

time that such services are required to be rendered, or that such membership privileges are required to be made available.

(3) Membership organization

The term “membership organization” means a corporation, association, federation, or other organization—

(A) organized without capital stock of any kind, and

(B) no part of the net earnings of which is distributable to any member.

(4) Receipt of prepaid dues income

Prepaid dues income shall be treated as received during the taxable year for which it is includible in gross income under section 451 (without regard to this section).

(Added Pub. L. 87-109, §1(a), July 26, 1961, 75 Stat. 222; amended Pub. L. 94-455, title XIX, §§1901(a)(68), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Subsec. (c)(3)(B). Pub. L. 94-455, §1901(a)(68), substituted “for its first taxable year” for “for its first taxable year (i) which begins after December 31, 1960, and (ii)”.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(68) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section 2 of Pub. L. 87-109 provided that: “The amendments made by this Act [enacting this section] shall apply with respect to taxable years beginning after December 31, 1960.”

§ 457. Deferred compensation plans of State and local governments and tax-exempt organizations

(a) Year of inclusion in gross income

(1) In general

Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

(2) Special rule for rollover amounts

To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.

(3) Special rule for health and long-term care insurance

In the case of a plan of an eligible employer described in subsection (e)(1)(A), to the extent

provided in section 402(l), paragraph (1) shall not apply to amounts otherwise includible in gross income under this subsection.

(b) Eligible deferred compensation plan defined

For purposes of this section, the term “eligible deferred compensation plan” means a plan established and maintained by an eligible employer—

(1) in which only individuals who perform service for the employer may be participants,

(2) which provides that (except as provided in paragraph (3)) the maximum amount which may be deferred under the plan for the taxable year (other than rollover amounts) shall not exceed the lesser of—

(A) the applicable dollar amount, or

(B) 100 percent of the participant’s includible compensation,

(3) which may provide that, for 1 or more of the participant’s last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

(A) twice the dollar amount in effect under subsection (b)(2)(A), or

(B) the sum of—

(i) the plan ceiling established for purposes of paragraph (2) for the taxable year (determined without regard to this paragraph), plus

(ii) so much of the plan ceiling established for purposes of paragraph (2) for taxable years before the taxable year as has not previously been used under paragraph (2) or this paragraph,

(4) which provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month,

(5) which meets the distribution requirements of subsection (d), and

(6) except as provided in subsection (g), which provides that—

(A) all amounts of compensation deferred under the plan,

(B) all property and rights purchased with such amounts, and

(C) all income attributable to such amounts, property, or rights,

shall remain (until made available to the participant or other beneficiary) solely the property and rights of the employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the employer’s general creditors.

A plan which is established and maintained by an employer which is described in subsection (e)(1)(A) and which is administered in a manner which is inconsistent with the requirements of any of the preceding paragraphs shall be treated as not meeting the requirements of such paragraph as of the 1st plan year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the employer corrects the inconsistency before the 1st day of such plan year.

(c) Limitation

The maximum amount of the compensation of any one individual which may be deferred under

subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).

(d) Distribution requirements

(1) In general

For purposes of subsection (b)(5), a plan meets the distribution requirements of this subsection if—

(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

(i) the calendar year in which the participant attains age 70½,

(ii) when the participant has a severance from employment with the employer, or

(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations),

(B) the plan meets the minimum distribution requirements of paragraph (2), and

(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.

(2) Minimum distribution requirements

A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of section 401(a)(9).

(3) Special rule for government plan

An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).

(e) Other definitions and special rules

For purposes of this section—

(1) Eligible employer

The term “eligible employer” means—

(A) a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State, and

(B) any other organization (other than a governmental unit) exempt from tax under this subtitle.

(2) Performance of service

The performance of service includes performance of service as an independent contractor and the person (or governmental unit) for whom such services are performed shall be treated as the employer.

(3) Participant

The term “participant” means an individual who is eligible to defer compensation under the plan.

(4) Beneficiary

The term “beneficiary” means a beneficiary of the participant, his estate, or any other per-

son whose interest in the plan is derived from the participant.

(5) Includible compensation

The term “includible compensation” has the meaning given to the term “participant’s compensation” by section 415(c)(3).

(6) Compensation taken into account at present value

Compensation shall be taken into account at its present value.

(7) Community property laws

The amount of includible compensation shall be determined without regard to any community property laws.

(8) Income attributable

Gains from the disposition of property shall be treated as income attributable to such property.

(9) Benefits of tax exempt organization plans not treated as made available by reason of certain elections, etc.

In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—

(A) Total amount payable is dollar limit or less

The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant’s consent) if—

(i) the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D)) does not exceed the dollar limit under section 411(a)(11)(A), and

(ii) such amount may be distributed only if—

(I) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

(II) there has been no prior distribution under the plan to such participant to which this subparagraph applied.

A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution to which this subparagraph applies.

(B) Election to defer commencement of distributions

The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to defer commencement of distributions under the plan if—

(i) such election is made after amounts may be available under the plan in accordance with subsection (d)(1)(A) and before commencement of such distributions, and

(ii) the participant may make only 1 such election.

(10) Transfers between plans

A participant shall not be required to include in gross income any portion of the entire

amount payable to such participant solely by reason of the transfer of such portion from 1 eligible deferred compensation plan to another eligible deferred compensation plan.

(11) Certain plans excluded

(A) In general

The following plans shall be treated as not providing for the deferral of compensation:

- (i) Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan.
- (ii) Any plan paying solely length of service awards to bona fide volunteers (or their beneficiaries) on account of qualified services performed by such volunteers.

(B) Special rules applicable to length of service award plans

(i) Bona fide volunteer

An individual shall be treated as a bona fide volunteer for purposes of subparagraph (A)(ii) if the only compensation received by such individual for performing qualified services is in the form of—

- (I) reimbursement for (or a reasonable allowance for) reasonable expenses incurred in the performance of such services, or
- (II) reasonable benefits (including length of service awards), and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers.

(ii) Limitation on accruals

A plan shall not be treated as described in subparagraph (A)(ii) if the aggregate amount of length of service awards accruing with respect to any year of service for any bona fide volunteer exceeds \$3,000.

(C) Qualified services

For purposes of this paragraph, the term “qualified services” means fire fighting and prevention services, emergency medical services, and ambulance services.

(D) Certain voluntary early retirement incentive plans

(i) In general

If an applicable voluntary early retirement incentive plan—

- (I) makes payments or supplements as an early retirement benefit, a retirement-type subsidy, or a benefit described in the last sentence of section 411(a)(9), and
- (II) such payments or supplements are made in coordination with a defined benefit plan which is described in section 401(a) and includes a trust exempt from tax under section 501(a) and which is maintained by an eligible employer described in paragraph (1)(A) or by an education association described in clause (ii)(II),

such applicable plan shall be treated for purposes of subparagraph (A)(i) as a bona fide severance pay plan with respect to

such payments or supplements to the extent such payments or supplements could otherwise have been provided under such defined benefit plan (determined as if section 411 applied to such defined benefit plan).

(ii) Applicable voluntary early retirement incentive plan

For purposes of this subparagraph, the term “applicable voluntary early retirement incentive plan” means a voluntary early retirement incentive plan maintained by—

- (I) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)), or
- (II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) and exempt from tax under section 501(a).

(12) Exception for nonelective deferred compensation of nonemployees

(A) In general

This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

(B) Nonelective deferred compensation

For purposes of subparagraph (A), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.

(13) Special rule for churches

The term “eligible employer” shall not include a church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(14) Treatment of qualified governmental excess benefit arrangements

Subsections (b)(2) and (c)(1) shall not apply to any qualified governmental excess benefit arrangement (as defined in section 415(m)(3)), and benefits provided under such an arrangement shall not be taken into account in determining whether any other plan is an eligible deferred compensation plan.

(15) Applicable dollar amount

(A) In general

The applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	The applicable dollar amount:
2002	\$11,000
2003	\$12,000
2004	\$13,000
2005	\$14,000
2006 or thereafter	\$15,000.

(B) Cost-of-living adjustments

In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the \$15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this paragraph which is not a multiple of \$500 shall be rounded to the next lowest multiple of \$500.

(16) Rollover amounts**(A) General rule**

In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(C) Reporting

Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).

(17) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(18) Coordination with catch-up contributions for individuals age 50 or older

In the case of an individual who is an eligible participant (as defined by section 414(v)) and who is a participant in an eligible deferred compensation plan of an employer described in paragraph (1)(A), subsections (b)(3) and (c) shall be applied by substituting for the amount otherwise determined under the applicable subsection the greater of—

(A) the sum of—

(i) the plan ceiling established for purposes of subsection (b)(2) (without regard to subsection (b)(3)), plus

(ii) the applicable dollar amount for the taxable year determined under section 414(v)(2)(B)(i), or

(B) the amount determined under the applicable subsection (without regard to this paragraph).

(f) Tax treatment of participants where plan or arrangement of employer is not eligible**(1) In general**

In the case of a plan of an eligible employer providing for a deferral of compensation, if such plan is not an eligible deferred compensation plan, then—

(A) the compensation shall be included in the gross income of the participant or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

(B) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc.).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan or contract described in section 403,

(C) that portion of any plan which consists of a transfer of property described in section 83,

(D) that portion of any plan which consists of a trust to which section 402(b) applies,

(E) a qualified governmental excess benefit arrangement described in section 415(m), and

(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.

(3) Definitions

For purposes of this subsection—

(A) Plan includes arrangements, etc.

The term “plan” includes any agreement or arrangement.

(B) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person’s rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(4) Employment retention plans

For purposes of paragraph (2)(F)—

(A) In general

The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that portion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

(B) Other rules**(i) Limitation**

Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years preceding the year in

which such portion is paid or otherwise made available to the participant.

(ii) Treatment

A plan shall not be treated for purposes of this title as providing for the deferral of compensation for any year with respect to the portion of the plan described in subparagraph (A).

(C) Applicable employment retention plan

The term “applicable employment retention plan” means an employment retention plan maintained by—

(i) a local educational agency (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801),¹ or

(ii) an education association which principally represents employees of 1 or more agencies described in clause (i) and which is described in section 501(c)(5) or (6) and exempt from taxation under section 501(a).

(D) Employment retention plan

The term “employment retention plan” means a plan to pay, upon termination of employment, compensation to an employee of a local educational agency or education association described in subparagraph (C) for purposes of—

(i) retaining the services of the employee, or

(ii) rewarding such employee for the employee’s service with 1 or more such agencies or associations.

(g) Governmental plans must maintain set-asides for exclusive benefit of participants

(1) In general

A plan maintained by an eligible employer described in subsection (e)(1)(A) shall not be treated as an eligible deferred compensation plan unless all assets and income of the plan described in subsection (b)(6) are held in trust for the exclusive benefit of participants and their beneficiaries.

(2) Taxability of trusts and participants

For purposes of this title—

(A) a trust described in paragraph (1) shall be treated as an organization exempt from taxation under section 501(a), and

(B) notwithstanding any other provision of this title, amounts in the trust shall be includible in the gross income of participants and beneficiaries only to the extent, and at the time, provided in this section.

(3) Custodial accounts and contracts

For purposes of this subsection, custodial accounts and contracts described in section 401(f) shall be treated as trusts under rules similar to the rules under section 401(f).

(4) Death benefits under USERRA-qualified active military service

A plan described in paragraph (1) shall not be treated as an eligible deferred compensation plan unless such plan meets the requirements of section 401(a)(37).

(Added Pub. L. 95-600, title I, §131(a), Nov. 6, 1978, 92 Stat. 2779; amended Pub. L. 96-222, title I, §101(a)(4), Apr. 1, 1980, 94 Stat. 196; Pub. L. 98-369, div. A, title IV, §491(d)(33), July 18, 1984, 98 Stat. 851; Pub. L. 99-514, title XI, §1107(a), Oct. 22, 1986, 100 Stat. 2426; Pub. L. 100-647, title I, §1011(e)(1), (2), (9), (10), title VI, §§6064(a)–(c), 6071(c), Nov. 10, 1988, 102 Stat. 3460, 3461, 3700, 3701, 3705; Pub. L. 101-239, title VII, §§7811(g)(4), (5), 7816(j), Dec. 19, 1989, 103 Stat. 2409, 2421; Pub. L. 102-318, title V, §521(b)(26), July 3, 1992, 106 Stat. 312; Pub. L. 104-188, title I, §§1421(b)(3)(C), 1444(b)(2), (3), 1447(a), (b), 1448(a), (b), 1458(a), Aug. 20, 1996, 110 Stat. 1796, 1810, 1812, 1813, 1819; Pub. L. 105-34, title X, §1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107-16, title VI, §§611(d)(3)(B), (e), 615(a), 632(c)(1), 641(a)(1)(A)–(C), 646(a)(3), 647(b), 648(b), 649(a), (b), June 7, 2001, 115 Stat. 98, 102, 115, 118, 119, 126–128; Pub. L. 107-147, title IV, §411(o)(9), (p)(5), Mar. 9, 2002, 116 Stat. 49, 51; Pub. L. 109-280, title VIII, §§829(a)(4), 845(b)(3), title XI, §1104(a)(1), (b), Aug. 17, 2006, 120 Stat. 1002, 1015, 1058, 1059; Pub. L. 110-245, title I, §104(c)(3), June 17, 2008, 122 Stat. 1627.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

AMENDMENTS

2008—Subsec. (g)(4). Pub. L. 110-245 added par. (4).

2006—Subsec. (a)(3). Pub. L. 109-280, §845(b)(3), added par. (3).

Subsec. (e)(11)(D). Pub. L. 109-280, §1104(a)(1), added subpar. (D).

Subsec. (e)(16)(B). Pub. L. 109-280, §829(a)(4), substituted “, (9), and (11)” for “and (9)”.

Subsec. (f)(2)(F). Pub. L. 109-280, §1104(b)(1), added subpar. (F).

Subsec. (f)(4). Pub. L. 109-280, §1104(b)(2), added par. (4).

2002—Subsec. (e)(5). Pub. L. 107-147, §411(p)(5), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The term ‘includible compensation’ means compensation for service performed for the employer which (taking into account the provisions of this section and other provisions of this chapter) is currently includible in gross income.”

Subsec. (e)(18). Pub. L. 107-147, §411(o)(9), added par. (18).

2001—Subsec. (a). Pub. L. 107-16, §649(b)(1), reenacted heading without change and amended text of subsec. (a) generally. Prior to amendment, text read as follows: “In the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.”

Subsec. (b)(2). Pub. L. 107-16, §641(a)(1)(B), inserted “(other than rollover amounts)” after “taxable year” in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 107-16, §611(e)(1)(A), substituted “the applicable dollar amount” for “\$7,500”.

Subsec. (b)(2)(B). Pub. L. 107-16, §632(c)(1), substituted “100 percent” for “33⅓ percent”.

Subsec. (b)(3)(A). Pub. L. 107-16, §611(e)(1)(B), substituted “twice the dollar amount in effect under subsection (b)(2)(A)” for “\$15,000”.

Subsec. (c). Pub. L. 107-16, §615(a), amended heading and text of subsec. (c) generally, substituting present provisions for provisions which stated that the maxi-

¹ So in original. A second closing parenthesis probably should precede the comma.

imum amount of compensation that an individual could defer under subsec. (a) during any taxable year could not exceed the applicable dollar amount, as modified by any adjustment provided under subsec. (b)(3), and provided for coordination with certain other deferrals.

Subsec. (c)(1). Pub. L. 107-16, § 611(e)(1)(A), substituted “the applicable dollar amount” for “\$7,500”.

Subsec. (c)(2). Pub. L. 107-16, § 611(d)(3)(B), substituted “402(g)(7)(A)(iii)” for “402(g)(8)(A)(iii)” in concluding provisions.

Subsec. (d)(1). Pub. L. 107-16, § 641(a)(1)(C), added subpar. (C) and concluding provisions.

Subsec. (d)(1)(A)(i). Pub. L. 107-16, § 646(a)(3), substituted “has a severance from employment” for “is separated from service”.

Subsec. (d)(2). Pub. L. 107-16, § 649(a), reenacted heading without change and amended text of par. (2) generally, substituting present provisions for provisions which stated that a plan would meet the minimum distribution requirements of this par. if plan met the requirements of section 401(a)(9), if plan met additional distribution requirements in the case of a deceased participant, and if any distribution payable over a period of more than 1 year would only be made in substantially nonincreasing amounts.

Subsec. (d)(3). Pub. L. 107-16, § 649(b)(2)(B), added par. (3).

Subsec. (e)(9). Pub. L. 107-16, § 649(b)(2)(A), in heading substituted “Benefits of tax exempt organization plans not treated as made available by reason of certain elections, etc.” for “Benefits not treated as made available by reason of certain elections, etc.” and temporarily inserted introductory provisions.

Subsec. (e)(9)(A)(i). Pub. L. 107-16, § 648(b), substituted “the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))” for “such amount”.

Subsec. (e)(15). Pub. L. 107-16, § 611(e)(2), amended heading and text of par. (15) generally. Prior to amendment, text read as follows: “The Secretary shall adjust the \$7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1994, and any increase under this paragraph which is not a multiple of \$500 shall be rounded to the next lowest multiple of \$500.”

Subsec. (e)(16). Pub. L. 107-16, § 641(a)(1)(A), added par. (16).

Subsec. (e)(17). Pub. L. 107-16, § 647(b), added par. (17). 1997—Subsec. (e)(9)(A). Pub. L. 105-34 substituted “dollar limit” for “\$3,500” in heading and “the dollar limit under section 411(a)(11)(A)” for “\$3,500” in cl. (i).

1996—Subsec. (b)(6). Pub. L. 104-188, § 1448(b), inserted “except as provided in subsection (g),” before “which provides that” in introductory provisions.

Subsec. (c)(2)(B)(i). Pub. L. 104-188, § 1421(b)(3)(C), substituted “section 402(h)(1)(B) or (k)” for “section 402(h)(1)(B)”.

Subsec. (e)(9). Pub. L. 104-188, § 1447(a), amended par. (9) generally. Prior to amendment, par. (9) read as follows: “BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS.—If—

“(A) the total amount payable to a participant under the plan does not exceed \$3,500, and

“(B) no additional amounts may be deferred under the plan with respect to the participant, the amount payable to the participant under the plan shall not be treated as made available merely because such participant may elect to receive a lump sum payable after separation from service and within 60 days of the election.”

Subsec. (e)(11). Pub. L. 104-188, § 1458(a), amended par. (11) generally. Prior to amendment, par. (11) read as follows: “CERTAIN PLANS EXCEPTED.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation.”

Subsec. (e)(14). Pub. L. 104-188, § 1444(b)(2), added par. (14).

Subsec. (e)(15). Pub. L. 104-188, § 1447(b), added par. (15).

Subsec. (f)(2)(E). Pub. L. 104-188, § 1444(b)(3), added subpar. (E).

Subsec. (g). Pub. L. 104-188, § 1448(a), added subsec. (g). 1992—Subsec. (c)(2)(B)(i). Pub. L. 102-318 substituted “402(e)(3)” for “402(a)(8)”.

1989—Subsec. (d)(1)(A)(iii). Pub. L. 101-239, § 7811(g)(4), substituted “, and” for period at end.

Subsec. (d)(2)(B)(i)(I). Pub. L. 101-239, § 7811(g)(5), inserted “and” at end.

Subsec. (e)(13). Pub. L. 101-239, § 7816(j), substituted “Special rule for churches” for “Exception for church plans” in heading and amended text generally. Prior to amendment, text read as follows: “The term ‘eligible deferred compensation plan’ shall not include a plan maintained by a church for church employees. For purposes of this paragraph, the term ‘church’ has the meaning given such term by section 3121(w)(3)(A), including a qualified church-controlled organization (as defined in section 3121(w)(3)(B)).”

1988—Subsec. (c)(2). Pub. L. 100-647, § 1011(e)(1), struck out “and paragraphs (2) and (3) of subsection (b)” after “of this subsection”.

Pub. L. 100-647, § 6071(c), substituted “rural cooperative plan” for “rural electric cooperative plan” in last sentence.

Subsec. (d)(1)(A). Pub. L. 100-647, § 1011(e)(2), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the plan provides that amounts payable under the plan will be made available to participants or other beneficiaries not earlier than when the participant is separated from service with the employer or is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary by regulation), and”.

Subsec. (d)(2)(B)(i)(I). Pub. L. 100-647, § 1011(e)(10), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: “at least 2/3 of the total amount payable with respect to the participant will be paid during the life expectancy of such participant (determined as of the commencement of the distribution), and”.

Subsec. (d)(10). Pub. L. 100-647, § 6064(a)(2), amended subsec. (d), as in effect on the day before the date of enactment of Pub. L. 99-514 (Oct. 22, 1986), by adding par. (10) reading as follows: “CERTAIN PLANS EXCEPTED.—Any bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan shall be treated as a plan not providing for the deferral of compensation.”

Subsec. (d)(11). Pub. L. 100-647, § 6064(b)(2), amended subsec. (d), as in effect on the day before the date of enactment of Pub. L. 99-514 (Oct. 22, 1986), by adding par. (11) reading as follows: “EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION OF NONEMPLOYEES.—

“(A) IN GENERAL.—This section shall not apply to nonelective deferred compensation attributable to services not performed as an employee.

“(B) NONELECTIVE DEFERRED COMPENSATION.—For purposes of subparagraph (a), deferred compensation shall be treated as nonelective only if all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship to the payor are covered under the same plan with no individual variations or options under the plan.”

Subsec. (e)(9). Pub. L. 100-647, § 1011(e)(9), inserted “after separation from service and” after “lump sum payable” in concluding provisions.

Subsec. (e)(11). Pub. L. 100-647, § 6064(a)(1), added par. (11).

Subsec. (e)(12). Pub. L. 100-647, § 6064(b)(1), added par. (12).

Subsec. (e)(13). Pub. L. 100-647, § 6064(c), added par. (13).

1986—Pub. L. 99-514 amended section generally, substituting “Deferred compensation plans of State and local governments and tax-exempt organizations” for “Deferred compensation plans with respect to service

for State and local governments” as section catchline and revising and restating as subssecs. (a) to (c), (e), and (f) provisions formerly contained in subssecs. (a) to (e) and adding provisions comprising subsec. (d).

1984—Subsec. (e)(2). Pub. L. 98-369, § 491(d)(33), struck out subpar. (C) which provided that par. (1) of this subsection not apply to a qualified bond purchase plan described in section 405(a), and redesignated subpars. (D) and (E) as (C) and (D), respectively.

1980—Subsec. (d)(9)(B). Pub. L. 96-222 in cl. (i) struck out “described in section 501(c)(12)” after “any organization” and substituted “electric service on a mutual or cooperative basis” for “electric service” and in cl. (ii) substituted “paragraph (4) or (6) of section 501(a)” for “section 501(c)(6)” and “at least 80 percent of the members” for “all the members”.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110-245, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 829(a)(4) of Pub. L. 109-280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109-280, set out as a note under section 402 of this title.

Amendment by section 845(b)(3) of Pub. L. 109-280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109-280, set out as a note under section 402 of this title.

Pub. L. 109-280, title XI, § 1104(d), Aug. 17, 2006, 120 Stat. 1060, as amended by Pub. L. 110-458, title I, § 111(a), Dec. 23, 2008, 122 Stat. 5113, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 623 and 1002 of Title 29, Labor] shall take effect on the date of the enactment of this Act [Aug. 17, 2006].

“(2) TAX AMENDMENTS.—The amendments made by subsections (a)(1) and (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 17, 2006].

“(3) ERISA AMENDMENTS.—The amendment made by subsection (c) [amending section 1002 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006].

“(4) CONSTRUCTION.—Nothing in the amendments made by this section [amending this section and sections 623 and 1002 of Title 29, Labor] shall alter or affect the construction of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.], or the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] as applied to any plan, arrangement, or conduct to which such amendments do not apply.”

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 411(x) of Pub. L. 107-147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 611(d)(3)(B), (e) of Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107-16, set out as a note under section 415 of this title.

Pub. L. 107-16, title VI, § 615(b), June 7, 2001, 115 Stat. 102, provided that: “The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 2001.”

Pub. L. 107-16, title VI, § 632(c)(2), June 7, 2001, 115 Stat. 115, provided that: “The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 2001.”

Amendment by section 641(a)(1)(A)–(C) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see

section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

Amendment by section 646(a)(3) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107-16, set out as a note under section 401 of this title.

Amendment by section 647(b) of Pub. L. 107-16 applicable to trustee-to-trustee transfers after Dec. 31, 2001, see section 647(c) of Pub. L. 107-16, set out as a note under section 403 of this title.

Amendment by section 648(b) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 648(c) of Pub. L. 107-16, set out as a note under section 411 of this title.

Pub. L. 107-16, title VI, § 649(c), June 7, 2001, 115 Stat. 128, provided that: “The amendments made by subsections (a) and (b) [amending this section] shall apply to distributions after December 31, 2001.”

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to plan years beginning after Aug. 5, 1997, see section 1071(c) of Pub. L. 105-34, set out as a note under section 411 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(3)(C) of Pub. L. 104-188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104-188, set out as a note under section 72 of this title.

Amendment by section 1444(b)(2), (3) of Pub. L. 104-188 applicable to years beginning after Dec. 31, 1994, see section 1444(e) of Pub. L. 104-188, set out as a note under section 415 of this title.

Section 1447(c) of Pub. L. 104-188 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1996.”

Section 1448(c) of Pub. L. 104-188 provided that: “(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to assets and income described in section 457(b)(6) of the Internal Revenue Code of 1986 held by a plan on and after the date of the enactment of this Act [Aug. 20, 1996].

“(2) TRANSITION RULE.—In the case of a plan in existence on the date of the enactment of this Act, a trust need not be established by reason of the amendments made by this section before January 1, 1999.”

Section 1458(c)(1) of Pub. L. 104-188 provided that: “The amendment made by subsection (a) [amending this section] shall apply to accruals of length of service awards after December 31, 1996.”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102-318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1011(e)(9) of Pub. L. 100-647 provided that the amendment made by that section is effective for years beginning after Dec. 31, 1988.

Amendment by section 1011(e)(1), (2), (10) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Section 6064(d) of Pub. L. 100-647 provided that: “(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1987.”

“(2) EXCEPTION FOR CERTAIN COLLECTIVELY BARGAINED PLANS.—

“(A) IN GENERAL.—Section 457 of the 1986 Code (as in effect before and after the amendments made by section 1107 of the Reform Act [Pub. L. 99-514]) shall not apply to nonelective deferred compensation provided under a plan in existence on December 31, 1987, and maintained pursuant to a collective bargaining agreement.

“(B) NONELECTIVE PLAN.—For purposes of this paragraph, a nonelective plan is a plan which covers a broad group of employees and under which the covered employees earn nonelective deferred compensation under a definite, fixed and uniform benefit formula.

“(C) TERMINATION.—This paragraph shall cease to apply to a plan as of the effective date of the first material modification of the plan agreed to after December 31, 1987.

“(3) TREATMENT OF CERTAIN NONELECTIVE DEFERRED COMPENSATION.—Section 457 of the 1986 Code shall not apply to amounts deferred under a nonelective deferred compensation plan maintained by an eligible employer described in section 457(e)(1)(A) of the 1986 Code (as in effect after the Reform Act [Pub. L. 99-514])—

“(A) if such amounts were deferred from periods before July 14, 1988, or

“(B) if—

“(i) such amounts are deferred from periods on or after such date pursuant to an agreement which—

“(I) was in writing on such date, and

“(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula, and

“(ii) the individual with respect to whom the deferral is made was covered under such agreement on such date.

Subparagraph (B) shall not apply to any taxable year ending after the date on which any modification of the amount or formula described in subparagraph (B)(i)(II) agreed to in writing before January 1, 1989, is effective. The preceding sentence shall not apply to a modification agreed to in writing before January 1, 1989, which does not increase any benefit of a participant. Amounts described in the first sentence of this paragraph shall be taken into account for purposes of applying section 457 of the 1986 Code to other amounts deferred under any eligible deferred compensation plan.

“(4) STUDY.—The Secretary of the Treasury or his delegate shall conduct a study on the tax treatment of deferred compensation paid by State and local governments and tax-exempt organizations (including deferred compensation paid to independent contractors). Not later than January 1, 1990, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under this paragraph together with such recommendations as he may deem advisable.”

[The due date for the report on the study referred to in section 6064(d)(4) of Pub. L. 100-647, set out above, extended to Jan. 1, 1992, by Pub. L. 101-508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388-559.]

Amendment by section 6071(c) of Pub. L. 100-647 applicable to taxable years beginning after Nov. 10, 1988, see section 6071(d) of Pub. L. 100-647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1107(c) of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1011(e)(6), (7), Nov. 10, 1988, 102 Stat. 3461, provided that:

“(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1988.

“(2) TRANSFERS AND CASH-OUTS.—Paragraphs (9) and (10) of section 457(e) of the Internal Revenue Code of 1986 (as amended by this section) shall apply to taxable years beginning after December 31, 1986.

“(3) APPLICATION TO TAX-EXEMPT ORGANIZATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the application of section 457 of the Internal Revenue Code of 1986 by reason of the amendments made by this section to deferred compensation plans established and maintained by organizations exempt from tax shall apply to taxable years beginning after December 31, 1986.

“(B) EXISTING DEFERRALS AND ARRANGEMENTS.—Section 457 of such Code shall not apply to amounts deferred under a plan described in subparagraph (A) which—

“(i) were deferred from taxable years beginning before January 1, 1987, or

“(ii) are deferred from taxable years beginning after December 31, 1986, pursuant to an agreement which—

“(I) was in writing on August 16, 1986,

“(II) on such date provides for a deferral for each taxable year covered by the agreement of a fixed amount or of an amount determined pursuant to a fixed formula.

Clause (i) shall not apply to any taxable year ending after the date on which any modification to the amount or formula described in subclause (II) is effective. Amounts described in the first sentence shall be taken into account for applying section 457 to other amounts deferred under any deferred compensation plan. This subparagraph shall only apply to individuals who were covered under the plan and agreement on August 16, 1986.

“(4) DEFERRED COMPENSATION PLANS FOR STATE JUDGES.—The amendments made by this section shall not apply to any qualified State judicial plan (as defined in section 131(c)(3)(B) of the Revenue Act of 1978 [set out as a note below] as amended by section 252 of the Tax Equity and Fiscal Responsibility Act of 1982).

“(5) SPECIAL RULE FOR CERTAIN DEFERRED COMPENSATION PLANS.—The amendments made by this section shall not apply—

“(A) to employees on August 16, 1986, of a nonprofit corporation organized under the laws of the State of Alabama maintaining a deferred compensation plan with respect to which the Internal Revenue Service issued a ruling dated March 17, 1976, that the plan would not affect the tax-exempt status of the corporation, or

“(B) to to [sic] individuals eligible to participate on August 16, 1986, in a deferred compensation plan with respect to which a letter dated November 6, 1975, submitted the original plan to the Internal Revenue Service, an amendment was submitted on November 19, 1975, and the Internal Revenue Service responded with a letter dated December 24, 1975, but only with respect to deferrals under such plan.”

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE

Section 131(c)(1) of Pub. L. 95-600 provided that: “The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978.”

ELIGIBILITY FOR PARTICIPATION IN RETIREMENT PLANS

Pub. L. 109-280, title VIII, §825, Aug. 17, 2006, 120 Stat. 999, provided that: “An individual shall not be precluded from participating in an eligible deferred com-

pensation plan by reason of having received a distribution under section 457(e)(9) of the Internal Revenue Code of 1986, as in effect prior to the enactment of the Small Business Job Protection Act of 1996 [Pub. L. 104-188, Aug. 20, 1996].”

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1100-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of this title.

TRANSITIONAL RULES

Section 131(c)(2) of Pub. L. 95-600, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) IN GENERAL.—In the case of any taxable year beginning after December 31, 1978, and before January 1, 1982—

“(i) any amount of compensation deferred under a plan of a State providing for a deferral of compensation (other than a plan described in section 457(e)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]), and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary, but

“(ii) the maximum amount of the compensation of any one individual which may be excluded from gross income by reason of clause (i) and by reason of section 457(a) of such Code during any such taxable year shall not exceed the lesser of—

“(I) \$7,500, or

“(II) 33½ percent of the participant’s includible compensation.

“(B) APPLICATION OF CATCH-UP PROVISIONS IN CERTAIN CASES.—If, in the case of any participant for any taxable year, all of the plans are eligible State deferred compensation plans, then clause (ii) of subparagraph (A) of this paragraph shall be applied with the modification provided by paragraph (3) of section 457(b) of such Code.

“(C) APPLICATIONS OF CERTAIN COORDINATION PROVISIONS.—In applying clause (ii) of subparagraph (A) of this paragraph and section 403(b)(2)(A)(ii) of such Code, rules similar to the rules of section 457(c)(2) of such Code shall apply.

“(D) MEANING OF TERMS.—Except as otherwise provided in this paragraph, terms used in this paragraph shall have the same meaning as when used in section 457 of such Code.”

DEFERRED COMPENSATION PLANS FOR STATE JUDGES

Section 131(c)(3) of Pub. L. 95-600, as added by Pub. L. 97-248, title II, § 252, Sept. 3, 1982, 96 Stat. 532, and

amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) IN GENERAL.—The amendments made by this section [enacting this section and provisions set out as notes under this section] shall not apply to any qualified State judicial plan.

“(B) QUALIFIED STATE JUDICIAL PLAN.—For purposes of subparagraph (A), the term ‘qualified State judicial plan’ means any retirement plan of a State for the exclusive benefit of judges or their beneficiaries if—

“(i) such plan has been continuously in existence since December 31, 1978,

“(ii) under such plan, all judges eligible to benefit under the plan—

“(I) are required to participate, and

“(II) are required to contribute the same fixed percentage of their basic or regular rate of compensation as judge,

“(iii) under such plan, no judge has an option as to contributions or benefits the exercise of which would affect the amount of includible compensation,

“(iv) the retirement payments of a judge under the plan are a percentage of the compensation of judges of that State holding similar positions, and

“(v) the plan during any year does not pay benefits with respect to any participant which exceed the limitations of section 415(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954].”

§ 457A. Nonqualified deferred compensation from certain tax indifferent parties

(a) In general

Any compensation which is deferred under a nonqualified deferred compensation plan of a nonqualified entity shall be includible in gross income when there is no substantial risk of forfeiture of the rights to such compensation.

(b) Nonqualified entity

For purposes of this section, the term “nonqualified entity” means—

(1) any foreign corporation unless substantially all of its income is—

(A) effectively connected with the conduct of a trade or business in the United States, or

(B) subject to a comprehensive foreign income tax, and

(2) any partnership unless substantially all of its income is allocated to persons other than—

(A) foreign persons with respect to whom such income is not subject to a comprehensive foreign income tax, and

(B) organizations which are exempt from tax under this title.

(c) Determinability of amounts of compensation

(1) In general

If the amount of any compensation is not determinable at the time that such compensation is otherwise includible in gross income under subsection (a)—

(A) such amount shall be so includible in gross income when determinable, and

(B) the tax imposed under this chapter for the taxable year in which such compensation is includible in gross income shall be increased by the sum of—

(i) the amount of interest determined under paragraph (2), and

(ii) an amount equal to 20 percent of the amount of such compensation.