

this section or the summary of that notice described in paragraph (c)(2)(iii)(B)(2) of this section must be provided on a written paper document. However, see §1.401(a)-21 of this chapter for rules permitting the use of electronic media to provide applicable notices to recipients with respect to retirement plans.

(2) *Consent.* The consent described in paragraphs (c)(2) and (3) of this section must be given on a written paper document. However, see §1.401(a)-21 of this chapter for rules permitting the use of electronic media to make participant elections with respect to retirement plans.

[T.D. 8219, 53 FR 31853, Aug. 22, 1988; 53 FR 48534, Dec. 1, 1988, as amended by T.D. 8620, 60 FR 49221, Sept. 22, 1995; T.D. 8796, 63 FR 70011, Dec. 18, 1998; T.D. 8794, 63 FR 70338, Dec. 21, 1998; T.D. 8873, 65 FR 6006, Feb. 8, 2000; T.D. 8891, 65 FR 44681, 44682, July 19, 2000; T.D. 9294, 71 FR 61887, Oct. 20, 2006]

#### § 1.411(a)(13)-1 Statutory hybrid plans.

(a) *In general.* This section sets forth certain rules that apply to statutory hybrid plans under section 411(a)(13). Paragraph (b) of this section describes special rules for certain statutory hybrid plans that determine benefits under a lump sum-based benefit formula. Paragraph (c) of this section describes the vesting requirement for statutory hybrid plans. Paragraphs (d) and (e) of this section contain definitions and effective/applicability dates, respectively.

(b) *Calculation of benefit by reference to hypothetical account balance or accumulated percentage—(1) Payment of a current balance or current value under a lump sum-based benefit formula.* Pursuant to section 411(a)(13)(A), a statutory hybrid plan that determines any portion of a participant's benefits under a lump sum-based benefit formula is not treated as failing to meet the following requirements solely because, with respect to benefits determined under that formula, the present value of those benefits is, under the terms of the plan, equal to the then-current balance of the hypothetical account maintained for the participant or to the then-current value of the accumulated percentage of the participant's final average compensation under that formula—

(i) Section 411(a)(2); or

(ii) With respect to the participant's accrued benefit derived from employer contributions, section 411(a)(11), 411(c), or 417(e).

(2) *Requirements that lump sum-based benefit formula must satisfy to obtain relief.* [Reserved]

(3) *Alternative forms of distribution under a lump sum-based benefit formula.* [Reserved]

(4) *Rules of application.* [Reserved]

(c) *Three-year vesting requirement—(1) In general.* Pursuant to section 411(a)(13)(B), if any portion of the participant's accrued benefit under a defined benefit plan is determined under a statutory hybrid benefit formula, the plan is treated as failing to satisfy the requirements of section 411(a)(2) unless the plan provides that the participant has a nonforfeitable right to 100 percent of the participant's accrued benefit if the participant has three or more years of service. Thus, this 3-year vesting requirement applies with respect to the entire accrued benefit of a participant under a defined benefit plan even if only a portion of the participant's accrued benefit under the plan is determined under a statutory hybrid benefit formula. Similarly, if the participant's accrued benefit under a defined benefit plan is, under the plan's terms, the larger of two (or more) benefit amounts, where each amount is determined under a different benefit formula (including a benefit determined pursuant to an offset among formulas within the plan or a benefit determined as the greater of a protected benefit under section 411(d)(6) and another benefit amount) and at least one of those formulas is a statutory hybrid benefit formula, the participant's entire accrued benefit under the defined benefit plan is subject to the 3-year vesting rule of section 411(a)(13)(B) and this paragraph (c). The rule described in the preceding sentence applies even if the larger benefit is ultimately the benefit determined under a formula that is not a statutory hybrid benefit formula.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

*Example 1.* Employer M sponsors Plan X, a defined benefit plan under which each participant's accrued benefit is equal to the sum of the benefit provided under two benefit formulas. The first benefit formula is a statutory hybrid benefit formula, and the second formula is not. Because a portion of each participant's accrued benefit provided under Plan X is determined under a statutory hybrid benefit formula, the 3-year vesting requirement described in paragraph (c)(1) of this section applies to each participant's entire accrued benefit provided under Plan X.

*Example 2.* The facts are the same as in *Example 1*, except that the benefit formulas described in *Example 1* only apply to participants for service performed in Division A of Employer M and a different benefit formula applies to participants for service performed in Division B of Employer M. Pursuant to the terms of Plan X, the accrued benefit of a participant attributable to service performed in Division B is based on a benefit formula that is not a statutory hybrid benefit formula. Therefore, the 3-year vesting requirement described in paragraph (c)(1) of this section does not apply to a participant with an accrued benefit under Plan X if the participant's benefit is solely attributable to service performed in Division B.

*Example 3.* Employer N sponsors defined benefit Plan Y, an independent plan that provides benefits based solely on a lump sum-based benefit formula, and defined benefit Plan Z, which provides benefits based on a formula which is not a statutory hybrid benefit formula, but which is a floor plan that provides for the benefits payable to a participant under Plan Z to be reduced by the amount of the vested accrued benefit payable under Plan Y. The formula under Plan Y is a statutory hybrid benefit formula. Accordingly, Plan Y is subject to the 3-year vesting requirement described in paragraph (c)(1) of this section. The formula provided under Plan Z, even taking into account the offset for vested accrued benefits under Plan Y, is not a statutory hybrid benefit formula. Therefore, Plan Z is not subject to the 3-year vesting requirement in paragraph (c)(1) of this section.

(d) *Definitions*—(1) *In general.* The definitions in this paragraph (d) apply for purposes of this section.

(2) *Accumulated benefit.* A participant's accumulated benefit at any date means the participant's benefit, as expressed under the terms of the plan, accrued to that date. For this purpose, if a participant's benefit is expressed under the terms of the plan as the current balance of a hypothetical account or the current value of an accumulated percentage of the participant's final

average compensation, the participant's accumulated benefit is expressed in that manner regardless of how the plan defines the participant's accrued benefit. Thus, for example, the accumulated benefit of a participant may be expressed under the terms of the plan as either the current balance of a hypothetical account or the current value of an accumulated percentage of the participant's final average compensation, even if the plan defines the participant's accrued benefit as an annuity beginning at normal retirement age that is actuarially equivalent to that balance or value.

(3) *Lump sum-based benefit formula*—(i) *In general.* A lump sum-based benefit formula means a benefit formula used to determine all or any part of a participant's accumulated benefit under a defined benefit plan under which the accumulated benefit provided under the formula is expressed as the current balance of a hypothetical account maintained for the participant or as the current value of an accumulated percentage of the participant's final average compensation. A benefit formula is expressed as the current balance of a hypothetical account maintained for the participant if it is expressed as a current single-sum dollar amount. Whether a benefit formula is a lump sum-based benefit formula is determined based on how the accumulated benefit of a participant is expressed under the terms of the plan, and does not depend on whether the plan provides an optional form of benefit in the form of a single-sum payment.

(ii) *Exception for employee contributions.* For purposes of the definition of a lump sum-based benefit formula in paragraph (d)(3)(i) of this section, the benefit properly attributable to after-tax employee contributions, rollover contributions from eligible retirement plans under section 402(c)(8), and other similar employee contributions (such as repayments of distributions pursuant to section 411(a)(7)(C) and employee contributions that are pickup contributions pursuant to section 414(h)(2)) is disregarded. However, a benefit is not properly attributable to contributions described in this paragraph (d)(3)(ii) if

the contributions are credited with interest at a rate that exceeds a reasonable rate of interest or if the conversion factors used to calculate such benefit are not actuarially reasonable. See section 411(c) for an example of a calculation of a benefit that is properly attributable to employee contributions.

(4) *Statutory hybrid benefit formula*—(i) *In general.* A statutory hybrid benefit formula means a benefit formula that is either a lump sum-based benefit formula or a formula that is not a lump sum-based benefit formula but that has an effect similar to a lump sum-based benefit formula.

(ii) *Effect similar to a lump sum-based benefit formula*—(A) *In general.* Except as provided in paragraphs (d)(4)(ii)(B) through (D) of this section, a benefit formula under a defined benefit plan that is not a lump sum-based benefit formula has an effect similar to a lump sum-based benefit formula if the formula provides that a participant's accumulated benefit is expressed as a benefit that includes the right to adjustments (including a formula that provides for indexed benefits under § 1.411(b)(5)-1(b)(2)) for a future period and the total dollar amount of those adjustments is reasonably expected to be smaller for the participant than for a similarly situated, younger individual (within the meaning of § 1.411(b)(5)-1(b)(5)) who is or could be a participant in the plan. A benefit formula that does not include adjustments for any future period is treated as a formula with an effect similar to a lump sum-based benefit formula if the formula would be described in the preceding sentence except for the fact that the adjustments are provided pursuant to a pattern of repeated plan amendments. See § 1.411(d)-4, A-1(c)(1).

(B) *Exception for post-retirement benefit adjustments.* Post-annuity starting date adjustments in the amount payable to a participant (such as cost-of-living increases) are disregarded in determining whether a benefit formula under a defined benefit plan has an effect similar to a lump sum-based benefit formula.

(C) *Exception for certain variable annuity benefit formulas.* If the assumed interest rate used for purposes of the adjustment of amounts payable to a par-

ticipant under a variable annuity benefit formula is 5 percent or higher, then the variable annuity benefit formula is not treated as being reasonably expected to provide a smaller total dollar amount of future adjustments for the participant than for a similarly situated, younger individual who is or could be a participant in the plan, and thus such a variable annuity benefit formula does not have an effect similar to a lump sum-based benefit formula.

(D) *Exception for employee contributions.* Benefits that are disregarded under paragraph (d)(3)(ii) of this section (benefits properly attributable to certain employee contributions) are also disregarded for purposes of determining whether a benefit formula has an effect similar to a lump sum-based benefit formula.

(5) *Statutory hybrid plan.* A statutory hybrid plan means a defined benefit plan that contains a statutory hybrid benefit formula.

(6) *Variable annuity benefit formula.* A variable annuity benefit formula means any benefit formula under a defined benefit plan which provides that the amount payable is periodically adjusted by reference to the difference between the rate of return on plan assets (or specified market indices) and a specified assumed interest rate.

(e) *Effective/applicability date*—(1) *Statutory effective/applicability date*—(i) *In general.* Except as provided in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section, section 411(a)(13) applies for periods beginning on or after June 29, 2005.

(ii) *Calculation of benefits.* Section 411(a)(13)(A) applies to distributions made after August 17, 2006.

(iii) *Vesting*—(A) *Plans in existence on June 29, 2005*—(1) *General rule.* In the case of a plan that is in existence on June 29, 2005 (regardless of whether the plan is a statutory hybrid plan on that date), section 411(a)(13)(B) applies to plan years that begin on or after January 1, 2008.

(2) *Exception for plan sponsor election.* See § 1.411(b)(5)-1(f)(1)(iii)(A)(2) for a special election for early application of section 411(a)(13)(B).

(B) *Plans not in existence on June 29, 2005.* In the case of a plan not in existence on June 29, 2005, section

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411(a)(13)(B) applies to plan years that end on or after June 29, 2005.

(C) *Collectively bargained plans.* Notwithstanding paragraphs (e)(1)(iii)(A) and (B) 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(a)(13)(B) 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.

(D) *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 paragraph (e)(1)(iii)(C) of this section if it is considered a collectively bargained plan under the rules of § 1.436-1(a)(5)(ii)(B).

(E) *Hour of service required.* Section 411(a)(13)(B) does not apply to a participant who does not have an hour of service after section 411(a)(13)(B) would otherwise apply to the participant under the rules of paragraph (e)(1)(iii)(A), (B), or (C) of this section.

(2) *Effective/applicability date of regulations—(i) In general.* Except as provided in paragraph (e)(2)(ii) of this section, this section applies to plan years that begin on or after January 1, 2011. For the periods after the statutory effective date set forth in paragraph (e)(1) of this section and before the regulatory effective date set forth in the preceding sentence, the relief of section 411(a)(13)(A) applies and the 3-year vesting requirement of section 411(a)(13)(B) must be satisfied. During these periods, a plan is permitted to rely on the provisions of this section for purposes of applying the relief of section 411(a)(13)(A) and satisfying the requirements of section 411(a)(13)(B).

(ii) *Special effective date.* [Reserved]

(iii) *Hour of service required.* A benefit formula is not treated as having an effect similar to a lump sum-based benefit formula under paragraph (d)(4)(ii) of this section with respect to a participant who does not have an hour of service after the regulatory effective date set forth in paragraph (e)(2)(i) of this section.

[T.D 9505, 75 FR 64135, Oct. 19, 2010, as amended by 76 FR 4244, Jan. 25, 2011]

### § 1.411(b)-1 Accrued benefit requirements.

(a) *Accrued benefit requirements—(1) In general.* Under section 411(b), for plan years beginning after the applicable effective date of section 411, rules are provided for the determination of the accrued benefit to which a participant is entitled under a plan. Under a defined contribution plan, a participant's accrued benefit is the balance to the credit of the participant's account. Under a defined benefit plan, a participant's accrued benefit is his accrued benefit determined under the plan. A defined benefit plan is not a qualified plan unless the method provided by the plan for determining accrued benefits satisfies at least one of the alternative methods (described in paragraph (b) of this section) for determining accrued benefits with respect to all active participants under the plan. A defined benefit plan may provide that accrued benefits for participants are determined under more than one plan formula. In such a case, the accrued benefits under all such formulas must be aggregated in order to determine whether or not the accrued benefits under the plan for participants satisfy one of the alternative methods. A plan may satisfy different methods with respect to different classifications of employees, or separately satisfy one method with respect to the accrued benefits for each such classification, provided that such classifications are not so structured as to evade the accrued benefit requirements of section 411(b) and this section. (For example, if a plan provides that employees who commence participation at or before age 40 accrue benefits in a manner which satisfies the 133 $\frac{1}{3}$  percent method of determining accrued benefits and employees who commence participation after age 40