (a)(17). Pub. L. 93–406, §2001(c), added par. (17).

Subsec. (a)(18). Pub. L. 93–406, §2001(d)(1), added par. (18).

Subsec. (a)(19). Pub. L. 93–406, §1021(f), added par. (19).

Subsec. (b). Pub. L. 93–406, §1023, substituted reference to the requirements of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate for reference to the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect.

Subsec. (d)(1). Pub. L. 93–406, §1022(c), (f), substituted ''October 10, 1962'' for ''the date of the enactment of this subsection'' and ''assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust'' for ''trustee is a bank, but a person (including the employer) other than a bank'' and inserted reference to an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act) in definition of ''bank''.

Subsec. (d)(3). Pub. L. 93–406, §1022(b)(2), inserted reference to the section 410(a)(3) definition of ''years of service'' and substituted reference to employees included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A) and employees who are nonresident aliens described in section 410(b)(2)(C) for reference to employees whose customary employment was for not more than 20 hours in any one week or was for not more than 5 months in any calendar year.

Subsec. (d)(4)(B). Pub. L. 93–406, §2001(h)(1), inserted ''in excess of contributions made by an owner-employee as an employee'' after ''benefits''.

Subsec. (d)(5). Pub. L. 93–406, §2001(e)(1), substituted ''Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)'' for ''Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3)''.

Subsec. (d)(8). Pub. L. 93–406, §2001(e)(2), struck out par. (8) covering excess contributions.

Subsec. (e). Pub. L. 93–406, §2001(e)(3), struck out pars. (1) and (2) which defined and described the effect of excess contributions, redesignated par. (3) as the entire subsec. (e) and in provisions as thus carried forward as the entire subsec. (e) substituted ''$7,500'' for ''$2,500'' and inserted references to section 4972(b).

Subsec. (f). Pub. L. 93–406, §1022(d), expanded provisions to cover annuity contracts.

Subsecs. (j), (k). Pub. L. 93–406, §2001(d)(2), added subsec. (j) and redesignated former subsec. (j) as (k).

1971—Subsec. (i). Pub. L. 91–691 struck out ''multi-employer'' before ''pension plans'' in heading, and substituted ''one or more employers'' for ''two or more employers who are not related (determined under regulations prescribed by the Secretary or his delegate)'' in par. (1).

1966—Subsec. (a)(10)(A)(ii). Pub. L. 89–809, §204(b)(1)(A), struck out ''(determined without regard

to section 404(a)(10))'' after ''deducted under section 404''.

Subsec. (c)(2)(A). Pub. L. 89–809, § 204(c), struck out ''to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B))'' after ''The term 'earned income' means the net earnings from self-employment (as defined in section 1402(a))'', added cl. (i) and redesignated former cls. (i) to (ii) as (ii) to (iv) respectively, and struck out references to section 911(b) and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, in text following cl. (iv).

Subsec. (c)(2)(B). Pub. L. 89–809, § 204(c), struck out subpar. (B) relating to earned income when both personal services and capital are material income-producing factors. See subsec. (c)(2)(A)(i).

Subsec. (c)(2)(C). Pub. L. 89–809, § 205(a), added subpar. (C).

Subsecs. (d)(5)(A), (B), (d)(6)(A), (e)(1)(A), (B)(i), (3). Pub. L. 89–809, § 204(b)(1)(B) to (E), struck out ''(determined without regard to section 404(a)(10))'' wherever appearing.

1965—Subsec. (d)(4)(B). Pub. L. 89–97 substituted ''section 72(m)(7)'' for ''section 213(g)(3)''.

1964—Subsecs. (i), (j). Pub. L. 88–272 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (a)(5). Pub. L. 87–792, § 2(1), inserted provisions defining total compensation for purposes of par. (5) and par. (10) of this subsection.

Subsec. (a)(7) to (10). Pub. L. 87–792, § 2(2), added pars. (7) to (10).

Subsecs. (c) to (g). Pub. L. 87–792, § 2(3), added subsecs. (c) to (g). Former subsec. (c) redesignated (h).

Subsec. (h). Pub. L. 87–863 added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 87–792, § 2(3), redesignated former subsec. (c) as (h).

Subsec. (i). Pub. L. 87–863 redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by sections 101(d)(2)(A)–(C) and 109(a)–(b)(2) of Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–458, title II, § 201(c), Dec. 23, 2008, 122 Stat. 5117, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 402 of this title] shall apply for calendar years beginning after December 31, 2008.

''(2) PROVISIONS RELATING TO PLAN OR CONTRACT AMENDMENTS.—

''(A) IN GENERAL.—If this paragraph applies to any pension plan or contract amendment, such pension plan or contract shall not fail to be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii) solely because the plan operates in accordance with this section.

''(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

''(i) IN GENERAL.—This paragraph shall apply to any amendment to any pension plan or annuity contract which—

''(I) is made pursuant to the amendments made by this section, and

''(II) is made on or before the last day of the first plan year beginning on or after January 1, 2011.

In the case of a governmental plan, subclause (II) shall be applied by substituting '2012' for '2011'.

''(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless during the period beginning on the effective date of the amendment and ending on December 31, 2009, the plan or contract is operated as if such plan or contract amendment were in effect.''

Pub. L. 110–245, title I, § 104(d), June 17, 2008, 122 Stat. 1627, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403, 404, 414, and 457 of this title] shall apply with respect to deaths and disabilities occurring on or after January 1, 2007.

''(2) PROVISIONS RELATING TO PLAN AMENDMENTS.—

''(A) IN GENERAL.—If this subparagraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(iii).

''(B) AMENDMENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—

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

''(I) pursuant to the amendments made by subsection (a) [amending this section] or pursuant to any regulation issued by the Secretary of the Treasury under subsection (a), and

''(II) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this clause shall be applied by substituting '2012' for '2010' in subclause (II).

''(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless—

''(I) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in clause (iii), and

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

''(iii) PERIOD DESCRIBED.—The period described in this clause is the period—

''(I) beginning on the effective date specified by the plan, and

''(II) ending on the date described in clause (i)(II) (or, if earlier, the date the plan or contract amendment is adopted).''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, § 114(g), as added by Pub. L. 110–458, title I, § 101(d)(3), Dec. 23, 2008, 122 Stat. 5099, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 411, 414, 420, 4971, 4972, and 6059 of this title] shall apply to plan years beginning after 2007.

''(2) EXCISE TAX.—The amendments made by subsection (e) [amending sections 4971 and 4972 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years described in paragraph (1) which end with or within any such taxable year.''

Amendment by section 827(b)(1) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Pub. L. 109–280, title VIII, § 861(c), Aug. 17, 2006, 120 Stat. 1021, provided that: ''The amendments made by this section [amending this section and provisions set out as a note under this section] shall apply to any year beginning after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title IX, § 901(c), Aug. 17, 2006, 120 Stat. 1032, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after December 31, 2006.

''(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], paragraph (1) shall be applied to

benefits pursuant to, and individuals covered by, any such agreement by substituting for 'December 31, 2006' the earlier of—

''(A) the later of—

''(i) December 31, 2007, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

''(B) December 31, 2008.

''(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

''(A) IN GENERAL.—In the case of employer securities to which this paragraph applies, the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after the earlier of—

''(i) December 31, 2007, or

''(ii) the first date on which the fair market value of such securities exceeds the guaranteed minimum value described in subparagraph (B)(ii).

''(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which are attributable to employer contributions other than elective deferrals, and which, on September 17, 2003—

''(i) consist of preferred stock, and

''(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

''(C) COORDINATION WITH TRANSITION RULE.—In applying section 401(a)(35)(H) of the Internal Revenue Code of 1986 and section 204(j)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1054(j)(7)] (as added by this section) to employer securities to which this paragraph applies, the applicable percentage shall be determined without regard to this paragraph.''

Pub. L. 109–280, title IX, §902(g), Aug. 17, 2006, 120 Stat. 1039, provided that: ''The amendments made by this section [amending this section, sections 411, 414, 416, and 4979 of this title, and sections 1053, 1132, and 1144 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007, except that the amendments made by subsection (f) [amending sections 1132 and 1144 of Title 29] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title IX, §905(c), Aug. 17, 2006, 120 Stat. 1051, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–311, title IV, §407(c), Oct. 4, 2004, 118 Stat. 1190, provided that: ''The amendments made by this section [amending this section and section 1377 of this title] shall take effect as if included in the provisions of the Small Business Job Protection Act of 1996 [Pub. L. 104–188] to which they relate.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c), (f)(3), (g)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(3) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, §643(d), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and sections 402 and 408 of this title] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, §646(b), June 7, 2001, 115 Stat. 126, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2001.''

Pub. L. 107–16, title VI, §657(d), June 7, 2001, 115 Stat. 137, provided that: ''The amendments made by this section [amending this section, section 402 of this title, and section 1104 of Title 29, Labor] shall apply to distributions made after final regulations implementing subsection (c)(2)(A) [set out as a note below] are prescribed [Final regulations implementing subsec. (c)(2)(A) became effective Mar. 28, 2005. See 69 F.R. 58017.].''

Pub. L. 107–16, title VI, §666(b), June 7, 2001, 115 Stat. 144, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 1(a)(7) [title III, §316(e)] of Pub. L. 106–554, set out as a note under section 51 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1502(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act [Aug. 5, 1997].''

Pub. L. 105–34, title XV, §1505(d), Aug. 5, 1997, 111 Stat. 1064, as amended by Pub. L. 105–206, title VI, §6015(b), July 22, 1998, 112 Stat. 820; Pub. L. 109–280, title VIII, §861(a)(2), Aug. 17, 2006, 120 Stat. 1021, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403 and 410 of this title] apply to taxable years beginning on or after the date of enactment of this Act [Aug. 5, 1997].

''(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403(b)(1)(D) and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.''

Section 1525(b) of Pub. L. 105–34 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

Section 1530(d) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section and sections 404, 415, 664, 674, 2055, 2056, 4947, 4975, 4978, and 4979A of this title] shall apply to transfers made by trusts to, or for the use of, an employee stock ownership plan after the date of the enactment of this Act [Aug. 5, 1997].''

Amendment by section 1601(d)(2)(A), (B), (3) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, and amendment by section 1601(d)(2)(D) of Pub. L. 105–34 applicable to calendar years beginning after Aug. 5, 1997, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(5), (6) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see sec-

tion 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Section 1404(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1422(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1996.''

Section 1426(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to plan years beginning after December 31, 1996, but shall not apply to any cash or deferred arrangement to which clause (i) of section 1116(f)(2)(B) of the Tax Reform Act of 1986 applies [Pub. L. 99–514, set out below].''

Amendment by section 1431(b)(2) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, and amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, amendment by section 1431(c)(1)(B) to be treated as having been in effect for years beginning in 1996, see section 1431(d) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1432(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1433(f) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1998.

''(2) EXCEPTIONS.—The amendments made by subsections (c), (d), and (e) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1441(b) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1443(c) of Pub. L. 104–188 provided that:

''(1) DISTRIBUTIONS.—The amendments made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].

''(2) PUBLIC UTILITY DISTRICTS.—The amendments made by subsection (b) [amending this section] shall apply to plan years beginning after December 31, 1996.''

Section 1445(b) of Pub. L. 104–188 provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1459(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1998.''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 732(e) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 408, and 415 of this title] shall apply to years beginning after December 31, 1994.

''(2) ROUNDING NOT TO RESULT IN DECREASES.—The amendments made by this section providing for the rounding of indexed amounts shall not apply to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994.''

Section 751(b) of Pub. L. 103–465 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 404, 412, and 4971 of this title] shall apply to plan years beginning after December 31, 1994.

''(2) REFERENCE.—The amendment made by subsection (a)(11) [amending section 404 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 1994].''

Section 766(d) of Pub. L. 103–465 provided that: ''The amendments made by this section [amending this section and sections 1054 and 1322 of Title 29, Labor] shall apply to plan amendments adopted on or after the date of enactment of this Act [Dec. 8, 1994].''

Amendment by section 776(d) of Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of Title 29, Labor.

Section 781 of title VII of Pub. L. 103–465 provided that: ''Except as otherwise provided in this subtitle [subtitle F (§§ 750–781) of title VII of Pub. L. 103–465, enacting sections 1310, 1311, and 1350 of Title 29, Labor, amending this section, sections 404, 411, 412, 415, 417, 4971, and 4972 of this title, and sections 1053 to 1056, 1082, 1132, 1301, 1303, 1305, 1306, 1322, 1341, 1342, and 1343 of Title 29, and enacting provisions set out as notes under this section, sections 1, 411, 412, and 4972 of this title, and sections 1056, 1082, 1303, 1306, 1310, 1311, 1322, 1341, and 1342 of Title 29], the amendments made by this subtitle shall be effective on the date of enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13212(d) of Pub. L. 103–66, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 404, 408, and 505 of this title] shall apply to benefits accruing in plan years beginning after December 31, 1993.

''(2) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act [Aug. 10, 1993], the amendments made by this section shall not apply to contributions or benefits pursuant to such agreements for plan years beginning before the earlier of—

''(A) the latest of—

''(i) January 1, 1994,

''(ii) the date on which the last of such collective bargaining agreements terminates (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment), or

''(iii) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act [45 U.S.C. 151 et seq.], the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on such date of enactment, or

''(B) January 1, 1997.

''(3) TRANSITION RULE FOR STATE AND LOCAL PLANS.—

''(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the dollar limitation under section 401(a)(17) of such Code shall not apply to the extent the amount of compensation which is allowed to be taken into account under the plan would be reduced below the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993.

''(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the 1st plan year beginning after the earlier of—

''(i) the plan year in which the plan is amended to reflect the amendments made by this section, or

''(ii) December 31, 1995.

''(C) PLAN MUST BE AMENDED TO INCORPORATE LIMITS.—This paragraph shall not apply to any eligible participant of a plan unless the plan is amended so that the plan incorporates by reference the dollar limitation under section 401(a)(17) of the Internal Revenue Code of 1986, effective with respect to noneligible participants for plan years beginning after December 31, 1995 (or earlier if the plan amendment so provides).''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(5)–(8) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Section 522(d) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402 to 404, 3402, 3405, 6047, and 6652 of this title] shall apply to distributions after December 31, 1992.

''(2) TRANSITION RULE FOR CERTAIN ANNUITY CONTRACTS.—If, as of July 1, 1992, a State law prohibits a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 which was purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of any 1 or more of either), the amendments made by this section shall not apply to distributions before the earlier of—

''(A) 90 days after the first day after July 1, 1992, on which such transfer is allowed under State law, or

''(B) January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to transfers in taxable years beginning after Dec. 31, 1990, see section 12011(c)(1) of Pub. L. 101–508, set out as an Effective Date note under section 420 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 7311(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to contributions after October 3, 1989.

''(2) TRANSITION.—The amendment made by this section shall not apply to contributions made before January 1, 1990, if—

''(A) the employer requested before October 3, 1989, a private letter ruling or determination letter with respect to the qualification of the plan maintaining the account under section 401(h) of the Internal Revenue Code of 1986,

''(B) the request sets forth a method under which the amount of contributions to the account are to be determined on the basis of cost,

''(C) such method is permissible under section 401(h) of such Code under the provisions of General Counsel Memorandum 39785, and

''(D) the Internal Revenue Service issued before October 4, 1989, a private letter ruling, determination letter, or other letter providing that the specific plan involved qualifies under section 401(a) of such Code when such method is used, that contributions to the account are deductible, or acknowledging that the account would not adversely affect the qualified status of the plan (contingent on all phases of the particular plan being approved).''

Amendment by sections 7811(g)(1), (h)(3) and 7816(*l*) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 7882 of Pub. L. 101–239 provided that: ''Except as otherwise provided in this subpart [subpart C (§§7881, 7882) of part V of title VII of Pub. L. 101–239, amending this section and sections 411 and 412 of this title, and sections 1002, 1021, 1023, 1054, 1082, 1083, 1085b, 1103, 1107, 1108, 1113, 1132, 1306, 1322, 1341, 1342, 1344, 1362, 1364, 1368, 1370, and 1371 of Title 29, Labor, enacting provisions set out as a note under section 1054 of Title 29, and amending provisions set out as notes under sections 404 and 412 of this title and sections 1021, 1301, 1322, and 1344 of Title 29], any amendment made by this subpart shall take effect as if included in the provision of the Pension Protection Act [Pub. L. 100–203, title IX, subtitle D, part II, §§9302–9346] to which such amendment relates.''

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(c)(7)(E) of Pub. L. 100–647 provided that:

''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and sections 403, 408, and 501 of this title] shall apply to plan years beginning after December 31, 1987.

''(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act [section 1105(c)(2) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 402 of this title], the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

''(I) the later of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(II) January 1, 1989.''

Section 1011(k)(1)(C) of Pub. L. 100–647 provided that:

''(i) Subparagraph (A)(i) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after October 16, 1987.

''(ii) Subparagraph (B) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after March 31, 1988.''

Section 1011(*l*)(5)(B) of Pub. L. 100–647 provided that: ''The amendment made by this paragraph [amending this section] shall take effect as if included in the amendments made by section 1120 of the Reform Act [Pub. L. 99–514].''

Amendment by sections 1011(d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), (2)–(7), (9), (*l*)(1)–(4), (6), (7), 1011A(j), (*l*), and 1011B(j)(1), (2), (6), (k)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6053(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 1121 of the Reform Act [Pub. L. 99–514].''

Section 6055(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1112(b) of the Reform Act [Pub. L. 99–514].''

Section 6071(d) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 457 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9341(c) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VII, §7881(i)(5), Dec. 19, 1989, 103 Stat. 2442, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting section 1085b of Title 29, Labor, and amending this section] shall apply to plan amendments adopted after the date of the enactment of this Act [Dec. 22, 1987].

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to plan amendments adopted pursuant to collective bargaining agreements ratified before the date of enactment (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment).''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(1) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Section 1111(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(g)(4), Nov. 10, 1988, 102 Stat. 3464, provided that:

''(1) SUBSECTION (a).—The amendments made by subsection (a) [amending this section] shall apply to benefits attributable to plan years beginning after December 31, 1988.

''(2) SUBSECTION (b).—The amendments made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1988.

''(3) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.''

Section 1112(e) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(h)(6)–(9), Nov. 10, 1988, 102 Stat. 3465, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title] shall apply to plan years beginning after December 31, 1988.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1991.

''(3) WAIVER OF EXCISE TAX ON REVERSIONS.—

''(A) IN GENERAL.—If—

''(i) a plan is in existence on August 16, 1986,

''(ii) such plan would fail to meet the requirements of section 401(a)(26) of the Internal Revenue Code of 1986 (as added by subsection (b)) if such section were in effect for the plan year including August 16, 1986, and

''(iii) there is no transfer of assets to or liabilities from the plan or spinoff or merger involving such plan after August 16, 1986,

then no tax shall be imposed under section 4980 of such Code on any employer reversion by reason of the termination or merger of such plan before the 1st year to which the amendment made by subsection (b) applies.

''(B) INTEREST RATE FOR DETERMINING ACCRUED BENEFIT OF HIGHLY COMPENSATED EMPLOYEES FOR CERTAIN PURPOSES.—In the case of a termination, transfer, or distribution of assets of a plan described in subparagraph (A)(ii) before the 1st year to which the amendment made by subsection (b) applies—

''(i) AMOUNT ELIGIBLE FOR ROLLOVER, INCOME AVERAGING, OR TAX-FREE TRANSFER.—For purposes of determining any eligible amount, the present value of the accrued benefit of any highly compensated employee shall be determined by using an interest rate not less than the highest of—

''(I) the applicable rate under the plan's method in effect under the plan on August 16, 1986,

''(II) the highest rate (as of the date of the termination, transfer, or distribution) determined under any of the methods applicable under the plan at any time after August 15, 1986, and before the termination, transfer, or distribution in calculating the present value of the accrued benefit of an employee who is not a highly compensated employee under the plan (or any other plan used in determining whether the plan meets the requirements of section 401 of the Internal Revenue Code of 1986), or

''(III) 5 percent.

''(ii) ELIGIBLE AMOUNT.—For purposes of clause (i), the term 'eligible amount' means any amount with respect to a highly compensated employee which—

''(I) may be rolled over under section 402(a)(5) of such Code,

''(II) is eligible for income averaging under section 402(e)(1) of such Code, or capital gains treatment under section 402(a)(2) or 403(a)(2) of such Code (as in effect before this Act), or

''(III) may be transferred to another plan without inclusion in gross income.

''(iii) AMOUNTS SUBJECT TO EARLY WITHDRAWAL OR EXCESS DISTRIBUTION TAX.—For purposes of sections 72(t) and 4980A of such Code, there shall not be taken into account the excess (if any) of—

''(I) the amount distributed to a highly compensated employee by reason of such termination or distribution, over

''(II) the amount determined by using the interest rate applicable under clause (i).

''(iv) DISTRIBUTIONS OF ANNUITY CONTRACTS.—If an annuity contract purchased after August 16, 1986, is distributed to a highly compensated employee in connection with such termination or distribution, there shall be included in gross income for the taxable year of such distribution an amount equal to the excess of—

''(I) the purchase price of such contract, over

''(II) the present value of the benefits payable under such contract determined by using the interest rate applicable under clause (i).

Such excess shall not be taken into account for purposes of sections 72(t) and 4980A of such Code.

''(v) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subparagraph, the term 'highly compensated employee' has the meaning given such term by section 414(q) of such Code.

''(4) SPECIAL RULE FOR PLANS WHICH MAY NOT TERMINATE.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, if a plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1301 et seq.] before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate.''

Amendment by section 1114(b)(7) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Section 1116(f) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1011(k)(8), (10), Nov. 10, 1988, 102 Stat. 3470, provided that:

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

''(2) NONDISCRIMINATION RULES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a), (b)(4), and (d) [amending this section], and the provisions of section 401(k)(4)(B) of the Internal Revenue Code of 1986 (as added by this section), shall apply to years beginning after December 31, 1986.

''(B) TRANSITION RULES FOR CERTAIN GOVERNMENTAL AND TAX-EXEMPT PLANS.—Subparagraph (B) of section

401(k)(4) of the Internal Revenue Code of 1986 (relating to governments and tax-exempt organizations not eligible for cash or deferred arrangements), as added by this section, shall not apply to any cash or deferred arrangement adopted by—

''(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, before May 6, 1986, or

''(ii) a tax-exempt organization before July 2, 1986.

In the case of an arrangement described in clause (i), the amendments made by subsections (a), (b)(4), and (d) shall apply to years beginning after December 31, 1988. If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, then any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date.

''(3) AGGREGATION AND EXCESS CONTRIBUTIONS.—The amendments made by subsections (c) and (e) [amending this section] shall apply to years beginning after December 31, 1986.

''(4) COLLECTIVE BARGAINING AGREEMENTS.—

''(A) IN GENERAL.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to years beginning before the earlier of—

''(i) the later of—

''(I) January 1, 1989, or

''(II) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(ii) January 1, 1991.

''(B) SPECIAL RULE FOR NONDISCRIMINATION RULES.—In the case of a plan described in subparagraph (A), the amendments and provisions described in paragraph (2) shall not apply to years beginning before the earlier of—

''(i) the date determined under subparagraph (A)(i)(II), or

''(ii) January 1, 1989.

''(5) SPECIAL RULE FOR QUALIFIED OFFSET ARRANGEMENTS.—

''(A) IN GENERAL.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of section 401(k)(4) of the Internal Revenue Code of 1986 (as added by this section) to the extent such arrangement is part of a qualified offset arrangement consisting of such cash or deferred arrangement and a defined benefit plan.

''(B) QUALIFIED OFFSET ARRANGEMENT.—For purposes of subparagraph (A), a cash or deferred arrangement is part of a qualified offset arrangement with a defined benefit plan to the extent such offset arrangement satisfies each of the following conditions with respect to the employer maintaining the arrangement on April 16, 1986, and at all times thereafter:

''(i) The benefit under the defined benefit plan is directly and uniformly conditioned on the initial elective deferrals (up to 4 percent of compensation).

''(ii) The benefit provided under the defined benefit plan (before the offset) is at least 60 percent of an employee's cumulative elective deferrals (up to 4 percent of compensation).

''(iii) The benefit under the defined benefit plan is reduced by the benefit attributable to the employee's elective deferrals under the plan (up to 4 percent of compensation) and the income allocable thereto. The interest rate used to calculate the reduction shall not exceed the greater of the rate under section 411(a)(11)(B)(ii) of such Code or the interest rate applicable under section 411(c)(2)(C)(iii) of such Code, taking into account section 411(c)(2)(D) of such Code.

For purposes of applying section 401(k)(3) of such Code to the cash or deferred arrangement, the benefits under the defined benefit plan conditioned on initial elective deferrals may be treated as matching contributions under such rules as the Secretary of the Treasury or his delegate may prescribe. The Secretary shall provide rules for the application of this paragraph in the case of successor plans.

''(C) DEFINITION OF EMPLOYER.—For purposes of this paragraph, the term 'employer' includes any research and development center which is federally funded and engaged in cancer research, but only with respect to employees of contractor-operators whose salaries are reimbursed as direct costs against the operator's contract to perform work at such center.

''(6) WITHDRAWALS ON SALE OF ASSETS.—Subclauses (II), (III), and (IV) of section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 (as added by subsection (b)(1)) shall apply to distributions after December 31, 1984.

''(7) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(k)(8) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below], shall be treated as made in accordance with the provisions of such plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(k)(8) of such Code.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.''

Section 1117(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(*l*)(12), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting section 4979 of this title and amending this section and section 414 of this title] shall apply to plan years beginning after December 31, 1986.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) January 1, 1989, or

''(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).

''(3) ANNUITY CONTRACTS.—In the case of an annuity contract under section 403(b) of the Internal Revenue Code of 1986—

''(A) the amendments made by this section shall apply to plan years beginning after December 31, 1988, and

''(B) in the case of a collective bargaining agreement described in paragraph (2), the amendments made by this section shall not apply to years beginning before the earlier of—

''(i) the later of—

''(I) January 1, 1989, or

''(II) the date determined under paragraph (2)(B), or

''(ii) January 1, 1991.

''(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note below] shall be treated as made in accordance with the provisions of the plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.''

Section 1119(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1985.''

Section 1121(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(a)(3), (4), Nov. 10, 1988, 102 Stat. 3472, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 402, 408, and 4974 of this title] shall apply to years beginning after December 31, 1988.

''(2) SUBSECTION (c).—The amendments made by subsection (c) [amending sections 402 and 408 of this title] shall apply to years beginning after December 31, 1986.

''(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to distributions to individuals covered by such agreements in years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

''(ii) January 1, 1989, or

''(B) January 1, 1991.

''(4) TRANSITION RULES.—

''(A) The amendments made by subsections (a) and (b) [amending this section and section 4974 of this title] shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as a note below].

''(B)(i) Except as provided in clause (ii), the amendment made by subsection (b) [amending this section] shall not apply in the case of any individual who has attained age 70½ before January 1, 1988.

''(ii) Clause (i) shall not apply to any individual who is a 5-percent owner (as defined in section 416(i) of the Internal Revenue Code of 1986), at any time during—

''(I) the plan year ending with or within the calendar year in which such owner attains age 66½, and

''(II) any subsequent plan year.

''(5) PLANS MAY INCORPORATE SECTION 401(a)(9) REQUIREMENTS BY REFERENCE.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986.''

Section 1136(c) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1985.''

Section 1143(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.''

Section 1145(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section, section 1055 of Title 29, Labor, and provisions set out as a note under section 1001 of Title 29] shall apply as if included in the amendments made by the Retirement Equity Act of 1984 [Pub. L. 98–397].''

Amendment by section 1171(b)(5) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Section 1174(c)(2)(B) of Pub. L. 99–514 provided that: ''The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986.''

Section 1175(a)(2) of Pub. L. 99–514 provided that: ''The amendment made by this subsection [amending this section] shall apply to stock acquired after December 31, 1986.''

Section 1176(c) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective December 31, 1986. The amendment made by subsection (b) [amending section 409 of this title] shall apply to acquisitions of securities after December 31, 1986.''

Section 1852(h)(1) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(t)(3)(C), Nov. 10, 1988, 102 Stat. 3588, provided that the amendment made by that section is effective for years beginning after Dec. 31, 1985.

Section 1879(g)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984.''

Amendment by sections 1848(b) and 1852(a)(4)(A), (6), (b)(8), (g), (h)(1) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1898(j) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 402, 411, 414, 415, 417, and 2503 of this title, and sections 1053 to 1056 of Title 29, Labor, and provisions set out as notes under section 1001 of Title 29] shall take effect as if included in the provision of the Retirement Equity Act of 1984 [Pub. L. 98–397] to which such amendment relates.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 203(a) of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, amendment by section 204(a) of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 301(b) of Pub. L. 98–397 applicable to plan amendments made after July 30, 1984, but not applicable to the termination of a certain defined benefit plan, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Nothing in amendment by section 203(a) of Pub. L. 98–397 to prevent any distribution required by reason of a failure to comply with the terms of a loan made on or before Aug. 18, 1985, and secured by a portion of the participant's accrued benefit, see section 1898(b)(4)(C)(ii) of Pub. L. 99–514, set out as an Effective Date of 1986 Amendment note under section 417 of this title.

Amendment by section 211(b)(5) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(13) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 491(f)(3) of Pub. L. 98–369 provided that: ''The amendments made by subsection (e) [redesignating section 409A as section 409 of this title and amending this section and sections 41, 415, 4975, and 6699 of this title] shall take effect on January 1, 1984.''

Section 521(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 72, 403, and 408 of this title and repealing provisions set out as a note under this section] shall apply to years beginning after December 31, 1984.

''(2) REPEAL OF SECTION 242 OF TEFRA.—The amendment made by subsection (a)(2) [repealing section 242 of Pub. L. 97–248, which amended this section and enacted provisions formerly set out below] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].

''(3) TRANSITION RULE.—A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], as amended by subsection (a)(1), by reason of distributions under a designation (before January 1, 1984) by any employee in accordance with a designation described in section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (as in efffect [sic] before the amendments made by this Act) [formerly set out as an Effective Date of 1982 Amendment note below].

''(4) SPECIAL RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), paragraph (1) shall be applied by substituting '1986' for '1984'.

''(5) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified on or before the date of the enactment of this Act [July 18, 1984] between employee representatives and one or more employers, the amendments made by this section shall not apply to years beginning before the earlier of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1988.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

Section 524(d)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983.''

Section 527(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) SUBSECTION (a).—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1984.

''(B) EXCEPTION FOR CERTAIN EXISTING PLANS.—The amendment made by subsection (a) shall not apply to any plan—

''(i) which was maintained by a State on June 8, 1984, and

''(ii) with respect to which a determination letter had been issued by the Secretary on December 6, 1982.

''(2) SUBSECTION (b).—

''(A) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [July 18, 1984].

''(B) TRANSITIONAL RULE.—Rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 [section 135(c)(2) of Pub. L. 95–600, set out below] shall apply with respect to any pre-ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for plan years beginning after December 31, 1979, and on or before the date of the enactment of this Act.''

Section 528(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after March 31, 1984.''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as a note under section 1401 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 242(b) of Pub. L. 97–248, which prescribed the effective date for amendment by section 242(a) of Pub. L. 97–248, was repealed by Pub. L. 98–369, div. A, title V, §521(a)(2), July 18, 1984, 98 Stat. 867.

Section 249(b) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1983.''

Section 254(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1981.''

Amendment by sections 237, 238, and 240 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(b)(1), (c)(2)–(4), (e)(2) of Pub. L. 97–34 applicable to plans which include employees within the meaning of subsec. (c)(1) of this section with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Section 314(a)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to distributions after December 31, 1980, in taxable years beginning after such date.''

Section 338(b) of Pub. L. 97–34 provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions of securities after December 31, 1979.''

Section 339 of Pub. L. 97–34 provided that: ''Except as otherwise provided, the amendments made by this subtitle [subtitle D (§§331–339) of title III of Pub. L. 97–34, enacting section 44G of this title and amending this section and sections 46, 48, 55, 56, 381, 383, 404, 409A, 415, 6096, 6411, 6511, and 6699 of this title] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 221(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to plan years beginning after December 31, 1980.''

Section 225(c) of Pub. L. 96–605 provided that: ''The amendments made by this section [amending this section and sections 408 and 410 of this title] shall apply with respect to plan years beginning after December 31, 1980.''

Section 410(c) of Pub. L. 96–364 provided that: ''The amendment made by this section [amending this section and section 1103 of Title 29, Labor] shall take effect on January 1, 1975, except that in the case of contributions received by a collectively bargained plan maintained by more than one employer before the date of enactment of this Act, [Sept. 26, 1980], any determination by the plan administrator that any such con-

tribution was made by mistake of fact or law before such date shall be deemed to have been made on such date of enactment.''

Amendment by section 208(a), (e) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 135(c)(1) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and section 402 of this title] shall apply to plan years beginning after December 31, 1979.''

Amendment by section 141(f)(3) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Section 143(b) of Pub. L. 95–600 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to acquisitions of securities after December 31, 1979.''

Amendment by section 152(e) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 803(b)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1974, see section 803(j) of Pub. L. 94–455, set out as a note under section 46 of this title.

Section 1505(c) of Pub. L. 94–455 provided that: ''The amendments made by this section [amending this section and section 801 of this title] apply for taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(56) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Section 1(e) of Pub. L. 94–267 provided that: ''The amendments made by this Act [amending this section and sections 402 to 404 and 805 of this title, and enacting provisions set out as a note under section 402 of this title] shall apply with respect to payments made to an employee on or after July 4, 1974.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1012(b) and 1016(a)(2) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1012(b) and 196(a)(2) of Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Section 1021(a)(1), (b) of Pub. L. 93–406 provided that the amendment made by that section is effective with respect to plan years beginning after Dec. 31, 1975.

Section 1022(d) of Pub. L. 93–406 provided that the amendment made by that section is effective as of Jan. 1, 1974.

Section 1022(f) of Pub. L. 93–406 provided that the amendment made by that section is effective as of Jan. 1, 1974.

Section 1024 of Pub. L. 93–406 provided that: ''Except as otherwise provided in section 1021, the amendments made by section 1021 [amending this section] shall apply to plan years to which part I applies. [For description of plan years to which part I applies, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.] Except as otherwise provided in section 1022, the amendments made by section 1022 [amending this section and section 6051 of this title] shall apply to plan years to which part I applies. Section 1023 [amending this section] shall take effect on the date of the enactment of this Act [Sept. 2, 1974].''

Section 2001(i)(2)–(4) of Pub. L. 93–406 provided that:

''(2) The amendments made by subsection (c) [amending this section] apply to

''(A) taxable years beginning after December 31, 1975, and

''(B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 1379(b) [of this title] as in effect on the day before the date of the enactment of this Act [Sept. 2, 1974].

''(3) The amendments made by subsection (d) [amending this section] apply to taxable years beginning after December 31, 1975.

''(4) The amendments made by subsections (e) and (f) [enacting section 4972 of this title and amending this section and section 72 of this title] apply to contributions made in taxable years beginning after December 31, 1975.''

Amendment by section 2001(h)(1) of Pub. L. 93–406 applicable to taxable years ending after Sept. 2, 1974, see section 2001(i)(6) of Pub. L. 93–406, set out as a note under section 72 of this title.

Amendment by section 2004(a)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transitional Provisions note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 1(b) of Pub. L. 91–691 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954.''

EFFECTIVE DATE OF 1966 AMENDMENT

Section 204(d) of Pub. L. 89–809, as amended by Pub. L. 90–607, Oct. 21, 1968, 82 Stat. 1189; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply with respect to taxable years beginning after December 31, 1967. The amendment made by subsection (c) [amending this section] shall apply with respect to taxable years beginning after December 31, 1967, and in the case of a taxpayer who applies the averaging provisions of section 401(e)(3) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning after December 31, 1967, the computation of the amount deductible under section 404 of such Code for any prior taxable year which began before January 1, 1968, shall be made, for purposes of such averaging provisions, as if the amendment made by subsection (c) were applicable to such prior taxable year.''

Section 205(b) of Pub. L. 89–809 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 13, 1966].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to taxable years beginning after Dec. 31, 1966, see section 106(e) of Pub. L. 89–97, set out as a note under section 213 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 219(b) of Pub. L. 88–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954, but only with respect to contributions made after December 31, 1954.''

EFFECTIVE DATE OF 1962 AMENDMENTS

Section 2(c) of Pub. L. 87–863 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 404 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 23, 1962].''

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

SHORT TITLE OF 1962 AMENDMENT

Section 1 of Pub. L. 87–792 provided: ''That this Act [enacting sections 405 and 6047 of this title and amending this section and sections 37, 62, 72, 101, 104, 105, 172, 402 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401, and 7207 of this title] may be cited as the 'Self-Employed Individuals Tax Retirement Act of 1962'.''

REGULATIONS

Pub. L. 109–280, title VIII, §823, Aug. 17, 2006, 120 Stat. 998, provided that: ''The Secretary of the Treasury shall issue regulations under which a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall, for all years to which section 401(a)(9) of such Code applies to such plan, be treated as having complied with such section 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9).''

Pub. L. 109–280, title VIII, §826, Aug. 17, 2006, 120 Stat. 999, provided that: ''Within 180 days after the date of the enactment of this Act [Aug. 17, 2006], the Secretary of the Treasury shall modify the rules for determining whether a participant has had a hardship for purposes of section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that if an event (including the occurrence of a medical expense) would constitute a hardship under the plan if it occurred with respect to the participant's spouse or dependent (as defined in section 152 of such Code), such event shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary under the plan with respect to the participant. The Secretary of the Treasury shall issue similar rules for purposes of determining whether a participant has had—

''(1) a hardship for purposes of section 403(b)(11)(B) of such Code; or

''(2) an unforeseen financial emergency for purposes of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such Code.''

Pub. L. 107–16, title VI, §657(c)(2), June 7, 2001, 115 Stat. 136, provided that:

''(A) AUTOMATIC ROLLOVER SAFE HARBOR.—Not later than 3 years after the date of enactment of this Act [June 7, 2001], the Secretary of Labor shall prescribe regulations providing for safe harbors under which the designation of an institution and investment of funds in accordance with section 401(a)(31)(B) of the Internal Revenue Code of 1986 is deemed to satisfy the fiduciary requirements of section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)).

''(B) USE OF LOW-COST INDIVIDUAL RETIREMENT PLANS.—The Secretary of the Treasury and the Secretary of Labor may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of transfers under section 401(a)(31)(B) of the Internal Revenue Code of 1986 and for other uses that promote the preservation of assets for retirement income purposes.''

Section 1141 of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by—

''(1) section 1111 [amending this section], relating to application of nondiscrimination rules to integrated plans,

''(2) section 1112 [amending this section and sections 402, 404, 406, 407, 410, and 818 of this title], relating to coverage requirements for qualified plans,

''(3) section 1113 [amending sections 410 and 411 of this title and sections 1052 to 1054 of Title 29, Labor], relating to minimum vesting standards,

''(4) section 1114 [amending this section, sections 106, 117, 120, 127, 129, 132, 274, 404A, 406, 407, 411, 414, 415, 423, 501, 505, and 4975 of this title, and section 1108 of Title 29], relating to the definition of highly compensated employee,

''(5) section 1115 [amending section 414 of this title], relating to separate lines of business and the definition of compensation,

''(6) section 1116 [amending this section], relating to rules for section 401(k) plans,

''(7) section 1117 [enacting section 4979 of this title and amending this section and section 414 of this title], relating to nondiscrimination requirements for employer matching and employer contribution,

''(8) section 1120 [amending section 403 of this title], relating to nondiscrimination requirements for tax sheltered annuities, and

''(9) section 1133 [enacting section 4981A [now 4980A] of this title], relating to tax on excess distributions.''

SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES

Pub. L. 109–280, title I, §104, Aug. 17, 2006, 120 Stat. 816, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan for its plan year which includes such date, the amendments made by this subtitle [subtitle A (§§101 to 107) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earlier of—

''(1) the first plan year for which the plan ceases to be an eligible cooperative plan, or

''(2) January 1, 2017.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible cooperative plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

''(1) rural cooperatives (as defined in section 401(k)(7)(B) of such Code without regard to clause (iv) thereof), or

''(2) organizations which are—

''(A) cooperative organizations described in section 1381(a) of such Code which are more than 50-percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

''(B) more than 50-percent owned, or controlled by, one or more cooperative organizations described in subparagraph (A).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Secu-

rity Act of 1974 [29 U.S.C. 1060(a)] and is maintained by a rural telephone cooperative association described in section 3(40)(B)(v) of such Act [29 U.S.C. 1002(40)(B)(v)].''

TEMPORARY RELIEF FOR CERTAIN PBGC SETTLEMENT PLANS

Pub. L. 109–280, title I, §105, Aug. 17, 2006, 120 Stat. 817, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was a PBGC settlement plan as of such date, the amendments made by this subtitle [subtitle A (§§101 to 107) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before January 1, 2014.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B), to a PBGC settlement plan for plan years beginning after December 31, 2007, and before January 1, 2014, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) PBGC SETTLEMENT PLAN.—For purposes of this section, the term 'PBGC settlement plan' means a defined benefit plan (other than a multiemployer plan) to which section 302 of such Act [29 U.S.C. 1082] and section 412 of such Code apply and—

''(1) which was sponsored by an employer which was in bankruptcy, giving rise to a claim by the Pension Benefit Guaranty Corporation of not greater than $150,000,000, and the sponsorship of which was assumed by another employer that was not a member of the same controlled group as the bankrupt sponsor and the claim of the Pension Benefit Guaranty Corporation was settled or withdrawn in connection with the assumption of the sponsorship, or

''(2) which, by agreement with the Pension Benefit Guaranty Corporation, was spun off from a plan subsequently terminated by such Corporation under section 4042 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1342].''

SPECIAL RULES FOR PLANS OF CERTAIN GOVERNMENT CONTRACTORS

Pub. L. 109–280, title I, §106, Aug. 17, 2006, 120 Stat. 817, provided that:

''(a) GENERAL RULE.—Except as provided in this section, if a plan is an eligible government contractor plan, this subtitle [subtitle A (§§101 to 107) of title I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, repealing sections 1057, 1082 to 1086 of Title 29, and enacting provisions set out as notes under this section and sections 1021, 1082, and 1083 of Title 29] and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, enacting provisions set out as notes under sections 409A, 412, 430, and 436 of this title, and amending provisions set out as a note under section 412 of this title] shall not apply to plan years beginning before the earliest of—

''(1) the first plan year for which the plan ceases to be an eligible government contractor plan,

''(2) the effective date of the Cost Accounting Standards Pension Harmonization Rule, or

''(3) January 1, 2011.

''(b) INTEREST RATE.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible government contractor plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(h)(2)(C)(iii) of such Act [29 U.S.C. 1083(h)(2)(C)(iii)] and section 430(h)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise used.

''(c) ELIGIBLE GOVERNMENT CONTRACTOR PLAN DEFINED.—For purposes of this section, a plan shall be treated as an eligible government contractor plan if it is maintained by a corporation or a member of the same affiliated group (as defined by section 1504(a) of the Internal Revenue Code of 1986), whose primary source of revenue is derived from business performed under contracts with the United States that are subject to the Federal Acquisition Regulations (chapter 1 of title 48, CFR) and that are also subject to the Defense Federal Acquisition Regulation Supplement (chapter 2 of title 48, CFR), and whose revenue derived from such business in the previous fiscal year exceeded $5,000,000,000, and whose pension plan costs that are assignable under those contracts are subject to sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413).

''(d) COST ACCOUNTING STANDARDS PENSION HARMONIZATION RULE.—The Cost Accounting Standards Board shall review and revise sections 412 and 413 of the Cost Accounting Standards (48 CFR 9904.412 and 9904.413) to harmonize the minimum required contribution under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] of eligible government contractor plans and government reimbursable pension plan costs not later than January 1, 2010. Any final rule adopted by the Cost Accounting Standards Board shall be deemed the Cost Accounting Standards Pension Harmonization Rule.''

GRANDFATHER RULE FOR CHURCH PLANS WHICH SELF-ANNUITIZE

Pub. L. 109–280, title VIII, §865, Aug. 17, 2006, 120 Stat. 1025, provided that:

''(a) IN GENERAL.—In the case of any plan year ending after the date of the enactment of this Act [Aug. 17, 2006], annuity payments provided with respect to any account maintained for a participant or beneficiary under a qualified church plan shall not fail to satisfy the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 merely because the payments are not made under an annuity contract purchased from an insurance company if such payments would not fail such requirements if provided with respect to a retirement income account described in section 403(b)(9) of such Code.

''(b) QUALIFIED CHURCH PLAN.—For purposes of this section, the term 'qualified church plan' means any money purchase pension plan described in section 401(a) of such Code which—

''(1) is a church plan (as defined in section 414(e) of such Code) with respect to which the election provided by section 410(d) of such Code has not been made, and

''(2) was in existence on April 17, 2002.''

NEW TECHNOLOGIES IN RETIREMENT PLANS

Section 1510 of Pub. L. 105–34 provided that:

''(a) IN GENERAL.—Not later than December 31, 1998, the Secretary of the Treasury and the Secretary of Labor shall each issue guidance which is designed to—

''(1) interpret the notice, election, consent, disclosure, and time requirements (and related recordkeeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators while maintaining the protection of the rights of participants and beneficiaries, and

''(2) clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

''(b) APPLICABILITY OF FINAL REGULATIONS.—Final regulations applicable to the guidance regarding new technologies described in subsection (a) shall not be effective until the first plan year beginning at least 6 months after the issuance of such final regulations.''

TREATMENT OF QUALIFIED FOOTBALL COACHES PLAN

Section 1704(k) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, a qualified football coaches plan—

''(A) shall be treated as a multiemployer collectively bargained plan, and

''(B) notwithstanding section 401(k)(4)(B) of such Code, may include a qualified cash and deferred arrangement under section 401(k) of such Code.

''(2) QUALIFIED FOOTBALL COACHES PLAN.—For purposes of this subsection, the term 'qualified football coaches plan' means any defined contribution plan which is established and maintained by an organization—

''(A) which is described in section 501(c) of such Code,

''(B) the membership of which consists entirely of individuals who primarily coach football as full-time employees of 4-year colleges or universities described in section 170(b)(1)(A)(ii) of such Code, and

''(C) which was in existence on September 18, 1986.

''(3) EFFECTIVE DATE.—This subsection shall apply to years beginning after December 22, 1987.''

APPLICABILITY OF SUBSECTION (a)(26)

Section 6065 of Pub. L. 100–647 provided that: ''In the case of plan years beginning before January 1, 1993, section 401(a)(26) of the 1986 Code shall not apply to any governmental plan (within the meaning of section 414(d) of such Code) with respect to employees who were participants in such plan on July 14, 1988.''

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Section 9343(a) of Pub. L. 100–203 provided that: ''Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq., 1301 et seq.] are not applicable in interpreting such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

Section 1465 of title I of Pub. L. 104–188 provided that: ''If any amendment made by this subtitle [subtitle D (§§1401–1465) of title I of Pub. L. 104–188, see Tables for classification] requires an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after January 1, 1998, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan or contract is operated in accordance with the requirements of such amendment, and

''(2) such amendment applies retroactively to such period.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this section shall be applied by substituting '2000' for '1998'.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

Section 523 of title V of Pub. L. 102–318 provided that: ''If any amendment made by this subtitle [subtitle B (§§521–523) of title V of Pub. L. 102–318, amending this section and sections 55, 62, 72, 219, 402 to 404, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3402, 3405, 4973, 4980A, 6047, 6652, and 7701 of this title] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

''(2) such plan amendment applies retroactively to such period.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

Section 1140 of title XI of Pub. L. 99–514, as amended by Pub. L. 101–239, title VII, §7861(c), Dec. 19, 1989, 103 Stat. 2431; Pub. L. 104–188, title I, §1704(t)(27), Aug. 20, 1996, 110 Stat. 1888, provided that:

''(a) IN GENERAL.—If any amendment made by this subtitle, subtitle C [subtitles A (§§1101–1147) and C (§§1171–1177) of title XI of Pub. L. 99–514, enacting sections 2057, 4972, 4979, 4980, 4981A, and 6659A of this title, amending this section, sections 38, 56, 72, 106, 108, 117, 120, 127, 129, 132, 133, 219, 274, 402 to 404A, 406 to 411, 414 to 417, 423, 457, 501, 505, 818, 852, 3121, 3306, 3405, 4973 to 4975, 4979A, 6051, 6693, and 7701 of this title, and sections 1052 to 1055 and 1108 of Title 29, Labor, repealing sections 41 and 6699 of this title, and amending provisions set out as a note under section 1001 of Title 29], or title XVIII of this Act [see Tables for classification] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

''(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment or in accordance with an amendment prescribed by the Secretary and adopted by the plan, and

''(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this provision.

''(b) MODEL AMENDMENT.—

''(1) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment or amendments which allow a plan to meet the requirements of any amendment made by this subtitle or subtitle C—

''(A) which requires an amendment to such plan, and

''(B) is effective before the first plan year beginning after December 31, 1988.

''(2) ADOPTION BY PLAN.—If a plan adopts the amendment or amendments prescribed under paragraph (1) and operates in accordance with such amendment or amendments, such plan shall not be treated as failing to provide definitely determinable benefits or contributions or to be operated in accordance with the provisions of the plan.

''(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, subsection (a) shall be applied by

substituting for the first plan year beginning on or after January 1, 1989, the first plan year beginning after the later of—

''(1) December 31, 1988, or

''(2) the earlier of—

''(A) December 31, 1990, or

''(B) the date on which the last of such collective bargaining agreements terminate (without regard to any extension after February 28, 1986).

For purposes of paragraph (1)(B) [(2)(B)] and any other provision of this title [see Tables for classification], an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act.''

SECRETARY TO ACCEPT APPLICATIONS WITH RESPECT TO SECTION 401(k) PLANS

Section 1142 of Pub. L. 99–514 provided that: ''The Secretary of the Treasury or his delegate shall, not later than May 1, 1987, begin accepting applications for opinion letters with respect to master and prototype plans for qualified cash or deferred arrangements under section 401(k) of the Internal Revenue Code of 1986.''

TREATMENT OF INDIVIDUALS HAVING BEGINNING DATE AFFECTED BY PUB. L. 99–514

Section 1852(a)(4)(C) of Pub. L. 99–514, as added by Pub. L. 100–647, title I, §1018(t)(3)(A), Nov. 10, 1988, 102 Stat. 3588, provided that: ''An individual whose required beginning date would, but for the amendment made by subparagraph (A) [amending this section], occur after December 31, 1986, but whose required beginning date after such amendment occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986.''

DISTRIBUTION REQUIREMENTS FOR ACCOUNTS AND ANNUITIES OF AN INSURER IN A REHABILITATION PROCEEDING

Section 553 of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of sections 401(a)(9), 408(a)(6) and (7), and 408(b)(3) and (4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

''(1) a trust, custodial account, or annuity or other contract forming part of a pension or profit-sharing plan, or a retirement annuity, or

''(2) a grantor of an individual retirement account or an individual retirement annuity,

shall not be treated as failing to meet the requirements of such sections if such account, annuity, or contract was issued by an insurance company which, on March 15, 1984, was a party to a rehabilitation proceeding under the applicable State insurance law.

''(b) LIMITATION.—Subsection (a) shall apply only during the period during which—

''(1) the insurance company continues to be a party to the proceeding described in subsection (a), and

''(2) distributions under the trust, custodial account, or annuity or other contract may not be made by reason of such proceeding.''

QUALIFICATION REQUIREMENTS MODIFIED IF REGULATIONS NOT ISSUED

Section 524(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—If the Secretary of the Treasury or his delegate does not publish final regulations under section 416 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) before January 1, 1985, the Secretary shall publish before such date plan amendment provisions which may be incorporated in a plan to meet the requirements of section 401(a)(10)(B)(ii) of such Code.

''(2) EFFECT OF INCORPORATION.—If a plan is amended to incorporate the plan amendment provisions described in paragraph (1), such plan shall be treated as meeting the requirements of section 401(a)(10)(B)(ii) of the Internal Revenue Code of 1986 during the period such amendment is in effect but not later than 6 months after the final regulations described in paragraph (1) are published.

''(3) FAILURE BY SECRETARY TO PUBLISH.—If the Secretary of the Treasury or his delegate does not publish plan amendment provisions described in paragraph (1), the plan shall be treated as meeting the requirements of section 401(a)(10)(B) of the Internal Revenue Code of 1986 if—

''(A) such plan is amended to incorporate such requirements by reference, except that

''(B) in the case of any optional requirement under section 416 of such Code, if such amendment does not specify the manner in which such requirement will be met, the employer shall be treated as having elected the requirement with respect to each employee which provides the maximum vested accrued benefit for such employee.''

TRANSITIONAL RULE

Section 135(c)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of cash or deferred arrangements in existence on June 27, 1974—

''(A) the qualification of the plan and the trust under section 401 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954];

''(B) the exemption of the trust under section 501(a) of such Code;

''(C) the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust; and

''(D) the excludability of the interest of the employee in the trust under sections 2039 and 2517 of such Code,

shall be determined for plan years beginning before January 1, 1980 in a manner consistent with Revenue Ruling 56–497 (1956–2 C.B. 284), Revenue Ruling 63–180 (1963–2 C.B. 189), and Revenue Ruling 68–89 (1968–1 C.B. 402).''

SALARY REDUCTION REGULATIONS

Section 2006 of Pub. L. 93–406, as amended by Pub. L. 94–455, title XV, §1506, Oct. 4, 1976, 90 Stat. 1739; Pub. L. 95–615, §5, Nov. 8, 1978, 92 Stat. 3097; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1980, to an employees' trust described in section 401(a), 403(a) or 405(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

''(b) ADMINISTRATION IN THE CASE OF CERTAIN QUALIFIED PENSION OR PROFIT-SHARING PLANS, ETC., IN EXISTENCE ON JUNE 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1980, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

''(1) provided for contributions to an employee's trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1986 [subsec. (a) of this section, section 403(a) of this title, or section 405(a) of this title] which is exempt from tax under section 501(a) of such Code [section 501(a) of this title], or

''(2) was maintained as part of an arrangement under which an employee was permitted to elect to

receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986 [this title].

''(c) ADMINISTRATION OF LAW WITH RESPECT TO CERTAIN PLANS.—

''(1) ADMINISTRATION IN THE CASE OF PLANS DESCRIBED IN SUBSECTION (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

''(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

''(B) in the manner in which such law was administered before January 1, 1972.

''(2) ADMINISTRATION IN THE CASE OF QUALIFIED PROFIT-SHARING PLANS.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

''(A) Revenue Ruling 56–497 (1956—2 C.B. 284),

''(B) Revenue Ruling 63–180 (1963—2 C.B. 189), and

''(C) Revenue Ruling 68–89 (1968—1 C.B. 402).

''(d) LIMITATION ON RETROACTIVITY OF FINAL REGULATIONS.—In the case of any salary reduction regulations which become final after December 31, 1979—

''(1) for purposes of chapter 1 of the Internal Revenue Code of 1986 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1980; and

''(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

''(e) SALARY REDUCTION REGULATIONS DEFINED.—For purpose of this section, the term 'salary reduction regulations' means regulations dealing with the includibility in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a) [subsec. (a) of this section], or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms (if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986).''

Pub. L. 95–615, § 210(b), Nov. 8, 1978, 92 Stat. 3109, provided that: ''Section 5 of this Act [amending this note] shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978 [see Short Title note set out under section 1 of this title].''

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

Provisions relating to inflation adjustment of items in sections 25B, 45A, 219, 401, 402, 404, 408, 408A, 409, 414 to 416, 457 of this title for certain years were contained in the following:

2010—Internal Revenue Notice 2009–94.
2009—Internal Revenue Notice 2008–102.
2008—Internal Revenue Notice 2007–87.
2007—Internal Revenue Notice 2006–98.
2006—Internal Revenue Notice 2005–75.
2005—Internal Revenue Notice 2004–72.
2004—Internal Revenue Notice 2003–73.
2003—Internal Revenue Notice 2002–71.
2002—Internal Revenue Notice 2001–84.
2001—Internal Revenue Notice 2000–66.
2000—Internal Revenue Notice 99–55.
1999—Internal Revenue Notice 98–53.
1998—Internal Revenue Notice 97–58.
1997—Internal Revenue Notice 96–55.

§ 402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust

Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

(b) Taxability of beneficiary of nonexempt trust

(1) Contributions

Contributions to an employees' trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

(2) Distributions

The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

(3) Grantor trusts

A beneficiary of any trust described in paragraph (1) shall not be considered the owner of any portion of such trust under subpart E of part I of subchapter J (relating to grantors and others treated as substantial owners).

(4) Failure to meet requirements of section 410(b)

(A) Highly compensated employees

If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan of which it is a part to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1) or (2) include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

(B) Failure to meet coverage tests

If a trust is not exempt from tax under section 501(a) for any taxable year solely be-

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

(i) such taxable year, or

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

(C) Highly compensated employee

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

(c) Rules applicable to rollovers from exempt trusts

(1) Exclusion from income

If—

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

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

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

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

(2) Maximum amount which may be rolled over

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

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

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

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

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

(A) In general

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

(B) Hardship exception

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

(4) Eligible rollover distribution

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

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

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

If all or any portion of a distribution during 2009 is treated as an eligible rollover distribution but would not be so treated if the minimum distribution requirements under section 401(a)(9) had applied during 2009, such distribution shall not be treated as an eligible rollover distribution for purposes of section 401(a)(31) or 3405(c) or subsection (f) of this section.

(5) Transfer treated as rollover contribution under section 408

For purposes of this title, a transfer to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B) resulting in any portion of a distribution being excluded from gross income under paragraph (1) shall be treated as a rollover contribution described in section 408(d)(3).

(6) Sales of distributed property

For purposes of this subsection—

(A) Transfer of proceeds from sale of distributed property treated as transfer of distributed property

The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

(B) Proceeds attributable to increase in value

The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(C) Designation where amount of distribution exceeds rollover contribution

In any case where part or all of the distribution consists of property other than money—

(i) the portion of the money or other property which is to be treated as attributable to amounts not included in gross income, and

(ii) the portion of the money or other property which is to be treated as included in the rollover contribution,

shall be determined on a ratable basis unless the taxpayer designates otherwise. Any designation under this subparagraph for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(D) Nonrecognition of gain or loss

No gain or loss shall be recognized on any sale described in subparagraph (A) to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (1).

(7) Special rule for frozen deposits

(A) In general

The 60-day period described in paragraph (3) shall not—

(i) include any period during which the amount transferred to the employee is a frozen deposit, or

(ii) end earlier than 10 days after such amount ceases to be a frozen deposit.

(B) Frozen deposits

For purposes of this subparagraph, the term ''frozen deposit'' means any deposit which may not be withdrawn because of—

(i) the bankruptcy or insolvency of any financial institution, or

(ii) any requirement imposed by the State in which such institution is located by reason of the bankruptcy or insolvency (or threat thereof) of 1 or more financial institutions in such State.

A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (3) (without regard to this paragraph) such deposit is described in the preceding sentence.

(8) Definitions

For purposes of this subsection—

(A) Qualified trust

The term ''qualified trust'' means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(B) Eligible retirement plan

The term ''eligible retirement plan'' means—

(i) an individual retirement account described in section 408(a),

(ii) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(iii) a qualified trust,

(iv) an annuity plan described in section 403(a),

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

(vi) an annuity contract described in section 403(b).

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated Roth account and a Roth IRA.

(9) Rollover where spouse receives distribution after death of employee

If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee.

(10) Separate accounting

Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

(11) Distributions to inherited individual retirement plan of nonspouse beneficiary

(A) In general

If, with respect to any portion of a distribution from an eligible retirement plan described in paragraph (8)(B)(iii) of a deceased employee, a direct trustee-to-trustee transfer is made to an individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

(i) the transfer shall be treated as an eligible rollover distribution,

(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

(B) Certain trusts treated as beneficiaries

For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be treated in the same manner as a designated beneficiary.

(d) Taxability of beneficiary of certain foreign situs trusts

For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under section 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).

(e) Other rules applicable to exempt trusts

(1) Alternate payees

(A) Alternate payee treated as distributee

For purposes of subsection (a) and section 72, an alternate payee who is the spouse or former spouse of the participant shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

(B) Rollovers

If any amount is paid or distributed to an alternate payee who is the spouse or former spouse of the participant by reason of any qualified domestic relations order (within the meaning of section 414(p)), subsection (c) shall apply to such distribution in the same manner as if such alternate payee were the employee.

(2) Distributions by United States to nonresident aliens

The amount includible under subsection (a) in the gross income of a nonresident alien with respect to a distribution made by the United States in respect of services performed by an employee of the United States shall not exceed an amount which bears the same ratio to the amount includible in gross income without regard to this paragraph as—

(A) the aggregate basic pay paid by the United States to such employee for such services, reduced by the amount of such basic pay which was not includible in gross income by reason of being from sources without the United States, bears to

(B) the aggregate basic pay paid by the United States to such employee for such services.

In the case of distributions under the civil service retirement laws, the term ''basic pay'' shall have the meaning provided in section 8331(3) of title 5, United States Code.

(3) Cash or deferred arrangements

For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) or which is part of a salary reduction agreement under section 403(b) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

(4) Net unrealized appreciation

(A) Amounts attributable to employee contributions

For purposes of subsection (a) and section 72, in the case of a distribution other than a lump sum distribution, the amount actually distributed to any distributee from a trust described in subsection (a) shall not include any net unrealized appreciation in securities of the employer corporation attributable to amounts contributed by the employee (other than deductible employee contributions within the meaning of section 72(*o*)(5)). This subparagraph shall not apply to a distribution to which subsection (c) applies.

(B) Amounts attributable to employer contributions

For purposes of subsection (a) and section 72, in the case of any lump sum distribution which includes securities of the employer corporation, there shall be excluded from gross income the net unrealized appreciation attributable to that part of the distribution which consists of securities of the employer corporation. In accordance with rules prescribed by the Secretary, a taxpayer may elect, on the return of tax on which a lump sum distribution is required to be included, not to have this subparagraph apply to such distribution.

(C) Determination of amounts and adjustments

For purposes of subparagraphs (A) and (B), net unrealized appreciation and the resulting adjustments to basis shall be determined in accordance with regulations prescribed by the Secretary.

(D) Lump-sum distribution

For purposes of this paragraph—

(i) In general

The term ''lump-sum distribution'' means the distribution or payment within one taxable year of the recipient of the balance to the credit of an employee which becomes payable to the recipient—

(I) on account of the employee's death,

(II) after the employee attains age 59½,

(III) on account of the employee's separation from service, or

(IV) after the employee has become disabled (within the meaning of section 72(m)(7)),

from a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501 or from a plan described in section 403(a). Subclause (III) of this clause shall be applied only with respect to an individual who is an employee without regard to section 401(c)(1), and subclause (IV) shall be applied only with respect to an employee within the meaning of section 401(c)(1). For purposes of this clause, a distribution to two or more trusts shall be treated as a distribution to one recipient. For purposes of this paragraph, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)).

(ii) Aggregation of certain trusts and plans

For purposes of determining the balance to the credit of an employee under clause (i)—

(I) all trusts which are part of a plan shall be treated as a single trust, all pension plans maintained by the employer shall be treated as a single plan, all prof-

it-sharing plans maintained by the employer shall be treated as a single plan, and all stock bonus plans maintained by the employer shall be treated as a single plan, and

(II) trusts which are not qualified trusts under section 401(a) and annuity contracts which do not satisfy the requirements of section 404(a)(2) shall not be taken into account.

(iii) Community property laws

The provisions of this paragraph shall be applied without regard to community property laws.

(iv) Amounts subject to penalty

This paragraph shall not apply to amounts described in subparagraph (A) of section 72(m)(5) to the extent that section 72(m)(5) applies to such amounts.

(v) Balance to credit of employee not to include amounts payable under qualified domestic relations order

For purposes of this paragraph, the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

(vi) Transfers to cost-of-living arrangement not treated as distribution

For purposes of this paragraph, the balance to the credit of an employee under a defined contribution plan shall not include any amount transferred from such defined contribution plan to a qualified cost-of-living arrangement (within the meaning of section 415(k)(2)) under a defined benefit plan.

(vii) Lump-sum distributions of alternate payees

If any distribution or payment of the balance to the credit of an employee would be treated as a lump-sum distribution, then, for purposes of this paragraph, the payment under a qualified domestic relations order (within the meaning of section 414(p)) of the balance to the credit of an alternate payee who is the spouse or former spouse of the employee shall be treated as a lump-sum distribution. For purposes of this clause, the balance to the credit of the alternate payee shall not include any amount payable to the employee.

(E) Definitions relating to securities

For purposes of this paragraph—

(i) Securities

The term ''securities'' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form.

(ii) Securities of the employer

The term ''securities of the employer corporation'' includes securities of a parent or subsidiary corporation (as defined in subsections (e) and (f) of section 424) of the employer corporation.

[(5) Repealed. Pub. L. 104–188, title I, § 1401(b)(13), Aug. 20, 1996, 110 Stat. 1789]

(6) Direct trustee-to-trustee transfers

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(f) Written explanation to recipients of distributions eligible for rollover treatment

(1) In general

The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution, provide a written explanation to the recipient—

(A) of the provisions under which the recipient may have the distribution directly transferred to an eligible retirement plan and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B),

(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to an eligible retirement plan,

(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution,

(D) if applicable, of the provisions of subsections (d) and (e) of this section, and

(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.

(2) Definitions

For purposes of this subsection—

(A) Eligible rollover distribution

The term ''eligible rollover distribution'' has the same meaning as when used in subsection (c) of this section, paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16). Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.

(B) Eligible retirement plan

The term ''eligible retirement plan'' has the meaning given such term by subsection (c)(8)(B).

(g) Limitation on exclusion for elective deferrals

(1) In general

(A) Limitation

Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar

amount. The preceding sentence shall not apply to the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.

(B) Applicable dollar amount

For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	The applicable dollar amount:
2002	$11,000
2003	$12,000
2004	$13,000
2005	$14,000
2006 or thereafter	$15,000.

(C) Catch-up contributions

In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

(2) Distribution of excess deferrals

(A) In general

If any amount (hereinafter in this paragraph referred to as ''excess deferrals'') is included in the gross income of an individual under paragraph (1) (or would be included but for the last sentence thereof) for any taxable year—

(i) not later than the 1st March 1 following the close of the taxable year, the individual may allocate the amount of such excess deferrals among the plans under which the deferrals were made and may notify each such plan of the portion allocated to it, and

(ii) not later than the 1st April 15 following the close of the taxable year, each such plan may distribute to the individual the amount allocated to it under clause (i) (and any income allocable to such amount through the end of such taxable year).

The distribution described in clause (ii) may be made notwithstanding any other provision of law.

(B) Treatment of distribution under section 401(k)

Except to the extent provided under rules prescribed by the Secretary, notwithstanding the distribution of any portion of an excess deferral from a plan under subparagraph (A)(ii), such portion shall, for purposes of applying section 401(k)(3)(A)(ii), be treated as an employer contribution.

(C) Taxation of distribution

In the case of a distribution to which subparagraph (A) applies—

(i) except as provided in clause (ii), such distribution shall not be included in gross income, and

(ii) any income on the excess deferral shall, for purposes of this chapter, be treated as earned and received in the taxable year in which such income is distributed.

No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.

(D) Partial distributions

If a plan distributes only a portion of any excess deferral and income allocable thereto, such portion shall be treated as having been distributed ratably from the excess deferral and the income.

(3) Elective deferrals

For purposes of this subsection, the term ''elective deferrals'' means, with respect to any taxable year, the sum of—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not includible in gross income for the taxable year under subsection (e)(3) (determined without regard to this subsection),

(B) any employer contribution to the extent not includible in gross income for the taxable year under subsection (h)(1)(B) (determined without regard to this subsection),

(C) any employer contribution to purchase an annuity contract under section 403(b) under a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), and

(D) any elective employer contribution under section 408(p)(2)(A)(i).

An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations.

(4) Cost-of-living adjustment

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(5) Disregard of community property laws

This subsection shall be applied without regard to community property laws.

(6) Coordination with section 72

For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

(7) Special rule for certain organizations

(A) In general

In the case of a qualified employee of a qualified organization, with respect to em-

ployer contributions described in paragraph (3)(C) made by such organization, the limitation of paragraph (1) for any taxable year shall be increased by whichever of the following is the least:

(i) $3,000,

(ii) $15,000 reduced by the sum of—

(I) the amounts not included in gross income for prior taxable years by reason of this paragraph, plus

(II) the aggregate amount of designated Roth contributions (as defined in section 402A(c)) permitted for prior taxable years by reason of this paragraph, or

(iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary).

(B) Qualified organization

For purposes of this paragraph, the term ''qualified organization'' means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001).

(C) Qualified employee

For purposes of this paragraph, the term ''qualified employee'' means any employee who has completed 15 years of service with the qualified organization.

(D) Years of service

For purposes of this paragraph, the term ''years of service'' has the meaning given such term by section 403(b).

(8) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) for purposes of this title.

(h) Special rules for simplified employee pensions

For purposes of this chapter—

(1) In general

Except as provided in paragraph (2), contributions made by an employer on behalf of an employee to an individual retirement plan pursuant to a simplified employee pension (as defined in section 408(k))—

(A) shall not be treated as distributed or made available to the employee or as contributions made by the employee, and

(B) if such contributions are made pursuant to an arrangement under section 408(k)(6) under which an employee may elect to have the employer make contributions to the simplified employee pension on behalf of the employee, shall not be treated as distributed or made available or as contributions made by the employee merely because the simplified employee pension includes provisions for such election.

(2) Limitations on employer contributions

Contributions made by an employer to a simplified employee pension with respect to an employee for any year shall be treated as distributed or made available to such employee and as contributions made by the employee to the extent such contributions exceed the lesser of—

(A) 25 percent of the compensation (within the meaning of section 414(s)) from such employer includible in the employee's gross income for the year (determined without regard to the employer contributions to the simplified employee pension), or

(B) the limitation in effect under section 415(c)(1)(A), reduced in the case of any highly compensated employee (within the meaning of section 414(q)) by the amount taken into account with respect to such employee under section 408(k)(3)(D).

(3) Distributions

Any amount paid or distributed out of an individual retirement plan pursuant to a simplified employee pension shall be included in gross income by the payee or distributee, as the case may be, in accordance with the provisions of section 408(d).

(i) Treatment of self-employed individuals

For purposes of this section, except as otherwise provided in subparagraph (A) of subsection (d)(4),[1] the term ''employee'' includes a self-employed individual (as defined in section 401(c)(1)(B)) and the employer of such individual shall be the person treated as his employer under section 401(c)(4).

(j) Effect of disposition of stock by plan on net unrealized appreciation

(1) In general

For purposes of subsection (e)(4), in the case of any transaction to which this subsection applies, the determination of net unrealized appreciation shall be made without regard to such transaction.

(2) Transaction to which subsection applies

This subsection shall apply to any transaction in which—

(A) the plan trustee exchanges the plan's securities of the employer corporation for other such securities, or

(B) the plan trustee disposes of securities of the employer corporation and uses the proceeds of such disposition to acquire securities of the employer corporation within 90 days (or such longer period as the Secretary may prescribe), except that this subpara-

[1] See References in Text note below.

graph shall not apply to any employee with respect to whom a distribution of money was made during the period after such disposition and before such acquisition.

(k) Treatment of simple retirement accounts

Rules similar to the rules of paragraphs (1) and (3) of subsection (h) shall apply to contributions and distributions with respect to a simple retirement account under section 408(p).

(*l*) Distributions from governmental plans for health and long-term care insurance

(1) In general

In the case of an employee who is an eligible retired public safety officer who makes the election described in paragraph (6) with respect to any taxable year of such employee, gross income of such employee for such taxable year does not include any distribution from an eligible retirement plan maintained by the employer described in paragraph (4)(B) to the extent that the aggregate amount of such distributions does not exceed the amount paid by such employee for qualified health insurance premiums for such taxable year.

(2) Limitation

The amount which may be excluded from gross income for the taxable year by reason of paragraph (1) shall not exceed $3,000.

(3) Distributions must otherwise be includible

(A) In general

An amount shall be treated as a distribution for purposes of paragraph (1) only to the extent that such amount would be includible in gross income without regard to paragraph (1).

(B) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as a distribution for purposes of subparagraph (A), the aggregate amounts distributed from an eligible retirement plan in a taxable year (up to the amount excluded under paragraph (1)) shall be treated as includible in gross income (without regard to subparagraph (A)) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(4) Definitions

For purposes of this subsection—

(A) Eligible retirement plan

For purposes of paragraph (1), the term ''eligible retirement plan'' means a governmental plan (within the meaning of section 414(d)) which is described in clause (iii), (iv), (v), or (vi) of subsection (c)(8)(B).

(B) Eligible retired public safety officer

The term ''eligible retired public safety officer'' means an individual who, by reason of disability or attainment of normal retirement age, is separated from service as a public safety officer with the employer who maintains the eligible retirement plan from which distributions subject to paragraph (1) are made.

(C) Public safety officer

The term ''public safety officer'' shall have the same meaning given such term by section 1204(9)(A) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b(9)(A)).

(D) Qualified health insurance premiums

The term ''qualified health insurance premiums'' means premiums for coverage for the eligible retired public safety officer, his spouse, and dependents (as defined in section 152), by an accident or health plan or qualified long-term care insurance contract (as defined in section 7702B(b)).

(5) Special rules

For purposes of this subsection—

(A) Direct payment to insurer required

Paragraph (1) shall only apply to a distribution if payment of the premiums is made directly to the provider of the accident or health plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan.

(B) Related plans treated as 1

All eligible retirement plans of an employer shall be treated as a single plan.

(6) Election described

(A) In general

For purposes of paragraph (1), an election is described in this paragraph if the election is made by an employee after separation from service with respect to amounts not distributed from an eligible retirement plan to have amounts from such plan distributed in order to pay for qualified health insurance premiums.

(B) Special rule

A plan shall not be treated as violating the requirements of section 401, or as engaging in a prohibited transaction for purposes of section 503(b), merely because it provides for an election with respect to amounts that are otherwise distributable under the plan or merely because of a distribution made pursuant to an election described in subparagraph (A).

(7) Coordination with medical expense deduction

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 213.

(8) Coordination with deduction for health insurance costs of self-employed individuals

The amounts excluded from gross income under paragraph (1) shall not be taken into account under section 162(*l*).

(Aug. 16, 1954, ch. 736, 68A Stat. 135; Pub. L. 86–437, §§1, 2(a), Apr. 22, 1960, 74 Stat. 79; Pub. L. 87–792, §4(c), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §§221(c)(1), 232(e)(1)–(3), Feb. 26, 1964, 78 Stat. 75, 111; Pub. L. 91–172, title III, §321(b)(1), title V, §515(a)(1), Dec. 30, 1969, 83 Stat. 590, 643; Pub. L. 93–406, title II, §§2002(g)(5), 2005(a), (b)(1), (c)(1), (2), Sept. 2, 1974, 88 Stat. 968, 987, 990, 991: Pub. L. 94–267, §1(a), Apr. 15, 1976, 90 Stat. 365; Pub. L. 94–455, title XIV, §1402(b)(1)(C), (2), title XV, §1512(a), title XIX, §§1901(a)(57)(A)–(C)(i), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1742, 1773, 1774, 1834; Pub. L. 95–30, title I, §102(b)(4), May 23, 1977, 91 Stat. 137; Pub. L. 95–458, §4(a), (c), Oct. 14, 1978, 92 Stat. 1257, 1259; Pub. L. 95–600, title I, §§101(d)(1), 135(b), 157(f)(1), (g)(1), (h)(1), Nov. 6, 1978, 92 Stat. 2770, 2787, 2806–2808; Pub. L. 96–222, title I, §101(a)(14)(C), (E)(i), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 96–608, §2(a), Dec. 28, 1980, 94 Stat. 3551; Pub. L. 97–34, title III, §§311(b)(2), (3)(A), (c), 314(c)(1), Aug. 13, 1981, 95 Stat. 280, 286; Pub. L. 97–448, title I, §§101(b), 103(c)(7), (8)(A), (12)(D), Jan. 12, 1983, 96 Stat. 2366, 2376, 2377; Pub. L. 98–369, div. A, title IV, §491(c)(2), (d)(9)–(11), title V, §522(a)(1), (b)–(d)(8), title VII, §713(c)(3), title X, §1001(b)(3), (e), July 18, 1984, 98 Stat. 848, 849, 868–870, 957, 1011, 1012; Pub. L. 98–397, title II, §§204(c)(1), (3), (4), 207(a), Aug. 23, 1984, 98 Stat. 1448, 1449; Pub. L. 99–272, title XI, §11012(c), Apr. 7, 1986, 100 Stat. 260; Pub. L. 99–514, title I, §104(b)(5), title XI, §§1105(a), 1106(c)(2), 1108(b), 1112(c), 1121(c)(1), 1122(a), (b)(1)(A), (2), (e)(1), (2)(A), (g), title XVIII, §§1852(a)(5)(A), (b)(1)–(7), (c)(5), 1854(f)(2), 1875(c)(1)(A), 1898(a)(2), (3), (c)(1)(A), (7)(A)(i), (e), Oct. 22, 1986, 100 Stat. 2105, 2417, 2423, 2432, 2444, 2465, 2466, 2469, 2470, 2865–2867, 2881, 2894, 2942, 2943, 2951, 2954, 2955; Pub. L. 100–647, title I, §§1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), 1018(t)(8)(A), (C), (u)(1), (6), (7), title VI, §6068(a), Nov. 10, 1988, 102 Stat. 3457–3459, 3464, 3472–3474, 3476, 3589, 3590, 3703; Pub. L. 101–239, title VII, §7811(g)(2), (i)(13), Dec. 19, 1989, 103 Stat. 2409, 2411; Pub. L. 101–508, title XI, §11801(c)(9)(I), Nov. 5, 1990, 104 Stat. 1388–526; Pub. L. 102–318, title V, §§521(a), (b)(9)–(11), 522(c)(1), July 3, 1992, 106 Stat. 300, 310, 311, 315; Pub. L. 103–465, title VII, §732(c), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§1401(a)–(b)(2), (13), 1421(b)(3)(A), (9)(B), 1450(a)(2), 1704(t)(68), Aug. 20, 1996, 110 Stat. 1787–1789, 1796, 1798, 1814, 1891; Pub. L. 105–34, title XV, §1501(a), Aug. 5, 1997, 111 Stat. 1058; Pub. L. 105–206, title VI, §6005(c)(2)(A), July 22, 1998, 112 Stat. 800; Pub. L. 107–16, title VI, §§611(d)(1)–(3)(A), 617(b), (c), 632(a)(3)(G), 636(b)(1), 641(a)(2)(A), (B), (b)(2)–(d), (e)(4)–(6), 643(a), 644(a), 657(b), June 7, 2001, 115 Stat. 97, 98, 105, 114, 117, 119–123, 136; Pub. L. 107–147, title IV, §411(*l*)(3), (*o*)(1), (p)(6), (q)(2), Mar. 9, 2002, 116 Stat. 47, 48, 51; Pub. L. 109–135, title IV, §407(a), Dec. 21, 2005, 119 Stat. 2635; Pub. L. 109–280, title VIII, §§822(a), 829(a)(1), 845(a), Aug. 17, 2006, 120 Stat. 998, 1001, 1013; Pub. L. 110–172, §8(a)(1), Dec. 29, 2007, 121 Stat. 2483; Pub. L. 110–458, title I, §§108(f)(1)–(2)(B), (j), 109(b)(3), title II, §201(b), Dec. 23, 2008, 122 Stat. 5109–5111, 5117.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The civil service retirement laws, referred to in subsec. (e)(2), are classified generally to subchapter III (§8331 et seq.) of chapter 83 of Title 5, Government Organization and Employees.

Section 415(c)(4) (as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001), referred to in subsec. (g)(7)(B), means section 415(c)(4) of this title prior to its repeal by Pub. L. 107–16, title VI, §632(a)(3)(E), June 7, 2001, 115 Stat. 114.

Subsection (d), referred to in subsec. (i), was amended generally by Pub. L. 104–188, title I, §1401(a), Aug. 20, 1996, 110 Stat. 1787, and as so amended, no longer contains a par. (4).

AMENDMENTS

2008—Subsec. (c)(4). Pub. L. 110–458, §201(b), inserted concluding provisions.

Subsec. (c)(11)(A). Pub. L. 110–458, §108(f)(1)(A), inserted ''described in paragraph (8)(B)(iii)'' after ''eligible retirement plan'' in introductory provisions.

Subsec. (c)(11)(A)(i). Pub. L. 110–458, §108(f)(2)(B), struck out ''for purposes of this subsection'' after ''eligible rollover distribution''.

Subsec. (c)(11)(B). Pub. L. 110–458, §108(f)(1)(B), struck out ''trust'' before ''designated beneficiary''.

Subsec. (f)(2)(A). Pub. L. 110–458, §108(f)(2)(A), inserted at end ''Such term shall include any distribution to a designated beneficiary which would be treated as an eligible rollover distribution by reason of subsection (c)(11), or section 403(a)(4)(B), 403(b)(8)(B), or 457(e)(16)(B), if the requirements of subsection (c)(11) were satisfied.''

Subsec. (g)(2)(A)(ii). Pub. L. 110–458, §109(b)(3), inserted ''through the end of such taxable year'' after ''such amount''.

Subsec. (*l*)(1). Pub. L. 110–458, §108(j)(1)(A), inserted ''maintained by the employer described in paragraph (4)(B)'' after ''an eligible retirement plan'' and struck out ''of the employee, his spouse, or dependents (as defined in section 152)'' after ''qualified health insurance premiums''.

Subsec. (*l*)(3)(B). Pub. L. 110–458, §108(j)(2), substituted ''all amounts to the credit of the eligible public safety officer in all eligible retirement plans maintained by the employer described in paragraph (4)(B) were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all eligible retirement plans were treated as 1 contract for purposes of determining the inclusion of such distribution under section 72''.

Subsec. (*l*)(4)(D). Pub. L. 110–458, §108(j)(1)(B), inserted ''(as defined in section 152)'' after ''dependents'' and substituted ''health plan'' for ''health insurance plan''.

Subsec. (*l*)(5)(A). Pub. L. 110–458, §108(j)(1)(C), substituted ''health plan'' for ''health insurance plan''.

2007—Subsec. (g)(7)(A)(ii)(II). Pub. L. 110–172 substituted ''permitted for prior taxable years by reason of this paragraph'' for ''for prior taxable years''. Amendment was executed to subsec. (g)(7)(A)(ii) as amended by Pub. L. 109–135, §407(a)(1), as the probable intent of Congress, notwithstanding Pub. L. 110–172, §8(b), which provided that the amendment take effect as if included in the provisions of Pub. L. 107–16 to which it relates. See 2006 Amendment note and Effective Date of 2007 Amendment note below.

2006—Subsec. (c)(2)(A). Pub. L. 109–280, §822(a), which directed the amendment of section 402(c)(2)(A) by substituting ''or to an annuity contract described in section 403(b) and such trust or contract provides for separate accounting'' for ''which is part of a plan which is

a defined contribution plan and which agrees to separately account'' and inserting ''(and earnings thereon)'' after ''so transferred'', without specifying the act to be amended, was executed to this section, which is section 402(c)(2)(A) of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (c)(11). Pub. L. 109–280, § 829(a)(1), added par. (11).

Subsec. (*l*). Pub. L. 109–280, § 845(a), added subsec. (*l*).

2005—Subsec. (g)(1)(A). Pub. L. 109–135, § 407(a)(2), inserted ''to'' after ''shall not apply''.

Subsec. (g)(7)(A)(ii). Pub. L. 109–135, § 407(a)(1), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''$15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or''.

2002—Subsec. (c)(2). Pub. L. 107–147, § 411(q)(2), inserted at end: ''In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).''

Subsec. (g)(1)(C). Pub. L. 107–147, § 411(*o*)(1), added subpar. (C).

Subsec. (g)(7)(B). Pub. L. 107–147, § 411(p)(6), substituted ''2001).'' for ''2001.''

Subsec. (h)(2)(A). Pub. L. 107–147, § 411(*l*)(3), substituted ''25 percent'' for ''15 percent''.

2001—Subsec. (c)(2). Pub. L. 107–16, § 643(a), inserted at end ''The preceding sentence shall not apply to such distribution to the extent—

''(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

''(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).''

Subsec. (c)(3). Pub. L. 107–16, § 644(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.''

Subsec. (c)(4)(C). Pub. L. 107–16, § 636(b)(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''any hardship distribution described in section 401(k)(2)(B)(i)(IV).''

Subsec. (c)(8)(B). Pub. L. 107–16, § 617(c), inserted concluding provisions.

Subsec. (c)(8)(B)(v). Pub. L. 107–16, § 641(a)(2)(A), added cl. (v).

Subsec. (c)(8)(B)(vi). Pub. L. 107–16, § 641(b)(2), added cl. (vi).

Subsec. (c)(9). Pub. L. 107–16, § 641(d), struck out before period at end ''; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution''.

Subsec. (c)(10). Pub. L. 107–16, § 641(a)(2)(B), added par. (10).

Subsec. (f)(1). Pub. L. 107–16, § 641(e)(5), struck out ''from an eligible retirement plan'' after ''rollover distribution'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 107–16, § 657(b), inserted before comma at end ''and that the automatic distribution by direct transfer applies to certain distributions in accordance with section 401(a)(31)(B)''.

Pub. L. 107–16, § 641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(B). Pub. L. 107–16, § 641(e)(6), substituted ''an eligible retirement plan'' for ''another eligible retirement plan''.

Subsec. (f)(1)(E). Pub. L. 107–16, § 641(c), added subpar. (E).

Subsec. (f)(2)(A). Pub. L. 107–16, § 641(e)(4), substituted '', paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)'' for ''or paragraph (4) of section 403(a)''.

Subsec. (g)(1). Pub. L. 107–16, § 611(d)(1), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000.''

Subsec. (g)(1)(A). Pub. L. 107–16, title VI, § 617(b)(1), inserted at end ''The preceding sentence shall not apply the portion of such excess as does not exceed the designated Roth contributions of the individual for the taxable year.''

Subsec. (g)(2)(A). Pub. L. 107–16, title VI, § 617(b)(2), inserted ''(or would be included but for the last sentence thereof)'' after ''paragraph (1)''.

Subsec. (g)(4). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (5) as (4) and struck out heading and text of former par. (4). Text read as follows: ''The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C).''

Subsec. (g)(5). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 107–16, § 611(d)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.''

Subsec. (g)(6). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (g)(7). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (8) as (7).

Subsec. (g)(7)(B). Pub. L. 107–16, § 632(a)(3)(G), inserted ''(as in effect before the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001'' before period at end.

Subsec. (g)(8), (9). Pub. L. 107–16, § 611(d)(3)(A), redesignated par. (9) as (8). Former par. (8) redesignated (7).

1998—Subsec. (c)(4)(C). Pub. L. 105–206 added subpar. (C).

1997—Subsec. (g)(9). Pub. L. 105–34 added par. (9).

1996—Subsec. (c)(10). Pub. L. 104–188, § 1401(b)(2), struck out par. (10) which read as follows:

''(10) DENIAL OF AVERAGING FOR SUBSEQUENT DISTRIBUTIONS.—If paragraph (1) applies to any distribution paid to any employee, paragraphs (1) and (3) of subsection (d) shall not apply to any distribution (paid after such distribution) of the balance to the credit of the employee under the plan under which the preceding distribution was made (or under any other plan which, under subsection (d)(4)(C), would be aggregated with such plan).''

Subsec. (d). Pub. L. 104–188, § 1401(a), amended subsec. (d) generally, substituting provisions relating to taxability of beneficiary of certain foreign situs trusts for former provisions relating to tax on lump sum distributions.

Subsec. (e)(3). Pub. L. 104–188, § 1450(a)(2), inserted ''or which is part of a salary reduction agreement under section 403(b)'' after ''section 401(k)(2))''.

Subsec. (e)(4)(D). Pub. L. 104–188, § 1401(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows:

''(D) LUMP SUM DISTRIBUTION.—For purposes of this paragraph, the term 'lump sum distribution' has the meaning given such term by subsection (d)(4)(A) (without regard to subsection (d)(4)(F)).''

Subsec. (e)(5). Pub. L. 104–188, § 1401(b)(13), struck out par. (5) which read as follows:

''(5) TAXABILITY OF BENEFICIARY OF CERTAIN FOREIGN SITUS TRUSTS.—For purposes of subsections (a), (b), and (c), a stock bonus, pension, or profit-sharing trust which would qualify for exemption from tax under sec-

tion 501(a) except for the fact that it is a trust created or organized outside the United States shall be treated as if it were a trust exempt from tax under section 501(a).''

Subsec. (g)(3)(A). Pub. L. 104–188, §1704(t)(68), substituted ''subsection (e)(3)'' for ''subsection (a)(8)''.

Subsec. (g)(3)(D). Pub. L. 104–188, §1421(b)(9)(B), added subpar. (D).

Subsec. (k). Pub. L. 104–188, §1421(b)(3)(A), added subsec. (k).

1994—Subsec. (g)(5). Pub. L. 103–465 inserted before period at end ''; except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500''.

1992—Subsecs. (a) to (d). Pub. L. 102–318, §521(a), amended subsecs. (a) to (d) generally, substituting present provisions for former provisions which in subsec. (a) related to taxability of beneficiaries of exempt trusts, in subsec. (b) related to taxability of beneficiaries of nonexempt trusts, in subsec. (c) related to taxability of beneficiaries of certain foreign situs trusts, and subsec. (d) which had been previously repealed.

Subsec. (e). Pub. L. 102–318, §521, amended subsec. (e) generally, substituting provisions relating to other rules applicable to exempt trusts for provisions relating to tax on lump sum distributions.

Subsec. (e)(6). Pub. L. 102–318, §522(c)(1), added par. (6).

Subsec. (f). Pub. L. 102–318, §521(a), amended subsec. (f) generally, substituting present provisions for provisions requiring a different time when explanation was to be provided and a different content of explanation to be given and using different definitions for ''eligible rollover distribution'' and ''eligible retirement plan''.

Subsec. (g)(1). Pub. L. 102–318, §521(b)(9), substituted ''subsections (e)(3)'' for ''subsections (a)(8)''.

Subsec. (i). Pub. L. 102–318, §521(b)(10), substituted ''subsection (d)(4)'' for ''subsection (e)(4)''.

Subsec. (j)(1). Pub. L. 102–318, §521(b)(11), substituted ''(e)(4)'' for ''(a)(1) or (e)(4)(J)''.

1990—Subsec. (a)(3)(B). Pub. L. 101–508, §11801(c)(9)(I)(i), substituted ''section 424'' for ''section 425''.

Subsec. (a)(6)(B)(i). Pub. L. 101–508, §11801(c)(9)(I)(ii), substituted ''section 424(f)'' for ''section 425(f)''.

1989—Subsec. (e)(7). Pub. L. 101–239, §7811(i)(13), added par. (7).

Subsec. (g)(3). Pub. L. 101–239, §7811(g)(2), inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in last sentence.

1988—Subsec. (a)(1). Pub. L. 100–647, §1011A(b)(8)(A), substituted ''paragraph (4)'' for ''paragraphs (2) and (4)''.

Subsec. (a)(4). Pub. L. 100–647, §1011A(b)(8)(B), struck out ''or (2)'' after ''under paragraph (1)''.

Subsec. (a)(5)(D)(i). Pub. L. 100–647, §1011A(b)(4)(C), inserted at end ''Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of subclauses (I) and (II).''

Pub. L. 100–647, §1011A(b)(4)(A), repealed amendment by Pub. L. 99–514, §1122(e)(1), which had amended cl. (i) generally, and provided that the Internal Revenue Code of 1986 shall be applied and administered as if such amendment had not been enacted. See 1986 Amendment note and Effective Date of 1988 Amendment note below.

Subsec. (a)(5)(D)(i)(I). Pub. L. 100–647, §1011A(b)(4)(B), inserted ''is payable as provided in clause (i), (iii), or (iv) of subsection (e)(4)(A) (without regard to the second sentence thereof) and'' after ''(I) such distribution''.

Subsec. (a)(5)(D)(iii). Pub. L. 100–647, §1011A(b)(4)(D), struck out ''10-year'' after ''Denial of'' in heading.

Subsec. (a)(5)(F). Pub. L. 100–647, §1011A(a)(1), substituted ''resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''described in subparagraph (A)''.

Subsec. (a)(6)(C). Pub. L. 100–647, §1011A(b)(8)(C), struck out ''paragraph (2) of subsection (a), and'' after ''paragraph (5)(A) applies,''.

Subsec. (a)(6)(E)(ii). Pub. L. 100–647, §1011A(b)(8)(D), substituted ''then paragraphs (1) and (3) of subsection (e) shall'' for ''then paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e), shall''.

Subsec. (a)(6)(G). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (a)(6)(H)(ii). Pub. L. 100–647, §1011A(b)(5), inserted at end ''A deposit shall not be treated as a frozen deposit unless on at least 1 day during the 60-day period described in paragraph (5)(C) (without regard to this subparagraph) such deposit is described in the preceding sentence.''

Subsec. (a)(6)(I). Pub. L. 100–647, §1018(t)(8)(A), redesignated subpar. (G), relating to treatment of potential future vesting, as (I).

Subsec. (b)(2)(A). Pub. L. 100–647, §1011(h)(4), added subpar. (A) and struck out former subpar. (A) which related to trust which is not exempt from tax under section 501(a) because plan fails to meet requirements of section 410(b).

Subsec. (b)(2)(B). Pub. L. 100–647, §1011(h)(4), added subpar. (B) and struck out former subpar. (B) which related to failure of plan to meet requirements of section 410(b) for more than 1 taxable year.

Subsec. (e)(1)(A). Pub. L. 100–647, §1011A(b)(8)(E), struck out ''ordinary income portion of a'' after ''subparagraph (B)) on the''.

Subsec. (e)(1)(B). Pub. L. 100–647, §1011A(b)(10), inserted at end ''For purposes of the preceding sentence, in determining the amount of tax under section 1(c), section 1(g) shall be applied without regard to paragraph (2)(B) thereof.''

Pub. L. 100–647, §1018(u)(1), made technical correction to directory language of Pub. L. 99–514, §104(b)(5). See 1986 Amendment note below.

Pub. L. 100–647, §1018(u)(6), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(B), see 1986 Amendment note below.

Subsec. (e)(3). Pub. L. 100–647, §1018(u)(7), related to execution of amendment by Pub. L. 99–514, §1122(b)(2)(C), see 1986 Amendment note below.

Subsec. (e)(4)(A). Pub. L. 100–647, §1011A(b)(8)(F), in concluding provisions, substituted ''A'' for ''Except for purposes of subsection (a)(2) and section 403(a)(2), a'', and struck out ''subsection (a)(2) of this section, and subsection (a)(2) of section 403,'' before ''the balance to''.

Subsec. (e)(4)(B)(i). Pub. L. 100–647, §1011A(b)(6), substituted ''employee'' for ''taxpayer''.

Subsec. (e)(4)(I). Pub. L. 100–647, §1011A(c)(9), struck out ''clause (ii) of'' after ''amounts described in''.

Subsec. (e)(4)(J). Pub. L. 100–647, §1011A(b)(7), amended last sentence generally. Prior to amendment, last sentence read as follows: ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(L). Pub. L. 100–647, §1011A(b)(8)(G), struck out subpar. (L) which related to election to treat pre-1974 participation as post-1973 participation.

Subsec. (e)(4)(M). Pub. L. 100–647, §1011A(b)(8)(H), struck out '', subsection (a)(2) of this section, and section 403(a)(2)'' after ''of this subsection''.

Subsec. (e)(4)(O). Pub. L. 100–647, §6068(a), added subpar. (O).

Subsec. (e)(5). Pub. L. 100–647, §1011A(b)(8)(I), struck out ''and paragraph (2) of subsection (a)'' after ''of this subsection''.

Subsec. (e)(6)(C). Pub. L. 100–647, §1011A(b)(8)(J), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''For purposes of this paragraph, special lump sum treatment applies to any distribution if any portion of such distribution—

''(i) is taxed under this subsection by reason of an election under paragraph (4)(B), or

''(ii) is treated as long-term capital gain under subsection (a)(2) of this section or section 403(a)(2).''

Subsec. (f)(1). Pub. L. 100–647, §1018(t)(8)(C), substituted ''an eligible'' for ''a eligible''.

Subsec. (g). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (g)(2). Pub. L. 100–647, §1011(c)(2), substituted ''Distribution'' for ''Required distribution'' in heading.

Subsec. (g)(2)(C). Pub. L. 100–647, §1011(c)(1), struck out ''(and no tax shall be imposed under section 72(t))'' after ''in gross income'', in cl. (i), substituted ''such income is distributed'' for ''such excess deferral is made'' in cl. (ii), and inserted at end ''No tax shall be imposed under section 72(t) on any distribution described in the preceding sentence.''

Subsec. (g)(2)(D). Pub. L. 100–647, §1011(c)(3), added subpar. (D).

Subsec. (g)(3). Pub. L. 100–647, §1011(c)(4), substituted ''this subsection'' for ''this paragraph''.

Pub. L. 100–647, §1011(c)(11), inserted at end ''An employer contribution shall not be treated as an elective deferral described in subparagraph (C) if under the salary reduction agreement such contribution is made pursuant to a one-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Subsec. (g)(8)(A)(iii). Pub. L. 100–647, §1011(c)(5)(A), inserted ''(determined in the manner prescribed by the Secretary)'' after ''prior taxable years''.

Subsec. (g)(8)(D). Pub. L. 100–647, §1011(c)(5)(B), added subpar. (D).

Subsec. (i). Pub. L. 100–647, §1011(c)(6)(A), redesignated subsec. (g), relating to treatment of self-employed individuals, as (i).

Subsec. (j). Pub. L. 100–647, §1011(c)(6)(B), redesignated subsec. (g), relating to effect of disposition of stock by plan on net unrealized appreciation, as (j).

1986—Subsec. (a)(2). Pub. L. 99–514, §1122(b)(1)(A), struck out par. (2) relating to capital gains treatment for portion of lump sum distribution.

Subsec. (a)(5)(D)(i). Pub. L. 99–514, §1122(e)(1), amended cl. (i) generally, to read as follows: ''Subparagraph (A) shall apply to a partial distribution only if the employee elects to have subparagraph (A) apply to such distribution and such distribution would be a lump sum distribution if subsection (e)(4)(A) were applied—

''(I) by substituting '50 percent of the balance to the credit of an employee' for 'the balance to the credit of an employee',

''(II) without regard to clause (ii) thereof, the second sentence thereof, and subparagraph (B) of subsection (e)(4).

Any distribution described in section 401(a)(28)(B)(ii) shall be treated as meeting the requirements of this clause.'' This amendment was repealed by Pub. L. 100–647, §1011A(b)(4)(A). See 1988 Amendment note above.

Pub. L. 99–514, §1852(b)(2), inserted at end ''For purposes of subclause (I), the balance to the credit of the employee shall not include any accumulated deductible employee contributions (within the meaning of section 72(*o*)(5)).''

Subsec. (a)(5)(D)(ii). Pub. L. 99–514, §1852(b)(5), substituted ''a trust or plan described in subclause (III) or (IV)'' for ''a plan described in subclause (IV) or (V)''.

Subsec. (a)(5)(D)(iii). Pub. L. 99–514, §1122(b)(2)(A), struck out ''and capital gains treatment'' in heading and amended text generally. Prior to amendment, cl. (iii) read as follows: ''If an election under clause (i) is made with respect to any partial distribution paid to any employee—

''(I) paragraph (2) of this subsection,

''(II) paragraphs (1) and (3) of subsection (e), and

''(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan).''

Subsec. (a)(5)(E)(v). Pub. L. 99–514, §1852(b)(1), substituted ''of all or any portion of'' for ''of any portion of''.

Subsec. (a)(5)(F). Pub. L. 99–514, §1121(c)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) heading read ''Special rules'' and text read as follows:

''(i) Transfer treated as rollover contribution under section 408

''For purposes of this title, a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A) to an eligible retirement plan described in subclause (I) or (II) of subparagraph (E)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

''(ii) 5-percent owners

''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if the employee is a 5-percent owner at the time such distribution is made. For purposes of the preceding sentence, the term '5-percent owner' means any individual who is a 5-percent owner (as defined in section 416(i)(1)(B)) at any time during the 5 plan years preceding the plan year in which the distribution is made.''

Pub. L. 99–514, §1852(b)(6), in cl. (i) substituted ''a transfer resulting in any portion of a distribution being excluded from gross income under subparagraph (A)'' for ''a transfer described in subparagraph (A)''.

Pub. L. 99–514, §1875(c)(1)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii), key employees, read as follows: ''An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms 'key employee' and 'top-heavy plan' have the same respective meanings as when used in section 416.''

Subsec. (a)(5)(G). Pub. L. 99–514, §1852(a)(5)(A), added subpar. (G).

Subsec. (a)(6)(D)(v). Pub. L. 99–514, §1852(b)(7), substituted ''(7)'' for ''(7)(B)''.

Subsec. (a)(6)(F). Pub. L. 99–514, §1898(c)(7)(A)(i), substituted ''paragraph (5)'' for ''paragraph (5)(A)''.

Subsec. (a)(6)(G). Pub. L. 99–514, §1898(a)(3), added subpar. (G) relating to treatment of potential future vesting.

Pub. L. 99–272 added subpar. (G) relating to payments from certain pension plan termination trusts.

Subsec. (a)(6)(H). Pub. L. 99–514, §1122(e)(2)(A), added subpar. (H).

Subsec. (a)(7). Pub. L. 99–514, §1852(b)(4), inserted ''; except that a trust or plan described in subclause (III) or (IV) of paragraph (5)(E)(iv) shall not be treated as an eligible retirement plan with respect to such distribution'' after ''the spouse were the employee''.

Subsec. (a)(9). Pub. L. 99–514, §1898(c)(1)(A), substituted ''any alternate payee who is the spouse or former spouse of the participant shall be treated'' for ''the alternate payee shall be treated''.

Subsec. (b). Pub. L. 99–514, §1112(c), designated existing provisions as par. (1), inserted par. (1) heading, and added par. (2).

Pub. L. 99–514, §1852(c)(5), substituted ''section 72(e)(5)'' for ''section 72(e)(1)''.

Subsec. (e)(1)(B). Pub. L. 99–514, §1122(b)(2)(B), and Pub. L. 100–647, §1018(u)(6), redesignated subpar. (C) as (B), substituted ''Amount of tax'' for ''Initial separate tax'' in heading and ''The amount of tax imposed by subparagraph (A)'' for ''The initial separate tax'', and struck out former subpar. (B) which related to computation of tax on lump sum distributions.

Pub. L. 99–514, §104(b)(5), as amended by Pub. L. 100–647, §1018(u)(1), struck out ''the zero bracket amount applicable to such individual for the taxable year plus'' after ''amount equal to''.

Pub. L. 99–514, §1122(a)(2)(A), (B), substituted ''5'' for ''10'' and ''⅕'' for ''one-tenth''.

Subsec. (e)(1)(C) to (E). Pub. L. 99–514, §1122(b)(2)(B)(i), redesignated subpars. (C) to (E) as (B) to (D), respectively.

Subsec. (e)(3). Pub. L. 99–514, §1122(b)(2)(C), and Pub. L. 100-647, §1018(u)(7), substituted ''total taxable amount'' for ''ordinary income portion''.

Subsec. (e)(4)(B). Pub. L. 99–514, §1122(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this section and section 403, no amount which is not an annuity contract may be treated as a lump sum distribution under subparagraph (A) unless the taxpayer elects for the taxable year to have all such amounts received during such year so treated at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under this subparagraph with respect to any individual after such individual has attained age 59½. No election may be made under this subparagraph by any taxpayer other than an individual, an estate, or a trust. In the case of a lump sum distribution made with respect to an employee to two or more trusts, the election under this subparagraph shall be made by the personal representative of the employee.''

Subsec. (e)(4)(E). Pub. L. 99–514, §1122(b)(2)(D), struck out subpar. (E) defining ''ordinary income portion'' with respect to a lump sum distribution.

Subsec. (e)(4)(F). Pub. L. 99–514, §1852(b)(3)(B), struck out subpar. (F) defining ''employee''. See subsec. (g) of this section relating to treatment of self-employed individuals.

Subsec. (e)(4)(H). Pub. L. 99–514, §1122(b)(2)(E), struck out ''(but not for purposes of subsection (a)(2) or section 403(a)(2)(A))'' after ''For purposes of this subsection''.

Subsec. (e)(4)(J). Pub. L. 99–514, §1122(g), inserted at end ''To the extent provided by the Secretary, a taxpayer may elect before any distribution not to have this paragraph apply with respect to such distribution.''

Subsec. (e)(4)(N). Pub. L. 99–514, §1106(c)(2), added subpar. (N).

Subsec. (e)(6). Pub. L. 99–514, §1898(a)(2), added par. (6).

Subsec. (f)(1). Pub. L. 99–514, §1898(e)(1), substituted ''eligible rollover distribution'' for ''qualifying rollover distribution''.

Subsec. (f)(2). Pub. L. 99–514, §1898(e)(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''For purposes of this subsection, the terms 'qualifying rollover distribution' and 'eligible retirement plan' have the respective meanings given such terms by subsection (a)(5)(E).''

Subsec. (g). Pub. L. 99–514, §1854(f)(2), added subsec. (g) relating to effect of disposition of stock by plan on net unrealized appreciation.

Pub. L. 99–514, §1852(b)(3)(A), added subsec. (g) relating to treatment of self-employed individuals.

Pub. L. 99–514, §1105(a), added subsec. (g) relating to limitation on exclusion for elective deferrals.

Subsec. (h). Pub. L. 99–514, §1108(b), added subsec. (h).

1984—Subsec. (a)(2). Pub. L. 98–369, §1001(b)(3), substituted ''6 months'' for ''1 year''.

Subsec. (a)(5)(A)(i). Pub. L. 98–369, §522(a)(1), substituted ''any portion of the balance to the credit of an employee in a qualified trust is paid to him'' for ''the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution''.

Subsec. (a)(5)(B). Pub. L. 98–369, §522(d)(1)(A), (2), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and inserted ''In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A)).''

Subsec. (a)(5)(D). Pub. L. 98–369, §522(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(5)(D)(iv)(III)–(V). Pub. L. 98–369, §491(d)(9), struck out subcl. (III), which included a retirement bond described in section 409 within term ''eligible retirement plan'' and redesignated former subcls. (IV) and (V) and (III) and (IV), respectively.

Subsec. (a)(5)(E). Pub. L. 98–369, §522(b), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(E)(i). Pub. L. 98–369, §522(d)(1)(B), substituted ''qualified total distribution'' for ''qualifying rollover distribution'' in heading and text.

Subsec. (a)(5)(E)(ii)(II). Pub. L. 98–369, §522(d)(3), substituted ''gross income (determined without regard to this paragraph)'' for ''gross income''.

Subsec. (a)(5)(E)(v). Pub. L. 98–369, §522(d)(4), substituted provision dealing with partial distribution for provision dealing with rollover of partial distributions of deductible employee contributions permitted.

Subsec. (a)(5)(F). Pub. L. 98–369, §522(b), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 98–369, §522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, §491(d)(10), substituted ''or (II)'' for '', (II), or (III)''.

Subsec. (a)(5)(F)(ii). Pub. L. 98–369, §522(d)(5), substituted ''subparagraph (E)(iv)'' for ''subparagraph (D)(iv)''.

Pub. L. 98–369, §491(d)(11), substituted ''(III) or (IV)'' for ''(IV) and (V)''.

Pub. L. 98–369, §713(c)(3), substituted ''Key employees'' for ''Self-employed individuals and owner-employees'' in heading and ''attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan'' for ''attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan'' in text, and inserted sentence adopting the meaning of ''key employee'' and ''top-heavy plan'' used in section 416.

Subsec. (a)(6)(A), (B). Pub. L. 98–369, §522(d)(6), substituted ''paragraph (5)(E)(i)'' for ''paragraph (5)(D)(i)''.

Subsec. (a)(6)(D)(iii), (iv). Pub. L. 98–369, §522(d)(7), substituted ''employee contributions (or, in the case of a partial distribution, the amount not includible in gross income)'' for ''employee contributions''.

Subsec. (a)(6)(E)(i). Pub. L. 98–369, §522(d)(1)(C), (8), substituted ''qualified total distribution'' for ''qualifying rollover distribution'', and ''paragraph (5)(D) or (5)(E)(i)(II)'' for ''paragraph (5)(D)(i)(II)''.

Subsec. (a)(6)(F). Pub. L. 98–397, §204(c)(3), added subpar. (F).

Subsec. (a)(7). Pub. L. 98–369, §522(c), substituted provisions relating to rollover where spouse receives distributions after death of employee for provisions dealing with rollover where spouse receives lump-sum distribution at death of employee.

Subsec. (a)(9). Pub. L. 98–397, §204(c)(1), added par. (9).

Subsec. (e)(4)(L). Pub. L. 98–369, §1001(b)(3), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (e)(4)(M). Pub. L. 98–397, §204(c)(4), added subpar. (M).

Subsec. (e)(5). Pub. L. 98–369, §491(c)(2), added par. (5).

Subsec. (f). Pub. L. 98–397, §207(a), added subsec. (f).

1983—Subsec. (a)(5)(D)(v). Pub. L. 97–448, §103(c)(8)(A), added cl. (v).

Subsec. (e)(1)(C). Pub. L. 97–448, §101(b), substituted ''the zero bracket amount applicable to such an individual for the taxable year'' for ''$2,300''.

Subsec. (e)(4)(A). Pub. L. 97–448, §103(c)(7), substituted ''this subsection, subsection (a)(2) of this section, and subsection (a)(2) of section 403'' for ''this section and section 403'' in last sentence.

Subsec. (e)(4)(J). Pub. L. 97–448, §103(c)(12)(D), amended Pub. L. 97–34, §311(c)(2) [see 1981 Amendment note below], by substituting ''section 72(*o*)(5)'' for ''section 77(*o*)(5)'' in last sentence of subpar. (j).

1981—Subsec. (a)(1). Pub. L. 97–34, §311(c)(1), inserted ''(other than deductible employee contributions within the meaning of section 72(*o*)(5))''.

Pub. L. 97–34, § 314(c)(1), struck out ''or made available'' after ''distributed'' in three places.

Subsec. (a)(5). Pub. L. 97–34, § 311(b)(3)(A), inserted ''(other than accumulated deductible employee contributions within the meaning of section 72(*o*)(5))'' after ''contributions'' in subpar. (B) and added subcl. (III) in subpar. (D).

Subsec. (e)(4). Pub. L. 97–34, § 311(b)(2), (c)(2), added to subpar. (A) provision that for purposes of sections 402 and 403, the balance to the credit of the employee does not include the accumulated deductible employee contributions under the plan (within the meaning of section 72(*o*)(5)), and added subpar. (J) provision making subpar. (J) inapplicable to distributions of accumulated deductible employee contributions (within the meaning of section 77(*o*)(5)). See 1983 Amendment note above.

1980—Subsec. (a)(6)(D)(iii). Pub. L. 96–222, § 101(a)(14)(E)(i), substituted ''may designate'' for ''many designate''.

Subsec. (a)(6)(E). Pub. L. 96–608 added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 96–222, § 101(a)(14)(C), substituted ''qualifying rollover distribution attributable to an employee is paid to the spouse of the employee after'' for ''lump-sum distribution from a qualified trust is paid to the spouse of the employee on account of''.

1978—Subsec. (a)(5). Pub. L. 95–458, § 4(a), among other changes, substituted provision permitting tax-free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5)(D)(i)(II). Pub. L. 95–600, § 157(h)(1), substituted ''subparagraphs (B) and (H) of subsection (e)(4)'' for ''subsection (e)(4)(B)''.

Subsec. (a)(6). Pub. L. 95–458, § 4(c), in provision preceding subpar. (A) struck out ''For purposes of paragraph (5)(A)(i)'', in subpar. (A) substituted ''For purposes of paragraph (5)(D)(i), a complete'' for ''A complete'', in subpar. (B) inserted ''For purposes of paragraph (5)(D)(i)—'' after ''assets.—'' in provision preceding cl. (i), and added subpar. (C).

Subsec. (a)(6)(D). Pub. L. 95–600, § 157(f)(1), added subpar. (D).

Subsec. (a)(7). Pub. L. 95–600, § 157(g)(1), added par. (7).

Subsec. (a)(8). Pub. L. 95–600, § 135(b), added par. (8).

Subsec. (e)(1)(C). Pub. L. 95–600, § 101(d)(1), substituted ''$2,300'' for ''$2,200''.

1977—Subsec. (e)(1)(C). Pub. L. 95–30 substituted ''amount equal to $2,200 plus one-tenth of the excess of'' for ''amount equal to one-tenth of the excess of'' in provisions preceding cl. (i).

1976—Subsec. (a)(1). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–455, § 1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1906(b)(13)(A), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977 and struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(4). Pub. L. 94–455, § 1901(a)(57)(A), substituted ''basic pay'' for ''basic salary'', ''civil service retirement laws'' for ''Civil Service Retirement Act (5 U.S.C. 2251)'', and ''section 8331(3) of title 5, United States Code'' for ''section 1(d) of such Act''.

Subsec. (a)(5). Pub. L. 94–267, § 1(a)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(5)(A). Pub. L. 94–267, § 1(a)(1), restructured provision by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(6). Pub. L. 94–267, § 1(a)(3), added par. (6).

Subsec. (a)(6)(A). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (d). Pub. L. 94–455, § 1901(a)(57)(B), struck out subsec. (d) which related to certain trust agreements made before Oct. 21, 1942.

Subsec. (e)(2). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(A). Pub. L. 94–455, § 1901(a)(57)(C)(i), substituted ''Except for purposes of subsection (a)(2) and section 403(a)(2)'' for ''For purposes of this subparagraph''.

Subsec. (e)(4)(B), (J). Pub. L. 94–455, § 1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4)(L). Pub. L. 94–455, § 1402(b)(2), substituted ''1 year'' for ''9 months''.

Pub. L. 94–455, §§ 1402(b)(1)(C), 1512(a), added subsec. (e)(4)(L) to be applicable to distributions and payments after Dec. 31, 1975, in taxable years beginning after Dec. 31, 1975, and provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

1974—Subsec. (a)(2). Pub. L. 93–406, § 2005(b)(1), substituted provisions covering capital gains treatment of portions of lump sum distributions determined through the application of a fraction formula susceptible of producing a phaseout of capital gains treatment for provisions covering capital gains treatment of portions of lump sum distributions determined on a fixed formula.

Subsec. (a)(3)(C). Pub. L. 93–406, § 2005(c)(1), struck out subsec. (a)(3)(C) which defined ''total distribution payable''.

Subsec. (a)(5). Pub. L. 93–406, §§ 2002(g)(5), 2005(c)(2), substituted provisions covering rollover amounts for provisions covering limitation on capital gains treatment.

Subsec. (e). Pub. L. 93–406, § 2005(a), substituted provisions covering tax on lump sum distributions for provisions covering plan termination distributions made after Dec. 31, 1953, and before Jan. 1, 1955.

1969—Subsec. (a)(5). Pub. L. 91–172, § 515(a)(1), added par. (5).

Subsec. (b). Pub. L. 91–172, § 321(b)(1), substituted provision for inclusion of contributions made by an employer to a nonexempt trust in the ''gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee's interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section'' for prior provision for inclusion in the ''gross income of an employee for the taxable year in which the contribution is made to the trust in the case of an employee whose beneficial interest in such contribution is nonforfeitable at the time the contribution is made'', and provided that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(1) (relating to amount not received as annuities) and that a beneficiary of any such trust shall not be considered the owner of any portion of such trust under subpart E of part I of subch. J (relating to grantors and others treated as substantial owners).

1964—Subsec. (a)(1). Pub. L. 88–272, § 232(e)(1), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

Subsec. (a)(3)(B). Pub. L. 88–272, § 221(c)(1), substituted ''subsections (e) and (f) of section 425'' for ''section 421(d)(2) and (3)''.

Subsecs. (b), (d). Pub. L. 88–272, § 232(e)(2), (3), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2). Pub. L. 87–792 inserted sentence providing that this paragraph shall not apply to distributions paid to any distributee to the extent such distributions are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

1960—Subsec. (a)(1). Pub. L. 86–437, § 2(a), substituted ''paragraphs (2) and (4)'' for ''paragraph (2)''.

Subsec. (a)(4). Pub. L. 86–437, § 1, added par. (4).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, § 108(f)(2)(C), Dec. 23, 2008, 122 Stat. 5109, provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to plan years beginning after December 31, 2009.''

Amendment by sections 108(f)(1)–(2)(B), (j) and 109(b)(3) of Pub. L. 110–458 effective as if included in the

provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by section 201(b) of Pub. L. 110–458 applicable to calendar years beginning after December 31, 2008, with provisions relating to pension plan or contract amendments, see section 201(c) of Pub. L. 110–458, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–172, §8(b), Dec. 29, 2007, 121 Stat. 2484, provided that: ''The amendments made by this section [amending this section and section 3121 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §822(b), Aug. 17, 2006, 120 Stat. 998, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2006.''

Pub. L. 109–280, title VIII, §829(b), Aug. 17, 2006, 120 Stat. 1002, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2006.''

Pub. L. 109–280, title VIII, §845(c), Aug. 17, 2006, 120 Stat. 1015, provided that: ''The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions in taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–135, title IV, §407(c), Dec. 21, 2005, 119 Stat. 2635, provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(1)–(3)(A) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, §617(f), June 7, 2001, 115 Stat. 106, provided that: ''The amendments made by this section [enacting section 402A of this title and amending this section and sections 408A, 6047, and 6051 of this title] shall apply to taxable years beginning after December 31, 2005.''

Amendment by section 632(a)(3)(G) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, §636(b)(2), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions made after December 31, 2001.''

Pub. L. 107–16, title VI, §641(f), June 7, 2001, 115 Stat. 121, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and sections 72, 219, 401, 403, 408, 415, 457, 3401, 3405, and 4973 of this title] shall apply to distributions after December 31, 2001.

''(2) REASONABLE NOTICE.—No penalty shall be imposed on a plan for the failure to provide the information required by the amendment made by subsection (c) [amending this section] with respect to any distribution made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor rollover notice after the date of the enactment of this Act [June 7, 2001], if the administrator of such plan makes a reasonable attempt to comply with such requirement.

''(3) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note below] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.''

Amendment by section 643(a) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, §644(c), June 7, 2001, 115 Stat. 123, provided that: ''The amendments made by this section [amending this section and section 408 of this title] shall apply to distributions after December 31, 2001.''

Amendment by section 657(b) of Pub. L. 107–16 applicable to distributions made after Mar. 28, 2005, see section 657(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title VI, §6005(c)(2)(C), July 22, 1998, 112 Stat. 800, provided that: ''The amendments made by this paragraph [amending this section and section 403 of this title] shall apply to distributions after December 31, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1501(c)(1) of Pub. L. 105–34 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1401(c) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 401, 406, 407, 691, 871, 877, and 4980A of this title] shall apply to taxable years beginning after December 31, 1999.

''(2) RETENTION OF CERTAIN TRANSITION RULES.—The amendments made by this section shall not apply to any distribution for which the taxpayer is eligible to elect the benefits of section 1122(h)(3) or (5) of the Tax Reform Act of 1986 [Pub. L. 99–514, set out below]. Notwithstanding the preceding sentence, individuals who elect such benefits after December 31, 1999, shall not be eligible for 5-year averaging under section 402(d) of the Internal Revenue Code of 1986 (as in effect immediately before such amendments).''

Amendment by section 1421(b)(3)(A), (9)(B) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1450(a)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1995, see section 1450(a)(3) of Pub. L. 104–188, set out in a Modifications of Subsection (b) of This Section note under section 403 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 521(e) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 55, 62, 72, 219, 401, 403, 406 to 408, 411, 414, 415, 457, 691, 871, 877, 1441, 3121, 3306, 3405, 4973, 4980A, and 7701 of this title] shall apply to distributions after December 31, 1992.

''(2) SPECIAL RULE FOR PARTIAL DISTRIBUTIONS.—For purposes of section 402(a)(5)(D)(i)(II) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this section), a distribution before January 1, 1993, which is made before or at the same time as a series of periodic payments shall not be treated as one of such series if it is not substantially equal in amount to other payments in such series.''

Amendment by section 522(c)(1) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7811(i)(13) of Pub. L. 101–239 provided that the amendment made by that section is effective with respect to taxable years ending after Dec. 19, 1989 (or, at the election of the taxpayer, beginning after Dec. 31, 1986).

Amendment by section 7811(g)(2) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(c)(1)–(6)(B), (11), (h)(4), 1011A(a)(1), (b)(4)(A)–(D), (5)–(8), (10), (c)(9), and 1018(t)(8)(A), (C), (u)(1), (6), (7) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6068(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years ending after December 31, 1984.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 104(b)(5) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Section 1105(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(c)(8), (9), Nov. 10, 1988, 102 Stat. 3458, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) DEFERRALS UNDER COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendment made by subsection (a) shall not apply to contributions made pursuant to such an agreement for taxable years beginning before the earlier of—

''(A) the date on which such agreement terminates (determined without regard to any extension thereof after February 28, 1986), or

''(B) January 1, 1989.

Such contributions shall be taken into account for purposes of applying the amendment made by this section to other plans.

''(3) DISTRIBUTIONS MADE BEFORE PLAN AMENDMENT.—

''(A) IN GENERAL.—If a plan amendment is required to allow the plan to make any distribution described in section 402(g)(2)(A)(ii) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1140 [set out as a note under section 401 of this title] shall be treated as made in accordance with the provisions of such plan.

''(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

''(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 402(g)(2)(A)(ii) of such Code.

''(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

''(4) SPECIAL RULE FOR TAXABLE YEARS OF PARTNERSHIPS WHICH INCLUDE JANUARY 1, 1987.—In the case of the taxable year of any partnership which begins before January 1, 1987, and ends after January 1, 1987, elective deferrals (within the meaning of section 402(g)(3) of the Internal Revenue Code of 1986) made on behalf of a partner for such taxable year shall, for purposes of section 402(g)(3) of such Code, be treated as having been made ratably during such taxable year.

''(5) CASH OR DEFERRED ARRANGEMENTS.—The amendments made by this section [amending this section and section 6051 of this title] shall not apply to employer contributions made during 1987 and attributable to services performed during 1986 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) if, under the terms of such arrangement as in effect on August 16, 1986—

''(A) the employee makes an election with respect to such contribution before January 1, 1987, and

''(B) the employer identifies the amount of such contribution before January 1, 1987.

''(6) REPORTING REQUIREMENTS.—The amendments made by subsection (b) [amending section 6051 of this title] shall apply to calendar years beginning after December 31, 1986.''

Amendment by section 1106(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1106(i) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(b) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1121(c)(1) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1122(h) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(b)(11)–(15), Nov. 10, 1988, 102 Stat. 3474, 3475, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and sections 72, 403, and 408 of this title] shall apply to amounts distributed after December 31, 1986, in taxable years ending after such date.

''(2) SUBSECTION (c).—

''(A) SUBSECTION (c)(1).—The amendment made by subsection (c)(1) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after July 1, 1986.

''(B) SUBSECTION (c)(2).—The amendment made by subsection (c)(2) [amending section 72 of this title] shall apply to individuals whose annuity starting date is after December 31, 1986, except that section 72(b)(3) of the Internal Revenue Code of 1986 (as added by such subsection) shall apply to individuals whose annuity starting date is after July 1, 1986.

''(C) SPECIAL RULE FOR AMOUNTS NOT RECEIVED AS ANNUITIES.—In the case of any plan not described in section 72(e)(8)(D) of the Internal Revenue Code of 1986 (as added by subsection (c)(3)), the amendments made by subsection (c)(3) [amending section 72 of this title] shall apply to amounts received after July 1, 1986.

''(3) SPECIAL RULE FOR INDIVIDUALS WHO ATTAINED AGE 50 BEFORE JANUARY 1, 1986.—

''(A) IN GENERAL.—In the case of a lump sum distribution to which this paragraph applies—

''(i) the existing capital gains provisions shall continue to apply, and

''(ii) the requirement of subparagraph (B) of section 402(e)(4) of the Internal Revenue Code of 1986 (as amended by subsection (a)) that the distribution be received after attaining age 59½ shall not apply.

''(B) COMPUTATION OF TAX.—If subparagraph (A) applies to any lump sum distribution of any taxpayer for any taxable year, the tax imposed by section 1 of the Internal Revenue Code of 1986 on such taxpayer for such taxable year shall be equal to the sum of—

''(i) the tax imposed by such section 1 on the taxable income of the taxpayer (reduced by the portion of such lump sum distribution to which clause (ii) applies), plus

''(ii) 20 percent of the portion of such lump sum distribution to which the existing capital gains provisions continue to apply by reason of this paragraph.

''(C) LUMP SUM DISTRIBUTIONS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any lump sum distribution if—

''(i) such lump sum distribution is received by an employee who has attained age 50 before January 1, 1986 or by an individual, estate, or trust with respect to such an employee, and

''(ii) the taxpayer makes an election under this paragraph.

Not more than 1 election may be made under this paragraph with respect to an employee. An election under this subparagraph shall be treated as an election under section 402(e)(4)(B) of such Code for purposes of such Code.

''(4) 5-YEAR PHASE-OUT OF CAPITAL GAINS TREATMENT.—

''(A) Notwithstanding the amendment made by subsection (b) [amending this section and section 403 of this title], if the taxpayer elects the application of this paragraph with respect to any distribution after December 31, 1986, and before January 1, 1992, the phase-out percentage of the amount which would have been treated, without regard to this subparagraph, as long-term capital gain under the existing capital gains provisions shall be treated as long-term capital gain.

''(B) For purposes of this paragraph—

''In the case of distributions during calendar year:	**The phase-out percentage is:**
1987	100
1988	95
1989	75
1990	50
1991	25.

''(C) No more than 1 election may be made under this paragraph with respect to an employee. An election under this paragraph shall be treated as an election under section 402(e)(4)(B) of the Internal Revenue Code of 1986 for purposes of such Code.

''(5) ELECTION OF 10-YEAR AVERAGING.—An employee who has attained age 50 before January 1, 1986, and elects the application of paragraph (3) or section 402(e)(1) of the Internal Revenue Code of 1986 (as amended by this Act) may elect to have such section applied by substituting '10 times' for '5 times' and '1/10' for '1/5' in subparagraph (B) thereof. For purposes of the preceding sentence, section 402(e)(1) of such Code shall be applied by using the rate of tax in effect under section 1 of the Internal Revenue Code of 1954 for taxable years beginning during 1986 and by including in gross income the zero bracket amount in effect under section 63(d) of such Code for such years. This paragraph shall also apply to an individual, estate, or trust which receives a distribution with respect to an employee described in this paragraph.

''(6) EXISTING CAPITAL GAIN PROVISIONS.—For purposes of paragraphs (3) and (4), the term 'existing capital gains provisions' means the provisions of paragraph (2) of section 402(a) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]) and paragraph (2) of section 403(a) of such Code (as so in effect).

''(7) SUBSECTION (d).—The amendments made by subsection (d) [amending section 403 of this title] shall apply to taxable years beginning after December 31, 1985.

''(8) FROZEN DEPOSITS.—The amendments made by subsection (e)(2) [amending this section and section 408 of this title] shall apply to amounts transferred to an employee before, on, or after the date of the enactment of this Act [Oct. 22, 1986], except that in the case of an amount transferred on or before such date, the 60-day period referred to in section 402(a)(5)(C) of the Internal Revenue Code of 1986 shall not expire before the 60th day after the date of the enactment of this Act.

''(9) SPECIAL RULE FOR STATE PLANS.—In the case of a plan maintained by a State which on May 5, 1986, permitted withdrawal by the employee of employee contributions (other than as an annuity), section 72(e) of the Internal Revenue Code of 1986 shall be applied—

''(A) without regard to the phrase 'before separation from service' in paragraph (8)(D), and

''(B) by treating any amount received (other than as an annuity) before or with the 1st annuity payment as having been received before the annuity starting date.''

Amendment by section 1852(a)(5)(A), (b)(1)–(7), (c)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1854(f)(4)(C) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(c)(6)(C), Nov. 10, 1988, 102 Stat. 3458, provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to any transaction occurring after December 31, 1984, except that in the case of any transaction occurring before the date of the enactment of this Act [Oct. 22, 1986], the period under which proceeds are required to be invested under section 402(j) of the Internal Revenue Code of 1954 [now 1986] (as added by paragraph (2)) shall not end before the earlier of 1 year after the date of such transaction or 180 days after the date of the enactment of this Act.''

Section 1875(c)(1)(B) of Pub. L. 99–514 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]. Such amendments shall apply also to distributions after 1983 and on or before the date of the enactment of this Act to individuals who are not 5-percent owners (as defined in section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 [now 1986] (as amended by this paragraph)).''

Amendment by section 1898(a)(2), (3), (c)(7)(A)(i), (e) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1898(c)(1)(A) of Pub. L. 99–514 applicable to payments made after Oct. 22, 1986, see section 1898(c)(1)(C) of Pub. L. 99–514, set out as a note under section 72 of this title.

Amendment by Pub. L. 99–272 effective Jan. 1, 1986, with certain exceptions, see section 11019 of Pub. L. 99–272, set out as a note under section 1341 of Title 29, Labor.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 204 of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 207 of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98–397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(9)–(11) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 491(f)(2) of Pub. L. 98–369 provided that: ''The amendment made by subsection (c) [amending this section and section 405 of this title] shall apply to redemptions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.''

Section 522(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1852(b)(9), Oct. 22, 1986, 100 Stat. 2867, provided that: ''The amendments made by this section [amending this section and sections 403, 408, and 409 of this title] shall apply to distributions made after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

Section 713(c)(4) of Pub. L. 98–369, as added by Pub. L. 99–514, title XVIII, § 1875(c)(2), Oct. 22, 1986, 100 Stat. 2894, provided that: ''The amendment made by paragraph (3) [amending this section] shall apply to distributions after July 18, 1984.''

Amendment by section 1001(b)(3) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(b)(2), (3)(A), (c) of Pub. L. 97–34, applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 314(c)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to taxable years beginning after December 31, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2(b) of Pub. L. 96–608, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to payments made in taxable years beginning after December 31, 1978.

''(2) TRANSITIONAL RULE.—In the case of any payment made before January 1, 1982, in a taxable year beginning after December 31, 1978, which is treated as a qualifying rollover distribution (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) by reason of the amendment made by subsection (a), the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1981.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(d) of Pub. L. 95–600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95–600, set out as a note under section 1 of this title.

Amendment by section 135(b) of Pub. L. 95–600 applicable to plan years beginning after December 31, 1979, see section 135(c)(1) of Pub. L. 95–600, set out as a note under section 401 of this title.

Section 157(h)(3)(A) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(14)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this subsection [amending this section and section 408 of this title] shall apply to payments made in taxable years beginning after December 31, 1977.''

Section 157(f)(2) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to qualifying rollover distributions (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) completed after December 31, 1978, in taxable years ending after such date.''

Section 157(g)(4) of Pub. L. 95–600 provided that: ''The amendments made by this subsection [amending this section and sections 403 and 408 of this title] shall apply to lump-sum distributions completed after December 31, 1978, in taxable years ending after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT; CERTAIN ROLLOVERS VALIDATED

Section 4(d) of Pub. L. 95–458, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending this section and section 403 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

''(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

''(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] for a taxable year beginning before the date of the enactment of this Act, [Oct. 14, 1978], and

''(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1512(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to distributions and payments made after December 31, 1975, in taxable years beginning after such date.''

Section 1901(a)(57)(C)(ii) of Pub. L. 94–455 provided that: ''The amendment made by clause (i) [amending this section] shall apply with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4,

1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 2002(i)(3) of Pub. L. 93–406, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by subsection (g)(5) and (6) [amending this section and section 403 of this title] shall apply on and after the date of enactment of this Act [Sept. 2, 1974] with respect to contributions to an employees' trust described in section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code or an annuity plan described in section 403(a) of such Code.''

Section 2005(d) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section and sections 46, 50A, 56, 62, 72, 101, 122, 403, 405, 406, 407, 871, 877, 901, 1304, and 1348 of this title] shall apply only with respect to distributions or payments made after December 31, 1973, in taxable years beginning after such date.''

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(1) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Section 515(d) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and sections 72, 403, 405, 406, 407 and 1304 of this title] shall apply to taxable years ending after December 31, 1969.''

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by section 221(c)(1) of Pub. L. 88–272 applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as a note under section 421 of this title.

Amendment by section 232(e)(1)–(3) of Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 3 of Pub. L. 86–437 provided that: ''The amendments made by this Act [amending this section and section 871 of this title] shall apply only with respect to taxable years beginning after December 31, 1959.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF DISQUALIFICATION RULES RELATING TO ACCEPTANCE OF ROLLOVER CONTRIBUTIONS

Section 1509 of Pub. L. 105–34 provided that: ''The Secretary of the Treasury or his delegate shall clarify that, under the Internal Revenue Service regulations protecting pension plans from disqualification by reason of the receipt of invalid rollover contributions under section 402(c) of the Internal Revenue Code of 1986, in order for the administrator of the plan receiving any such contribution to reasonably conclude that the contribution is a valid rollover contribution it is not necessary for the distributing plan to have a determination letter with respect to its status as a qualified plan under section 401 of such Code.''

MODEL EXPLANATION

Section 521(d) of Pub. L. 102–318 provided that: ''The Secretary of the Treasury or his delegate shall develop a model explanation which a plan administrator may provide to a recipient in order to meet the requirements of section 402(f) of the Internal Revenue Code of 1986.''

INCORPORATION BY REFERENCE OF SUBSECTION (g) LIMITATIONS

Section 1011(c)(10) of Pub. L. 100–647 provided that: ''Notwithstanding any other provision of law, a plan may incorporate by reference the dollar limitations under section 402(g) of the Internal Revenue Code of 1986.''

APPLICABILITY OF SUBSECTION (a)(5)(F)(ii)

Section 1011A(a)(5) of Pub. L. 100–647 provided that: ''Section 402(a)(5)(F)(ii) of the Internal Revenue Code of 1954 shall not apply to distributions after October 22, 1986, and before the 1st taxable year beginning after 1986 which are attributable to benefits which accrued before January 1, 1985.''

APPLICABILITY OF SUBSECTION (a)(5)(D)(i)(II)

Section 1011A(b)(4)(E) of Pub. L. 100–647 provided that: ''Section 402(a)(5)(D)(i)(II) of the 1986 Code (as in effect after the amendment made by subparagraph (A)) shall not apply to distributions after December 31, 1986, and before March 31, 1988.''

ELECTION TO TREAT CERTAIN LUMP SUM DISTRIBUTIONS RECEIVED DURING 1987 AS RECEIVED DURING 1986

Section 1124 of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(d), Nov. 10, 1988, 102 Stat. 3476, provided that:

''(a) IN GENERAL.—If an employee dies, separates from service, or becomes disabled before 1987 and an individual, trust, or estate receives a lump-sum distribution with respect to such employee after December 31, 1986, and before March 16, 1987, on account of such death, separation from service, or disability, then, for purposes of the Internal Revenue Code of 1986, such individual, estate, or trust may treat such distribution as if it were received in 1986.

''(b) SPECIAL RULE FOR TERMINATED PLAN.—In the case of an individual, estate, or trust who receives with respect to an employee a distribution from a terminated plan which was maintained by a corporation organized under the laws of the State of Nevada, the principal place of business of which is Denver, Colorado, and which filed for relief from creditors under the United States Bankruptcy Code on August 28, 1986, the individual, estate, or trust may treat a lump sum distribution received from such plan before June 30, 1987, as if it were received in 1986.

''(c) LUMP SUM DISTRIBUTION.—For purposes of this section, the term 'lump sum distribution' has the meaning given such term by section 402(e)(4)(A) of the Internal Revenue Code of 1986, without regard to subparagraph (B) or (H) of section 402(e)(4) of such Code.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L.

104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TREATMENT OF CERTAIN DISTRIBUTIONS FROM QUALIFIED TERMINATED PLAN

Section 551 of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) IN GENERAL.—For purposes of the Internal Revenue Code [of] 1986 [formerly I.R.C. 1954], if—

''(1) a distribution was made from a qualified terminated plan to an employee on December 16, 1976, and on January 6, 1977, such employee transferred all of the property received in such distribution to an individual retirement account (within the meaning of section 408(a) of such Code) established for the benefit of such employee, and

''(2) the remaining balance to the credit of such employee in such qualified terminated plan was distributed to such employee on January 21, 1977, and all the property received by such employee in such distribution was transferred by such employee to such individual retirement account on January 21, 1977,

then such distributions shall be treated as qualifying rollover distributions (within the meaning of section 402(a)(5) of such Code) and shall not be includible in the gross income of such employee for the taxable year in which paid.

''(b) QUALIFIED TERMINATED PLAN.—For purposes of this section, the term 'qualified terminated plan' means a pension plan—

''(1) with respect to which a notice of sufficiency was issued by the Pension Benefit Guaranty Corporation on December 2, 1976, and

''(2) which was terminated by corporate action on February 20, 1976.

''(c) REFUND OR CREDIT OF OVERPAYMENT BARRED BY STATUTE OF LIMITATIONS.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1986 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Section 157(h)(3)(B) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(14)(A), (D), Apr. 1, 1980, 94 Stat. 204, 205; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 which is described in section 402(a)(5)(A) or 403(a)(4)(A) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] by reason of the amendments made by this subsection [amending sections 402 and 408 of this title], the applicable period specified in section 402(a)(5)(C) of such Code (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B) of such code) shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULES RELATING TO PERIOD FOR ROLLOVER CONTRIBUTION

Section 1(d) of Pub. L. 94–267, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—

''(A) PERIOD FOR ROLLOVER CONTRIBUTION.—In the case of a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] or section 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to distributions of the balance to the credit of the employee) which is contributed by an employee after the date of the enactment of this Act [Apr. 15, 1976] to a trust, plan, account, annuity, or bond described in section 402(a)(5)(B) or 403(a)(4)(B) of such Code, the applicable period specified in section 402(a)(5)(B) or 403(a)(4)(B) of such Code (relating to rollover distributions to another plan or retirement account) shall not expire before December 31, 1976.

''(B) TIME OF CONTRIBUTION.—

(i) GENERAL RULE.—If the initial portion of a payment the applicable period for which is determined under subparagraph (A) is contributed before December 31, 1976, by an individual to a trust, plan, account, annuity, or bond described in subparagraph (A) and the remaining portion of such payment is contributed by such individual to such a trust, plan, account, annuity, or bond not later than 30 days after the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 of the Internal Revenue Code of 1986 with respect to the contribution, then, for purposes of subparagraph (A) and sections 402(a)(5) and 403(a)(4) of such Code, at the election of the individual (made in accordance with regulations prescribed by the Secretary or his delegate), such remaining portion shall be considered to have been contributed on the date the initial portion of the payment was contributed. For purposes of this subparagraph, the initial portion of a payment is the amount by which such payment exceeds the amount of the tax imposed on such payment by chapter 1 of such Code (determined without regard to this subparagraph). [chapter 1 of this title]

''(ii) REGULATIONS.—For purposes of this subparagraph, the tax imposed on a payment by chapter 1 of the Internal Revenue Code of 1986, and the date a credit or refund is allowed by the Secretary of the Treasury or his delegate under section 6402 with respect to a contribution, shall be determined under regulations prescribed by the Secretary of the Treasury or his delegate.

''(C) PERIOD OF LIMITATIONS.—If an individual has made the election provided by subparagraph (B), then—

''(i) the period provided by the Internal Revenue Code of 1986 for the assessment of any deficiency for the taxable year in which the payment described in subparagraph (A) was made and each subsequent taxable year for which tax is determined by reference to the treatment of such payment under such Code or the status under such Code of any trust, plan, account, annuity, or bond described in subparagraph (A) shall, to the extent attributable to such treatment, not expire before the expiration of 3 years from the date the Sec-

retary of the Treasury or his delegate is notified by the individual (in such manner as the Secretary of the Treasury or his delegate may prescribe) that such individual has made (or failed to make) the contribution of the remaining portion of the payment within the period specified in subparagraph (B)(i), and

''(ii) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of section 6212(c) of such Code or the provisions of any other law or rule of law which would otherwise prevent such assessment.

''(2) ROLLOVER CONTRIBUTION FOR CERTAIN PROPERTY SOLD.—Sections 402(a)(5)(C) and 403(a)(4)(C) of the Internal Revenue Code of 1986 (relating to the requirement that rollover amount must consist of property received in a distribution) shall not apply with respect to that portion of the property received in a payment described in section 402(a)(5)(A) (other than a payment described in section 402(a)(5)(A) as in effect on the day before the date of the enactment of this Act [Apr. 15, 1976] or 403(a)(4)(A) (other than a payment described in section 403(a)(4)(A) as in effect on the day before the date of the enactment of this Act) [Apr. 15, 1976] of such Code which is sold or exchanged by the employee on or before the date of the enactment of this Act, [Apr. 15, 1976], if the employee transfers an amount of cash equal to the proceeds received from the sale or exchange of such property in excess of the amount considered contributed by the employee (within the meaning of section 402(a)(4)(D)(i) of such Code).

''(3) NONRECOGNITION OF GAIN OR LOSS.—For purposes of the Internal Revenue Code of 1986 [this title] no gain or loss shall be recognized with respect to the sale or exchange of property described in paragraph (2) if the proceeds of such sale or exchange are transferred by an employee in accordance with this subsection and the applicable provisions of section 402(a)(5) or 403(a)(4) of such Code.''

§ 402A. Optional treatment of elective deferrals as Roth contributions

(a) General rule

If an applicable retirement plan includes a qualified Roth contribution program—

(1) any designated Roth contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

(b) Qualified Roth contribution program

For purposes of this section—

(1) In general

The term ''qualified Roth contribution program'' means a program under which an employee may elect to make designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

(2) Separate accounting required

A program shall not be treated as a qualified Roth contribution program unless the applicable retirement plan—

(A) establishes separate accounts (''designated Roth accounts'') for the designated Roth contributions of each employee and any earnings properly allocable to the contributions, and

(B) maintains separate recordkeeping with respect to each account.

(c) Definitions and rules relating to designated Roth contributions

For purposes of this section—

(1) Designated Roth contribution

The term ''designated Roth contribution'' means any elective deferral which—

(A) is excludable from gross income of an employee without regard to this section, and

(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

(2) Designation limits

The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

(3) Rollover contributions

(A) In general

A rollover contribution of any payment or distribution from a designated Roth account which is otherwise allowable under this chapter may be made only if the contribution is to—

(i) another designated Roth account of the individual from whose account the payment or distribution was made, or

(ii) a Roth IRA of such individual.

(B) Coordination with limit

Any rollover contribution to a designated Roth account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a designated Roth account shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

(B) Distributions within nonexclusion period

A payment or distribution from a designated Roth account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

(i) the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan, or

(ii) if a rollover contribution was made to such designated Roth account from a designated Roth account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated Roth contribution to such previously established account.

(C) Distributions of excess deferrals and contributions and earnings thereon

The term ''qualified distribution'' shall not include any distribution of any excess deferral under section 402(g)(2) or any excess contribution under section 401(k)(8), and any income on the excess deferral or contribution.

(3) Treatment of distributions of certain excess deferrals

Notwithstanding section 72, if any excess deferral under section 402(g)(2) attributable to a designated Roth contribution is not distributed on or before the 1st April 15 following the close of the taxable year in which such excess deferral is made, the amount of such excess deferral shall—

(A) not be treated as investment in the contract, and

(B) be included in gross income for the taxable year in which such excess is distributed.

(4) Aggregation rules

Section 72 shall be applied separately with respect to distributions and payments from a designated Roth account and other distributions and payments from the plan.

(e) Other definitions

For purposes of this section—

(1) Applicable retirement plan

The term ''applicable retirement plan'' means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

(2) Elective deferral

The term ''elective deferral'' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).

(Added Pub. L. 107–16, title VI, § 617(a), June 7, 2001, 115 Stat. 103.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

(1) Distributee taxable under section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Self-employed individuals

For purposes of this subsection, the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(5) Direct trustee-to-trustee transfer

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

(1) General rule

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1) (A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and additions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(*l*), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Includible compensation

For purposes of this subsection, the term ''includible compensation'' means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes—

(A) any elective deferral (as defined in section 402(g)(3)), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(4) Years of service

In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract

If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

[(6) Repealed. Pub. L. 107–147, title IV, §411(p)(2), Mar. 9, 2002, 116 Stat. 50]

(7) Custodial accounts for regulated investment company stock

(A) Amounts paid treated as contributions

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before the employee dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), encounters financial hardship.

(B) Account treated as plan

For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company

For purposes of this paragraph, the term ''regulated investment company'' means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(8) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such dis-

tribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

(9) Retirement income accounts provided by churches, etc.

(A) Amounts paid treated as contributions

For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account

For purposes of this paragraph, the term ''retirement income account'' means a defined contribution program established or maintained by a church, or a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) or his beneficiaries.

(10) Distribution requirements

Under regulations prescribed by the Secretary, this subsection shall not apply to any annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.

(11) Requirement that distributions not begin before age 59½, severance from employment, death, or disability

This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)),

(B) in the case of hardship, or

(C) for distributions to which section 72(t)(2)(G) applies.

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

(12) Nondiscrimination requirements

(A) In general

For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agreement, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than $200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any nonresident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week.

(B) Church

For purposes of paragraph (1)(D), the term ''church'' has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) State and local governmental plans

For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

(13) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(14) Death benefits under USERRA-qualified active military service

This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations

Premiums paid by an employer for an annuity contract which is not subject to subsection (a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

(Aug. 16, 1954, ch. 736, 68A Stat. 137; Pub. L. 85–866, title I, §23(a)–(c), Sept. 2, 1958, 72 Stat. 1620–1622; Pub. L. 87–370, §3(a), Oct. 4, 1961, 75 Stat. 801; Pub. L. 87–792, §4(d), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §232(e)(4)–(6), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, §321(b)(2), title V, §515(a)(2), Dec. 30, 1969, 83 Stat. 591, 644; Pub. L. 93–406, title II, §§1022(e), 2002(g)(6), 2004(c)(4), 2005(b)(2), Sept. 2, 1974, 88 Stat. 940, 969, 986, 991; Pub. L. 94–267, §1(b), Apr. 15, 1976, 90 Stat. 366; Pub. L. 94–455, title XIV, §1402(b)(1)(D), (2), title XV, §1504(a), title XIX, §§1901(a)(58), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1738, 1774, 1794, 1834; Pub. L. 95–458, §4(b), Oct. 14, 1978, 92 Stat. 1259; Pub. L. 95–600, title I, §§154(a), 156(a), (b), 157(g)(2), Nov. 6, 1978, 92 Stat. 2801, 2802, 2808; Pub. L. 96–222, title I, §101(a)(12), (13)(C), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(b)(3)(B), Aug. 13, 1981, 95 Stat. 280; Pub. L. 97–248, title II, §251(a), (b), (c)(3), Sept. 3, 1982, 96 Stat. 529–531; Pub. L. 97–448, title I, §103(c)(8)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–21, title I, §122(c)(4), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title IV, §491(d)(12), title V, §§521(c), 522(a)(2), (3), (d)(9)–(11), title X, §1001(b)(4), (e), July 18, 1984, 98 Stat. 849, 867, 869–871, 1011, 1012; Pub. L. 99–514, title XI, §§1120(a), (b), 1122(b)(1)(B), (d), 1123(c), title XVIII, §1852(a)(3)(A), (B), (5)(B), (b)(10), Oct. 22, 1986, 100 Stat. 2463, 2466, 2469, 2474, 2865, 2867; Pub. L. 100–647, title I, §1011(c)(7)(B), (12), (m)(1), (2), title VI, §6052(a)(1), Nov. 10, 1988, 102 Stat. 3458, 3459, 3471, 3696; Pub. L. 101–508, title XI, §11701(k), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 102–318, title V, §§521(b)(12), (13), 522(a)(3), (c)(2), (3), July 3, 1992, 106 Stat. 311, 314, 315; Pub. L. 104–188, title I, §§1450(c)(1), 1704(t)(69), Aug. 20, 1996, 110 Stat. 1815, 1891; Pub. L. 105–34, title XV, §§1504(a)(1), 1505(c), title XVI, §1601(d)(6)(B), Aug. 5, 1997, 111 Stat. 1063, 1064, 1090; Pub. L. 105–206, title VI, §6005(c)(2)(B), July 22, 1998, 112 Stat. 800; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§632(a)(2), 641(b)(1), (e)(7), 642(b)(1), 646(a)(2), 647(a), June 7, 2001, 115 Stat. 113, 120, 121, 126, 127; Pub. L. 107–147, title IV, §411(p)(1)–(3), Mar. 9, 2002, 116 Stat. 49, 50; Pub. L. 108–311, title IV, §§404(e), 408(a)(11), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–135, title IV, §412(w), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title VIII, §§827(b)(2), (3), 829(a)(2), (3), 845(b)(1), (2), Aug. 17, 2006, 120 Stat. 1000, 1002, 1015; Pub. L. 110–245, title I, §104(c)(2), June 17, 2008, 122 Stat. 1627.)

AMENDMENTS

2008—Subsec. (b)(14). Pub. L. 110–245 added par. (14).

2006—Subsec. (a)(2). Pub. L. 109–280, §845(b)(1), added par. (2).

Subsec. (a)(4)(B). Pub. L. 109–280, §829(a)(2), inserted ''and (11)'' after ''(7)''.

Subsec. (b)(2). Pub. L. 109–280, §845(b)(2), added par. (2).

Subsec. (b)(7)(A)(ii). Pub. L. 109–280, §827(b)(2), inserted ''(unless such amount is a distribution to which section 72(t)(2)(G) applies)'' after ''distributee''.

Subsec. (b)(8)(B). Pub. L. 109–280, §829(a)(3), substituted '', (9), and (11)'' for ''and (9)''.

Subsec. (b)(11)(C). Pub. L. 109–280, §827(b)(3), added subpar. (C).

2005—Subsec. (b)(9)(B). Pub. L. 109–135 inserted ''or'' before ''a convention''.

2004—Subsec. (a)(4)(B). Pub. L. 108–311, §404(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).''

Subsec. (b)(7)(A)(ii). Pub. L. 108–311, §408(a)(11), substituted ''3121(a)(5)(D)'' for ''3121(a)(1)(D)''.

2002—Subsec. (b)(1). Pub. L. 107–147, §411(p)(1), inserted concluding provisions and struck out former concluding provisions which read as follows: ''then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.''

Subsec. (b)(3). Pub. L. 107–147, §411(p)(3), in first sentence, inserted '', and which precedes the taxable year by no more than five years'' before period at end and, in second sentence, struck out ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' after ''this subsection applies''.

Subsec. (b)(6). Pub. L. 107–147, § 411(p)(2), struck out heading and text of par. (6). Text read as follows: ''For purposes of this subsection and section 72(f) (relating to special rules for computing employees' contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.''

2001—Subsec. (b)(1). Pub. L. 107–16, § 642(b)(1), substituted ''section 408(d)(3)(A)(ii)'' for ''section 408(d)(3)(A)(iii)'' in concluding provisions.

Pub. L. 107–16, § 632(a)(2)(A), substituted ''the applicable limit under section 415'' for ''the exclusion allowance for such taxable year'' in concluding provisions.

Subsec. (b)(2). Pub. L. 107–16, § 632(a)(2)(B), struck out par. (2), which described exclusion allowance for purposes of subsec. (b) providing general criteria, determination under section 415 rules, number of years of service for duly ordained, commissioned, or licensed ministers or lay employees, and alternative exclusion allowance for such ministers or lay employees.

Subsec. (b)(3). Pub. L. 107–16, § 632(a)(2)(C), inserted ''or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'' before period at end of second sentence.

Subsec. (b)(7)(A)(ii). Pub. L. 107–16, § 646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(8)(A)(ii). Pub. L. 107–16, § 641(b)(1), substituted ''such distribution to an eligible retirement plan described in section 402(c)(8)(B), and'' for ''such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and''.

Subsec. (b)(8)(B). Pub. L. 107–16, § 641(e)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A).''

Subsec. (b)(11). Pub. L. 107–16, § 646(a)(2)(B), substituted ''severance from employment'' for ''separation from service'' in heading.

Subsec. (b)(11)(A). Pub. L. 107–16, § 646(a)(2)(A), substituted ''has a severance from employment'' for ''separates from service''.

Subsec. (b)(13). Pub. L. 107–16, § 647(a), added par. (13).

2000—Subsec. (b)(3)(B). Pub. L. 106–554 substituted ''section 125, 132(f)(4), or'' for ''section 125 or''.

1998—Subsec. (b)(8)(B). Pub. L. 105–206 inserted ''(including paragraph (4)(C) thereof)'' after ''section 402(c)''.

1997—Subsec. (b)(1)(A)(iii). Pub. L. 105–34, § 1601(d)(6)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 105–34, § 1504(a)(1), inserted at end ''Such term includes—'' and subpars. (A) and (B).

Subsec. (b)(12)(C). Pub. L. 105–34, § 1505(c), added subpar. (C).

1996—Subsec. (b)(1)(E). Pub. L. 104–188, § 1450(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30),''.

Subsec. (b)(10). Pub. L. 104–188, § 1704(t)(69), substituted ''a direct'' for ''an direct'' in last sentence.

1992—Subsec. (a)(4)(A)(i). Pub. L. 102–318, § 521(b)(12)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (a)(4)(B). Pub. L. 102–318, § 521(b)(12)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).''

Subsec. (a)(5). Pub. L. 102–318, § 522(c)(2), added par. (5).

Subsec. (b)(8)(A)(i). Pub. L. 102–318, § 521(b)(13)(A), inserted before comma at end ''in an eligible rollover distribution (within the meaning of section 402(c)(4))''.

Subsec. (b)(8)(B) to (D). Pub. L. 102–318, § 521(b)(13)(B), added subpar. (B) and struck out former subpars. (B) to (D), which related to special rules for partial distributions, applicability of certain similar rules, and eligibility for rollover treatment of required distributions.

Subsec. (b)(10). Pub. L. 102–318, § 522(a)(3), (c)(3), substituted ''sections 401(a)(9) and 401(a)(31)'' for ''section 401(a)(9)'' and inserted at end ''Any amount transferred in an direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.''

1990—Subsec. (b)(12)(A). Pub. L. 101–508 inserted ''involving a one-time irrevocable election'' after ''similar arrangement'' in second sentence.

1988—Subsec. (b)(1)(D). Pub. L. 100–647, § 1011(m)(1)(B), substituted ''paragraph (12)'' for ''paragraph (10)''.

Subsec. (b)(1)(E). Pub. L. 100–647, § 1011(c)(7)(B), added subpar. (E).

Subsec. (b)(10). Pub. L. 100–647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12). Pub. L. 100–647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12)(A). Pub. L. 100–647, § 1011(m)(2), inserted ''(17),'' after ''paragraphs (4), (5),'' and '', section 401(m),'' after ''of section 401(a)'' in cl. (i).

Pub. L. 100–647, § 1011(c)(12), inserted after cl. (ii) ''For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.''

Pub. L. 100–647, § 6052(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded.''

1986—Subsec. (a)(1). Pub. L. 99–514, § 1122(d)(1), substituted ''Distributee taxable under section 72'' for ''General rule'' in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).''

Subsec. (a)(2). Pub. L. 99–514, § 1122(b)(1)(B), struck out par. (2) which read as follows:

''(A) General rule

''If—

''(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

''(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

''(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribu-

tion shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

''(B) Cross reference

''For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).''

Subsec. (a)(4)(B). Pub. L. 99–514, §1852(a)(5)(B)(i), substituted ''through (G)'' for ''through (F)''.

Subsec. (b)(1). Pub. L. 99–514, §1122(d)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities)''.

Subsec. (b)(1)(D). Pub. L. 99–514, §1120(a), added subpar. (D).

Subsec. (b)(7)(A)(ii). Pub. L. 99–514, §1123(c)(2), inserted ''in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)),'' after ''section 72(m)(7)), or''.

Subsec. (b)(7)(D). Pub. L. 99–514, §1852(a)(3)(B), struck out subpar. (D) ''Distribution requirements'' which read as follows: ''For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract.''

Subsec. (b)(8)(C). Pub. L. 99–514, §1852(b)(10), inserted ''and'' before ''(F)(i)''.

Subsec. (b)(8)(D). Pub. L. 99–514, §1852(a)(5)(B)(ii), added subpar. (D).

Subsec. (b)(10). Pub. L. 99–514, §1120(b), added par. (10) relating to nondiscrimination requirements.

Pub. L. 99–514, §1852(a)(3)(A), added par. (10) relating to distribution requirements.

Subsec. (b)(11). Pub. L. 99–514, §1123(c)(1), added par. (11).

Subsec. (c). Pub. L. 99–514, §1122(d)(3), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities).''

1984—Subsec. (a)(2)(A). Pub. L. 98–369, §1001(b)(4), substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (a)(4)(A)(i). Pub. L. 98–369, §522(a)(2), substituted ''any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,'' for ''the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.''

Subsec. (a)(4)(B). Pub. L. 98–369, §522(d)(9), substituted ''(B) through (F)'' for ''(B) through (E)''.

Subsec. (b)(1). Pub. L. 98–369, §491(d)(12), struck out ''or 409(b)(3)(C)'' after ''408(d)(3)(A)(iii)''.

Subsec. (b)(7)(D). Pub. L. 98–369, §521(c), added subpar. (D).

Subsec. (b)(8)(A)(i). Pub. L. 98–369, §522(a)(3), substituted ''any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him'' for ''the balance to the credit of an employee is paid to him in a qualifying distribution''.

Subsec. (b)(8)(B). Pub. L. 98–369, §522(d)(10), substituted provisions relating to special rules for partial distributions for provisions relating to definition of qualifying distributions.

Subsec. (b)(8)(C). Pub. L. 98–369, §522(d)(11), substituted ''(F)(i)'' for ''(D)(v), and (E)(i)''.

1983—Subsec. (b)(3). Pub. L. 98–21 substituted ''section 911'' for ''sections 105(d) and 911''.

Subsec. (b)(8)(C). Pub. L. 97–448 substituted ''subparagraphs (B), (C), (D)(v), and (E)(i) of section 402(a)(5)'' for ''subparagraphs (B), (C), and (E)(i) of section 402(a)(5)''.

1982—Subsec. (b)(2)(B). Pub. L. 97–248, §251(a)(1), (c)(3), substituted ''home health service agencies, and certain churches, etc.'' for ''and home health service agencies'', and ''(under section 415 without regard to section 415(c)(8))'' for ''(under section 415)''.

Subsec. (b)(2)(C), (D). Pub. L. 97–248, §251(a)(2), added subpars. (C) and (D).

Subsec. (b)(9). Pub. L. 97–248, §251(b), added par. (9).

1981—Subsec. (b)(8)(B)(i). Pub. L. 97–34 inserted '', or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(*o*)(5))'' after ''subsection (a)''.

1980—Subsec. (b). Pub. L. 96–222 substituted in par. (1) ''409(b)(3)(C)'' for ''409(d)(3)(C)'', and in par. (7)(A) ''which satisfies'' for ''which satisfied''.

1978—Subsec. (a)(4). Pub. L. 95–600, §157(g)(2), in subpar. (B) substituted ''paragraphs (6) and (7)'' for ''paragraph (6)''.

Pub. L. 95–458, among other changes, substituted provision permitting tax free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5). Pub. L. 95–458 struck out par. (5) which related to special rules concerning time of termination of a profit-sharing plan and the treatment of the sale of a corporate subsidiary or assets as payment or distribution on account of termination of a plan of which an annuity trust was a part.

Subsec. (b)(1). Pub. L. 95–600, §156(b), inserted provision relating to application of rules of this subsection to amounts contributed by an employer for a taxable year.

Subsec. (b)(7)(A). Pub. L. 95–600, §154(a), struck out ''the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account'' after ''contract for his employee if'', and added cls. (i) and (ii).

Subsec. (b)(8). Pub. L. 95–600, §156(a), added par. (8).

1976—Subsec. (a)(2)(A). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b) (1)(D), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

Subsec. (a)(4). Pub. L. 94–455, §1901(a)(58), reenacted provisions following subpar. (C) without substantive change.

Pub. L. 94–267, §1(b)(2), substituted ''a payment'' for ''the lump-sum distribution''.

Subsec. (a)(4)(A). Pub. L. 94–267, §1(b)(1), restructured provisions by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(5). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary'' wherever appearing.

Pub. L. 94–267, §1(b)(3), added par. (5).

Subsec. (b)(1)(A)(ii). Pub. L. 94–455, §1901(b)(8)(A), substituted ''educational organization described in section 170(b)(1)(A)(ii)'' for ''educational institution (as defined in section 151(e)(4))''.

Subsec. (b)(4)(B). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (b)(7)(C). Pub. L. 94–455, §1504(a), struck out '', and which issues only redeemable stock'' after ''regulated investment company within the meaning of section 851(a)''.

1974—Subsec. (a)(2). Pub. L. 93–406, §2005(b)(2), substituted ''a lump sum distribution (as defined in section 4002(e)(4)(A)) is paid to the recipient'' for ''the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the payee within one taxable year of the payee'' as cl. (iii) of subpar. (A), substituted ''so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For pur-

poses of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph'' for ''then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1)'' following cl. (iii) of subpar. (A), substituted provisions setting out a cross reference to section 402(e) for provisions defining ''total amounts'' as subpar. (B), and struck out subpar. (C) setting out limitations on capital gains treatment.

Subsec. (a)(4). Pub. L. 93–406, § 2002(g)(6), added par. (4).

Subsec. (b)(2). Pub. L. 93–406, § 2004(c)(4), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 93–406, § 1022(e), added par. (7).

1969—Subsec. (a)(2)(C). Pub. L. 91–172, § 515(a)(2), added subpar. (C).

Subsec. (c). Pub. L. 91–172, § 321(b)(2), consolidated provisions of subsec. (c) providing for taxability of beneficiary under a nonqualified annuity, the employees gross income to include amount contributed by employer for annuity contract in the year in which amount is contributed, the amount to be included as provided in section 72 of this title and of subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, the gross income to include amount contributed by employer after Dec. 31, 1957, in the year of change from forfeitable to nonforfeitable rights, the new provisions including premiums paid by an employer in accordance with section 83, except that value of the contract shall be substituted for fair market value of the property for purposes of applying such section 83, such provision not to be applicable to that portion of premiums paid which is excluded from gross income under subsec. (b) of this section.

Subsec. (d). Pub. L. 91–172, § 321(b)(2), struck out subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers' cooperatives, gross income of the employee to include (amount contributed by employer after Dec. 31, 1957), in year of change from forfeitable to nonforfeitable rights. See subsec. (c) of this section.

1964—Subsecs. (a)(1), (b)(1), (c). Pub. L. 88–272, § 232(e)(4)–(6), struck out ''except that section 72(e)(3) shall not apply'' after ''(relating to annuities)''.

1962—Subsec. (a)(2)(A). Pub. L. 87–792, § 4(d)(1), (2), substituted ''described in paragraph (1)'' for ''which meets the requirements of section 401(a)(3), (4), (5), and (6)'' in cl. (i), and inserted sentence at end thereof providing that this subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

Subsec. (a)(3). Pub. L. 87–792, § 4(d)(3), added par. (3).

1961—Subsec. (b). Pub. L. 87–370, § 3(a)(3), inserted ''or public school'' in heading.

Subsec. (b)(1)(A). Pub. L. 87–370, § 3(a)(1), included annuity contracts purchased for an employee, other than one described in clause (i) of this subpar., who performs services for an educational institution, as defined in section 151(e)(4) of this title, by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of either.

Subsec. (b)(3). Pub. L. 87–370, § (3)(a)(2), substituted ''the employer described in paragraph (1)(A)'' for ''the employer described in section 501(c)(3) and exempt from tax under section 501(a)''.

1958—Subsec. (a)(1). Pub. L. 85–866, § 23(b), substituted ''which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section),'' for ''with respect to which the employer's contribution is deductible under section 404(a)(2), or if an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),''.

Subsecs. (b) to (d). Pub. L. 85–866, § 23(a), added subsec. (b), redesignated former subsec. (b) as (c), and added subsec. (d).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 827(b)(2), (3) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Amendment by section 829(a)(2), (3) of Pub. L. 109–280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109–280, set out as a note under section 402 of this title.

Amendment by section 845(b)(1), (2) of Pub. L. 109–280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109–280, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(e) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 632(a)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Amendment by section 641(b)(1), (e)(7) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Amendment by section 642(b)(1) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 642(c) of Pub. L. 107–16, set out as a note under section 408 of this title.

Amendment by section 646(a)(2) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107–16, set out as a note under section 401 of this title.

Pub. L. 107–16, title VI, § 647(c), June 7, 2001, 115 Stat. 127, provided that: ''The amendments made by this section [amending this section and section 457 of this title] shall apply to trustee-to-trustee transfers after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997,

Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, §314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6005 of Pub. L. 105–206 applicable to distributions after Dec. 31, 1998, see section 6005(c)(2)(C) of Pub. L. 105–206, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1504(a)(2) of Pub. L. 105–34 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1505(c) of Pub. L. 105–34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(6)(B) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1450(c)(2) of Pub. L. 104–188 provided that: ''The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1995, except a contract shall not be required to meet any change in any requirement by reason of such amendment before the 90th day after the date of the enactment of this Act [Aug. 20, 1996].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(12), (13) of Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

Amendment by section 522(a)(3), (c)(2), (3) of Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101–239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(B) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Amendment by section 1011(c)(12), (m)(1), (2) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6052(a)(2) of Pub. L. 100–647 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment made by section 1120(b) of the Reform Act [Pub. L. 99–514].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1120(c) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011(m)(3), Nov. 10, 1988, 102 Stat. 3471, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

''(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) January 1, 1991, or

''(B) the later of—

''(i) January 1, 1989, or

''(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).''

Amendment by section 1122(b)(1)(B), (d) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, but only with respect to distributions from contracts described in subsec. (b) of this section which are attributable to assets other than assets held as of the close of the last year beginning before Jan. 1, 1989, with certain exceptions and transition rule, see section 1123(e) of Pub. L. 99–514, as amended, set out as a note under section 72 of this title.

Section 1852(a)(3)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section] shall apply to benefits accruing after December 31, 1986, in taxable years ending after such date.''

Amendment by section 1852(a)(5)(B), (b)(10) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(12) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(c) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522 of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 1001(b)(4) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 251(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 415 of this title, and enacting a provision set out as a note below] shall apply to taxable years beginning after December 31, 1981.

''(2) RETIREMENT INCOME ACCOUNTS.—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1974.

''(3) SECTION 415 AMENDMENTS.—The amendments made by subsection (c) [amending section 415 of this title] shall apply to years beginning after December 31, 1981.

''(4) CORRECTION PERIOD.—The amendment made by subsection (d) [enacting provisions set out below] shall take effect on July 1, 1982.

''(5) SPECIAL RULE FOR EXISTING DEFINED BENEFIT ARRANGEMENTS.—Any defined benefit arrangement which is established by a church or a convention or association of churches (including an organization described in section 414(e)(3)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and which is in effect on the date of the enactment of this Act [Sept. 3, 1982] shall not be treated as failing to meet the requirements of section 403(b)(2) of such Code merely because it is a defined benefit arrangement.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97–34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 154(b) of Pub. L. 95–600 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.''

Section 156(d) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, § 101(a)(13)(A), Apr. 1, 1980, 94 Stat. 204, provided that: ''The amendments made by this section [amending this section and sections 219, 220, 408, 409, 2039, and 4973] shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after such date.''

Amendment by section 157(g)(2) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by Pub. L. 95–458 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 4(d) of Pub. L. 95–458, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Section 1504(b) of Pub. L. 94–455 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975.''

Amendment by section 1901(a)(58), (b)(8)(A) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 1022(e) of Pub. L. 93–406 provided that the amendment made by that section is effective Jan. 1, 1974.

Amendment by section 2002(g)(6) of Pub. L. 93–406 applicable on and after Sept. 2, 1974, with respect to contributions to an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a), see section 2002(i)(3) of Pub. L. 93–406, set out as a note under section 402 of this title.

Amendment by section 2004(c)(4) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 2005(b)(2) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(2) of Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

Amendment by section 515(a)(2) of Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88–272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 3(b) of Pub. L. 87–370 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957.''

EFFECTIVE DATES OF 1958 AMENDMENT

Section 23(g) of Pub. L. 85–866 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 101 of this title] shall apply with respect to taxable years beginning after December 31, 1957. The amendments made by subsection (e) [amending section 2039 of this title] shall apply with respect to estates of decedents dying after December 31, 1957. The amendments made by subsection (f) [amending section 2517 of this title] shall apply with respect to calendar years after 1957.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1120 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

ELECTION TO MODIFY SECTION 403(b) EXCLUSION ALLOWANCE TO CONFORM TO SECTION 415 MODIFICATION

Pub. L. 107–16, title VI, § 632(b)(3), June 7, 2001, 115 Stat. 115, provided that: ''In the case of taxable years beginning after December 31, 1999, and before January 1, 2002, a plan may disregard the requirement in the

regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance.''

MODIFICATIONS OF SUBSECTION (b) OF THIS SECTION

Section 1601(d)(4) of Pub. L. 105–34, as amended by Pub. L. 105–206, title VI, §6016(a)(2), July 22, 1998, 112 Stat. 822, provided that:

''(A) Paragraphs (7)(A)(ii) and (11) of section 403(b) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act [Pub. L. 104–188, set out below] to the extent that such distribution is not includible in income by reason of—

''(i) in the case of distributions before January 1, 1998, section 403(b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act [Pub. L. 104–188, set out below]), and

''(ii) in the case of distributions on and after such date, such section 403(b)(10).

''(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996 [Pub. L. 104–188, set out below].''

Section 1450(a), (b) of Pub. L. 104–188 provided that:

''(a) MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED.—

''(1) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

''(2) CONSTRUCTIVE RECEIPT.—[Amended section 402 of this title.]

''(3) EFFECTIVE DATE.—This subsection shall apply to taxable years beginning after December 31, 1995.

''(b) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—

''(1) IN GENERAL.—In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing.

''(2) ROLLOVERS.—Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code.''

SAMPLING TO DETERMINE WHETHER PLAN MEETS SUBSECTION (b)(12) REQUIREMENTS

Section 6052(b) of Pub. L. 100–647 provided that: ''In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

''(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

''(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

CORRECTION PERIOD FOR CHURCH PLANS

Section 251(d) of Pub. L. 97–248, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be treated as not meeting the requirements of section 401 or 403 of such Code if—

''(1) by reason of any change in any law, regulation, ruling, or otherwise such plan is required to be amended to meet such requirements, and

''(2) such plan is so amended at the next earliest church convention or such other time as the Secretary of the Treasury or his delegate may prescribe.''

TRANSITIONAL RULE FOR MAKING SECTION 403(b)(8) ROLLOVER IN THE CASE OF PAYMENTS DURING 1978

Section 101(a)(13)(B) of Pub. L. 96–222, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any payment made during 1978 in a qualifying distribution described in section 403(b)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1980.''

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Applicable period specified in section 402(a)(5)(C) of this title shall not expire before close of Dec. 31, 1980 in case of any payment described in subsec. (a)(4)(A) of this section or section 402(a)(5)(A) of this title, see section 157(h)(3)(B) of Pub. L. 95–600, set out as a note under section 402 of this title.

§404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the fol-

lowing limitations as to the amounts deductible in any year:

(1) Pension trusts

(A) In general

In the taxable year when paid, if the contributions are paid into a pension trust (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (*o*), and in the case of any other plan in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years,

(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 431, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 431.

(B) Special rule in case of certain amendments

In the case of a multiemployer plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary), if the full funding limitation determined under section 431(c)(6) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 431(c)(6)(A)(ii) exceeds the amount determined under section 431(c)(6)(A)(i), and if the funding method and the actuarial assumptions used are those used for such year under section 431, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying section 431(c)(6) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary to carry out the purposes of this subparagraph.

(C) Certain collectively-bargained plans

In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 168(i)(10)(C), with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words ''plan amendment'' the words ''plan amendment or increase in benefits payable under title II of the Social Security Act''. For the purposes of this subparagraph, the term ''controlled group'' has the meaning provided by section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C).

(D) Amount determined on basis of unfunded current liability

In the case of a defined benefit plan which is a multiemployer plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of—

(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D), over

(ii) the value of the plan's assets determined under section 431(c)(2).

(E) Carryover

Any amount paid in a taxable year in excess of the amount deductible in such year

under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.

(2) Employees' annuities

In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17),[1] (19), (20), (22), (26), (27), (31), and (37) and, if applicable, the requirements of section 401(a)(10) and of section 401(d), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) Stock bonus and profit-sharing trusts

(A) Limits on deductible contributions

(i) In general

In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of—

(I) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

(II) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.

(ii) Carryover of excess contributions

Any amount paid into the trust in any taxable year in excess of the limitation of clause (i) (or the corresponding provision of prior law) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this clause in any 1 such succeeding taxable year together with the amount allowable under clause (i) shall not exceed the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.

(iii) Certain retirement plans excluded

For purposes of this subparagraph, the term ''stock bonus or profit-sharing trust'' shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1).

(iv) 2 or more trusts treated as 1 trust

If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph.

(v) Defined contribution plans subject to the funding standards

Except as provided by the Secretary, a defined contribution plan which is subject to the funding standards of section 412 shall be treated in the same manner as a stock bonus or profit-sharing plan for purposes of this subparagraph.

(B) Profit-sharing plan of affiliated group

In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) Trusts created or organized outside the United States

If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501(a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) Other plans

If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is in-

[1] See References in Text note below.

cludible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee. For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.

(6) Time when contributions deemed made

For purposes of paragraphs (1), (2), and (3), a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) Limitation on deductions where combination of defined contribution plan and defined benefit plan

(A) In general

If amounts are deductible under the foregoing paragraphs of this subsection (other than paragraph (5)) in connection with 1 or more defined contribution plans and 1 or more defined benefit plans or in connection with trusts or plans described in 2 or more of such paragraphs, the total amount deductible in a taxable year under such plans shall not exceed the greater of—

(i) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, or

(ii) the amount of contributions made to or under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans for the plan year which ends with or within such taxable year (or for any prior plan year).

A defined contribution plan which is a pension plan shall not be treated as failing to provide definitely determinable benefits merely by limiting employer contributions to amounts deductible under this section. In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3)).

(B) Carryover of contributions in excess of the deductible limit

Any amount paid under the plans in any taxable year in excess of the limitation of subparagraph (A) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this subparagraph in any 1 such succeeding taxable year together with the amount allowable under subparagraph (A) shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plans.

(C) Paragraph not to apply in certain cases

(i) Beneficiary test

This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.

(ii) Elective deferrals

If, in connection with 1 or more defined contribution plans and 1 or more defined benefit plans, no amounts (other than elective deferrals (as defined in section 402(g)(3))) are contributed to any of the defined contribution plans for the taxable year, then subparagraph (A) shall not apply with respect to any of such defined contribution plans and defined benefit plans.

(iii) Limitation

In the case of employer contributions to 1 or more defined contribution plans—

(I) if such contributions do not exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, this paragraph shall not apply to such contributions or to employer contributions to the defined benefit plans to which this paragraph would otherwise apply by reason of contributions to the defined contribution plans, and

(II) if such contributions exceed 6 percent of such compensation, this paragraph shall be applied by only taking into account such contributions to the extent of such excess.

For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions plans to the extent attributable to employer contributions to such plans in such preceding taxable years.

(iv) Guaranteed plans

In applying this paragraph, any single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 shall not be taken into account.

(v) Multiemployer plans

In applying this paragraph, any multiemployer plan shall not be taken into account.

(D) Insurance contract plans

For purposes of this paragraph, a plan described in section 412(e)(3) shall be treated as a defined benefit plan.

(8) Self-employed individuals

In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

(A) the term ''employee'' includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4);

(B) the term ''earned income'' has the meaning assigned to it by section 401(c)(2);

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not exceed the earned income of such individual (determined without regard to the deductions allowed by this section) derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) Certain contributions to employee stock ownership plans

(A) Principal payments

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4975(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6), applied by the plan to the repayment of the principal of a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6). The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan. Any amount paid into such trust in any taxable year in excess of the amount deductible under this paragraph shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the preceding sentence.

(B) Interest payment

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied by the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6).

(C) S corporations

This paragraph shall not apply to an S corporation.

(D) Qualified gratuitous transfers

A qualified gratuitous transfer (as defined in section 664(g)(1)) shall have no effect on the amount or amounts otherwise deductible under paragraph (3) or (7) or under this paragraph.

(10) Contributions by certain ministers to retirement income accounts

In the case of contributions made by a minister described in section 414(e)(5) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions—

(A) shall be treated as made to a trust which is exempt from tax under section 501(a) and which is part of a plan which is described in section 401(a), and

(B) shall be deductible under this subsection to the extent such contributions do not exceed the limit on elective deferrals under section 402(g) or the limit on annual additions under section 415.

For purposes of this paragraph, all plans in which the minister is a participant shall be treated as one plan.

(11) Determinations relating to deferred compensation

For purposes of determining under this section—

(A) whether compensation of an employee is deferred compensation; and

(B) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

(12) Definition of compensation

For purposes of paragraphs (3), (7), (8), and (9) and subsection (h)(1)(C), the term ''compensation'' shall include amounts treated as ''participant's compensation'' under subparagraph (C) or (D) of section 415(c)(3).

(b) Method of contributions, etc., having the effect of a plan; certain deferred benefits

(1) Method of contributions, etc., having the effect of a plan

If—

(A) there is no plan, but

(B) there is a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation (including a plan described in paragraph (2)),

subsection (a) shall apply as if there were such a plan.

(2) Plans providing certain deferred benefits

(A) In general

For purposes of this section, any plan providing for deferred benefits (other than com-

pensation) for employees, their spouses, or their dependents shall be treated as a plan deferring the receipt of compensation. In the case of such a plan, for purposes of this section, the determination of when an amount is includible in gross income shall be made without regard to any provisions of this chapter excluding such benefits from gross income.

(B) Exception

Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e)).

(c) Certain negotiated plans

If contributions are paid by an employer—

(1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and dependents at least medical or hospital care, or pensions on retirement or death of employees; and

(2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence—

(A) such individual, if he is or was an employee within the meaning of section 401(c)(1), shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2), and

(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection. The first and third sentences of this subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a).

(d) Deductibility of payments of deferred compensation, etc., to independent contractors

If a plan would be described in so much of subsection (a) as precedes paragraph (1) thereof (as modified by subsection (b)) but for the fact that there is no employer-employee relationship, the contributions or compensation—

(1) shall not be deductible by the payor thereof under this chapter, but

(2) shall (if they would be deductible under this chapter but for paragraph (1)) be deductible under this subsection for the taxable year in which an amount attributable to the contribution or compensation is includible in the gross income of the persons participating in the plan.

(e) Contributions allocable to life insurance protection for self-employed individuals

In the case of a self-employed individual described in section 401(c)(1), contributions which are allocable (determined under regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance shall not be taken into account under paragraph (1), (2), or (3) of subsection (a).

[(f) Repealed. Pub. L. 98–369, div. A, title VII, § 713(b)(3), July 18, 1984, 98 Stat. 957]

(g) Certain employer liability payments considered as contributions

(1) In general

For purposes of this section, any amount paid by an employer under section 4041(b), 4062, 4063, or 4064, or part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

(2) Controlled group deductions

In the case of a payment described in paragraph (1) made by an entity which is liable because it is a member of a commonly controlled group of corporations, trades, or businesses, within the meaning of subsection (b) or (c) of section 414, the fact that the entity did not directly employ participants of the plan with respect to which the liability payment was made shall not affect the deductibility of a payment which otherwise satisfies the conditions of section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income).

(3) Timing of deduction of contributions

(A) In general

Except as otherwise provided in this paragraph, any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.

(B) Contributions under standard terminations

Subparagraph (A) shall not apply (and subsection (a)(1)(A) shall apply) to any payments described in paragraph (1) which are paid to terminate a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 to the extent such payments result in the assets of the plan being in excess of the total amount of benefits under such plan which are guaranteed by the Pension Benefit Guaranty Corporation under section 4022 of such Act.

(C) Contributions to certain trusts

Subparagraph (A) shall not apply to any payment described in paragraph (1) which is

made under section 4062(c) of such Act and such payment shall be deductible at such time as may be prescribed in regulations which are based on principles similar to the principles of subsection (a)(1)(A).

(4) References to Employee Retirement Income Security Act of 1974

For purposes of this subsection, any reference to a section of the Employee Retirement Income Security Act of 1974 shall be treated as a reference to such section as in effect on the date of the enactment of the Retirement Protection Act of 1994.

(h) Special rules for simplified employee pensions

(1) In general

Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) Contributions made for a year are deductible—

(i) in the case of a simplified employee pension maintained on a calendar year basis, for the taxable year with or within which the calendar year ends, or

(ii) in the case of a simplified employee pension which is maintained on the basis of the taxable year of the employer, for such taxable year.

(B) Contributions shall be treated for purposes of this subsection as if they were made for a taxable year if such contributions are made on account of such taxable year and are made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed 25 percent of the compensation paid to the employees during the calendar year ending with or within the taxable year (or during the taxable year in the case of a taxable year described in subparagraph (A)(ii)). The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the 25 percent limit of the preceding sentence.

(2) Effect on certain trusts

For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable limitations in subsection (a)(3)(A) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the trust subject to subsection (a)(3)(A).

(3) Coordination with subsection (a)(7)

For purposes of subsection (a)(7), a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust.

[(i) Repealed. Pub. L. 99–514, title XI, § 1171(b)(6), Oct. 22, 1986, 100 Stat. 2513]

(j) Special rules relating to application with section 415

(1) No deduction in excess of section 415 limitation

In computing the amount of any deduction allowable under paragraph (1), (2), (3), (4), (7), or (9) of subsection (a) for any year—

(A) in the case of a defined benefit plan, there shall not be taken into account any benefits for any year in excess of any limitation on such benefits under section 415 for such year, or

(B) in the case of a defined contribution plan, the amount of any contributions otherwise taken into account shall be reduced by any annual additions in excess of the limitation under section 415 for such year.

(2) No advance funding of cost-of-living adjustments

For purposes of clause (i), (ii) or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, there shall not be taken into account any adjustments under section 415(d)(1) for any year before the year for which such adjustment first takes effect.

(k) Deduction for dividends paid on certain employer securities

(1) General rule

In the case of a C corporation, there shall be allowed as a deduction for a taxable year the amount of any applicable dividend paid in cash by such corporation with respect to applicable employer securities. Such deduction shall be in addition to the deductions allowed under subsection (a).

(2) Applicable dividend

For purposes of this subsection—

(A) In general

The term ''applicable dividend'' means any dividend which, in accordance with the plan provisions—

(i) is paid in cash to the participants in the plan or their beneficiaries,

(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid,

(iii) is, at the election of such participants or their beneficiaries—

(I) payable as provided in clause (i) or (ii), or

(II) paid to the plan and reinvested in qualifying employer securities, or

(iv) is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

(B) Limitation on certain dividends

A dividend described in subparagraph (A)(iv) which is paid with respect to any employer security which is allocated to a par-

ticipant shall not be treated as an applicable dividend unless the plan provides that employer securities with a fair market value of not less than the amount of such dividend are allocated to such participant for the year which (but for subparagraph (A)) such dividend would have been allocated to such participant.

(3) Applicable employer securities

For purposes of this subsection, the term ''applicable employer securities'' means, with respect to any dividend, employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by—

(A) the corporation paying such dividend, or

(B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 409(*l*)(4)) which includes such corporation.

(4) Time for deduction

(A) In general

The deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which the dividend is paid or distributed to a participant or his beneficiary.

(B) Reinvestment dividends

For purposes of subparagraph (A), an applicable dividend reinvested pursuant to clause (iii)(II) of paragraph (2)(A) shall be treated as paid in the taxable year of the corporation in which such dividend is reinvested in qualifying employer securities or in which the election under clause (iii) of paragraph (2)(A) is made, whichever is later.

(C) Repayment of loans

In the case of an applicable dividend described in clause (iv) of paragraph (2)(A), the deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which such dividend is used to repay the loan described in such clause.

(5) Other rules

For purposes of this subsection—

(A) Disallowance of deduction

The Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance or evasion of taxation.

(B) Plan qualification

A plan shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7), or as engaging in a prohibited transaction for purposes of section 4975(d)(3), merely by reason of any payment or distribution described in paragraph (2)(A).

(6) Definitions

For purposes of this subsection—

(A) Employer securities

The term ''employer securities'' has the meaning given such term by section 409(*l*).

(B) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7). Such term includes a tax credit employee stock ownership plan (as defined in section 409).

(7) Full vesting

In accordance with section 411, an applicable dividend described in clause (iii)(II) of paragraph (2)(A) shall be subject to the requirements of section 411(a)(1).

(*l*) Limitation on amount of annual compensation taken into account

For purposes of applying the limitations of this section, the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.

(m) Special rules for simple retirement accounts

(1) In general

Employer contributions to a simple retirement account shall be treated as if they are made to a plan subject to the requirements of this section.

(2) Timing

(A) Deduction

Contributions described in paragraph (1) shall be deductible in the taxable year of the employer with or within which the calendar year for which the contributions were made ends.

(B) Contributions after end of year

For purposes of this subsection, contributions shall be treated as made for a taxable year if they are made on account of the taxable year and are made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof).

(n) Elective deferrals not taken into account for purposes of deduction limits

Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a) or paragraph (1)(C) of subsection (h) and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.

(*o*) Deduction limit for single-employer plans

For purposes of subsection (a)(1)(A)—

(1) In general

In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the greater of—

(A) the sum of the amounts determined under paragraph (2) with respect to each plan year ending with or within the taxable year, or

(B) the sum of the minimum required contributions under section 430 for such plan years.

(2) Determination of amount

(A) In general

The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of—

(i) the sum of—

(I) the funding target for the plan year,

(II) the target normal cost for the plan year, and

(III) the cushion amount for the plan year, over

(ii) the value (determined under section 430(g)(3)) of the assets of the plan which are held by the plan as of the valuation date for the plan year.

(B) Special rule for certain employers

If section 430(i) does not apply to a plan for a plan year, the amount determined under subparagraph (A)(i) for the plan year shall in no event be less than the sum of—

(i) the funding target for the plan year (determined as if section 430(i) applied to the plan), plus

(ii) the target normal cost for the plan year (as so determined).

(3) Cushion amount

For purposes of paragraph (2)(A)(i)(III)—

(A) In general

The cushion amount for any plan year is the sum of—

(i) 50 percent of the funding target for the plan year, and

(ii) the amount by which the funding target for the plan year would increase if the plan were to take into account—

(I) increases in compensation which are expected to occur in succeeding plan years, or

(II) if the plan does not base benefits for service to date on compensation, increases in benefits which are expected to occur in succeeding plan years (determined on the basis of the average annual increase in benefits over the 6 immediately preceding plan years).

(B) Limitations

(i) In general

In making the computation under subparagraph (A)(ii), the plan's actuary shall assume that the limitations under subsection (*l*) and section 415(b) shall apply.

(ii) Expected increases

In the case of a plan year during which a plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, the plan's actuary may, notwithstanding subsection (*l*), take into account increases in the limitations which are expected to occur in succeeding plan years.

(4) Special rules for plans with 100 or fewer participants

(A) In general

For purposes of determining the amount under paragraph (3) for any plan year, in the case of a plan which has 100 or fewer participants for the plan year, the liability of the plan attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years shall not be taken into account in determining the target liability.

(B) Rule for determining number of participants

For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(d)(3)) shall be treated as one plan, but only participants of such member or employer shall be taken into account.

(5) Special rule for terminating plans

In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974, terminates during the plan year, the amount determined under paragraph (2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

(6) Actuarial assumptions

Any computation under this subsection for any plan year shall use the same actuarial assumptions which are used for the plan year under section 430.

(7) Definitions

Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430.

(Aug. 16, 1954, ch. 736, 68A Stat. 138; Pub. L. 85–866, title I, §24, Sept. 2, 1958, 72 Stat. 1623; Pub. L. 87–792, §3, Oct. 10, 1962, 76 Stat. 819; Pub. L. 87–863, §2(b), Oct. 23, 1962, 76 Stat. 1141; Pub. L. 89–809, title II, §204(a), (b)(2), (3), Nov. 13, 1966, 80 Stat. 1577; Pub. L. 91–172, title III, §321(b)(3), Dec. 30, 1969, 83 Stat. 591; Pub. L. 93–406, title II, §§1013(c), 1016(a)(3), 2001(a), (g)(2)(E), (F), 2004(b), (c)(1), 2007(a), (b), title IV, §4401(a), formerly §4081(a), Sept. 2, 1974, 88 Stat. 921, 929, 952, 957, 986, 993, 994, 1033, renumbered §4401(a), Pub. L. 96–364, title I, §108(a), Sept. 26, 1980, 94 Stat. 1267; Pub. L. 94–267, §1(c)(3), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XV, §1502(a)(2), title XIX, §§1901(a)(59), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1737, 1774, 1834; Pub. L. 95–600, title I, §§133(a), (b), 141(f)(9), 152(f), Nov. 6, 1978, 92 Stat. 2783, 2795, 2799; Pub. L. 96–222, title I, §101(a)(10)(E), (J)(ii), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 96–364, title II, §205, Sept. 26, 1980, 94 Stat. 1287; Pub. L. 97–34, title III, §§312(a), 331(b), 333(a), Aug. 13, 1981, 95 Stat. 283, 293, 296; Pub. L. 97–248, title II, §§235(f), 237(e)(2), 238(a), 253(b), Sept. 3, 1982, 96 Stat. 507, 512, 533; Pub. L. 98–369, div. A, title IV, §474(r)(14), title V, §§512(a), 542(a), title VII, §713(b)(3), (d)(4)(A), (5), (6), (9), July 18, 1984, 98 Stat. 842, 862, 890, 957, 958; Pub. L. 99–272, title XI, §11011(c)(1), (2), Apr. 7, 1986, 100 Stat. 257, 258; Pub. L. 99–514, title XI, §§1106(d)(2), 1108(c), 1112(d)(2), 1131(a), (b), 1136(b), 1171(b)(6), 1173(a), title XVIII, §§1848(c), 1851(b)(2)(A)–(C)(ii),

1854(b)(2)–(5), 1875(c)(7), Oct. 22, 1986, 100 Stat. 2424, 2433, 2445, 2476, 2477, 2486, 2513, 2515, 2857, 2863, 2878, 2895; Pub. L. 100–203, title IX, § 9307(c), (d), title X, § 10201(b)(2), (3), Dec. 22, 1987, 101 Stat. 1330–357, 1330–387; Pub. L. 100–647, title I, §§ 1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), 1018(t)(4)(A), (5), title II, § 2005(b), Nov. 10, 1988, 102 Stat. 3459, 3463, 3478, 3491, 3492, 3588, 3589, 3610; Pub. L. 101–239, title VII, §§ 7302(a), 7841(b)(1), Dec. 19, 1989, 103 Stat. 2351, 2428; Pub. L. 101–508, title XI, § 11812(b)(7), Nov. 5, 1990, 104 Stat. 1388–535; Pub. L. 102–318, title V, § 522(a)(2), July 3, 1992, 106 Stat. 314; Pub. L. 103–66, title XIII, § 13212(c)(1), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, § 751(a)(11), Dec. 8, 1994, 108 Stat. 5022; Pub. L. 104–188, title I, §§ 1316(d)(1), (2), 1421(b)(2), 1431(b)(3), 1461(b), 1704(q)(1), (t)(76), Aug. 20, 1996, 110 Stat. 1786, 1795, 1803, 1823, 1887, 1891; Pub. L. 105–34, title XV, § 1530(c)(2), title XVI, § 1601(d)(2)(C), Aug. 5, 1997, 111 Stat. 1078, 1088; Pub. L. 105–206, title VI, § 6015(d), title VII, § 7001(a), July 22, 1998, 112 Stat. 821, 827; Pub. L. 107–16, title VI, §§ 611(c)(1), 614(a), 616(a)–(b)(2)(A), 632(a)(3)(B), 652(a), 662(a), (b), June 7, 2001, 115 Stat. 97, 102, 103, 114, 129, 142; Pub. L. 107–147, title IV, § 411(*l*)(1), (2), (4), (s), (w), Mar. 9, 2002, 116 Stat. 47, 51, 52; Pub. L. 108–218, title I, § 101(b)(5), Apr. 10, 2004, 118 Stat. 598; Pub. L. 109–280, title VIII, §§ 801(a)–(c)(3), (d), 802(a), 803(a), (b), Aug. 17, 2006, 120 Stat. 992–996; Pub. L. 110–245, title I, § 104(c)(1), June 17, 2008, 122 Stat. 1627; Pub. L. 110–458, title I, § 108(a)–(c), Dec. 23, 2008, 122 Stat. 5108.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 401(a)(17), referred to in subsec. (a)(2), was repealed by Pub. L. 97–248, title II, § 237(b), Sept. 3, 1982, 96 Stat. 511. A new section 401(a)(17) was added by Pub. L. 99–514, title XI, § 1106(d)(1), Oct. 22, 1986, 100 Stat. 2423.

The date of the enactment of the Tax Reform Act of 1986, referred to in subsec. (a)(3)(A)(v)(II), is the date of enactment of Pub. L. 99–514, which was approved Oct. 22, 1986.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(1)(D)(iv), (7)(C)(iv), (g)(1), (3)(B), (C), (4), and (*o*)(3)(B)(ii), (5), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. Part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 is classified generally to part 1 (§ 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 4021, 4022, 4041, 4062, 4063, and 4064 of the Employee Retirement Income Security Act of 1974 are classified to sections 1321, 1322, 1341, 1362, 1363, and 1364, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Retirement Protection Act of 1994, referred to in subsec. (g)(4), is the date of enactment of subtitle F (§§ 750–781) of title VII of Pub. L. 103–465, which was approved Dec. 8, 1994.

AMENDMENTS

2008—Subsec. (a)(1)(D)(i). Pub. L. 110–458, § 108(b), substituted ''431(c)(6)(D)'' for ''431(c)(6)(C)''.

Subsec. (a)(2). Pub. L. 110–245 substituted ''(31), and (37)'' for ''and (31)''.

Subsec. (a)(7)(A). Pub. L. 110–458, § 108(a)(2), in concluding provisions, substituted ''the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the value of the plan's assets (as determined under section 430(g)(3))'' for ''the plan's funding shortfall determined under section 430'' in last sentence and struck out second sentence which read as follows: ''For purposes of clause (ii), if paragraph (1)(D) applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(*l*).''

Subsec. (a)(7)(C)(iii). Pub. L. 110–458, § 108(c), amended cl. (iii) generally. Prior to amendment, text read as follows: ''In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.''

Subsec. (*o*)(2)(A)(ii). Pub. L. 110–458, § 108(a)(1)(A), substituted ''430(g)(3)'' for ''430(g)(2)''.

Subsec. (*o*)(4)(B). Pub. L. 110–458, § 108(a)(1)(B), substituted ''412(d)(3)'' for ''412(f)(4)''.

2006—Subsec. (a)(1)(A). Pub. L. 109–280, § 801(a)(1), (c)(1), inserted ''in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (*o*), and in the case of any other plan'' after ''section 501(a),'' in introductory provisions and substituted ''431'' for ''412'' in two places in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 109–280, § 801(c)(2), in introductory provisions, substituted ''In the case of a multiemployer plan'' for ''In the case of a plan'', ''431(c)(6)'' for ''412(c)(7)'', ''431(c)(6)(A)(ii)'' for ''412(c)(7)(B)'', ''431(c)(6)(A)(i)'' for ''412(c)(7)(A)'', and ''431'' for ''412'', and, in cl. (i), substituted ''431(c)(6)'' for ''412(c)(7)''.

Subsec. (a)(1)(D). Pub. L. 109–280, § 802(a), amended heading and text of subpar. (D) generally, substituting provisions relating to maximum amount deductible in the case of a defined benefit plan which is a multiemployer plan for provisions relating to maximum amount deductible in the case of any defined benefit plan and stating rule for plans with 100 or less participants, rule for determining number of participants, and rule for terminating plans.

Subsec. (a)(1)(D)(i). Pub. L. 109–280, § 801(d)(1), substituted ''section 412(*l*)(8)(A), except that section 412(*l*)(8)(A) shall be applied for purposes of this clause by substituting '150 percent (140 percent in the case of a multiemployer plan) of current liability' for 'the current liability' in clause (i).'' for ''section 412(*l*)''.

Subsec. (a)(1)(F). Pub. L. 109–280, § 801(d)(2), struck out heading and text of subpar. (F). Text read as follows: ''An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (*l*)(7)(C)(i)(IV) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this paragraph.''

Subsec. (a)(7)(A). Pub. L. 109–280, § 801(c)(3)(A), inserted at end ''In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the plan's funding shortfall determined under section 430.''

Subsec. (a)(7)(C)(iii). Pub. L. 109–280, § 803(a), added cl. (iii).

Subsec. (a)(7)(C)(iv). Pub. L. 109–280, § 801(b), added cl. (iv).

Subsec. (a)(7)(C)(v). Pub. L. 109–280, §803(b), added cl. (v).

Subsec. (a)(7)(D). Pub. L. 109–280, §801(c)(3)(B), added subpar. (D) and struck out heading and text of former subpar. (D). Former text read as follows: ''For purposes of this paragraph, any plan described in section 412(i) shall be treated as a defined benefit plan.''

Subsec. (*o*). Pub. L. 109–280, §801(a)(2), added subsec. (*o*).

2004—Subsec. (a)(1)(F). Pub. L. 108–218 added subpar. (F).

2002—Subsec. (a)(1)(D)(iv). Pub. L. 107–147, §411(s), substituted ''Special rule for terminating plans'' for ''Plans maintained by professional service employers'' in heading.

Subsec. (a)(7)(C). Pub. L. 107–147, §411(*l*)(4), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1), (2), and (3), if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.''

Subsec. (a)(12). Pub. L. 107–147, §411(*l*)(1), substituted ''(9) and subsection (h)(1)(C),'' for ''(9),''.

Subsec. (k)(1). Pub. L. 107–147, §411(w)(1)(A), struck out ''during the taxable year'' after ''such corporation''.

Subsec. (k)(2)(B). Pub. L. 107–147, §411(w)(1)(B), substituted ''(A)(iv)'' for ''(A)(iii)''.

Subsec. (k)(4)(B), (C). Pub. L. 107–147, §411(w)(1)(C), (D), substituted ''clause (iv)'' for ''clause (iii)'' in subpar. (B), added a new subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (k)(7). Pub. L. 107–147, §411(w)(2), added par. (7).

Subsec. (n). Pub. L. 107–147, §411(*l*)(2), substituted ''subsection (a) or paragraph (1)(C) of subsection (h)'' for ''subsection (a),''.

2001—Subsec. (a)(1)(A). Pub. L. 107–16, §616(a)(2)(B)(i), inserted ''(other than a trust to which paragraph (3) applies)'' after ''pension trust'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 107–16, §652(a), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(*l*). For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(*l*)(8)(C))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account.''

Subsec. (a)(3)(A)(i)(I). Pub. L. 107–16, §616(a)(1)(A), substituted ''25 percent'' for ''15 percent''.

Subsec. (a)(3)(A)(v). Pub. L. 107–16, §616(a)(2)(A), amended cl. (v) generally, substituting present provisions for provisions which directed that the limitation of cl. (i) for any taxable year would be increased by the unused pre-87 limitation carryforwards and defined ''unused pre-87 limitation carryforwards''.

Subsec. (a)(3)(B). Pub. L. 107–16, §616(b)(2)(A), struck out at end ''The term 'compensation otherwise paid or accrued during the taxable year to all employees' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.''

Subsec. (a)(10)(B). Pub. L. 107–16, §632(a)(3)(B), struck out '', the exclusion allowance under section 403(b)(2),'' after ''deferrals under section 402(g)''.

Subsec. (a)(12). Pub. L. 107–16, §616(b)(1), added par. (12).

Subsec. (h)(1)(C). Pub. L. 107–16, §616(a)(1)(B), substituted ''25 percent'' for ''15 percent'' in two places.

Subsec. (h)(2). Pub. L. 107–16, §616(a)(2)(B)(ii), (iii), substituted ''certain trusts'' for ''stock bonus and profit-sharing trust'' in heading and ''trust subject to subsection (a)(3)(A)'' for ''stock bonus or profit-sharing trust'' in text.

Subsec. (k)(2)(A)(iii), (iv). Pub. L. 107–16, §662(a), added cl. (iii) and redesignated former cl. (iii) as (iv).

Subsec. (k)(5)(A). Pub. L. 107–16, §662(b), inserted ''avoidance or'' before ''evasion''.

Subsec. (*l*). Pub. L. 107–16, §611(c)(1), substituted ''$200,000'' for ''$150,000'' in two places.

Subsec. (n). Pub. L. 107–16, §614(a), added subsec. (n).

1998—Subsec. (a)(9)(C), (D). Pub. L. 105–206, §6015(d), redesignated subpar. (C), relating to qualified gratuitous transfers, as (D) and inserted heading.

Subsec. (a)(11). Pub. L. 105–206, §7001(a), added par. (11).

1997—Subsec. (a)(3)(A)(i). Pub. L. 105–34, §1601(d)(2)(C)(i), substituted ''not in excess of the greater of—'' and subcls. (I) and (II) for ''not in excess of 15 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan.''

Subsec. (a)(3)(A)(ii). Pub. L. 105–34, §1601(d)(2)(C)(ii), substituted ''the amount described in subclause (I) or (II) of clause (i), whichever is greater, with respect to such taxable year.'' for ''15 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan.''

Subsec. (a)(9)(C). Pub. L. 105–34, §1530(c)(2), added subpar. (C) relating to qualified gratuitous transfers.

1996—Subsec. (a)(2). Pub. L. 104–188, §1704(t)(76), struck out ''(18),'' after ''(17),''.

Subsec. (a)(9)(C). Pub. L. 104–188, §1316(d)(1), added subpar. (C) relating to S corporations.

Subsec. (a)(10). Pub. L. 104–188, §1461(b), added par. (10).

Subsec. (j)(1). Pub. L. 104–188, §1704(q)(1), substituted ''(9)'' for ''(10)'' in introductory provisions.

Subsec. (k)(1). Pub. L. 104–188, §1316(d)(2), substituted ''a C corporation'' for ''a corporation''.

Subsec. (*l*). Pub. L. 104–188, §1431(b)(3), struck out at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Subsec. (m). Pub. L. 104–188, §1421(b)(2), added subsec. (m).

1994—Subsec. (g)(4). Pub. L. 103–465 substituted ''the Retirement Protection Act of 1994'' for ''the Single-Employer Pension Plan Amendments Act of 1986''.

1993—Subsec. (*l*). Pub. L. 103–66 substituted ''$150,000'' for ''$200,000'' in first sentence and ''The Secretary shall adjust the $150,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B).'' for ''The Secretary shall adjust the $200,000 amount at the same time and in the same manner as under section 415(d).''

1992—Subsec. (a)(2). Pub. L. 102–318 substituted ''(27), and (31)'' for ''and (27)''.

1990—Subsec. (a)(1)(C). Pub. L. 101–508 substituted ''section 168(i)(10)(C)'' for ''section 167(*l*)(3)(A)(iii)''.

1989—Subsec. (g)(1). Pub. L. 101–239, §7841(b)(1), inserted ''4041(b),'' after ''under section''.

Subsec. (k). Pub. L. 101–239, §7302(a), amended subsec. (k) generally, substituting ''Deduction for dividends paid on certain employer securities'' for ''Dividends paid deductions'' in heading and pars. (1) to (6) for former pars. (1) and (2) and concluding provisions.

1988—Subsec. (a)(1)(D). Pub. L. 100–647, §2005(b)(3), struck out ''(without regard to any reduction by the credit balance in the funding standard account)'' after ''under section 412(*l*)''.

Pub. L. 100–647, §2005(b)(1), substituted ''For purposes of determining whether a plan has more than 100 participants'' for ''For purposes of this subparagraph''.

Subsec. (a)(7)(A). Pub. L. 100–647, §2005(b)(2), inserted at end ''For purposes of clause (ii), if paragraph (1)(D)

applies to a defined benefit plan for any plan year, the amount necessary to satisfy the minimum funding standard provided by section 412 with respect to such plan for such plan year shall not be less than the unfunded current liability of such plan under section 412(*l*).''

Pub. L. 100–647, § 1011A(e)(4)(A), in introductory provisions, substituted ''foregoing paragraphs'' for ''foregoing provisions'' and inserted ''or in connection with trusts or plans described in 2 or more of such paragraphs'' after ''defined benefit plans''.

Subsec. (a)(8)(D). Pub. L. 100–647, § 1018(t)(5), made technical correction to Pub. L. 99–514, § 1875(c)(7)(B), see 1986 Amendment note below.

Subsec. (h)(1)(C). Pub. L. 100–647, § 1011(f)(6), inserted ''(or during the taxable year in the case of a taxable year described in subparagraph (A)(ii))'' after ''within the taxable year''.

Subsec. (h)(3). Pub. L. 100–647, § 1011A(e)(4)(B), substituted ''Coordination with subsection (a)(7)'' for ''Effect on limit on deductions'' in heading and amended text generally. Prior to amendment, text read as follows: ''For any taxable year for which the employer has a deduction under paragraph (1), the otherwise applicable 25 percent limitations in subsection (a)(7) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the stock bonus or profit-sharing trust.''

Subsec. (k). Pub. L. 100–647, § 1011B(h)(3)(A), inserted ''(whether or not allocated to participants)'' after ''to employer securities'' in par. (2)(C).

Pub. L. 100–647, § 1011B(h)(6), substituted ''or as engaging in a prohibited transaction for purposes of section 4975(d)(3) merely by reason of any distribution or payment'' for ''merely by reason of any distribution'' in third sentence.

Pub. L. 100–647, § 1018(t)(4)(A), substituted ''evasion of taxation'' for ''avoidance of taxation'' in fourth sentence.

Pub. L. 100–647, § 1011B(h)(3)(B), inserted at end ''Paragraph (2)(C) shall not apply to dividends from employer securities which are allocated to any participant unless the plan provides that employer securities with a fair market value not less than the amount of such dividends are allocated to such participant for the year which (but for paragraph (2)(C)) such dividends would have been allocated to such participant.''

Subsec. (*l*). Pub. L. 100–647, § 1011(d)(4), inserted at end ''In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year.''

Pub. L. 100–647, § 1011(d)(1), inserted at end ''For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.''

1987—Subsec. (a)(1)(A)(iii). Pub. L. 100–203, § 9307(d), inserted ''the unfunded costs attributable to'' after ''to amortize''.

Subsec. (a)(1)(D), (E). Pub. L. 100–203, § 9307(c), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (a)(5). Pub. L. 100–203, § 10201(b)(3), inserted at end ''For purposes of this section, any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.''

Subsec. (b)(2)(B). Pub. L. 100–203, § 10201(b)(2), substituted ''Exception'' for ''Exception for certain benefits'' in heading and amended text generally. Prior to amendment, text read as follows: ''Subparagraph (A) shall not apply to—

''(i) any benefit provided through a welfare benefit fund (as defined in section 419(e)), or

''(ii) any benefit with respect to which an election under section 463 applies.''

1986—Subsec. (a). Pub. L. 99–514, § 1851(b)(2)(C)(i), substituted ''this chapter; but, if they would otherwise be deductible'' for ''section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections''.

Subsec. (a)(2). Pub. L. 99–514, § 1136(b), substituted ''(26), and (27)'' for ''and (26)''.

Pub. L. 99–514, § 1112(d)(2), substituted ''(22), and (26)'' for ''and (22)''.

Subsec. (a)(3)(A). Pub. L. 99–514, § 1131(a), amended subpar. (A) generally, revising and restating as cls. (i) to (v) provisions formerly contained in single paragraph.

Subsec. (a)(7). Pub. L. 99–514, § 1131(b), amended par. (7) generally, revising and restating as subpars. (A) to (C) provisions formerly contained in single paragraph, and adding subpar. (D).

Subsec. (a)(8)(C). Pub. L. 99–514, § 1875(c)(7)(A), inserted ''(determined without regard to the deductions allowed by this section)''.

Subsec. (a)(8)(D). Pub. L. 99–514, § 1875(c)(7)(B), as amended by Pub. L. 100–647, § 1018(t)(5), struck out ''(determined without regard to the deductions allowed by this section)'' after ''earned income of such individual''.

Pub. L. 99–514, § 1848(c), substituted ''the deduction allowed by this section'' for ''the deductions allowed by this section and section 405(c)''.

Subsec. (b). Pub. L. 99–514, § 1851(b)(2)(B)(i), substituted ''certain'' for ''unfunded'' in heading.

Subsec. (b)(2). Pub. L. 99–514, § 1851(b)(2)(A), (B)(ii), substituted ''certain'' for ''unfunded'' in heading, and in subpar. (B)(ii), substituted ''any benefit'' for ''to any benefit''.

Subsec. (d). Pub. L. 99–514, § 1851(b)(2)(C)(ii), substituted ''under this chapter'' for ''under section 162 or 212'' in pars. (1) and (2).

Subsec. (g)(3). Pub. L. 99–272, § 11011(c)(1), amended par. (3) generally. Prior to the amendment, par. (3), coordination with subsection (a), read as follows: ''Any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.''

Subsec. (g)(4). Pub. L. 99–272, § 11011(c)(2), added par. (4).

Subsec. (h)(1)(A), (B). Pub. L. 99–514, § 1108(c), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) Contributions made for a calendar year are deductible for the taxable year with which or within which the calendar year ends.

''(B) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year.''

Subsec. (i). Pub. L. 99–514, § 1171(b)(6), struck out subsec. (i) relating to the deductibility of unused portions of employee stock ownership credit.

Subsec. (k). Pub. L. 99–514, § 1854(b)(2)(B), struck out ''during the taxable year'' after ''cash by such corporation'' in introductory provisions.

Pub. L. 99–514, § 1854(b)(4), inserted ''The Secretary may disallow the deduction under this subsection for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance of taxation.''

Pub. L. 99–514, § 1854(b)(3), inserted ''A plan to which this subsection applies shall not be treated as violating the requirements of section 401, 409, or 4975(e)(7) merely by reason of any distribution described in paragraph (2).''

Pub. L. 99–514, § 1854(b)(2)(A), inserted ''Any deduction under subparagraph (A) or (B) of paragraph (2) shall be allowed in the taxable year of the corporation in which the dividend is paid or distributed to the participant under paragraph (2).''

Pub. L. 99–514, § 1173(a)(2), inserted ''Any deduction under paragraph (2)(C) shall be allowable in the taxable year of the corporation in which the dividend is used to repay the loan described in such paragraph.''

Subsec. (k)(2)(A), (B). Pub. L. 99–514, § 1854(b)(5), inserted ''or their beneficiaries''.

Subsec. (k)(2)(C). Pub. L. 99–514, §1173(a)(1), added subpar. (C).

Subsec. (*l*). Pub. L. 99–514, §1106(d)(2), added subsec. (*l*).

1984—Subsec. (a)(8)(D). Pub. L. 98–369, §713(d)(6), inserted ''(determined without regard to the deductions allowed by this section and section 405(c))''.

Subsec. (a)(9), (10). Pub. L. 98–369, §713(d)(4)(A), struck out par. (9) relating to plans benefiting self-employed individuals and redesignated par. (10) as (9).

Subsec. (b). Pub. L. 98–369, §512(a), amended subsec. (b) generally, inserting heading, redesignating former heading as par. (1) heading, designating existing provisions as par. (1), and in par. (1) as so designated, inserted ''(including a plan described in paragraph (2))'' after ''compensation'' and adding par. (2).

Subsec. (e). Pub. L. 98–369, §713(d)(9), substituted ''under paragraph (1), (2), or (3) of subsection (a)'' for ''under this section''.

Subsec. (f). Pub. L. 98–369, §713(b)(3), repealed subsec. (f) which related to certain loan repayments considered as contributions.

Subsec. (h)(4). Pub. L. 98–369, §713(d)(5), repealed par. (4) which related to effect on self-employed individuals or shareholder-employees.

Subsec. (i). Pub. L. 98–369, §474(r)(14), in par. (1), substituted ''If any portion of the employee stock ownership credit determined under section 41 for any taxable year has not, after the application of section 38(c), been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39'' for ''There shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which an unused employee stock ownership credit carryover (within the meaning of section 44G(b)(2)(A)) may be carried, an amount equal to the portion of such unused credit carryover which expires at the close of such taxable year'', and in par. (2), substituted references to section 41 and 41(c)(3) for references to section 44G and 44G(c)(3), respectively.

Subsec. (k). Pub. L. 98–369, §542(a), added subsec. (k).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(2), substituted ''(8), (9)'' for ''(8)'', and ''401(a)(10) and of section 401(d)'' for ''401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1))''.

Subsec. (a)(3)(B). Pub. L. 97–248, §253(b), inserted provision that ''compensation otherwise paid or accrued during the taxable year to all employees'' shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.

Subsec. (e). Pub. L. 97–248, §238(a), amended subsec. (e) generally, substituting provisions relating to contributions allocable to life insurance protection for self-employed individuals, for provisions relating to general requirements, contributions made under more than one plan, contributions allocable to insurance protection, and limitations of not lower than $750 or 100 percent of earned income with respect to special limitations for self-employed individuals.

Subsec. (j). Pub. L. 97–248, §235(f), added subsec. (j).

1981—Subsec. (a)(10). Pub. L. 97–34, §333(a), added par. (10).

Subsec. (e). Pub. L. 97–34, §312(a), substituted in pars. (1) and (2)(A) ''$15,000'' for ''$7,500''.

Subsec. (i). Pub. L. 97–34, §331(b), added subsec. (i).

1980—Subsec. (g). Pub. L. 96–364 redesignated existing provisions as par. (1), inserted applicability to part 1 of subtitle E of title IV of Employee Retirement Income Security Act of 1974, and added pars. (2) and (3).

Subsec. (h). Pub. L. 96–222 inserted ''or shareholder employees'' after ''individuals'' in heading, and in par. (4) ''or described in section 1379(b)(1)'' after ''of subsection (e)'' and ''or a shareholder-employee (as defined in section 1379(d))'' after ''section 401(c)(1)'' and substituted in pars. (2) to (4) ''paragraph (1)'' for ''subparagraph (1)''.

1978—Subsec. (a)(2). Pub. L. 95–600, §141(f)(9), substituted ''(20), and (22)'' for ''and (20)''.

Subsec. (b). Pub. L. 95–600, §133(b), substituted ''other plan'' for ''similar plan''.

Subsec. (d). Pub. L. 95–600, §133(a), added subsec. (d).

Subsec. (h). Pub. L. 95–600, §152(f), added subsec. (h).

1976—Subsecs. (a)(1)(B), (8)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (a)(2). Pub. L. 94–267 substituted ''(19), and (20)'' for ''and (19)''.

Subsec. (d). Pub. L. 94–455, §1901(a)(59), struck out subsec. (d) which related to the taxability of the beneficiary under certain forfeitable contracts purchased by exempt organizations.

Subsecs. (e)(2)(B), (3). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (e)(4). Pub. L. 94–455, §1502(a)(2), inserted provisions following subpar. (B).

1974—Subsec. (a)(1). Pub. L. 93–406, §1013(c)(1), expanded subpars. (A), (B), and (C) to accommodate the increased minimum funding standards required by section 412.

Subsec. (a)(2). Pub. L. 93–406, §§1016(a)(3), 2001(g)(2)(E), 2004(c)(1), inserted references to the requirements of section 401(a)(11), (12), (13), (14), (15), (16), (17), (18), and (19), and, if applicable, the requirements of section 401(a)(17) and (18).

Subsec. (a)(3)(A). Pub. L. 93–406, §2004(b), inserted '', but the amount so deductible under this sentence in any one succeeding taxable year together with the amount so deductible under the first sentence of this subparagraph shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plan'' after ''If in any taxable year there is paid into the trust, or a similar trust then in effect, amounts less than the amounts deductible under the preceding sentence, the excess, or if no amount is paid, the amounts deductible, shall be carried forward and be deductible when paid in the succeeding taxable years in order of time, but the amount so deductible under this sentence in any such succeeding taxable year shall not exceed 15 percent of the compensation otherwise paid or accrued during such succeeding taxable year to the beneficiaries under the plan''.

Subsec. (a)(6). Pub. L. 93–406, §1013(c)(2), substituted provisions covering only taxpayers operating on the accrual basis for provisions covering the time when contributions shall be deemed made.

Subsec. (a)(7). Pub. L. 93–406, §1013(c)(3), inserted reference to the amount of contributions made to or under the trusts or plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standards provided by section 412 for the plan year which ends with or within such taxable year (or for any prior plan year) and substituted ''25 percent'' for ''30 percent'' in provision covering amounts paid into trusts or under an annuity plan in any taxable year in excess of the amount allowable with respect to such year.

Subsec. (a)(9)(B)(ii). Pub. L. 93–406, §2001(g)(2)(F), substituted ''the second sentence of paragraph (3)'' for ''paragraph (1)(D), the second and third sentences of paragraph (3), and the second sentence of paragraph (7)''.

Subsec. (c). Pub. L. 93–406, §2008(a), (b), substituted ''or pensions'' for ''and pensions'' in par. (1), substituted ''The first and third sentences of this subsection'' for ''This subsection'' in provisions covering amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a), inserted provisions setting out specified treatment to be accorded individuals who before July 1, 1974, were participants in plans described in the subsections, and inserted provision that section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in the subsection.

Subsec. (e)(1). Pub. L. 93–406, §2001(a)(1), substituted ''subject to paragraphs (2) and (4), not exceed $7,500, or

15 percent'' for ''subject to the provisions of paragraph (2), not exceed $2,500, or 10 percent''.

Subsec. (e)(2)(A). Pub. L. 93–406, § 2001(a)(2), substituted ''shall (subject to paragraph (4)) not exceed $7,500, or 15 percent'' for ''shall not exceed $2,500 or 10 percent''.

Subsec. (e)(4). Pub. L. 93–406, § 2001(a)(3), added par. (4).

Subsec. (g). Pub. L. 93–406, § 4081(a), added subsec. (g).

1969—Subsec. (a)(5). Pub. L. 91–172 substituted ''If the plan is not one included in paragraph (1), (2), or (3), in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee participates only if separate accounts are maintained for each employee'' for ''In the taxable year when paid, if the plan is not one included in paragraph (1), (2), or (3), if the employees' rights to or derived from such employer's contribution or such compensation are nonforfeitable at the time the contribution or compensation is paid''.

1966—Subsec. (a). Pub. L. 89–809, § 204(a), repealed par. (10) which provided for a special limitation on the amount allowed as a deduction for self-employed individuals.

Subsec. (e). Pub. L. 89–809, § 204(b)(2), (3), struck out references to par. (10) of subsec. (a) wherever appearing.

1962—Subsec. (a)(2). Pub. L. 87–863 inserted '', or retirement annuities and medical benefits as described in section 401(h),'' after ''purchase of retirement annuities'', and '', or such retirement annuities and medical benefits'' after ''such retirement annuities.''

Pub. L. 87–792, § 3(a)(1), substituted ''(5), (6), (7), and (8), and, if applicable, the requirements of section 401(a)(9) and (10) and of section 401(d) (other than paragraph (1)),'' for ''(5), and (6),''.

Subsecs. (a)(8) to (10). Pub. L. 87–792, § 3(a)(2), added pars. (8) to (10).

Subsecs. (e), (f). Pub. L. 87–792, § 3(b), added subsecs. (e) and (f).

1958—Subsec. (a). Pub. L. 85–866 substituted ''income); but, if'' for ''income) but if'' preceding par. (1).

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 801(e), Aug. 17, 2006, 120 Stat. 995, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 404A of this title] shall apply to years beginning after December 31, 2007.

''(2) SPECIAL RULES.—The amendments made by subsection (d) [amending this section] shall apply to years beginning after December 31, 2005.''

Pub. L. 109–280, title VIII, § 802(b), Aug. 17, 2006, 120 Stat. 996, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2007.''

Pub. L. 109–280, title VIII, § 803(d), Aug. 17, 2006, 120 Stat. 996, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to contributions for taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–218, title I, § 101(d), Apr. 10, 2004, 118 Stat. 599, provided that:

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section, sections 412 and 415 of this title, and sections 1082 and 1306 of Title 29, Labor] shall apply to plan years beginning after December 31, 2003.

''(2) LOOKBACK RULES.—For purposes of applying subsections (d)(9)(B)(ii) and (e)(1) of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(9)(B)(ii), (e)(1)] and subsections (*l*)(9)(B)(ii) and (m)(1) of [former] section 412 of the Internal Revenue Code of 1986 to plan years beginning after December 31, 2003, the amendments made by this section may be applied as if such amendments had been in effect for all prior plan years. The Secretary of the Treasury may prescribe simplified assumptions which may be used in applying the amendments made by this section to such prior plan years.

''(3) TRANSITION RULE FOR SECTION 415 LIMITATION.—In the case of any participant or beneficiary receiving a distribution after December 31, 2003[,] and before January 1, 2005, the amount payable under any form of benefit subject to section 417(e)(3) of the Internal Revenue Code of 1986 and subject to adjustment under section 415(b)(2)(B) of such Code shall not, solely by reason of the amendment made by subsection (b)(4) [amending section 415 of this title], be less than the amount that would have been so payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 1, 2004.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(c)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Pub. L. 107–16, title VI, § 614(b), June 7, 2001, 115 Stat. 102, provided that: ''The amendment made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 616(c), June 7, 2001, 115 Stat. 103, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to years beginning after December 31, 2001.''

Amendment by section 632(a)(3)(B) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107–16, set out as a note under section 72 of this title.

Pub. L. 107–16, title VI, § 652(c), June 7, 2001, 115 Stat. 130, provided that: ''The amendments made by this section [amending this section and section 4972 of this title] shall apply to plan years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 662(c), June 7, 2001, 115 Stat. 142, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6015(d) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, § 7001(b), July 22, 1998, 112 Stat. 827, provided that:

''(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [July 22, 1998].

''(2) CHANGE IN METHOD OF ACCOUNTING.—In the case of any taxpayer required by the amendment made by sub-

section (a) [amending this section] to change its method of accounting for its first taxable year ending after the date of the enactment of this Act [July 22, 1998]—

''(A) such change shall be treated as initiated by the taxpayer,

''(B) such change shall be treated as made with the consent of the Secretary of the Treasury; and

''(C) the net amount of the adjustments required to be taken into account by the taxpayer under section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the 3-taxable year period beginning with such first taxable year.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1530(c)(2) of Pub. L. 105–34 applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan after Aug. 5, 1997, see section 1530(d) of Pub. L. 105–34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(2)(C) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1316(d)(1), (2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1997, see section 1316(f) of Pub. L. 104–188, set out as a note under section 170 of this title.

Amendment by section 1421(b)(2) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1431(b)(3) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1431(d)(2) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1461(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 1414 of this title] shall apply to years beginning after December 31, 1996.''

Section 1704(q)(2) of Pub. L. 104–188 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendments made by section 713(d)(4)(A) of the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102–318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to property placed in service after Nov. 5, 1990, but not applicable to any property to which section 168 of this title does not apply by reason of subsec. (f)(5) of section 168, and not applicable to rehabilitation expenditures described in section 252(f)(5) of Pub. L. 99–514, see section 11812(c) of Pub. L. 101–508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7302(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendment made by this section [amending this section] shall apply to employer securities acquired after August 4, 1989.

''(2) SECURITIES ACQUIRED WITH CERTAIN LOANS.—The amendment made by this section shall not apply to employer securities acquired after August 4, 1989, which are acquired—

''(A) with the proceeds of any loan which was made pursuant to a binding written commitment in effect on August 4, 1989, and at all times thereafter before such loan is made, and

''(B) pursuant to a written binding contract (or tender offer registered with the Securities and Exchange Commission) in effect on August 4, 1989, and at all times thereafter before such securities are acquired.''

Section 7841(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(1), (4), (f)(6), 1011A(e)(4), 1011B(h)(3), (6), and 1018(t)(4)(A), (5) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 2005(e) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, §7812(d), Dec. 19, 1989, 103 Stat. 2412, provided that: ''The amendments made by this section [amending this section and sections 412, 414, and 4972 of this title and section 1082 of Title 29, Labor] shall take effect as if included in the amendments made by the provisions of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] to which it relates, except that the amendment made by subsection (a)(1) [amending section 4972 of this title] shall take effect as if included in the amendment made by section 1131(c) of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–203, title IX, §9307(f), Dec. 22, 1987, 101 Stat. 1330–359, as amended by Pub. L. 101–239, title VII, §7881(d)(3), Dec. 19, 1989, 103 Stat. 2439, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 412 of this title and section 1082 of Title 29, Labor] shall apply to years beginning after December 31, 1987.

''(2) AMORTIZATION OF GAINS AND LOSSES.—Sections 412(b)(2)(B)(iv) and 412(b)(3)(B)(ii) of the Internal Revenue Code of 1986 and sections 302(b)(2)(B)(iv) and 302(b)(3)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(2)(B)(iv), (3)(B)(ii)] (as amended by paragraphs (1)(A) and (2)(A) of subsection (a)) shall apply to gains and losses established in years beginning after December 31, 1987. For purposes of the preceding sentence, any gain or loss determined by a valuation occurring as of January 1, 1988, shall be treated as established in years beginning before 1988, or at the election of the employer, shall be amortized in accordance with Internal Revenue Service Notice 89–52.''

Section 10201(c)(1) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 419 and 461 of this title, and repealing sections 81 and 463 of this title] shall apply to taxable years beginning after December 31, 1987.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1106(d)(2) of Pub. L. 99–514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99–514, set out as a note under section 415 of this title.

Amendment by section 1108(c) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1108(h) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1112(d)(2) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiv-

er of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1131(d) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011A(e)(3), Nov. 10, 1988, 102 Stat. 3478, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 4972 of this title and amending this section] shall apply to taxable years beginning after December 31, 1986.

''(2) SPECIAL RULES FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to contributions pursuant to any such agreement for taxable years beginning before the earlier of—

''(A) January 1, 1989, or

''(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986).''

Amendment by section 1171(b)(6) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, but this section 404(i) of this title to continue to apply with respect to credits under section 41 of this title attributable to compensation paid or accrued before Jan. 1, 1987 (or under section 38 of this title with respect to qualified investment before Jan. 1, 1983), see section 1171(c) of Pub. L. 99–514, set out as a note under section 38 of this title.

Section 1173(c)(1) of Pub. L. 99–514 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to dividends paid in taxable years beginning after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by sections 1848(c), 1851(b)(2)(A)–(C)(ii), and 1854(b)(3)–(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1854(b)(2) of Pub. L. 99–514 not applicable to dividends paid before Jan. 1, 1986, if the taxpayer treated such dividends in a manner inconsistent with such amendment on a return filed with the Secretary before Oct. 22, 1986, see section 1854(b)(6) of Pub. L. 99–514, set out as a note under section 72 of this title.

Section 1875(c)(7)(B) of Pub. L. 99–514 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1984.

Section 11011(c)(3) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section] shall apply to payments made after January 1, 1986, in taxable years ending after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(14) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Section 512(c) of Pub. L. 98–369 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 162 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

''(2) EXCEPTION FOR CERTAIN EXTENDED VACATION PAY PLANS.—In the case of any extended vacation pay plan maintained pursuant to a collective bargaining agreement—

''(A) between employee representatives and 1 or more employers, and

''(B) in effect on June 22, 1984,

the amendments made by this section shall not apply before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof agreed to after June 22, 1984). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

Section 542(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 116 and 3405 of this title] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984].''

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 253(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to taxable years beginning after December 31, 1981.''

Amendment by section 235(f) of Pub. L. 97–248, in the case of any plan which is not in existence on July 1, 1982, applicable to years ending after July 1, 1982, and in the case of any plan which is in existence on July 1, 1982, applicable to years beginning after Dec. 31, 1982, see section 235(g)(1) of Pub. L. 97–248, set out as a note under section 415 of this title.

Amendment by sections 237 and 238 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 312(a) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) of this title with respect to taxable years beginning after Dec. 31, 1981, see section 312(f)(1) of Pub. L. 97–34, set out as a note under section 72 of this title.

Section 331(f)(2) of Pub. L. 97–34 provided that: ''The amendments made by subsections (b) and (c) [amending this section and sections 56, 409A, and 6699 of this title] shall apply to taxable years ending after December 31, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 133(c) of Pub. L. 95–600, as amended by Pub. L. 96–222, title I, §101(a)(5), Apr. 1, 1980, 94 Stat. 196; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to deductions for taxable years beginning after December 31, 1978.

''(2) SPECIAL RULE FOR CERTAIN TITLE INSURANCE COMPANIES.—

''(A) IN GENERAL.—In the case of a qualified title insurance company plan, the amendment made by subsection (a) [amending this section] shall apply to deductions for taxable years beginning after December 31, 1979.

''(B) QUALIFIED TITLE INSURANCE COMPANY PLAN.—For purposes of subparagraph (A), the term 'qualified title insurance company plan' means a plan of a qualified title insurance company—

''(i) which defers the payment of amounts credited by such company to separate accounts for members of such company in consideration of their issuance of policies of title insurance, and

''(ii) under which no part of such amounts is payable to or withdrawable by the members until after the period for the adverse possession of real property under applicable State law.

''(C) QUALIFIED TITLE INSURANCE COMPANY.—For purposes of subparagraph (B), the term 'qualified title insurance company' means an unincorporated title insurance company organized as a business trust—

''(i) which is engaged in the business of providing title insurance coverage on interests in and liens upon real property obtained by clients of the members of such company, and

''(ii) which is subject to tax under section 831 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].''

Amendment by section 141(f)(9) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409 of this title.

Amendment by section 152(f) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by section 1502(a)(2) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1975, see section 1502(b) of Pub. L. 94–455, set out as a note under section 415 of this title.

Amendment by section 1901(a)(59) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

Amendment by Pub. L. 94–267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94–267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by sections 1013(c) and 1016(a)(3) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1013(c) and 1016(a)(3) of Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Section 2001(i)(1) of Pub. L. 93–406 provided that: ''The amendments made by subsections (a) [amending this section] and (b) [amending section 1379 of this title] apply to taxable years beginning after December 31, 1973.''

Amendment by section 2001(g)(2)(E), (F) of Pub. L. 93–406 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 2001(i)(5) of Pub. L. 93–406, set out as a note under section 72 of this title.

Section 2008(c) of Pub. L. 93–406 provided that: ''The amendments made by this section [amending this section] shall apply to taxable years ending on or after June 30, 1972.''

Amendment by section 2004(b), (c)(1) of Pub. L. 93–406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93–406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 4081(a) of Pub. L. 93–406 effective on Sept. 2, 1974, with exceptions specified in section 1461(b), (c) of Title 29, Labor, see section 1461(a) of Title 29.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91–172, set out as an Effective Date note under section 83 of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–809 applicable with respect to taxable years beginning after Dec. 31, 1967, see section 204(d) of Pub. L. 89–809, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–863 applicable to taxable years beginning after Oct. 23, 1962, see section 2(c) of Pub. L. 87–863, set out as a note under section 401 of this title.

Amendment by Pub. L. 87–792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87–792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

CLARIFICATION OF TREATMENT OF CONTRIBUTIONS TO MULTIEMPLOYER PLAN

Pub. L. 107–16, title VI, §658, June 7, 2001, 115 Stat. 137, provided that:

''(a) NOT CONSIDERED METHOD OF ACCOUNTING.—For purposes of section 446 of the Internal Revenue Code of 1986, a determination under section 404(a)(6) of such Code regarding the taxable year with respect to which a contribution to a multiemployer pension plan is deemed made shall not be treated as a method of accounting of the taxpayer. No deduction shall be allowed for any taxable year for any contribution to a multiemployer pension plan with respect to which a deduction was previously allowed.

''(b) REGULATIONS.—The Secretary of the Treasury shall promulgate such regulations as necessary to clarify that a taxpayer shall not be allowed an aggregate amount of deductions for contributions to a multiemployer pension plan which exceeds the amount of such contributions made or deemed made under section 404(a)(6) of the Internal Revenue Code of 1986 to such plan.

''(c) EFFECTIVE DATE.—Subsection (a), and any regulations promulgated under subsection (b), shall be effective for years ending after the date of the enactment of this Act [June 7, 2001].''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Section 713(d)(8) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Sections 404(e) and 1379(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Sept. 3, 1982]) shall not apply to any plan to which section 401(j) of such Code applies (or would apply but for its repeal).''

DEDUCTIBILITY OF PAYMENTS TO PLAN BY CORPORATION OPERATING PUBLIC TRANSPORTATION SYSTEM ACQUIRED BY STATE

Section 408 of Pub. L. 96–364, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(a) For purposes of subsection (g) of section 404 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to certain employer liability payments considered as contributions), as amended by section 205 of this Act, any payment made to a plan covering employees of a corporation operating a public transportation system shall be treated as a payment described in paragraph (1) of such subsection if—

''(1) such payment is made to fund accrued benefits under the plan in conjunction with an acquisition by a State (or agency or instrumentality thereof) of the stock or assets of such corporation, and

''(2) such acquisition is pursuant to a State public transportation law enacted after June 30, 1979, and before January 1, 1980.

''(b) The provisions of this section shall apply to payments made after June 29, 1980.''

YEAR OF DEDUCTION FOR CERTAIN EMPLOYER CONTRIBUTIONS FOR SEVERANCE PAYMENTS REQUIRED BY FOREIGN LAW

Section 1022(j) of Pub. L. 93–406, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''Effective for taxable years beginning after December 31, 1973, if—

''(1) an employer is engaged in a trade or business in a foreign country,

''(2) such employer is required by the laws of that country to make payments, based on periods of service, to its employees or their beneficiaries after the employees' retirement, death, or other separation from the service, and

''(3) such employer establishes a trust (whether organized within or outside the United States) for the purpose of funding the payments required by such law,

then, in determining for purposes of paragraph (5) of section 404(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] the taxable year in which any contribution to or under the plan is includible in the gross income of the nonresident alien employees of such employer, such paragraph (5) shall be treated as not requiring that separate accounts be maintained for such nonresident alien employees.''

§ 404A. Deduction for certain foreign deferred compensation plans

(a) General rule

Amounts paid or accrued by an employer under a qualified foreign plan—

(1) shall not be allowable as a deduction under this chapter, but

(2) if they would otherwise be deductible, shall be allowed as a deduction under this section for the taxable year for which such amounts are properly taken into account under this section.

(b) Rules for qualified funded plans

For purposes of this section—

(1) In general

Except as otherwise provided in this section, in the case of a qualified funded plan contributions are properly taken into account for the taxable year in which paid.

(2) Payment after close of taxable year

For purposes of paragraph (1), a payment made after the close of a taxable year shall be treated as made on the last day of such year if the payment is made—

(A) on account of such year, and

(B) not later than the time prescribed by law for filing the return for such year (including extensions thereof).

(3) Limitations

In the case of a qualified funded plan, the amount allowable as a deduction for the taxable year shall be subject to—

(A) in the case of—

(i) a plan under which the benefits are fixed or determinable, limitations similar to those contained in clauses (ii) and (iii) of subparagraph (A) of section 404(a)(1) (determined without regard to the last sentence of such subparagraph (A)), or

(ii) any other plan, limitations similar to the limitations contained in paragraph (3) of section 404(a), and

(B) limitations similar to those contained in paragraph (7) of section 404(a).

(4) Carryover

If—

(A) the aggregate of the contributions paid during the taxable year reduced by any contributions not allowable as a deduction under paragraphs (1) and (2) of subsection (g), exceeds

(B) the amount allowable as a deduction under subsection (a) (determined without regard to subsection (d)),

such excess shall be treated as an amount paid in the succeeding taxable year.

(5) Amounts must be paid to qualified trust, etc.

In the case of a qualified funded plan, a contribution shall be taken into account only if it is paid—

(A) to a trust (or the equivalent of a trust) which meets the requirements of section 401(a)(2),

(B) for a retirement annuity, or
(C) to a participant or beneficiary.

(c) Rules relating to qualified reserve plans

For purposes of this section—

(1) In general

In the case of a qualified reserve plan, the amount properly taken into account for the taxable year is the reasonable addition for such year to a reserve for the taxpayer's liability under the plan. Unless otherwise required or permitted in regulations prescribed by the Secretary, the reserve for the taxpayer's liability shall be determined under the unit credit method modified to reflect the requirements of paragraphs (3) and (4). All benefits paid under the plan shall be charged to the reserve.

(2) Income item

In the case of a plan which is or has been a qualified reserve plan, an amount equal to that portion of any decrease for the taxable year in the reserve which is not attributable to the payment of benefits shall be included in gross income.

(3) Rights must be nonforfeitable, etc.

In the case of a qualified reserve plan, an item shall be taken into account for a taxable year only if—

(A) there is no substantial risk that the rights of the employee will be forfeited, and

(B) such item meets such additional requirements as the Secretary may by regulations prescribe as necessary or appropriate to ensure that the liability will be satisfied.

(4) Spreading of certain increases and decreases in reserves

There shall be amortized over a 10-year period any increase or decrease to the reserve on account of—

(A) the adoption of the plan or a plan amendment,

(B) experience gains and losses, and[1]

(C) any change in actuarial assumptions,

(D) changes in the interest rate under subsection (g)(3)(B), and

(E) such other factors as may be prescribed by regulations.

(d) Amounts taken into account must be consistent with amounts allowed under foreign law

(1) General rule

In the case of any plan, the amount allowed as a deduction under subsection (a) for any taxable year shall equal—

(A) the lesser of—

(i) the cumulative United States amount, or

(ii) the cumulative foreign amount, reduced by

(B) the aggregate amount determined under this section for all prior taxable years.

(2) Cumulative amounts defined

For purposes of paragraph (1)—

(A) Cumulative United States amount

The term ''cumulative United States amount'' means the aggregate amount determined with respect to the plan under this section for the taxable year and for all prior taxable years to which this section applies. Such determination shall be made for each taxable year without regard to the application of paragraph (1).

(B) Cumulative foreign amount

The term ''cumulative foreign amount'' means the aggregate amount allowed as a deduction under the appropriate foreign tax laws for the taxable year and all prior taxable years to which this section applies.

(3) Effect on earnings and profits, etc.

In determining the earnings and profits and accumulated profits of any foreign corporation with respect to a qualified foreign plan, except as provided in regulations, the amount determined under paragraph (1) with respect to any plan for any taxable year shall in no event exceed the amount allowed as a deduction under the appropriate foreign tax laws for such taxable year.

(e) Qualified foreign plan

For purposes of this section, the term ''qualified foreign plan'' means any written plan of an employer for deferring the receipt of compensation but only if—

(1) such plan is for the exclusive benefit of the employer's employees or their beneficiaries,

(2) 90 percent or more of the amounts taken into account for the taxable year under the plan are attributable to services—

(A) performed by nonresident aliens, and

(B) the compensation for which is not subject to tax under this chapter, and

(3) the employer elects (at such time and in such manner as the Secretary shall by regulations prescribe) to have this section apply to such plan.

(f) Funded and reserve plans

For purposes of this section—

(1) Qualified funded plan

The term ''qualified funded plan'' means a qualified foreign plan which is not a qualified reserve plan.

(2) Qualified reserve plan

The term ''qualified reserve plan'' means a qualified foreign plan with respect to which an election made by the taxpayer is in effect for the taxable year. An election under the preceding sentence shall be made in such manner and form as the Secretary may by regulations prescribe and, once made, may be revoked only with the consent of the Secretary.

(g) Other special rules

(1) No deduction for certain amounts

Except as provided in section 404(a)(5), no deduction shall be allowed under this section for any item to the extent such item is attributable to services—

(A) performed by a citizen or resident of the United States who is a highly compensated employee (within the meaning of section 414(q)), or

(B) performed in the United States the compensation for which is subject to tax under this chapter.

[1] So in original. The word ''and'' probably should not appear.

(2) Taxpayer must furnish information

(A) In general

No deduction shall be allowed under this section with respect to any plan for any taxable year unless the taxpayer furnishes to the Secretary with respect to such plan (at such time as the Secretary may by regulations prescribe)—

(i) a statement from the foreign tax authorities specifying the amount of the deduction allowed in computing taxable income under foreign law for such year with respect to such plan,

(ii) if the return under foreign tax law shows the deduction for plan contributions or reserves as a separate, identifiable item, a copy of the foreign tax return for the taxable year, or

(iii) such other statement, return, or other evidence as the Secretary prescribes by regulation as being sufficient to establish the amount of the deduction under foreign law.

(B) Redetermination where foreign tax deduction is adjusted

If the deduction under foreign tax law is adjusted, the taxpayer shall notify the Secretary of such adjustment on or before the date prescribed by regulations, and the Secretary shall redetermine the amount of the tax for the year or years affected. In any case described in the preceding sentence, rules similar to the rules of subsection (c) of section 905 shall apply.

(3) Actuarial assumptions must be reasonable; full funding

(A) In general

Except as provided in subparagraph (B), principles similar to those set forth in paragraphs (3) and (6) of section 431(c) shall apply for purposes of this section.

(B) Interest rate for reserve plan

(i) In general

In the case of a qualified reserve plan, in lieu of taking rates of interest into account under subparagraph (A), the rate of interest for the plan shall be the rate selected by the taxpayer which is within the permissible range.

(ii) Rate remains in effect so long as it falls within permissible range

Any rate selected by the taxpayer for the plan under this subparagraph shall remain in effect for such plan until the first taxable year for which such rate is no longer within the permissible range. At such time, the taxpayer shall select a new rate of interest which is within the permissible range applicable at such time.

(iii) Permissible range

For purposes of this subparagraph, the term ''permissible range'' means a rate of interest which is not more than 20 percent above, and not more than 20 percent below, the average rate of interest for long-term corporate bonds in the appropriate country for the 15-year period ending on the last day before the beginning of the taxable year.

(4) Accounting method

Any change in the method (but not the actuarial assumptions) used to determine the amount allowed as a deduction under subsection (a) shall be treated as a change in accounting method under section 446(e).

(5) Section 481 applies to election

For purposes of section 481, any election under this section shall be treated as a change in the taxpayer's method of accounting. In applying section 481 with respect to any such election, the period for taking into account any increase or decrease in accumulated profits, earnings and profits or taxable income resulting from the application of section 481(a)(2) shall be the year for which the election is made and the fourteen succeeding years.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section (including regulations providing for the coordination of the provisions of this section with section 404 in the case of a plan which has been subject to both of such sections).

(Added Pub. L. 96–603, § 2(a), Dec. 28, 1980, 94 Stat. 3505; amended Pub. L. 99–514, title XI, § 1114(b)(8), title XVIII, § 1851(b)(2)(C)(iii), Oct. 22, 1986, 100 Stat. 2451, 2863; Pub. L. 100–647, title I, § 1012(b)(4), Nov. 10, 1988, 102 Stat. 3496; Pub. L. 109–280, title VIII, § 801(c)(4), Aug. 17, 2006, 120 Stat. 995.)

AMENDMENTS

2006—Subsec. (g)(3)(A). Pub. L. 109–280 substituted ''paragraphs (3) and (6) of section 431(c)'' for ''paragraphs (3) and (7) of section 412(c)''.

1988—Subsec. (d)(3). Pub. L. 100–647 inserted ''except as provided in regulations,'' after ''qualified foreign plan,''.

1986—Subsec. (a). Pub. L. 99–514, § 1851(b)(2)(C)(iii), substituted ''under this chapter'' for ''under section 162, 212, or 404'' in par. (1) and ''they would otherwise be deductible'' for ''they satisfy the conditions of section 162'' in par. (2).

Subsec. (g)(1)(A). Pub. L. 99–514, § 1114(b)(8), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or highly compensated''.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to years beginning after Dec. 31, 2007, see section 801(e)(1) of Pub. L. 109–280, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1114(b)(8) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1851(b)(2)(C)(iii) of Pub. L. 99–514 effective, except as otherwise provided, as if in-

cluded in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section 2(e) of Pub. L. 96–603, as amended by Pub. L. 97–448, title III, § 305(a), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] shall apply with respect to employer contributions or accruals for taxable years beginning after December 31, 1979.

''(2) ELECTION TO APPLY AMENDMENTS RETROACTIVELY WITH RESPECT TO FOREIGN SUBSIDIARIES.—

''(A) IN GENERAL.—The taxpayer may elect to have the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] apply retroactively with respect to its foreign subsidiaries.

''(B) SCOPE OF RETROACTIVE APPLICATION.—Any election made under this paragraph shall apply with respect to all foreign subsidiaries of the taxpayer for the taxpayer's open period.

''(C) DISTRIBUTIONS BY FOREIGN SUBSIDIARY MUST BE OUT OF POST-1971 EARNINGS AND PROFITS.—The election under this paragraph shall apply to distributions made by a foreign subsidiary only if made out of accumulated profits (or earnings and profits) earned after December 31, 1970.

''(D) REVOCATION ONLY WITH CONSENT.—An election under this paragraph may be revoked only with the consent of the Secretary of the Treasury or his delegate.

''(E) OPEN PERIOD.—For purposes of this subsection, the term 'open period' means, with respect to any taxpayer, all taxable years which begin before January 1, 1980, and which begin after December 31, 1971, and for which, on December 31, 1980, the making of a refund, or the assessment of a deficiency, was not barred by any law or rule of law.

''(3) ALLOWANCE OF PRIOR DEDUCTIONS IN CASE OF CERTAIN FUNDED BRANCH PLANS.—

''(A) IN GENERAL.—If—

''(i) the taxpayer elects to have this paragraph apply, and

''(ii) the taxpayer agrees to the assessment of all deficiencies (including interest thereon) arising from all erroneous deductions,

then an amount equal to 1/15th of the aggregate of the prior deductions which would have been allowable if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980, shall be allowed as a deduction for the taxpayer's first taxable year beginning in 1980, and an equal amount shall be allowed for each of the succeeding 14 taxable years.

''(B) PRIOR DEDUCTION.—For purposes of subparagraph (A), the term 'prior deduction' means a deduction with respect to a qualified funded plan (within the meaning of section 404A(f)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) of the taxpayer—

''(i) which the taxpayer claimed for a taxable year (or could have claimed if the amendments made by this section [enacting this section and section 6689 of this title and amending sections 679 and 905 of this title] applied to taxable years beginning before January 1, 1980) beginning before January 1, 1980,

''(ii) which was not allowable, and

''(iii) with respect to which, on December 1, 1980, the assessment of a deficiency was not barred by any law or rule of law.

''(4) TIME AND MANNER FOR MAKING ELECTIONS.—

''(A) TIME.—An election under paragraph (2) or (3) may be made only on or before the due date (including extensions) for filing the taxpayer's return of tax under chapter 1 of the Internal Revenue Code of 1986 [section 1 et seq. of this title] for its first taxable year ending on or after December 31, 1980.

''(B) MANNER.—An election under paragraph (2) may be made only by a statement attached to the taxpayer's return for its first taxable year ending on or after December 31, 1980. An election under paragraph (3) may be made only if the taxpayer, on or before the last day for making the election, files with the Secretary of the Treasury or his delegate such amended return and such other information as the Secretary of the Treasury or his delegate may require, and agrees to the assessment of a deficiency for any closed year falling within the open period, to the extent such deficiency is attributable to the operation of such election.''

[Pub. L. 97–448, title III, § 311(c)(1), Jan. 12, 1983, 96 Stat. 2411, provided that: ''The amendment made by subsection (a) of section 305 [amending par. (2)(E) of this note] shall take effect on December 28, 1980.'']

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[§ 405. Repealed. Pub. L. 98–369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848]

Section, added Pub. L. 87–792, § 5(a), Oct. 10, 1962, 76 Stat. 826; amended Pub. L. 89–97, title I, § 106(d)(5), July 30, 1965, 79 Stat. 337; Pub. L. 91–172, title V, § 515(c)(1), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§ 2004(c)(2), 2005(c)(11), Sept. 2, 1974, 88 Stat. 986, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97–34, title III, § 313(a), (b)(1), Aug. 13, 1981, 95 Stat. 285, 286; Pub. L. 97–452, § 2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, § 42(a)(6), July 18, 1984, 98 Stat. 557, related to qualified bond purchase plans.

EFFECTIVE DATE OF REPEAL

Repeal applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 62 of this title.

ROLLOVER OF EXISTING BONDS INTO QUALIFIED EMPLOYER PLANS

Pub. L. 98–369, div. A, title IV, § 491(c)(1), (f)(2), July 18, 1984, 98 Stat. 848, 853, provided that, applicable to redemptions after July 18, 1984, in taxable years ending after such date, subsec. (d)(3)(A) of this section, as in effect before its repeal, is amended to read as follows:

''(A) IN GENERAL.—If—

''(i) any qualified bond is redeemed,

''(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and

''(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated

as a rollover contribution described in section 408(d)(3).''

BONDS UNDER QUALIFIED BOND PURCHASE PLANS REDEEMABLE AT ANY TIME AFTER JULY 18, 1984

Section 491(f)(4) of Pub. L. 98–369 provided that: ''Notwithstanding—

''(A) subparagraph (D) of section 405(b)(1) of the Internal Revenue Code of 1954 (as in effect before its repeal by this section) [see above], and

''(B) the terms of any bond described in subsection (b) of such section 405,

such a bond may be redeemed at any time after the date of the enactment of this Act [July 18, 1984] in the same manner as if the individual redeeming the bond had attained age 59½.''

§ 406. Employees of foreign affiliates covered by section 3121(*l*) agreements

(a) Treatment as employees of American employer

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of an American employer (as defined in section 3121(h)), an individual who is a citizen or resident of the United States and who is an employee of a foreign affiliate (as defined in section 3121(*l*)(6)) of such American employer shall be treated as an employee of such American employer, if—

(1) such American employer has entered into an agreement under section 3121(*l*) which applies to the foreign affiliate of which such individual is an employee;

(2) the plan of such American employer expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its foreign affiliates to which an agreement entered into by such American employer under section 3121(*l*) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign affiliate.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such American employer; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such American employer and by determining such individual's status with regard to such American employer.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign affiliate which would constitute his total compensation if his services had been performed for such American employer, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary; and

(B) such individual shall be treated as having paid the amount paid by such American employer which is equivalent to the tax imposed by section 3101.

[(c) Repealed. Pub. L. 104–188, title I, § 1401(b)(7), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by an American employer, or by another taxpayer which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such American employer under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such American employer or to any other taxpayer which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign affiliate of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the American employer if he were an employee of the American employer, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign affiliate under this subsection shall be deductible for its taxable year with or within which the taxable year of such American employer ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of an American employer under subsection (a) shall also be treated as an employee of such American employer, with respect to the plan described in subsection (a)(2), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, § 220(a), Feb. 26, 1964, 78 Stat. 58; amended Pub. L. 91–172, title V, § 515(c)(2), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§ 1016(a)(4), 2005(c)(12), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, § 321(c), (e)(2)(A)–(D)(i), Apr. 20, 1983, 97 Stat. 119, 120; Pub. L. 98–369, div. A, title IV, § 491(d)(13)–(15), July 18, 1984, 98 Stat. 849; Pub. L. 99–514, title XI, §§ 1112(d)(3), 1114(b)(9)(A), (C), title XVIII, § 1852(e)(2)(C), Oct. 22, 1986, 100

Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, §1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§7811(g)(3), 7831(f), title X, §10201(b)(1), (2), Dec. 19, 1989, 103 Stat. 2409, 2427, 2472; Pub. L. 102–318, title V, §521(b)(14), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§1401(b)(7), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, §1401(b)(7), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, §1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Section 101(b) (relating to employees' death benefits).''

1992—Subsec. (c). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

1989—Subsec. (a). Pub. L. 101–239, §10201(b)(1), substituted ''3121(*l*)(6)'' for ''3121(*l*)(8)''.

Subsec. (b)(1)(A). Pub. L. 101–239, §7831(f), made technical correction to Pub. L. 99–514, §1114(b)(9)(A), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, §7811(g)(3), substituted ''purposes of limitation'' for ''purposes limitation'' in heading.

Subsec. (c)(3). Pub. L. 101–239, §10201(b)(2), substituted ''3121(*l*)(6)(B)'' for ''3121(*l*)(8)(B)''.

1988—Subsec. (c). Pub. L. 100–647, §1011A(b)(16), struck out ''of capital gain provisions and'' after ''service for purposes'' in heading and substituted ''applying section 402(e)'' for ''applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)'' in text.

Subsec. (e). Pub. L. 100–647, §1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''Section 72(d) (relating to employees' annuities).''

1986—Subsec. (b)(1). Pub. L. 99–514, §1112(d)(3), struck out ''(without regard to paragraph (1)(A) thereof)'' after ''section 410(b)'' in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, §1114(b)(9)(A), as amended by Pub. L. 101–239, §7831(f), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign affiliate of such American employer''.

Subsec. (b)(1)(B). Pub. L. 99–514, §1114(b)(9)(C), inserted ''(as so defined)'' after ''employee''.

Subsec. (e)(5). Pub. L. 99–514, §1852(e)(2)(C), struck out par. (5) which read as follows: ''Section 2517 (relating to certain annuities under qualified plans).''

1984—Subsec. (a). Pub. L. 98–369, §491(d)(13), substituted in introductory provision ''or an annuity plan described in section 403(a)'' for '', an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)''.

Subsec. (a)(3). Pub. L. 98–369, §491(d)(14), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

Subsec. (d). Pub. L. 98–369, §491(d)(15)(A), (B), substituted in introductory provision ''section 404'' for ''sections 404 and 405(c)'', and ''or annuity'' for ''annuity, or bond purchase''.

Subsec. (d)(2). Pub. L. 98–369, §491(d)(15)(C), struck out ''(or section 405(c))'' after ''section 404''.

1983—Pub. L. 98–21, §321(e)(2)(D)(i), substituted ''Employees of foreign affiliates covered by section 3121(*l*) agreements'' for ''Certain employees of foreign subsidiaries'' in section catchline.

Subsec. (a). Pub. L. 98–21, §321(c), amended subsec. (a) generally, substituting ''American employer'' for ''domestic corporation'' in heading and in text wherever appearing, inserting reference to section 3121(h) of this title, inserting ''or resident'' after ''citizen'' wherever appearing, substituting ''foreign affiliate'' for ''foreign subsidiary'' wherever appearing, and ''foreign affiliates'' for ''foreign subsidiaries''.

Subsec. (b). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing.

Subsec. (c). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing in provisions preceding par. (1) and in pars. (1) and (2).

Subsec. (c)(3). Pub. L. 98–21, §321(e)(2)(A), (B), substituted ''foreign affiliate by reason of which he is treated as an employee of such American employer, if he becomes an employee of another entity in which such American employer has not less than a 10-percent interest (within the meaning of section 3121(*l*)(8)(B)'' for ''foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation''.

Subsec. (d). Pub. L. 98–21, §321(e)(2)(A), (C), substituted references to an American employer for references to a domestic corporation and reference to an affiliate for a reference to a subsidiary wherever appearing, substituted ''another taxpayer'' for ''another corporation'' in provisions preceding par. (1), and substituted ''any other taxpayer'' for ''any other corporation'' in par. (1).

Subsec. (e). Pub. L. 98–21, §321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation wherever appearing in provisions preceding par. (1).

1976—Subsec. (b)(2)(A). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b)(1). Pub. L. 93–406, §1016(a)(4), substituted ''section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''paragraphs (3)(B) and (4) of section 401(a)''.

Subsec. (c). Pub. L. 93–406, §2005(c)(12), substituted ''subsections (a)(2) and (e) of section 402'' for ''section 72(n), section 402(a)(2)''.

1969—Subsec. (c). Pub. L. 91–172 substituted ''provisions and limitation of tax'' for ''provisions'' in heading, and substituted ''section 72(n), section 402(a)(2),'' for ''section 402(a)(2)'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(7) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 10201(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section, section 3121 of this title, and section 410 of Title 42, The Public Health and Welfare] shall apply with respect to any agreement in effect under section 3121(*l*) of the Internal Revenue Code of 1986 on or after June 15, 1989, with respect to which no notice of termination is in effect on such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(A), (C) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Section 1852(e)(2)(E) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section and section 407 of this title and repealing section 2517 of this title] shall apply to transfers after the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 321(f) of Pub. L. 98–21 provided that:

''(1)(A) The amendments made by this section [amending this section and sections 407, 1402, 3121, and 6413 of this title and section 410 of Title 42, The Public Health and Welfare] (other than subsection (d) [amending section 407 of this title]) shall apply to agreements entered into after the date of the enactment of this Act [Apr. 20, 1983].

''(B) At the election of any American employer, the amendments made by this section (other than subsection (d)) shall also apply to any agreement entered into on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

''(2)(A) The amendments made by subsection (d) [amending section 407 of this title] shall apply to plans established after the date of the enactment of this Act [Apr. 20, 1983].

''(B) At the election of any domestic parent corporation the amendments made by subsection (d) shall also apply to any plan established on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(4) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transition of Rules note under section 410 of this title.

Amendment by section 2005(c)(12) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section 220(d) of Pub. L. 88–272 provided that: ''The amendments made by subsections (a) [enacting this section], (b) [enacting section 407 of this title], and (c)(1) [amending the analysis preceding section 401 of this title] shall apply to taxable years ending after December 31, 1963. The amendments made by subsections (c)(2) [amending section 3121 of this title] and (3) [amending section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1962.''

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 407. Certain employees of domestic subsidiaries engaged in business outside the United States

(a) Treatment as employees of domestic parent corporation

(1) In general

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of a domestic parent corporation, an individual who is a citizen or resident of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a

plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions

For purposes of this section—

(A) Domestic subsidiary

A corporation shall be treated as a domestic subsidiary for any taxable year only if—

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence), was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation

The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is a highly compensated employee (within the meaning of section 414(q)), he shall be treated as having such capacity with respect to such domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee (as so defined) shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such domestic parent corporation.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary.

[(c) Repealed. Pub. L. 104–188, title I, §1401(b)(8), Aug. 20, 1996, 110 Stat. 1789]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a)(1)(A), for purposes of applying the following provisions of this title:

(1) Section 72(f) (relating to special rules for computing employees' contributions).

(2) Section 2039 (relating to annuities).

(Added Pub. L. 88–272, title II, §220(b), Feb. 26, 1964, 78 Stat. 60; amended Pub. L. 91–172, title V, §515(c)(3), Dec. 30, 1969, 83 Stat. 646; Pub. L. 93–406, title II, §§1016(a)(5), 2005(c)(13), Sept. 2, 1974, 88 Stat. 929, 992; Pub. L. 94–455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 98–21, title III, §321(d), Apr. 20, 1983, 97 Stat. 119; Pub. L. 98–369, div. A, title IV, §491(d)(16)–(18), July 18, 1984, 98 Stat. 850; Pub. L. 99–514, title XI, §§1112(d)(3), 1114(b)(9)(B), (C), title XVIII, §1852(e)(2)(D), Oct. 22, 1986, 100 Stat. 2445, 2451, 2868; Pub. L. 100–647, title I, §1011A(b)(1)(C), (16), Nov. 10, 1988, 102 Stat. 3472, 3475; Pub. L. 101–239, title VII, §§7811(g)(3), 7831(f), Dec. 19, 1989, 103 Stat. 2409, 2427; Pub. L. 102–318, title V, §521(b)(15), July 3, 1992, 106 Stat. 311; Pub. L.

104–188, title I, §§1401(b)(8), 1402(b)(2), Aug. 20, 1996, 110 Stat. 1789, 1790.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104–188, §1401(b)(8), struck out subsec. (c) which related to treatment of termination of status as deemed employee.

Subsec. (e)(2), (3). Pub. L. 104–188, §1402(b)(2), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''Section 101(b) (relating to employees' death benefits).''

1992—Subsec. (c). Pub. L. 102–318 substituted ''402(d)'' for ''402(e)''.

1989—Subsec. (b)(1)(A). Pub. L. 101–239, §7831(f), made technical correction to Pub. L. 99–514, §1114(b)(9)(B), see 1986 Amendment note below.

Subsec. (c). Pub. L. 101–239, §7811(g)(3), substituted ''purposes of limitation'' for ''purposes limitation'' in heading.

1988—Subsec. (c). Pub. L. 100–647, §1011A(b)(16), struck out ''of capital gain provisions and'' after ''service for purposes'' in heading and substituted ''applying section 402(e)'' for ''applying subsections (a)(2) and (e) of section 402, and section 403(a)(2)'' in text.

Subsec. (e). Pub. L. 100–647, §1011A(b)(1)(C), redesignated pars. (2) to (4) as (1) to (3), respectively, and struck out former par. (1) which read as follows: ''Section 72(d) (relating to employees' annuities).''

1986—Subsec. (b)(1). Pub. L. 99–514, §1112(d)(3), struck out ''(without regard to paragraph (1)(A) thereof)'' after ''section 410(b)'' in introductory text.

Subsec. (b)(1)(A). Pub. L. 99–514, §1114(b)(9)(B), as amended by Pub. L. 101–239, §7831(f), substituted ''a highly compensated employee (within the meaning of section 414(q))'' for ''an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a domestic subsidiary''.

Subsec. (b)(1)(B). Pub. L. 99–514, §1114(b)(9)(C), inserted ''(as so defined)'' after ''employee''.

Subsec. (e)(5). Pub. L. 99–514, §1852(e)(2)(D), struck out par. (5) which read as follows: ''Section 2517 (relating to certain annuities under qualified plans).''

1984—Subsec. (a)(1). Pub. L. 98–369, §491(d)(16), substituted ''or an annuity plan described in section 403(a)'' for '', an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)''.

Subsec. (a)(1)(B). Pub. L. 98–369, §491(d)(17), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

Subsec. (d). Pub. L. 98–369, §491(d)(18)(A), (B), substituted in introductory provision ''section 404'' for ''sections 404 and 405(a)'', and ''or annuity'' for ''annuity, or bond purchase''.

Subsec. (d)(2). Pub. L. 98–369, §491(d)(18)(C), struck out ''(or section 405(c))'' after ''section 404''.

1983—Subsec. (a)(1). Pub. L. 98–21 inserted ''or resident'' after ''citizen'', and inserted ''or residents'' after ''citizens'' in subpar. (A).

1976—Subsec. (b)(2). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

1974—Subsec. (b)(1). Pub. L. 93–406, §1016(a)(5), substituted ''section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof)'' for ''paragraphs (3)(B) and (4) of section 401(a)''.

Subsec. (c). Pub. L. 93–406, §2005(c)(13), substituted ''subsections (a)(2) and (e) of section 402'' for ''section 72(n), section 402(a)(2)''.

1969—Subsec. (c). Pub. L. 91–172 substituted ''provisions and limitation of tax'' for ''provisions'' in heading, and substituted ''section 72(n), section 402(a)(2),'' for ''section 402(a)(2)'' in text.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1401(b)(8) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1999, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.

Amendment by section 1402(b)(2) of Pub. L. 104–188 applicable with respect to decedents dying after Aug. 20, 1996, see section 1402(c) of Pub. L. 104–188, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(g)(3) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7831(f) of Pub. L. 101–239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 7831(g) of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1112(d)(3) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of excise tax on reversions, see section 1112(e) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1114(b)(9)(B), (C) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1988, see section 1114(c)(3) of Pub. L. 99–514, set out as a note under section 414 of this title.

Amendment by section 1852(e)(2)(D) of Pub. L. 99–514 applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99–514, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to plans established after Apr. 20, 1983, except that at the election of any domestic parent corporation such amendment shall also apply to any plan established on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by section 1016(a)(5) of Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Amendment by section 2005(c)(13) of Pub. L. 93–406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93–406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91–172, set out as a note under section 402 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 220(d) of Pub. L. 88–272, set out as a note under section 406 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1112 and 1114 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term ''individual retirement account'' means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in[1] section 402(c), 403(a)(4), 403(b)(8), or 457(e)(16), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A).

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(b) Individual retirement annuity

For purposes of this section, the term ''individual retirement annuity'' means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b)(1)(A), and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed the dollar amount in effect under section 219(b)(1)(A).

(c) Accounts established by employers and certain associations of employees

A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c)(1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

(1) The trust satisfies the requirements of paragraphs (1) through (6) of subsection (a).

(2) There is a separate accounting for the interest of each employee or member (or spouse of an employee or member).

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

[1] So in original.

(d) Tax treatment of distributions

(1) In general

Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

(2) Special rules for applying section 72

For purposes of applying section 72 to any amount described in paragraph (1)—

(A) all individual retirement plans shall be treated as 1 contract,

(B) all distributions during any taxable year shall be treated as 1 distribution, and

(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.

(3) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term ''eligible retirement plan'' means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

(B) Limitation

This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general

In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity

An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted

(i) In general

If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan

For purposes of clause (i), the term ''eligible plan'' means any account, annuity, contract, or plan referred to in subparagraph (A).

(E) Denial of rollover treatment for required distributions

This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a)(6) or (b)(3).

(F) Frozen deposits

For purposes of this paragraph, rules similar to the rules of section 402(c)(7) (relating to frozen deposits) shall apply.

(G) Simple retirement accounts

In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not

apply unless such payment or distribution is paid into another simple retirement account.

(H) Application of section 72

(i) In general

If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) Applicable rules

In the case of a distribution described in clause (i)—

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) Waiver of 60-day requirement

The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Contributions returned before due date of return

Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

(5) Distributions of excess contributions after due date for taxable year and certain excess rollover contributions

(A) In general

In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under section 219(b)(1)(A), paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or the dollar limitation in effect under section 415(c)(1)(A) for such taxable year.

(B) Excess rollover contributions attributable to erroneous information

If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

For purposes of this paragraph, the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(6) Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

(7) Special rules for simplified employee pensions or simple retirement accounts

(A) Transfer or rollover of contributions prohibited until deferral test met

Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t)(1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k)(6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k)(6)(A)(iii) are met with respect to such contribution.

(B) Certain exclusions treated as deductions

For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) or 402(k) shall be treated as an amount allowable or allowed as a deduction under section 219.

(8) Distributions for charitable purposes

(A) In general

So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed $100,000 shall not be includible in gross income of such taxpayer for such taxable year.

(B) Qualified charitable distribution

For purposes of this paragraph, the term ''qualified charitable distribution'' means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A).

(C) Contributions must be otherwise deductible

For purposes of this paragraph, a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) Application of section 72

Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction

Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170.

(F) Termination

This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2009.

(9) Distribution for health savings account funding

(A) In general

In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

(B) Qualified HSA funding distribution

For purposes of this paragraph, the term ''qualified HSA funding distribution'' means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

(C) Limitations

(i) Maximum dollar limitation

The amount excluded from gross income by subparagraph (A) shall not exceed the excess of—

(I) the annual limitation under section 223(b) computed on the basis of the type of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over

(II) in the case of a distribution described in clause (ii)(II), the amount of the earlier qualified HSA funding distribution.

(ii) One-time transfer

(I) In general

Except as provided in subclause (II), an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

(II) Conversion from self-only to family coverage

If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

(D) Failure to maintain high deductible health plan coverage

(i) In general

If, at any time during the testing period, the individual is not an eligible individual, then the aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A)—

(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

(ii) Exception for disability or death

Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period

The term ''testing period'' means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) Application of section 72

Notwithstanding section 72, in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A), the aggregate amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(e) Tax treatment of accounts and annuities

(1) Exemption from tax

Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Loss of exemption of account where employee engages in prohibited transaction

(A) In general

If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph—

(i) the individual for whose benefit any account was established is treated as the creator of such account, and

(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

(B) Account treated as distributing all its assets

In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

(3) Effect of borrowing on annuity contract

If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

(4) Effect of pledging account as security

If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) Purchase of endowment contract by individual retirement account

If the assets of an individual retirement account or any part of such assets are used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3), and

(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

(6) Commingling individual retirement account amounts in certain common trust funds and common investment funds

Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a).

[(f) Repealed. Pub. L. 99–514, title XI, § 1123(d)(2), Oct. 22, 1986, 100 Stat. 2475]

(g) Community property laws

This section shall be applied without regard to any community property laws.

(h) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(i) Reports

The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating $10 or more in any calendar year, and such other matters as the Secretary may require. The reports required by this subsection—

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 31 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.

(j) Increase in maximum limitations for simplified employee pensions

In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) Simplified employee pension defined

(1) In general

For purposes of this title, the term ''simplified employee pension'' means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

(2) Participation requirements

This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $450 in compensation (within the meaning of section 414(q)(4)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3). For purposes of any arrangement described in subsection (k)(6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general

The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).

(B) Special rules

For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).

(C) Contributions must bear uniform relationship to total compensation

For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity

For purposes of subparagraph (C), the rules of section 401(*l*)(2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) Withdrawals must be permitted

A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Employee may elect salary reduction arrangement

(A) Arrangements which qualify

(i) In general

A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect

Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage

Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals

Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a)(30) are met.

(B) Exception where more than 25 employees

This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions

(i) In general

Rules similar to the rules of section 401(k)(8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) Excess contribution

For purposes of clause (i), the term ''excess contribution'' means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A)(iii).

(D) Deferral percentage

For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000) for the year.

(E) Exception for State and local and tax-exempt pensions

This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions

This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C), including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4), provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee

For purposes of this paragraph, the term ''highly compensated employee'' has the meaning given such term by section 414(q).

(H) Termination

This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A).

(7) Definitions

For purposes of this subsection and subsection (*l*)—

(A) Employee, employer, or owner-employee

The terms ''employee'', ''employer'', and ''owner-employee'' shall have the respective meanings given such terms by section 401(c).

(B) Compensation

Except as provided in paragraph (2)(C), the term ''compensation'' has the meaning given such term by section 414(s).

(C) Year

The term ''year'' means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

(8) Cost-of-living adjustment

The Secretary shall adjust the $450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B); except that any increase in the $450 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

(9) Cross reference

For excise tax on certain excess contributions, see section 4979.

(*l*) Simplified employer reports

(1) In general

An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

(2) Simple retirement accounts

(A) No employer reports

Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

(B) Summary description

The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) and the issuer of an annuity established under such an arrangement shall provide to the employer maintaining the arrangement, each year a description containing the following information:

(i) The name and address of the employer and the trustee or issuer.

(ii) The requirements for eligibility for participation.

(iii) The benefits provided with respect to the arrangement.

(iv) The time and method of making elections with respect to the arrangement.

(v) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

(C) Employee notification

The employer shall notify each employee immediately before the period for which an election described in subsection (p)(5)(C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B).

(m) Investment in collectibles treated as distributions

(1) In general

The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) Collectible defined

For purposes of this subsection, the term ''collectible'' means—

(A) any work of art,

(B) any rug or antique,

(C) any metal or gem,

(D) any stamp or coin,

(E) any alcoholic beverage, or

(F) any other tangible personal property specified by the Secretary for purposes of this subsection.

(3) Exception for certain coins and bullion

For purposes of this subsection, the term ''collectible'' shall not include—

(A) any coin which is—

(i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,

(ii) a silver coin described in section 5112(e) of title 31, United States Code,

(iii) a platinum coin described in section 5112(k) of title 31, United States Code, or

(iv) a coin issued under the laws of any State, or

(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7)[2] requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is in the physical possession of a trustee described under subsection (a) of this section.

(n) Bank

For purposes of subsection (a)(2), the term ''bank'' means—

(1) any bank (as defined in section 581),

(2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and

[2] See References in Text note below.

(3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(*o*) Definitions and rules relating to nondeductible contributions to individual retirement plans

(1) In general

Subject to the provisions of this subsection, designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

(2) Limits on amounts which may be contributed

(A) In general

The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

(B) Nondeductible limit

For purposes of this paragraph—

(i) In general

The term ''nondeductible limit'' means the excess of—

(I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g)), over

(II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g)).

(ii) Taxpayer may elect to treat deductible contributions as nondeductible

If a taxpayer elects not to deduct an amount which (without regard to this clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

(C) Designated nondeductible contributions

(i) In general

For purposes of this paragraph, the term ''designated nondeductible contribution'' means any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219.

(ii) Designation

Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

(3) Time when contributions made

In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f)(3) shall apply.

(4) Individual required to report amount of designated nondeductible contributions

(A) In general

Any individual who—

(i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or

(ii) receives any amount from any individual retirement plan for any taxable year,

shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B).

(B) Information required to be supplied

The following information is described in this subparagraph:

(i) The amount of designated nondeductible contributions for the taxable year.

(ii) The amount of distributions from individual retirement plans for the taxable year.

(iii) The excess (if any) of—

(I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over

(II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.

(iv) The aggregate balance of all individual retirement plans of the individual as of the close of the calendar year in which the taxable year begins.

(v) Such other information as the Secretary may prescribe.

(C) Penalty for reporting contributions not made

For penalty where individual reports designated nondeductible contributions not made, see section 6693(b).

(p) Simple retirement accounts

(1) In general

For purposes of this title, the term ''simple retirement account'' means an individual retirement plan (as defined in section 7701(a)(37))—

(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met; and

(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

(2) Qualified salary reduction arrangement

(A) In general

For purposes of this subsection, the term ''qualified salary reduction arrangement'' means a written arrangement of an eligible employer under which—

(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

(II) to the employee directly in cash,

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of the applicable dollar amount for any year,

(iii) the employer is required to make a matching contribution to the simple re-

tirement account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

(iv) no contributions may be made other than contributions described in clause (i) or (iii).

(B) Employer may elect 2-percent nonelective contribution

(i) In general

An employer shall be treated as meeting the requirements of subparagraph (A)(iii) for any year if, in lieu of the contributions described in such clause, the employer elects to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C).

(ii) Compensation limitation

The compensation taken into account under clause (i) for any year shall not exceed the limitation in effect for such year under section 401(a)(17).

(C) Definitions

For purposes of this subsection—

(i) Eligible employer

(I) In general

The term ''eligible employer'' means, with respect to any year, an employer which had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year.

(II) 2-year grace period

An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

(ii) Applicable percentage

(I) In general

The term ''applicable percentage'' means 3 percent.

(II) Election of lower percentage

An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C). An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

(III) Special rule for years arrangement not in effect

If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

(D) Arrangement may be only plan of employer

(i) In general

An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

(ii) Qualified plan

For purposes of this subparagraph, the term ''qualified plan'' means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5).

(E) Applicable dollar amount; cost-of-living adjustment

(i) In general

For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

For years beginning in calendar year:	The applicable dollar amount:
2002	$7,000
2003	$8,000
2004	$9,000
2005 or thereafter	$10,000.

(ii) Cost-of-living adjustment

In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph

which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(3) Vesting requirements

The requirements of this paragraph are met with respect to a simple retirement account if the employee's rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k)(4) shall apply.

(4) Participation requirements

(A) In general

The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

(i) received at least $5,000 in compensation from the employer during any 2 preceding years, and

(ii) are reasonably expected to receive at least $5,000 in compensation during the year,

are eligible to make the election under paragraph (2)(A)(i) or receive the nonelective contribution described in paragraph (2)(B).

(B) Excludable employees

An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b)(3).

(5) Administrative requirements

The requirements of this paragraph are met with respect to any simple retirement account if, under the qualified salary reduction arrangement—

(A) an employer must—

(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

(ii) make the matching contributions under paragraph (2)(A)(iii) or the nonelective contributions under paragraph (2)(B) not later than the date described in section 404(m)(2)(B),

(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year (and the 60-day period before the first day such employee is eligible to participate), to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

(6) Definitions

For purposes of this subsection—

(A) Compensation

(i) In general

The term ''compensation'' means amounts described in paragraphs (3) and (8) of section 6051(a). For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).

(ii) Self-employed

In the case of an employee described in subparagraph (B), the term ''compensation'' means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. The preceding sentence shall be applied as if the term ''trade or business'' for purposes of section 1402 included service described in section 1402(c)(6).

(B) Employee

The term ''employee'' includes an employee as defined in section 401(c)(1).

(C) Year

The term ''year'' means the calendar year.

(7) Use of designated financial institution

A plan shall not be treated as failing to satisfy the requirements of this subsection or any other provision of this title merely because the employer makes all contributions to the individual retirement accounts or annuities of a designated trustee or issuer. The preceding sentence shall not apply unless each plan participant is notified in writing (either separately or as part of the notice under subsection (*l*)(2)(C)) that the participant's balance may be transferred without cost or penalty to another individual account or annuity in accordance with subsection (d)(3)(G).

(8) Coordination with maximum limitation under subsection (a)

In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting ''the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection, whichever is applicable'' for ''the dollar amount in effect under section 219(b)(1)(A)''.

(9) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions

Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.

(10) Special rules for acquisitions, dispositions, and similar transactions

(A) In general

An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

(i) the employer satisfies requirements similar to the requirements of section 410(b)(6)(C)(i)(II); and

(ii) the qualified salary reduction arrangement maintained by the employer

would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

(B) Applicable requirement

For purposes of this paragraph, the term ''applicable requirement'' means—

(i) the requirement under paragraph (2)(A)(i) that an employer be an eligible employer;

(ii) the requirement under paragraph (2)(D) that an arrangement be the only plan of an employer; and

(iii) the participation requirements under paragraph (4).

(C) Transition period

For purposes of this paragraph, the term ''transition period'' means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.

(q) Deemed IRAs under qualified employer plans

(1) General rule

If—

(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B), the requirements of subsection (a)(5) shall not apply.

(2) Special rules for qualified employer plans

For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1).

(3) Definitions

For purposes of this subsection—

(A) Qualified employer plan

The term ''qualified employer plan'' has the meaning given such term by section 72(p)(4)(A)(i); except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).

(B) Voluntary employee contribution

The term ''voluntary employee contribution'' means any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C))—

(i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1), and

(ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.

(r) Cross references

(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4963.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.

(Added Pub. L. 93–406, title II, § 2002(b), Sept. 2, 1974, 88 Stat. 959; amended Pub. L. 94–455, title XV, § 1501(b)(2), (5), (10), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1735–1737, 1834; Pub. L. 95–600, title I, §§ 152(a), (b), 156(c)(1), (3), 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2), title VII, § 703(c)(4), Nov. 6, 1978, 92 Stat. 2797, 2802, 2803, 2805, 2806, 2808, 2939; Pub. L. 96–222, title I, § 101(a)(10)(A), (C), (F), (G), (J)(i), (14)(B), (E)(ii), Apr. 1, 1980, 94 Stat. 201–205; Pub. L. 96–605, title II, § 225(b)(3), (4), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title III, §§ 311(g)(1)(A)–(C), (2), (h)(2), 312(b)(2), (c)(5), 313(b)(2), 314(b)(1), Aug. 13, 1981, 95 Stat. 281–284, 286; Pub. L. 97–248, title II, §§ 237(e)(3), 238(d)(3), (4), 243(a), (b)(1)(A), title III, § 335(a)(1), Sept. 3, 1982, 96 Stat. 512, 513, 521, 522, 628; Pub. L. 97–448, title I, § 103(d)(1), (e), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 98–369, div. A, title I, § 147(a), title IV, § 491(d)(19)–(24), title V, §§ 521(b), 522(d)(12), title VII, § 713(c)(2)(B), (f)(2), (5)(B), (g)(2), (j), July 18, 1984, 98 Stat. 687, 850, 867, 871, 957, 959, 960; Pub. L. 99–514, title XI, §§ 1102(a), (b)(2), (c), (e)(2), 1108(a), (d)–(g)(1), (4), (6), 1121(c)(2), 1122(e)(2)(B), 1123(d)(2), 1144(a), title XVIII, §§ 1852(a)(1), (5)(C), (7)(A), 1875(c)(6)(A), (8), 1898(a)(5), Oct. 22, 1986, 100 Stat. 2414–2416, 2431, 2433, 2434, 2465, 2470, 2475, 2490, 2864–2866, 2895, 2944; Pub. L. 100–647, title I, §§ 1011(b)(1)–(3), (c)(7)(C), (f)(1)–(5), (10), (i)(5), 1011A(a)(2)(A), 1018(t)(3)(D), title VI, § 6057(a), Nov. 10, 1988, 102 Stat. 3456, 3458, 3461–3463, 3468, 3472, 3588, 3698; Pub. L. 101–239, title VII, §§ 7811(m)(7), 7841(a)(1), Dec. 19, 1989, 103 Stat. 2412, 2427; Pub. L. 102–318, title V, § 521(b)(16)–(19), July 3, 1992, 106 Stat. 311; Pub. L. 103–66, title XIII, § 13212(b), Aug. 10, 1993, 107 Stat. 472; Pub. L. 103–465, title VII, § 732(d), Dec. 8, 1994, 108 Stat. 5005; Pub. L. 104–188, title I, §§ 1421(a), (b)(3)(B), (5), (6), (c), 1427(b)(3), 1431(c)(1)(B), 1455(b)(1), Aug. 20, 1996, 110 Stat. 1792, 1796–1798, 1802, 1803, 1817; Pub. L. 105–34, title III, §§ 302(d), 304(a), title XV, § 1501(b), title XVI, § 1601(d)(1)(A)–(C)(i), (D)–(G), Aug. 5, 1997, 111 Stat. 829, 831, 1058, 1087, 1088; Pub. L. 105–206, title VI, §§ 6015(a), 6016(a)(1), 6018(b), July 22, 1998, 112 Stat. 820–822; Pub. L. 106–554, § 1(a)(7) [title III, § 319(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–646; Pub. L. 107–16, title VI, §§ 601(b), 602(a), 611(c)(1), (f)(1), (2), (g)(2), 641(e)(8), 642(a), (b)(2), (3), 643(c), 644(b), June 7, 2001, 115 Stat. 95, 97, 99, 121–123; Pub. L. 107–147, title IV, § 411(i)(1), (j)(1), Mar. 9, 2002, 116 Stat. 46, 47; Pub. L. 108–311, title IV, §§ 404(d), 408(a)(12), (13), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–280, title XII, § 1201(a), Aug. 17, 2006, 120 Stat. 1063; Pub. L. 109–432, div. A, title III, § 307(a), Dec. 20, 2006, 120 Stat. 2951; Pub. L. 110–172, § 3(a), Dec. 29, 2007, 121 Stat. 2474; Pub. L. 110–343, div. C, title II, § 205(a), Oct. 3, 2008, 122 Stat. 3865.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 7 of the Commodity Exchange Act, referred to in subsec. (m)(3)(B), is classified to section 11 of Title 7, Agriculture, and relates to vacation on request of designation as ''contract market''. Section 5 of the Commodity Exchange Act, which is classified to section 7 of Title 7, relates to designation of boards of trade as ''contract markets''.

Paragraph (6) or (7) of section 101 of the Federal Credit Union Act, referred to in subsec. (n)(2), is classified to section 1752(6), (7) of Title 12, Banks and Banking.

AMENDMENTS

2008—Subsec. (d)(8)(F). Pub. L. 110–343 substituted ''December 31, 2009'' for ''December 31, 2007''.

2007—Subsec. (d)(8)(D). Pub. L. 110–172 substituted ''all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible'' for ''all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72''.

2006—Subsec. (d)(8). Pub. L. 109–280, which directed the amendment of section 408(d) by adding par. (8), without specifying the act to be amended, was executed by making the addition to this section, which is section 408 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress.

Subsec. (d)(9). Pub. L. 109–432 added par. (9).

2004—Subsec. (a)(1). Pub. L. 108–311, §408(a)(12), substituted ''457(e)(16),'' for ''457(e)(16)''.

Subsec. (n)(2). Pub. L. 108–311, §408(a)(13), substituted ''paragraph (6) or (7) of section 101'' for ''section 101(6)''.

Subsec. (p)(6)(A)(i). Pub. L. 108–311, §404(d), inserted at end ''For purposes of the preceding sentence, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).''

2002—Subsec. (k)(2)(C). Pub. L. 107–147, §411(j)(1)(A), substituted ''$450'' for ''$300''.

Subsec. (k)(8). Pub. L. 107–147, §411(j)(1)(B), substituted ''$450'' for ''$300'' in two places.

Subsec. (q)(3)(A). Pub. L. 107–147, §411(i)(1), reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: ''The term 'qualified employer plan' has the meaning given such term by section 72(p)(4); except such term shall not include a government plan which is not a qualified plan unless the plan is an eligible deferred compensation plan (as defined in section 457(b)).''

2001—Subsec. (a)(1). Pub. L. 107–16, §641(e)(8), substituted ''403(b)(8), or 457(e)(16)'' for ''or 403(b)(8),''.

Pub. L. 107–16, §601(b)(1), substituted ''on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)'' for ''in excess of $2,000 on behalf of any individual''.

Subsec. (b). Pub. L. 107–16, §601(b)(3), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000'' in concluding provisions.

Subsec. (b)(2)(B). Pub. L. 107–16, §601(b)(2), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000''.

Subsec. (d)(3)(A). Pub. L. 107–16, §642(a), inserted ''or'' at end of cl. (i), added cl. (ii) and concluding provisions, and struck out former cls. (ii) and (iii) which read as follows:

''(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or

''(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

''(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

''(III) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution.''

Subsec. (d)(3)(D)(i). Pub. L. 107–16, §642(b)(2), substituted ''(i) or (ii)'' for ''(i), (ii), or (iii)''.

Subsec. (d)(3)(G). Pub. L. 107–16, §642(b)(3), reenacted heading without change and amended text of subpar. (G) generally. Prior to amendment, text read as follows: ''This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in subsection (p)) unless—

''(i) it is paid into another simple retirement account, or

''(ii) in the case of any payment or distribution to which section 72(t)(6) does not apply, it is paid into an individual retirement plan.''

Subsec. (d)(3)(H). Pub. L. 107–16, §643(c), added subpar. (H).

Subsec. (d)(3)(I). Pub. L. 107–16, §644(b), added subpar. (I).

Subsec. (j). Pub. L. 107–16, §601(b)(4), struck out ''$2,000'' before ''amounts''.

Subsec. (k)(3)(C), (6)(D)(ii), (8). Pub. L. 107–16, §611(c)(1), substituted ''$200,000'' for ''$150,000''.

Subsec. (p)(2)(A)(ii). Pub. L. 107–16, §611(f)(1), substituted ''the applicable dollar amount'' for ''$6,000''.

Subsec. (p)(2)(E). Pub. L. 107–16, §611(f)(2), amended heading and text of subpar. (E) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1996, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.''

Subsec. (p)(6)(A)(ii). Pub. L. 107–16, §611(g)(2), inserted at end ''The preceding sentence shall be applied as if the term 'trade or business' for purposes of section 1402 included service described in section 1402(c)(6).''

Subsec. (p)(8). Pub. L. 107–16, §601(b)(5), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,000''.

Subsecs. (q), (r). Pub. L. 107–16, §602(a), added subsec. (q) and redesignated former subsec. (q) as (r).

2000—Subsec. (d)(5). Pub. L. 106–554 amended heading generally. Prior to amendment, heading read as follows: ''Certain distributions of excess contributions after due date for taxable year''.

1998—Subsec. (d)(7). Pub. L. 105–206, §6018(b)(2), inserted ''or simple retirement accounts'' after ''pensions'' in heading.

Subsec. (d)(7)(B). Pub. L. 105–206, §6018(b)(1), inserted ''or 402(k)'' after ''section 402(h)''.

Subsec. (p)(2)(C)(i)(II). Pub. L. 105–206, §6016(a)(1)(C)(i), substituted ''the preceding sentence shall not apply'' for ''the preceding sentence shall apply only in accordance with rules similar to the rules of section 410(b)(6)(C)(i)'' in last sentence.

Subsec. (p)(2)(D)(i). Pub. L. 105–206, §6016(a)(1)(A), struck out ''or (B)'' after ''(A)'' in last sentence.

Subsec. (p)(2)(D)(iii). Pub. L. 105–206, §6016(a)(1)(C)(ii), struck out heading and text of cl. (iii). Text read as follows: ''In the case of an employer who establishes and

maintains a plan under this subsection for 1 or more years and who fails to meet any requirement of this subsection for any subsequent year due to any acquisition, disposition, or similar transaction involving another such employer, rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this subsection.''

Subsec. (p)(8), (9). Pub. L. 105–206, § 6015(a), redesignated par. (8), relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions, as (9).

Subsec. (p)(10). Pub. L. 105–206, § 6016(a)(1)(B), added par. (10).

1997—Subsec. (i). Pub. L. 105–34, § 1601(d)(1)(A), substituted ''31 days'' for ''30 days'' in concluding provisions.

Pub. L. 105–34, § 302(d), struck out ''under regulations'' after ''may require'' in introductory provisions and struck out ''in such regulations'' after ''prescribes'' in pars. (1) and (2)(B).

Subsec. (k)(6)(H). Pub. L. 105–34, § 1601(d)(1)(B), substituted ''of an employer if the terms of simplified employee pensions of such employer'' for ''if the terms of such pension''.

Subsec. (*l*)(2)(B). Pub. L. 105–34, § 1601(d)(1)(C)(i), inserted ''and the issuer of an annuity established under such an arrangement'' after ''under subsection (p)'' in introductory provisions and ''or issuer'' after ''trustee'' in cl. (i).

Subsec. (m)(3). Pub. L. 105–34, § 304(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In the case of an individual retirement account, paragraph (2) shall not apply to—

''(A) any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31,

''(B) any silver coin described in section 5112(e) of title 31, or

''(C) any coin issued under the laws of any State.''

Subsec. (p)(2)(D)(i). Pub. L. 105–34, § 1601(d)(1)(E), inserted at end ''If only individuals other than employees described in subparagraph (A) or (B) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.''

Subsec. (p)(2)(D)(iii). Pub. L. 105–34, § 1601(d)(1)(F), added cl. (iii).

Subsec. (p)(5). Pub. L. 105–34, § 1601(d)(1)(G), substituted ''simple'' for ''simplified'' in introductory provisions.

Subsec. (p)(8). Pub. L. 105–34, § 1601(d)(1)(D), added par. (8) relating to coordination with maximum limitation under subsection (a).

Pub. L. 105–34, § 1501(b), added par. (8) relating to matching contributions on behalf of self-employed individuals not treated as elective employer contributions.

1996—Subsec. (d)(3)(G). Pub. L. 104–188, § 1421(b)(3)(B), added subpar. (G).

Subsec. (d)(5)(A). Pub. L. 104–188, § 1427(b)(3), substituted ''the dollar amount in effect under section 219(b)(1)(A)'' for ''$2,250'' in introductory provisions.

Subsec. (i). Pub. L. 104–188, § 1455(b)(1), inserted ''aggregating $10 or more in any calendar year'' after ''distributions'' in introductory provisions.

Pub. L. 104–188, § 1421(b)(6), inserted at end ''In the case of a simple retirement account under subsection (p), only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection, there shall be furnished, within 30 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.''

Subsec. (k)(2)(C). Pub. L. 104–188, § 1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

Subsec. (k)(6)(H). Pub. L. 104–188, § 1421(c), added subpar. (H).

Subsec. (*l*). Pub. L. 104–188, § 1421(b)(5), designated existing provisions as par. (1), inserted heading, and added par. (2).

Subsecs. (p), (q). Pub. L. 104–188, § 1421(a), added subsec. (p) and redesignated former subsec. (p) as (q).

1994—Subsec. (k)(8). Pub. L. 103–465 inserted before period at end ''; except that any increase in the $300 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50''.

1993—Subsec. (k)(3)(C), (6)(D)(ii). Pub. L. 103–66, § 13212(b)(1), substituted ''$150,000'' for ''$200,000''.

Subsec. (k)(8). Pub. L. 103–66, § 13212(b)(2), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''The Secretary shall adjust the $300 amount in paragraph (2)(C) and the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time and in the same manner as under section 415(d), except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17).''

1992—Subsec. (a)(1). Pub. L. 102–318, § 521(b)(16), substituted ''402(c)'' for ''402(a)(5), 402(a)(7)''.

Subsec. (d)(3)(A)(ii). Pub. L. 102–318, § 521(b)(17), amended clause (ii) generally. Prior to amendment, clause (ii) read as follows: ''the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a), or an annuity plan described in section 403(a) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or''.

Subsec. (d)(3)(B). Pub. L. 102–318, § 521(b)(18), struck out at end ''Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).''

Subsec. (d)(3)(F). Pub. L. 102–318, § 521(b)(19), substituted ''402(c)(7)'' for ''402(a)(6)(H)''.

1989—Subsecs. (a)(6), (b)(3). Pub. L. 101–239, § 7811(m)(7), struck out ''(without regard to subparagraph (C)(ii) thereof)'' after ''section 401(a)(9)''.

Subsec. (d)(6). Pub. L. 101–239, § 7841(a)(1), substituted ''his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b)(2)'' for ''his former spouse under a divorce decree or under a written instrument incident to such divorce''.

1988—Subsec. (d)(2)(C). Pub. L. 100–647, § 1011(b)(1), substituted ''in which the taxable year begins'' for ''with or within which the taxable year ends''.

Subsec. (d)(3)(A). Pub. L. 100–647, § 1011A(a)(2)(A), struck out at end ''Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).''

Subsec. (d)(3)(E). Pub. L. 100–647, § 1018(t)(3)(D), substituted ''paragraph'' for ''subparagraph''.

Subsec. (d)(4). Pub. L. 100–647, § 1011(b)(2), substituted ''Contributions'' for ''Excess contributions'' in heading, struck out ''to the extent that such contribution exceeds the amount allowable as a deduction under section 219'' after ''individual retirement annuity'' in introductory provisions, and substituted ''such contribution'' for ''such excess contribution'' in subpars. (B) and (C) and in last sentence.

Subsec. (d)(5). Pub. L. 100–647, § 1011(b)(3), substituted ''shall be computed without regard to section 219(g)'' for ''(after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B)'' in last sentence.

Subsec. (d)(7). Pub. L. 100–647, § 1011(f)(5), added par. (7).

Subsec. (k)(3)(B). Pub. L. 100–647, §1011(i)(5), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A)—

''(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3), and

''(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.''

Subsec. (k)(3)(C). Pub. L. 100–647, §1011(f)(3)(C), struck out ''total'' before ''compensation''.

Subsec. (k)(6)(A). Pub. L. 100–647, §1011(f)(1), substituted ''Arrangements which qualify'' for ''In general'' in heading and amended text generally. Prior to amendment, text read as follows: ''A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension—

''(i) an employee may elect to have the employer make payments—

''(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

''(II) to the employee directly in cash,

''(ii) an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer, and

''(iii) the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product derived by multiplying the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate by 1.25.''

Subsec. (k)(6)(A)(iv). Pub. L. 100–647, §1011(c)(7)(C), added cl. (iv).

Subsec. (k)(6)(B). Pub. L. 100–647, §1011(f)(2), inserted ''who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained)'' after ''than 25 employees''.

Subsec. (k)(6)(D)(ii). Pub. L. 100–647, §1011(f)(3)(A), substituted ''(not in excess of the first $200,000)'' for ''(within the meaning of section 414(s))''.

Subsec. (k)(6)(F), (G). Pub. L. 100–647, §1011(f)(4), added subpar. (f) and redesignated former subpar. (F) as (G).

Subsec. (k)(7)(B). Pub. L. 100–647, §1011(f)(3)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The term 'compensation' means, in the case of an employee within the meaning of section 401(c)(1), earned income within the meaning of section 401(c)(2).''

Subsec. (k)(8). Pub. L. 100–647, §1011(f)(3)(D), (10), substituted ''paragraphs (3)(C) and (6)(D)(ii)'' for ''paragraph (3)(C)'' and inserted '', except that in the case of years beginning after 1988, the $200,000 amount (as so adjusted) shall not exceed the amount in effect under section 401(a)(17)'' after ''under section 415(d)''.

Subsec. (m)(3). Pub. L. 100–647, §6057(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In the case of an individual retirement account, paragraph (2) shall not apply to any gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31 or any silver coin described in section 5112(e) of title 31.''

Subsec. (*o*)(4)(B)(iv). Pub. L. 100–647, §1011(b)(1), substituted ''in which the taxable year begins'' for ''with or within which the taxable year ends''.

1986—Subsecs. (a)(6), (b)(3). Pub. L. 99–514, §1852(a)(1), substituted ''(without regard to subparagraph (C)(ii) thereof) and the incidental death benefit requirements of section 401(a)'' for ''(relating to required distributions)''.

Subsec. (c)(1). Pub. L. 99–514, §1852(a)(7)(A), substituted ''paragraphs (1) through (6)'' for ''paragraphs (1) through (7)''.

Subsec. (d)(1). Pub. L. 99–514, §1102(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement account or under an individual retirement annuity shall be included in gross income by the payee or distributee, as the case may be, for the taxable year in which the payment or distribution is received. Notwithstanding any other provision of this title (including chapters 11 and 12), the basis any person in such an account or annuity is zero.''

Subsec. (d)(2). Pub. L. 99–514, §1102(c), substituted ''Special rules for applying section 72'' for ''Distributions of annuity contracts'' in heading and amended par. generally. Prior to amendment, par. (2) read as follows: ''Paragraph (1) does not apply to any annuity contract which meets the requirements of paragraphs (1), (3), (4), and (5) of subsection (b) and which is distributed from an individual retirement account. Section 72 applies to any such annuity contract, and for purposes of section 72 the investment in such contract is zero.''

Subsec. (d)(3)(A). Pub. L. 99–514, §1875(c)(8)(C), inserted at end ''Clause (ii) shall not apply during the 5-year period beginning on the date of the qualified total distribution referred to in such clause if the individual was treated as a 5-percent owner with respect to such distribution under section 402(a)(5)(F)(ii).''

Subsec. (d)(3)(A)(ii). Pub. L. 99–514, §1875(c)(8)(A), (B), struck out ''(other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)'' after ''section 501(a)'' and struck out ''(other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan)'' after ''section 403(a)''.

Pub. L. 99–514, §1121(c)(2), made amendment identical to Pub. L. 99–514, §1875(c)(8)(A), (B), see above.

Subsec. (d)(3)(E). Pub. L. 99–514, §1852(a)(5)(C), added subpar. (E).

Subsec. (d)(3)(F). Pub. L. 99–514, §1122(e)(2)(B), added subpar. (F).

Subsec. (d)(5). Pub. L. 99–514, §1102(b)(2), inserted at end ''For purposes of this paragraph, the amount allowable as a deduction under section 219 (after application of section 408(*o*)(2)(B)(ii)) shall be increased by the nondeductible limit under section 408(*o*)(2)(B).''

Subsec. (d)(5)(A). Pub. L. 99–514, §1875(c)(6)(A), substituted ''the dollar limitation in effect under section 415(c)(1)(A) for such taxable year'' for ''$15,000''.

Subsec. (f). Pub. L. 99–514, §1123(d)(2), struck out subsec. (f) which related to additional tax on certain amounts included in gross income before age 59½.

Subsec. (i). Pub. L. 99–514, §1102(e)(2), amended last sentence generally. Prior to amendment, last sentence read as follows: ''The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.''

Subsec. (k)(2). Pub. L. 99–514, §1108(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

''(A) has attained age 21, and

''(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(3).''

Subsec. (k)(2)(A). Pub. L. 99–514, §1898(a)(5), substituted ''age 21'' for ''age 25''.

Subsec. (k)(3)(A). Pub. L. 99–514, §1108(g)(4), substituted ''year'' for ''calendar year''.

Pub. L. 99–514, §1108(g)(1)(A), substituted ''any highly compensated employee (within the meaning of section 414(q))'' for ''any employee who is—

''(i) an officer,

''(ii) a shareholder,

''(iii) a self-employed individual, or

''(iv) highly compensated''.

Subsec. (k)(3)(C). Pub. L. 99–514, §1108(g)(1)(B), inserted ''and except as provided in subparagraph (D),''

and ''(other than contributions under an arrangement described in paragraph (6))'', and struck out end sentence which read as follows: ''The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).''

Subsec. (k)(3)(D), (E). Pub. L. 99–514, § 1108(g)(1)(C), added subpar. (D) and struck out former subpar. (D), treatment of certain contributions and taxes, which read ''Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contribution Act), title II of the Social Security Act, or any other Federal or State law. If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(*l*)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension.'', and former subpar. (E), integrated plan defined, which read ''For purposes of subparagraph (D), the term 'integrated plan' means a plan which meets the requirements of section 401(a) or 403(a) but would not meet such requirements if contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account.''

Subsec. (k)(6). Pub. L. 99–514, § 1108(a), added par. (6).

Subsec. (k)(7)(C). Pub. L. 99–514, § 1108(f), added subpar. (C).

Subsec. (k)(8). Pub. L. 99–514, § 1108(e), added par. (8).

Subsec. (k)(9). Pub. L. 99–514, § 1108(g)(6), added par. (9).

Subsec. (m)(3). Pub. L. 99–514, § 1144(a), added par. (3).

Subsecs. (*o*), (p). Pub. L. 99–514, § 1102(a), added subsec. (*o*) and redesignated former subsec. (*o*) as (p).

1984—Subsec. (a)(1). Pub. L. 98–369, § 491(d)(19), substituted ''or 403(b)(8)'' for ''403(b)(8), 405(d)(3), or 409(b)(3)(C)''.

Subsec. (a)(6). Pub. L. 98–369, § 521(b)(1), added par. (6) and struck out former par. (6) which provided that the entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary, over (A) the life of such individual or the lives of such individual and his spouse, or (B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

Subsec. (a)(7). Pub. L. 98–369, § 521(b)(1), struck out par. (7) which provided that if (A) an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

Subsec. (b)(3). Pub. L. 98–369, § 521(b)(2), added par. (3) and struck out former par. (3) which provided that the entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary, over (A) the life of such owner or the lives of such owner and his spouse, or (B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

Subsec. (b)(4), (5). Pub. L. 98–369, § 521(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided that if (A) the owner dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

Subsec. (d)(3)(A)(i). Pub. L. 98–369, § 491(d)(20), struck out ''or retirement bond'' before ''for the benefit''.

Subsec. (d)(3)(A)(ii). Pub. L. 98–369, § 522(d)(12), substituted ''rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust'' for ''rollover contribution from an employee's trust''.

Subsec. (d)(3)(B). Pub. L. 98–369, § 491(d)(21), substituted ''or an individual retirement annuity'' for '', individual retirement annuity, or a retirement bond''.

Subsec. (d)(3)(C), (D). Pub. L. 98–369, § 713(g)(2), designated the subpar. (C), as added by section 335(a)(1) of Pub. L. 97–248, relating to permitting partial rollovers, as subpar. (D).

Subsec. (d)(3)(D)(ii). Pub. L. 98–369, § 491(d)(22), struck out ''bond,'' after ''annuity,''.

Subsec. (d)(6). Pub. L. 98–369, § 491(d)(23), substituted ''or an individual retirement annuity'' for '', individual retirement annuity, or retirement bond'', and ''or annuity'' for '', annuity, or bond''.

Subsec. (h). Pub. L. 98–369, § 713(c)(2)(B), substituted ''(as defined in subsection (n))'' for ''(as defined in section 401(d)(1))''.

Subsec. (i). Pub. L. 98–369, § 147(a), inserted ''(and the years to which they relate)''.

Subsec. (k)(1). Pub. L. 98–369, § 713(f)(2), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (k)(3)(C). Pub. L. 98–369, § 713(f)(5)(B), inserted provision which required annual adjustment of the $200,000 amount concurrently with the dollar amount adjustment in section 415(c)(1)(A).

Subsec. (k)(3)(D). Pub. L. 98–369, § 713(j), substituted in penultimate sentence ''OASDI contributions (as defined in section 401(*l*)(2)'' for ''taxes paid under section 3111 (relating to tax on employers) with respect to an employee'' and ''as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension'' for ''as a contribution by the employer to an employee's simplified pension'' and struck out third sentence which provided ''If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees.''

Subsec. (k)(3)(E). Pub. L. 98–369, § 491(d)(24), substituted ''or 403(a)'' for '', 403(a), or 405(a)''.

1983—Subsec. (j). Pub. L. 97–448, § 103(d)(1)(B), substituted ''$17,000'' for ''$15,000'' in provisions preceding par. (1).

Subsec. (k)(3)(C)(ii). Pub. L. 97–448, § 103(d)(1)(A), inserted ''(other than an employee within the meaning of section 401(c)(1))'' after ''a simplified employee pension on behalf of each employee''.

Subsecs. (m), (n). Pub. L. 97–448, §103(e)(1), amended directory language of Pub. L. 97–34, §314(b)(1), thereby correcting subsec. designations. See 1981 Amendment note below for subsecs. (m) and (n).

1982—Subsec. (a)(2). Pub. L. 97–248, §237(e)(3)(A), substituted reference to subsection (n) of this section, for reference to section 401(d)(1).

Subsec. (a)(7). Pub. L. 97–248, §243(a)(1), amended par. (7) generally, designating existing provisions as subpars. (A) and (B), in subpar. (B), as so designated, striking out ''if'' before ''distribution'', in provisions following subpar. (B) substituting ''will be distributed within 5 years after his death (or the death of the surviving spouse)'' for ''will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries'', and substituting ''shall not apply'' for ''does not apply''.

Subsec. (b)(4). Pub. L. 97–248, §243(a)(2), amended par. (4) generally, designating existing provisions, as subpars. (A) and (B), in subpar. (B), as so redesignated, striking out ''if'' before ''distribution'', in provisions following subpar. (B) substituting ''will be distributed within 5 years after his death (or the death of the surviving spouse)'' for ''will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries'', and substituting ''shall not apply'' for ''shall have no application''.

Subsec. (d)(3)(C). Pub. L. 97–248, §243(b)(1)(A), added subpar. (C) relating to denial of rollover treatment for inherited accounts.

Pub. L. 97–248, §335(a)(1), added subpar. (C) relating to permitting partial rollovers.

Subsec. (j). Pub. L. 97–248, §238(d)(3), amended subsec. (j) generally, substituting provisions increasing amount by the amount of the limitation in effect under section 415(c)(1)(A), for provisions increasing amount by substituting ''$15,000'' for ''$2,000''.

Subsec. (k)(1). Pub. L. 97–248, §238(d)(4)(B), struck out reference to par. (6) of this subsection.

Subsec. (k)(3)(C). Pub. L. 97–248, §238(d)(4)(C), amended subpar. (C) generally, striking out cl. ''(i)'' designation and cl. (ii) which related to taking into account compensation in excess of $100,000 with respect to a simplified employee pension.

Subsec. (k)(6). Pub. L. 97–248, §238(d)(4)(A), struck out par. (6) which related to prohibition on employer maintaining plan to which section 401(j) applies.

Subsecs. (n), (*o*). Pub. L. 97–248, §237(e)(3)(B), added subsec. (n) and redesignated former subsec. (n) as (*o*).

1981—Subsec. (a)(1). Pub. L. 97–34, §313(b)(2), inserted reference to section 405(d)(3).

Pub. L. 97–34, §311(g)(1)(A), substituted ''$2,000'' for ''$1,500''.

Subsec. (b). Pub. L. 97–34, §311(g)(1)(B), substituted in par. (2)(B) and provision following par. (5) ''$2,000'' for ''$1,500''.

Subsec. (d)(4). Pub. L. 97–34, §311(h)(2), substituted section ''219'' for ''219 or 220'' in provision preceding subpar. (A) and in subpar. (B).

Subsec. (d)(5)(A). Pub. L. 97–34, §312(c)(5), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, §311(g)(2), (h)(2), substituted ''$2,250'' for ''$1,750'' and ''219'' for ''219 or 220'' in two places.

Subsec. (j). Pub. L. 97–34, §312(c)(5), substituted ''$15,000'' for ''$7,500''.

Pub. L. 97–34, §311(g)(1)(C), substituted ''$2,000'' for ''$1,500''.

Subsec. (k)(3)(C). Pub. L. 97–34, §312(b)(2), designated provision relating to compensation bearing a uniform relationship to total compensation as cl. (i), and in cl. (i) as so designated, substituted ''$200,000'' for ''$100,000'', and added cl. (ii).

Subsecs. (m), (n). Pub. L. 97–34, §314(b)(1), as amended by Pub. L. 97–448, §103(e)(1), added subsec. (m) and redesignated former subsec. (m) as (n).

1980—Subsec. (a)(1). Pub. L. 96–222, §101(a)(14)(B), inserted reference to section 402(a)(7).

Subsec. (d)(5). Pub. L. 96–222, §101(a)(10)(C), (14)(E)(ii), in subpar. (A) inserted provisions requiring that if employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar amount of the preceding sentence be increased by the lessor of the amount of such contributions or $7,500 and restructured subpar. (B).

Subsec. (j)(3). Pub. L. 96–222, §101(a)(10)(J)(i), struck out par. (3) which made reference to paragraph (5) of subsection (b).

Subsec. (k). Pub. L. 96–222, §101(a)(10)(A), (F), (G), substituted in par. (1) ''(5), and (6)'' for ''and (5)'' and in par. (3)(D) ''If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid'' for ''Taxes paid'', inserted in par. (2) provisions requiring that for purposes of this paragraph there be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(2) and pars. (3)(E) and (6), and redesignated former par. (6) as (7).

Subsec. (k)(2), (3)(B)(i). Pub. L. 96–605, §225(b)(3), (4), substituted ''section 410(b)(3)'' for ''section 410(b)(2)''.

1978—Subsec. (a)(1). Pub. L. 95–600, §156(c)(3), inserted reference to section 403(b)(8).

Subsec. (b)(2). Pub. L. 95–600, §157(d)(1), (e)(1)(A), designated existing provisions as subpars. (B) and (C) and added subpar. (A), and in subpar. (B) as so designated, inserted ''on behalf of any individual'' after ''annual premium'', respectively.

Subsec. (d)(3)(A)(iii). Pub. L. 95–600, §156(c)(1), added cl. (iii).

Subsec. (d)(3)(B). Pub. L. 95–600, §157(g)(3), (h)(2), inserted provision relating to the applicability of clause (ii) of subparagraph (A) to any amount paid or distributed out of an individual retirement account or annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) and substituted ''1-year period'' for ''3-year period''.

Subsec. (d)(4). Pub. L. 95–600, §703(c)(4), amended Pub. L. 94–455, §1501(b)(5). See 1976 Amendment note below.

Subsec. (d)(5), (6). Pub. L. 95–600, §157(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (j) to (m). Pub. L. 95–600, §152(a), added subsecs. (j) to (*l*) and redesignated former subsec. (j) as (m).

1976—Subsecs. (a)(2), (6), (b). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (c)(2). Pub. L. 94–455, §1501(b)(2), substituted ''member (or spouse of an employee or member)'' for ''member''.

Subsec. (d)(1). Pub. L. 94–455, §1501(b)(10), substituted ''Notwithstanding any other provision of this title (including chapters 11 and 12), the basis'' for ''The basis''.

Subsec. (d)(4). Pub. L. 94–455, §1501(b)(5), as amended by Pub. L. 95–600, §703(c)(4), inserted reference to section 220 and substituted ''In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such excess contribution is made'' for ''Any net income described in subparagraph (C) shall be included in the gross income of the individual for the taxable year in which received''.

Subsecs. (h), (i). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–343, div. C, title II, §205(b), Oct. 3, 2008, 122 Stat. 3865, provided that: ''The amendment made by this section [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110–172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109–280, to which such amendment relates, see section 3(j) of Pub. L. 110–172, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–432 applicable to taxable years beginning after Dec. 31, 2006, see section 307(c) of Pub. L. 109–432, set out as a note under section 223 of this title.

Pub. L. 109–280, title XII, § 1201(c)(1), Aug. 17, 2006, 120 Stat. 1066, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to distributions made in taxable years beginning after December 31, 2005.''

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(d) of Pub. L. 108–311 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 404(f) of Pub. L. 108–311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 601(b) of Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2001, see section 601(c) of Pub. L. 107–16, set out as an Effective and Termination Dates of 2001 Amendment note under section 219 of this title.

Pub. L. 107–16, title VI, § 602(c), June 7, 2001, 115 Stat. 96, provided that: ''The amendments made by this section [amending this section and section 1003 of Title 29, Labor] shall apply to plan years beginning after December 31, 2002.''

Amendment by section 611(c)(1), (f)(1), (2), (g)(2) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.

Amendment by section 641(e)(8) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107–16, set out as a note under section 402 of this title.

Pub. L. 107–16, title VI, § 642(c), June 7, 2001, 115 Stat. 122, provided that:

''(1) EFFECTIVE DATE.—The amendments made by this section [amending this section and section 403 of this title] shall apply to distributions after December 31, 2001.

''(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 [Pub. L. 99–514, set out as a note under section 402 of this title] shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.''

Amendment by section 643(c) of Pub. L. 107–16 applicable to distributions made after Dec. 31, 2001, see section 643(d) of Pub. L. 107–16, set out as a note under section 401 of this title.

Amendment by section 644(b) of Pub. L. 107–16 applicable to distributions after Dec. 31, 2001, see section 644(c) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018(b) of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

Amendment by sections 6015(a) and 6016(a)(1) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 302(d) of Pub. L. 105–34 applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as a note under section 219 of this title.

Section 304(b) of Pub. L. 105–34 provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1997.''

Section 1501(c)(2) of Pub. L. 105–34 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to years beginning after December 31, 1996.''

Amendment by section 1601(d)(1)(A)–(C)(i), (D)–(G) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(a), (b)(3)(B), (5), (6), (c) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Amendment by section 1427(b)(3) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1427(c) of Pub. L. 104–188, set out as a note under section 219 of this title.

Amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104–188, set out as a note under section 414 of this title.

Section 1455(e) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and sections 6047, 6652, 6693, and 6724 of this title] shall apply to returns, reports, and other statements the due date for which (determined without regard to extensions) is after December 31, 1996.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to years beginning after Dec. 31, 1994, and, to the extent of providing for the rounding of indexed amounts, not applicable to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994, see section 732(e) of Pub. L. 103–465, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable, except as otherwise provided, to benefits accruing in plan years beginning after Dec. 31, 1993, see section 13212(d) of Pub. L. 103–66, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7811(m)(7) of Pub. L. 101–239 effective, except as otherwise provided, as if included in

the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Section 7841(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 414 of this title] shall apply to transfers after the date of the enactment of this Act [Dec. 19, 1989] in taxable years ending after such date.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(C) of Pub. L. 100–647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99–514, see section 1011(c)(7)(E) of Pub. L. 100–647, set out as a note under section 401 of this title.

Section 1011A(a)(2)(B) of Pub. L. 100–647 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to rollover contributions made in taxable years beginning after December 31, 1986.''

Amendment by sections 1011(b)(1)–(3), (f)(1)–(5), (10), (i)(5) and 1018(t)(3)(D) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6057(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to acquisitions after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1102(a), (b)(2), (c), (e)(2) of Pub. L. 99–514 applicable to contributions and distributions for taxable years beginning after Dec. 31, 1986, see section 1102(g) of Pub. L. 99–514, set out as a note under section 219 of this title.

Amendment by section 1108(a), (d)–(g)(1), (4), (6) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, except that section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954 (as in effect before the amendments made by section 1108 of Pub. L. 99–514) shall continue to apply for years beginning after Dec. 31, 1986, and before Jan. 1, 1989, except that employer contributions under an arrangement under section 408(k)(6) of the Internal Revenue Code of 1986 (as added by section 1108 of Pub. L. 99–514) may not be integrated under section 408(k)(3)(D) and (E) of the Internal Revenue Code of 1954, see section 1108(h) of Pub. L. 99–514, as amended, set out as a note under section 219 of this title.

Amendment by section 1121(c)(2) of Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and transition rules, see section 1121(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1122(e)(2)(B) of Pub. L. 99–514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1123(d)(2) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, except as otherwise provided, see section 1123(e) of Pub. L. 99–514, set out as a note under section 72 of this title.

Section 1144(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall apply to acquisitions after December 31, 1986.''

Amendment by sections 1852(a)(1), (5)(C), (7)(A) and 1875(c)(8) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Amendment by section 1875(c)(6)(A) of Pub. L. 99–514 effective as if included in the amendments made by section 238 of Pub. L. 97–248, see section 1875(c)(12) of Pub. L. 99–514, set out as a note under section 62 of this title.

Section 1898(a)(5) of Pub. L. 99–514 provided that the amendment made by that section is effective with respect to plan years beginning after Oct. 22, 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 147(a) of Pub. L. 98–369 applicable to contributions made after Dec. 31, 1984, see section 147(d)(1) of Pub. L. 98–369, set out as a note under section 219 of this title.

Amendment by section 491(d)(19)–(24) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Amendment by section 521(b) of Pub. L. 98–369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 522(d)(12) of Pub. L. 98–369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98–369, set out as a note under section 402 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by sections 237 and 238 of Pub. L. 97–248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97–248, set out as an Effective Date note under section 416 of this title.

Section 243(c) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title VII, §713(g)(1), July 18, 1984, 98 Stat. 960, provided that: ''The amendments made by this section [amending this section and sections 219 and 409 of this title] shall apply with respect to individuals dying after December 31, 1983.''

Section 335(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section and section 409 of this title] shall apply to distributions made after December 31, 1982, in taxable years ending after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 311(g)(1)(A)–(C), (2), (h)(2) of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i) of Pub. L. 97–34, set out as a note under section 219 of this title.

Amendment by section 312(b)(2), (c)(5) of Pub. L. 97–34 applicable to plans which include employees within the meaning of section 401(c)(1) with respect to taxable years beginning after Dec. 31, 1981, see section 312(f) of Pub. L. 97–34, set out as a note under section 72 of this title.

Amendment by section 313(b)(2) of Pub. L. 97–34 applicable to redemptions after Aug. 13, 1981, in taxable years ending after such date, see section 313(c) of Pub. L. 97–34, set out as a note under section 219 of this title.

Section 314(b)(2) of Pub. L. 97–34 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to property acquired after December 31, 1981, in taxable years ending after such date.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–605 applicable with respect to plan years beginning after Dec. 31, 1980, see section 225(c) of Pub. L. 96–605, set out as a note under section 401 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 152(h) of Pub. L. 95–600 provided that: ''The amendments made by this section [amending this section and sections 219, 401, 404, 414, and 415 of this title] shall apply to taxable years beginning after December 31, 1978.''

Amendment by section 156(c)(1), (3) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1977, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as a note under section 403 of this title.

Section 157(c)(2)(A) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to distributions in taxable years beginning after December 31, 1975.''

Section 157(d)(2) of Pub. L. 95–600 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts issued after the date of the enactment of this Act [Nov. 6, 1978].''

Amendment by section 157(h)(2) of Pub. L. 95–600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95–600, set out as a note under section 402 of this title.

Section 157(e)(2) of Pub. L. 95–600 provided that: ''The amendments made by paragraph (1) [amending this section and section 409 of this title] shall apply to taxable years beginning after December 31, 1976.''

Amendment by section 157(g)(3) of Pub. L. 95–600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95–600, set out as a note under section 402 of this title.

Amendment by section 703(c)(4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1976, see section 703(c)(5) of Pub. L. 95–600, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1501(b)(2), (5), (10) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1501(d) of Pub. L. 94–455, set out as a note under section 62 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1974, see section 2002(i)(1) of Pub. L. 93–406, set out as a note under section 219 of this title.

DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS

Pub. L. 109–280, title VIII, § 830, Aug. 17, 2006, 120 Stat. 1002, provided that:

''(a) IN GENERAL.—The Secretary of the Treasury (or the Secretary's delegate) shall make available a form (or modify existing forms) for use by individuals to direct that a portion of any refund of overpayment of tax imposed by chapter 1 of the Internal Revenue Code of 1986 be paid directly to an individual retirement plan (as defined in section 7701(a)(37) of such Code) of such individual.

''(b) EFFECTIVE DATE.—The form required by subsection (a) shall be made available for taxable years beginning after December 31, 2006.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§ 1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§ 521–523] of title V of Pub. L. 102–318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULE FOR CONTRIBUTIONS FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1978

Section 157(c)(2)(B) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of contributions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall be applied as if such paragraph did not contain any dollar limitation.''

EXCHANGE OF FIXED PREMIUM ANNUITY OR ENDOWMENT CONTRACT ISSUED ON OR BEFORE NOV. 6, 1978, FOR INDIVIDUAL RETIREMENT ANNUITY

Section 157(d)(3) of Pub. L. 95–600, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In the case of any annuity or endowment contract issued on or before the date of the enactment of this Act [Nov. 6, 1978] which would be an individual retirement annuity within the meaning of section 408(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (1) [amending subsec. (b)(2) of this section]) but for the fact that the premiums under the contract are fixed, at the election of the taxpayer an exchange before January 1, 1981, of that contract for an individual retirement annuity within the meaning of such section 408(b) (as amended by paragraph (1)) shall be treated as a nontaxable exchange which does not constitute a distribution.''

§ 408A. Roth IRAs

(a) General rule

Except as provided in this section, a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.

(b) Roth IRA

For purposes of this title, the term ''Roth IRA'' means an individual retirement plan (as defined in section 7701(a)(37)) which is designated (in such manner as the Secretary may prescribe) at the time of establishment of the plan as a Roth IRA. Such designation shall be made in such manner as the Secretary may prescribe.

(c) Treatment of contributions

(1) No deduction allowed

No deduction shall be allowed under section 219 for a contribution to a Roth IRA.

(2) Contribution limit

The aggregate amount of contributions for any taxable year to all Roth IRAs maintained for the benefit of an individual shall not exceed the excess (if any) of—

(A) the maximum amount allowable as a deduction under section 219 with respect to such individual for such taxable year (computed without regard to subsection (d)(1) or (g) of such section), over

(B) the aggregate amount of contributions for such taxable year to all other individual retirement plans (other than Roth IRAs) maintained for the benefit of the individual.

(3) Limits based on modified adjusted gross income

(A) Dollar limit

The amount determined under paragraph (2) for any taxable year shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced (but not below zero) by the amount which bears the same ratio to such amount as—

(i) the excess of—

(I) the taxpayer's adjusted gross income for such taxable year, over

(II) the applicable dollar amount, bears to

(ii) $15,000 ($10,000 in the case of a joint return or a married individual filing a separate return).

The rules of subparagraphs (B) and (C) of section 219(g)(2) shall apply to any reduction under this subparagraph.

(B) Definitions

For purposes of this paragraph—

(i) adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and

(ii) the applicable dollar amount is—

(I) in the case of a taxpayer filing a joint return, $150,000,

(II) in the case of any other taxpayer (other than a married individual filing a separate return), $95,000, and

(III) in the case of a married individual filing a separate return, zero.

(C) Marital status

Section 219(g)(4) shall apply for purposes of this paragraph.

(D) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2006, the dollar amounts in subclauses (I) and (II) of subparagraph (B)(ii) shall each be increased by an amount equal to—

(i) such dollar amount, multiplied by

(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2005'' for ''calendar year 1992'' in subparagraph (B) thereof.

Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $1,000.

(4) Contributions permitted after age 70½

Contributions to a Roth IRA may be made even after the individual for whom the account is maintained has attained age 70½.

(5) Mandatory distribution rules not to apply before death

Notwithstanding subsections (a)(6) and (b)(3) of section 408 (relating to required distributions), the following provisions shall not apply to any Roth IRA:

(A) Section 401(a)(9)(A).

(B) The incidental death benefit requirements of section 401(a).

(6) Rollover contributions

(A) In general

No rollover contribution may be made to a Roth IRA unless it is a qualified rollover contribution.

(B) Coordination with limit

A qualified rollover contribution shall not be taken into account for purposes of paragraph (2).

(7) Time when contributions made

For purposes of this section, the rule of section 219(f)(3) shall apply.

(d) Distribution rules

For purposes of this title—

(1) Exclusion

Any qualified distribution from a Roth IRA shall not be includible in gross income.

(2) Qualified distribution

For purposes of this subsection—

(A) In general

The term ''qualified distribution'' means any payment or distribution—

(i) made on or after the date on which the individual attains age 59½,

(ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual,

(iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7)), or

(iv) which is a qualified special purpose distribution.

(B) Distributions within nonexclusion period

A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under subparagraph (A) if such payment or distribution is made within the 5-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual.

(C) Distributions of excess contributions and earnings

The term ''qualified distribution'' shall not include any distribution of any contribution described in section 408(d)(4) and any net income allocable to the contribution.

(3) Rollovers from an eligible retirement plan other than a Roth IRA

(A) In general

Notwithstanding sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16), in the case of any distribution to which this paragraph applies—

(i) there shall be included in gross income any amount which would be includible were it not part of a qualified rollover contribution,

(ii) section 72(t) shall not apply, and

(iii) unless the taxpayer elects not to have this clause apply, any amount required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be so included ratably over the 2-taxable-year period beginning with the first taxable year beginning in 2011.

Any election under clause (iii) for any distributions during a taxable year may not be changed after the due date for such taxable year.

(B) Distributions to which paragraph applies

This paragraph shall apply to a distribution from an eligible retirement plan (as defined by section 402(c)(8)(B)) maintained for the benefit of an individual which is contributed to a Roth IRA maintained for the benefit of such individual in a qualified rollover contribution. This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)[1]

(C) Conversions

The conversion of an individual retirement plan (other than a Roth IRA) to a Roth IRA shall be treated for purposes of this paragraph as a distribution to which this paragraph applies.

(D) Additional reporting requirements

Trustees of Roth IRAs, trustees of individual retirement plans, persons subject to section 6047(d)(1), or all of the foregoing persons, whichever is appropriate, shall include such additional information in reports required under section 408(i) or 6047 as the Secretary may require to ensure that amounts required to be included in gross income under subparagraph (A) are so included.

(E) Special rules for contributions to which 2-year averaging applies

In the case of a qualified rollover contribution to a Roth IRA of a distribution to which subparagraph (A)(iii) applied, the following rules shall apply:

(i) Acceleration of inclusion

(I) In general

The amount otherwise required to be included in gross income for any taxable year beginning in 2010 or the first taxable year in the 2-year period under subparagraph (A)(iii) shall be increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

(II) Limitation on aggregate amount included

The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 2-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.

(ii) Death of distributee

(I) In general

If the individual required to include amounts in gross income under such subparagraph dies before all of such amounts are included, all remaining amounts shall be included in gross income for the taxable year which includes the date of death.

(II) Special rule for surviving spouse

If the spouse of the individual described in subclause (I) acquires the individual's entire interest in any Roth IRA to which such qualified rollover contribution is properly allocable, the spouse may elect to treat the remaining amounts described in subclause (I) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of such individual in which such amounts would otherwise have been includible. Any such election may not be made or changed after the due date for the spouse's taxable year which includes the date of death.

(F) Special rule for applying section 72

(i) In general

If—

(I) any portion of a distribution from a Roth IRA is properly allocable to a qualified rollover contribution described in this paragraph; and

(II) such distribution is made within the 5-taxable year period beginning with the taxable year in which such contribution was made,

then section 72(t) shall be applied as if such portion were includible in gross income.

(ii) Limitation

Clause (i) shall apply only to the extent of the amount of the qualified rollover contribution includible in gross income under subparagraph (A)(i).

(4) Aggregation and ordering rules

(A) Aggregation rules

Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.

(B) Ordering rules

For purposes of applying this section and section 72 to any distribution from a Roth IRA, such distribution shall be treated as made—

[1] So in original. Probably should be followed by a period.

(i) from contributions to the extent that the amount of such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA; and

(ii) from such contributions in the following order:

(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

Any distribution allocated to a qualified rollover contribution under clause (ii)(II) shall be allocated first to the portion of such contribution required to be included in gross income.

(5) Qualified special purpose distribution

For purposes of this section, the term ''qualified special purpose distribution'' means any distribution to which subparagraph (F) of section 72(t)(2) applies.

(6) Taxpayer may make adjustments before due date

(A) In general

Except as provided by the Secretary, if, on or before the due date for any taxable year, a taxpayer transfers in a trustee-to-trustee transfer any contribution to an individual retirement plan made during such taxable year from such plan to any other individual retirement plan, then, for purposes of this chapter, such contribution shall be treated as having been made to the transferee plan (and not the transferor plan).

(B) Special rules

(i) Transfer of earnings

Subparagraph (A) shall not apply to the transfer of any contribution unless such transfer is accompanied by any net income allocable to such contribution.

(ii) No deduction

Subparagraph (A) shall apply to the transfer of any contribution only to the extent no deduction was allowed with respect to the contribution to the transferor plan.

(7) Due date

For purposes of this subsection, the due date for any taxable year is the date prescribed by law (including extensions of time) for filing the taxpayer's return for such taxable year.

(e) Qualified rollover contribution

For purposes of this section—

(1) In general

The term ''qualified rollover contribution'' means a rollover contribution—

(A) to a Roth IRA from another such account,

(B) from an eligible retirement plan, but only if—

(i) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

(ii) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

(2) Military death gratuity

(A) In general

The term ''qualified rollover contribution'' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

(B) Annual limit on number of rollovers not to apply

Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by the[2] subparagraph (A).

(C) Application of section 72

For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.

(f) Individual retirement plan

For purposes of this section—

(1) a simplified employee pension or a simple retirement account may not be designated as a Roth IRA; and

(2) contributions to any such pension or account shall not be taken into account for purposes of subsection (c)(2)(B).

(Added Pub. L. 105–34, title III, § 302(a), Aug. 5, 1997, 111 Stat. 825; amended Pub. L. 105–206, title VI, § 6005(b)(1)–(7), (9), title VII, § 7004(a), July 22, 1998, 112 Stat. 796–800, 833; Pub. L. 105–277, div. J, title IV, § 4002(j), Oct. 21, 1998, 112 Stat. 2681–908; Pub. L. 107–16, title VI, § 617(e)(1), June 7, 2001, 115 Stat. 106; Pub. L. 109–222, title V, § 512(a), (b), May 17, 2006, 120 Stat. 365; Pub. L. 109–280, title VIII, §§ 824(a), (b), 833(c), Aug. 17, 2006, 120 Stat. 998, 1004; Pub. L. 110–245, title I, § 109(a), (b), June 17, 2008, 122 Stat. 1631, 1632; Pub. L. 110–458, title I, § 108(d), (h), Dec. 23, 2008, 122 Stat. 5109.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title and Internal

[2] So in original. The word ''the'' probably should not appear.

Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2008—Subsec. (c)(3)(B). Pub. L. 110–458, § 108(d)(1), in introductory provisions, struck out second ''an'' before ''eligible'' and ''other than a Roth IRA'' before ''during any taxable year'', and inserted as concluding provisions ''This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A).''

Subsec. (c)(3)(C), (E). Pub. L. 110–458, § 108(h)(1), redesignated subpar. (C) relating to inflation adjustment as subpar. (E).

Subsec. (d)(3)(B). Pub. L. 110–458, § 108(d)(2), struck out ''(other than a Roth IRA)'' after ''section 402(c)(8)(B))'' and inserted at end ''This paragraph shall not apply to a distribution which is a qualified rollover contribution from a Roth IRA or a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A)''.

Subsec. (e). Pub. L. 110–245, § 109(b), amended subsec. (e), as in effect after amendment by section 824(a) of Pub. L. 109–280, by amending text generally. Prior to amendment, text read as follows: ''For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution—

''(1) to a Roth IRA from another such account,

''(2) from an eligible retirement plan, but only if—

''(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

''(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.''

Pub. L. 110–245, § 109(a), amended subsec. (e), as in effect before amendment by section 824(a) of Pub. L. 109–280, by reenacting heading without change and amending text to read as follows: ''For purposes of this section—

''(1) IN GENERAL.—The term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). Such term includes a rollover contribution described in section 402A(c)(3)(A). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

''(2) MILITARY DEATH GRATUITY.—

''(A) IN GENERAL.—The term 'qualified rollover contribution' includes a contribution to a Roth IRA maintained for the benefit of an individual made before the end of the 1-year period beginning on the date on which such individual receives an amount under section 1477 of title 10, United States Code, or section 1967 of title 38 of such Code, with respect to a person, to the extent that such contribution does not exceed—

''(i) the sum of the amounts received during such period by such individual under such sections with respect to such person, reduced by

''(ii) the amounts so received which were contributed to a Coverdell education savings account under section 530(d)(9).

''(B) ANNUAL LIMIT ON NUMBER OF ROLLOVERS NOT TO APPLY.—Section 408(d)(3)(B) shall not apply with respect to amounts treated as a rollover by subparagraph (A).

''(C) APPLICATION OF SECTION 72.—For purposes of applying section 72 in the case of a distribution which is not a qualified distribution, the amount treated as a rollover by reason of subparagraph (A) shall be treated as investment in the contract.'' See 2006 Amendment note below.

2006—Subsec. (c)(3)(B). Pub. L. 109–222, § 512(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B). Prior to amendment, text read as follows: ''A taxpayer shall not be allowed to make a qualified rollover contribution to a Roth IRA from an individual retirement plan other than a Roth IRA during any taxable year if, for the taxable year of the distribution to which such contribution relates—

''(i) the taxpayer's adjusted gross income exceeds $100,000, or

''(ii) the taxpayer is a married individual filing a separate return.

This subparagraph shall not apply to a qualified rollover contribution from a Roth IRA or to a qualified rollover contribution from a designated Roth account which is a rollover contribution described in section 402A(c)(3)(A).'' See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, § 824(b)(1), substituted ''eligible retirement plan'' for ''IRA'' in heading and ''an eligible retirement plan (as defined by section 402(c)(8)(B))'' for ''individual retirement plan'' in introductory provisions. See Effective Date of 2006 Amendment note below.

Subsec. (c)(3)(B)(i). Pub. L. 109–222, § 512(a)(2), substituted ''except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and'' for ''except that—

''(I) any amount included in gross income under subsection (d)(3) shall not be taken into account; and

''(II) any amount included in gross income by reason of a required distribution under a provision described in paragraph (5) shall not be taken into account for purposes of subparagraph (B)(i), and''.

Subsec. (c)(3)(C). Pub. L. 109–222, § 512(a)(1), redesignated subpar. (D), relating to marital status, as (C). Former subpar. (C) redesignated (B). See Effective Date of 2006 Amendment note below.

Pub. L. 109–280, § 833(c), added subpar. (C) relating to inflation adjustment.

Subsec. (c)(3)(D), (E). Pub. L. 110–458, § 108(h)(2), redesignated subpar. (E) as (D) and substituted ''subparagraph (B)(ii)'' for ''subparagraph (C)(ii)''.

Subsec. (d)(3). Pub. L. 109–280, § 824(b)(2)(E), substituted ''an eligible retirement plan'' for ''an IRA'' in heading.

Subsec. (d)(3)(A). Pub. L. 109–280, § 824(b)(2)(A), substituted ''sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16)'' for ''section 408(d)(3)'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 109–222, § 512(b)(1), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''unless the taxpayer elects not to have this clause apply for any taxable year, any amount required to be included in gross income for such taxable year by reason of this paragraph for any distribution before January 1, 1999, shall be so included ratably over the 4-taxable year period beginning with such taxable year.''

Subsec. (d)(3)(B). Pub. L. 109–280, § 824(b)(2)(B), substituted ''eligible retirement plan (as defined by section 402(c)(8)(B))'' for ''individual retirement plan''.

Subsec. (d)(3)(D). Pub. L. 109–280, § 824(b)(2)(C), (D), substituted ''persons subject to section 6047(d)(1), or all of the foregoing persons'' for ''or both'' and inserted ''or 6047'' after ''408(i)''.

Subsec. (d)(3)(E). Pub. L. 109–222, § 512(b)(2)(B), substituted ''2-year'' for ''4-year'' in heading.

Subsec. (d)(3)(E)(i). Pub. L. 109–222, § 512(b)(2)(A), amended cl. (i) generally. Prior to amendment, text read as follows:

''(I) IN GENERAL.—The amount required to be included in gross income for each of the first 3 taxable years in the 4-year period under subparagraph (A)(iii) shall be

increased by the aggregate distributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under subparagraph (A)(i).

''(II) LIMITATION ON AGGREGATE AMOUNT INCLUDED.—The amount required to be included in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years in the 4-year period (without regard to subclause (I)) reduced by amounts included for all preceding taxable years.''

Subsec. (e). Pub. L. 109–280, §824(a), reenacted heading without change and amended text of subsec. (e) generally. Prior to amendments by Pub. L. 109–280, §824(a), and Pub. L. 110–245, §109(a), text read as follows: ''For purposes of this section, the term 'qualified rollover contribution' means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.'' See 2008 Amendment note above.

2001—Subsec. (e). Pub. L. 107–16 inserted ''Such term includes a rollover contribution described in section 402A(c)(3)(A).'' after first sentence.

1998—Subsec. (c)(3)(A). Pub. L. 105–206, §6005(b)(1), substituted ''shall not exceed an amount equal to the amount determined under paragraph (2)(A) for such taxable year, reduced'' for ''shall be reduced'' in introductory provisions.

Subsec. (c)(3)(A)(ii). Pub. L. 105–206, §6005(b)(2)(A), inserted ''or a married individual filing a separate return'' after ''joint return''.

Subsec. (c)(3)(B). Pub. L. 105–206, §6005(b)(2)(B)(i), inserted '', for the taxable year of the distribution to which such contribution relates'' after ''if'' in introductory provisions.

Subsec. (c)(3)(B)(i). Pub. L. 105–206, §6005(b)(2)(B)(ii), struck out ''for such taxable year'' after ''gross income''.

Subsec. (c)(3)(C)(i). Pub. L. 105–206, §7004(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''adjusted gross income shall be determined in the same manner as under section 219(g)(3), except that any amount included in gross income under subsection (d)(3) shall not be taken into account, and''.

Pub. L. 105–206, §6005(b)(2)(C), struck out ''and the deduction under section 219 shall be taken into account'' after ''taken into account''.

Subsec. (c)(3)(C)(i)(II). Pub. L. 105–277 substituted '', and'' for period at end.

Subsec. (d)(1). Pub. L. 105–206, §6005(b)(5)(B), substituted ''Exclusion'' for ''General rules'' in heading and amended text generally. Prior to amendment, text read as follows:

''(A) EXCLUSIONS FROM GROSS INCOME.—Any qualified distribution from a Roth IRA shall not be includible in gross income.

''(B) NONQUALIFIED DISTRIBUTIONS.—In applying section 72 to any distribution from a Roth IRA which is not a qualified distribution, such distribution shall be treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate amount of contributions to the Roth IRA.''

Subsec. (d)(2)(B). Pub. L. 105–206, §6005(b)(3)(A), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''A payment or distribution shall not be treated as a qualified distribution under subparagraph (A) if—

''(i) it is made within the 5-taxable year period beginning with the 1st taxable year for which the individual made a contribution to a Roth IRA (or such individual's spouse made a contribution to a Roth IRA) established for such individual, or

''(ii) in the case of a payment or distribution properly allocable (as determined in the manner prescribed by the Secretary) to a qualified rollover contribution from an individual retirement plan other than a Roth IRA (or income allocable thereto), it is made within the 5-taxable year period beginning with the taxable year in which the rollover contribution was made.''

Subsec. (d)(2)(C). Pub. L. 105–206, §6005(b)(3)(B), added subpar. (C).

Subsec. (d)(3)(A). Pub. L. 105–206, §6005(b)(4)(A), added cl. (iii) and concluding provisions and struck out former cl. (iii) which read as follows: ''in the case of a distribution before January 1, 1999, any amount required to be included in gross income by reason of this paragraph shall be so included ratably over the 4-taxable year period beginning with the taxable year in which the payment or distribution is made.''

Subsec. (d)(3)(D). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (E) as (D) and struck out heading and text of former subpar. (D). Text read as follows: ''If, no later than the due date for filing the return of tax for any taxable year (without regard to extensions), an individual transfers, from an individual retirement plan (other than a Roth IRA), contributions for such taxable year (and any earnings allocable thereto) to a Roth IRA, no such amount shall be includible in gross income to the extent no deduction was allowed with respect to such amount.''

Subsec. (d)(3)(E). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (F) as (E). Former subpar. (E) redesignated (D).

Subsec. (d)(3)(F). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 105–206, §6005(b)(4)(B), added subpar. (F).

Subsec. (d)(3)(G). Pub. L. 105–206, §6005(b)(6)(B), redesignated subpar. (G) as (F).

Pub. L. 105–206, §6005(b)(4)(B), added subpar. (G).

Subsec. (d)(4). Pub. L. 105–206, §6005(b)(5)(A), substituted ''Aggregation and ordering rules'' for ''Coordination with individual retirement accounts'' in heading and amended text generally. Prior to amendment, text read as follows: ''Section 408(d)(2) shall be applied separately with respect to Roth IRAs and other individual retirement plans.''

Subsec. (d)(6). Pub. L. 105–206, §6005(b)(6)(A), added par. (6).

Subsec. (d)(7). Pub. L. 105–206, §6005(b)(7), added par. (7).

Subsec. (f). Pub. L. 105–206, §6005(b)(9), added subsec. (f).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §108(h)(2), Dec. 23, 2008, 122 Stat. 5109, amended this section ''[i]n the case of taxable years beginning after December 31, 2009''.

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Pub. L. 110–245, title I, §109(d), June 17, 2008, 122 Stat. 1633, provided that:

''(1) IN GENERAL.—Except as provided by paragraphs (2) and (3), the amendments made by this section [amending this section and section 530 of this title] shall apply with respect to deaths from injuries occurring on or after the date of the enactment of this Act [June 17, 2008].

''(2) APPLICATION OF AMENDMENTS TO DEATHS FROM INJURIES OCCURRING ON OR AFTER OCTOBER 7, 2001, AND BEFORE ENACTMENT.—The amendments made by this section shall apply to any contribution made pursuant to section 408A(e)(2) or 530(d)(5) of the Internal Revenue Code of 1986, as amended by this Act, with respect to amounts received under section 1477 of title 10, United States Code, or under section 1967 of title 38 of such Code, for deaths from injuries occurring on or after October 7, 2001, and before the date of the enactment of

this Act if such contribution is made not later than 1 year after the date of the enactment of this Act.

''(3) PENSION PROTECTION ACT CHANGES.—Section 408A(e)(1) of the Internal Revenue Code of 1986 (as in effect after the amendments made by subsection (b)) shall apply to taxable years beginning after December 31, 2007.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, § 824(b)(1), Aug. 17, 2006, 120 Stat. 998, provided that the amendment made by section 824(b)(1) amends this section as in effect before the Tax Increase Prevention and Reconciliation Act of 2005, Pub. L. 109–222. See below.

Pub. L. 109–280, title VIII, § 824(c), Aug. 17, 2006, 120 Stat. 999, provided that: ''The amendments made by this section [amending this section] shall apply to distributions after December 31, 2007.''

Amendment by section 833(c) of Pub. L. 109–280 applicable to taxable years beginning after 2006, see section 833(d) of Pub. L. 109–280, set out as a note under section 25B of this title.

Pub. L. 109–222, title V, § 512(c), May 17, 2006, 120 Stat. 366, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2009.''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–16 applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1998 AMENDMENTS

Amendment by Pub. L. 105–277 effective as if included in the provision of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, to which such amendment relates, see section 4002(k) of Pub. L. 105–277, set out as a note under section 1 of this title.

Amendment by section 6005(b)(1)–(7), (9) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

Pub. L. 105–206, title VII, § 7004(b), July 22, 1998, 112 Stat. 833, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2004.''

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1997, see section 302(f) of Pub. L. 105–34, set out as an Effective Date of 1997 Amendment note under section 219 of this title.

ROLLOVER OF AMOUNTS RECEIVED IN AIRLINE CARRIER BANKRUPTCY TO ROTH IRAS

Pub. L. 110–458, title I, § 125, Dec. 23, 2008, 122 Stat. 5115, provided that:

''(a) GENERAL RULE.—If a qualified airline employee receives any airline payment amount and transfers any portion of such amount to a Roth IRA within 180 days of receipt of such amount (or, if later, within 180 days of the date of the enactment of this Act [Dec. 23, 2008]), then such amount (to the extent so transferred) shall be treated as a qualified rollover contribution described in section 408A(e) of the Internal Revenue Code of 1986, and the limitations described in section 408A(c)(3) of such Code shall not apply to any such transfer.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) AIRLINE PAYMENT AMOUNT.—

''(A) IN GENERAL.—The term 'airline payment amount' means any payment of any money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee—

''(i) under the approval of an order of a Federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, and

''(ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount.

The amount of such payment shall be determined without regard to any requirement to deduct and withhold tax from such payment under sections 3102(a) and 3402(a).

''(B) EXCEPTION.—An airline payment amount shall not include any amount payable on the basis of the carrier's future earnings or profits.

''(2) QUALIFIED AIRLINE EMPLOYEE.—The term 'qualified airline employee' means an employee or former employee of a commercial passenger airline carrier who was a participant in a defined benefit plan maintained by the carrier which—

''(A) is a plan described in section 401(a) of the Internal Revenue Code of 1986 which includes a trust exempt from tax under section 501(a) of such Code, and

''(B) was terminated or became subject to the restrictions contained in paragraphs (2) and (3) of section 402(b) of the Pension Protection Act of 2006 [Pub. L. 109–280, 26 U.S.C. 430 note].

''(3) REPORTING REQUIREMENTS.—If a commercial passenger airline carrier pays 1 or more airline payment amounts, the carrier shall, within 90 days of such payment (or, if later, within 90 days of the date of the enactment of this Act [Dec. 23, 2008]), report—

''(A) to the Secretary of the Treasury, the names of the qualified airline employees to whom such amounts were paid, and

''(B) to the Secretary and to such employees, the years and the amounts of the payments.

Such reports shall be in such form, and contain such additional information, as the Secretary may prescribe.

''(c) EFFECTIVE DATE.—This section shall apply to transfers made after the date of the enactment of this Act [Dec. 23, 2008] with respect to airline payment amounts paid before, on, or after such date.''

§ 409. Qualifications for tax credit employee stock ownership plans

(a) Tax credit employee stock ownership plan defined

Except as otherwise provided in this title, for purposes of this title, the term ''tax credit employee stock ownership plan'' means a defined contribution plan which—

(1) meets the requirements of section 401(a),

(2) is designed to invest primarily in employer securities, and

(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), (h), and (*o*) of this section.

(b) Required allocation of employer securities

(1) In general

A plan meets the requirements of this subsection if—

(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section 41(c)(1)(B))[1] to the accounts of all participants who are entitled to share in such allocation, and

(B) for the plan year the allocation to each participant so entitled is an amount which

[1] See References in Text note below.

bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

(2) Compensation in excess of $100,000 disregarded

For purposes of paragraph (1), compensation of any participant in excess of the first $100,000 per year shall be disregarded.

(3) Determination of compensation

For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

(4) Suspension of allocation in certain cases

Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic employee plan credit or the credit allowed under section 41[1] (relating to the employee stock ownership credit) may be extended over whatever period may be necessary to comply with the requirements of section 415.

(c) Participants must have nonforfeitable rights

A plan meets the requirements of this subsection only if it provides that each participant has a nonforfeitable right to any employer security allocated to his account.

(d) Employer securities must stay in the plan

A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participant's account under subsection (b) (or allocated to a participant's account in connection with matched employer and employee contributions) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of—

(1) death, disability, separation from service, or termination of the plan;

(2) a transfer of a participant to the employment of an acquiring employer from the employment of the selling corporation in the case of a sale to the acquiring corporation of substantially all of the assets used by the selling corporation in a trade or business conducted by the selling corporation, or

(3) with respect to the stock of a selling corporation, a disposition of such selling corporation's interest in a subsidiary when the participant continues employment with such subsidiary.

This subsection shall not apply to any distribution required under section 401(a)(9) or to any distribution or reinvestment required under section 401(a)(28).

(e) Voting rights

(1) In general

A plan meets the requirements of this subsection if it meets the requirements of paragraph (2) or (3), whichever is applicable.

(2) Requirements where employer has a registration-type class of securities

If the employer has a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which securities of the employer which are entitled to vote and are allocated to the account of such participant or beneficiary are to be voted.

(3) Requirement for other employers

If the employer does not have a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant or beneficiary in the plan is entitled to direct the plan as to the manner in which voting rights under securities of the employer which are allocated to the account of such participant or beneficiary are to be exercised with respect to any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations.

(4) Registration-type class of securities defined

For purposes of this subsection, the term, ''registration-type class of securities'' means—

(A) a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934, and

(B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such section 12.

(5) 1 vote per participant

A plan meets the requirements of paragraph (3) with respect to an issue if—

(A) the plan permits each participant 1 vote with respect to such issue, and

(B) the trustee votes the shares held by the plan in the proportion determined after application of subparagraph (A).

(f) Plan must be established before employer's due date

(1) In general

A plan meets the requirements of this subsection only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(2) Special rule for first year

A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because it was not established by the close of the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(g) Transferred amounts must stay in plan even though investment credit is redetermined or recaptured

A plan meets the requirement of this subsection only if it provides that amounts which

are transferred to the plan (because of the requirements of section 48(n)(1) or 41(c)(1)(B))[2] shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the employee plan credit or the credit allowed under section 41[2] (relating to employee stock ownership credit) is recaptured or redetermined. For purposes of the preceding sentence, the references to section 48(n)(1)[2] and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

(h) Right to demand employer securities; put option

(1) In general

A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

(A) has a right to demand that his benefits be distributed in the form of employer securities, and

(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

(2) Plan may distribute cash in certain cases

(A) In general

A plan which otherwise meets the requirements of this subsection or of section 4975(e)(7) shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities.

(B) Exception for certain plans restricted from distributing securities

(i) In general

A plan to which this subparagraph applies shall not be treated as failing to meet the requirements of this subsection or section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that the participant entitled to a distribution has a right to receive the distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).

(ii) Applicable plans

This subparagraph shall apply to a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) and which is established and maintained by—

(I) an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), or

(II) an S corporation.

(3) Special rule for banks

In the case of a plan established and maintained by a bank (as defined in section 581) which is prohibited by law from redeeming or purchasing its own securities, the requirements of paragraph (1)(B) shall not apply if the plan provides that participants entitled to a distribution from the plan shall have a right to receive a distribution in cash.

(4) Put option period

An employer shall be deemed to satisfy the requirements of paragraph (1)(B) if it provides a put option for a period of at least 60 days following the date of distribution of stock of the employer and, if the put option is not exercised within such 60-day period, for an additional period of at least 60 days in the following plan year (as provided in regulations promulgated by the Secretary).

(5) Payment requirement for total distribution

If an employer is required to repurchase employer securities which are distributed to the employee as part of a total distribution, the requirements of paragraph (1)(B) shall be treated as met if—

(A) the amount to be paid for the employer securities is paid in substantially equal periodic payments (not less frequently than annually) over a period beginning not later than 30 days after the exercise of the put option described in paragraph (4) and not exceeding 5 years, and

(B) there is adequate security provided and reasonable interest paid on the unpaid amounts referred to in subparagraph (A).

For purposes of this paragraph, the term ''total distribution'' means the distribution within 1 taxable year to the recipient of the balance to the credit of the recipient's account.

(6) Payment requirement for installment distributions

If an employer is required to repurchase employer securities as part of an installment distribution, the requirements of paragraph (1)(B) shall be treated as met if the amount to be paid for the employer securities is paid not later than 30 days after the exercise of the put option described in paragraph (4).

(7) Exception where employee elected diversification

Paragraph (1)(A) shall not apply with respect to the portion of the participant's account which the employee elected to have reinvested under section 401(a)(28)(B) or subparagraph (B) or (C) of section 401(a)(35).

(i) Reimbursement for expenses of establishing and administering plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

(1) Expenses of establishing plan

As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

[2] See References in Text note below.

(A) 10 percent of the first $100,000 which the employer is required to transfer to the plan for that taxable year under section 41(c)(1)(B),[3] and

(B) 5 percent of any amount so required to be transferred in excess of the first $100,000; and

(2) Administrative expenses

As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

(A) the sum of—

(i) 10 percent of the first $100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

(ii) 5 percent of the amount of such dividends in excess of $100,000 or

(B) $100,000.

(j) Conditional contributions to the plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to satisfy such requirements (or as failing to satisfy the requirements of section 401(a) of this title or of section 403(c)(1) of the Employee Retirement Income Security Act of 1974) merely because of the return of a contribution (or a provision permitting such a return) if—

(1) the contribution to the plan is conditioned on a determination by the Secretary that such plan meets the requirements of this section,

(2) the application for a determination described in paragraph (1) is filed with the Secretary not later than 90 days after the date on which an employee plan credit is claimed, and

(3) the contribution is returned within 1 year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this section.

(k) Requirements relating to certain withdrawals

Notwithstanding any other law or rule of law—

(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for purposes of the matching employee plan credit shall not be considered to make the benefits forfeitable, and

(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries,

if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974. For purposes of this subsection, the reference to the matching employee plan credit shall refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

***(l)* Employer securities defined**

For purposes of this section—

(1) In general

The term ''employer securities'' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

(2) Special rule where there is no readily tradable common stock

If there is no common stock which meets the requirements of paragraph (1), the term ''employer securities'' means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

(3) Preferred stock may be issued in certain cases

Noncallable preferred stock shall be treated as employer securities if such stock is convertible at any time into stock which meets the requirements of paragraph (1) or (2) (whichever is applicable) and if such conversion is at a conversion price which (as of the date of the acquisition by the tax credit employee stock ownership plan) is reasonable. For purposes of the preceding sentence, under regulations prescribed by the Secretary, preferred stock shall be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

(4) Application to controlled group of corporations

(A) In general

For purposes of this subsection, the term ''controlled group of corporations'' has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

(B) Where common parent owns at least 50 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

(C) Where common parent owns 100 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possess-

[3] See References in Text note below.

ing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier subsidiary were the common parent) shall be treated as includible corporations.

(5) Nonvoting common stock may be acquired in certain cases

Nonvoting common stock of an employer described in the second sentence of section 401(a)(22) shall be treated as employer securities if an employer has a class of nonvoting common stock outstanding and the specific shares that the plan acquires have been issued and outstanding for at least 24 months.

(m) Nonrecognition of gain or loss on contribution of employer securities to tax credit employee stock ownership plan

No gain or loss shall be recognized to the taxpayer with respect to the transfer of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer to the extent that such transfer is required under section 41(c)(1)(B),[4] or subparagraph (A) or (B) of section 48(n)(1).[4]

(n) Securities received in certain transactions

(1) In general

A plan to which section 1042 applies and an eligible worker-owned cooperative (within the meaning of section 1042(c)) shall provide that no portion of the assets of the plan or cooperative attributable to (or allocable in lieu of) employer securities acquired by the plan or cooperative in a sale to which section 1042 applies may accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a))—

(A) during the nonallocation period, for the benefit of—

(i) any taxpayer who makes an election under section 1042(a) with respect to employer securities,,,[5]

(ii) any individual who is related to the taxpayer (within the meaning of section 267(b)), or

(B) for the benefit of any other person who owns (after application of section 318(a)) more than 25 percent of—

(i) any class of outstanding stock of the corporation which issued such employer securities or of any corporation which is a member of the same controlled group of corporations (within the meaning of subsection (*l*)(4)) as such corporation, or

(ii) the total value of any class of outstanding stock of any such corporation.

For purposes of subparagraph (B), section 318(a) shall be applied without regard to the employee trust exception in paragraph (2)(B)(i).

(2) Failure to meet requirements

If a plan fails to meet the requirements of paragraph (1)—

(A) the plan shall be treated as having distributed to the person described in paragraph (1) the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation,

(B) the provisions of section 4979A shall apply, and

(C) the statutory period for the assessment of any tax imposed by section 4979A shall not expire before the date which is 3 years from the later of—

(i) the 1st allocation of employer securities in connection with a sale to the plan to which section 1042 applies, or

(ii) the date on which the Secretary is notified of such failure.

(3) Definitions and special rules

For purposes of this subsection—

(A) Lineal descendants

Paragraph (1)(A)(ii) shall not apply to any individual if—

(i) such individual is a lineal descendant of the taxpayer, and

(ii) the aggregate amount allocated to the benefit of all such lineal descendants during the nonallocation period does not exceed more than 5 percent of the employer securities (or amounts allocated in lieu thereof) held by the plan which are attributable to a sale to the plan by any person related to such descendants (within the meaning of section 267(c)(4)) in a transaction to which section 1042 applied.

(B) 25-percent shareholders

A person shall be treated as failing to meet the stock ownership limitation under paragraph (1)(B) if such person fails such limitation—

(i) at any time during the 1-year period ending on the date of sale of qualified securities to the plan or cooperative, or

(ii) on the date as of which qualified securities are allocated to participants in the plan or cooperative.

(C) Nonallocation period

The term ''nonallocation period'' means the period beginning on the date of the sale of the qualified securities and ending on the later of—

(i) the date which is 10 years after the date of sale, or

(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.

(*o*) Distribution and payment requirements

A plan meets the requirements of this subsection if—

(1) Distribution requirement

(A) In general

The plan provides that, if the participant and, if applicable pursuant to sections

[4] See References in Text note below.

[5] So in original.

401(a)(11) and 417, with the consent of the participant's spouse elects, the distribution of the participant's account balance in the plan will commence not later than 1 year after the close of the plan year—

(i) in which the participant separates from service by reason of the attainment of normal retirement age under the plan, disability, or death, or

(ii) which is the 5th plan year following the plan year in which the participant otherwise separates from service, except that this clause shall not apply if the participant is reemployed by the employer before distribution is required to begin under this clause.

(B) Exception for certain financed securities

For purposes of this subsection, the account balance of a participant shall not include any employer securities acquired with the proceeds of the loan described in section 404(a)(9) until the close of the plan year in which such loan is repaid in full.

(C) Limited distribution period

The plan provides that, unless the participant elects otherwise, the distribution of the participant's account balance will be in substantially equal periodic payments (not less frequently than annually) over a period not longer than the greater of—

(i) 5 years, or

(ii) in the case of a participant with an account balance in excess of $800,000, 5 years plus 1 additional year (but not more than 5 additional years) for each $160,000 or fraction thereof by which such balance exceeds $800,000.

(2) Cost-of-living adjustment

The Secretary shall adjust the dollar amounts under paragraph (1)(C) at the same time and in the same manner as under section 415(d).

(p) Prohibited allocations of securities in an S corporation

(1) In general

An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

(2) Failure to meet requirements

(A) In general

If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

(B) Cross reference

For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

(3) Nonallocation year

For purposes of this subsection—

(A) In general

The term ''nonallocation year'' means any plan year of an employee stock ownership plan if, at any time during such plan year—

(i) such plan holds employer securities consisting of stock in an S corporation, and

(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

(B) Attribution rules

For purposes of subparagraph (A)—

(i) In general

The rules of section 318(a) shall apply for purposes of determining ownership, except that—

(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

(II) paragraph (4) thereof shall not apply.

(ii) Deemed-owned shares

Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), an individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

(4) Disqualified person

For purposes of this subsection—

(A) In general

The term ''disqualified person'' means any person if—

(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

(B) Treatment of family members

In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

(C) Deemed-owned shares

(i) In general

The term ''deemed-owned shares'' means, with respect to any person—

(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

(II) such person's share of the stock in such corporation which is held by such

plan but which is not allocated under the plan to participants.

(ii) Person's share of unallocated stock

For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

(D) Member of family

For purposes of this paragraph, the term ''member of the family'' means, with respect to any individual—

(i) the spouse of the individual,

(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

(5) Treatment of synthetic equity

For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

(A) the treatment of any person as a disqualified person, or

(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

(6) Definitions

For purposes of this subsection—

(A) Employee stock ownership plan

The term ''employee stock ownership plan'' has the meaning given such term by section 4975(e)(7).

(B) Employer securities

The term ''employer security'' has the meaning given such term by section 409(*l*).

(C) Synthetic equity

The term ''synthetic equity'' means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

(7) Regulations and guidance

(A) In general

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

(B) Avoidance or evasion

The Secretary may, by regulation or other guidance of general applicability, provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of this subsection.

(q) Cross references

(1) For requirements for allowance of employee plan credit, see section 48(n).[6]

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an employee plan credit or employee stock ownership credit, see section 6699.[6]

(3) For requirements for allowance of an employee stock ownership credit, see section 41.[6]

(Added Pub. L. 95–600, title I, § 141(a), Nov. 6, 1978, 92 Stat. 2787, § 409A; amended Pub. L. 96–222, title I, § 101(a)(7)(D)–(F), (I), (J), (L)(i)(VI), (ii)(I), (II), (iii)(V), (v)(VI), (VII), Apr. 1, 1980, 94 Stat. 198–200; Pub. L. 96–605, title II, § 224(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97–34, title III, §§ 331(c)(1), 334, 336, 337(a), Aug. 13, 1981, 95 Stat. 293, 297, 298; Pub. L. 97–448, title I, § 103(h), (i), Jan. 12, 1983, 96 Stat. 2379; renumbered § 409 and amended Pub. L. 98–369, div. A, title IV, §§ 474(r)(15), 491(e)(1), July 18, 1984, 98 Stat. 843, 852; Pub. L. 99–514, title XI, §§ 1172(b)(1), 1174(a)(1), (b)(1), (2), (c)(1)(A), 1176(b), title XVIII, §§ 1852(a)(4)(B), 1854(a)(3)(A), (f)(1), (3)(C), 1899A(11), Oct. 22, 1986, 100 Stat. 2514, 2516, 2517, 2520, 2865, 2873, 2881, 2882, 2958; Pub. L. 100–647, title I, §§ 1011B(g)(1), (2), (i)(1), (3), (j)(3), (5), (k)(3), 1018(t)(4)(B), (C), (H), Nov. 10, 1988, 102 Stat. 3490, 3492, 3493, 3588, 3589; Pub. L. 101–239, title VII, §§ 7304(a)(2)(A), (B), 7811(h)(1), Dec. 19, 1989, 103 Stat. 2352, 2353, 2409; Pub. L. 105–34, title XV, § 1506(a), Aug. 5, 1997, 111 Stat. 1064; Pub. L. 107–16, title VI, § 656(a), June 7, 2001, 115 Stat. 131; Pub. L. 107–147, title IV, § 411(j)(2), Mar. 9, 2002, 116 Stat. 47; Pub. L. 109–280, title IX, § 901(a)(2)(B), Aug. 17, 2006, 120 Stat. 1029.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

Section 41, referred to in subsecs. (b)(1)(A), (4), (g), (i)(1)(A), (m), and (p), which related to employee stock

[6] See References in Text note below.

ownership credit, was repealed by Pub. L. 99–514, title XI, §1171(a), Oct. 22, 1986, 100 Stat. 2513. Section 30 of this title, relating to credit for increasing research activities, was renumbered section 41.

Section 12 of the Securities Exchange Act of 1934, referred to in subsec. (e)(4), is classified to section 78*l* of Title 15, Commerce and Trade.

Section 403(c)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (j) and (k), is classified to section 1103(c)(1) of Title 29, Labor.

The enactment of the Tax Reform Act of 1984, referred to in subsecs. (g) and (k), means the enactment of div. A of Pub. L. 98–369, which was approved July 18, 1984.

Subsec. (n) of section 48, referred to in subsecs. (g), (m), and (p)(1), was repealed by section 474(*o*)(15) of Pub. L. 98–369.

Section 6699, referred to in subsec. (p)(2), was repealed by Pub. L. 99–514, title XI, §1171(b)(7)(A), Oct. 22, 1986, 100 Stat. 2513.

PRIOR PROVISIONS

A prior section 409, added Pub. L. 93–406, title II, §2002(c), Sept. 2, 1974, 88 Stat. 964; amended Pub. L. 94–455, title XV, §1501(b)(6), title XIX, §§1901(a)(60), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1774, 1834; Pub. L. 95–600, title I, §§156(c)(2), (3), 157(e)(1)(B), Nov. 6, 1978, 92 Stat. 2803, 2806; Pub. L. 96–222, title I, §101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(g)(1)(D), (3), Aug. 13, 1981, 95 Stat. 281; Pub. L. 97–248, title II, §243(b)(1)(B), title III, §335(a)(2), Sept. 3, 1982, 96 Stat. 523, 628; Pub. L. 97–452, §2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, §42(a)(7), title V, §522(d)(13), July 18, 1984, 98 Stat. 557, 871, related to retirement bonds, prior to repeal by Pub. L. 98–369, div. A, title IV, §491(b), (f)(1), July 18, 1984, 98 Stat. 848, 853, applicable to obligations issued after Dec. 31, 1983.

AMENDMENTS

2006—Subsec. (h)(7). Pub. L. 109–280 inserted ''or subparagraph (B) or (C) of section 401(a)(35)'' before period at end.

2002—Subsec. (*o*)(1)(C)(ii). Pub. L. 107–147 substituted ''$800,000'' for ''$500,000'' in two places and ''$160,000'' for ''$100,000''.

2001—Subsecs. (p), (q). Pub. L. 107–16 added subsec. (p) and redesignated former subsec. (p) as (q).

1997—Subsec. (h)(2). Pub. L. 105–34 designated existing provisions as subpar. (A), inserted subpar. heading, struck out ''In the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) shall not be considered to have failed to meet the requirements of this subsection or of section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that participants entitled to a distribution from the plan shall have a right to receive such distribution in cash, except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of paragraph (1)(B).'' after ''employer securities.'', and added subpar. (B).

1989—Subsec. (*l*)(5). Pub. L. 101–239, §7811(h)(1), substituted ''the second sentence'' for ''the last sentence''.

Subsec. (n)(1). Pub. L. 101–239, §7304(a)(2)(A)(i), struck out ''or section 2057'' after ''section 1042'' in two places in introductory provisions.

Subsec. (n)(1)(A)(i). Pub. L. 101–239, §7304(a)(2)(A)(ii), struck out ''or any decedent if the executor of the estate of such decedent makes a qualified sale to which section 2057 applies'' after ''employer securities,''.

Subsec. (n)(1)(A)(ii). Pub. L. 101–239, §7304(a)(2)(A)(iii), struck out ''or the decedent'' after ''the taxpayer''.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 101–239, §7304(a)(2)(B), struck out ''or section 2057'' after ''section 1042''.

1988—Subsec. (d). Pub. L. 100–647, §1011B(j)(3), inserted ''or to any distribution or reinvestment required under section 401(a)(28)'' after ''under section 401(a)(9)''.

Subsec. (e)(5). Pub. L. 100–647, §1018(t)(4)(H), substituted ''paragraph (3)'' for ''paragraph (2) or (3)''.

Subsec. (h)(2). Pub. L. 100–647, §1018(t)(4)(B), substituted ''paragraph (1)(B)'' for ''section 409(*o*)''.

Subsec. (h)(7). Pub. L. 100–647, §1011B(j)(5), added par. (7).

Subsec. (*l*)(4), (5). Pub. L. 100–647, §1011B(k)(3), redesignated par. (4), relating to nonvoting common stock may be acquired in certain cases, as (5).

Subsec. (n)(1). Pub. L. 100–647, §1011B(g)(1), made technical amendment to directory language of Pub. L. 99–514, §1172(b)(1). See 1986 Amendment note below.

Subsec. (n)(2)(C)(i), (3)(A)(ii). Pub. L. 100–647, §1011B(g)(2), inserted ''or section 2057'' after ''which section 1042''.

Subsec. (n)(3)(C). Pub. L. 100–647, §1018(t)(4)(C), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The term 'nonallocation period' means the 10-year period beginning on the later of—

''(i) the date of the sale of the qualified securities, or

''(ii) the date of the plan allocation attributable to the final payment of acquisition indebtedness incurred in connection with such sale.''

Subsec. (*o*)(1)(A). Pub. L. 100–647, §1011B(i)(3), substituted ''if the participant and, if applicable pursuant to sections 401(a)(11) and 417, with the consent of the participant's spouse elects'' for ''unless the participant otherwise elects''.

Subsec. (*o*)(1)(A)(ii). Pub. L. 100–647, §1011B(i)(1), substituted ''distribution is required to begin under this clause'' for ''such year''.

1986—Subsec. (a)(3). Pub. L. 99–514, §1174(b)(2), inserted reference to subsec. (*o*).

Subsec. (d). Pub. L. 99–514, §1899A(11), substituted ''participant's'' for ''participants's''.

Pub. L. 99–514, §1852(a)(4)(B), inserted at end ''This subsection shall not apply to any distribution required under section 401(a)(9).''

Subsec. (d)(1). Pub. L. 99–514, §1174(a)(1), substituted ''separation from service, or termination of the plan'' for ''or separation from service''.

Subsec. (e)(2). Pub. L. 99–514, §1854(f)(1)(C), (D), inserted ''or beneficiary'' after ''participant'' in two places and substituted ''securities of the employer'' for ''employer securities''.

Subsec. (e)(3). Pub. L. 99–514, §1854(f)(1)(B)–(D), inserted ''or beneficiary'' after ''participant'' in two places and substituted ''securities of the employer'' for ''employer securities'' and ''any corporate matter which involves the voting of such shares with respect to the approval or disapproval of any corporate merger or consolidation, recapitalization, reclassification, liquidation, dissolution, sale of substantially all assets of a trade or business, or such similar transaction as the Secretary may prescribe in regulations'' for ''a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares voted''.

Subsec. (e)(5). Pub. L. 99–514, §1854(f)(1)(A), added par. (5).

Subsec. (h)(2). Pub. L. 99–514, §1854(f)(3)(C), inserted '', except that such plan may distribute employer securities subject to a requirement that such securities may be resold to the employer under terms which meet the requirements of section 409(*o*)''.

Subsec. (h)(5), (6). Pub. L. 99–514, §1174(c)(1)(A), added pars. (5) and (6).

Subsec. (*l*)(4). Pub. L. 99–514, §1176(b), added par. (4) relating to acquisition of nonvoting common stock.

Subsec. (n). Pub. L. 99–514, §1854(a)(3)(A), added subsec. (n). Former subsec. (n) redesignated (*o*).

Subsec. (n)(1). Pub. L. 99–514, §1172(b)(1), as amended by Pub. L. 100–647, §1011B(g)(1), inserted ''or section 2057'' in two places in introductory provisions, ''or any decedent if the executor of the estate of such decedent

makes a qualified sale to which section 2057 applies,'' in subpar. (A)(i), and ''or the decedent'' in subpar. (A)(ii).

Subsec. (*o*). Pub. L. 99–514, § 1174(b)(1), added subsec. (*o*). Former subsec. (*o*) redesignated (p).

Pub. L. 99–514, § 1854(a)(3)(A), redesignated former subsec. (n) as (*o*).

Subsec. (p). Pub. L. 99–514, § 1174(b)(1), redesignated former subsec. (*o*) as (p).

1984—Subsec. (b)(1)(A). Pub. L. 98–369, § 474(r)(15)(A), (B), substituted ''41'' for ''44G'' and struck out ''48(n)(1)(A) or'' after ''requirements of section''.

Subsec. (b)(4). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

Subsec. (g). Pub. L. 98–369, § 474(r)(15)(A), (C), substituted ''41'' for ''44G'' in two places, and inserted provision directing that, for purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (i)(1)(A). Pub. L. 98–369, § 474(r)(15)(A), (D), substituted ''41'' for ''44G'', and struck out ''48(n)(1) or'' after ''taxable year under section''.

Subsec. (k). Pub. L. 98–369, § 474(r)(15)(E), inserted provision requiring that, for purposes of this subsection, the reference to the matching employee plan credit refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (m). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

Subsec. (n)(3). Pub. L. 98–369, § 474(r)(15)(A), substituted ''41'' for ''44G''.

1983—Subsec. (d)(2). Pub. L. 97–448, § 103(i), struck out provisions covering the sale of substantially all of the stock of a subsidiary of the employer.

Subsec. (h)(2). Pub. L. 97–448, § 103(h), substituted ''the requirements of this subsection or of section 401(a)'' for ''the requirements of section 401(a)''.

1981—Subsec. (b). Pub. L. 97–34, § 331(c)(1)(A), (B), inserted in par. (1)(A) reference to section 44G(c)(1)(B), and inserted in par. (4) ''or the credit allowed under section 44G (relating to the employee stock ownership credit)'' after ''basic employee plan credit''.

Subsec. (d). Pub. L. 97–34, § 337, designated provision relating to death, disability, or separation from service as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 97–34, § 331(c)(1)(C), (D), inserted reference to section 44G(c)(1)(B) and inserted ''or the credit allowed under section 44G (relating to employee stock ownership credit)'' after ''employee plan credit''.

Subsec. (h)(2). Pub. L. 97–34, § 334, substituted ''this subsection'' for ''this section'' and inserted provision respecting receipt of distributions in cash where employer's charter or bylaws restrict ownership of substantially all outstanding employer securities to employees or to a section 401(a) trust where a participant is not permitted to exercise the right described in par. (1)(A).

Subsec. (h)(3), (4). Pub. L. 97–34, § 336, added pars. (3) and (4).

Subsec. (i)(1)(A). Pub. L. 97–34, § 331(c)(1)(E), inserted reference to section 44G(c)(1)(B).

Subsec. (m). Pub. L. 97–34, § 331(c)(1)(F), inserted reference to section 44G(c)(1)(B).

Subsec. (n)(2), (3). Pub. L. 97–34, § 331(c)(1)(G), (H), inserted ''or employee stock ownership credit'' after ''employee plan credit'' in par. (2) and added par. (3).

1980—Pub. L. 96–222, § 101(a)(7)(L)(v)(VII), substituted ''tax credit employee stock ownership plans'' for ''ESOPS'' in section catchline.

Subsec. (a). Pub. L. 96–222, § 101(a)(7)(L)(ii)(I), (v)(VI), substituted in heading and in text ''tax credit employee stock ownership plan'' for ''ESOP''.

Subsec. (b)(4). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (d). Pub. L. 96–222, § 101(a)(7)(F), inserted ''(or allocated to a participant's account in connection with matched employer and employee contributions)'' after ''under subsection (b)''.

Subsec. (f)(1). Pub. L. 96–222, § 101(a)(7)(I)(i), substituted ''only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan'' for ''for a plan year only if it is established on or before the due date for the filing of the employer's tax return for the taxable year (including any extension of such date) in which or with which the plan year ends''.

Subsec. (f)(2). Pub. L. 96–222, § 101(a)(7)(I)(ii), (L)(v)(VII), substituted ''employee plan'' for ''ESOP'' and inserted ''with respect to the plan'' after ''by the employer''.

Subsec. (g). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (h)(2). Pub. L. 96–222, § 101(a)(7)(E), inserted ''or of section 4975(e)(7)'' after ''the requirements of this section''.

Subsecs. (j)(2), (k)(1). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit''.

Subsec. (*l*)(2)(B). Pub. L. 96–222, § 101(a)(7)(J)(i), substituted ''class of common stock'' for ''class of stock''.

Subsec. (*l*)(3). Pub. L. 96–222, § 101(a)(7)(J)(ii), (L)(ii)(II), substituted ''as employer securities'' for ''as meeting the requirements of paragraph (1)'', ''paragraph (1) or (2)'' for ''paragraph (2)'', and ''tax credit employee stock ownership plan'' for ''ESOP'' and inserted provisions requiring preferred stock to be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

Subsec. (*l*)(4). Pub. L. 96–605 substituted in heading ''Application to controlled group of corporations'' for ''Controlled group of corporations defined'' and in subpar. (B) heading ''Where common parent owns at least'' for ''Common parent may own only'' and added subpar. (C).

Subsec. (m). Pub. L. 96–222, § 101(a)(7)(D), (L)(i), substituted provisions relating to nonrecognition of gain or loss on contribution of employer securities to a tax credit employee stock ownership plan for provisions relating to contributions of stock of a controlling corporation.

Subsec. (n). Pub. L. 96–222, § 101(a)(7)(L)(iii)(V), substituted ''employee plan credit'' for ''ESOP credit'' in pars. (1) and (2).

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, § 656(d), June 7, 2001, 115 Stat. 135, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 4975 and 4979A of this title] shall apply to plan years beginning after December 31, 2004.

''(2) EXCEPTION FOR CERTAIN PLANS.—In the case of any—

''(A) employee stock ownership plan established after March 14, 2001, or

''(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after March 14, 2001.''

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1506(c) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section, section 4975 of this title, and section 1108 of Title 29, Labor] shall apply to taxable years beginning after December 31, 1997.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 7304(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and sections 4978 and 4979A of this title and repealing sections 2057 and 4978A of this title] shall apply to the estates of decedents dying after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by section 7811(h)(1) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1172(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [enacting section 2057 of this title and amending this section and section 4979A of this title] shall apply to sales after the date of the enactment of this Act [Oct. 22, 1986] with respect to which an election is made by the executor of an estate who is required to file the return of the tax imposed by the Internal Revenue Code of 1986 on a date (including extensions) after the date of the enactment of this Act.''

Section 1174(a)(2) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1011B(i)(2), Nov. 10, 1988, 102 Stat. 3492, provided that: ''The amendment made by this subsection [amending this section] shall apply to distributions after December 31, 1984.''

Section 1174(b)(3) of Pub. L. 99–514 provided that: ''The amendments made by this subsection [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986.''

Section 1174(c)(1)(B) of Pub. L. 99–514 provided that: ''The amendment made by this paragraph [amending this section] shall apply to distributions attributable to stock acquired after December 31, 1986, except that a plan may elect to have such amendment apply to all distributions after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1176(b) of Pub. L. 99–514 applicable to acquisitions of securities after Dec. 31, 1986, see section 1176(c) of Pub. L. 99–514, set out as a note under section 401 of this title.

Amendment by section 1852(a)(4)(B) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

Section 1854(a)(3)(C) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, §1018(t)(4)(G), Nov. 10, 1988, 102 Stat. 3588, provided that:

''(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and section 1042 of this title] shall apply to sales of securities after the date of the enactment of this Act [Oct. 22, 1986].

''(ii) A taxpayer or executor may elect to have section 1042(b)(3) of the Internal Revenue Code of 1954 (as in effect before the amendment made by subparagraph (B)) apply to sales before the date of the enactment of this Act as if such section included the last sentence of section 409(n)(1) of the Internal Revenue Code of 1986 (as added by subparagraph (A)).''

Section 1854(f)(4)(A), (B) of Pub. L. 99–514 provided that:

''(A) The amendments made by paragraph (1)(A) and (3) [amending this section and sections 1042 and 4975 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

''(B) The amendments made by subparagraphs (B), (C), and (D) of paragraph (1) [amending this section] shall apply after December 31, 1986, to stock acquired after December 31, 1979.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(15) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Redesignation of section 409A as 409 by section 491(e)(1) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 331(c)(1) of Pub. L. 97–34 applicable to taxable years ending after Dec. 31, 1982, see section 331(f)(2) of Pub. L. 97–34, set out as a note under section 404 of this title.

Section 337(b) of Pub. L. 97–34, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendments made by this section [amending this section] shall apply to distributions described in section 409A(d) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (or any corresponding provision of prior law) made after March 29, 1975.''

Amendment by sections 334 and 336 of Pub. L. 97–34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97–34, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 224(b) of Pub. L. 96–605 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.''

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 141(g) of Pub. L. 95–600, as added by Pub. L. 96–222, title I, §101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197; amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection and subsection (h) [set out as an Effective Date of 1978 Amendment note under section 4975 of this title], the amendments made by this section [enacting sections 409A [now 409] and 6699 of this title and amending sections 46, 48, 56, 401, 404, 415, 805, 1504, and 4975 of this title] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.

''(2) ELECTION TO HAVE AMENDMENTS APPLY DURING 1978.—At the election of the taxpayer, paragraph (1) shall be applied by substituting 'December 31, 1977' for 'December 31, 1978'; except that in the case of a plan in existence before December 31, 1978, any such election shall not affect the required allocation of employer securities attributable to qualified investment for tax-

able years beginning before January 1, 1979. An election under the preceding sentence shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made, shall be irrevocable.

''(3) VOTING RIGHT PROVISIONS.—Section 409A(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as added by subsection (a)) [now section 409] shall apply to plans to which section 409A of such Code applies, beginning with the first day of such application.

''(4) RIGHT TO DEMAND EMPLOYER SECURITIES, ETC.—Paragraphs (1)(A) and (2) of section 409A(h) of the Internal Revenue Code of 1986 (as added by subsection (a)) [now section 409] shall apply to distributions after December 31, 1978, made by a plan to which section 409A of such Code applies.

''(5) SUBSECTION (f)(7).—The amendment made by subsection (f)(7) [amending section 415 of this title] shall apply to years beginning after December 31, 1978.

''(6) RETROACTIVE APPLICATION OF AMENDMENT MADE BY SUBSECTION (d).—In determining the regular tax deduction under section 56(c) of the Internal Revenue Code of 1986 for any taxable year beginning before January 1, 1979, the amount of the credit allowable under section 38 of such Code shall be determined without regard to section 46(a)(2)(B) of such Code (as in effect before the enactment of the Energy Tax Act of 1978 [Nov. 9, 1978]).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 409A. Inclusion in gross income of deferred compensation under nonqualified deferred compensation plans

(a) Rules relating to constructive receipt

(1) Plan failures

(A) Gross income inclusion

(i) In general

If at any time during a taxable year a nonqualified deferred compensation plan—

(I) fails to meet the requirements of paragraphs (2), (3), and (4), or

(II) is not operated in accordance with such requirements,

all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

(ii) Application only to affected participants

Clause (i) shall only apply with respect to all compensation deferred under the plan for participants with respect to whom the failure relates.

(B) Interest and additional tax payable with respect to previously deferred compensation

(i) In general

If compensation is required to be included in gross income under subparagraph (A) for a taxable year, the tax imposed by this chapter for the taxable year shall be increased by the sum of—

(I) the amount of interest determined under clause (ii), and

(II) an amount equal to 20 percent of the compensation which is required to be included in gross income.

(ii) Interest

For purposes of clause (i), the interest determined under this clause for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the deferred compensation been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such deferred compensation is not subject to a substantial risk of forfeiture.

(2) Distributions

(A) In general

The requirements of this paragraph are met if the plan provides that compensation deferred under the plan may not be distributed earlier than—

(i) separation from service as determined by the Secretary (except as provided in subparagraph (B)(i)),

(ii) the date the participant becomes disabled (within the meaning of subparagraph (C)),

(iii) death,

(iv) a specified time (or pursuant to a fixed schedule) specified under the plan at the date of the deferral of such compensation,

(v) to the extent provided by the Secretary, a change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation, or

(vi) the occurrence of an unforeseeable emergency.

(B) Special rules

(i) Specified employees

In the case of any specified employee, the requirement of subparagraph (A)(i) is met only if distributions may not be made before the date which is 6 months after the date of separation from service (or, if earlier, the date of death of the employee). For purposes of the preceding sentence, a specified employee is a key employee (as defined in section 416(i) without regard to paragraph (5) thereof) of a corporation any stock in which is publicly traded on an established securities market or otherwise.

(ii) Unforeseeable emergency

For purposes of subparagraph (A)(vi)—

(I) In general

The term ''unforeseeable emergency'' means a severe financial hardship to the participant resulting from an illness or accident of the participant, the participant's spouse, or a dependent (as defined in section 152(a)) of the participant, loss

of the participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

(II) Limitation on distributions

The requirement of subparagraph (A)(vi) is met only if, as determined under regulations of the Secretary, the amounts distributed with respect to an emergency do not exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship).

(C) Disabled

For purposes of subparagraph (A)(ii), a participant shall be considered disabled if the participant—

(i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, or

(ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, receiving income replacement benefits for a period of not less than 3 months under an accident and health plan covering employees of the participant's employer.

(3) Acceleration of benefits

The requirements of this paragraph are met if the plan does not permit the acceleration of the time or schedule of any payment under the plan, except as provided in regulations by the Secretary.

(4) Elections

(A) In general

The requirements of this paragraph are met if the requirements of subparagraphs (B) and (C) are met.

(B) Initial deferral decision

(i) In general

The requirements of this subparagraph are met if the plan provides that compensation for services performed during a taxable year may be deferred at the participant's election only if the election to defer such compensation is made not later than the close of the preceding taxable year or at such other time as provided in regulations.

(ii) First year of eligibility

In the case of the first year in which a participant becomes eligible to participate in the plan, such election may be made with respect to services to be performed subsequent to the election within 30 days after the date the participant becomes eligible to participate in such plan.

(iii) Performance-based compensation

In the case of any performance-based compensation based on services performed over a period of at least 12 months, such election may be made no later than 6 months before the end of the period.

(C) Changes in time and form of distribution

The requirements of this subparagraph are met if, in the case of a plan which permits under a subsequent election a delay in a payment or a change in the form of payment—

(i) the plan requires that such election may not take effect until at least 12 months after the date on which the election is made,

(ii) in the case of an election related to a payment not described in clause (ii), (iii), or (vi) of paragraph (2)(A), the plan requires that the payment with respect to which such election is made be deferred for a period of not less than 5 years from the date such payment would otherwise have been made, and

(iii) the plan requires that any election related to a payment described in paragraph (2)(A)(iv) may not be made less than 12 months prior to the date of the first scheduled payment under such paragraph.

(b) Rules relating to funding

(1) Offshore property in a trust

In the case of assets set aside (directly or indirectly) in a trust (or other arrangement determined by the Secretary) for purposes of paying deferred compensation under a nonqualified deferred compensation plan, for purposes of section 83 such assets shall be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors—

(A) at the time set aside if such assets (or such trust or other arrangement) are located outside of the United States, or

(B) at the time transferred if such assets (or such trust or other arrangement) are subsequently transferred outside of the United States.

This paragraph shall not apply to assets located in a foreign jurisdiction if substantially all of the services to which the nonqualified deferred compensation relates are performed in such jurisdiction.

(2) Employer's financial health

In the case of compensation deferred under a nonqualified deferred compensation plan, there is a transfer of property within the meaning of section 83 with respect to such compensation as of the earlier of—

(A) the date on which the plan first provides that assets will become restricted to the provision of benefits under the plan in connection with a change in the employer's financial health, or

(B) the date on which assets are so restricted,

whether or not such assets are available to satisfy claims of general creditors.

(3) Treatment of employer's defined benefit plan during restricted period

(A) In general

If—

(i) during any restricted period with respect to a single-employer defined benefit plan, assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary) or transferred to such a trust or other arrangement for purposes of paying deferred compensation of an applicable covered employee under a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor, or

(ii) a nonqualified deferred compensation plan of the plan sponsor or member of a controlled group which includes the plan sponsor provides that assets will become restricted to the provision of benefits under the plan to an applicable covered employee in connection with such restricted period (or other similar financial measure determined by the Secretary) with respect to the defined benefit plan, or assets are so restricted,

such assets shall, for purposes of section 83, be treated as property transferred in connection with the performance of services whether or not such assets are available to satisfy claims of general creditors. Clause (i) shall not apply with respect to any assets which are so set aside before the restricted period with respect to the defined benefit plan.

(B) Restricted period

For purposes of this section, the term ''restricted period'' means, with respect to any plan described in subparagraph (A)—

(i) any period during which the plan is in at-risk status (as defined in section 430(i));[1]

(ii) any period the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, and

(iii) the 12-month period beginning on the date which is 6 months before the termination date of the plan if, as of the termination date, the plan is not sufficient for benefit liabilities (within the meaning of section 4041 of the Employee Retirement Income Security Act of 1974).

(C) Special rule for payment of taxes on deferred compensation included in income

If an employer provides directly or indirectly for the payment of any Federal, State, or local income taxes with respect to any compensation required to be included in gross income by reason of this paragraph—

(i) interest shall be imposed under subsection (a)(1)(B)(i)(I) on the amount of such payment in the same manner as if such payment was part of the deferred compensation to which it relates,

(ii) such payment shall be taken into account in determining the amount of the additional tax under subsection (a)(1)(B)(i)(II) in the same manner as if such payment was part of the deferred compensation to which it relates, and

(iii) no deduction shall be allowed under this title with respect to such payment.

(D) Other definitions

For purposes of this section—

(i) Applicable covered employee

The term ''applicable covered employee'' means any—

(I) covered employee of a plan sponsor,

(II) covered employee of a member of a controlled group which includes the plan sponsor, and

(III) former employee who was a covered employee at the time of termination of employment with the plan sponsor or a member of a controlled group which includes the plan sponsor.

(ii) Covered employee

The term ''covered employee'' means an individual described in section 162(m)(3) or an individual subject to the requirements of section 16(a) of the Securities Exchange Act of 1934.

(4) Income inclusion for offshore trusts and employer's financial health

For each taxable year that assets treated as transferred under this subsection remain set aside in a trust or other arrangement subject to paragraph (1), (2), or (3), any increase in value in, or earnings with respect to, such assets shall be treated as an additional transfer of property under this subsection (to the extent not previously included in income).

(5) Interest on tax liability payable with respect to transferred property

(A) In general

If amounts are required to be included in gross income by reason of paragraph (1), (2), or (3) for a taxable year, the tax imposed by this chapter for such taxable year shall be increased by the sum of—

(i) the amount of interest determined under subparagraph (B), and

(ii) an amount equal to 20 percent of the amounts required to be included in gross income.

(B) Interest

For purposes of subparagraph (A), the interest determined under this subparagraph for any taxable year is the amount of interest at the underpayment rate plus 1 percentage point on the underpayments that would have occurred had the amounts so required to be included in gross income by paragraph (1), (2), or (3) been includible in gross income for the taxable year in which first deferred or, if later, the first taxable year in which such amounts are not subject to a substantial risk of forfeiture.

[1] So in original. The semicolon probably should be a comma.

(c) No inference on earlier income inclusion or requirement of later inclusion

Nothing in this section shall be construed to prevent the inclusion of amounts in gross income under any other provision of this chapter or any other rule of law earlier than the time provided in this section. Any amount included in gross income under this section shall not be required to be included in gross income under any other provision of this chapter or any other rule of law later than the time provided in this section.

(d) Other definitions and special rules

For purposes of this section:

(1) Nonqualified deferred compensation plan

The term ''nonqualified deferred compensation plan'' means any plan that provides for the deferral of compensation, other than—

(A) a qualified employer plan, and

(B) any bona fide vacation leave, sick leave, compensatory time, disability pay, or death benefit plan.

(2) Qualified employer plan

The term ''qualified employer plan'' means—

(A) any plan, contract, pension, account, or trust described in subparagraph (A) or (B) of section 219(g)(5) (without regard to subparagraph (A)(iii)),

(B) any eligible deferred compensation plan (within the meaning of section 457(b)), and

(C) any plan described in section 415(m).

(3) Plan includes arrangements, etc.

The term ''plan'' includes any agreement or arrangement, including an agreement or arrangement that includes one person.

(4) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(5) Treatment of earnings

References to deferred compensation shall be treated as including references to income (whether actual or notional) attributable to such compensation or such income.

(6) Aggregation rules

Except as provided by the Secretary, rules similar to the rules of subsections (b) and (c) of section 414 shall apply.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations—

(1) providing for the determination of amounts of deferral in the case of a nonqualified deferred compensation plan which is a defined benefit plan,

(2) relating to changes in the ownership and control of a corporation or assets of a corporation for purposes of subsection (a)(2)(A)(v),

(3) exempting arrangements from the application of subsection (b) if such arrangements will not result in an improper deferral of United States tax and will not result in assets being effectively beyond the reach of creditors,

(4) defining financial health for purposes of subsection (b)(2), and

(5) disregarding a substantial risk of forfeiture in cases where necessary to carry out the purposes of this section.

(Added Pub. L. 108–357, title VIII, §885(a), Oct. 22, 2004, 118 Stat. 1634; amended Pub. L. 109–135, title IV, §403(hh)(2), Dec. 21, 2005, 119 Stat. 2631; Pub. L. 109–280, title I, §116(a), (b), Aug. 17, 2006, 120 Stat. 856, 858; Pub. L. 110–458, title I, §101(e), Dec. 23, 2008, 122 Stat. 5100.)

REFERENCES IN TEXT

Section 4041 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(3)(B)(iii), is classified to section 1341 of Title 29, Labor.

Section 16(a) of the Securities Exchange Act of 1934, referred to in subsec. (b)(3)(D)(ii), is classified to section 78p(a) of Title 15, Commerce and Trade.

PRIOR PROVISIONS

A prior section 409A was renumbered section 409 of this title.

AMENDMENTS

2008—Subsec. (b)(3)(A)(ii). Pub. L. 110–458 inserted ''to an applicable covered employee'' after ''under the plan''.

2006—Subsec. (b)(3). Pub. L. 109–280, §116(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 109–280 redesignated pars. (3) and (4) as (4) and (5), respectively, and substituted ''paragraph (1), (2), or (3)'' for ''paragraph (1) or (2)'' wherever appearing.

2005—Subsec. (a)(4)(C)(ii). Pub. L. 109–135 struck out ''first'' after ''requires that the''.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title I, §116(c), Aug. 17, 2006, 120 Stat. 858, provided that: ''The amendments made by this section [amending this section] shall apply to transfers or other reservation of assets after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 109–135, title IV, §403(hh)(3)(A), Dec. 21, 2005, 119 Stat. 2631, provided that: ''Notwithstanding section 885(d)(1) of the American Jobs Creation Act of 2004 [Pub. L. 108–357, set out below], subsection (b) of section 409A of the Internal Revenue Code of 1986 shall take effect on January 1, 2005.''

Pub. L. 108–357, title VIII, §885(d), Oct. 22, 2004, 118 Stat. 1640, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 3401, 6041, and 6051 of this title] shall apply to amounts deferred after December 31, 2004.

''(2) SPECIAL RULES.—

''(A) EARNINGS.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

''(B) MATERIAL MODIFICATIONS.—For purposes of this subsection, amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, unless such modification is pursuant to the guidance issued under subsection (f) [set out as a note below].

''(3) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—The amendments made by this section shall not apply to any nonelective deferred compensation to which section 457 of the Internal Revenue Code of 1986 does not apply by reason of section 457(e)(12) of such Code, but only if such compensation is provided under a nonqualified deferred compensation plan—

''(A) which was in existence on May 1, 2004,

''(B) which was providing nonelective deferred compensation described in such section 457(e)(12) on such date, and

''(C) which is established or maintained by an organization incorporated on July 2, 1974.

If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.''

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of amendments by subtitles A (§§ 101–107) and B (§§ 111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

GUIDANCE RELATING TO CONFORMANCE WITH FUNDING RULES

Pub. L. 109–135, title IV, § 403(hh)(3)(B), Dec. 21, 2005, 119 Stat. 2631, provided that: ''Not later than 90 days after the date of the enactment of this Act [Dec. 21, 2005], the Secretary of the Treasury shall issue guidance under which a nonqualified deferred compensation plan which is in violation of the requirements of section 409A(b) of such Code shall be treated as not having violated such requirements if such plan comes into conformance with such requirements during such limited period as the Secretary may specify in such guidance.''

GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL

Pub. L. 108–357, title VIII, § 885(e), Oct. 22, 2004, 118 Stat. 1640, provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.''

GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS

Pub. L. 108–357, title VIII, § 885(f), Oct. 22, 2004, 118 Stat. 1641, as amended by Pub. L. 109–135, title IV, § 403(hh)(4), Dec. 21, 2005, 119 Stat. 2632, provided that: ''Not later than 60 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before January 1, 2005, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), be amended—

''(1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with regard to amounts deferred after December 31, 2004, but only if amounts subject to the termination or cancellation are includible in income of the participant as earned (or, if later, when no longer subject to substantial risk of forfeiture), and

''(2) to conform to the requirements of such section 409A with regard to amounts deferred after December 31, 2004.''

SUBPART B—SPECIAL RULES

Sec.
410. Minimum participation standards.
411. Minimum vesting standards.
412. Minimum funding standards.
413. Collectively bargained plans.[1]
414. Definitions and special rules.
415. Limitations on benefits and contribution under qualified plans.
416. Special rules for top-heavy plans.
417. Definitions and special rules for purposes of minimum survivor annuity requirements.

AMENDMENTS

1984—Pub. L. 98–397, title II, § 203(c), Aug. 23, 1984, 98 Stat. 1445, added item 417.

1982—Pub. L. 97–248, title II, § 240(d), Sept. 3, 1982, 96 Stat. 520, added item 416.

1974—Pub. L. 93–406, title II, § 1011, Sept. 2, 1974, 88 Stat. 898, added subpart heading and analysis of sections.

§ 410. Minimum participation standards

(a) Participation

(1) Minimum age and service conditions

(A) General rule

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 21; or

(ii) the date on which he completes 1 year of service.

(B) Special rules for certain plans

(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting ''2 years of service'' for ''1 year of service''.

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be

[1] So in original. Does not conform to section catchline.

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.

shall not be taken into account except to the extent provided in regulations prescribed by the Secretary.

(ii) Plan in reorganization

Except as otherwise determined by the Secretary, in determining the vested benefits charge for any plan year following any plan year in which the plan was in reorganization, any change in benefits—

(I) described in clause (i)(I), or

(II) described in clause (i)(II) as determined under regulations prescribed by the Secretary,

shall, for purposes of subparagraph (A)(ii), be treated as a change in benefits pursuant to an amendment to a plan.

(5) Base plan year

(A) In general

The base plan year for any plan year is—

(i) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(ii) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(B) Relevant collective bargaining agreement

A relevant collective bargaining agreement is a collective bargaining agreement—

(i) which is in effect for at least 6 months during the plan year, and

(ii) which has not been in effect for more than 36 months as of the end of the plan year.

(C) Relevant effective date

The relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

(D) Adjustment date

The adjustment date is the date which is—

(i) 90 days before the relevant effective date, or

(ii) if there is no relevant effective date, 90 days before the beginning of the plan year.

(6) Person in pay status

The term ''person in pay status'' means—

(A) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

(B) to the extent provided in regulations prescribed by the Secretary, any other person who is entitled to such a benefit under the plan.

(7) Other definitions and special rules

(A) Unfunded vested benefits

The term ''unfunded vested benefits'' means, in connection with a plan, an amount (determined in accordance with regulations prescribed by the Secretary) equal to—

(i) the value of vested benefits under the plan, less

(ii) the value of the assets of the plan.

(B) Vested benefits

The term ''vested benefits'' means any nonforfeitable benefit (within the meaning of section 4001(a)(8) of the Employee Retirement Income Security Act of 1974).

(C) Allocation of assets

In determining the plan's unfunded vested benefits, plan assets shall first be allocated to the vested benefits attributable to persons in pay status.

(D) Treatment of certain benefit reductions

The vested benefits charge shall be determined without regard to reductions in accrued benefits under section 418D which are first effective in the plan year.

(E) Withdrawal liability

For purposes of this part, any outstanding claim for withdrawal liability shall not be considered a plan asset, except as otherwise provided in regulations prescribed by the Secretary.

(c) Prohibition of nonannuity payments

Except as provided in regulations prescribed by the Pension Benefit Guaranty Corporation, while a plan is in reorganization a benefit with respect to a participant (other than a death benefit) which is attributable to employer contributions and which has a value of more than $1,750 may not be paid in a form other than an annuity which (by itself or in combination with social security, railroad retirement, or workers' compensation benefits) provides substantially level payments over the life of the participant.

(d) Terminated plans

Any multiemployer plan which terminates under section 4041A(a)(2) of the Employee Retirement Income Security Act of 1974 shall not be considered in reorganization after the last day of the plan year in which the plan is treated as having terminated.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1271.)

REFERENCES IN TEXT

Section 412, referred to in subsec. (b)(2), was amended generally by Pub. L. 109–280, title I, § 111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, section 412(b)(3) no longer contains a subpar. (B) and section 412(b)(2) no longer relates to charges to the funding standard account.

Section 4001(a)(8) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(7)(B), is classified to section 1301(a)(8) of Title 29, Labor.

Section 4041A(a)(2) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d), is classified to section 1341a(a)(2) of Title 29.

EFFECTIVE DATE

Section 210 of title II of Pub. L. 96–364 provided that:

''(a) Except as otherwise provided in this section, the amendments made by this title [amending sections 401, 404, 411 to 414, 4971, and 4975 of this title] shall take effect on the date of the enactment of this Act [Sept. 26, 1980].

''(b) Subpart C of part I of subchapter D of chapter 1 of such Code (as added by this Act) [sections 418 to 418E of this title] shall take effect, with respect to each

plan, on the first day of the first plan year beginning on or after the earlier of—

''(1) the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on the date of the enactment of this Act [Sept. 26, 1980], expires, without regard to extensions agreed to after such date of enactment, or

''(2) 3 years after the date of the enactment of this Act [Sept. 26, 1980].

''(c) The amendments made by section 209 [enacting section 194 of this title, and amending sections 501 and 4975 of this title] shall apply to taxable years ending after the date of the enactment of this Act [Sept. 26, 1980].''

§ 418A. Notice of reorganization and funding requirements

(a) Notice requirement

(1) In general

If—

(A) a multiemployer plan is in reorganization for a plan year, and

(B) section 418B would require an increase in contributions for such plan year,

the plan sponsor shall notify the persons described in paragraph (2) that the plan is in reorganization and that, if contributions to the plan are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both such reduction and imposition may occur).

(2) Persons to whom notice is to be given

The persons described in this paragraph are—

(A) each employer who has an obligation to contribute under the plan (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974), and

(B) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(3) Overburden credit not taken into account

The determination under paragraph (1)(B) shall be made without regard to the overburden credit provided by section 418C.

(b) Additional requirements

The Pension Benefit Guaranty Corporation may prescribe additional or alternative requirements for assuring, in the case of a plan with respect to which notice is required by subsection (a)(1), that the persons described in subsection (a)(2)—

(1) receive appropriate notice that the plan is in reorganization,

(2) are adequately informed of the implications of reorganization status, and

(3) have reasonable access to information relevant to the plan's reorganization status.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1274.)

REFERENCES IN TEXT

Section 4212(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A), is classified to section 1392(a) of Title 29, Labor.

§ 418B. Minimum contribution requirement

(a) Accumulated funding deficiency in reorganization

(1) In general

For any plan year in which a multiemployer plan is in reorganization—

(A) the plan shall continue to maintain its funding standard account, and

(B) the plan's accumulated funding deficiency under section 412(a)[1] for such plan year shall be equal to the excess (if any) of—

(i) the sum of the minimum contribution requirement for such plan year (taking into account any overburden credit under section 418C(a)) plus the plan's accumulated funding deficiency for the preceding plan year (determined under this section if the plan was in reorganization during such plan year or under section 412(a)[1] if the plan was not in reorganization), over

(ii) amounts considered contributed by employers to or under the plan for the plan year (increased by any amount waived under subsection (f) for the plan year).

(2) Treatment of withdrawal liability payments

For purposes of paragraph (1), withdrawal liability payments (whether or not received) which are due with respect to withdrawals before the end of the base plan year shall be considered amounts contributed by the employer to or under the plan if, as of the adjustment date, it was reasonable for the plan sponsor to anticipate that such payments would be made during the plan year.

(b) Minimum contribution requirement

(1) In general

Except as otherwise provided in this section for purposes of this subpart the minimum contribution requirement for a plan year in which a plan is in reorganization is an amount equal to the excess of—

(A) the sum of—

(i) the plan's vested benefits charge for the plan year; and

(ii) the increase in normal cost for the plan year determined under the entry age normal funding method which is attributable to plan amendments adopted while the plan was in reorganization, over

(B) the amount of the overburden credit (if any) determined under section 418C for the plan year.

(2) Adjustment for reductions in contribution base units

If the plan's current contribution base for the plan year is less than the plan's valuation contribution base for the plan year, the minimum contribution requirement for such plan year shall be equal to the product of the amount determined under paragraph (1) (after any adjustment required by this subpart other than this paragraph) multiplied by a fraction—

(A) the numerator of which is the plan's current contribution base for the plan year, and

[1] See References in Text note below.

(B) the denominator of which is the plan's valuation contribution base for the plan year.

(3) Special rule where cash-flow amount exceeds vested benefits charge

(A) In general

If the vested benefits charge for a plan year of a plan in reorganization is less than the plan's cash-flow amount for the plan year, the plan's minimum contribution requirement for the plan year is the amount determined under paragraph (1) (determined before the application of paragraph (2)) after substituting the term ''cash-flow amount'' for the term ''vested benefits charge'' in paragraph (1)(A).

(B) Cash-flow amount

For purposes of subparagraph (A), a plan's cash-flow amount for a plan year is an amount equal to—

(i) the amount of the benefits payable under the plan for the base plan year, plus the amount of the plan's administrative expenses for the base plan year, reduced by

(ii) the value of the available plan assets for the base plan year determined under regulations prescribed by the Secretary,

adjusted in a manner consistent with section 418(b)(4).

(c) Current contribution base; valuation contribution base

(1) Current contribution base

For purposes of this subpart, a plan's current contribution base for a plan year is the number of contribution base units with respect to which contributions are required to be made under the plan for that plan year, determined in accordance with regulations prescribed by the Secretary.

(2) Valuation contribution base

(A) In general

Except as provided in subparagraph (B), for purposes of this subpart a plan's valuation contribution base is the number of contribution base units for which contributions were received for the base plan year—

(i) adjusted to reflect declines in the contribution base which have occurred (or could reasonably be anticipated) as of the adjustment date for the plan year referred to in paragraph (1),

(ii) adjusted upward (in accordance with regulations prescribed by the Secretary) for any contribution base reduction in the base plan year caused by a strike or lockout or by unusual events, such as fire, earthquake, or severe weather conditions, and

(iii) adjusted (in accordance with regulations prescribed by the Secretary) for reductions in the contribution base resulting from transfers of liabilities.

(B) Insolvent plans

For any plan year—

(i) in which the plan is insolvent (within the meaning of section 418E(b)(1)), and

(ii) beginning with the first plan year beginning after the expiration of all relevant collective bargaining agreements which were in effect in the plan year in which the plan became insolvent,

the plan's valuation contribution base is the greater of the number of contribution base units for which contributions were received for the first or second plan year preceding the first plan year in which the plan is insolvent, adjusted as provided in clause (ii) or (iii) of subparagraph (A).

(3) Contribution base unit

For purposes of this subpart, the term ''contribution base unit'' means a unit with respect to which an employer has an obligation to contribute under a multiemployer plan (as defined in regulations prescribed by the Secretary).

(d) Limitation on required increases in rate of employer contributions

(1) In general

Under regulations prescribed by the Secretary, the minimum contribution requirement applicable to any plan for any plan year which is determined under subsection (b) (without regard to subsection (b)(2)) shall not exceed an amount which is equal to the sum of—

(A) the greater of—

(i) the funding standard requirement for such plan year, or

(ii) 107 percent of—

(I) if the plan was not in reorganization in the preceding plan year, the funding standard requirement for such preceding plan year, or

(II) if the plan was in reorganization in the preceding plan year, the sum of the amount determined under this subparagraph for the preceding plan year and the amount (if any) determined under subparagraph (B) for the preceding plan year, plus

(B) if for the plan year a change in benefits is first required to be considered in computing the charges under section 412(b)(2)(A) or (B),[1] the sum of—

(i) the increase in normal cost for a plan year determined under the entry age normal funding method due to increases in benefits described in section 418(b)(4)(A)(ii) (determined without regard to section 418(b)(4)(B)(ii)), and

(ii) the amount necessary to amortize in equal annual installments the increase in the value of vested benefits under the plan due to increases in benefits described in clause (i) over—

(I) 10 years, to the extent such increase in value is attributable to persons in pay status, or

(II) 25 years, to the extent such increase in value is attributable to other participants.

(2) Funding standard requirement

For purposes of paragraph (1), the funding standard requirement for any plan year is an

amount equal to the net charge to the funding standard account for such plan year (as defined in section 418(b)(2)).

(3) Special rule for certain plans

(A) In general

In the case of a plan described in section 4216(b) of the Employee Retirement Income Security Act of 1974, if a plan amendment which increases benefits is adopted after January 1, 1980—

(i) paragraph (1) shall apply only if the plan is a plan described in subparagraph (B), and

(ii) the amount under paragraph (1) shall be determined without regard to subparagraph (1)(B).

(B) Eligible plans

A plan is described in this subparagraph if—

(i) the rate of employer contributions under the plan for the first plan year beginning on or after the date on which an amendment increasing benefits is adopted, multiplied by the valuation contribution base for that plan year, equals or exceeds the sum of—

(I) the amount that would be necessary to amortize fully, in equal annual installments, by July 1, 1986, the unfunded vested benefits attributable to plan provisions in effect on July 1, 1977 (determined as of the last day of the base plan year); and

(II) the amount that would be necessary to amortize fully, in equal annual installments, over the period described in subparagraph (C), beginning with the first day of the first plan year beginning on or after the date on which the amendment is adopted, the unfunded vested benefits (determined as of the last day of the base plan year) attributable to each plan amendment after July 1, 1977; and

(ii) the rate of employer contributions for each subsequent plan year is not less than the lesser of—

(I) the rate which when multiplied by the valuation contribution base for that subsequent plan year produces the annual amount that would be necessary to complete the amortization schedule described in clause (i), or

(II) the rate for the plan year immediately preceding such subsequent plan year, plus 5 percent of such rate.

(C) Period

The period determined under this subparagraph is the lesser of—

(i) 12 years, or

(ii) a period equal in length to the average of the remaining expected lives of all persons receiving benefits under the plan.

(4) Exception in case of certain benefit increases

Paragraph (1) shall not apply with respect to a plan, other than a plan described in paragraph (3), for the period of consecutive plan years in each of which the plan is in reorganization, beginning with a plan year in which occurs the earlier of the date of the adoption or the effective date of any amendment of the plan which increases benefits with respect to service performed before the plan year in which the adoption of the amendment occurred.

(e) Certain retroactive plan amendments

In determining the minimum contribution requirement with respect to a plan for a plan year under subsection (b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under section 412(c)(8).[1]

(f) Waiver of accumulated funding deficiency

(1) In general

The Secretary may waive any accumulated funding deficiency under this section in accordance with the provisions of section 412(d)(1).[1]

(2) Treatment of waiver

Any waiver under paragraph (1) shall not be treated as a waived funding deficiency (within the meaning of section 412(d)(3)).[1]

(g) Actuarial assumptions must be reasonable

For purposes of making any determination under this subpart, the requirements of section 412(c)(3)[1] shall apply.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1274.)

REFERENCES IN TEXT

Section 412, referred to in subsecs. (a)(1)(B), (d)(1)(B), and (e) to (g), was amended generally by Pub. L. 109–280, title I, § 111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, provisions formerly contained in section 412(a), (b)(2)(A), (B), (c)(3), (8), (d)(1), and (3), have been revised and restated elsewhere in, or omitted from, the section.

Section 4216(b) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A), is classified to section 1396(b) of Title 29, Labor.

§ 418C. Overburden credit against minimum contribution requirement

(a) General rule

For purposes of determining the contribution under section 418B (before the application of section 418B(b)(2) or (d)), the plan sponsor of a plan which is overburdened for the plan year shall apply an overburden credit against the plan's minimum contribution requirement for the plan year (determined without regard to section 418B(b)(2) or (d) and without regard to this section).

(b) Definition of overburdened plan

A plan is overburdened for a plan year if—

(1) the average number of pay status participants under the plan in the base plan year exceeds the average of the number of active participants in the base plan year and the 2 plan years preceding the base plan year, and

(2) the rate of employer contributions under the plan equals or exceeds the greater of—

(A) such rate for the preceding plan year, or

(B) such rate for the plan year preceding the first year in which the plan is in reorganization.

(c) Amount of overburden credit

The amount of the overburden credit for a plan year is the product of—

(1) one-half of the average guaranteed benefit paid for the base plan year, and

(2) the overburden factor for the plan year.

The amount of the overburden credit for a plan year shall not exceed the amount of the minimum contribution requirement for such year (determined without regard to this section).

(d) Overburden factor

For purposes of this section, the overburden factor of a plan for the plan year is an amount equal to—

(1) the average number of pay status participants for the base plan year, reduced by

(2) the average of the number of active participants for the base plan year and for each of the 2 plan years preceding the base plan year.

(e) Definitions

For purposes of this section—

(1) Pay status participant

The term ''pay status participant'' means, with respect to a plan, a participant receiving retirement benefits under the plan.

(2) Number of active participants

The number of active participants for a plan year shall be the sum of—

(A) the number of active employees who are participants in the plan and on whose behalf contributions are required to be made during the plan year;

(B) the number of active employees who are not participants in the plan but who are in an employment unit covered by a collective bargaining agreement which requires the employees' employer to contribute to the plan unless service in such employment unit was never covered under the plan or a predecessor thereof, and

(C) the total number of active employees attributed to employers who made payments to the plan for the plan year of withdrawal liability pursuant to part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974, determined by dividing—

(i) the total amount of such payments, by

(ii) the amount equal to the total contributions received by the plan during the plan year divided by the average number of active employees who were participants in the plan during the plan year.

The Secretary shall by regulations provide alternative methods of determining active participants where (by reason of irregular employment, contributions on a unit basis, or otherwise) this paragraph does not yield a representative basis for determining the credit.

(3) Average number

The term ''average number'' means, with respect to pay status participants for a plan year, a number equal to one-half the sum of—

(A) the number with respect to the plan as of the beginning of the plan year, and

(B) the number with respect to the plan as of the end of the plan year.

(4) Average guaranteed benefit

The average guaranteed benefit paid is 12 times the average monthly pension payment guaranteed under section 4022A(c)(1) of the Employee Retirement Income Security Act of 1974 determined under the provisions of the plan in effect at the beginning of the first plan year in which the plan is in reorganization and without regard to section 4022A(c)(2).

(5) First year in reorganization

The first year in which the plan is in reorganization is the first of a period of 1 or more consecutive plan years in which the plan has been in reorganization not taking into account any plan years the plan was in reorganization prior to any period of 3 or more consecutive plan years in which the plan was not in reorganization.

(f) No overburden credit in case of certain reductions in contributions

(1) In general

Notwithstanding any other provision of this section, a plan is not eligible for an overburden credit for a plan year if the Secretary finds that the plan's current contribution base for any plan year was reduced, without a corresponding reduction in the plan's unfunded vested benefits attributable to pay status participants, as a result of a change in an agreement providing for employer contributions under the plan.

(2) Treatment of certain withdrawals

For purposes of paragraph (1), a complete or partial withdrawal of an employer (within the meaning of part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974) does not impair a plan's eligibility for an overburden credit, unless the Secretary finds that a contribution base reduction described in paragraph (1) resulted from a transfer of liabilities to another plan in connection with the withdrawal.

(g) Mergers

Notwithstanding any other provision of this section, if 2 or more multiemployer plans merge, the amount of the overburden credit which may be applied under this section with respect to the plan resulting from the merger for any of the 3 plan years ending after the effective date of the merger shall not exceed the sum of the used overburden credit for each of the merging plans for its last plan year ending before the effective date of the merger. For purposes of the preceding sentence, the used overburden credit is that portion of the credit which does not exceed the excess of the minimum contribution requirement determined without regard to any overburden credit under this section over the employer contributions required under the plan.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1278.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (e)(2)(C), (4), and (f)(2), 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. Section 4022A of the Employee Retirement Income Security Act of 1974 is classified to section 1322a 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.

§ 418D. Adjustments in accrued benefits

(a) Adjustments in accrued benefits

(1) In general

Notwithstanding section 411, a multiemployer plan in reorganization may be amended, in accordance with this section, to reduce or eliminate accrued benefits attributable to employer contributions which, under section 4022A(b) of the Employee Retirement Income Security Act of 1974, are not eligible for the Pension Benefit Guaranty Corporation's guarantee. The preceding sentence shall only apply to accrued benefits under plan amendments (or plans) adopted after March 26, 1980, or under collective bargaining agreement entered into after March 26, 1980.

(2) Adjustment of vested benefits charge

In determining the minimum contribution requirement with respect to a plan for a plan year under section 418B(b), the vested benefits charge may be adjusted to reflect a plan amendment reducing benefits under this section or section 412(c)(8),[1] but only if the amendment is adopted and effective no later than 2½ months after the end of the plan year, or within such extended period as the Secretary may prescribe by regulations under section 412(c)(10).[1]

(b) Limitation on reduction

(1) In general

Accrued benefits may not be reduced under this section unless—

(A) notice has been given, at least 6 months before the first day of the plan year in which the amendment reducing benefits is adopted, to—

(i) plan participants and beneficiaries,

(ii) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

(iii) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer,

that the plan is in reorganization and that, if contributions under the plan are not increased, accrued benefits under the plan will be reduced or an excise tax will be imposed on employers;

(B) in accordance with regulations prescribed by the Secretary—

(i) any category of accrued benefits is not reduced with respect to inactive participants to a greater extent proportionally that such category of accrued benefits is reduced with respect to active participants,

(ii) benefits attributable to employer contributions other than accrued benefits and the rate of future benefit accruals are reduced at least to an extent equal to the reduction in accrued benefits of inactive participants, and

(iii) in any case in which the accrued benefit of a participant or beneficiary is reduced by changing the benefit form or the requirements which the participant or beneficiary must satisfy to be entitled to the benefit, such reduction is not applicable to—

(I) any participant or beneficiary in pay status on the effective date of the amendment, or the beneficiary of such a participant, or

(II) any participant who has attained normal retirement age, or who is within 5 years of attaining normal retirement age, on the effective date of the amendment, or the beneficiary of any such participant; and

(C) the rate of employer contributions for the plan year in which the amendment becomes effective and for all succeeding plan years in which the plan is in reorganization equals or exceeds the greater of—

(i) the rate of employer contributions, calculated without regard to the amendment, for the plan year in which the amendment becomes effective, or

(ii) the rate of employer contributions for the plan year preceding the plan year in which the amendment becomes effective.

(2) Information required to be included in notice

The plan sponsors shall include in any notice required to be sent to plan participants and beneficiaries under paragraph (1) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(c) No recoupment

A plan may not recoup a benefit payment which is in excess of the amount payable under the plan because of an amendment retroactively reducing accrued benefits under this section.

(d) Benefit increases under multiemployer plan in reorganization

(1) Restoration of previously reduced benefits

(A) In general

A plan which has been amended to reduce accrued benefits under this section may be amended to increase or restore accrued benefits, or the rate of future benefit accruals, only if the plan is amended to restore levels of previously reduced accrued benefits of inactive participants and of participants who are within 5 years of attaining normal retirement age to at least the same extent as any such increase in accrued benefits or in the rate of future benefit accruals.

[1] See References in Text note below.

(B) Benefit increases and benefit restorations

For purposes of this subsection, in the case of a plan which has been amended under this section to reduce accrued benefits—

(i) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit increase to the extent that the benefit, or the accrual rate, is thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan before the effective date of the amendment reducing accrued benefits, and

(ii) an increase in a benefit, or in the rate of future benefit accruals, shall be considered a benefit restoration to the extent that the benefit, or the accrual rate, is not thereby increased above the highest benefit level, or accrual rate, which was in effect under the terms of the plan immediately before the effective date of the amendment reducing accrued benefits.

(2) Uniformity in benefit restoration

If a plan is amended to partially restore previously reduced accrued benefit levels, or the rate of future benefit accruals, the benefits of inactive participants shall be restored in at least the same proportions as other accrued benefits which are restored.

(3) No benefit increases in year of benefit reduction

No benefit increase under a plan may take effect in a plan year in which an amendment reducing accrued benefits under the plan, in accordance with this section, is adopted or first becomes effective.

(4) Retroactive payments

A plan is not required to make retroactive benefit payments with respect to that portion of an accrued benefit which was reduced and subsequently restored under this section.

(e) Inactive participant

For purposes of this section, the term ''inactive participant'' means a person not in covered service under the plan who is in pay status under the plan or who has a nonforfeitable benefit under the plan.

(f) Regulations

The Secretary may prescribe rules under which, notwithstanding any other provision of this section, accrued benefit reductions or benefit increases for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors reflecting differences in negotiated levels of financial support for plan benefit obligations.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1280.)

REFERENCES IN TEXT

Section 4022A(b) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(1), is classified to section 1322a(b) of Title 29, Labor.

Section 412, referred to in subsec. (a)(2), was amended generally by Pub. L. 109–280, title I, § 111(a), Aug. 17, 2006, 120 Stat. 820, and as so amended, no longer contains a subsec. (c)(8) or (10).

Section 4212(a) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(1)(A)(ii), is classified to section 1392(a) of Title 29.

§ 418E. Insolvent plans

(a) Suspension of certain benefit payments

Notwithstanding section 411, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974.

(b) Definitions

For purposes of this section, for a plan year—

(1) Insolvency

A multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d).

(2) Resource benefit level

The term ''resource benefit level'' means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) to be the highest level which can be paid out of the plan's available resources.

(3) Available resources

The term ''available resources'' means the plan's cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the Pension Benefit Guaranty Corporation under section 4261(b)(2) of the Employee Retirement Income Security Act of 1974.

(4) Insolvency year

The term ''insolvency year'' means a plan year in which a plan is insolvent.

(c) Benefit payments under insolvent plans

(1) Determination of resource benefit level

The plan sponsor of a plan in reorganization shall determine in writing the plan's resource benefit level for each insolvency year, based on the plan sponsor's reasonable projection of the plan's available resources and the benefits payable under the plan.

(2) Uniformity of the benefit suspension

The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary, apply in substantially uniform proportions to the benefits of all persons in pay status (within the meaning of section 418(b)(6)) under the plan, except that the Secretary may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(3) Resource benefit level below level of basic benefits

Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource bene-

fit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits shall be suspended for that plan year.

(4) Excess resources

(A) In general

If, by the end of an insolvency year, the plan sponsor determines in writing that the plan's available resources in that insolvency year could have supported benefit payments above the resource benefit level for that insolvency year, the plan sponsor shall distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan in that insolvency year, in accordance with regulations prescribed by the Secretary.

(B) Excess resources

For purposes of this paragraph, the term ''excess resources'' means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at the benefit levels under the plan.

(5) Unpaid benefits

If, by the end of an insolvency year, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level which were unpaid shall be distributed to the participants and beneficiaries, in accordance with regulations prescribed by the Secretary, to the extent possible taking into account the plan's total available resources in that insolvency year.

(6) Retroactive payments

Except as provided in paragraph (4) or (5), a plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this section.

(d) Plan sponsor determination

(1) Triennial test

As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 418B(b)(3)(B)(ii)) for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 5 plan years. If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.

(2) Determination of insolvency

If, at any time, the plan sponsor of a plan in reorganization reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year, the plan sponsor shall make such determination available to interested parties.

(3) Determination of resource benefit level

The plan sponsor of a plan in reorganization shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

(e) Notice requirements

(1) Impending insolvency

If the plan sponsor of a plan in reorganization determines under subsection (d)(1) or (2) that the plan may become insolvent (within the meaning of subsection (b)(1)), the plan sponsor shall—

(A) notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of that determination, and

(B) inform the parties described in section 418A(a)(2) and the plan participants and beneficiaries that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

(2) Resource benefit level

No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in reorganization shall notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of the resource benefit level determined in writing for that insolvency year.

(3) Potential need for financial assistance

In any case in which the plan sponsor anticipates that the resource benefit level for an insolvency year may not exceed the level of basic benefits, the plan sponsor shall notify the Pension Benefit Guaranty Corporation.

(4) Regulations

Notice required by this subsection shall be given in accordance with regulations prescribed by the Pension Benefit Guaranty Corporation, except that notice to the Secretary shall be given in accordance with regulations prescribed by the Secretary.

(5) Corporation may prescribe time

The Pension Benefit Guaranty Corporation may prescribe a time other than the time prescribed by this section for the making of a determination or the filing of a notice under this section.

(f) Financial assistance

(1) Permissive application

If the plan sponsor of an insolvent plan for which the resource benefit level is above the level of basic benefits anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the Pension Benefit Guaranty Cor-

poration under section 4261 of the Employee Retirement Income Security Act of 1974.

(2) Mandatory application

A plan sponsor who has determined a resource benefit level for an insolvency year which is below the level of basic benefits shall apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

(g) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this subpart in such manner as determined by the Secretary.

(Added Pub. L. 96–364, title II, § 202(a), Sept. 26, 1980, 94 Stat. 1282; amended Pub. L. 109–280, title II, § 213(a), Aug. 17, 2006, 120 Stat. 917.)

REFERENCES IN TEXT

Section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1322a(g)(5) of Title 29, Labor.

Section 4261 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(3) and (f), is classified to section 1431 of Title 29.

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109–280 substituted ''5 plan years'' for ''3 plan years'' the second place it appeared and inserted at end ''If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title II, § 213(b), Aug. 17, 2006, 120 Stat. 918, provided that: ''The amendments made by this section [amending this section] shall apply with respect to the determinations made in plan years beginning after 2007.''

SUBPART D—TREATMENT OF WELFARE BENEFIT FUNDS

Sec.
419. Treatment of funded welfare benefit plans.
419A. Qualified asset account; limitation on additions to account.

§ 419. Treatment of funded welfare benefit plans

(a) General rule

Contributions paid or accrued by an employer to a welfare benefit fund—

(1) shall not be deductible under this chapter, but

(2) if they would otherwise be deductible, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

(b) Limitation

The amount of the deduction allowable under subsection (a)(2) for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year.

(c) Qualified cost

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term ''qualified cost'' means, with respect to any taxable year, the sum of—

(A) the qualified direct cost for such taxable year, and

(B) subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year.

(2) Reduction for funds after-tax income

In the case of any welfare benefit fund, the qualified cost for any taxable year shall be reduced by such fund's after-tax income for such taxable year.

(3) Qualified direct cost

(A) In general

The term ''qualified direct cost'' means, with respect to any taxable year, the aggregate amount (including administrative expenses) which would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

(B) Time when benefits provided

For purposes of subparagraph (A), a benefit shall be treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of this chapter excluding such benefit from gross income).

(C) 60-month amortization of child care facilities

(i) In general

In determining qualified direct costs with respect to any child care facility for purposes of subparagraph (A), in lieu of depreciation the adjusted basis of such facility shall be allowable as a deduction ratably over a period of 60 months beginning with the month in which the facility is placed in service.

(ii) Child care facility

The term ''child care facility'' means any tangible property which qualifies under regulations prescribed by the Secretary as a child care center primarily for children of employees of the employer; except that such term shall not include any property—

(I) not of a character subject to depreciation; or

(II) located outside the United States.

(4) After-tax income

(A) In general

The term ''after-tax income'' means, with respect to any taxable year, the gross income of the welfare benefit fund reduced by the sum of—

(i) the deductions allowed by this chapter which are directly connected with the production of such gross income, and

(ii) the tax imposed by this chapter on the fund for the taxable year.

(B) Treatment of certain amounts

In determining the gross income of any welfare benefit fund—

(i) contributions and other amounts received from employees shall be taken into account, but

(ii) contributions from the employer shall not be taken into account.

(5) Item only taken into account once

No item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

(d) Carryover of excess contributions

If—

(1) the amount of the contributions paid (or deemed paid under this subsection) by the employer during any taxable year to a welfare benefit fund, exceeds

(2) the limitation of subsection (b),

such excess shall be treated as an amount paid by the employer to such fund during the succeeding taxable year.

(e) Welfare benefit fund

For purposes of this section—

(1) In general

The term ''welfare benefit fund'' means any fund—

(A) which is part of a plan of an employer, and

(B) through which the employer provides welfare benefits to employees or their beneficiaries.

(2) Welfare benefit

The term ''welfare benefit'' means any benefit other than a benefit with respect to which—

(A) section 83(h) applies,

(B) section 404 applies (determined without regard to section 404(b)(2)), or

(C) section 404A applies.

(3) Fund

The term ''fund'' means—

(A) any organization described in paragraph (7), (9), (17), or (20) of section 501(c),

(B) any trust, corporation, or other organization not exempt from the tax imposed by this chapter, and

(C) to the extent provided in regulations, any account held for an employer by any person.

(4) Treatment of amounts held pursuant to certain insurance contracts

(A) In general

Notwithstanding paragraph (3)(C), the term ''fund'' shall not include amounts held by an insurance company pursuant to an insurance contract if—

(i) such contract is a life insurance contract described in section 264(a)(1), or

(ii) such contract is a qualified nonguaranteed contract.

(B) Qualified nonguaranteed contract

(i) In general

For purposes of this paragraph, the term ''qualified nonguaranteed contract'' means any insurance contract (including a reasonable premium stabilization reserve held thereunder) if—

(I) there is no guarantee of a renewal of such contract, and

(II) other than insurance protection, the only payments to which the employer or employees are entitled are experience rated refunds or policy dividends which are not guaranteed and which are determined by factors other than the amount of welfare benefits paid to (or on behalf of) the employees of the employer or their beneficiaries.

(ii) Limitation

In the case of any qualified nonguaranteed contract, subparagraph (A) shall not apply unless the amount of any experience rated refund or policy dividend payable to an employer with respect to a policy year is treated by the employer as received or accrued in the taxable year in which the policy year ends.

(f) Method of contributions, etc., having the effect of a plan

If—

(1) there is no plan, but

(2) there is a method or arrangement of employer contributions or benefits which has the effect of a plan,

this section shall apply as if there were a plan.

(g) Extension to plans for independent contractors

If any fund would be a welfare benefit fund (as modified by subsection (f)) but for the fact that there is no employee-employer relationship—

(1) this section shall apply as if there were such a relationship, and

(2) any reference in this section to the employer shall be treated as a reference to the person for whom services are provided, and any reference in this section to an employee shall be treated as a reference to the person providing the services.

(Added Pub. L. 98–369, div. A, title V, §511(a), July 18, 1984, 98 Stat. 854; amended Pub. L. 99–514, title XVIII, §1851(a)(1), (8)(A), (b)(2)(C)(iv), Oct. 22, 1986, 100 Stat. 2858, 2860, 2863; Pub. L. 100–203, title IX, §10201(b)(4), Dec. 22, 1987, 101 Stat. 1330–387; Pub. L. 100–647, title I, §1018(t)(2)(C), Nov. 10, 1988, 102 Stat. 3587.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–647 substituted ''chapter'' for ''subchapter''.

1987—Subsec. (e)(2)(D). Pub. L. 100–203 struck out subpar. (D) which related to a benefit with respect to which an election under section 463 applies.

1986—Subsec. (a)(1). Pub. L. 99–514, §1851(b)(2)(C)(iv)(I), substituted ''under this subchapter'' for ''under section 162 or 212''.

Subsec. (a)(2). Pub. L. 99–514, §1851(b)(2)(C)(iv)(II), substituted ''they would otherwise be deductible'' for ''they satisfy the requirements of either of such sections''.

Subsec. (e)(4). Pub. L. 99–514, §1851(a)(8)(A), added par. (4).

Subsec. (g)(1). Pub. L. 99–514, §1851(a)(1), substituted ''such a relationship'' for ''such a plan''.

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 taxable years beginning after Dec. 31, 1987, see section 10201(c)(1) of Pub. L. 100–203, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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

Section 511(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1851(a)(12), (14), Oct. 22, 1986, 100 Stat. 2862, provided that:

''(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this subpart] shall apply to contributions paid or accrued after December 31, 1985, in taxable years ending after such date.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of plan maintained pursuant to 1 or more collective bargaining agreements—

''(A) between employee representatives and 1 or more employers, and

''(B) in effect on July 1, 1985 (or ratified on or before such date),

the amendments made by this section shall not apply to years beginning before 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 July 1, 1985).

''(3) SPECIAL RULE FOR PARAGRAPH (2).—For purposes of paragraph (2), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

''(4) SPECIAL EFFECTIVE DATE FOR CONTRIBUTIONS OF FACILITIES.—Notwithstanding paragraphs (1) and (2), the amendments made by this section shall apply in the case of—

''(A) any contribution after June 22, 1984, of a facility to a welfare benefit fund, and

''(B) any other contribution after June 22, 1984, to a welfare benefit fund to be used to acquire or improve a facility.

''(5) BINDING CONTRACT EXCEPTIONS TO PARAGRAPH (4).—Paragraph (4) shall not apply to any facility placed in service before January 1, 1987—

''(A) which is acquired or improved by the fund (or contributed to the fund) pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter, or

''(B) the construction of which by or for the fund began before June 22, 1984.

''(6) AMENDMENTS RELATED TO TAX ON UNRELATED BUSINESS INCOME.—The amendments made by subsection (b) [amending section 512 of this title] shall apply with respect to taxable years ending after December 31, 1985. For purposes of section 15 of the Internal Revenue Code of 1954 [now 1986], such amendments shall be treated as a change in the rate of a tax imposed by chapter 1 of such Code.

''(7) AMENDMENTS RELATED TO EXCISE TAXES ON CERTAIN WELFARE BENEFIT PLANS.—The amendments made by subsection (c) [enacting section 4976 of this title] shall apply to benefits provided after December 31, 1985.''

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.

EFFECTIVE DATE OF REGULATIONS

Section 1851(a)(8)(B) of Pub. L. 99–514 provided that: ''Except in the case of a reserve for post-retirement medical or life insurance benefits and any other arrangement between an insurance company and an employer under which the employer has a contractual right to a refund or dividend based solely on the experience of such employer, any account held for an employer by any person and defined as a fund in regulations issued pursuant to section 419(e)(3)(C) of the Internal Revenue Code of 1954 [now 1986] shall be considered a 'fund' no earlier than 6 months following the date such regulations are published in final form.''

§ 419A. Qualified asset account; limitation on additions to account

(a) General rule

For purposes of this subpart and section 512, the term ''qualified asset account'' means any account consisting of assets set aside to provide for the payment of—

(1) disability benefits,

(2) medical benefits,

(3) SUB or severance pay benefits, or

(4) life insurance benefits.

(b) Limitation on additions to account

No addition to any qualified asset account may be taken into account under section 419(c)(1)(B) to the extent such addition results in the amount in such account exceeding the account limit.

(c) Account limit

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund—

(A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a), and

(B) administrative costs with respect to such claims.

(2) Additional reserve for post-retirement medical and life insurance benefits

The account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for—

(A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or

(B) post-retirement life insurance benefits to be provided to covered employees.

(3) Amount taken into account for SUB or severance pay benefits

(A) In general

The account limit for any taxable year with respect to SUB or severance pay bene-

fits is 75 percent of the average annual qualified direct costs for SUB or severance pay benefits for any 2 of the immediately preceding 7 taxable years (as selected by the fund).

(B) Special rule for certain new plans

In the case of any new plan for which SUB or severance pay benefits are not available to any key employee, the Secretary shall, by regulations, provide for an interim amount to be taken into account under paragraph (1).

(4) Limitation on amounts to be taken into account

(A) Disability benefits

For purposes of paragraph (1), disability benefits payable to any individual shall not be taken into account to the extent such benefits are payable at an annual rate in excess of the lower of—

(i) 75 percent of such individual's average compensation for his high 3 years (within the meaning of section 415(b)(3)), or

(ii) the limitation in effect under section 415(b)(1)(A).

(B) Limitation on SUB or severance pay benefits

For purposes of paragraph (3), any SUB or severance pay benefit payable to any individual shall not be taken into account to the extent such benefit is payable at an annual rate in excess of 150 percent of the limitation in effect under section 415(c)(1)(A).

(5) Special limitation where no actuarial certification

(A) In general

Unless there is an actuarial certification of the account limit determined under this subsection for any taxable year, the account limit for such taxable year shall not exceed the sum of the safe harbor limits for such taxable year.

(B) Safe harbor limits

(i) Short-term disability benefits

In the case of short-term disability benefits, the safe harbor limit for any taxable year is 17.5 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to such benefits.

(ii) Medical benefits

In the case of medical benefits, the safe harbor limit for any taxable year is 35 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to medical benefits.

(iii) SUB or severance pay benefits

In the case of SUB or severance pay benefits, the safe harbor limit for any taxable year is the amount determined under paragraph (3).

(iv) Long-term disability or life insurance benefits

In the case of any long-term disability benefit or life insurance benefit, the safe harbor limit for any taxable year shall be the amount prescribed by regulations.

(6) Additional reserve for medical benefits of bona fide association plans

(A) In general

An applicable account limit for any taxable year may include a reserve in an amount not to exceed 35 percent of the sum of—

(i) the qualified direct costs, and

(ii) the change in claims incurred but unpaid,

for such taxable year with respect to medical benefits (other than post-retirement medical benefits).

(B) Applicable account limit

For purposes of this subsection, the term ''applicable account limit'' means an account limit for a qualified asset account with respect to medical benefits provided through a plan maintained by a bona fide association (as defined in section 2791(d)(3) of the Public Health Service Act (42 U.S.C. 300gg–91(d)(3)).[1]

(d) Requirement of separate accounts for post-retirement medical or life insurance benefits provided to key employees

(1) In general

In the case of any employee who is a key employee—

(A) a separate account shall be established for any medical benefits or life insurance benefits provided with respect to such employee after retirement, and

(B) medical benefits and life insurance benefits provided with respect to such employee after retirement may only be paid from such separate account.

The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years.

(2) Coordination with section 415

For purposes of section 415, any amount attributable to medical benefits allocated to an account established under paragraph (1) shall be treated as an annual addition to a defined contribution plan for purposes of section 415(c). Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(3) Key employee

For purposes of this section, the term ''key employee'' means any employee who, at any time during the plan year or any preceding plan year, is or was a key employee as defined in section 416(i).

(e) Special limitations on reserves for medical benefits or life insurance benefits provided to retired employees

(1) Reserve must be nondiscriminatory

No reserve may be taken into account under subsection (c)(2) for post-retirement medical

[1] So in original. The period probably should be preceded by an additional closing parenthesis.

benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b) with respect to such benefits (whether or not such requirements apply to such plan). The preceding sentence shall not apply to any plan maintained pursuant to an agreement between employee representatives and 1 or more employers if the Secretary finds that such agreement is a collective bargaining agreement and that post-retirement medical benefits or life insurance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(2) Limitation on amount of life insurance benefits

Life insurance benefits shall not be taken into account under subsection (c)(2) to the extent the aggregate amount of such benefits to be provided with respect to the employee exceeds $50,000.

(f) Definitions and other special rules

For purposes of this section—

(1) SUB or severance pay benefit

The term ''SUB or severance pay benefit'' means—

(A) any supplemental unemployment compensation benefit (as defined in section 501(c)(17)(D)), and

(B) any severance pay benefit.

(2) Medical benefit

The term ''medical benefit'' means a benefit which consists of the providing (directly or through insurance) of medical care (as defined in section 213(d)).

(3) Life insurance benefit

The term ''life insurance benefit'' includes any other death benefit.

(4) Valuation

For purposes of this section, the amount of the qualified asset account shall be the value of the assets in such account (as determined under regulations).

(5) Special rule for collective bargained and employee pay-all plans

No account limits shall apply in the case of any qualified asset account under a separate welfare benefit fund—

(A) under a collective bargaining agreement, or

(B) an employee pay-all plan under section 501(c)(9) if—

(i) such plan has at least 50 employees (determined without regard to subsection (h)(1)), and

(ii) no employee is entitled to a refund with respect to amounts in the fund, other than a refund based on the experience of the entire fund.

(6) Exception for 10-or-more employer plans

(A) In general

This subpart shall not apply in the case of any welfare benefit fund which is part of a 10 or more employer plan. The preceding sentence shall not apply to any plan which maintains experience-rating arrangements with respect to individual employers.

(B) 10 or more employer plan

For purposes of subparagraph (A), the term ''10 or more employer plan'' means a plan—

(i) to which more than 1 employer contributes, and

(ii) to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

(7) Adjustments for existing excess reserves

(A) Increase in account limit

The account limit for any of the first 4 taxable years to which this section applies shall be increased by the applicable percentage of any existing excess reserves.

(B) Applicable percentage

For purposes of subparagraph (A)—

In the case of:	The applicable percentage is:
The first taxable year to which this section applies	80
The second taxable year to which this section applies	60
The third taxable year to which this section applies	40
The fourth taxable year to which this section applies	20.

(C) Existing excess reserve

For purposes of computing the increase under subparagraph (A) for any taxable year, the term ''existing excess reserve'' means the excess (if any) of—

(i) the amount of assets set aside at the close of the first taxable year ending after July 18, 1984, for purposes described in subsection (a), over

(ii) the account limit determined under this section (without regard to this paragraph) for the taxable year for which such increase is being computed.

(D) Funds to which paragraph applies

This paragraph shall apply only to a welfare benefit fund which, as of July 18, 1984, had assets set aside for purposes described in subsection (a).

(g) Employer taxed on income of welfare benefit fund in certain cases

(1) In general

In the case of any welfare benefit fund which is not an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the employer shall include in gross income for any taxable year an amount equal to such fund's deemed unrelated income for the fund's taxable year ending within the employer's taxable year.

(2) Deemed unrelated income

For purposes of paragraph (1), the deemed unrelated income of any welfare benefit fund shall be the amount which would have been its unrelated business taxable income under section 512(a)(3) if such fund were an organization described in paragraph (7), (9), (17), or (20) of section 501(c).

(3) Coordination with section 419

If any amount is included in the gross income of an employer for any taxable year under paragraph (1) with respect to any welfare benefit fund—

(A) the amount of the tax imposed by this chapter which is attributable to the amount so included shall be treated as a contribution paid to such welfare benefit fund on the last day of such taxable year, and

(B) the tax so attributable shall be treated as imposed on the fund for purposes of section 419(c)(4)(A).

(h) Aggregation rules

For purposes of this subpart—

(1) Aggregation of funds

(A) Mandatory aggregation

For purposes of subsections (c)(4), (d)(2), and (e)(2), all welfare benefit funds of an employer shall be treated as 1 fund.

(B) Permissive aggregation for purposes not specified in subparagraph (A)

For purposes of this section (other than the provisions specified in subparagraph (A)), at the election of the employer, 2 or more welfare benefit funds of such employer may (to the extent not inconsistent with the purposes of this subpart and section 512) be treated as 1 fund.

(2) Treatment of related employers

Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subpart. Such regulations may provide that the plan administrator of any welfare benefit fund which is part of a plan to which more than 1 employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of this section.

(Added Pub. L. 98–369, div. A, title V, §511(a), July 18, 1984, 98 Stat. 856; amended Pub. L. 99–514, title XVIII, §1851(a)(2), (3)(A), (4)–(7), (9), (13), Oct. 22, 1986, 100 Stat. 2858–2860, 2862; Pub. L. 100–647, title I, §1018(t)(1)(C), (2)(A), (u)(12), Nov. 10, 1988, 102 Stat. 3587, 3590; Pub. L. 104–188, title I, §1704(t)(60), Aug. 20, 1996, 110 Stat. 1890; Pub. L. 109–280, title VIII, §843(a), Aug. 17, 2006, 120 Stat. 1010.)

AMENDMENTS

2006—Subsec. (c)(6). Pub. L. 109–280 added par. (6).

1996—Subsec. (c)(3). Pub. L. 104–188 substituted ''severance'' for ''severence'' in heading.

1988—Subsec. (a). Pub. L. 100–647, §1018(u)(12), made technical amendment to directory language of Pub. L. 99–514, §1851(a)(6)(B). See 1986 Amendment note below.

Subsec. (f)(5). Pub. L. 100–647, §1018(t)(2)(A), repealed Pub. L. 99–514, §1851(a)(4). See 1986 Amendment note below.

Pub. L. 100–647, §1018(t)(1)(C), substituted ''account'' for ''accounts''.

1986—Subsec. (a). Pub. L. 99–514, §1851(a)(6)(B), as amended by Pub. L. 100–647, §1018(u)(12), inserted ''and section 512'' after ''this subpart''.

Subsec. (c)(5)(A). Pub. L. 99–514, §1851(a)(5), substituted ''under this subsection'' for ''under paragraph (1)''.

Subsec. (d)(1). Pub. L. 99–514, §1851(a)(2)(B), inserted ''The requirements of this paragraph shall apply to the first taxable year for which a reserve is taken into account under subsection (c)(2) and to all subsequent taxable years.''

Subsec. (d)(2). Pub. L. 99–514, §1851(a)(2)(A), inserted ''Subparagraph (B) of section 415(c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.''

Subsec. (e). Pub. L. 99–514, §1851(a)(3)(A), amended subsec. (e) generally. Prior to amendment, par. (1), benefits must be nondiscriminatory, read as follows: ''No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b)(1) with respect to such benefits.'', and par. (2), taxable life insurance benefits not taken into account, read as follows: ''No life insurance benefit may be taken into account under subsection (c)(2) to the extent—

''(A) such benefit is includible in gross income under section 79, or

''(B) such benefit would be includible in gross income under section 101(b) (determined by substituting '$50,000' for '$5,000').''

Subsec. (f)(5). Pub. L. 99–514, §1851(a)(13), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''HIGHER LIMIT IN CASE OF COLLECTIVELY BARGAINED PLANS.—Not later than July 1, 1985, the Secretary shall by regulations provide for special account limits in the case of any qualified asset account under a welfare benefit fund established under a collective bargaining agreement.''

Pub. L. 99–514, §1851(a)(4), which directed amendment of par. (5) by substituting ''welfare benefit fund maintained pursuant to'' for ''welfare benefit fund established under'', was repealed by Pub. L. 100–647, §1018(t)(2)(A).

Subsec. (f)(7)(C), (D). Pub. L. 99–514, §1851(a)(7), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''For purposes of this paragraph, the term 'existing excess reserve' means the excess (if any) of—

''(i) the amount of assets set aside for purposes described in subsection (a) as of the close of the first taxable year ending after the date of the enactment of the Tax Reform Act of 1984, over

''(ii) the account limit which would have applied under this section to such taxable year if this section had applied to such taxable year.''

Subsec. (g)(3). Pub. L. 99–514, §1851(a)(9), added par. (3).

Subsec. (h)(1). Pub. L. 99–514, §1851(a)(6)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''At the election of the employer, 2 or more welfare benefit funds of such employer may be treated as 1 fund.''

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109–280, title VIII, §843(b), Aug. 17, 2006, 120 Stat. 1010, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.''

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 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.

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.

APPLICATION OF SECTION 419A(e) TO GROUP-TERM LIFE INSURANCE

Section 1851(a)(3)(B) of Pub. L. 99–514, as amended by Pub. L. 100–647, title I, § 1018(t)(2)(D), Nov. 10, 1988, 102 Stat. 3587, provided that: ''Subsection (e) of section 419A, section 505, and section 4976(b)(1)(B) of the Internal Revenue Code of 1954 [now 1986] (as amended by subparagraph (A)) shall not apply to any group-term life insurance to the extent that the amendments made by section 223(a) of the Tax Reform Act of 1984 [section 223(a) of Pub. L. 98–369, amending section 79 of this title] do not apply to such insurance by reason of paragraph (2) of section 223(d) of such Act [set out as a note under section 79 of this title].''

SUBPART E—TREATMENT OF TRANSFERS TO RETIREE HEALTH ACCOUNTS

Sec.
420. Transfers of excess pension assets to retiree health accounts.

§ 420. Transfers of excess pension assets to retiree health accounts

(a) General rule

If there is a qualified transfer of any excess pension assets of a defined benefit plan to a health benefits account which is part of such plan—

(1) a trust which is part of such plan shall not be treated as failing to meet the requirements of subsection (a) or (h) of section 401 solely by reason of such transfer (or any other action authorized under this section),

(2) no amount shall be includible in the gross income of the employer maintaining the plan solely by reason of such transfer,

(3) such transfer shall not be treated—

(A) as an employer reversion for purposes of section 4980, or

(B) as a prohibited transaction for purposes of section 4975, and

(4) the limitations of subsection (d) shall apply to such employer.

(b) Qualified transfer

For purposes of this section—

(1) In general

The term ''qualified transfer'' means a transfer—

(A) of excess pension assets of a defined benefit plan to a health benefits account which is part of such plan in a taxable year beginning after December 31, 1990,

(B) which does not contravene any other provision of law, and

(C) with respect to which the following requirements are met in connection with the plan—

(i) the use requirements of subsection (c)(1),

(ii) the vesting requirements of subsection (c)(2), and

(iii) the minimum cost requirements of subsection (c)(3).

(2) Only 1 transfer per year

(A) In general

No more than 1 transfer with respect to any plan during a taxable year may be treated as a qualified transfer for purposes of this section.

(B) Exception

A transfer described in paragraph (4) shall not be taken into account for purposes of subparagraph (A).

(3) Limitation on amount transferred

The amount of excess pension assets which may be transferred in a qualified transfer shall not exceed the amount which is reasonably estimated to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the taxable year of the transfer for qualified current retiree health liabilities.

(4) Special rule for 1990

(A) In general

Subject to the provisions of subsection (c), a transfer shall be treated as a qualified transfer if such transfer—

(i) is made after the close of the taxable year preceding the employer's first taxable year beginning after December 31, 1990, and before the earlier of—

(I) the due date (including extensions) for the filing of the return of tax for such preceding taxable year, or

(II) the date such return is filed, and

(ii) does not exceed the expenditures of the employer for qualified current retiree health liabilities for such preceding taxable year.

(B) Deduction reduced

The amount of the deductions otherwise allowable under this chapter to an employer for the taxable year preceding the employer's first taxable year beginning after December 31, 1990, shall be reduced by the amount of any qualified transfer to which this paragraph applies.

(C) Coordination with reduction rule

Subsection (e)(1)(B) shall not apply to a transfer described in subparagraph (A).

(5) Expiration

No transfer made after December 31, 2013, shall be treated as a qualified transfer.

(c) Requirements of plans transferring assets

(1) Use of transferred assets

(A) In general

Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) shall be used only to pay qualified current retiree health liabilities (other than liabilities of key employees not taken into account under subsection (e)(1)(D)) for the taxable year of the transfer (whether directly or through reimbursement). In the case of a qualified future

transfer or collectively bargained transfer to which subsection (f) applies, any assets so transferred may also be used to pay liabilities described in subsection (f)(2)(C).

(B) Amounts not used to pay for health benefits

(i) In general

Any assets transferred to a health benefits account in a qualified transfer (and any income allocable thereto) which are not used as provided in subparagraph (A) shall be transferred out of the account to the transferor plan.

(ii) Tax treatment of amounts

Any amount transferred out of an account under clause (i)—

(I) shall not be includible in the gross income of the employer for such taxable year, but

(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

(C) Ordering rule

For purposes of this section, any amount paid out of a health benefits account shall be treated as paid first out of the assets and income described in subparagraph (A).

(2) Requirements relating to pension benefits accruing before transfer

(A) In general

The requirements of this paragraph are met if the plan provides that the accrued pension benefits of any participant or beneficiary under the plan become nonforfeitable in the same manner which would be required if the plan had terminated immediately before the qualified transfer (or in the case of a participant who separated during the 1-year period ending on the date of the transfer, immediately before such separation).

(B) Special rule for 1990

In the case of a qualified transfer described in subsection (b)(4), the requirements of this paragraph are met with respect to any participant who separated from service during the taxable year to which such transfer relates by recomputing such participant's benefits as if subparagraph (A) had applied immediately before such separation.

(3) Minimum cost requirements

(A) In general

The requirements of this paragraph are met if each group health plan or arrangement under which applicable health benefits are provided provides that the applicable employer cost for each taxable year during the cost maintenance period shall not be less than the higher of the applicable employer costs for each of the 2 taxable years immediately preceding the taxable year of the qualified transfer or, in the case of a transfer which involves a plan maintained by an employer described in subsection (f)(2)(E)(i)(III), if the plan meets the requirements of subsection (f)(2)(D)(i)(II).

(B) Applicable employer cost

For purposes of this paragraph, the term ''applicable employer cost'' means, with respect to any taxable year, the amount determined by dividing—

(i) the qualified current retiree health liabilities of the employer for such taxable year determined—

(I) without regard to any reduction under subsection (e)(1)(B), and

(II) in the case of a taxable year in which there was no qualified transfer, in the same manner as if there had been such a transfer at the end of the taxable year, by

(ii) the number of individuals to whom coverage for applicable health benefits was provided during such taxable year.

(C) Election to compute cost separately

An employer may elect to have this paragraph applied separately with respect to individuals eligible for benefits under title XVIII of the Social Security Act at any time during the taxable year and with respect to individuals not so eligible.

(D) Cost maintenance period

For purposes of this paragraph, the term ''cost maintenance period'' means the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in two or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A) for such taxable year.

(E) Regulations

(i) In general

The Secretary shall prescribe such regulations as may be necessary to prevent an employer who significantly reduces retiree health coverage during the cost maintenance period from being treated as satisfying the minimum cost requirement of this subsection.

(ii) Insignificant cost reductions permitted

(I) In general

An eligible employer shall not be treated as failing to meet the requirements of this paragraph for any taxable year if, in lieu of any reduction of retiree health coverage permitted under the regulations prescribed under clause (i), the employer reduces applicable employer cost by an amount not in excess of the reduction in costs which would have occurred if the employer had made the maximum permissible reduction in retiree health coverage under such regulations. In applying such regulations to any subsequent taxable year, any reduction in applicable employer cost under this clause shall be treated as if it were an equivalent reduction in retiree health coverage.

(II) Eligible employer

For purposes of subclause (I), an employer shall be treated as an eligible em-

ployer for any taxable year if, for the preceding taxable year, the qualified current retiree health liabilities of the employer were at least 5 percent of the gross receipts of the employer. For purposes of this subclause, the rules of paragraphs (2), (3)(B), and (3)(C) of section 448(c) shall apply in determining the amount of an employer's gross receipts.

(d) Limitations on employer

For purposes of this title—

(1) Deduction limitations

No deduction shall be allowed—

(A) for the transfer of any amount to a health benefits account in a qualified transfer (or any retransfer to the plan under subsection (c)(1)(B)),

(B) for qualified current retiree health liabilities paid out of the assets (and income) described in subsection (c)(1), or

(C) for any amounts to which subparagraph (B) does not apply and which are paid for qualified current retiree health liabilities for the taxable year to the extent such amounts are not greater than the excess (if any) of—

(i) the amount determined under subparagraph (A) (and income allocable thereto), over

(ii) the amount determined under subparagraph (B).

(2) No contributions allowed

An employer may not contribute after December 31, 1990, any amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to qualified current retiree health liabilities for which transferred assets are required to be used under subsection (c)(1).

(e) Definition and special rules

For purposes of this section—

(1) Qualified current retiree health liabilities

For purposes of this section—

(A) In general

The term ''qualified current retiree health liabilities'' means, with respect to any taxable year, the aggregate amounts (including administrative expenses) which would have been allowable as a deduction to the employer for such taxable year with respect to applicable health benefits provided during such taxable year if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

For purposes of the preceding sentence, the rule of section 419(c)(3)(B) shall apply.

(B) Reductions for amounts previously set aside

The amount determined under subparagraph (A) shall be reduced by the amount which bears the same ratio to such amount as—

(i) the value (as of the close of the plan year preceding the year of the qualified transfer) of the assets in all health benefits accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the qualified current retiree health liability, bears to

(ii) the present value of the qualified current retiree health liabilities for all plan years (determined without regard to this subparagraph).

(C) Applicable health benefits

The term ''applicable health benefits'' means health benefits or coverage which are provided to—

(i) retired employees who, immediately before the qualified transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and

(ii) their spouses and dependents.

(D) Key employees excluded

If an employee is a key employee (within the meaning of section 416(i)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing qualified current retiree health liabilities for such taxable year or in calculating applicable employer cost under subsection (c)(3)(B).

(2) Excess pension assets

The term ''excess pension assets'' means the excess (if any) of—

(A) the lesser of—

(i) the fair market value of the plan's assets (reduced by the prefunding balance and funding standard carryover balance determined under section 430(f)), or

(ii) the value of plan assets as determined under section 430(g)(3) after reduction under section 430(f), over

(B) 125 percent of the sum of the funding target and the target normal cost determined under section 430 for such plan year.

(3) Health benefits account

The term ''health benefits account'' means an account established and maintained under section 401(h).

(4) Coordination with section 430

In the case of a qualified transfer, any assets so transferred shall not, for purposes of this section and section 430, be treated as assets in the plan.

(5) Application to multiemployer plans

In the case of a multiemployer plan, this section shall be applied to any such plan—

(A) by treating any reference in this section to an employer as a reference to all employers maintaining the plan (or, if appropriate, the plan sponsor), and

(B) in accordance with such modifications of this section (and the provisions of this title relating to this section) as the Secretary determines appropriate to reflect the fact the plan is not maintained by a single employer.

(f) Qualified transfers to cover future retiree health costs and collectively bargained retiree health benefits

(1) In general

An employer maintaining a defined benefit plan (other than a multiemployer plan) may, in lieu of a qualified transfer, elect for any taxable year to have the plan make—

(A) a qualified future transfer, or

(B) a collectively bargained transfer.

Except as provided in this subsection, a qualified future transfer and a collectively bargained transfer shall be treated for purposes of this title and the Employee Retirement Income Security Act of 1974 as if it were a qualified transfer.

(2) Qualified future and collectively bargained transfers

For purposes of this subsection—

(A) In general

The terms ''qualified future transfer'' and ''collectively bargained transfer'' mean a transfer which meets all of the requirements for a qualified transfer, except that—

(i) the determination of excess pension assets shall be made under subparagraph (B),

(ii) the limitation on the amount transferred shall be determined under subparagraph (C),

(iii) the minimum cost requirements of subsection (c)(3) shall be modified as provided under subparagraph (D), and

(iv) in the case of a collectively bargained transfer, the requirements of subparagraph (E) shall be met with respect to the transfer.

(B) Excess pension assets

(i) In general

In determining excess pension assets for purposes of this subsection, subsection (e)(2) shall be applied by substituting ''120 percent'' for ''125 percent''.

(ii) Requirement to maintain funded status

If, as of any valuation date of any plan year in the transfer period, the amount determined under subsection (e)(2)(B) (after application of clause (i)) exceeds the amount determined under subsection (e)(2)(A), either—

(I) the employer maintaining the plan shall make contributions to the plan in an amount not less than the amount required to reduce such excess to zero as of such date, or

(II) there is transferred from the health benefits account to the plan an amount not less than the amount required to reduce such excess to zero as of such date.

(C) Limitation on amount transferred

Notwithstanding subsection (b)(3), the amount of the excess pension assets which may be transferred—

(i) in the case of a qualified future transfer shall be equal to the sum of—

(I) if the transfer period includes the taxable year of the transfer, the amount determined under subsection (b)(3) for such taxable year, plus

(II) in the case of all other taxable years in the transfer period, the sum of the qualified current retiree health liabilities which the plan reasonably estimates, in accordance with guidance issued by the Secretary, will be incurred for each of such years, and

(ii) in the case of a collectively bargained transfer, shall not exceed the amount which is reasonably estimated, in accordance with the provisions of the collective bargaining agreement and generally accepted accounting principles, to be the amount the employer maintaining the plan will pay (whether directly or through reimbursement) out of such account during the collectively bargained cost maintenance period for collectively bargained retiree health liabilities.

(D) Minimum cost requirements

(i) In general

The requirements of subsection (c)(3) shall be treated as met if—

(I) in the case of a qualified future transfer, each group health plan or arrangement under which applicable health benefits are provided provides applicable health benefits during the period beginning with the first year of the transfer period and ending with the last day of the 4th year following the transfer period such that the annual average amount of the applicable employer cost during such period is not less than the applicable employer cost determined under subsection (c)(3)(A) with respect to the transfer, and

(II) in the case of a collectively bargained transfer, each collectively bargained group health plan under which collectively bargained health benefits are provided provides that the collectively bargained employer cost for each taxable year during the collectively bargained cost maintenance period shall not be less than the amount specified by the collective bargaining agreement.

(ii) Election to maintain benefits for future transfers

An employer may elect, in lieu of the requirements of clause (i)(I), to meet the requirements of subsection (c)(3) by meeting the requirements of such subsection (as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999) for each of the years described in the period under clause (i)(I).

(iii) Collectively bargained employer cost

For purposes of this subparagraph, the term ''collectively bargained employer cost'' means the average cost per covered individual of providing collectively bargained retiree health benefits as determined in accordance with the applicable

collective bargaining agreement. Such agreement may provide for an appropriate reduction in the collectively bargained employer cost to take into account any portion of the collectively bargained retiree health benefits that is provided or financed by a government program or other source.

(E) Special rules for collectively bargained transfers

(i) In general

A collectively bargained transfer shall only include a transfer which—

(I) is made in accordance with a collective bargaining agreement,

(II) before the transfer, the employer designates, in a written notice delivered to each employee organization that is a party to the collective bargaining agreement, as a collectively bargained transfer in accordance with this section, and

(III) involves a plan maintained by an employer which, in its taxable year ending in 2005, provided health benefits or coverage to retirees and their spouses and dependents under all of the benefit plans maintained by the employer, but only if the aggregate cost (including administrative expenses) of such benefits or coverage which would have been allowable as a deduction to the employer (if such benefits or coverage had been provided directly by the employer and the employer used the cash receipts and disbursements method of accounting) is at least 5 percent of the gross receipts of the employer (determined in accordance with the last sentence of subsection (c)(3)(E)(ii)(II)) for such taxable year, or a plan maintained by a successor to such employer.

(ii) Use of assets

Any assets transferred to a health benefits account in a collectively bargained transfer (and any income allocable thereto) shall be used only to pay collectively bargained retiree health liabilities (other than liabilities of key employees not taken into account under paragraph (6)(B)(iii)) for the taxable year of the transfer or for any subsequent taxable year during the collectively bargained cost maintenance period (whether directly or through reimbursement).

(3) Coordination with other transfers

In applying subsection (b)(3) to any subsequent transfer during a taxable year in a transfer period or collectively bargained cost maintenance period, qualified current retiree health liabilities shall be reduced by any such liabilities taken into account with respect to the qualified future transfer or collectively bargained transfer to which such period relates.

(4) Special deduction rules for collectively bargained transfers

In the case of a collectively bargained transfer—

(A) the limitation under subsection (d)(1)(C) shall not apply, and

(B) notwithstanding subsection (d)(2), an employer may contribute an amount to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) with respect to collectively bargained retiree health liabilities for which transferred assets are required to be used under subsection (c)(1)(B), and the deductibility of any such contribution shall be governed by the limits applicable to the deductibility of contributions to a welfare benefit fund under a collective bargaining agreement (as determined under section 419A(f)(5)(A)) without regard to whether such contributions are made to a health benefits account or welfare benefit fund and without regard to the provisions of section 404 or the other provisions of this section.

The Secretary shall provide rules to ensure that the application of this paragraph does not result in a deduction being allowed more than once for the same contribution or for 2 or more contributions or expenditures relating to the same collectively bargained retiree health liabilities.

(5) Transfer period

For purposes of this subsection, the term ''transfer period'' means, with respect to any transfer, a period of consecutive taxable years (not less than 2) specified in the election under paragraph (1) which begins and ends during the 10-taxable-year period beginning with the taxable year of the transfer.

(6) Terms relating to collectively bargained transfers

For purposes of this subsection—

(A) Collectively bargained cost maintenance period

The term ''collectively bargained cost maintenance period'' means, with respect to each covered retiree and his covered spouse and dependents, the shorter of—

(i) the remaining lifetime of such covered retiree and his covered spouse and dependents, or

(ii) the period of coverage provided by the collectively bargained health plan (determined as of the date of the collectively bargained transfer) with respect to such covered retiree and his covered spouse and dependents.

(B) Collectively bargained retiree health liabilities

(i) In general

The term ''collectively bargained retiree health liabilities'' means the present value, as of the beginning of a taxable year and determined in accordance with the applicable collective bargaining agreement, of all collectively bargained health benefits (including administrative expenses) for such taxable year and all subsequent taxable years during the collectively bargained cost maintenance period.

(ii) Reduction for amounts previously set aside

The amount determined under clause (i) shall be reduced by the value (as of the close of the plan year preceding the year of the collectively bargained transfer) of the assets in all health benefits accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the collectively bargained retiree health liabilities.

(iii) Key employees excluded

If an employee is a key employee (within the meaning of section 416(I)(1))[1] with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing collectively bargained retiree health liabilities for such taxable year or in calculating collectively bargained employer cost under subsection (c)(3)(C).

(C) Collectively bargained health benefits

The term ''collectively bargained health benefits'' means health benefits or coverage which are provided to—

(i) retired employees who, immediately before the collectively bargained transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and their spouses and dependents, and

(ii) if specified by the provisions of the collective bargaining agreement governing the collectively bargained transfer, active employees who, following their retirement, are entitled to receive such benefits and who are entitled to pension benefits under the plan, and their spouses and dependents.

(D) Collectively bargained health plan

The term ''collectively bargained health plan'' means a group health plan or arrangement for retired employees and their spouses and dependents that is maintained pursuant to 1 or more collective bargaining agreements.

(Added Pub. L. 101–508, title XII, §12011(a), Nov. 5, 1990, 104 Stat. 1388–567; amended Pub. L. 103–465, title VII, §731(a)–(c)(3), Dec. 8, 1994, 108 Stat. 5003, 5004; Pub. L. 104–188, title I, §1704(a), (t)(32), Aug. 20, 1996, 110 Stat. 1878, 1889; Pub. L. 106–170, title V, §535(a)(1), (b), Dec. 17, 1999, 113 Stat. 1934; Pub. L. 108–218, title II, §204(a), Apr. 10, 2004, 118 Stat. 609; Pub. L. 108–357, title VII, §709(b)(1), (2), Oct. 22, 2004, 118 Stat. 1551, 1552; Pub. L. 109–280, title I, §114(d), title VIII, §§841(a), 842(a), Aug. 17, 2006, 120 Stat. 854, 1005, 1009; Pub. L. 110–28, title VI, §§6612(a), (b), 6613(a), May 25, 2007, 121 Stat. 181; Pub. L. 110–458, title I, §108(i)(1), (2), Dec. 23, 2008, 122 Stat. 5110.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Act is classified generally to subchapter XVIII (§1395 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.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (f)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Subsection (c)(3) as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999, referred to in subsec. (f)(2)(D)(ii), is subsec. (c)(3) of this section prior to its general amendment by section 535(b)(1) of Pub. L. 106–170.

AMENDMENTS

2008—Subsec. (c)(1)(A). Pub. L. 110–458, §108(i)(1), inserted last sentence ''In the case of a qualified future transfer or collectively bargained transfer to which subsection (f) applies, any assets so transferred may also be used to pay liabilities described in subsection (f)(2)(C).''

Subsec. (f)(2)(D)(i)(I). Pub. L. 110–458, §108(i)(2), struck out ''such'' after ''average amount of''.

2007—Subsec. (c)(3)(A). Pub. L. 110–28, §6613(a), substituted ''transfer or, in the case of a transfer which involves a plan maintained by an employer described in subsection (f)(2)(E)(i)(III), if the plan meets the requirements of subsection (f)(2)(D)(i)(II).'' for ''transfer.''

Subsec. (e)(2)(B). Pub. L. 110–28, §6612(b), substituted ''funding target'' for ''funding shortfall''.

Subsec. (f)(2)(E)(i)(III). Pub. L. 110–28, §6612(a), substituted ''subsection (c)(3)(E)(ii)(II)'' for ''subsection (c)(2)(E)(ii)(II)''.

2006—Subsec. (a). Pub. L. 109–280, §842(a)(1), struck out ''(other than a multiemployer plan)'' after ''defined benefit plan'' in introductory provisions.

Subsec. (e)(2). Pub. L. 109–280, §114(d)(1), reenacted heading without change and amended text of par. (2) generally. Prior to amendment, text read as follows: ''The term 'excess pension assets' means the excess (if any) of—

''(A) the amount determined under section 412(c)(7)(A)(ii), over

''(B) the greater of—

''(i) the amount determined under section 412(c)(7)(A)(i), or

''(ii) 125 percent of current liability (as defined in section 412(c)(7)(B)).

The determination under this paragraph shall be made as of the most recent valuation date of the plan preceding the qualified transfer.''

Subsec. (e)(4). Pub. L. 109–280, §114(d)(2), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''In the case of a qualified transfer to a health benefits account—

''(A) any assets transferred in a plan year on or before the valuation date for such year (and any income allocable thereto) shall, for purposes of section 412, be treated as assets in the plan as of the valuation date for such year, and

''(B) the plan shall be treated as having a net experience loss under section 412(b)(2)(B)(iv) in an amount equal to the amount of such transfer (reduced by any amounts transferred back to the pension plan under subsection (c)(1)(B)) and for which amortization charges begin for the first plan year after the plan year in which such transfer occurs, except that such section shall be applied to such amount by substituting '10 plan years' for '5 plan years'.''

Subsec. (e)(5). Pub. L. 109–280, §842(a)(2), added par. (5).

Subsec. (f). Pub. L. 109–280, §841(a), added subsec. (f).

2004—Subsec. (b)(5). Pub. L. 108–218 substituted ''2013'' for ''2005''.

Subsec. (c)(3)(E). Pub. L. 108–357 designated existing provisions as cl. (i), inserted heading, and added cl. (ii).

1999—Subsec. (b)(1)(C)(iii). Pub. L. 106–170, §535(b)(2)(A), substituted ''cost'' for ''benefits''.

Subsec. (b)(5). Pub. L. 106–170, §535(a)(1), substituted ''made after December 31, 2005'' for ''in any taxable year beginning after December 31, 2000''.

[1] So in original. Probably should be ''416(i)(1))''.

Subsec. (c)(3). Pub. L. 106–170, § 535(b)(1), amended heading and text of par. (3) generally, substituting present provisions for provisions relating to maintenance of benefit requirements.

Subsec. (e)(1)(D). Pub. L. 106–170, § 535(b)(2)(B), substituted ''or in calculating applicable employer cost under subsection (c)(3)(B)'' for ''and shall not be subject to the minimum benefit requirements of subsection (c)(3)''.

1996—Pub. L. 104–188, § 1704(a), provided that, except as otherwise expressly provided, whenever in title XII of Pub. L. 101–508 an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986. Section 12011(a) of title XII of Pub. L. 101–508 directed the amendment of part I of subchapter D of chapter 1 by adding this subpart, including this section, without specifying that amendment was to the Internal Revenue Code of 1986.

Subsec. (e)(1)(C). Pub. L. 104–188, § 1704(t)(32), substituted ''means'' for ''mean''.

1994—Subsec. (b)(1)(C)(iii). Pub. L. 103–465, § 731(c)(1), substituted ''benefits'' for ''cost''.

Subsec. (b)(5). Pub. L. 103–465, § 731(a), substituted ''2000'' for ''1995''.

Subsec. (c)(3). Pub. L. 103–465, § 731(b), amended par. (3) generally, substituting present provisions for provisions outlining minimum cost requirements for plans, providing for elections to compute costs separately, and defining ''applicable employer cost'' and ''cost maintenance period''.

Subsec. (e)(1)(B). Pub. L. 103–465, § 731(c)(2), reenacted subpar. (B) heading without change and amended text generally. Prior to amendment, text read as follows: ''The amount determined under subparagraph (A) shall be reduced by any amount previously contributed to a health benefits account or welfare benefit fund (as defined in section 419(e)(1)) to pay for the qualified current retiree health liabilities. The portion of any reserves remaining as of the close of December 31, 1990, shall be allocated on a pro rata basis to qualified current retiree health liabilities.''

Subsec. (e)(1)(D). Pub. L. 103–465, § 731(c)(3), substituted ''and shall not be subject to the minimum benefit requirements of subsection (c)(3)'' for ''or in calculating applicable employer cost under subsection (c)(3)(B)''.

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 2007 AMENDMENT

Pub. L. 110–28, title VI, § 6612(c), May 25, 2007, 121 Stat. 181, provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which they relate.''

Pub. L. 110–28, title VI, § 6613(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to transfers after the date of the enactment of this Act [May 25, 2007].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(d) 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 VIII, § 841(b), Aug. 17, 2006, 120 Stat. 1009, provided that: ''The amendments made by this section [amending this section] shall apply to transfers after the date of the enactment of this Act [Aug. 17, 2006].''

Pub. L. 109–280, title VIII, § 842(b), Aug. 17, 2006, 120 Stat. 1009, provided that: ''The amendment made by this section [amending this section] shall apply to transfers made in taxable years beginning after December 31, 2006.''

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title VII, § 709(b)(3), Oct. 22, 2004, 118 Stat. 1552, provided that: ''The amendments made by this subsection [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106–170, title V, § 535(c), Dec. 17, 1999, 113 Stat. 1935, provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1021, 1103, and 1108 of Title 29, Labor] shall apply to qualified transfers occurring after the date of the enactment of this Act [Dec. 17, 1999].

''(2) TRANSITION RULE.—If the cost maintenance period for any qualified transfer after the date of the enactment of this Act [Dec. 17, 1999] includes any portion of a benefit maintenance period for any qualified transfer on or before such date, the amendments made by subsection (b) [amending this section] shall not apply to such portion of the cost maintenance period (and such portion shall be treated as a benefit maintenance period).''

EFFECTIVE DATE OF 1994 AMENDMENT

Section 731(d) of Pub. L. 103–465 provided that:

''(1) EXTENSION.—The amendments made by subsections (a) and (c)(3) [amending this section] shall apply to taxable years beginning after December 31, 1995.

''(2) BENEFITS.—The amendments made by subsections (b) and (c)(1) and (2) [amending this section] shall apply to qualified transfers occurring after the date of the enactment of this Act [Dec. 8, 1994].''

EFFECTIVE DATE

Section 12011(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 401 of this title] shall apply to transfers in taxable years beginning after December 31, 1990.

''(2) WAIVER OF ESTIMATED TAX PENALTIES.—No addition to tax shall be made under section 6654 or section 6655 of the Internal Revenue Code of 1986 for the taxable year preceding the taxpayer's 1st taxable year beginning after December 31, 1990, with respect to any underpayment to the extent such underpayment was created or increased by reason of section 420(b)(4)(B) of such Code (as added by subsection (a)).''

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.

PART II—CERTAIN STOCK OPTIONS

Sec.
421. General rules.
422. Incentive stock options.
[422A. Renumbered.]
423. Employee stock purchase plans.
424. Definitions and special rules.
[425. Renumbered.]

AMENDMENTS

1990—Pub. L. 101–508, title XI, § 11801(b)(6), (c)(9)(A)(ii), Nov. 5, 1990, 104 Stat. 1388–522, 1388–524, struck out items 422 ''Qualified stock options'' and 424 ''Restricted stock options'' and redesignated items 422A and 425 as 422 and 424, respectively.

1981—Pub. L. 97–34, title II, §251(b)(6), Aug. 13, 1981, 95 Stat. 259, added item 422A.

1964—Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 63, substituted ''CERTAIN STOCK OPTIONS'' for ''MISCELLANEOUS PROVISIONS'' in part II heading, and ''General rules'' for ''Employee stock options'' in item 421, and added items 422–425.

§421. General rules

(a) Effect of qualifying transfer

If a share of stock is transferred to an individual in a transfer in respect of which the requirements of section 422(a) or 423(a) are met—

(1) no income shall result at the time of the transfer of such share to the individual upon his exercise of the option with respect to such share;

(2) no deduction under section 162 (relating to trade or business expenses) shall be allowable at any time to the employer corporation, a parent or subsidiary corporation of such corporation, or a corporation issuing or assuming a stock option in a transaction to which section 424(a) applies, with respect to the share so transferred; and

(3) no amount other than the price paid under the option shall be considered as received by any of such corporations for the share so transferred.

(b) Effect of disqualifying disposition

If the transfer of a share of stock to an individual pursuant to his exercise of an option would otherwise meet the requirements of section 422(a) or 423(a) except that there is a failure to meet any of the holding period requirements of section 422(a)(1) or 423(a)(1), then any increase in the income of such individual or deduction from the income of his employer corporation for the taxable year in which such exercise occurred attributable to such disposition, shall be treated as an increase in income or a deduction from income in the taxable year of such individual or of such employer corporation in which such disposition occurred. No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.

(c) Exercise by estate

(1) In general

If an option to which this part applies is exercised after the death of the employee by the estate of the decedent, or by a person who acquired the right to exercise such option by bequest or inheritance or by reason of the death of the decedent, the provisions of subsection (a) shall apply to the same extent as if the option had been exercised by the decedent, except that—

(A) the holding period and employment requirements of sections 422(a) and 423(a) shall not apply, and

(B) any transfer by the estate of stock acquired shall be considered a disposition of such stock for purposes of section 423(c).

(2) Deduction for estate tax

If an amount is required to be included under section 423(c) in gross income of the estate of the deceased employee or of a person described in paragraph (1), there shall be allowed to the estate or such person a deduction with respect to the estate tax attributable to the inclusion in the taxable estate of the deceased employee of the net value for estate tax purposes of the option. For this purpose, the deduction shall be determined under section 691(c) as if the option acquired from the deceased employee were an item of gross income in respect of the decedent under section 691 and as if the amount includible in gross income under section 423(c) were an amount included in gross income under section 691 in respect of such item of gross income.

(3) Basis of shares acquired

In the case of a share of stock acquired by the exercise of an option to which paragraph (1) applies—

(A) the basis of such share shall include so much of the basis of the option as is attributable to such share; except that the basis of such share shall be reduced by the excess (if any) of (i) the amount which would have been includible in gross income under section 423(c) if the employee had exercised the option on the date of his death and had held the share acquired pursuant to such exercise at the time of his death, over (ii) the amount which is includible in gross income under such section; and

(B) the last sentence of section 423(c) shall apply only to the extent that the amount includible in gross income under such section exceeds so much of the basis of the option as is attributable to such share.

(d) Certain sales to comply with conflict-of-interest requirements

If—

(1) a share of stock is transferred to an eligible person (as defined in section 1043(b)(1)) pursuant to such person's exercise of an option to which this part applies, and

(2) such share is disposed of by such person pursuant to a certificate of divestiture (as defined in section 1043(b)(2)),

such disposition shall be treated as meeting the requirements of section 422(a)(1) or 423(a)(1), whichever is applicable.

(Aug. 16, 1954, ch. 736, 68A Stat. 142; Pub. L. 85–320, §1, Feb. 11, 1958, 72 Stat. 4; Pub. L. 85–866, title I, §§25, 26(a), Sept. 2, 1958, 72 Stat. 1623, 1624; Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 63; Pub. L. 97–34, title II, §251(b)(1), Aug. 13, 1981, 95 Stat. 259; Pub. L. 101–508, title XI, §11801(c)(9)(B), Nov. 5, 1990, 104 Stat. 1388–524; Pub. L. 108–357, title II, §251(b), title VIII, §905(a), Oct. 22, 2004, 118 Stat. 1458, 1653.)

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–357, §251(b), inserted at end ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.''

Subsec. (d). Pub. L. 108–357, §905(a), added subsec. (d).

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(9)(B)(i)(I), substituted ''422(a) or 423(a)'' for ''422(a), 422A(a), 423(a), or 424(a)'' in introductory provisions.

Subsec. (a)(1). Pub. L. 101–508, §11801(c)(9)(B)(i)(II), struck out ''except as provided in section 422(c)(1),'' before ''no income''.

Subsec. (a)(2). Pub. L. 101–508, § 11801(c)(9)(B)(i)(III), substituted ''424(a)'' for ''425(a)''.

Subsec. (b). Pub. L. 101–508, § 11801(c)(9)(B)(ii), substituted ''422(a) or 423(a)'' for ''422(a), 422A(a), 423(a), or 424(a)'' and ''422(a)(1) or 423(a)(1),'' for ''422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1),''.

Subsec. (c)(1)(A). Pub. L. 101–508, § 11801(c)(9)(B)(iii)(I), substituted ''422(a) and 423(a)'' for ''422(a), 422A(a), 423(a), and 424(a)''.

Subsec. (c)(1)(B). Pub. L. 101–508, § 11801(c)(9)(B)(iii)(II), substituted ''section 423(c)'' for ''sections 423(c) and 424(c)(1)''.

Subsec. (c)(2), (3)(A). Pub. L. 101–508, § 11801(c)(9)(B)(iii)(III), substituted ''423(c)'' for ''422(c)(1), 423(c), or 424(c)(1)'' wherever appearing.

Subsec. (c)(3)(B). Pub. L. 101–508, § 11801(c)(9)(B)(iii)(IV), (V), substituted ''section 423(c)'' for ''sections 422(c)(1), 423(c), and 424(c)(1)'' and ''such section'' for ''such sections''.

1981—Subsecs. (a), (b), (c)(1)(A). Pub. L. 97–34 inserted references to section 422A(a) in subsecs. (a), (b), and (c)(1)(A) and to section 422A(a)(1) in subsec. (b).

1964—Pub. L. 88–272 amended section generally, and among other changes, inserted provisions relating to the effect of a qualifying transfer, and to the basis of shares acquired when an option is exercised by an estate, and omitted provisions relating to treatment of restricted stock options, a special rule where option price was between 85 percent and 95 percent of value of stock, acquisition of new stock, definitions, modification, extension, or renewal of option, and corporate reorganizations, liquidations, etc. See sections 421 to 425 of this title.

1958—Subsec. (a). Pub. L. 85–866, § 25, inserted sentence authorizing substitution of ''grantor corporation'' or ''corporation issuing or assuming a stock option in a transaction to which subsection (g) is applicable'' for ''employer corporation''.

Subsec. (d)(6)(C). Pub. L. 85–320 added subpar. (C).

Subsec. (d)(1)(A)(ii). Pub. L. 85–866, § 26(a)(1), substituted ''in the case of a variable price option'' for ''in case the purchase price of the stock under the option is fixed or determinable under a formula in which the only variable is the value of the stock at any time during a period of 6 months which includes the time the option is exercised'' and inserted ''fair'' before ''market value''.

Subsec. (d)(7). Pub. L. 85–866, § 26(a)(2), added par. (7).

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–357, title II, § 251(d), Oct. 22, 2004, 118 Stat. 1459, provided that: ''The amendments made by this section [amending this section, sections 423, 3121, 3231, and 3306 of this title, and section 409 of Title 42, The Public Health and Welfare] shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act [Oct. 22, 2004].''

Pub. L. 108–357, title VIII, § 905(b), Oct. 22, 2004, 118 Stat. 1653, provided that: ''The amendment made by this section [amending this section] shall apply to sales after the date of the enactment of this Act [Oct. 22, 2004].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 221(e) of Pub. L. 88–272, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting sections 422 to 425 and 6039, amending this section, sections 402, 691, 6652, 6678, and the analysis preceding sections 401 and 6031, and renumbering section 3039 as 3040 of this title] shall apply to taxable years ending after December 31, 1963.

''(2) The amendments made by paragraphs (1) and (3) of subsection (b) [enacting section 3039, renumbering former section 3039 as 3040, and amending section 6678 of this title] and paragraph (2) of section 6652(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as amended by paragraph (2) of subsection (b)), shall apply to stock transferred pursuant to options exercised on or after January 1, 1964.

''(3) In the case of an option granted after December 31, 1963, and before January 1, 1965—

''(A) paragraphs (1) and (2) of section 422(b) of the Internal Revenue Code of 1986 (as added by subsection (a)), shall not apply, and

''(B) paragraph (1) of section 425(h) of such Code (as added by subsection (a)), shall not apply to any change in the terms of such option made before January 1, 1965, to permit such option to qualify under paragraphs (3), (4), and (5) of such section 422(b).''

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by section 25 of Pub. L. 85–866 applicable to taxable years beginning after Dec. 31, 1953, and ending after Aug. 16, 1954, see section 1(c)(1) of Pub. L. 85–866, set out as a note under section 165 of this title.

Section 26(b) of Pub. L. 85–866 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after September 30, 1958.''

Section 3 of Pub. L. 85–320 provided that: ''The amendments made by this Act [amending this section and section 1014 of this title] shall apply with respect to taxable years ending after December 31, 1956, but only in the case of employees dying after such date.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

§ 422. Incentive stock options

(a) In general

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an incentive stock option if—

(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 1 year after the transfer of such share to him, and

(2) at all times during the period beginning on the date of the granting of the option and ending on the day 3 months before the date of such exercise, such individual was an employee of either the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) applies.

(b) Incentive stock option

For purposes of this part, the term ''incentive stock option'' means an option granted to an individual for any reason connected with his employment by a corporation, if granted by the employer corporation or its parent or subsidiary corporation, to purchase stock of any of such corporations, but only if—

(1) the option is granted pursuant to a plan which includes the aggregate number of shares which may be issued under options and the employees (or class of employees) eligible to receive options, and which is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(2) such option is granted within 10 years from the date such plan is adopted, or the date such plan is approved by the stockholders, whichever is earlier;

(3) such option by its terms is not exercisable after the expiration of 10 years from the date such option is granted;

(4) the option price is not less than the fair market value of the stock at the time such option is granted;

(5) such option by its terms is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him; and

(6) such individual, at the time the option is granted, does not own stock possessing more than 10 percent of the total combined voting power of all classes of stock of the employer corporation or of its parent or subsidiary corporation.

Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option.

(c) Special rules

(1) Good faith efforts to value of stock

If a share of stock is transferred pursuant to the exercise by an individual of an option which would fail to qualify as an incentive stock option under subsection (b) because there was a failure in an attempt, made in good faith, to meet the requirement of subsection (b)(4), the requirement of subsection (b)(4) shall be considered to have been met. To the extent provided in regulations by the Secretary, a similar rule shall apply for purposes of subsection (d).

(2) Certain disqualifying dispositions where amount realized is less than value at exercise

If—

(A) an individual who has acquired a share of stock by the exercise of an incentive stock option makes a disposition of such share within either of the periods described in subsection (a)(1), and

(B) such disposition is a sale or exchange with respect to which a loss (if sustained) would be recognized to such individual,

then the amount which is includible in the gross income of such individual, and the amount which is deductible from the income of his employer corporation, as compensation attributable to the exercise of such option shall not exceed the excess (if any) of the amount realized on such sale or exchange over the adjusted basis of such share.

(3) Certain transfers by insolvent individuals

If an insolvent individual holds a share of stock acquired pursuant to his exercise of an incentive stock option, and if such share is transferred to a trustee, receiver, or other similar fiduciary in any proceeding under title 11 or any other similar insolvency proceeding, neither such transfer, nor any other transfer of such share for the benefit of his creditors in such proceeding, shall constitute a disposition of such share for purposes of subsection (a)(1).

(4) Permissible provisions

An option which meets the requirements of subsection (b) shall be treated as an incentive stock option even if—

(A) the employee may pay for the stock with stock of the corporation granting the option,

(B) the employee has a right to receive property at the time of exercise of the option, or

(C) the option is subject to any condition not inconsistent with the provisions of subsection (b).

Subparagraph (B) shall apply to a transfer of property (other than cash) only if section 83 applies to the property so transferred.

(5) 10-percent shareholder rule

Subsection (b)(6) shall not apply if at the time such option is granted the option price is at least 110 percent of the fair market value of the stock subject to the option and such option by its terms is not exercisable after the expiration of 5 years from the date such option is granted.

(6) Special rule when disabled

For purposes of subsection (a)(2), in the case of an employee who is disabled (within the meaning of section 22(e)(3)), the 3-month period of subsection (a)(2) shall be 1 year.

(7) Fair market value

For purposes of this section, the fair market value of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.

(d) $100,000 per year limitation

(1) In general

To the extent that the aggregate fair market value of stock with respect to which incentive stock options (determined without regard to this subsection) are exercisable for the 1st time by any individual during any calendar year (under all plans of the individual's employer corporation and its parent and subsidiary corporations) exceeds $100,000, such options shall be treated as options which are not incentive stock options.

(2) Ordering rule

Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(3) Determination of fair market value

For purposes of paragraph (1), the fair market value of any stock shall be determined as of the time the option with respect to such stock is granted.

(Added Pub. L. 97–34, title II, §251(a), Aug. 13, 1981, 95 Stat. 256, §422A; amended Pub. L. 97–448,

title I, § 102(j)(1)–(4), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 98–369, div. A, title V, § 555(a)(1), div. B, title VI, § 2662(f)(1), July 18, 1984, 98 Stat. 897, 1159; Pub. L. 99–514, title III, § 321(a), (b), title XVIII, § 1847(b)(5), Oct. 22, 1986, 100 Stat. 2220, 2856; Pub. L. 100–647, title I, § 1003(d)(1)(A), (2), Nov. 10, 1988, 102 Stat. 3384; renumbered § 422 and amended Pub. L. 101–508, title XI, § 11801(c)(9)(A)(i), (C), Nov. 5, 1990, 104 Stat. 1388–524, 1388–525.)

PRIOR PROVISIONS

A prior section 422, added Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 64; amended Pub. L. 94–455, title VI, § 603(a), (b), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1574, 1834; Pub. L. 96–589, § 6(i)(3), Dec. 24, 1980, 94 Stat. 3410, related to qualified stock options, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(20), Nov. 5, 1990, 104 Stat. 1388–521. For savings provision, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMENDMENTS

1990—Pub. L. 101–508, § 11801(c)(9)(A)(i), renumbered section 422A of this title as this section.

Subsec. (a)(2). Pub. L. 101–508, § 11801(c)(9)(C)(i), substituted ''424(a)'' for ''425(a)''.

Subsec. (c)(5) to (8). Pub. L. 101–508, § 11801(c)(9)(C)(ii), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) ''Coordination with sections 422 and 424'' which read as follows: ''Sections 422 and 424 shall not apply to an incentive stock option.''

1988—Subsec. (b). Pub. L. 100–647, § 1003(d)(1)(A), inserted at end ''Such term shall not include any option if (as of the time the option is granted) the terms of such option provide that it will not be treated as an incentive stock option.''

Subsec. (b)(7). Pub. L. 100–647, § 1003(d)(2)(B), struck out par. (7) which read as follows: ''under the terms of the plan, the aggregate fair market value (determined at the time the option is granted) of the stock with respect to which incentive stock options are exercisable for the 1st time by such individual during any calendar year (under all such plans of the individual's employer corporation and its parent and subsidiary corporations) shall not exceed $100,000.''

Subsec. (c)(1). Pub. L. 100–647, § 1003(d)(2)(C), substituted ''subsection (d)'' for ''paragraph (7) of subsection (b)''.

Subsec. (d). Pub. L. 100–647, § 1003(d)(2)(A), added subsec. (d).

1986—Subsec. (b)(7). Pub. L. 99–514, § 321(a), added par. (7) and struck out former par. (7) which read as follows: ''such option by its terms is not exercisable while there is outstanding (within the meaning of subsection (c)(7)) any incentive stock option which was granted, before the granting of such option, to such individual to purchase stock in his employer corporation or in a corporation which (at the time of the granting of such option) is a parent or subsidiary corporation of the employer corporation, or in a predecessor corporation of any of such corporations; and''.

Subsec. (b)(8). Pub. L. 99–514, § 321(a), struck out par. (8) which read as follows: ''in the case of an option granted after December 31, 1980, under the terms of the plan the aggregate fair market value (determined as of the time the option is granted) of the stock for which any employee may be granted incentive stock options in any calendar year (under all such plans of his employer corporation and its parent and subsidiary corporation) shall not exceed $100,000 plus any unused limit carryover to such year.''

Subsec. (c)(1). Pub. L. 99–514, § 321(b)(2), substituted ''paragraph (7) of subsection (b)'' for ''paragraph (8) of subsection (b) and paragraph (4) of this subsection''.

Subsec. (c)(4). Pub. L. 99–514, § 321(b)(1), redesignated par. (5) as (4) and struck out former par. (4) relating to carryover of unused limit.

Subsec. (c)(5), (6). Pub. L. 99–514, § 321(b)(1)(B), redesignated pars. (6) and (8) as (5) and (6), respectively. Former par. (5) redesignated (4).

Subsec. (c)(7). Pub. L. 99–514, § 321(b)(1), redesignated par. (9) as (7) and struck out former par. (7) which provided that for purposes of subsec. (b)(7) any incentive stock option be treated as outstanding until such option was exercised in full or expired by reason of lapse of time.

Subsec. (c)(8). Pub. L. 99–514, § 321(b)(1)(B), redesignated par. (10) as (8). Former par. (8) redesignated (6).

Subsec. (c)(9). Pub. L. 99–514, § 321(b)(1)(B), redesignated par. (9) as (7).

Pub. L. 99–514, § 1847(b)(5), substituted ''section 22(e)(3)'' for ''section 37(e)(3)''.

Subsec. (c)(10). Pub. L. 99–514, § 321(b)(1)(B), redesignated par. (10) as (8).

1984—Subsec. (c)(9). Pub. L. 98–369, § 2662(f)(1), substituted ''section 37(e)(3)'' for ''section 105(d)(4)''.

Subsec. (c)(10). Pub. L. 98–369, § 555(a)(1), added par. (10).

1983—Subsec. (b)(8). Pub. L. 97–448, § 102(j)(1), substituted ''granted incentive stock options'' for ''granted options''.

Subsec. (c)(1). Pub. L. 97–448, § 102(j)(2), substituted ''Good faith efforts to value stock'' for ''Exercise of option when price is less than value of stock'' as par. (1) heading and inserted sentence providing that, to the extent provided in regulations by the Secretary, a rule similar to that already enunciated in the paragraph applies for purposes of par. (8) of subsec. (b) and par. (4) of subsec. (c).

Subsec. (c)(2)(A). Pub. L. 97–448, § 102(j)(3), substituted ''either of the periods'' for ''the 2-year period''.

Subsec. (c)(4)(A)(ii). Pub. L. 97–448, § 102(j)(4), substituted ''granted incentive stock options'' for ''granted options''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 321(c) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section] shall apply to options granted after December 31, 1986.''

Amendment by section 1847(b)(5) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 555(c)(1) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, § 1855(a)(1), Oct. 22, 1986, 100 Stat. 2882, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to options granted after March 20, 1984, except that such subsection shall not apply to any incentive stock option granted before September 20, 1984, pursuant to a plan adopted or corporate action taken by the board of directors of the grantor corporation before May 15, 1984.''

Amendment by section 2662 of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 251(c) of Pub. L. 97–34, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) OPTIONS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [enacting this section and amending sections 421, 425 [now 424], and 6039 of this title] shall apply with respect to options granted on or after January 1, 1976, and exercised on or after January 1, 1981, or outstanding on such date.

''(B) ELECTION AND DESIGNATION OF OPTIONS.—In the case of an option granted before January 1, 1981, the amendments made by this section shall apply only if the corporation granting such option elects (in the manner and at the time prescribed by the Secretary of the Treasury or his delegate) to have the amendments made by this section apply to such option. The aggregate fair market value (determined at the time the option is granted) of the stock for which any employee was granted options (under all plans of his employer corporation and its parent and subsidiary corporations) to which the amendments made by this section apply by reason of this subparagraph shall not exceed $50,000 per calendar year ans shall not exceed $200,000 in the aggregate.

''(2) CHANGES IN TERMS OF OPTIONS.—In the case of an option granted on or after January 1, 1976, and outstanding on the date of the enactment of this Act [Aug. 13, 1981], paragraph (1) of section 425(h) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] shall not apply to any change in the terms of such option (or the terms of the plan under which granted, including shareholder approval) made within 1 year after such date of enactment to permit such option to qualify as a incentive stock option.''

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

TREATMENT OF OPTIONS AS INCENTIVE STOCK OPTIONS

Section 1003(d)(1)(B) of Pub. L. 100–647 provided that: ''In the case of an option granted after December 31, 1986, and on or before the date of the enactment of this Act [Nov. 10, 1988], such option shall not be treated as an incentive stock option if the terms of such option are amended before the date 90 days after such date of enactment to provide that such option will not be treated as an incentive stock option.''

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.

[§ 422A. Renumbered § 422]

§ 423. Employee stock purchase plans

(a) General rule

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted after December 31, 1963, under an employee stock purchase plan (as defined in subsection (b)) if—

(1) no disposition of such share is made by him within 2 years after the date of the granting of the option nor within 1 year after the transfer of such share to him; and

(2) at all times during the period beginning with the date of the granting of the option and ending on the day 3 months before the date of such exercise, he is an employee of the corporation granting such option, a parent or subsidiary corporation of such corporation, or a corporation or a parent or subsidiary corporation of such corporation issuing or assuming a stock option in a transaction to which section 424(a) applies.

(b) Employee stock purchase plan

For purposes of this part, the term ''employee stock purchase plan'' means a plan which meets the following requirements:

(1) the plan provides that options are to be granted only to employees of the employer corporation or of its parent or subsidiary corporation to purchase stock in any such corporation;

(2) such plan is approved by the stockholders of the granting corporation within 12 months before or after the date such plan is adopted;

(3) under the terms of the plan, no employee can be granted an option if such employee, immediately after the option is granted, owns stock possessing 5 percent or more of the total combined voting power or value of all classes of stock of the employer corporation or of its parent or subsidiary corporation. For purposes of this paragraph, the rules of section 424(d) shall apply in determining the stock ownership of an individual, and stock which the employee may purchase under outstanding options shall be treated as stock owned by the employee;

(4) under the terms of the plan, options are to be granted to all employees of any corporation whose employees are granted any of such options by reason of their employment by such corporation, except that there may be excluded—

(A) employees who have been employed less than 2 years,

(B) employees whose customary employment is 20 hours or less per week,

(C) employees whose customary employment is for not more than 5 months in any calendar year, and

(D) highly compensated employees (within the meaning of section 414(q));

(5) under the terms of the plan, all employees granted such options shall have the same rights and privileges, except that the amount of stock which may be purchased by any employee under such option may bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees, and the plan may provide that no employee may purchase more than a maximum amount of stock fixed under the plan;

(6) under the terms of the plan, the option price is not less than the lesser of—

(A) an amount equal to 85 percent of the fair market value of the stock at the time such option is granted, or

(B) an amount which under the terms of the option may not be less than 85 percent of

the fair market value of the stock at the time such option is exercised;

(7) under the terms of the plan, such option cannot be exercised after the expiration of—

(A) 5 years from the date such option is granted if, under the terms of such plan, the option price is to be not less than 85 percent of the fair market value of such stock at the time of the exercise of the option, or

(B) 27 months from the date such option is granted, if the option price is not determinable in the manner described in subparagraph (A)

(8) under the terms of the plan, no employee may be granted an option which permits his rights to purchase stock under all such plans of his employer corporation and its parent and subsidiary corporations to accrue at a rate which exceeds $25,000 of fair market value of such stock (determined at the time such option is granted) for each calendar year in which such option is outstanding at any time. For purposes of this paragraph—

(A) the right to purchase stock under an option accrues when the option (or any portion thereof) first becomes exercisable during the calendar year;

(B) the right to purchase stock under an option accrues at the rate provided in the option, but in no case may such rate exceed $25,000 of fair market value of such stock (determined at the time such option is granted) for any one calendar year; and

(C) a right to purchase stock which has accrued under one option granted pursuant to the plan may not be carried over to any other option; and

(9) under the terms of the plan, such option is not transferable by such individual otherwise than by will or the laws of descent and distribution, and is exercisable, during his lifetime, only by him.

For purposes of paragraphs (3) to (9), inclusive, where additional terms are contained in an offering made under a plan, such additional terms shall, with respect to options exercised under such offering, be treated as a part of the terms of such plan.

(c) Special rule where option price is between 85 percent and 100 percent of value of stock

If the option price of a share of stock acquired by an individual pursuant to a transfer to which subsection (a) applies was less than 100 percent of the fair market value of such share at the time such option was granted, then, in the event of any disposition of such share by him which meets the holding period requirements of subsection (a), or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies, an amount equal to the lesser of—

(1) the excess of the fair market value of the share at the time of such disposition or death over the amount paid for the share under the option, or

(2) the excess of the fair market value of the share at the time the option was granted over the option price.

If the option price is not fixed or determinable at the time the option is granted, then for purposes of this subsection, the option price shall be determined as if the option were exercised at such time. In the case of the disposition of such share by the individual, the basis of the share in his hands at the time of such disposition shall be increased by an amount equal to the amount so includible in his gross income. No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.

(Added Pub. L. 88–272, title II, §221(a), Feb. 26, 1964, 78 Stat. 67; amended Pub. L. 94–455, title XIV, §1402(b)(1)(E), (2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 98–369, div. A, title X, §1001(b)(5), (e), July 18, 1984, 98 Stat. 1011, 1012; Pub. L. 99–514, title XI, §1114(b)(13), Oct. 22, 1986, 100 Stat. 2451; Pub. L. 101–508, title XI, §11801(c)(9)(D), (E), Nov. 5, 1990, 104 Stat. 1388–525; Pub. L. 108–357, title II, §251(c), Oct. 22, 2004, 118 Stat. 1459.)

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–357 inserted at end of concluding provisions ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.''

1990—Subsec. (a). Pub. L. 101–508, §11801(c)(9)(D)(i), struck out ''(other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B))'' after ''December 31, 1963''.

Subsec. (a)(2). Pub. L. 101–508, §11801(c)(9)(D)(ii), substituted ''424(a)'' for ''425(a)''.

Subsec. (b)(3). Pub. L. 101–508, §11801(c)(9)(E), substituted ''424(d)'' for ''425(d)''.

1986—Subsec. (b)(4)(D). Pub. L. 99–514 substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees''.

1984—Subsec. (a)(1). Pub. L. 98–369 substituted ''6 months'' for ''1 year'', applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

1976—Subsec. (a)(1). Pub. L. 94–455, §1402(b)(2), provided that ''9 months'' would be changed to ''1 year''.

Pub. L. 94–455, §1402(b)(1)(E), provided that ''6 months'' would be changed to ''9 months'' for taxable years beginning in 1977.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–357 applicable to stock acquired pursuant to options exercised after Oct. 22, 2004, see section 251(d) of Pub. L. 108–357, set out as a note under section 421 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable to years beginning after Dec. 31, 1986, see section 1114(c)(1) of Pub. L. 99–514, set out as a note under section 414 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(1) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Section 1402(b)(2) of Pub. L. 94–455 provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, see section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 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.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

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.

§ 424. Definitions and special rules

(a) Corporate reorganizations, liquidations, etc.

For purposes of this part, the term ''issuing or assuming a stock option in a transaction to which section 424(a) applies'' means a substitution of a new option for the old option, or an assumption of the old option, by an employer corporation, or a parent or subsidiary of such corporation, by reason of a corporate merger, consolidation, acquisition of property or stock, separation, reorganization, or liquidation, if—

(1) the excess of the aggregate fair market value of the shares subject to the option immediately after the substitution or assumption over the aggregate option price of such shares is not more than the excess of the aggregate fair market value of all shares subject to the option immediately before such substitution or assumption over the aggregate option price of such shares, and

(2) the new option or the assumption of the old option does not give the employee additional benefits which he did not have under the old option.

For purposes of this subsection, the parent-subsidiary relationship shall be determined at the time of any such transaction under this subsection.

(b) Acquisition of new stock

For purposes of this part, if stock is received by an individual in a distribution to which section 305, 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies, and such distribution was made with respect to stock transferred to him upon his exercise of the option, such stock shall be considered as having been transferred to him on his exercise of such option. A similar rule shall be applied in the case of a series of such distributions.

(c) Disposition

(1) In general

Except as provided in paragraphs (2), (3), and (4), for purposes of this part, the term ''disposition'' includes a sale, exchange, gift, or a transfer of legal title, but does not include—

(A) a transfer from a decedent to an estate or a transfer by request or inheritance;

(B) an exchange to which section 354, 355, 356, or 1036 (or so much of section 1031 as relates to section 1036) applies; or

(C) a mere pledge or hypothecation.

(2) Joint tenancy

The acquisition of a share of stock in the name of the employee and another jointly with the right of survivorship or a subsequent transfer of a share of stock into such joint ownership shall not be deemed a disposition, but a termination of such joint tenancy (except to the extent such employee acquires ownership of such stock) shall be treated as a disposition by him occurring at the time such joint tenancy is terminated.

(3) Special rule where incentive stock is acquired through use of other statutory option stock

(A) Nonrecognition sections not to apply

If—

(i) there is a transfer of statutory option stock in connection with the exercise of any incentive stock option, and

(ii) the applicable holding period requirements (under section 422(a)(1) or 423(a)(1)) are not met before such transfer,

then no section referred to in subparagraph (B) of paragraph (1) shall apply to such transfer.

(B) Statutory option stock

For purpose of subparagraph (A), the term ''statutory option stock'' means any stock acquired through the exercise of an incentive stock option or an option granted under an employee stock purchase plan.

(4) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

(A) such transfer shall not be treated as a disposition for purposes of this part, and

(B) the same tax treatment under this part with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(d) Attribution of stock ownership

For purposes of this part, in applying the percentage limitations of sections 422(b)(6) and 423(b)(3)—

(1) the individual with respect to whom such limitation is being determined shall be considered as owning the stock owned, directly or indirectly, by or for his brothers and sisters

(whether by the whole or half blood), spouse, ancestors, and lineal descendants; and

(2) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust, shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries.

(e) Parent corporation

For purposes of this part, the term ''parent corporation'' means any corporation (other than the employer corporation) in an unbroken chain of corporations ending with the employer corporation if, at the time of the granting of the option, each of the corporations other than the employer corporation owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(f) Subsidiary corporation

For purposes of this part, the term ''subsidiary corporation'' means any corporation (other than the employer corporation) in an unbroken chain of corporations beginning with the employer corporation if, at the time of the granting of the option, each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50 percent or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

(g) Special rule for applying subsections (e) and (f)

In applying subsections (e) and (f) for purposes of section[1] 422(a)(2) and 423(a)(2), there shall be substituted for the term ''employer corporation'' wherever it appears in subsection (e) and (f) the term ''grantor corporation'' or the term ''corporation issuing or assuming a stock option in a transaction to which section 424(a) applies'' as the case may be.

(h) Modification, extension, or renewal of option

(1) In general

For purposes of this part, if the terms of any option to purchase stock are modified, extended, or renewed, such modification, extension, or renewal shall be considered as the granting of a new option.

(2) Special rule for section 423 options

In the case of the transfer of stock pursuant to the exercise of an option to which section 423 applies and which has been so modified, extended, or renewed, the fair market value of such stock at the time of the granting of the option shall be considered as whichever of the following is the highest—

(A) the fair market value of such stock on the date of the original granting of the option,

(B) the fair market value of such stock on the date of the making of such modification, extension, or renewal, or

(C) the fair market value of such stock at the time of the making of any intervening modification, extension, or renewal.

(3) Definition of modification

The term ''modification'' means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option—

(A) attributable to the issuance or assumption of an option under subsection (a);

(B) to permit the option to qualify under section 423(b)(9); or

(C) in the case of an option not immediately exercisable in full, to accelerate the time at which the option may be exercised.

(i) Stockholder approval

For purposes of this part, if the grant of an option is subject to approval by stockholders, the date of grant of the option shall be determined as if the option had not been subject to such approval.

(j) Cross references

For provisions requiring the reporting of certain acts with respect to a qualified stock option, an incentive stock option, options granted under employer stock purchase plans, or a restricted stock option, see section 6039.

(Added Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 71, § 425; amended Pub. L. 97–34, title II, § 251(b)(2)–(4), Aug. 13, 1981, 95 Stat. 259; Pub. L. 97–448, title I, § 102(j)(5), (6), Jan. 12, 1983, 96 Stat. 2373; Pub. L. 98–369, div. A, title V, § 555(b), July 18, 1984, 98 Stat. 898; Pub. L. 100–647, title I, § 1018(*l*)(1), (2), Nov. 10, 1988, 102 Stat. 3584; Pub. L. 101–239, title VII, § 7811(m)(6), Dec. 19, 1989, 103 Stat. 2412; renumbered § 424 and amended Pub. L. 101–508, title XI, § 11801(c)(9)(A)(i), (F), Nov. 5, 1990, 104 Stat. 1388–524, 1388–525; Pub. L. 104–188, title I, § 1702(h)(13), Aug. 20, 1996, 110 Stat. 1874.)

PRIOR PROVISIONS

A prior section 424, added Pub. L. 88–272, title II, § 221(a), Feb. 26, 1964, 78 Stat. 69; amended Pub. L. 94–455, title VI, § 603(c), title XIV, § 1402(b)(1)(F), (2), Oct. 4, 1976, 90 Stat. 1574, 1732, related to restricted stock options, prior to repeal by Pub. L. 101–508, title XI, § 11801(a)(21), Nov. 5, 1990, 104 Stat. 1388–521. For savings provisions, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

AMENDMENTS

1996—Subsec. (c)(3)(B). Pub. L. 104–188 substituted ''an incentive stock option or an option granted under an employee stock purchase plan'' for ''a qualified stock option, an incentive stock option, an option granted under an employee stock purchase plan, or a restricted stock option''.

1990—Pub. L. 101–508, § 11801(c)(9)(A)(i), renumbered section 425 of this title as this section.

Subsec. (a). Pub. L. 101–508, § 11801(c)(9)(F)(i), substituted ''424(a)'' for ''425(a)''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–508, § 11801(c)(9)(F)(ii), substituted ''422(a)(1) or 423(a)(1)'' for ''422(a)(1), 422A(a)(1), 423(a)(1), or 424(a)(1)''.

Subsec. (d). Pub. L. 101–508, § 11801(c)(9)(F)(iii), substituted ''422(b)(6) and 423(b)(3)'' for ''422(b)(7), 422A(b)(6), 423(b)(3), and 424(b)(3)''.

Subsec. (g). Pub. L. 101–508, § 11801(c)(9)(F)(iv), substituted ''422(a)(2) and 423(a)(2)'' for ''422(a)(2), 422A(a)(2), 423(a)(2), and 424(a)(2)'' and ''424(a)'' for ''425(a)''.

Subsec. (h)(2). Pub. L. 101–508, § 11801(c)(9)(F)(v)(I), added par. (2) and struck out former par. (2) which related to special rules for sections 423 and 424 options and to an exception that such rules would not apply with respect to a modification, extension or renewal of a restricted stock option before Jan. 1, 1964, if the ag-

[1] So in original. Probably should be ''sections''.

gregate of the monthly fair market value for 12 consecutive months before date of modification, etc., divided by 12 is an amount less than 80% of the fair market value of such stock on the date of original granting or the date of modification, etc., whichever is higher.

Subsec. (h)(3). Pub. L. 101–508, §11801(c)(9)(F)(v)(III), struck out at end ''If a restricted stock option is exercisable after the expiration of 10 years from the date such option is granted, subparagraph (B) shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.''

Subsec. (h)(3)(B). Pub. L. 101–508, §11801(c)(9)(F)(v)(II), substituted ''section 423(b)(9)'' for ''sections 422(b)(6), 423(b)(9), and 424(b)(2)''.

1989—Subsec. (c)(1). Pub. L. 101–239 made technical correction to Pub. L. 100–647, §1018(*l*)(2), see 1988 Amendment note below.

1988—Subsec. (c)(1). Pub. L. 100–647, §1018(*l*)(2), as amended by Pub. L. 101–239, substituted ''paragraphs (2), (3), and (4)'' for ''paragraphs (2) and (3)''.

Subsec. (c)(4). Pub. L. 100–647, §1018(*l*)(1), added par. (4).

1984—Subsec. (h)(3)(B). Pub. L. 98–369 struck out reference to section 422A(b)(5).

1983—Subsec. (c)(1). Pub. L. 97–448, §102(j)(6)(B), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)''.

Subsec. (c)(3). Pub. L. 97–448, §102(j)(6)(A), added par. (3).

Subsec. (j). Pub. L. 97–448, §102(j)(5), inserted reference to an incentive stock option.

1981—Subsec. (d). Pub. L. 97–34, §251(b)(2), inserted reference to section 422A(b)(6).

Subsec. (g). Pub. L. 97–34, §251(b)(3), inserted reference to section 422A(a)(2).

Subsec. (h)(3)(B). Pub. L. 97–34, §251(b)(4), inserted reference to section 422A(b)(5).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 555(c)(3) of Pub. L. 98–369, as amended by Pub. L. 99–514, title XVIII, §1855(a)(4), Oct. 22, 1986, 100 Stat. 2882, provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to modifications of options after March 20, 1984.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 102(j)(6) of Pub. L. 97–448 provided that the amendment made by that section is effective only with respect to transfers after March 15, 1982.

Amendment by section 102(j)(5) of title I of Pub. L. 97–448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97–34, to which such amendment relates, see section 109 of Pub. L. 97–448, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97–34, set out as an Effective Date note under section 422 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, except in cases of options granted after Dec. 31, 1963, and before Jan. 1, 1965, in which case par. (1) of subsec. (h) shall not apply to any change in the terms of such option made before Jan. 1, 1965, to permit such option to qualify under pars. (3), (4), and (5) of section 422(b), see section 221(e) of Pub. L. 88–272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101–508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101–508, set out as a note under section 45K of this title.

[§425. Renumbered §424]

PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS

Subpart
A. Minimum funding standards for pension plans.
B. Benefit limitations under single-employer plans.

AMENDMENTS

2006—Pub. L. 109–280, title I, §113(a)(1)(A), Aug. 17, 2006, 120 Stat. 846, substituted ''RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS'' for ''MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS'' in part heading and added subpart analysis.

SUBPART A—MINIMUM FUNDING STANDARDS FOR PENSION PLANS

Sec.
430. Minimum funding standards for single-employer defined benefit pension plans.
431. Minimum funding standards for multiemployer plans.[1]
432. Additional funding rules for multiemployer plans in endangered status or critical status.

AMENDMENT OF ANALYSIS

For termination of amendment by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates of 2006 Amendment note set out under section 412 of this title.

AMENDMENTS

2006—Pub. L. 109–280, title II, §§212(d), 221(c), Aug. 17, 2006, 120 Stat. 917, 919, temporarily added item 432. See Effective and Termination Dates of 2006 Amendment note set out under section 412 of this title.

§430. Minimum funding standards for single-employer defined benefit pension plans

(a) Minimum required contribution

For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f),

[1] Editorially supplied. Section 431 added by Pub. L. 109–280 without corresponding amendment of subpart analysis.

the term ''minimum required contribution'' means, with respect to any plan year of a defined benefit plan which is not a multiemployer plan—

(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e);

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by such excess.

(b) Target normal cost

For purposes of this section:

(1) In general

Except as provided in subsection (i)(2) with respect to plans in at-risk status, the term ''target normal cost'' means, for any plan year, the excess of—

(A) the sum of—

(i) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, plus

(ii) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(B) the amount of mandatory employee contributions expected to be made during the plan year.

(2) Special rule for increase in compensation

For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.

(c) Shortfall amortization charge

(1) In general

For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total (not less than zero) of the shortfall amortization installments for such plan year with respect to the shortfall amortization bases for such plan year and each of the 6 preceding plan years.

(2) Shortfall amortization installment

For purposes of paragraph (1)—

(A) Determination

The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

(B) Shortfall installment

The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(C) Segment rates

In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(3) Shortfall amortization base

For purposes of this section, the shortfall amortization base of a plan for a plan year is—

(A) the funding shortfall of such plan for such plan year, minus

(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

(4) Funding shortfall

For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

(A) the funding target of the plan for the plan year, over

(B) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

(5) Exemption from new shortfall amortization base

(A) In general

In any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

(B) Transition rule

(i) In general

Except as provided in clause (iii), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for purposes of paragraph (3)(A) and subparagraph (A).

(ii) Applicable percentage

For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92
2009	94
2010	96.

(iii) Transition relief not available for new or deficit reduction plans

Clause (i) shall not apply to a plan—

(I) which was not in effect for a plan year beginning in 2007, or

(II) which was in effect for a plan year beginning in 2007 and which was subject to section 412(*l*) (as in effect for plan years beginning in 2007) for such year, determined after the application of paragraphs (6) and (9) thereof.

(6) Early deemed amortization upon attainment of funding target

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

(d) Rules relating to funding target

For purposes of this section—

(1) Funding target

Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

(2) Funding target attainment percentage

The ''funding target attainment percentage'' of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

(e) Waiver amortization charge

(1) Determination of waiver amortization charge

The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

(2) Waiver amortization installment

For purposes of paragraph (1)—

(A) Determination

The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

(B) Waiver installment

The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

(3) Interest rate

In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

(4) Waiver amortization base

The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(c).

(5) Early deemed amortization upon attainment of funding target

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to such bases) shall be reduced to zero.

(f) Reduction of minimum required contribution by prefunding balance and funding standard carryover balance

(1) Election to maintain balances

(A) Prefunding balance

The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a prefunding balance.

(B) Funding standard carryover balance

(i) In general

In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

(ii) Plans maintaining funding standard account in 2007

A plan is described in this clause if the plan—

(I) was in effect for a plan year beginning in 2007, and

(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

(2) Application of balances

A prefunding balance and a funding standard carryover balance maintained pursuant to this paragraph—

(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

(C) may be reduced at any time, pursuant to an election under paragraph (5).

(3) Election to apply balances against minimum required contribution

(A) In general

Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the cur-

rent plan year all or a portion of the prefunding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced as of the first day of the plan year by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

(B) Coordination with funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no amount of the prefunding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

(C) Limitation for underfunded plans

The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), bears to

(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent. In the case of plan years beginning in 2008, the ratio under this subparagraph may be determined using such methods of estimation as the Secretary may prescribe.

(4) Effect of balances on amounts treated as value of plan assets

In the case of any plan maintaining a prefunding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

(A) Applicability of shortfall amortization base

For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance, but only if an election under paragraph (3) applying any portion of the prefunding balance in reducing the minimum required contribution is in effect for the plan year.

(B) Determination of excess assets, funding shortfall, and funding target attainment percentage

(i) In general

For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance and the funding standard carryover balance.

(ii) Special rule for certain binding agreements with PBGC

For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term ''specified balance'' means the prefunding balance or the funding standard carryover balance, as the case may be.

(C) Availability of balances in plan year for crediting against minimum required contribution

For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance.

(5) Election to reduce balance prior to determinations of value of plan assets and crediting against minimum required contribution

(A) In general

The plan sponsor may elect to reduce by any amount the balance of the prefunding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

(B) Coordination between prefunding balance and funding standard carryover balance

To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the prefunding balance.

(6) Prefunding balance

(A) In general

A prefunding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

(B) Increases

(i) In general

As of the first day of each plan year beginning after 2008, the prefunding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

(I) the aggregate total of employer contributions to the plan for the preceding plan year, over—

(II) the minimum required contribution for such preceding plan year.

(ii) Adjustments for interest

Any excess contributions under clause (i) shall be properly adjusted for interest ac-

cruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

(iii) Certain contributions necessary to avoid benefit limitations disregarded

The excess described in clause (i) with respect to any preceding plan year shall be reduced (but not below zero) by the amount of contributions an employer would be required to make under subsection (b), (c), or (e) of section 436 to avoid a benefit limitation which would otherwise be imposed under such paragraph for the preceding plan year. Any contribution which may be taken into account in satisfying the requirements of more than 1 of such paragraphs shall be taken into account only once for purposes of this clause.

(C) Decreases

The prefunding balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(7) Funding standard carryover balance

(A) In general

A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

(B) Beginning balance

The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

(C) Decreases

The funding standard carryover balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

(8) Adjustments for investment experience

In determining the prefunding balance or the funding standard carryover balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

(9) Elections

Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

(g) Valuation of plan assets and liabilities

(1) Timing of determinations

Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

(2) Valuation date

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

(B) Exception for small plans

If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

(C) Application of certain rules in determination of plan size

For purposes of this paragraph—

(i) Plans not in existence in preceding year

In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

(ii) Predecessors

Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

(3) Determination of value of plan assets

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

(B) Averaging allowed

A plan may determine the value of plan assets on the basis of the averaging of fair market values, but only if such method—

(i) is permitted under regulations prescribed by the Secretary,

(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 25th month preceding the month in which the valuation date occurs and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month), and

(iii) does not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

Any such averaging shall be adjusted for contributions, distributions, and expected earnings (as determined by the plan's actuary on the basis of an assumed earnings rate specified by the actuary but not in excess of the third segment rate applicable under subsection (h)(2)(C)(iii)), as specified by the Secretary.

(4) Accounting for contribution receipts

For purposes of determining the value of assets under paragraph (3)—

(A) Prior year contributions

If—

(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2008, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

(B) Special rule for current year contributions made before valuation date

If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

(i) such contributions, and

(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined by using the effective interest rate for the plan year.

(h) Actuarial assumptions and methods

(1) In general

Subject to this subsection, the determination of any present value or other computation under this section shall be made on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(2) Interest rates

(A) Effective interest rate

For purposes of this section, the term ''effective interest rate'' means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's accrued or earned benefits referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

(B) Interest rates for determining funding target

For purposes of determining the funding target and target normal cost of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be—

(i) in the case of benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year, the first segment rate with respect to the applicable month,

(ii) in the case of benefits reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

(iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

(C) Segment rates

For purposes of this paragraph—

(i) First segment rate

The term ''first segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

(ii) Second segment rate

The term ''second segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

(iii) Third segment rate

The term ''third segment rate'' means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (ii).

(D) Corporate bond yield curve

For purposes of this paragraph—

(i) In general

The term ''corporate bond yield curve'' means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and that are in the top 3 quality levels available.

(ii) Election to use yield curve

Solely for purposes of determining the minimum required contribution under this section, the plan sponsor may, in lieu of the segment rates determined under subparagraph (C), elect to use interest rates under the corporate bond yield curve. For purposes of the preceding sentence such curve shall be determined without regard to the 24-month averaging described in clause (i). Such election, once made, may be revoked only with the consent of the Secretary.

(E) Applicable month

For purposes of this paragraph, the term ''applicable month'' means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

(F) Publication requirements

The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(D)(i) for such month) and each of the rates determined under subparagraph (C) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan's projection of future interest rates.

(G) Transition rule

(i) In general

Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2008 or 2009, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

(I) the product of such rate for such month determined without regard to this subparagraph, multiplied by the applicable percentage, and

(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2007), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) Applicable percentage

For purposes of clause (i), the applicable percentage is 33⅓ percent for plan years beginning in 2008 and 66⅔ percent for plan years beginning in 2009.

(iii) New plans ineligible

Clause (i) shall not apply to any plan if the first plan year of the plan begins after December 31, 2007.

(iv) Election

The plan sponsor may elect not to have this subparagraph apply. Such election, once made, may be revoked only with the consent of the Secretary.

(3) Mortality tables

(A) In general

Except as provided in subparagraph (C) or (D), the Secretary shall by regulation prescribe mortality tables to be used in determining any present value or making any computation under this section. Such tables shall be based on the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(B) Periodic revision

The Secretary shall (at least every 10 years) make revisions in any table in effect under subparagraph (A) to reflect the actual experience of pension plans and projected trends in such experience.

(C) Substitute mortality table

(i) In general

Upon request by the plan sponsor and approval by the Secretary, a mortality table which meets the requirements of clause (iii) shall be used in determining any present value or making any computation under this section during the period of consecutive plan years (not to exceed 10) specified in the request.

(ii) Early termination of period

Notwithstanding clause (i), a mortality table described in clause (i) shall cease to be in effect as of the earliest of—

(I) the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or

(II) the date on which the plan actuary determines that such table does not meet the requirements of clause (iii).

(iii) Requirements

A mortality table meets the requirements of this clause if—

(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II), and

(II) such table reflects the actual experience of the pension plans maintained

by the sponsor and projected trends in general mortality experience.

(iv) All plans in controlled group must use separate table

Except as provided by the Secretary, a plan sponsor may not use a mortality table under this subparagraph for any plan maintained by the plan sponsor unless—

(I) a separate mortality table is established and used under this subparagraph for each other plan maintained by the plan sponsor and if the plan sponsor is a member of a controlled group, each member of the controlled group, and

(II) the requirements of clause (iii) are met separately with respect to the table so established for each such plan, determined by only taking into account the participants of such plan, the time such plan has been in existence, and the actual experience of such plan.

(v) Deadline for submission and disposition of application

(I) Submission

The plan sponsor shall submit a mortality table to the Secretary for approval under this subparagraph at least 7 months before the 1st day of the period described in clause (i).

(II) Disposition

Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect as of the 1st day of the period described in clause (i) unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of clause (iii). The 180-day period shall be extended upon mutual agreement of the Secretary and the plan sponsor.

(D) Separate mortality tables for the disabled

Notwithstanding subparagraph (A)—

(i) In general

The Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(ii) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under clause (i) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(iii) Periodic revision

The Secretary shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

(4) Probability of benefit payments in the form of lump sums or other optional forms

For purposes of determining any present value or making any computation under this section, there shall be taken into account—

(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

(5) Approval of large changes in actuarial assumptions

(A) In general

No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary.

(B) Plans to which paragraph applies

This paragraph shall apply to a plan only if—

(i) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed $50,000,000, and

(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

(i) Special rules for at-risk plans

(1) Funding target for plans in at-risk status

(A) In general

In the case of a plan which is in at-risk status for a plan year, the funding target of the plan for the plan year shall be equal to the sum of—

(i) the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined

by using the additional actuarial assumptions described in subparagraph (B), and

(ii) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor determined under subparagraph (C).

(B) Additional actuarial assumptions

The actuarial assumptions described in this subparagraph are as follows:

(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 10 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk funding target and at-risk target normal cost are being determined.

(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result in the highest present value of benefits.

(C) Loading factor

The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

(i) $700, times the number of participants in the plan, plus

(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

(2) Target normal cost of at-risk plans

In the case of a plan which is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be equal to the sum of—

(A) the excess of—

(i) the sum of—

(I) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus

(II) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(ii) the amount of mandatory employee contributions expected to be made during the plan year, plus

(B) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor equal to 4 percent of the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year.

(3) Minimum amount

In no event shall—

(A) the at-risk funding target be less than the funding target, as determined without regard to this subsection, or

(B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

(4) Determination of at-risk status

For purposes of this subsection—

(A) In general

A plan is in at-risk status for a plan year if—

(i) the funding target attainment percentage for the preceding plan year (determined under this section without regard to this subsection) is less than 80 percent, and

(ii) the funding target attainment percentage for the preceding plan year (determined under this section by using the additional actuarial assumptions described in paragraph (1)(B) in computing the funding target) is less than 70 percent.

(B) Transition rule

In the case of plan years beginning in 2008, 2009, and 2010, subparagraph (A)(i) shall be applied by substituting the following percentages for ''80 percent'':

(i) 65 percent in the case of 2008.

(ii) 70 percent in the case of 2009.

(iii) 75 percent in the case of 2010.

In the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year under subparagraph (A) may be determined using such methods of estimation as the Secretary may provide.

(C) Special rule for employees offered early retirement in 2006

(i) In general

For purposes of subparagraph (A)(ii), the additional actuarial assumptions described in paragraph (1)(B) shall not be taken into account with respect to any employee if—

(I) such employee is employed by a specified automobile manufacturer,

(II) such employee is offered a substantial amount of additional cash compensation, substantially enhanced retirement benefits under the plan, or materially reduced employment duties on the condition that by a specified date (not later than December 31, 2010) the employee retires (as defined under the terms of the plan),

(III) such offer is made during 2006 and pursuant to a bona fide retirement incentive program and requires, by the terms of the offer, that such offer can be accepted not later than a specified date (not later than December 31, 2006), and

(IV) such employee does not elect to accept such offer before the specified date on which the offer expires.

(ii) Specified automobile manufacturer

For purposes of clause (i), the term ''specified automobile manufacturer'' means—

(I) any manufacturer of automobiles, and

(II) any manufacturer of automobile parts which supplies such parts directly to a manufacturer of automobiles and which, after a transaction or series of transactions ending in 1999, ceased to be

a member of a controlled group which included such manufacturer of automobiles.

(5) Transition between applicable funding targets and between applicable target normal costs

(A) In general

In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

(i) the amount determined under this section without regard to this subsection, plus

(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

(B) Transition percentage

For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

If the consecutive number of years (including the plan year) the plan is in at-risk status is—	The transition percentage is—
1	20
2	40
3	60
4	80.

(C) Years before effective date

For purposes of this paragraph, plan years beginning before 2008 shall not be taken into account.

(6) Small plan exception

If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan shall not be treated as in at-risk status for the plan year. For purposes of this paragraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account and the rules of subsection (g)(2)(C) shall apply.

(j) Payment of minimum required contributions

(1) In general

For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

(2) Interest

Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

(3) Accelerated quarterly contribution schedule for underfunded plans

(A) Failure to timely make required installment

In any case in which the plan has a funding shortfall for the preceding plan year, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points. In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

(B) Amount of underpayment, period of underpayment

For purposes of subparagraph (A)—

(i) Amount

The amount of the underpayment shall be the excess of—

(I) the required installment, over

(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

(ii) Period of underpayment

The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

(iii) Order of crediting contributions

For purposes of clause (i)(II), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(C) Number of required installments; due dates

For purposes of this paragraph—

(i) Payable in 4 installments

There shall be 4 required installments for each plan year.

(ii) Time for payment of installments

The due dates for required installments are set forth in the following table:

In the case of the following required installment:	The due date is:
1st	April 15
2nd	July 15
3rd	October 15
4th	January 15 of the following year.

(D) Amount of required installment

For purposes of this paragraph—

(i) In general

The amount of any required installment shall be 25 percent of the required annual payment.

(ii) Required annual payment

For purposes of clause (i), the term ''required annual payment'' means the lesser of—

(I) 90 percent of the minimum required contribution (determined without regard to this subsection) to the plan for the plan year under this section, or

(II) 100 percent of the minimum required contribution (determined without regard to this subsection or to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

(E) Fiscal years, short years, and years with alternate valuation date

(i) Fiscal years

In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

(ii) Short plan year

This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

(iii) Plan with alternate valuation date

The Secretary shall prescribe regulations for the application of this paragraph in the case of a plan which has a valuation date other than the first day of the plan year.

(4) Liquidity requirement in connection with quarterly contributions

(A) In general

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

(B) Plans to which paragraph applies

This paragraph shall apply to a plan (other than a plan described in subsection (g)(2)(B)) which—

(i) is required to pay installments under paragraph (3) for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

(C) Period of underpayment

For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

(D) Limitation on increase

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

(E) Definitions

For purposes of this paragraph—

(i) Liquidity shortfall

The term ''liquidity shortfall'' means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

(I) the base amount with respect to such quarter, over

(II) the value (as of such last day) of the plan's liquid assets.

(ii) Base amount

(I) In general

The term ''base amount'' means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

(II) Special rule

If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satisfaction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

(iii) Disbursements from the plan

The term ''disbursements from the plan'' means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

(iv) Adjusted disbursements

The term ''adjusted disbursements'' means disbursements from the plan reduced by the product of—

(I) the plan's funding target attainment percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

(v) Liquid assets

The term ''liquid assets'' means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

(vi) Quarter

The term ''quarter'' means, with respect to any required installment, the 3-month

period preceding the month in which the due date for such installment occurs.

(F) Regulations

The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

(k) Imposition of lien where failure to make required contributions

(1) In general

In the case of a plan to which this subsection applies (as provided under paragraph (2)), if—

(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds $1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

(2) Plans to which subsection applies

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) covered under section 4021 of the Employee Retirement Income Security Act of 1974 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

(3) Amount of lien

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

(4) Notice of failure; lien

(A) Notice of failure

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

(B) Period of lien

The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

(C) Certain rules to apply

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

(5) Enforcement

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

(6) Definitions

For purposes of this subsection—

(A) Contribution payment

The term ''contribution payment'' means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (j).

(B) Due date; required installment

The terms ''due date'' and ''required installment'' have the meanings given such terms by subsection (j).

(C) Controlled group

The term ''controlled group'' means any group treated as a single employer under subsections (b), (c), (m), and (*o*) of section 414.

(*l*) Qualified transfers to health benefit accounts

In the case of a qualified transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

(Added Pub. L. 109–280, title I, §112(a), Aug. 17, 2006, 120 Stat. 826; amended Pub. L. 110–458, title I, §§101(b)(2), 121(b), title II, §202(b), Dec. 23, 2008, 122 Stat. 5095, 5113, 5118.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (h)(3)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the 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.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (h)(5)(B)(i), (ii) and (k)(2), (4)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29, Labor. Sections 4001, 4006, 4021, and 4068 of the Act are classified to sections 1301, 1306, 1321, and 1368, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–458, §101(b)(2)(A), amended subsec. (b) generally. Prior to amendment, text read as follows: ''For purposes of this section, except as provided in subsection (i)(2) with respect to plans in at-risk status, the term ''target normal cost'' means, for any plan year, the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. For purposes of this subsection, if any benefit attributable to services per-

formed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.''

Subsec. (c)(5)(B)(i). Pub. L. 110–458, §202(b)(2), added cl. (i) and struck out former cl. (i). Prior to amendment, text read as follows: ''Except as provided in clauses (iii) and (iv), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year for purposes of subparagraph (A).''

Subsec. (c)(5)(B)(iii). Pub. L. 110–458, §202(b)(1), redesignated cl. (iv) as (iii) and struck out former cl. (iii). Prior to amendment, text read as follows: ''Clause (i) shall not apply with respect to any plan year beginning after 2008 unless the shortfall amortization base for each of the preceding years beginning after 2007 was zero (determined after application of this subparagraph).''

Pub. L. 110–458, §101(b)(2)(B), inserted ''beginning'' before ''after 2008''.

Subsec. (c)(5)(B)(iv). Pub. L. 110–458, §202(b)(1), redesignated cl. (iv) as (iii).

Subsec. (c)(5)(B)(iv)(II). Pub. L. 110–458, §101(b)(2)(C), inserted ''for such year'' after ''beginning in 2007)''.

Subsec. (f)(3)(A). Pub. L. 110–458, §101(b)(2)(D)(i), struck out ''as of the first day of the plan year'' after ''credited by the plan sponsor''.

Subsec. (f)(4)(A). Pub. L. 110–458, §101(b)(2)(D)(ii), substituted ''paragraph (3)'' for ''paragraph (2)''.

Subsec. (f)(6)(B)(iii). Pub. L. 110–458, §101(b)(2)(D)(iii), substituted ''subsection (b), (c), or (e) of section 436'' for ''paragraph (1), (2), or (4) of section 206(g)''.

Subsec. (f)(6)(C). Pub. L. 110–458, §101(b)(2)(D)(iv), struck out ''the sum of'' after ''by'' in introductory provisions.

Subsec. (f)(8). Pub. L. 110–458, §101(b)(2)(D)(v), struck out ''of the Treasury'' after ''by the Secretary''.

Subsec. (g)(3)(B). Pub. L. 110–458, §121(b), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: ''Any such averaging shall be adjusted for contributions and distributions (as provided by the Secretary).''

Subsec. (h)(2)(B). Pub. L. 110–458, §101(b)(2)(E)(i), (ii), in introductory provisions, inserted ''and target normal cost'' after ''funding target'' and substituted ''benefits'' for ''liabilities''.

Subsec. (h)(2)(F). Pub. L. 110–458, §101(b)(2)(E)(iii), (iv), substituted ''section 417(e)(3)(D)(i) for such month)'' for ''section 417(e)(3)(D)(i)) for such month'' and ''subparagraph (C)'' for ''subparagraph (B)''.

Subsec. (i)(2)(A). Pub. L. 110–458, §101(b)(2)(F)(i)(I), added subpar. (A) and struck out former subpar. (A) which read as follows: ''the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus''.

Subsec. (i)(2)(B). Pub. L. 110–458, §101(b)(2)(F)(i)(II), substituted ''the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year'' for ''the target normal cost (determined without regard to this paragraph) of the plan for the plan year''.

Subsec. (i)(4)(B). Pub. L. 110–458, §101(b)(2)(F)(ii), substituted ''subparagraph (A)'' for ''subparagraph (A)(ii)'' in concluding provisions.

Subsec. (j)(3)(A). Pub. L. 110–458, §101(b)(2)(G)(i), inserted at end ''In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.''

Subsec. (j)(3)(D)(ii)(II). Pub. L. 110–458, §101(b)(2)(G)(ii), substituted ''section 412(c)'' for ''section 302(c)''.

Subsec. (j)(3)(E). Pub. L. 110–458, §101(b)(2)(G)(iii), (iv), substituted '', short years, and years with alternate valuation date'' for ''and short years'' in heading and added cl. (iii).

Subsec. (k)(1). Pub. L. 110–458, §101(b)(2)(H)(i), inserted ''(as provided under paragraph (2))'' after ''applies'' in introductory provisions.

Subsec. (k)(6)(B). Pub. L. 110–458, §101(b)(2)(H)(ii), struck out '', except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under section 430'' before period at end.

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110–458, title I, §101(b)(3), Dec. 23, 2008, 122 Stat. 5096, provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraphs (1)(A) [amending section 1083 of Title 29, Labor], (1)(F)(i) [amending section 1083 of Title 29], (2)(A) [amending this section], and (2)(F)(i) [amending this section] shall apply to plan years beginning after December 31, 2008.''

''(B) ELECTION FOR EARLIER APPLICATION.—The amendments made by such paragraphs shall apply to a plan for the first plan year beginning after December 31, 2007, if the plan sponsor makes the election under this subparagraph. An election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe, and, once made, may be revoked only with the consent of the Secretary.''

Amendment by section 101(b)(2)(B)–(E), (F)(ii)–(H) 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, §121(c), Dec. 23, 2008, 122 Stat. 5114, provided that: ''The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109–280] to which the amendments relate.''

Pub. L. 110–458, title II, §202(c), Dec. 23, 2008, 122 Stat. 5118, provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1083 of Title 29, Labor] shall apply as if included in the enactment of sections 102 and 112, respectively, of the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE

Pub. L. 109–280, title I, §112(b), Aug. 17, 2006, 120 Stat. 846, provided that: ''The amendments made by this section [enacting this section] shall apply with respect to plan years beginning after December 31, 2007.''

APPLICABILITY OF SUBTITLES A AND B OF TITLE I OF PUB. L. 109–280

For special rules on applicability of 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.

MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS

Pub. L. 109–280, title I, §115(a)–(c), Aug. 17, 2006, 120 Stat. 855, 856, provided that:

''(a) IN GENERAL.—In the case of a plan that—

''(1) was not required to pay a variable rate premium for the plan year beginning in 1996,

''(2) has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor), and

''(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after December 31, 2007.

''(b) MODIFIED RULES.—The rules described in this subsection are as follows:

''(1) For purposes of section 430(j)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Em-

ployee Retirement Income Security Act of 1974 [29 U.S.C. 1083(j)(3)], the plan shall be treated as not having a funding shortfall for any plan year.

''(2) For purposes of—

''(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act [29 U.S.C. 1306(a)(3)(E)(iii)], and

''(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act [29 U.S.C. 1082],

the mortality table shall be the mortality table used by the plan.

''(3) Section 430(c)(5)(B) of such Code and section 303(c)(5)(B) of such Act [29 U.S.C. 1083(c)(5)(B)] (relating to phase-in of funding target for exemption from new shortfall amortization base) shall each be applied by substituting '2012' for '2011' therein and by substituting for the table therein the following:

"In the case of a plan year beginning in calendar year:	The applicable percentage is:
2008	90 percent
2009	92 percent
2010	94 percent
2011	96 percent.

''(c) DEFINITIONS.—Any term used in this section which is also used in section 430 of such Code or section 303 of such Act [29 U.S.C. 1083] shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act [29 U.S.C. 1001 et seq.], such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act.''

SPECIAL FUNDING RULES FOR CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

Pub. L. 109–280, title IV, § 402, Aug. 17, 2006, 120 Stat. 922, as amended by Pub. L. 110–28, title VI, §§ 6614(a), 6615(a), May 25, 2007, 121 Stat. 181; Pub. L. 110–458, title I, §§ 104(b), 126(a), Dec. 23, 2008, 122 Stat. 5104, 5116, provided that:

''(a) IN GENERAL.—The plan sponsor of an eligible plan may elect to either—

''(1) have the rules of subsection (b) apply, or

''(2) have section 303 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083] and section 430 of the Internal Revenue Code of 1986 applied to its first taxable year beginning in 2008 by amortizing the shortfall amortization base for such taxable year over a period of 10 plan years (rather than 7 plan years) beginning with such plan year and by using, in determining the funding target for each of the 10 plan years during such period, an interest rate of 8.25 percent (rather than the segment rates calculated on the basis of the corporate bond yield curve).

''(b) ALTERNATIVE FUNDING SCHEDULE.—

''(1) IN GENERAL.—If an election is made under subsection (a)(1) to have this subsection apply to an eligible plan and the requirements of paragraphs (2) and (3) are met with respect to the plan—

''(A) in the case of any applicable plan year beginning before January 1, 2008, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (e) for the plan for the plan year, and

''(B) in the case of any applicable plan year beginning on or after January 1, 2008, the minimum required contribution determined under sections 303 of such Act [29 U.S.C. 1083] and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (e) for the plan for the plan year.

''(2) ACCRUAL RESTRICTIONS.—

''(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

''(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act [29 U.S.C. 1054(b)(1)(G)], of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and

''(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

''(B) INCREASES IN SECTION 415 LIMITS.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this section unless, effective as of the first day of the first applicable plan year (or, if later, the date of the enactment of this Act [Aug. 17, 2006]) and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

''(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

''(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

''(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term 'applicable benefit increase' means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

''(i) any increase in benefits,

''(ii) any change in the accrual of benefits, or

''(iii) any change in the rate at which benefits become nonforfeitable under the plan.

''(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant's disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) (or on or after July 26, 2005, in the case of the restrictions under paragraph (3)) if the participant—

''(A) was receiving disability benefits as of such date, or

''(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

''(c) DEFINITIONS.—For purposes of this section—

''(1) ELIGIBLE PLAN.—The term 'eligible plan' means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act [29 U.S.C. 1082] and 412 of such Code applies which is sponsored by an employer—

''(A) which is a commercial passenger airline, or

''(B) the principal business of which is providing catering services to a commercial passenger airline.

''(2) APPLICABLE PLAN YEAR.—The term 'applicable plan year' means each plan year to which the election under subsection (a)(1) applies under subsection (d)(1)(A).

''(d) ELECTIONS AND RELATED TERMS.—

''(1) YEARS FOR WHICH ELECTION MADE.—

''(A) ALTERNATIVE FUNDING SCHEDULE.—If an election under subsection (a)(1) was made with respect to an eligible plan, the plan sponsor may select either a plan year beginning in 2006 or a plan year beginning in 2007 as the first plan year to which such election applies. The election shall apply to such plan year and all subsequent years. The election shall be made—

''(i) not later than December 31, 2006, in the case of an election for a plan year beginning in 2006, or

''(ii) not later than December 31, 2007, in the case of an election for a plan year beginning in 2007.

''(B) 10 YEAR AMORTIZATION.—An election under subsection (a)(2) shall be made not later than December 31, 2007.

''(C) ELECTION OF NEW PLAN YEAR FOR ALTERNATIVE FUNDING SCHEDULE.—In the case of an election under subsection (a)(1), the plan sponsor may specify a new plan year in such election and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

''(2) MANNER OF ELECTION.—A plan sponsor shall make any election under subsection (a) in such manner as the Secretary of the Treasury may prescribe. Such election, once made, may be revoked only with the consent of such Secretary.

''(e) MINIMUM REQUIRED CONTRIBUTION.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

''(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

''(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act [29 U.S.C. 1082(a)(2)(A)] and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance and funding standard carryover balance as of the first day of the first of such years under section 303(f) of such Act [29 U.S.C. 1083(f)] and section 430(f) of such Code shall be zero.

''(3) DEFINITIONS.—For purposes of this section—

''(A) UNFUNDED LIABILITY.—The term 'unfunded liability' means the unfunded accrued liability under the plan, determined under the unit credit funding method.

''(B) AMORTIZATION PERIOD.—The term 'amortization period' means the 17-plan year period beginning with the first applicable plan year.

''(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

''(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall apply,

''(B) a rate of interest of 8.85 percent shall be used for all calculations requiring an interest rate, and

''(C) the value of plan assets shall be determined under sections 303(g)(3) of such Act [29 U.S.C. 1083(g)(3)] and 430(g)(3) of such Code.

''(5) SPECIAL RULE FOR CERTAIN PLAN SPINOFFS.—For purposes of subsection (b), if, with respect to any eligible plan to which this subsection applies—

''(A) any applicable plan year includes the date of the enactment of this Act,

''(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under paragraph (1) for the eligible plan for such applicable plan year shall be an aggregate amount determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spinoff). The employer shall designate the allocation of such aggregate amount between such plans for the applicable plan year.

''(f) SPECIAL RULES FOR CERTAIN BALANCES AND WAIVERS.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

''(1) FUNDING STANDARD ACCOUNT AND CREDIT BALANCES.—Any charge or credit in the funding standard account under section 302 of such Act [29 U.S.C. 1082] or section 412 of such Code, and any prefunding balance or funding standard carryover balance under section 303 of such Act [29 U.S.C. 1083] or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

''(2) WAIVED FUNDING DEFICIENCIES.—Any waived funding deficiency under sections 302 and 303 of such Act or section 412 of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall be deemed satisfied as of the first day of the first applicable plan year and the amount of such waived funding deficiency shall be taken into account in determining the plan's unfunded liability under subsection (e)(3)(A). In the case of a plan amendment adopted to satisfy the requirements of subsection (b)(2), the plan shall not be deemed to violate section 304(b) of such Act [29 U.S.C. 1084(b)] or section 412(f) of such Code, as so in effect, by reason of such amendment or any increase in benefits provided to such plan's participants under a separate plan that is a defined contribution plan or a multiemployer plan.

''(g) OTHER RULES FOR PLANS MAKING ELECTION UNDER THIS SECTION.—

''(1) SUCCESSOR PLANS TO CERTAIN PLANS.—If—

''(A) an election under paragraph (1) or (2) of subsection (a) is in effect with respect to any eligible plan, and

''(B) the eligible plan is maintained by an employer that establishes or maintains 1 or more other defined benefit plans (other than any multiemployer plan), and such other plans in combination provide benefit accruals to any substantial number of successor employees,

the Secretary of the Treasury may, in the Secretary's discretion, determine that any trust of which any other such plan is a part does not constitute a qualified trust under section 401(a) of the Internal Revenue Code of 1986 unless all benefit obligations of the eligible plan have been satisfied. For purposes of this paragraph, the term 'successor employee' means any employee who is or was covered by the eligible plan and any employees who perform substantially the same type of work with respect to the same business operations as an employee covered by such eligible plan.

''(2) SPECIAL RULES FOR TERMINATIONS.—

''(A) PBGC LIABILITY LIMITED.—[Amended section 1322 of Title 29, Labor.]

''(B) TERMINATION PREMIUM.—In applying section 4006(a)(7)(A) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1306(a)(7)(A)] to an eligible plan during any period in which an election under subsection (a)(1) is in effect—

''(i) '$2,500' shall be substituted for '$1,250' in such section if such plan terminates during the 5-year period beginning on the first day of the first applicable plan year with respect to such plan, and

''(ii) such section shall be applied without regard to subparagraph (B) of section 8101(d)(2) of the Deficit Reduction Act of 2005 [Pub. L. 109–171, 29 U.S.C. 1306 note] (relating to special rule for plans terminated in bankruptcy).

The substitution described in clause (i) shall not apply with respect to any plan if the Secretary of Labor determines that such plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

''(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iv) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to any taxable year of a plan sponsor of an eligible plan if any applicable plan year with respect to such plan ends with or within such taxable year.

''(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act [29 U.S.C. 1054(h)] or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

''(h) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

''(1) IN GENERAL.—[Amended section 410 of this title.]

''(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 410 of this title] shall apply to years beginning before, on, or after the date of the enactment of this Act [Aug. 17, 2006].

''(i) EXTENSION OF SPECIAL RULE FOR ADDITIONAL FUNDING REQUIREMENTS.—In the case of an employer which is a commercial passenger airline, section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] and section 412(*l*)(12) of the Internal Revenue Code of 1986, as in effect before the date of the enactment of this Act [Aug. 17, 2006], shall each be applied—

''(1) by substituting 'January 1, 2008' for 'December 28, 2005' in subparagraph (D)(i) thereof, and

''(2) without regard to subparagraph (D)(ii).

''(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of and amendments made by this section [amending section 410 of this title and section 1322 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006].''

[Pub. L. 110–458, title I, § 126(b), Dec. 23, 2008, 122 Stat. 5116, provided that: ''The amendment made by this section [amending section 402(e)(4)(C) of Pub. L. 109–280, set out above] shall apply to plan years beginning after December 31, 2007.'']

[Pub. L. 110–28, title VI, § 6614(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by subsection (a) [amending section 402(i)(1) of Pub. L. 109–280, set out above] shall take effect as if included in section 402 of the Pension Protection Act of 2006 [Pub. L. 109–280].''']

[Pub. L. 110–28, title VI, § 6615(b), May 25, 2007, 121 Stat. 181, provided that: ''The amendment made by this section [amending section 402(a)(2) of Pub. L. 109–280, set out above] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which such amendment relates.''']

§ 431. Minimum funding standards for multiemployer plans

(a) In general

For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is—

(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 4243 of the Employee Retirement Income Security Act of 1974.

(b) Funding standard account

(1) Account required

Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account

For a plan year, the funding standard account shall be charged with the sum of—

(A) the normal cost of the plan for the plan year,

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year to which this section applies, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

(iv) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 412(c)(3)) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 412(b)(3)(D) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 412(c)(7)(A)(i)(I) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006).

(3) Credits to account

For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 412(g) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Special rule for amounts first amortized in plan years before 2008

In the case of any amount amortized under section 412(b) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006) over any period beginning with a plan year beginning before 2008 in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

(5) Combining and offsetting amounts to be amortized

Under regulations prescribed by the Secretary, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(6) Interest

The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(7) Special rules relating to charges and credits to funding standard account

For purposes of this part—

(A) Withdrawal liability

Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be considered an amount contributed by the employer to or under the plan. The Secretary may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) Adjustments when a multiemployer plan leaves reorganization

If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 4243(a) of such Act as of the end of the last plan year that the plan was in reorganization.

(C) Plan payments to supplemental program or withdrawal liability payment fund

Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 4222 of such Act or to a fund exempt under section 501(c)(22) pursuant to section 4223 of such Act shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Interim withdrawal liability payments

Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of title IV of such Act and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary.

(E) Election for deferral of charge for portion of net experience loss

If an election is in effect under section 412(b)(7)(F) (as in effect on the day before the date of the enactment of the Pension Protection Act of 2006) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and

paragraph (2)(B)(iii) shall not apply to the amount so charged).

(F) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 412 in such manner as is determined by the Secretary.

(G) Short-term benefits

To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are not payable as a life annuity but are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(ii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for ''15''.

(c) Additional rules

(1) Determinations to be made under funding method

For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) Valuation of assets

(A) In general

For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary.

(B) Election with respect to bonds

The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of the Secretary.

(3) Actuarial assumptions must be reasonable

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—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) Treatment of certain changes as experience gain or loss

For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term ''wages'' under section 3121, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5),

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) Full funding

If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b)(2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

(6) Full-funding limitation

(A) In general

For purposes of paragraph (5), the term ''full-funding limitation'' means the excess (if any) of—

(i) 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

(ii) the lesser of—

(I) the fair market value of the plan's assets, or

(II) the value of such assets determined under paragraph (2).

(B) Minimum amount

(i) In general

In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

(ii) Assets

For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(C) Full funding limitation

For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not nonforfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3)).

(D) Current liability

For purposes of this paragraph—

(i) In general

The term ''current liability'' means all liabilities to employees and their beneficiaries under the plan.

(ii) Treatment of unpredictable contingent event benefits

For purposes of clause (i), any benefit contingent on an event other than—

(I) age, service, compensation, death, or disability, or

(II) an event which is reasonably and reliably predictable (as determined by the Secretary),

shall not be taken into account until the event on which the benefit is contingent occurs.

(iii) Interest rate used

The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

(iv) Mortality tables

(I) Commissioners' standard table

In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary which is based on the prevailing commissioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) Secretarial authority

The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(v) Separate mortality tables for the disabled

Notwithstanding clause (iv)—

(I) In general

The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. The Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act and the regulations thereunder.

(vi) Periodic review

The Secretary shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(E) Required change of interest rate

For purposes of determining a plan's current liability for purposes of this paragraph—

(i) In general

If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) Permissible range

For purposes of this subparagraph—

(I) In general

Except as provided in subclause (II), the term ''permissible range'' means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) Secretarial authority

If the Secretary finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, the Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) Assumptions

Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(7) Annual valuation

(A) In general

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.

(B) Valuation date

(i) Current year

Except as provided in clause (ii), the valuation referred to in subparagraph (A)

shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) Use of prior year valuation

The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) Limitation

A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(8) Time when certain contributions deemed made

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 subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary.

(d) Extension of amortization periods for multiemployer plans

(1) Automatic extension upon application by certain plans

(A) In general

If the plan sponsor of a multiemployer plan—

(i) submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

(B) Criteria

A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

(iv) the notice required under paragraph (3)(A) has been provided.

(C) Termination

The preceding provisions of this paragraph shall not apply with respect to any application submitted after December 31, 2014.

(2) Alternative extension

(A) In general

If the plan sponsor of a multiemployer plan submits to the Secretary an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary may extend the amortization period for a period of time (not in excess of 10 years reduced by the number of years of any extension under paragraph (1) with respect to such unfunded liability) if the Secretary makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

(B) Determination

The Secretary may grant an extension under subparagraph (A) if the Secretary determines that—

(i) such extension would carry out the purposes of this Act[1] and would provide adequate protection for participants under the plan and their beneficiaries, and

(ii) the failure to permit such extension would—

(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

(II) be adverse to the interests of plan participants in the aggregate.

(C) Action by Secretary

The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

(3) Advance notice

(A) In general

The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as

[1] So in original. Probably should be ''title''.

defined in section 4001(a)(21) of the Employee Retirement Income Security Act of 1974) with respect to the affected plan. 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 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 paragraph (1).

(Added Pub. L. 109–280, title II, § 211(a), Aug. 17, 2006, 120 Stat. 890.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(2), (b)(7)(A)–(D), and (d)(3)(A), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title IV of the Act is classified principally to subchapter III (§ 1301 et seq.) of chapter 18 of Title 29, Labor. Part 1 of subtitle E of title IV of the Act is classified generally to part 1 (§ 1381 et seq.) of subtitle E of subchapter III of chapter 18 of Title 29. Sections 4001, 4222, 4223, and 4243 of the Act are classified to sections 1301, 1402, 1403, and 1423, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Pension Protection Act of 2006, referred to in subsec. (b)(2)(D), (E), (3)(D), (4), (7)(E), is the date of enactment of Pub. L. 109–280, which was approved Aug. 17, 2006.

The Social Security Act, referred to in subsec. (c)(4)(A), (6)(D)(v)(II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

EFFECTIVE DATE

Pub. L. 109–280, title II, § 211(b), Aug. 17, 2006, 120 Stat. 898, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to plan years beginning after 2007.

''(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1084] and section 412(e) of the Internal Revenue Code of 1986 with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act [Aug. 17, 2006], including the use of the rate of interest determined under section 6621(b) of such Code.''

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of this section to 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 increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

§ 432. Additional funding rules for multiemployer plans in endangered status or critical status

(a) General rule

For purposes of this part, in the case of a multiemployer plan in effect on July 16, 2006—

(1) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

(2) if the plan is in critical status—

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

(b) Determination of endangered and critical status

For purposes of this section—

(1) Endangered status

A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and, as of the beginning of the plan year, either—

(A) the plan's funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d).

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) Critical status

A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

(A) A plan is described in this subparagraph if—

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of—

(I) the fair market value of plan assets, plus

(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if—

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 431(d), or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 431(d).

(C) A plan is described in this subparagraph if—

(i)(I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d).

(D) A plan is described in this subparagraph if the sum of—

(i) the fair market value of plan assets, plus

(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(3) Annual certification by plan actuary

(A) In general

Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary and to the plan sponsor—

(i) whether or not the plan is in endangered status for such plan year and whether or not the plan is or will be in critical status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(B) Actuarial projections of assets and liabilities

(i) In general

In making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either—

(I) the actuarial statement required under section 103(d) of the Employee Retirement Income Security Act of 1974 with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

(ii) Determinations of future contributions

Any actuarial projection of plan assets shall assume—

(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) Projected industry activity

Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(C) Penalty for failure to secure timely actuarial certification

Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 101(b)(1) of such Act.

(D) Notice

(i) In general

In any case in which it is certified under subparagraph (A) that a multiemployer

plan is or will be in endangered or critical status for a plan year, the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor.

(ii) Plans in critical status

If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that—

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) Model notice

The Secretary, in consultation with the Secretary of Labor[1] shall prescribe a model notice that a multiemployer plan may use to satisfy the requirements under clause (ii).

(c) Funding improvement plan must be adopted for multiemployer plans in endangered status

(1) In general

In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the funding improvement plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including—

(I) one proposal for reductions in the amount of future benefit accruals necessary to achieve the applicable benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the applicable benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) one proposal for increases in contributions under the plan necessary to achieve the applicable benchmarks, assuming no amendments reducing future benefit accruals under the plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the applicable benchmarks in accordance with the funding improvement plan.

For purposes of this section, the term ''applicable benchmarks'' means the requirements applicable to the multiemployer plan under paragraph (3) (as modified by paragraph (5)).

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

(3) Funding improvement plan

For purposes of this section—

(A) In general

A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to provide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan during the funding improvement period of the following requirements:

(i) Increase in plan's funding percentage

The plan's funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of—

(I) such percentage as of the beginning of such period, plus

(II) 33 percent of the difference between 100 percent and the percentage under subclause (I).

(ii) Avoidance of accumulated funding deficiencies

No accumulated funding deficiency for any plan year during the funding improvement period (taking into account any extension of amortization periods under section 431(d)).

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A)(i)(II) shall be applied by substituting ''20 percent'' for ''33 percent''.

(4) Funding improvement period

For purposes of this section—

(A) In general

The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

[1] So in original. Probably should be followed by a comma.

(i) the second anniversary of the date of the adoption of the funding improvement plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A) shall be applied by substituting ''15-year period'' for ''10-year period''.

(C) Coordination with changes in status

(i) Plans no longer in endangered status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

(ii) Plans in critical status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

(D) Plans in endangered status at end of period

If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

(5) Special rules for seriously endangered plans more than 70 percent funded

(A) In general

If the funded percentage of a plan in seriously endangered status was more than 70 percent as of the beginning of the initial determination year—

(i) paragraphs (3)(B) and (4)(B) shall apply only if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), and

(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of paragraph (3)(B) and (4)(B) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

(B) Special rule after expiration of agreements

Notwithstanding subparagraph (A)(ii), if, for any plan year ending after the date described in subparagraph (A)(ii), the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), paragraphs (3)(B) and (4)(B) shall continue to apply for such year.

(6) Updates to funding improvement plans and schedules

(A) Funding improvement plan

The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(B) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(C) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(7) Imposition of default schedule where failure to adopt funding improvement plan

(A) In general

If—

(i) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered endangered status expires, and

(ii) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,

the plan sponsor shall implement the schedule described in paragraph (1)(B)(i)(I) beginning on the date specified in subparagraph (B).

(B) Date of implementation

The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.

(8) Funding plan adoption period

For purposes of this section, the term ''funding plan adoption period'' means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

(d) Rules for operation of plan during adoption and improvement periods

(1) Special rules for plan adoption period

During the funding plan adoption period—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation,

(B) no amendment of the 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 may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law, and

(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

(i) an increase in the plan's funded percentage, and

(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 431(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan's benefit structure, reductions in future benefit accruals, and other reasonable actions consistent with the terms of the plan and applicable law.

(2) Compliance with funding improvement plan

(A) In general

A plan may not be amended after the date of the adoption of a funding improvement plan so as to be inconsistent with the funding improvement plan.

(B) No reduction in contributions

A plan sponsor may not during any funding improvement period accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation.

(C) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a funding improvement plan so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that the benefit increase is consistent with the funding improvement plan and is paid for out of contributions not required by the funding improvement plan to meet the applicable benchmark in accordance with the schedule contemplated in the funding improvement plan.

(e) Rehabilitation plan must be adopted for multiemployer plans in critical status

(1) In general

In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the rehabilitation plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and adjustable benefits, and increases in contributions, that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 411(d)(6)) have been reduced to the maximum extent permitted by law.

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adop-

tion period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

(3) Rehabilitation plan

For purposes of this section—

(A) In general

A rehabilitation plan is a plan which consists of—

(i) actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or increases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 4245 of the Employee Retirement Income Security Act of 1974).

A rehabilitation plan must provide annual standards for meeting the requirements of such rehabilitation plan. Such plan shall also include the schedules required to be provided under paragraph (1)(B)(i) and if clause (ii) applies, shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) Updates to rehabilitation plan and schedules

(i) Rehabilitation plan

The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 104 of the Employee Retirement Income Security Act of 1974.

(ii) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(iii) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(C) Imposition of default schedule where failure to adopt rehabilitation plan

(i) In general

If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires, and

(II) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a to adopt a[2] contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),

the plan sponsor shall implement the default schedule described in the last sentence of paragraph (1) beginning on the date specified in clause (ii).

(ii) Date of implementation

The date specified in this clause is the date which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.

(4) Rehabilitation period

For purposes of this section—

(A) In general

The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

(i) the second anniversary of the date of the adoption of the rehabilitation plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

(B) Emergence

A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 431(d).

(5) Rehabilitation plan adoption period

For purposes of this section, the term ''rehabilitation plan adoption period'' means the period beginning on the date of the certification

[2] So in original.

under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

(6) Limitation on reduction in rates of future accruals

Any reduction in the rate of future accruals under the default schedule described in the last sentence of paragraph (1) shall not reduce the rate of future accruals below—

(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

(7) Automatic employer surcharge

(A) Imposition of surcharge

Each employer otherwise obligated to make a contribution for the initial critical year shall be obligated to pay to the plan for such year a surcharge equal to 5 percent of the contribution otherwise required under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each succeeding plan year in which the plan is in critical status for a consecutive period of years beginning with the initial critical year, the surcharge shall be 10 percent of the contribution otherwise so required.

(B) Enforcement of surcharge

The surcharges under subparagraph (A) shall be due and payable on the same schedule as the contributions on which the surcharges are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 515 of the Employee Retirement Income Security Act of 1974 and shall be enforceable as such.

(C) Surcharge to terminate upon collective bargaining agreement renegotiation

The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other such agreement) that includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i), as modified under subparagraph (B) of paragraph (3).

(D) Surcharge not to apply until employer receives notice

The surcharge under this paragraph shall not apply to an employer until 30 days after the employer has been notified by the plan sponsor that the plan is in critical status and that the surcharge is in effect.

(E) Surcharge not to generate increased benefit accruals

Notwithstanding any provision of a plan to the contrary, the amount of any surcharge under this paragraph shall not be the basis for any benefit accrual under the plan.

(8) Benefit adjustments

(A) Adjustable benefits

(i) In general

Notwithstanding section 411(d)(6), the plan sponsor shall, subject to the notice requirement under subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

(ii) Exception for retirees

Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

(iii) Plan sponsor flexibility

The plan sponsor shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this title and considered appropriate by the plan sponsor based on the plan's then current overall funding status.

(iv) Adjustable benefit defined

For purposes of this paragraph, the term ''adjustable benefit'' means—

(I) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(II) any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) and any benefit payment option (other than the qualified joint and survivor annuity), and

(III) benefit increases that would not be eligible for a guarantee under section 4022A of the Employee Retirement Income Security Act of 1974 on the first day of initial critical year because the

increases were adopted (or, if later, took effect) less than 60 months before such first day.

(B) Normal retirement benefits protected

Except as provided in subparagraph (A)(iv)(III), nothing in this paragraph shall be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age.

(C) Notice requirements

(i) In general

No reduction may be made to adjustable benefits under subparagraph (A) unless notice of such reduction has been given at least 30 days before the general effective date of such reduction for all participants and beneficiaries to—

(I) plan participants and beneficiaries,

(II) each employer who has an obligation to contribute (within the meaning of section 4212(a) of the Employee Retirement Income Security Act of 1974) under the plan, and

(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(ii) Content of notice

The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any reduction on their benefits, including an estimate (on an annual or monthly basis) of any affected adjustable benefit that a participant or beneficiary would otherwise have been eligible for as of the general effective date described in clause (i), and

(II) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(iii) Form and manner

Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in regulations of the Secretary, in consultation with the Secretary of Labor,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

the[3] Secretary shall in the regulations prescribed under subclause (I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

[3] So in original. Probably should be capitalized.

(9) Adjustments disregarded in withdrawal liability determination

(A) Benefit reductions

Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

(B) Surcharges

Any surcharges under paragraph (7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 4211 of such Act, except for purposes of determining the unfunded vested benefits attributable to an employer under section 4211(c)(4) of such Act or a comparable method approved under section 4211(c)(5) of such Act.

(C) Simplified calculations

The Pension Benefit Guaranty Corporation shall prescribe simplified methods for the application of this paragraph in determining withdrawal liability.

(f) Rules for operation of plan during adoption and rehabilitation period

(1) Compliance with rehabilitation plan

(A) In general

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

(B) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

(2) Restriction on lump sums and similar benefits

(A) In general

Effective on the date the notice of certification of the plan's critical status for the initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 411(d)(6), the plan shall not pay—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary by regulations.

(B) Exception

Subparagraph (A) shall not apply to a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(3) Adjustments disregarded in withdrawal liability determination

Any benefit reductions under this subsection shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an employer's withdrawal liability under section 4201 of the Employee Retirement Income Security Act of 1974.

(4) Special rules for plan adoption period

During the rehabilitation plan adoption period—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the 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 may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

(g) Expedited resolution of plan sponsor decisions

If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

(h) Nonbargained participation

(1) Both bargained and nonbargained employee-participants

In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

(2) Nonbargained employees only

In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(i) Definitions; actuarial method

For purposes of this section—

(1) Bargaining party

The term ''bargaining party'' means—

(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

(ii) in the case of a plan described under section 404(c), or a continuation of such a plan, the association of employers that is the employer settlor of the plan; and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

(2) Funded percentage

The term ''funded percentage'' means the percentage equal to a fraction—

(A) the numerator of which is the value of the plan's assets, as determined under section 431(c)(2), and

(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 431(c)(3).

(3) Accumulated funding deficiency

The term ''accumulated funding deficiency'' has the meaning given such term in section 431(a).

(4) Active participant

The term ''active participant'' means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

(5) Inactive participant

The term ''inactive participant'' means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

(A) is not in covered service under the plan, and

(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

(6) Pay status

A person is in pay status under a multiemployer plan if—

(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early,

late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

(B) to the extent provided in regulations of the Secretary, such person is entitled to such a benefit under the plan.

(7) Obligation to contribute

The term ''obligation to contribute'' has the meaning given such term under section 4212(a) of the Employee Retirement Income Security Act of 1974.

(8) Actuarial method

Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

(9) Plan sponsor

For purposes of this section, section 431, and section 4971(g):

(A) In general

The term ''plan sponsor'' means, with respect to any multiemployer plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(B) Special rule for section 404(c) plans

In the case of a plan described in section 404(c) (or a continuation of such plan), such term means the bargaining parties described in paragraph (1).

(10) Benefit commencement date

The term ''benefit commencement date'' means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

(Added Pub. L. 109–280, title II, § 212(a), Aug. 17, 2006, 120 Stat. 899; amended Pub. L. 110–458, title I, § 102(b)(2)(A)–(G), Dec. 23, 2008, 122 Stat. 5101, 5102.)

TERMINATION OF SECTION

For termination of section by section 221(c) of Pub. L. 109–280, see Effective and Termination Dates note below.

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in text, is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Sections 101, 103, 104, 502, 515, 4022A, 4201, 4211, 4212, and 4245 of the Act are classified to sections 1021, 1023, 1024, 1132, 1145, 1322a, 1381, 1391, 1392, and 1426, respectively, 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.

AMENDMENTS

2008—Subsec. (b)(3)(C). Pub. L. 110–458, § 102(b)(2)(A), substituted ''section 101(b)(1)'' for ''section 101(b)(4)''.

Subsec. (b)(3)(D)(iii). Pub. L. 110–458, § 102(b)(2)(B), substituted ''The Secretary, in consultation with the Secretary of Labor'' for ''The Secretary of Labor''.

Subsec. (c)(3)(A)(ii). Pub. L. 110–458, § 102(b)(2)(C)(i), substituted ''section 431(d)'' for ''section 304(d)''.

Subsec. (c)(7)(A)(ii). Pub. L. 110–458, § 102(b)(2)(C)(ii)(I), substituted ''to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,'' for ''to agree on changes to contribution or benefit schedules necessary to meet the applicable benchmarks in accordance with the funding improvement plan,''.

Subsec. (c)(7)(B). Pub. L. 110–458, § 102(b)(2)(C)(ii)(II), added subpar. (B), and struck out former subpar. (B). Prior to amendment, text read as follows: ''The date specified in this subparagraph is the earlier of the date—

''(i) on which the Secretary of Labor certifies that the parties are at an impasse, or

''(ii) which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.''

Subsec. (e)(3)(C)(i)(II). Pub. L. 110–458, § 102(b)(2)(D)(i)(I), substituted ''to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),'' for ''contribution or benefit schedules with terms consistent with the rehabilitation plan and the schedule from the plan sponsor under paragraph (1)(B)(i),''.

Subsec. (e)(3)(C)(ii). Pub. L. 110–458, § 102(b)(2)(D)(i)(II), added cl. (ii) and struck out former cl. (ii). Prior to amendment, text read as follows: ''The date specified in this clause is the earlier of the date—

''(I) on which the Secretary of Labor certifies that the parties are at an impasse, or

''(II) which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.''

Subsec. (e)(4)(A)(ii). Pub. L. 110–458, § 102(b)(2)(D)(ii)(I), struck out ''the date of'' after ''in effect on''.

Subsec. (e)(4)(B). Pub. L. 110–458, § 102(b)(2)(D)(ii)(II), substituted ''but taking'' for ''and taking''.

Subsec. (e)(6). Pub. L. 110–458, § 102(b)(2)(D)(iii), substituted ''the last sentence of paragraph (1)'' for ''paragraph (1)(B)(i)'' in introductory provisions and ''establish'' for ''established'' in concluding provisions.

Subsec. (e)(8)(A)(i). Pub. L. 110–458, § 102(b)(2)(D)(iv)(I), substituted ''section 411(d)(6)'' for ''section 204(g)''.

Subsec. (e)(8)(C)(i)(II). Pub. L. 110–458, § 102(b)(2)(D)(iv)(II), inserted ''of the Employee Retirement Income Security Act of 1974'' after ''section 4212(a)''.

Subsec. (e)(8)(C)(iii). Pub. L. 110–458, § 102(b)(2)(D)(iv)(IV), which directed substitution of ''the Secretary'' for ''the Secretary of Labor'' in last sentence, was executed by making the substitution for ''The Secretary of Labor'', to reflect the probable intent of Congress.

Subsec. (e)(8)(C)(iii)(I). Pub. L. 110–458, § 102(b)(2)(D)(iv)(III), substituted ''the Secretary, in consultation with the Secretary of Labor'' for ''the Secretary of Labor''.

Subsec. (e)(9)(B). Pub. L. 110–458, § 102(b)(2)(D)(v), substituted ''the allocation of unfunded vested benefits to an employer'' for ''an employer's withdrawal liability''.

Subsec. (f)(2)(A)(i). Pub. L. 110–458, § 102(b)(2)(E), substituted ''section 411(a)(9)'' for ''411(b)(1)(A)'' and inserted at end ''to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs after the date such notice is sent,''.

Subsec. (g). Pub. L. 110–458, § 102(b)(2)(F), inserted ''under subsection (c)'' after ''for adoption of a funding improvement plan''.

Subsec. (i)(3). Pub. L. 110–458, § 102(b)(2)(G)(i), substituted ''section 431(a)'' for ''section 412(a)''.

Subsec. (i)(9). Pub. L. 110–458, § 102(b)(2)(G)(ii), added par. (9) and struck out former par. (9). Prior to amendment, text read as follows: ''In the case of a plan described under section 404(c), or a continuation of such a plan, the term 'plan sponsor' means the bargaining parties described under paragraph (1).''

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amend-

ment 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

Section applicable with respect to plan years beginning after 2007, with special rules for certain notices and certain restored benefits, see section 212(e) of Pub. L. 109–280, set out as an Effective and Termination Dates of 2006 Amendment note under section 412 of this title.

Section inapplicable to plan years beginning after Dec. 31, 2014, with exception for certain funding improvement and rehabilitation plans, see section 221(c) of Pub. L. 109–280, set out as an Effective and Termination Dates of 2006 Amendment note under section 412 of this title.

TEMPORARY DELAY OF DESIGNATION OF MULTIEMPLOYER PLANS AS IN ENDANGERED OR CRITICAL STATUS

Pub. L. 110–458, title II, §204, Dec. 23, 2008, 122 Stat. 5118, provided that:

''(a) IN GENERAL.—Notwithstanding the actuarial certification under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of the Internal Revenue Code of 1986, if a plan sponsor of a multiemployer plan elects the application of this section, then, for purposes of section 305 of such Act and section 432 of such Code—

''(1) the status of the plan for its first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, shall be the same as the status of such plan under such sections for the plan year preceding such plan year, and

''(2) in the case of a plan which was in endangered or critical status for the preceding plan year described in paragraph (1), the plan shall not be required to update its plan or schedules under section 305(c)(6) of such Act and section 432(c)(6) of such Code, or section 305(e)(3)(B) of such Act and section 432(e)(3)(B) of such Code, whichever is applicable, until the plan year following the first plan year described in paragraph (1).

If section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 did not apply to the preceding plan year described in paragraph (1), the plan actuary shall make a certification of the status of the plan under section 305(b)(3) of such Act and section 432(b)(3) of such Code for the preceding plan year in the same manner as if such sections had applied to such preceding plan year.

''(b) EXCEPTION FOR PLANS BECOMING CRITICAL DURING ELECTION.—If—

''(1) an election was made under subsection (a) with respect to a multiemployer plan, and

''(2) such plan has, without regard to such election, been certified by the plan actuary under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code to be in critical status for the first plan year described in subsection (a)(1),

then such plan shall be treated as a plan in critical status for such plan year for purposes of applying section 4971(g)(1)(A) of such Code, section 302(b)(3) of such Act [29 U.S.C. 1082(b)(3)] (without regard to the second sentence thereof), and section 412(b)(3) of such Code (without regard to the second sentence thereof).

''(c) ELECTION AND NOTICE.—

''(1) ELECTION.—An election under subsection (a) shall—

''(A) be made at such time and in such manner as the Secretary of the Treasury or the Secretary's delegate may prescribe and, once made, may be revoked only with the consent of the Secretary, and

''(B) if the election is made—

''(i) before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act [29 U.S.C. 1085(b)(3)] and section 432(b)(3) of such Code, be included with such annual certification, and

''(ii) after such date, be submitted to the Secretary or the Secretary's delegate not later than 30 days after the date of the election.

''(2) NOTICE TO PARTICIPANTS.—

''(A) IN GENERAL.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is neither in endangered nor critical status by reason of an election made under subsection (a)—

''(i) the plan sponsor of a multiemployer plan shall not be required to provide notice under such sections, and

''(ii) the plan sponsor shall provide to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor a notice of the election and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require—

''(I) if the election is made before the date the annual certification is submitted to the Secretary or the Secretary's delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, not later than 30 days after the date of the certification, and

''(II) if the election is made after such date, not later than 30 days after the date of the election.

''(B) NOTICE OF ENDANGERED STATUS.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is certified to be in critical status for any plan year but is in endangered status by reason of an election made under subsection (a), the notice provided under such sections shall be the notice which would have been provided if the plan had been certified to be in endangered status.''

TEMPORARY EXTENSION OF THE FUNDING IMPROVEMENT AND REHABILITATION PERIODS FOR MULTIEMPLOYER PENSION PLANS IN CRITICAL AND ENDANGERED STATUS FOR 2008 OR 2009

Pub. L. 110–458, title II, §205, Dec. 23, 2008, 122 Stat. 5120, provided that:

''(a) IN GENERAL.—If the plan sponsor of a multiemployer plan which is in endangered or critical status for a plan year beginning in 2008 or 2009 (determined after application of section 204 [of Pub. L. 110–458, set out above]) elects the application of this section, then, for purposes of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986—

''(1) except as provided in paragraph (2), the plan's funding improvement period or rehabilitation period, whichever is applicable, shall be 13 years rather than 10 years, and

''(2) in the case of a plan in seriously endangered status, the plan's funding improvement period shall be 18 years rather than 15 years.

''(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) ELECTION.—An election under this section shall be made at such time, and in such manner and form, as (in consultation with the Secretary of Labor) the Secretary of the Treasury or the Secretary's delegate may prescribe.

''(2) DEFINITIONS.—Any term which is used in this section which is also used in section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such sections.

''(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2007.''

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of this section to 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 increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109–280, set out as a note under section 412 of this title.

SUBPART B—BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS

Sec.
436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.[1]

§ 436. Funding-based limits on benefits and benefit accruals under single-employer plans

(a) General rule

For purposes of section 401(a)(29), a defined benefit plan which is a single-employer plan shall be treated as meeting the requirements of this section if the plan meets the requirements of subsections (b), (c), (d), and (e).

(b) Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans

(1) In general

If a participant of a defined benefit plan which is a single-employer plan is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during any plan year, the plan shall provide that such benefit may not be provided if the adjusted funding target attainment percentage for such plan year—

(A) is less than 60 percent, or

(B) would be less than 60 percent taking into account such occurrence.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the occurrence referred to in paragraph (1), and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(3) Unpredictable contingent event benefit

For purposes of this subsection, the term ''unpredictable contingent event benefit'' means any benefit payable solely by reason of—

(A) a plant shutdown (or similar event, as determined by the Secretary), or

(B) an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

(c) Limitations on plan amendments increasing liability for benefits

(1) In general

No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage for such plan year is—

(A) less than 80 percent, or

(B) would be less than 80 percent taking into account such amendment.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to—

(A) in the case of paragraph (1)(A), the amount of the increase in the funding target of the plan (under section 430) for the plan year attributable to the amendment, and

(B) in the case of paragraph (1)(B), the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

(3) Exception for certain benefit increases

Paragraph (1) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

(d) Limitations on accelerated benefit distributions

(1) Funding percentage less than 60 percent

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan may not pay any prohibited payment after the valuation date for the plan year.

(2) Bankruptcy

A defined benefit plan which is a single-employer plan shall provide that, during any period in which the plan sponsor is a debtor in a case under title 11, United States Code, or similar Federal or State law, the plan may not pay any prohibited payment. The preceding sentence shall not apply on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage of such plan is not less than 100 percent.

[1] So in original. Does not conform to section catchline.

(3) Limited payment if percentage at least 60 percent but less than 80 percent

(A) In general

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or greater but less than 80 percent, the plan may not pay any prohibited payment after the valuation date for the plan year to the extent the amount of the payment exceeds the lesser of—

(i) 50 percent of the amount of the payment which could be made without regard to this section, or

(ii) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 417(e)) of the maximum guarantee with respect to the participant under section 4022 of the Employee Retirement Income Security Act of 1974.

(B) One-time application

(i) In general

The plan shall also provide that only 1 prohibited payment meeting the requirements of subparagraph (A) may be made with respect to any participant during any period of consecutive plan years to which the limitations under either paragraph (1) or (2) or this paragraph applies.

(ii) Treatment of beneficiaries

For purposes of this subparagraph, a participant and any beneficiary on his behalf (including an alternate payee, as defined in section 414(p)(8)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under subparagraph (A) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic relations order (as defined in section 414(p)(1)(A)) provides otherwise.

(4) Exception

This subsection shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on September 1, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

(5) Prohibited payment

For purpose of this subsection, the term ''prohibited payment'' means—

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during any period a limitation under paragraph (1) or (2) is in effect,

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary by regulations.

Such term shall not include the payment of a benefit which under section 411(a)(11) may be immediately distributed without the consent of the participant.

(e) Limitation on benefit accruals for plans with severe funding shortfalls

(1) In general

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, benefit accruals under the plan shall cease as of the valuation date for the plan year.

(2) Exemption

Paragraph (1) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 430) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

(f) Rules relating to contributions required to avoid benefit limitations

(1) Security may be provided

(A) In general

For purposes of this section, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of subparagraph (B).

(B) Form of security

The security required under subparagraph (A) shall consist of—

(i) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 412 of the Employee Retirement Income Security Act of 1974,

(ii) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(iii) such other form of security as is satisfactory to the Secretary and the parties involved.

(C) Enforcement

Any security provided under subparagraph (A) may be perfected and enforced at any time after the earlier of—

(i) the date on which the plan terminates,

(ii) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 430(j), or

(iii) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

(D) Release of security

The security shall be released (and any amounts thereunder shall be refunded to-

gether with any interest accrued thereon) at such time as the Secretary may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the adjusted funding target attainment percentage.

(2) Prefunding balance or funding standard carryover balance may not be used

No prefunding balance or funding standard carryover balance under section 430(f) may be used under subsection (b), (c), or (e) to satisfy any payment an employer may make under any such subsection to avoid or terminate the application of any limitation under such subsection.

(3) Deemed reduction of funding balances

(A) In general

Subject to subparagraph (C), in any case in which a benefit limitation under subsection (b), (c), (d), or (e) would (but for this subparagraph and determined without regard to subsection (b)(2), (c)(2), or (e)(2)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this title as having made an election under section 430(f) to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

(B) Exception for insufficient funding balances

Subparagraph (A) shall not apply with respect to a benefit limitation for any plan year if the application of subparagraph (A) would not result in the benefit limitation not applying for such plan year.

(C) Restrictions of certain rules to collectively bargained plans

With respect to any benefit limitation under subsection (b), (c), or (e), subparagraph (A) shall only apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.

(g) New plans

Subsections (b), (c), and (e) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this subsection, the reference in this subsection to a plan shall include a reference to any predecessor plan.

(h) Presumed underfunding for purposes of benefit limitations

(1) Presumption of continued underfunding

In any case in which a benefit limitation under subsection (b), (c), (d), or (e) has been applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan for the current plan year.

(2) Presumption of underfunding after 10th month

In any case in which no certification of the adjusted funding target attainment percentage for the current plan year is made with respect to the plan before the first day of the 10th month of such year, for purposes of subsections (b), (c), (d), and (e), such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of such first day.

(3) Presumption of underfunding after 4th month for nearly underfunded plans

In any case in which—

(A) a benefit limitation under subsection (b), (c), (d), or (e) did not apply to a plan with respect to the plan year preceding the current plan year, but the adjusted funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such subsection to apply to the plan with respect to such preceding plan year, and

(B) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual adjusted funding target attainment percentage of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of such subsection, to be the valuation date of the plan for the current plan year and the adjusted funding target attainment percentage of the plan as of such first day shall, for purposes of such subsection, be presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage of the plan for such preceding plan year.

(i) Treatment of plan as of close of prohibited or cessation period

For purposes of applying this title—

(1) Operation of plan after period

Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of the period for which any limitation of payment or accrual of benefits under subsection (d) or (e) applies.

(2) Treatment of affected benefits

Nothing in this subsection shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this section.

(j) Terms relating to funding target attainment percentage

For purposes of this section—

(1) In general

The term ''funding target attainment percentage'' has the same meaning given such term by section 430(d)(2).

(2) Adjusted funding target attainment percentage

The term ''adjusted funding target attainment percentage'' means the funding target

attainment percentage which is determined under paragraph (1) by increasing each of the amounts under subparagraphs (A) and (B) of section 430(d)(2) by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q)) which were made by the plan during the preceding 2 plan years.

(3) Application to plans which are fully funded without regard to reductions for funding balances

(A) In general

In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to the reduction in the value of assets under section 430(f)(4)), the funding target attainment percentage for purposes of paragraphs (1) and (2) shall be determined without regard to such reduction.

(B) Transition rule

Subparagraph (A) shall be applied to plan years beginning after 2007 and before 2011 by substituting for ''100 percent'' the applicable percentage determined in accordance with the following table:

In the case of a plan year beginning in calendar year:	The applicable percentage is
2008	92
2009	94
2010	96.

(C) Limitation

Subparagraph (B) shall not apply with respect to any plan year beginning after 2008 unless the funding target attainment percentage (determined without regard to the reduction in the value of assets under section 430(f)(4)) of the plan for each preceding plan year beginning after 2007 was not less than the applicable percentage with respect to such preceding plan year determined under subparagraph (B).

(k) Secretarial authority for plans with alternate valuation date

In the case of a plan which has designated a valuation date other than the first day of the plan year, the Secretary may prescribe rules for the application of this section which are necessary to reflect the alternate valuation date.

(*l*) Single-employer plan

For purposes of this section, the term ''single-employer plan'' means a plan which is not a multiemployer plan.

(m) Special rule for 2008

For purposes of this section, in the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

(Added Pub. L. 109–280, title I, §113(a)(1)(B), Aug. 17, 2006, 120 Stat. 847; amended Pub. L. 110–458, title I, §101(c)(2), Dec. 23, 2008, 122 Stat. 5097.)

REFERENCES IN TEXT

Section 4022 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(3)(A)(ii), is classified to section 1322 of Title 29, Labor.

Section 412 of the Employee Retirement Income Security Act of 1974, referred to in subsec (f)(1)(B)(i), is classified to section 1112 of Title 29, Labor.

AMENDMENTS

2008—Subsec. (b)(2). Pub. L. 110–458, §101(c)(2)(A), substituted ''section 430'' for ''section 303'' in introductory provisions and ''an adjusted funding'' for ''a funding'' in subpar. (B).

Subsec. (b)(3). Pub. L. 110–458, §101(c)(2)(B), inserted ''benefit'' after ''event'' in heading and substituted ''an event'' for ''any event'' in subpar. (B).

Subsec. (d)(5). Pub. L. 110–458, §101(c)(2)(C), inserted concluding provisions.

Subsec. (f)(1)(D). Pub. L. 110–458, §101(c)(2)(D)(i), inserted ''adjusted'' before ''funding''.

Subsec. (f)(2). Pub. L. 110–458, §101(c)(2)(D)(ii), substituted ''prefunding balance or funding standard carryover balance under section 430(f)'' for ''prefunding balance under section 430(f) or funding standard carryover balance''.

Subsec. (j)(3)(A). Pub. L. 110–458, §101(c)(2)(E)(i), struck out ''without regard to this paragraph and'' before ''without regard to the reduction'' and substituted ''section 430(f)(4)'' for ''section 430(f)(4)(A)'' and ''paragraphs (1) and (2)'' for ''paragraph (1)''.

Subsec. (j)(3)(C). Pub. L. 110–458, §101(c)(2)(E)(ii), substituted ''without regard to the reduction in the value of assets under section 430(f)(4)'' for ''without regard to this paragraph'' and inserted ''beginning'' before ''after'' in two places.

Subsecs. (k) to (m). Pub. L. 110–458, §101(c)(2)(F), added subsecs. (k) and (*l*) and redesignated former subsec. (k) as (m).

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

Pub. L. 109–280, title I, §113(b), Aug. 17, 2006, 120 Stat. 852, as amended by Pub. L. 110–458, title I, §101(c)(3), Dec. 23, 2008, 122 Stat. 5098, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this subpart] shall apply to plan years beginning after December 31, 2007.

''(2) COLLECTIVE BARGAINING EXCEPTION.—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 January 1, 2008, the amendments made by this section shall not apply to plan years beginning before the earlier of—

''(A) the later of—

''(i) the date on which the last collective bargaining agreement relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act [Aug. 17, 2006]), or

''(ii) the first day of the first plan year to which the amendments made by this section [enacting this subpart] would (but for this paragraph) apply, or

''(B) January 1, 2010.

For purposes of subparagraph (A)(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 added by this section shall not be treated as a termination of such collective bargaining agreement.''

TEMPORARY MODIFICATION OF APPLICATION OF LIMITATION ON BENEFIT ACCRUALS

Pub. L. 110–458, title II, §203, Dec. 23, 2008, 122 Stat. 5118, provided that: ''In the case of the first plan year beginning during the period beginning on October 1, 2008, and ending on September 30, 2009, sections

206(g)(4)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(g)(4)(A)) and 436(e)(1) of the Internal Revenue Code of 1986 shall be applied by substituting the plan's adjusted funding target attainment percentage for the preceding plan year for such percentage for such plan year but only if the adjusted funding target attainment percentage for the preceding plan year is greater.''

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.

Subchapter E—Accounting Periods and Methods of Accounting

Part
I. Accounting periods.
II. Methods of accounting.
III. Adjustments.

PART I—ACCOUNTING PERIODS

Sec.
441. Period for computation of taxable income.
442. Change of annual accounting period.
443. Returns for a period of less than 12 months.
444. Election of taxable year other than required taxable year.

AMENDMENTS

1987—Pub. L. 100–203, title X, § 10206(a)(2), Dec. 22, 1987, 101 Stat. 1330–398, added item 444.

§ 441. Period for computation of taxable income

(a) Computation of taxable income

Taxable income shall be computed on the basis of the taxpayer's taxable year.

(b) Taxable year

For purposes of this subtitle, the term ''taxable year'' means—

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies;

(3) the period for which the return is made, if a return is made for a period of less than 12 months; or

(4) in the case of a DISC filing a return for a period of at least 12 months, the period determined under subsection (h).

(c) Annual accounting period

For purposes of this subtitle, the term ''annual accounting period'' means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

(d) Calendar year

For purposes of this subtitle, the term ''calendar year'' means a period of 12 months ending on December 31.

(e) Fiscal year

For purposes of this subtitle, the term ''fiscal year'' means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f) the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) Election of year consisting of 52–53 weeks

(1) General rule

A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) on whatever date such same day of the week last occurs in a calendar month, or

(B) on whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute his taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

(2) Special rules for 52–53-week year

(A) Effective dates

In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 15) be treated—

(i) as beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) as ending with the last day of the calendar month ending nearest to the last day of such taxable year,

as the case may be.

(B) Change in accounting period

In the case of a change from or to a taxable year described in paragraph (1)—

(i) if such change results in a short period (within the meaning of section 443) of 359 days or more, or of less than 7 days, section 443(b) (relating to alternative tax computation) shall not apply;

(ii) if such change results in a short period of less than 7 days, such short period shall, for purposes of this subtitle, be added to and deemed a part of the following taxable year; and

(iii) if such change results in a short period to which subsection (b) of section 443 applies, the taxable income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) Special rule for partnerships, S corporations, and personal service corporations

The Secretary may by regulation provide terms and conditions for the application of