

411(b)(1)(A) and paragraph (b)(1) of this section because the accrued benefit under the plan at some point will be less than the accrued benefit required under section 411(b)(1)(A) and paragraph (b)(1) of this section (i.e., 3 percent  $\times$  normal retirement benefit  $\times$  years of participation).

(iii) The plan of the S Corporation does satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section because the rate of benefit accrual is equal in each of the first 25 years of service and the rate decreases thereafter.

(iv) The plan of the S Corporation does satisfy the requirements of section 411(b)(1)(C) and paragraph (b)(3) of this section because the accrued benefit under the plan will equal or exceed the normal retirement benefit multiplied by the fraction described in paragraph (b)(3)(i) of this section.

(Sec. 411 (88 Stat. 901; 26 U.S.C. 411))

[T.D. 7501, 42 FR 42334, Aug. 23, 1977]

**§ 1.411(b)(5)-1 Reduction in rate of benefit accrual under a defined benefit plan.**

(a) *In general*—(1) *Organization of regulation.* This section sets forth certain rules for determining whether a reduction occurs in the rate of benefit accrual under a defined benefit plan because of the attainment of any age for purposes of section 411(b)(1)(H)(i). Paragraph (b) of this section describes safe harbors for certain plan designs (including statutory hybrid plans) that are deemed to satisfy the age discrimination rules under section 411(b)(1)(H). Paragraph (c) of this section describes rules relating to statutory hybrid plan conversion amendments. Paragraph (d) of this section describes rules restricting interest credits (or equivalent amounts) under a statutory hybrid plan to a market rate of return. Paragraph (e) of this section contains additional rules related to market rates of return. Paragraph (f) of this section contains effective/applicability dates.

(2) *Definitions.* The definitions of accumulated benefit, lump sum-based benefit formula, statutory hybrid benefit formula, statutory hybrid plan, and variable annuity benefit formula in § 1.411(a)(13)-1(d) apply for purposes of this section.

(b) *Safe harbors for certain plan designs*—(1) *Accumulated benefit testing*—(i) *In general.* Pursuant to section 411(b)(5)(A), and subject to paragraph (b)(1)(ii) of this section, a plan is not

treated as failing to meet the requirements of section 411(b)(1)(H)(i) with respect to an individual who is or could be a participant if, as of any date, the accumulated benefit of the individual would not be less than the accumulated benefit of any similarly situated, younger individual who is or could be a participant. Thus, this test involves a comparison of the accumulated benefit of an individual who is or could be a participant in the plan with the accumulated benefit of each similarly situated, younger individual who is or could be a participant in the plan. See paragraph (b)(5) of this section for rules regarding whether a younger individual who is or could be a participant is similarly situated to a participant. The comparison described in this paragraph (b)(1)(i) is based on any one of the following benefit measures, each of which is referred to as a *safe-harbor formula measure*:

(A) The annuity payable at normal retirement age (or current age, if later) if the accumulated benefit of the participant under the terms of the plan is an annuity payable at normal retirement age (or current age, if later).

(B) The current balance of a hypothetical account maintained for the participant if the accumulated benefit of the participant under the terms of the plan is a balance of a hypothetical account.

(C) The current value of an accumulated percentage of the participant's final average compensation if the accumulated benefit of the participant under the terms of the plan is an accumulated percentage of final average compensation.

(ii) *Benefit formulas for comparison*—

(A) *In general.* Except as provided in paragraphs (b)(1)(ii)(B), (C), and (D) of this section, the safe harbor provided by section 411(b)(5)(A) and paragraph (b)(1)(i) of this section is available with respect to an individual only if the individual's accumulated benefit under the plan is expressed in terms of only one safe-harbor formula measure and no similarly situated, younger individual who is or could be a participant has an accumulated benefit that is expressed in terms of any measure other than that same safe-harbor formula measure. Thus, for example, if a plan

provides that the accumulated benefit of participants who are age 55 or over is expressed under the terms of the plan as a life annuity payable at normal retirement age (or current age, if later) as described in paragraph (b)(1)(i)(A) of this section and the plan provides that the accumulated benefit of participants who are younger than age 55 is expressed as the current balance of a hypothetical account as described in paragraph (b)(1)(i)(B) of this section, then the safe harbor described in section 411(b)(5)(A) and paragraph (b)(1)(i) of this section does not apply to individuals who are or could be participants who are age 55 or over.

(B) *Sum-of benefit formulas.* If a plan provides that a participant's accumulated benefit is expressed as the sum of benefits determined in terms of two or more benefit formulas, each of which is expressed in terms of a different safe-harbor formula measure, then the plan is deemed to satisfy paragraph (b)(1)(i) of this section with respect to an individual who is or could be a participant, provided that the plan satisfies the comparison described in paragraph (b)(1)(i) of this section separately for benefits determined in terms of each safe-harbor formula measure and no accumulated benefit of a similarly situated, younger individual who is or could be a participant is expressed other than as—

(1) The sum of benefits under two or more benefit formulas, each of which is expressed in terms of one of those same safe-harbor formula measures as is used for the participant's "sum-of" benefit;

(2) The greater of benefits under two or more benefit formulas, each of which is expressed in terms of any one of those same safe-harbor formula measures;

(3) The choice of benefits under two or more benefit formulas, each of which is expressed in terms of any one of those same safe-harbor formula measures; or

(4) A benefit that is determined in terms of only one of those same safe-harbor formula measures.

(C) *Greater-of benefit formulas.* If a plan provides that a participant's accumulated benefit is expressed as the greater of benefits under two or more

benefit formulas, each of which is determined in terms of a different safe-harbor formula measure, then the plan is deemed to satisfy paragraph (b)(1)(i) of this section with respect to an individual who is or could be a participant, provided that the plan satisfies the comparison described in paragraph (b)(1)(i) of this section separately for benefits determined in terms of each safe-harbor formula measure and no accumulated benefit of a similarly situated, younger individual who is or could be a participant is expressed other than as—

(1) The greater of benefits determined under two or more benefit formulas, each of which is expressed in terms of one of those same safe-harbor formula measures as is used for the participant's "greater-of" benefit;

(2) The choice of benefits determined under two or more benefit formulas, each of which is expressed in terms of one of those same safe-harbor formula measures; or

(3) A benefit that is determined in terms of only one of those same safe-harbor formula measures.

(D) *Choice-of benefit formulas.* If a plan provides that a participant's accumulated benefit is determined pursuant to a choice by the participant between benefits determined in terms of two or more different safe-harbor formula measures, then the plan is deemed to satisfy paragraph (b)(1)(i) of this section with respect to an individual who is or could be a participant, provided that the plan satisfies the comparison described in paragraph (b)(1)(i) of this section separately for benefits determined in terms of each safe-harbor formula measure and no accumulated benefit of a similarly situated, younger individual who is or could be a participant is expressed other than as—

(1) The choice of benefits determined under two or more benefit formulas, each of which is expressed in terms of one of those same safe-harbor formula measures as is used for the participant's "choice-of" benefit; or

(2) A benefit that is determined in terms of only one of those same safe-harbor formula measures.

(iii) *Disregard of certain subsidized benefits.* For purposes of paragraph (b)(1)(i) of this section, any subsidized portion

of any early retirement benefit that is included in a participant's accumulated benefit is disregarded. For this purpose, the subsidized portion of an early retirement benefit is the retirement-type subsidy within the meaning of § 1.411(d)-3(g)(6) that is contingent on a participant's severance from employment and commencement of benefits before normal retirement age.

(iv) *Examples.* The provisions of this paragraph (b)(1) are illustrated by the following examples:

*Example 1.* (i) *Facts relating to formulas described in paragraph (b)(1)(i)(A) of this section.* Employer X maintains a defined benefit plan that provides a straight life annuity payable commencing at normal retirement age (which is age 65) equal to 1 percent of the participant's highest 3 consecutive years' compensation times years of service and provides for suspension of benefits as permitted under section 411(a)(3)(B). In the case of a participant whose service continues after normal retirement age, the amount payable is the greater of (i) the benefit payable at normal retirement age, and for each year thereafter, actuarially increased to account for delayed commencement, and (ii) the retirement benefit determined under the formula at the date the employee's service ceases (calculated by including years of service and increases in compensation after normal retirement age).

(ii) *Conclusion.* Under these facts, the plan formula is a formula described in paragraph (b)(1)(i)(A) of this section. The formula is not a statutory hybrid benefit formula merely because the plan formula includes a benefit that is based on the participant's benefit at normal retirement age (and each year thereafter) that is actuarially increased for commencement after attainment of normal retirement age. In addition, the plan formula would satisfy the comparison under paragraph (b)(1)(i) of this section for each individual who is or could be a participant because, as of any date (including any date after normal retirement age), the accumulated benefit of the individual would not be less than the accumulated benefit of any similarly situated, younger individual who is or could be a participant.

*Example 2.* (i) *Facts relating to formulas described in paragraph (b)(1)(i)(B) of this section.* Employer Y maintains a defined benefit plan that expresses each participant's accumulated benefit as the balance of a hypothetical account. Under the formula, the hypothetical account balance of each participant is credited monthly with interest at a specified rate and the hypothetical account balance of each employee who is a participant is also credited with a pay credit under the

plan equal to 7 percent of the participant's compensation for the month.

(ii) *Conclusion.* The plan formula is a lump sum-based benefit formula described in paragraph (b)(1)(i)(B) of this section and the formula would satisfy the comparison under paragraph (b)(1)(i) of this section for each individual who is or could be a participant because, as of any date, the hypothetical account balance of the individual would not be less than the hypothetical account balance of any similarly situated, younger individual who is or could be a participant.

*Example 3.* (i) *Facts where plan suspends interest credits after normal retirement age.* The facts are the same as in *Example 2* except that the plan provides for suspension of benefits as permitted under section 411(a)(3)(B). Pursuant to the plan's suspension of benefits provision, the plan provides for interest credits to cease during service after normal retirement age or for the amount of the interest credits during this service to be reduced to reflect principal credits credited.

(ii) *Conclusion.* The plan does not satisfy the safe harbor in paragraph (b)(1)(i) of this section. Applying the rule of paragraph (b)(1)(i) of this section, the plan formula would fail to satisfy the safe harbor comparison under paragraph (b)(1)(i) of this section with respect to an individual whose benefits have been suspended because, as of any date after attainment of normal retirement age, the hypothetical account balance of this individual would be less than the hypothetical account balance of one or more similarly situated individuals who have not attained normal retirement age.

*Example 4.* (i) *Facts providing greater-of benefits as described in paragraph (b)(1)(ii)(C) of this section.* Employer Z sponsors a defined benefit plan that provides an accumulated benefit expressed as a straight life annuity commencing at the plan's normal retirement age (age 65), based on a percentage of average annual compensation times the participant's years of service. On November 2, 2011, the plan is amended effective as of January 1, 2012, to provide participants who have attained age 55 by January 1, 2012, with a benefit that is the greater of the benefit under the average annual compensation formula and a benefit that is based on the balance of a hypothetical account, which provides for annual pay credits of a specified percentage of the participant's compensation and annual interest credits based on the third segment rate.

(ii) *Conclusion where plan provides greater-of benefits to older participants.* The plan satisfies the safe harbor of paragraph (b)(1)(i) of this section with respect to all individuals who are or could be participants. Pursuant to the rules of paragraph (b)(1)(ii)(C) of this section, the plan satisfies the safe harbor with respect to individuals who have attained age 55 by January 1, 2012, because (A)

with respect to the benefit described in paragraph (b)(1)(i)(A) of this section (the benefit based on average annual compensation, disregarding the benefit based on the balance of a hypothetical account), the accumulated benefit for any individual who is or could be a participant and who is at least age 55 on January 1, 2012, would in no event be less than the accumulated benefit for a similarly situated, younger individual who is or could be participant and who has not yet attained age 55 by January 1, 2012, (B) with respect to the benefit described in paragraph (b)(1)(i)(B) of this section (the benefit based on the balance of a hypothetical account, disregarding the benefit based on average annual compensation), the accumulated benefit for any individual who is or could be a participant and who is at least age 55 on January 1, 2012, would in no event be less than the accumulated benefit for a similarly situated, younger individual who is or could be a participant and who has not yet attained age 55 by January 1, 2012, and (C) the benefit of any individual who is or could be a participant who has not yet attained age 55 by January 1, 2012, is only expressed as an annuity payable at normal retirement age as described in paragraph (b)(1)(i)(A) of this section, and this safe-harbor formula measure applies also to participants who have attained age 55 by January 1, 2012. Furthermore, the plan satisfies the safe harbor with respect to individuals who have not yet attained age 55 by January 1, 2012, because the benefit of these individuals satisfies the general rule of paragraph (b)(1)(ii)(A) of this section.

(iii) *Conclusion where plan provides greater-of benefits only to younger participants.* If, instead of the facts in paragraph (i) of this *Example 4*, the plan had been amended to provide only participants who have not yet attained age 55 by January 1, 2012, with a benefit that is the greater of the benefit under the average annual compensation formula and a benefit that is based on the balance of a hypothetical account, then the safe harbor would not be satisfied with respect to individuals who have attained age 55 by January 1, 2012. Under paragraph (b)(1)(ii)(A) of this section, except as provided in paragraphs (b)(1)(ii)(B), (C), and (D) of this section, the safe harbor of paragraph (b)(1)(i) of this section is available only with respect to individuals over age 55, whose benefit is expressed in terms of only one safe-harbor formula measure, if no similarly situated, younger individual has an accumulated benefit that is expressed in terms of any measure other than that same safe-harbor formula measure. This is not the case under these facts. The greater-of rule of paragraph (b)(1)(ii)(C) of this section would not apply to individuals who have attained age 55 because the accumulated benefits of these individuals is not equal to the greater of benefits under two or more benefit formulas.

*Example 5.* (i) *Facts where plan provides choice-of benefits to older participants.* The facts are the same as in paragraph (i) of *Example 4*, except that for service after December 31, 2011, the amendment permits participants who have attained age 55 by January 1, 2012, to choose between benefits under the average annual compensation benefit formula or benefits under the hypothetical account balance formula (but, if a participant chooses the hypothetical account balance formula, his or her benefit under the plan is in no event to be less than the benefit determined under the average annual compensation benefit formula for service before January 1, 2012), while other participants receive benefits solely under the hypothetical account balance formula (but individuals who are participants on December 31, 2011, are in no event to receive less than the benefit determined under the average annual compensation benefit formula for service before January 1, 2012).

(ii) *Conclusion where plan provides choice to older participants.* The plan satisfies the safe harbor with respect to all individuals who are or could be participants. Pursuant to the rule of paragraph (b)(1)(ii)(D) of this section, the plan satisfies the safe harbor of paragraph (b)(1)(i) of this section with respect to individuals who have attained age 55 by January 1, 2012, and, pursuant to the rule of paragraph (b)(1)(ii)(A), the plan satisfies the safe harbor with respect to individuals who have not yet attained 55 by January 1, 2012.

(iii) *Conclusion where plan provides choice-of benefits to older workers and greater-of benefits to younger participants.* If, in addition to the facts in paragraph (i) of this *Example 5*, the plan were also to provide participants who had not yet attained age 55 by January 1, 2012, the greater of the benefits under the average annual compensation benefit formula or the benefits under the hypothetical account balance formula, then pursuant to the rules of paragraph (b)(1)(ii)(A) and (D) of this section, the safe harbor would not be satisfied with respect to participants who have attained age 55 by January 1, 2012.

(2) *Indexed benefits—(i) In general.* Except as provided in paragraph (b)(2)(iii) of this section, pursuant to section 411(b)(5)(E) and this paragraph (b)(2)(i), a defined benefit plan is not treated as failing to meet the requirements of section 411(b)(1)(H) with respect to a participant solely because a benefit formula (other than a lump sum-based benefit formula) under the plan provides for the periodic adjustment of the participant's accrued benefit under the plan by means of the application of a recognized index or methodology. For purpose of the preceding sentence, a

rate that does not exceed a market rate of return, as defined in paragraph (d) of this section, is deemed to be a recognized index or methodology. However, such a plan must satisfy the qualification requirements otherwise applicable to statutory hybrid plans, including the requirements of §1.411(a)(13)-1(c) (relating to minimum vesting standards) and paragraph (c) of this section (relating to plan conversion amendments).

(ii) *Similarly situated participant test.* Paragraph (b)(2)(i) of this section does not apply unless the aggregate adjustments made to a participant's accrued benefit under the plan (determined as a percentage of the unadjusted accrued benefit) in a period would not be less than the aggregate adjustments for any similarly situated, younger participant. This test requires a comparison, for each period, of the aggregate adjustments for each individual who is or could be a participant in the plan for the period with the aggregate adjustments of each other similarly situated, younger individual who is or could be a participant in the plan for that period. See paragraph (b)(5) of this section for rules regarding whether each younger individual who is or could be a participant is similarly situated to a participant.

(iii) *Protection against loss—(A) In general.* Paragraph (b)(2)(i) of this section does not apply unless the plan satisfies section 411(b)(5)(E)(ii) and paragraph (d)(2) of this section (relating to preservation of capital).

(B) *Exception for variable annuity benefit formulas.* The requirement to satisfy section 411(b)(5)(B)(i)(II), as set forth in paragraph (d)(2) of this section, as well as section 411(b)(5)(E)(ii), as set forth in this paragraph (b)(2)(iii), does not apply in the case of a benefit provided under a variable annuity benefit formula as defined in §1.411(a)(13)-1(d)(6).

(3) *Certain offsets permitted.* A plan is not treated as failing to meet the requirements of section 411(b)(1)(H) solely because the plan provides offsets against benefits under the plan to the extent the offsets are allowable in applying the requirements of section 401(a) and the applicable requirements of the Employee Retirement Income

Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)), and the Age Discrimination in Employment Act of 1967, Public Law 90-202 (81 Stat. 602 (1967)).

(4) *Permitted disparities in plan contributions or benefits.* A plan is not treated as failing to meet the requirements of section 411(b)(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.

(5) *Definition of similarly situated.* For purposes of paragraphs (b)(1) and (b)(2) of this section, an individual is similarly situated to another individual if the individual is identical to that other individual in every respect that is relevant in determining a participant's benefit under the plan (including period of service, compensation, position, date of hire, work history, and any other respect) except for age. In determining whether an individual is similarly situated to another individual, any characteristic that is relevant for determining benefits under the plan and that is based directly or indirectly on age is disregarded. For example, if a particular benefit formula applies to a participant on account of the participant's age, an individual to whom the benefit formula does not apply and who is identical to the participant in all other respects is similarly situated to the participant. By contrast, an individual is not similarly situated to a participant if a different benefit formula applies to the individual and the application of the different formula is not based directly or indirectly on age.

(c) *Special rules for plan conversion amendments—(1) In general.* Pursuant to section 411(b)(5)(B)(ii), (iii), and (iv), if there is a conversion amendment within the meaning of paragraph (c)(4) of this section with respect to a defined benefit plan, then the plan is treated as failing to meet the requirements of section 411(b)(1)(H) unless the plan, after the amendment, satisfies the requirements of paragraph (c)(2) of this section.

(2) *Separate calculation of post-conversion benefit—(i) In general.* A statutory hybrid plan satisfies the requirements of this paragraph (c)(2) if the plan provides that, in the case of an individual

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who was a participant in the plan immediately before the date of adoption of the conversion amendment, the participant's benefit at any subsequent annuity starting date is not less than the sum of—

(A) The participant's section 411(d)(6) protected benefit (as defined in § 1.411(d)-3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the conversion amendment; and

(B) The participant's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the conversion amendment.

(i) *Rules of application.* For purposes of this paragraph (c)(2), except as provided in paragraph (c)(3) of this section, the benefits under paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) of this section must each be determined in the same manner as if they were provided under separate plans that are independent of each other (for example, without any benefit offsets), and, except to the extent permitted under § 1.411(d)-3 or § 1.411(d)-4 (or other applicable law), each optional form of payment provided under the terms of the plan with respect to a participant's section 411(d)(6) protected benefit as in effect before the conversion amendment must be available thereafter to the extent of the plan's benefits for service prior to the effective date of the conversion amendment.

(3) *Establishment of opening hypothetical account balance or opening accumulated percentage—*(i) *In general.* Provided that the requirements of paragraph (c)(3)(ii) or (c)(3)(iii) of this section are satisfied, a statutory hybrid plan under which an opening hypothetical account balance or opening accumulated percentage of the participant's final average compensation is established as of the effective date of the conversion amendment does not fail to satisfy the requirements of paragraph (c)(2) of this section merely because benefits attributable to that opening hypothetical account balance or opening accumulated percentage

(that is, benefits that are not described in paragraph (c)(2)(i)(B) of this section) are substituted for benefits described in paragraph (c)(2)(i)(A) of this section.

(ii) *Comparison of benefits at annuity starting date—*(A) *Testing requirement.* The requirements of this paragraph (c)(3)(ii) are satisfied with respect to an optional form of benefit payable at an annuity starting date only if the plan provides that the amount of the benefit payable in that optional form under the lump sum-based benefit formula that is attributable to the opening hypothetical account balance or opening accumulated percentage as described in paragraph (c)(3)(i) of this section is not less than the benefit under the comparable optional form of benefit under paragraph (c)(2)(i)(A) of this section. To satisfy this requirement, if the benefit under the optional form attributable to the opening hypothetical account balance or opening accumulated percentage is less than the benefit under the comparable optional form of benefit described in paragraph (c)(2)(i)(A) of this section, then the benefit attributable to the opening hypothetical account balance or opening accumulated percentage must be increased to the extent necessary to provide the minimum benefit described in this paragraph (c)(3)(ii). Thus, if a plan is using the option under this paragraph (c)(3)(ii) to satisfy paragraph (c)(2) of this section with respect to a participant, the participant must receive a benefit equal to not less than the sum of—

(1) The benefit described in paragraph (c)(2)(i)(B) of this section; and

(2) The greater of—

(i) The benefit attributable to the opening hypothetical account balance or attributable to the opening accumulated percentage of the participant's final average compensation as described in this paragraph (c)(3)(ii); or

(ii) The benefit described in paragraph (c)(2)(i)(A) of this section.

(B) *Comparable optional form of benefit.* If there was an optional form of benefit within the same generalized optional form of benefit (within the meaning of § 1.411(d)-3(g)(8)) that would have been available to the participant at that annuity starting date under the

terms of the plan as in effect immediately before the effective date of the conversion amendment, then that optional form of benefit is the comparable optional form of benefit.

(C) *Special rule for new post-conversion optional forms of benefit.* If an optional form of benefit is available on the annuity starting date with respect to the benefit attributable to the opening hypothetical account balance or opening accumulated percentage, but no optional form within the same generalized optional form of benefit (within the meaning of §1.411(d)-3(g)(8)) was available at that annuity starting date under the terms of the plan as in effect immediately prior to the effective date of the conversion amendment, then, for purposes of this paragraph (c)(3)(ii), the plan is treated as if such an optional form of benefit were available immediately prior to the effective date of the conversion amendment for purposes of this paragraph (c)(3)(ii). Thus, for example, if a single-sum optional form of payment is not available under the plan terms applicable to the accrued benefit described in paragraph (c)(2)(i)(A) of this section, but a single-sum optional form of payment is available with respect to the benefit attributable to the opening hypothetical account balance or opening accumulated percentage as of the annuity starting date, then, for purposes of this paragraph (c)(3)(ii), the plan is treated as if a single sum (which satisfies the requirements of section 417(e)(3)) were available under the terms of the plan as in effect immediately prior to the effective date of the conversion amendment.

(iii) *Comparison of benefits at effective date of conversion amendment.* [Reserved]

(4) *Conversion amendment—(i) In general.* An amendment is a conversion amendment that is subject to the requirements of this paragraph (c) with respect to a participant if—

(A) The amendment reduces or eliminates the benefits that, but for the amendment, the participant would have accrued after the effective date of the amendment under a benefit formula that is not a statutory hybrid benefit formula (and under which the

participant was accruing benefits prior to the amendment); and

(B) After the effective date of the amendment, all or a portion of the participant's benefit accruals under the plan are determined under a statutory hybrid benefit formula.

(ii) *Rules of application—(A) In general.* Paragraphs (c)(4)(iii), (iv), and (v) of this section describe special rules that treat certain arrangements as conversion amendments. The rules described in those paragraphs apply both separately and in combination. Thus, for example, in an acquisition described in §1.410(b)-2(f), if the buyer adopts an amendment under which a participant's benefits under the seller's plan that is not a statutory hybrid plan are coordinated with a separate plan of the buyer that is a statutory hybrid plan, such as through an offset of the participant's benefit under the buyer's plan by the participant's benefit under the seller's plan, the seller and buyer are treated as a single employer under paragraph (c)(4)(iv) of this section and they are treated as having adopted a conversion amendment under paragraph (c)(4)(iii) of this section. However, pursuant to paragraph (c)(4)(iii) of this section, if there is no coordination between the two plans, there is no conversion amendment.

(B) *Covered amendments.* Only amendments that eliminate or reduce accrued benefits described in section 411(a)(7), or a retirement-type subsidy described in section 411(d)(6)(B)(i), that would otherwise accrue as a result of future service are treated as amendments described in paragraph (c)(4)(i)(A) of this section.

(C) *Operation of plan terms treated as covered amendment.* If, under the terms of a plan, a change in the conditions of a participant's employment results in a reduction of the participant's benefits that would have accrued in the future under a benefit formula that is not a statutory hybrid benefit formula, the plan is treated for purposes of this paragraph (c)(4) as if such plan terms constitute an amendment that reduces the participant's benefits that would have accrued after the effective date of the change under a benefit formula that is not a statutory hybrid benefit

formula. Thus, for example, if a participant transfers from an operating division that is covered by a non-statutory hybrid benefit formula to an operating division that is covered by a statutory hybrid benefit formula, there has been a conversion amendment and the effective date of the conversion amendment is the date of the transfer. For purposes of applying the effective date rule of paragraph (f)(1)(ii) of this section, the date that the relevant plan terms were adopted is treated as the adoption date of the amendment.

(iii) *Multiple plans.* An employer is treated as having adopted a conversion amendment if the employer adopts an amendment under which a participant's benefits under a plan that is not a statutory hybrid plan are coordinated with a separate plan that is a statutory hybrid plan, such as through a reduction (offset) of the benefit under the plan that is not a statutory hybrid plan.

(iv) *Multiple employers.* If the employer of an employee changes as a result of a transaction described in § 1.410(b)-2(f), then the two employers are treated as a single employer for purposes of this paragraph (c)(4).

(v) *Multiple amendments—(A) In general—(1) General rule.* For purposes of this paragraph (c)(4), a conversion amendment includes multiple amendments that result in a conversion amendment even if the amendments are not conversion amendments individually. For example, an employer is treated as having adopted a conversion amendment if the employer first adopts an amendment described in paragraph (c)(4)(i)(A) of this section and, at a later date, adopts an amendment that adds a benefit under a statutory hybrid benefit formula as described in paragraph (c)(4)(i)(B) of this section, if they are consolidated under paragraph (c)(4)(v)(A)(2) of this section.

(2) *Delay between plan amendments.* In determining whether a conversion amendment has been adopted, an amendment to provide a benefit under a statutory hybrid benefit formula is consolidated with a prior amendment to reduce non-statutory hybrid benefit formula benefits if the amendment providing benefits under a statutory hybrid benefit formula is adopted within

three years after adoption of the amendment reducing non-statutory hybrid benefit formula benefits. Thus, the later adoption of the statutory hybrid benefit formula will cause the earlier amendment to be treated as part of a conversion amendment. In the case of an amendment to provide a benefit under a statutory hybrid benefit formula that is adopted more than three years after adoption of an amendment to reduce benefits under a non-statutory hybrid benefit formula, there is a presumption that the amendments are not consolidated unless the facts and circumstances indicate that adoption of the amendment to provide a benefit under a statutory hybrid benefit formula was intended at the time of reduction in the non-statutory hybrid benefit formula.

(B) *Multiple conversion amendments.* If an employer adopts multiple amendments reducing benefits described in paragraph (c)(4)(i)(A) of this section, each amendment is treated as a separate conversion amendment, provided that paragraph (c)(4)(i)(B) of this section is applicable at the time of the amendment (taking into account the rules of this paragraph (c)(4)).

(vi) *Effective date of a conversion amendment.* The effective date of a conversion amendment is, with respect to a participant, the date as of which the reduction of the participant's benefits described in paragraph (c)(4)(i)(A) of this section occurs. In accordance with section 411(d)(6), the date of a reduction of those benefits cannot be earlier than the date of adoption of the conversion amendment.

(5) *Examples.* The following examples illustrate the application of this paragraph (c):

*Example 1.* (i) *Facts where plan does not establish opening hypothetical account balance for participants and participant elects life annuity at normal retirement age.* Employer N sponsors Plan E, a defined benefit plan that provides an accumulated benefit, payable as a straight life annuity commencing at age 65 (which is Plan E's normal retirement age), based on a percentage of highest average compensation times the participant's years of service. Plan E permits any participant who has had a severance from employment to elect payment in the following optional forms of benefit (with spousal consent if applicable), with any payment not made in a

straight life annuity converted to an equivalent form based on reasonable actuarial assumptions: A straight life annuity; and a 50 percent, 75 percent, or 100 percent joint and survivor annuity. The payment of benefits may commence at any time after attainment of age 55, with an actuarial reduction if the commencement is before normal retirement age. In addition, the plan offers a single-sum payment after attainment of age 55 equal to the present value of the normal retirement benefit using the applicable interest rate and mortality table under section 417(e)(3) in effect under the terms of the plan on the annuity starting date.

(ii) *Facts relating to the conversion amendment.* On January 1, 2012, Plan E is amended to eliminate future accruals under the highest average compensation benefit formula and to base future benefit accruals under a hypothetical account balance formula. For service on or after January 1, 2012, each participant's hypothetical account balance is credited monthly with a pay credit equal to a specified percentage of the participant's compensation during the month and also with interest based on the third segment rate described in section 430(h)(2)(C)(iii). With respect to benefits under the hypothetical account balance attributable to service on and after January 1, 2012, a participant is permitted to elect (with spousal consent if applicable) payment in the same generalized optional forms of benefit (even though different actuarial factors apply) as under the terms of the plan in effect before January 1, 2012, and also as a single-sum distribution. The plan provides for the benefit attributable to service before January 1, 2012, to be determined under the terms of the plan as in effect immediately before the effective date of the amendment, and the benefit attributable to service on and after January 1, 2012, to be determined separately, under the terms of the plan as in effect after the effective date of the amendment, with neither benefit offsetting the other in any manner. Thus, each participant's benefit is equal to the sum of the benefit attributable to service before January 1, 2012 (to be determined under the terms of the plan as in effect immediately before the effective date of the amendment), plus the benefit attributable to the participant's hypothetical account balance.

(iii) *Facts relating to an affected participant.* Participant A is age 62 on January 1, 2012. On December 31, 2011, A's benefit for years of service before January 1, 2012, payable as a straight life annuity commencing at A's normal retirement age (age 65), which is January 1, 2015, is \$1,000 per month. On January 1, 2015, when Participant A has a severance from employment, the then-current hypothetical account balance, with pay credits and interest from January 1, 2012, to January 1, 2015, is \$11,000. Using the conversion fac-

tors applicable under the plan on January 1, 2015, that balance is equivalent to a straight life annuity of \$100 per month commencing on January 1, 2015. This benefit is in addition to the benefit attributable to service before January 1, 2012. Participant A elects (with spousal consent) a straight life annuity of \$1,100 per month commencing January 1, 2015.

(iv) *Conclusion.* Participant A's benefit satisfies the requirements of paragraph (c) of this section because Participant A's benefit is not less than the sum of Participant A's section 411(d)(6) protected benefit (as defined in §1.411(d)-3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment, and Participant A's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the amendment.

*Example 2.* (i) *Facts involving plan's establishment of opening hypothetical account balance and payment of pre-conversion accumulated benefit in life annuity at normal retirement age.* Except as indicated in this *Example 2*, the facts are the same as the facts under paragraph (i) of *Example 1*.

(ii) *Facts relating to the conversion amendment.* On January 1, 2012, Plan E is amended to eliminate future accruals under the highest average compensation benefit formula and to provide future benefit accruals under a hypothetical account balance formula. An opening hypothetical account balance is established for each participant, and, under the plan's terms, that balance is equal to the present value of the participant's accumulated benefit on December 31, 2011 (payable as a straight life annuity at normal retirement age or immediately, if later), using the applicable interest rate and applicable mortality table under section 417(e)(3) on January 1, 2012. Under Plan E, the account based on this opening hypothetical account balance is maintained as a separate account from the account for accruals on or after January 1, 2012. The hypothetical account balance maintained for each participant for accruals on or after January 1, 2012, is credited monthly with a pay credit equal to a specified percentage of the participant's compensation during the month. A participant's hypothetical account balance (including both of the separate accounts) is credited monthly with interest based on the third segment rate described in section 430(h)(2)(C)(iii).

(iii) *Facts relating to optional forms of benefit.* Following severance from employment and attainment of age 55, a participant is permitted to elect (with spousal consent, if applicable) payment in the same generalized

optional forms of benefit as under the plan in effect prior to January 1, 2012, with the amount payable calculated based on the hypothetical account balance on the annuity starting date and the applicable interest rate and applicable mortality table on the annuity starting date. The single-sum distribution is equal to the hypothetical account balance.

(iv) *Facts relating to conversion protection.* The plan provides that, as of a participant's annuity starting date, the plan will determine whether the benefit attributable to the opening hypothetical account balance payable in the particular optional form of benefit selected is equal to or greater than the benefit accrued under the plan through the date of conversion and payable in the same generalized optional form of benefit with the same annuity starting date. If the benefit attributable to the opening hypothetical account balance is equal to or greater than the pre-conversion benefit, the plan provides that such benefit is paid in lieu of the pre-conversion benefit, together with the benefit attributable to post-conversion pay-based principal credits. If the benefit attributable to the opening hypothetical account balance is less than the pre-conversion benefit, the plan provides that such benefit is increased sufficiently to provide the pre-conversion benefit, together with the benefit attributable to post-conversion pay-based principal credits.

(v) *Facts relating to an affected participant.* On January 1, 2012, the opening hypothetical account balance established for Participant A is \$80,000, which is the present value of Participant A's straight life annuity of \$1,000 per month commencing at January 1, 2015, using the applicable interest rate and applicable mortality table under section 417(e)(3) in effect on January 1, 2012. On January 1, 2012, the applicable interest rate for Participant A is equivalent to a level rate of 5.5 percent. Thereafter, Participant A's hypothetical account balance for subsequent accruals is credited monthly with a pay credit equal to a specified percentage of the participant's compensation during the month. In addition, Participant A's hypothetical account balance (including both of the separate accounts) is credited monthly with interest based on the third segment rate described in section 430(h)(2)(C)(iii).

(vi) *Facts relating to calculation of the participant's benefit.* Participant A has a severance from employment on January 1, 2015 at age 65, and elects (with spousal consent) a straight life annuity commencing January 1, 2015. On January 1, 2015, the opening hypothetical account balance, with interest credits from January 1, 2012, to January 1, 2015, has become \$95,000, which, using the conversion factors under the plan on January 1, 2015, is equivalent to a straight life annuity of \$1,005 per month commencing on January

1, 2015 (which is greater than the \$1,000 a month payable at age 65 under the terms of the plan in effect before January 1, 2012). This benefit is in addition to the benefit determined using the hypothetical account balance for service after January 1, 2012.

(vii) *Conclusion.* The benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant A because A's benefit is not less than the sum of (A) the greater of Participant A's benefits attributable to the opening hypothetical account balance and A's section 411(d)(6) protected benefit (as defined in § 1.411(d)-3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment, and (B) Participant A's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the amendment.

*Example 3.* (i) *Facts involving a subsequent decrease in interest rates.* The facts are the same as in *Example 2*, except that, because of a decrease in bond rates after January 1, 2012, and before January 1, 2015, the rate of interest credited in that period averages less than 5.5 percent, and, on January 1, 2015, the effective applicable interest rate under section 417(e)(3) under the plan's terms is 4.7 percent. As a result, Participant A's opening hypothetical account balance plus attributable interest credits has increased to only \$87,000 on January 1, 2015, and, using the conversion factors under the plan on January 1, 2015, is equivalent to a straight life annuity commencing on January 1, 2015, of \$775 per month. Under the terms of Plan E, the benefit attributable to A's opening hypothetical account balance is increased so that A's straight life annuity commencing on January 1, 2015, is \$1,000 per month. This benefit is in addition to the benefit attributable to the hypothetical account balance for service after January 1, 2012.

(ii) *Conclusion.* The benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant A because A's benefit is not less than the sum of—

(A) The greater of A's benefits attributable to the opening hypothetical account balance and A's section 411(d)(6) protected benefit (as defined in § 1.411(d)-3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment; and

(B) A's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in

effect after the effective date of the amendment.

*Example 4.* (i) *Facts involving payment of a subsidized early retirement benefit.* The facts are the same as in *Example 2*, except that under the terms of Plan E on December 31, 2011, a participant who retires before age 65 and after age 55 with 30 years of service has only a 3 percent per year actuarial reduction. Participant A has a severance from employment on January 1, 2013, when A is age 63 and has 30 years of service. On January 1, 2013, A's opening hypothetical account balance, with interest from January 1, 2012, to January 1, 2013, has become \$86,000, which, using the conversion factors under the plan (as amended) on January 1, 2013, is equivalent to a straight life annuity commencing on January 1, 2013, of \$850 per month.

(ii) *Facts relating to calculation of the participant's benefit.* Under the terms of Plan E on December 31, 2011, Participant A is entitled to a straight life annuity commencing on January 1, 2013, equal to at least \$940 per month (\$1,000 reduced by 3 percent for each of the 2 years that A's benefits commence before normal retirement age). Under the terms of Plan E, the benefit attributable to A's opening account balance is increased so that A is entitled to a straight life annuity of \$940 per month commencing on January 1, 2015. This benefit is in addition to the benefit determined using the hypothetical account balance for service after January 1, 2012.

(iii) *Conclusion.* The benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant A because A's benefit is not less than the sum of—

(A) The greater of Participant A's benefits attributable to the opening hypothetical account balance (increased by attributable interest credits) and A's section 411(d)(6) protected benefit (as defined in § 1.411(d)-3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the amendment; and

(B) Participant A's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the amendment.

*Example 5.* (i) *Facts involving addition of a single-sum payment option.* The facts are the same as in *Example 2*, except that, before January 1, 2012, Plan E did not offer payment in a single-sum distribution for amounts in excess of \$5,000. Plan E, as amended on January 1, 2012, offers payment in any of the available annuity distribution forms commencing at any time following severance from employment as were provided under Plan E before January 1, 2012. In addition, Plan E, as amended on January 1, 2012, offers

payment in the form of a single sum attributable to service before January 1, 2012, which is the greater of the opening hypothetical account balance (increased by attributable interest credits) or a single-sum distribution of the straight life annuity payable at age 65 using the same actuarial factors as are used for mandatory cashouts for amounts equal to \$5,000 or less under the terms of the plan on December 31, 2011. Participant B is age 40 on January 1, 2012, and B's opening hypothetical account balance (increased by attributable interest credits) is \$33,000 (which is the present value, using the conversion factors under the plan (as amended) on January 1, 2012, of Participant B's straight life annuity of \$1,000 per month commencing at January 1, 2037, which is when B will be age 65). Participant B has a severance from employment on January 1, 2015, and elects (with spousal consent) an immediate single-sum distribution. Participant B's opening hypothetical account balance (increased by attributable interest) on January 1, 2015, is \$45,000. The present value, on January 1, 2015, of Participant B's benefit of \$1,000 per month, commencing immediately using the actuarial factors for mandatory cashouts under the terms of the plan on December 31, 2011, would result in a single-sum payment of \$44,750. Participant B is paid a single-sum distribution equal to the sum of \$45,000 plus an amount equal to B's January 1, 2015, hypothetical account balance for benefit accruals for service after January 1, 2012.

(ii) *Conclusion.* Because, under Plan E, Participant B is entitled to the sum of—

(A) The greater of the \$45,000 opening hypothetical account balance (increased by attributable interest credits) and \$44,750 (present value of the benefit with respect to service prior to January 1, 2012, using the actuarial factors for mandatory cashout distributions under the terms of the plan on December 31, 2011); and

(B) An amount equal to B's hypothetical account balance for benefit accruals for service after January 1, 2012, the benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant B. If Participant B's hypothetical account balance under Plan E was instead less than \$44,750 on January 1, 2015, Participant B would be entitled to a single-sum payment equal to the sum of \$44,750 and an amount equal to B's hypothetical account balance for benefit accruals for service after January 1, 2012.

*Example 6.* (i) *Facts involving addition of new annuity optional form of benefit.* The facts are the same as in *Example 2*, except that, after December 31, 2011, and before January 1, 2015, Plan E is amended to offer payment in a 5-, 10-, or 15-year term certain and life annuity, using the same actuarial assumptions

that apply for other optional forms of distribution. When Participant A has a severance from employment on January 1, 2015, A elects (with spousal consent) a 5-year term certain and life annuity commencing immediately equal to \$935 per month. Application of the same actuarial assumptions to Participant A's benefit of \$1,000 per month (under Plan E as in effect on December 31, 2011), commencing immediately on January 1, 2015, would result in a 5-year term certain and life annuity commencing immediately equal to \$955 per month. Under the terms of Plan E, the benefit attributable to A's opening account balance is increased so that, using the conversion factors under the plan (as amended) on January 1, 2015, A's opening hypothetical account balance (increased by attributable interest credits) produces a 5-year term certain and life annuity commencing immediately equal to \$955 per month commencing on January 1, 2015. This benefit is in addition to the benefit determined using the January 1, 2015, hypothetical account balance for service after January 1, 2012.

(i) *Conclusion.* This benefit satisfies the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant A.

*Example 7. (i) Facts involving addition of distribution option before age 55.* The facts are the same as in *Example 5*, except that Participant B (age 43) elects (with spousal consent) a straight life annuity commencing immediately on January 1, 2015. Under Plan E, the straight life annuity attributable to Participant B's opening hypothetical account balance at age 43 is \$221 per month. Application of the same actuarial assumptions to Participant B's benefit of \$1,000 per month commencing at age 65 (under Plan E as in effect on December 31, 2011) would result in a straight life annuity commencing immediately on January 1, 2015, equal to \$219 per month.

(ii) *Conclusion.* Because, under its terms, Plan E provides that Participant B is entitled to an amount not less than the present value (using the same actuarial assumptions as apply on January 1, 2015, in converting the \$45,000 hypothetical account balance attributable to the opening hypothetical account balance to the \$221 straight life annuity) of Participant B's straight life annuity of \$1,000 per month commencing at age 65, and the \$221 straight life annuity is in addition to the benefit accruals for service after January 1, 2012, payment of the \$221 monthly annuity would satisfy the requirements of paragraph (c)(3)(ii)(A) of this section with respect to Participant B.

(d) *Market rate of return*—(1) *In general*—(i) *Basic test.* Subject to the rules of paragraph (e) of this section, a statutory hybrid plan satisfies the requirements of section 411(b)(1)(H) and this

paragraph (d) only if, for any plan year, the interest crediting rate with respect to benefits determined under a statutory hybrid benefit formula is not greater than a market rate of return.

(ii) *Definitions relating to market rate of return*—(A) *Interest credit.* Subject to other rules in this paragraph (d), an interest credit for purposes of this paragraph (d) and section 411(b)(5)(B) means the following adjustments to a participant's accumulated benefit under a statutory hybrid benefit formula, to the extent not conditioned on current service and not made on account of imputed service (as defined in § 1.401(a)(4)-11(d)(3)(ii)(B))—

(1) Any increase or decrease for a period, under the terms of the plan at the beginning of the period, that is calculated by applying a rate of interest or rate of return (including a rate of increase or decrease under an index) to the participant's accumulated benefit (or a portion thereof) as of the beginning of the period; and

(2) Any other increase for a period, under the terms of the plan at the beginning of the period.

(B) *Treatment of plan amendments.* An increase to a participant's accumulated benefit is not treated as an interest credit to the extent the increase is made as a result of a plan amendment providing for a one-time adjustment to the participant's accumulated benefit. However, a pattern of repeated plan amendments each of which provides for a one-time adjustment to a participant's accumulated benefit will cause such adjustments to be treated as provided on a permanent basis under the terms of the plan. See § 1.411(d)-4, A-1(c)(1).

(C) *Interest crediting rate.* Except as otherwise provided in this paragraph (d), the interest crediting rate, or effective rate of return, for a period with respect to a participant equals the total amount of interest credits for the period divided by the participant's accumulated benefit at the beginning of the period.

(D) *Principal credit.* For purposes of this paragraph (d), a principal credit means any increase to a participant's accumulated benefit under a statutory hybrid benefit formula that is not an interest credit. Thus, for example, a

principal credit includes an increase to a participant's accumulated benefit to the extent the increase is conditioned on current service or made on account of imputed service. As a result, a principal credit includes an increase to the value of an accumulated percentage of the participant's final average compensation. For indexed benefits described in paragraph (b)(2) of this section, a principal credit includes an increase to the participant's accrued benefit other than an increase provided by indexing. In addition, pursuant to the rule in paragraph (d)(1)(ii)(B) of this section, a principal credit generally includes an increase to a participant's accumulated benefit to the extent the increase is made as a result of a plan amendment providing for a one-time adjustment to the participant's accumulated benefit. As a result, a principal credit includes an opening hypothetical account balance or opening accumulated percentage of the participant's final average compensation, as described in paragraph (c)(3) of this section.

(iii) *Market rate of return for single rates.* Except as otherwise provided in this paragraph (d)(1), an interest crediting rate is not in excess of a market rate of return only if the plan terms provide that the interest credit for each plan year is determined using one of the following specified interest crediting rates:

(A) The interest rate on long-term investment grade corporate bonds (as described in paragraph (d)(3) of this section).

(B) An interest rate that, under paragraph (d)(4) of this section, is deemed to be not in excess of the interest rate described in paragraph (d)(3) of this section.

(C) A rate of return that, under paragraph (d)(5) of this section, is not in excess of a market rate of return.

(iv) *Timing and other rules related to interest crediting rate—(A) In general.* A plan that provides interest credits must specify how the plan determines interest credits and must specify how and when interest credits are credited. The plan must specify the method for determining interest credits in accordance with the requirements of paragraph (d)(1)(iv)(B) of this section, the

frequency of interest crediting in accordance with the requirements of paragraph (d)(1)(iv)(C) of this section, and the treatment of interest credits on distributed amounts, as well as other debits and credits during the period, in accordance with the rules of paragraph (d)(1)(iv)(D) of this section. See paragraph (e) of this section for additional rules that apply to changes in the interest crediting rate.

(B) *Methods to determine interest credits.* A plan that is using any specified interest crediting rate can determine interest credits for each current interest crediting period based on the effective periodic interest crediting rate that applies over the period. Alternatively, a plan that is using one of the interest crediting rates described in paragraph (d)(3) or (d)(4) of this section can determine interest credits for a stability period based on the interest crediting rate for a specified lookback month with respect to that stability period. For purposes of the preceding sentence, the stability period and lookback month must satisfy the rules for selecting the stability period and lookback month under § 1.417(e)-1(d)(4), although the interest crediting rate can be any one of the rates in paragraph (d)(3) or (d)(4) of this section and the stability period and lookback month need not be the same as those used under the plan for purposes of section 417(e)(3).

(C) *Frequency of interest crediting.* Interest credits under a plan must be provided on an annual or more frequent periodic basis and interest credits for each interest crediting period must be credited as of the end of the period. If a plan provides for the crediting of interest more frequently than annually (for example, daily, monthly or quarterly) based on one of the annual interest rates described in paragraph (d)(3) or (d)(4) of this section, then the plan generally provides an above market rate of return unless each periodic interest credit is determined using an interest crediting rate that is no greater than a pro rata portion of the applicable annual interest crediting rate. However, a plan that credits interest daily based on one of the annual interest rates described in paragraph (d)(3) or (d)(4) of this section is not treated as

providing an above market rate of return merely because the plan determines each daily interest credit using a daily interest crediting rate that is 1/360 of the applicable annual interest crediting rate. In addition, interest credits determined, under the terms of a plan, based on one of the annual interest rates described in paragraph (d)(3) or (d)(4) of this section are not treated as creating an effective rate of return that is in excess of a market rate of return merely because an otherwise permissible interest crediting rate for a plan year is compounded more frequently than annually. Thus, for example, if a plan's terms provide for interest to be credited monthly and for the interest crediting rate to be equal to the interest rate on long-term investment grade corporate bonds (as described in paragraph (d)(3) of this section) and the applicable annual rate on these bonds for the plan year is 6 percent, then the accumulated benefit at the beginning of each month could be increased as a result of interest credits by as much as 0.5 percent per month during the plan year without resulting in an interest crediting rate that is in excess of a market rate of return.

(D) *Debits and credits during the interest crediting period.* [Reserved]

(v) *Lesser rates.* An interest crediting rate is not in excess of a market rate of return if the rate can never be in excess of a particular rate that is described in paragraph (d)(1)(iii) of this section. Thus, for example, an interest crediting rate that always equals the rate described in paragraph (d)(3) of this section minus 200 basis points is not in excess of a market rate of return because it can never be in excess of the rate described in paragraph (d)(3) of this section. Similarly, an interest crediting rate that always equals the lesser of the yield on 30-year Treasury bonds and a fixed 6 percent interest rate is not in excess of a market rate of return because it can never be in excess of the yield on 30-year Treasury bonds.

(vi) *Greater-of rates.* If a statutory hybrid plan determines an interest credit by applying the greater of 2 or more different rates to the accumulated benefit, the effective interest crediting rate is not in excess of a market rate of return only if each of the different

rates would separately satisfy the requirements of this paragraph (d) and the requirements of paragraph (d)(6) of this section are also satisfied.

(vii) *Blended rates.* A statutory hybrid plan does not provide an effective interest crediting rate that is in excess of a market rate of return merely because the plan determines an interest credit by applying different rates to different predetermined portions of the accumulated benefit, provided each rate would separately satisfy the requirements of this paragraph (d) if the rate applied to the entire accumulated benefit.

(2) *Preservation of capital requirement—(i) General rule.* A statutory hybrid plan satisfies the requirements of section 411(b)(1)(H) only if the plan provides that the participant's benefit under the statutory hybrid benefit formula determined as of the participant's annuity starting date is no less than the benefit based on the sum of all principal credits (as described in paragraph (d)(1)(ii)(D) of this section) credited under the plan to the participant as of that date (including principal credits that were credited before the applicable statutory effective date of paragraph (f)(1) of this section).

(ii) *Application to multiple annuity starting dates.* [Reserved]

(iii) *Exception for variable annuity benefit formulas.* See paragraph (b)(2)(iii)(B) of this section for an exception to this paragraph (d)(2).

(3) *Long-term investment grade corporate bonds.* For purposes of this paragraph (d), the rate of interest on long-term investment grade corporate bonds means the third segment rate described in section 417(e)(3)(D) or 430(h)(2)(C)(iii) (determined with or without regard to the transition rules of section 417(e)(3)(D)(ii) or 430(h)(2)(G)). However, for plan years beginning prior to January 1, 2008, the rate of interest on long-term investment grade corporate bonds means the rate described in section 412(b)(5)(B)(ii)(II) prior to amendment by the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA '06).

(4) *Safe harbor rates of interest—(i) In general.* This paragraph (d)(4) identifies interest rates that are deemed to be

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not in excess of the interest rate described in paragraph (d)(3) of this section. The Commissioner may, in guidance of general applicability, specify additional interest crediting rates that are deemed to be not in excess of the rate described in paragraph (d)(3) of this section. See § 601.601(d)(2)(ii)(b).

(ii) *Rates based on bonds with margins*—(A) *In general.* An interest crediting rate is deemed to be not in excess of the interest rate described in paragraph (d)(3) of this section if the rate is equal to the sum of any of the following rates of interest for bonds and the associated margin for that interest rate:

Interest rate bond index	Associated margin
The discount rate on 3-month Treasury Bills .....	175 basis points.
The discount rate on 12-month or shorter Treasury Bills .....	150 basis points.
The yield on 1-year Treasury Constant Maturities .....	100 basis points.
The yield on 3-year or shorter Treasury bonds .....	50 basis points.
The yield on 7-year or shorter Treasury bonds .....	25 basis points.
The yield on 30-year or shorter Treasury bonds .....	0 basis points.
The first segment rate .....	0 basis points.
The second segment rate .....	0 basis points.

(B) *Rule of application.* For purposes of this paragraph (d)(4), the first and second segment rates mean the first and second segment rates described in section 417(e)(3)(D) or 430(h)(2)(C), determined with or without regard to the transition rules of section 417(e)(3)(D)(ii) or 430(h)(2)(G).

(iii) *Eligible cost-of-living indices.* An interest crediting rate is deemed to be not in excess of the interest rate described in paragraph (d)(3) of this section if the rate is adjusted no less frequently than annually and is equal to the rate of increase with respect to an eligible cost-of-living index described in § 1.401(a)(9)-6, A-14(b), except that, for purposes of this paragraph (d)(4)(iii), the eligible cost-of-living index described in § 1.401(a)(9)-6, A-14(b)(2) is increased by 300 basis points.

(iv) *Fixed rate of interest.* [Reserved]

(5) *Other rates of return*—(i) *General rule.* This paragraph (d)(5) sets forth additional methods for determining an interest crediting rate that is not in excess of a market rate of return.

(ii) *Actual rate of return on plan assets.* In the case of indexed benefits described in paragraph (b)(2) of this section, an interest crediting rate equal to the actual rate of return on the aggregate assets of the plan, including both positive returns and negative returns, is not in excess of a market rate of return if the plan's assets are diversified so as to minimize the volatility of returns. This requirement that plan assets be diversified so as to minimize

the volatility of returns does not require greater diversification than is required under section 404(a)(1)(C) of Title I of the Employee Retirement Income Security Act of 1974, Public Law 93-406 (88 Stat. 829 (1974)) with respect to defined benefit pension plans.

(iii) *Annuity contract rates.* The rate of return on the annuity contract for the employee issued by an insurance company licensed under the laws of a State is not in excess of a market rate of return. However, this paragraph (d)(5)(iii) does not apply if the Commissioner determines that the annuity contract has been structured to provide an interest crediting rate that is in excess of a market rate of return.

(iv) *Rate of return on certain RICs.* [Reserved]

(6) *Combinations of rates of return*—(i) *In general.* A plan that determines interest credits based, in whole or in part, on the greater of two or more different interest crediting rates provides an effective interest crediting rate in excess of a market rate of return unless the combination of rates is described in paragraph (d)(6)(ii), (d)(6)(iii), (e)(3)(iii), or (e)(4) of this section. However, a plan is not treated as providing the greater of two or more interest crediting rates merely because the plan satisfies the requirements of paragraph (d)(2) of this section. In addition, a plan is not treated as providing the greater of two or more interest crediting rates merely because a rate of return described in paragraph

(d)(5)(iii) of this section is itself based on the greater of two or more rates.

(ii) *Annual or more frequent floor applied to bond-based rates.* [Reserved]

(iii) *Cumulative floor applied to equity-based or bond-based rates.* [Reserved]

(e) *Other rules regarding market rates of return—(1) In general.* This paragraph (e) sets forth additional rules regarding the application of the market rate of return requirement with respect to benefits determined under a statutory hybrid benefit formula.

(2) *Plan termination.* [Reserved]

(3) *Rules relating to section 411(d)(6)—*

(i) *General rule.* The right to interest credits in the future that are not conditioned on future service constitutes a section 411(d)(6) protected benefit (as defined in § 1.411(d)-3(g)(14)). Thus, to the extent that benefits have accrued under the terms of a statutory hybrid plan that entitle the participant to future interest credits, an amendment to the plan to change the interest crediting rate must satisfy section 411(d)(6) if the revised rate under any circumstances could result in interest credits that are smaller as of any date after the applicable amendment date (within the meaning of § 1.411(d)-3(g)(4)) than the interest credits that would be provided without regard to the amendment. For additional rules, see § 1.411(d)-3(b). Paragraphs (e)(3)(ii) and (e)(3)(iii) of this section set forth special rules that apply regarding the interaction of section 411(d)(6) and changes to a plan's interest crediting rate. The Commissioner may, in guidance of general applicability, prescribe additional rules regarding the interaction of section 411(d)(6) and section 411(b)(5), including changes to a plan's interest crediting rate. See § 601.601(d)(2)(ii)(b).

(ii) *Adoption of long-term investment grade corporate bond rate.* For purposes of applying section 411(d)(6) and this paragraph (e) to an amendment to change to the interest crediting rate described in paragraph (d)(3) of this section, a plan is not treated as providing interest credits that are smaller as of any date after the applicable amendment date than the interest credits that would be provided using an interest crediting rate described in paragraph (d)(4) of this section merely

because the plan credits interest after the applicable amendment date using the interest crediting rate described in paragraph (d)(3) of this section, provided—

(A) The amendment only applies to interest credits to be credited after the effective date of the amendment;

(B) The effective date of the amendment is at least 30 days after adoption of the amendment; and

(C) On the effective date of the amendment, the new interest crediting rate is not lower than the interest crediting rate that would have applied in the absence of the amendment.

(iii) *Coordination of section 411(d)(6) and market rate of return limitation.* [Reserved]

(4) *Actuarial increases after normal retirement age.* [Reserved]

(f) *Effective/applicability date—(1) Statutory effective/applicability dates—(i) In general.* Except as provided in paragraph (f)(1)(iii) of this section, section 411(b)(5) applies for periods beginning on or after June 29, 2005.

(ii) *Conversion amendments.* The requirements of section 411(b)(5)(B)(ii), 411(b)(5)(B)(iii), and 411(b)(5)(B)(iv) apply to a conversion amendment (as defined in paragraph (c)(4) of this section) that both is adopted on or after June 29, 2005, and takes effect on or after June 29, 2005.

(iii) *Market rate of return—(A) Plans in existence on June 29, 2005—(1) In general.* In the case of a plan that was in existence on June 29, 2005 (regardless of whether the plan was a statutory hybrid plan on that date), section 411(b)(5)(B)(i) applies to plan years that begin on or after January 1, 2008.

(2) *Exception for plan sponsor election.* Notwithstanding paragraph (f)(1)(iii)(A)(1) of this section, a plan sponsor of a plan that was in existence on June 29, 2005 (regardless of whether the plan was a statutory hybrid plan on that date) may elect to have the requirements of section 411(a)(13)(B) and section 411(b)(5)(B)(i) apply for any period on or after June 29, 2005, and before the first plan year beginning after December 31, 2007. In accordance with section 1107 of the PPA '06, an employer is permitted to adopt an amendment to make this election as late as the last day of the first plan year that

begins on or after January 1, 2009 (January 1, 2011, in the case of a governmental plan as defined in section 414(d)) if the plan operates in accordance with the election.

(B) *Plans not in existence on June 29, 2005.* In the case of a plan not in existence on June 29, 2005, section 411(b)(5)(B)(i) applies to the plan on and after the later of June 29, 2005, and the date the plan becomes a statutory hybrid plan.

(iv) *Collectively bargained plans—(A) In general.* Notwithstanding paragraph (f)(1)(iii) of this section, in the case of a collectively bargained plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified on or before August 17, 2006, the requirements of section 411(b)(5)(B)(i) do not apply to plan years that begin before the earlier of—

(1) The later of—

(i) The date on which the last of those collective bargaining agreements terminates (determined without regard to any extension thereof on or after August 17, 2006); or

(ii) January 1, 2008; or

(2) January 1, 2010.

(B) *Treatment of plans with both collectively bargained and non-collectively bargained employees.* In the case of a plan with respect to which a collective bargaining agreement applies to some, but not all, of the plan participants, the plan is considered a collectively bargained plan for purposes of this paragraph (f)(1)(iv) if it is considered a collectively bargained plan under the rules of § 1.436-1(a)(5)(ii)(B).

(2) *Effective/applicability date of regulations—(i) In general—(A) General effective date.* Except as provided in paragraph (f)(2)(i)(B) of this section, this section applies to plan years that begin on or after January 1, 2011.

(B) *Special effective date.* Paragraphs (d)(1)(iii), (d)(1)(vi), and (d)(6)(i) of this section apply to plan years that begin on or after January 1, 2012.

(ii) *Conversion amendments.* With respect to a conversion amendment (within the meaning of paragraph (c)(4) of this section), where the effective date of the conversion amendment (as defined in paragraph (c)(4)(vi) of this

section) is on or after the statutory effective date set forth in paragraph (f)(1)(ii) of this section, the requirements of paragraph (c)(2) of this section apply only to a participant who has an hour of service on or after the regulatory effective date set forth in paragraph (f)(2)(i) of this section.

(iii) *Reliance before regulatory effective date.* For the periods after the statutory effective date set forth in paragraph (f)(1) of this section and before the regulatory effective date set forth in paragraph (f)(2)(i) of this section, the safe harbor and other relief of section 411(b)(5) apply and the market rate of return and other requirements of section 411(b)(5) must be satisfied. During these periods, a plan is permitted to rely on the provisions of this section for purposes of applying the relief and satisfying the requirements of section 411(b)(5).

[T.D. 9505, 75 FR 64137, Oct. 19, 2010, as amended by T.D. 9505, Dec. 28, 2010]

**§ 1.411(c)-1 Allocation of accrued benefits between employer and employee contributions.**

(a) *Accrued benefit derived from employer contributions.* For purposes of section 411 and the regulations thereunder, under section 411(c)(1), an employee's accrued benefit derived from employer contributions under a plan as of any applicable date is the excess, if any, of—

(1) The total accrued benefit under the plan provided for the employee as of such date, over

(2) The accrued benefit provided for the employee, derived from contributions made by the employee under the plan as of such date.

For computation of accrued benefit derived from employee contributions to a defined contribution plan or from voluntary employee contributions to a defined benefit plan, see paragraph (b) of this section. For computation of accrued benefit derived from mandatory employee contributions to a defined benefit plan, see paragraph (c) of this section.

(b) *Accrued benefit derived from employee contribution to defined contribution plan, etc.* For purposes of section 411 and the regulations thereunder, under section 411(c)(2)(A) the accrued