

which the plan is maintained terminates (determined without regard to any extension thereof after Aug. 20, 1996), or (2) Jan. 1, 1999, but such amendment not applicable to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendment applies, see section 1442(c) of Pub. L. 104-188, set out as a note under section 411 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to plan years and limitation years beginning after Dec. 31, 1994, except that employer may elect to treat such amendment as effective on or after Dec. 8, 1994, with provisions relating to reduction of accrued benefits, exception, and timing of plan amendment, see section 767(d) of Pub. L. 103-465, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7861(a)(1), (5)(B), (6)(B) and 7862(d)(4), (5), (10) of Pub. L. 101-239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7863 of Pub. L. 101-239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1), (b)(1), (2) of Pub. L. 101-239 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 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

Amendment by section 7894(c)(3) of Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, to which such amendment relates, see section 7894(i) of Pub. L. 101-239, set out as a note under section 1002 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1113(e)(1), (2), (4)(A) of Pub. L. 99-514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99-514, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 1139(c)(1) of Pub. L. 99-514 applicable to distributions in plan years beginning after Dec. 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after Dec. 31, 1984, and before Jan. 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984, Pub. L. 98-397, with additional provisions relating to reductions in accrued benefits, see section 1139(d) of Pub. L. 99-514, set out as a note under section 411 of Title 26.

Amendment by section 1898(a)(1)(B) of Pub. L. 99-514 applicable to contributions made for plan years beginning after Oct. 22, 1986, except that in the case of a plan described in section 302(b) of Pub. L. 98-397, set out as a note under section 1001 of this title, such amendments shall not apply to any plan year to which amendments made by Pub. L. 98-397 do not apply by reason of such section 302(b), see section 1898(a)(1)(C) of Pub. L. 99-514, set out as a note under section 411 of Title 26.

Amendment by section 1898(a)(4)(B)(i), (d)(1)(B), (2)(B), of Pub. L. 99-514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98-397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99-514, set out as a note under section 401 of Title 26.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise pro-

vided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

#### REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1113 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of Title 26, Internal Revenue Code.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

#### APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§101-108) and B (§§111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401-1465] of title I of Pub. L. 104-188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104-188, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

### § 1054. Benefit accrual requirements

#### (a) Satisfaction of requirements by pension plans

Each pension plan shall satisfy the requirements of subsection (b)(3) of this section, and—

(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1) of this section; and

(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2) of this section.

#### (b) Enumeration of plan requirements

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

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

(ii) the number of years (not in excess of 33 $\frac{1}{3}$ ) of his participation in the plan.

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

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133 $\frac{1}{3}$  percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

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

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

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

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

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

ing constant as of the current year for all years after such current year.

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

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

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

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "year of service" has the meaning provided by section 1052(a)(3)(A) of this title.

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

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

(ii) satisfies the requirements of paragraphs (2) and (3) of section 1081(b) of this title (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 1081(b) of this title were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which benefits under the plan—

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

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

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

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

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

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

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

(iv) Clause (i) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

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

(vi) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 shall apply with respect to the requirements of this subparagraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(1)(H).

(2)(A) A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

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

(C) Any regulations prescribed by the Secretary of the Treasury pursuant to subparagraphs (B) and (C) of section 411(b)(2) of title 26 shall apply with respect to the requirements of

this paragraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(2).

(3) A plan satisfies the requirements of this paragraph if—

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

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

(4)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 1052(b) of this title, determined without regard to section 1052(b)(5) of this title) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

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

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

(D) In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary.

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

(5) SPECIAL RULES RELATING TO AGE.—

(A) COMPARISON TO SIMILARLY SITUATED YOUNGER INDIVIDUAL.—

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

(ii) SIMILARLY SITUATED.—For purposes of this subparagraph, a participant is similarly

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

(iii) DISREGARD OF SUBSIDIZED EARLY RETIREMENT BENEFITS.—In determining the accrued benefit as of any date for purposes of this subparagraph, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

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

(B) APPLICABLE DEFINED BENEFIT PLANS.—

(i) INTEREST CREDITS.—

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

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

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

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

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

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

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

(iv) SPECIAL RULES FOR EARLY RETIREMENT SUBSIDIES.—For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount<sup>1</sup> with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) APPLICABLE PLAN AMENDMENT.—For purposes of this subparagraph—

(I) IN GENERAL.—The term “applicable plan amendment” means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

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

(III) MULTIPLE AMENDMENTS.—The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) APPLICABLE DEFINED BENEFIT PLAN.—For purposes of this subparagraph, the term “applicable defined benefit plan” has the meaning given such term by section 1053(f)(3) of this title.

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

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

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified

<sup>1</sup> So in original. Probably should be “similar account”.

under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) CERTAIN OFFSETS PERMITTED.—A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are otherwise allowable in applying the requirements of section 401(a) of title 26.

(D) PERMITTED DISPARITIES IN PLAN CONTRIBUTIONS OR BENEFITS.—A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(i) of title 26 are met.

(E) INDEXING PERMITTED.—

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

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

(iii) INDEXING.—For purposes of this subparagraph, the term “indexing” means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) EARLY RETIREMENT BENEFIT OR RETIREMENT-TYPE SUBSIDY.—For purposes of this paragraph, the terms “early retirement benefit” and “retirement-type subsidy” have the meaning given such terms in subsection (g)(2)(A).

(G) BENEFIT ACCRUED TO DATE.—For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

**(c) Employee’s accrued benefits derived from employer and employee contributions**

(1) For purposes of this section and section 1053 of this title an employee’s accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

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

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

(ii) if a separate account is not maintained with respect to an employee’s contributions

under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee’s contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee’s accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 1055(g)(3) of this title (as of the determination date).

(C) For purposes of this subsection, the term “accumulated contributions” means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section 1053(a)(2) of this title does not apply (by reason of the applicable effective date), and

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

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year for the period beginning with the 1st plan year to which subsection (a)(2) of this section applies by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 1055(g)(3) of this title (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

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

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

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

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

**(d) Employee service which may be disregarded in determining employee's accrued benefits under plan**

Notwithstanding section 1053(b)(1) of this title, for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 1053(e)(1) of this title) permitted under regulations prescribed by the Secretary of the Treasury, or

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

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

**(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service**

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

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

(2) resumes employment covered under the plan, and

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

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

**(f) Employer treated as maintaining a plan**

For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

**(g) Decrease of accrued benefits through amendment of plan**

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(d)(2) or 1441 of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

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

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

(3) For purposes of this subsection, any—

(A) tax credit employee stock ownership plan (as defined in section 409(a) of title 26, or

(B) employee stock ownership plan (as defined in section 4975(e)(7) of title 26),

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

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

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

(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

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

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

(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

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

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

**(h) Notice of significant reduction in benefit accruals**

(1) An applicable pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless the plan administrator provides the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals) and to each employer who has an obligation to contribute to the plan.

(2) The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification

of the amendment occurs before the amendment is adopted.

(6)(A) In the case of any egregious failure to meet any requirement of this subsection with respect to any plan amendment, the provisions of the applicable pension plan shall be applied as if such plan amendment entitled all applicable individuals to the greater of—

(i) the benefits to which they would have been entitled without regard to such amendment, or

(ii) the benefits under the plan with regard to such amendment.

(B) For purposes of subparagraph (A), there is an egregious failure to meet the requirements of this subsection if such failure is within the control of the plan sponsor and is—

(i) an intentional failure (including any failure to promptly provide the required notice or information after the plan administrator discovers an unintentional failure to meet the requirements of this subsection),

(ii) a failure to provide most of the individuals with most of the information they are entitled to receive under this subsection, or

(iii) a failure which is determined to be egregious under regulations prescribed by the Secretary of the Treasury.

(7) The Secretary of the Treasury may by regulations allow any notice under this subsection to be provided by using new technologies.

(8) For purposes of this subsection—

(A) The term “applicable individual” means, with respect to any plan amendment—

(i) each participant in the plan; and

(ii) any beneficiary who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(B) The term “applicable pension plan” means—

(i) any defined benefit plan; or

(ii) an individual account plan which is subject to the funding standards of section 412 of title 26.

(9) For purposes of this subsection, a plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A) of this section) shall be treated as having the effect of reducing the rate of future benefit accrual.

**(i) Prohibition on benefit increases where plan sponsor is in bankruptcy**

(1) In the case of a plan described in paragraph (3) which is maintained by an employer that is a debtor in a case under title 11 or similar Federal or State law, no amendment of the plan which increases the liabilities of the plan by reason of—

(A) any increase in benefits,

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

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

with respect to employees of the debtor, shall be effective prior to the effective date of such employer's plan of reorganization.

(2) Paragraph (1) shall not apply to any plan amendment that—

(A) the Secretary of the Treasury determines to be reasonable and that provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(B) only repeals an amendment described in section 1082(d)(2) of this title,

(C) is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26, or

(D) was adopted prior to, or pursuant to a collective bargaining agreement entered into prior to, the date on which the employer became a debtor in a case under title 11 or similar Federal or State law.

(3) This subsection shall apply only to plans (other than multiemployer plans) covered under section 1321 of this title for which the funding target attainment percentage (as defined in section 1083(d)(2) of this title) is less than 100 percent after taking into account the effect of the amendment.

(4) For purposes of this subsection, the term "employer" has the meaning set forth in section 1082(b)(1) of this title, without regard to section 1082(b)(2) of this title.

**(j) Diversification requirements for certain individual account plans**

**(1) In general**

An applicable individual account plan shall meet the diversification requirements of paragraphs (2), (3), and (4).

**(2) Employee contributions and elective deferrals invested in employer securities**

In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

**(3) Employer contributions invested in employer securities**

In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual who—

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

(B) is a beneficiary of a participant described in subparagraph (A) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

**(4) Investment options**

**(A) In general**

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

**(B) Treatment of certain restrictions and conditions**

**(i) Time for making investment choices**

A plan shall not be treated as failing to meet the requirements of this paragraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

**(ii) Certain restrictions and conditions not allowed**

Except as provided in regulations, a plan shall not meet the requirements of this paragraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan. This subparagraph shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

**(5) Applicable individual account plan**

For purposes of this subsection—

**(A) In general**

The term "applicable individual account plan" means any individual account plan (as defined in section 1002(34) of this title) which holds any publicly traded employer securities.

**(B) Exception for certain ESOPS**

Such term does not include an employee stock ownership plan if—

(i) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m) of section 401 of title 26, and

(ii) such plan is a separate plan (for purposes of section 414(l) of title 26) with respect to any other defined benefit plan or individual account plan maintained by the same employer or employers.

**(C) Exception for one participant plans**

Such term shall not include a one-participant retirement plan (as defined in section 1021(i)(8)(B) of this title).

**(D) Certain plans treated as holding publicly traded employer securities**

**(i) In general**

Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if



any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

**(ii) Exception for certain controlled groups with publicly traded securities**

Clause (i) shall not apply to a plan if—

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

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

**(iii) Definitions**

For purposes of this subparagraph, the term—

(I) “controlled group of corporations” has the meaning given such term by section 1563(a) of title 26, except that “50 percent” shall be substituted for “80 percent” each place it appears,

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

(III) “parent corporation” has the meaning given such term by section 424(e) of title 26.

**(6) Other definitions**

For purposes of this paragraph—

**(A) Applicable individual**

The term “applicable individual” means—

(i) any participant in the plan, and

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

**(B) Elective deferral**

The term “elective deferral” means an employer contribution described in section 402(g)(3)(A) of title 26.

**(C) Employer security**

The term “employer security” has the meaning given such term by section 1107(d)(1) of this title.

**(D) Employee stock ownership plan**

The term “employee stock ownership plan” has the meaning given such term by section 4975(e)(7) of title 26.

**(E) Publicly traded employer securities**

The term “publicly traded employer securities” means employer securities which are readily tradable on an established securities market.

**(F) Year of service**

The term “year of service” has the meaning given such term by section 1053(b)(2) of this title.

**(7) Transition rule for securities attributable to employer contributions**

**(A) Rules phased in over 3 years**

**(i) In general**

In the case of the portion of an account to which paragraph (3) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, paragraph (3) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

**(ii) Exception for certain participants aged 55 or over**

Clause (i) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

**(B) Applicable percentage**

For purposes of subparagraph (A), the applicable percentage shall be determined as follows:

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

**(k) Cross reference**

**For special rules relating to plan provisions adopted to preclude discrimination, see section 1053(c)(2) of this title.**

(Pub. L. 93-406, title I, §204, Sept. 2, 1974, 88 Stat. 858; Pub. L. 98-397, title I, §§102(e)(3), (f), 105(b), title III, §301(a)(2), Aug. 23, 1984, 98 Stat. 1429, 1436, 1451; Pub. L. 99-272, title XI, §11006(a), Apr. 7, 1986, 100 Stat. 243; Pub. L. 99-509, title IX, §9202(a), Oct. 21, 1986, 100 Stat. 1975; Pub. L. 99-514, title XI, §1113(e)(4)(B), title XVIII, §§1879(u)(1), 1898(a)(4)(B)(ii), (f)(1)(B), (2), Oct. 22, 1986, 100 Stat. 2448, 2913, 2944, 2956; Pub. L. 100-203, title IX, §9346(a), Dec. 22, 1987, 101 Stat. 1330-374; Pub. L. 101-239, title VII, §§7862(b)(1)(A), (2), 7871(a)(1), (3), 7881(m)(2)(A)-(C), 7891(a)(1), 7894(c)(4)-(6), Dec. 19, 1989, 103 Stat. 2432, 2434, 2435, 2444, 2445, 2449; Pub. L. 103-465, title VII, §766(a), Dec. 8, 1994, 108 Stat. 5036; Pub. L. 105-34, title X, §1071(b)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107-16, title VI, §§645(a)(2), (b)(2), 659(b), June 7, 2001, 115 Stat. 124, 125, 139; Pub. L. 107-147, title IV, §411(u)(2), Mar. 9, 2002, 116 Stat. 52; Pub. L. 109-280, title I, §108(a)(5)-(8), formerly §107(a)(5)-(8), title V, §502(c)(1), title VII, §701(a)(1), title IX, §901(b)(1), Aug. 17, 2006, 120 Stat. 819, 941, 981, 1029, renumbered Pub. L. 111-192, title II, §202(a), June 25, 2010, 124 Stat. 1297; Pub. L. 110-458, title I, §107(a)(2), (3), Dec. 23, 2008, 122 Stat. 5107.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(G), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

## AMENDMENTS

2008—Subsec. (b)(5)(A)(iii). Pub. L. 110-458, § 107(a)(2)(A), substituted “subparagraph” for “clause”.

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

Subsec. (b)(5)(C). Pub. L. 110-458, § 107(a)(2)(B), inserted “otherwise” before “allowable”.

2006—Subsec. (b)(5). Pub. L. 109-280, § 701(a)(1), added par. (5).

Subsec. (g)(1). Pub. L. 109-280, § 108(a)(5), formerly § 107(a)(5), as renumbered by Pub. L. 111-192, substituted “1082(d)(2)” for “1082(c)(8)”.

Subsec. (h)(1). Pub. L. 109-280, § 502(c)(1), inserted before period at end “and to each employer who has an obligation to contribute to the plan”.

Subsec. (i)(2)(B). Pub. L. 109-280, § 108(a)(6), formerly § 107(a)(6), as renumbered by Pub. L. 111-192, substituted “1082(d)(2)” for “1082(c)(8)”.

Subsec. (i)(3). Pub. L. 109-280, § 108(a)(7), formerly § 107(a)(7), as renumbered by Pub. L. 111-192, substituted “funding target attainment percentage (as defined in section 1083(d)(2) of this title)” for “funded current liability percentage (within the meaning of section 1082(d)(8) of this title)”.

Subsec. (i)(4). Pub. L. 109-280, § 108(a)(8), formerly § 107(a)(8), as renumbered by Pub. L. 111-192, substituted “section 1082(b)(1) of this title, without regard to section 1082(b)(2) of this title” for “section 1082(c)(11)(A) of this title, without regard to section 1082(c)(11)(B) of this title”.

Subsecs. (j), (k). Pub. L. 109-280, § 901(b)(1), added subsec. (j) and redesignated former subsec. (j) as (k).

2002—Subsec. (h)(9). Pub. L. 107-147 struck out “significantly” before “reduces” and before “reducing”.

2001—Subsec. (g)(2). Pub. L. 107-16, § 645(b)(2), inserted after second sentence “The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner.”

Subsec. (g)(4), (5). Pub. L. 107-16, § 645(a)(2), added pars. (4) and (5).

Subsec. (h). Pub. L. 107-16, § 659(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

“(1) A plan described in paragraph (2) may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to—

“(A) each participant in the plan,

“(B) each beneficiary who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title), and

“(C) each employee organization representing participants in the plan,

except that such notice shall instead be provided to a person designated, in writing, to receive such notice on behalf of any person referred to in subparagraph (A), (B), or (C).

“(2) A plan is described in this paragraph if such plan is—

“(A) a defined benefit plan, or

“(B) an individual account plan which is subject to the funding standards of section 1082 of this title.”

1997—Subsec. (d)(1). Pub. L. 105-34 substituted “the dollar limit under section 1053(e)(1) of this title” for “\$3,500”.

1994—Subsecs. (i), (j). Pub. L. 103-465 added subsec. (i) and redesignated former subsec. (i) as (j).

1989—Subsec. (b)(1)(A). Pub. L. 101-239, § 7894(c)(4), substituted “subparagraph” for “superparagraph” in last sentence.

Subsec. (b)(1)(E). Pub. L. 101-239, § 7894(c)(5), substituted “term ‘year of service’” for “term ‘years of service’”.

Subsec. (b)(2)(B). Pub. L. 101-239, § 7871(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “Subparagraph (A) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.”

Subsec. (b)(2)(C). Pub. L. 101-239, § 7871(a)(3), substituted “subparagraphs (B) and (C)” for “subparagraphs (C) and (D)”.

Pub. L. 101-239, § 7871(a)(1), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (b)(2)(D). Pub. L. 101-239, § 7871(a)(1), redesignated subpar. (D) as (C).

Subsec. (c)(2)(B). Pub. L. 101-239, § 7881(m)(2)(B), inserted heading and amended text generally. Prior to amendment, text read as follows:

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

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

Subsec. (c)(2)(C)(iii). Pub. L. 101-239, § 7881(m)(2)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year) from the beginning of the first plan year to which section 1053(a)(2) of this title applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.”

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

“(i) the employee’s accrued benefit under the plan,

or

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

Subsec. (d). Pub. L. 101-239, § 7894(c)(6), removed the indentation of the term “Paragraph” where first appearing in concluding provisions.

Subsec. (g)(3)(A). Pub. L. 101-239, § 7891(a)(1), substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (h). Pub. L. 101-239, § 7862(b)(1)(A), made technical correction to directory language of Pub. L. 99-514, § 1879(u)(1), see 1986 Amendment note below.

Subsec. (h)(2). Pub. L. 101-239, § 7862(b)(2), adjusted left-hand margin of introductory provisions to full measure.

1987—Subsec. (c)(2)(C)(iii). Pub. L. 100-203, §9346(a)(1), substituted “120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year)” for “5 percent per annum”.

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

1986—Subsec. (a). Pub. L. 99-509, §9202(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Each pension plan shall satisfy the requirements of subsection (b)(2) of this section, and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1) of this section.”

Subsec. (b)(1)(H). Pub. L. 99-509, §9202(a)(2), added subpar. (H).

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

Subsec. (e). Pub. L. 99-514, §1898(a)(4)(B)(ii), inserted last sentence and struck out former last sentence which read as follows: “In the case of a defined contribution plan, the plan provision required under this subsection may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal”.

Subsec. (g)(1). Pub. L. 99-514, §1898(f)(2), inserted reference to section 1441.

Subsec. (g)(3). Pub. L. 99-514, §1898(f)(1)(B), added par. (3).

Subsec. (h). Pub. L. 99-514, §1879(u)(1), as amended by Pub. L. 101-239, §7862(b)(1)(A), designated existing provisions as par. (1), substituted “plan described in paragraph (2)” for “single-employer plan”, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, substituted “subparagraph (A), (B), or (C)” for “paragraph (1), (2), or (3)” in concluding provisions, and added par. (2).

Pub. L. 99-272 added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99-514, §1113(e)(4)(B), amended subsec. (i) generally, striking out reference to class year plans under section 1053(c)(3) of this title.

Pub. L. 99-272 redesignated former subsec. (h) as (i).

1984—Subsec. (b)(3)(A). Pub. L. 98-397, §102(e)(3), inserted “, determined without regard to section 1052(b)(5) of this title” after “section 1052(b) of this title”.

Subsec. (d)(1). Pub. L. 98-397, §105(b), substituted “\$3,500” for “\$1,750”.

Subsec. (e). Pub. L. 98-397, §102(f), substituted “5 consecutive 1-year breaks in service” for “any 1-year break in service”.

Subsec. (g). Pub. L. 98-397, §301(a)(2), designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 108(a)(5) to (8) of Pub. L. 109-280 applicable to plan years beginning after 2007, see section 108(e) of Pub. L. 109-280, set out as a note under section 1021 of this title.

Amendment by section 502(c)(1) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, see

section 502(d) of Pub. L. 109-280, set out as a note under section 4980F of Title 26, Internal Revenue Code.

Amendment by section 701(a)(1) of Pub. L. 109-280 applicable to periods beginning on or after June 29, 2005, with provisions relating to vesting and interest credit requirements for plans in existence on June 29, 2005, special rule for collectively bargained plans, and provisions relating to conversions of plan amendments adopted after, and taking effect after, June 29, 2005, see section 701(e) of Pub. L. 109-280, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 901(b)(1) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109-280, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 645(a)(2) of Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see section 645(a)(3) of Pub. L. 107-16, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 659(b) of Pub. L. 107-16 applicable to plan amendments taking effect on or after June 7, 2001, with transition provisions and special notice rule, see section 659(c) of Pub. L. 107-16, set out as an Effective Date note under section 4980F of Title 26, Internal Revenue Code.

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to plan amendments adopted on or after Dec. 8, 1994, see section 766(d) of Pub. L. 103-465, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(b)(1)(A), (2) of Pub. L. 101-239 effective as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 7863 of Pub. L. 101-239, set out as a note under section 106 of Title 26, Internal Revenue Code.

Amendment by section 7871(a)(1), (3) of Pub. L. 101-239 effective as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509, see section 7871(a)(4) of Pub. L. 101-239, set out as a note under section 411 of Title 26.

Amendment by section 7881(m)(2)(A)–(C) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26.

Amendment by section 7891(a)(1) of Pub. L. 101-239 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 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

Amendment by section 7894(c)(4)–(6) of Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, to which such amendment relates, see section 7894(i) of Pub. L. 101-239, set out as a note under section 1002 of this title.

## EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9346(c), Dec. 22, 1987, 101 Stat. 1330-374, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 411 of Title 26, Internal Revenue Code] shall apply to plan years beginning after December 31, 1987.

“(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989.—If any amendment made by this section requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

“(A) during the period after such amendments made by this section take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments or in accordance with an amendment prescribed by the Secretary of the Treasury and adopted by the plan, and

“(B) such plan amendment applies retroactively to the period after such amendments take effect and such first plan year.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.”

## EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1113(e)(4)(B) of Pub. L. 99-514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99-514, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

Pub. L. 99-514, title XVIII, §1879(u)(5), formerly §1879(u)(4), Oct. 22, 1986, 100 Stat. 2913, as redesignated and amended by Pub. L. 101-239, title VII, §7862(b)(1)(A), (B), Dec. 19, 1989, 103 Stat. 2432, provided that:

“(A) GENERAL RULE.—Except as provided in subparagraph (B), the preceding provisions of this subsection [amending this section and sections 1002 and 1349 of this title] shall be effective as if such provisions were included in the enactment of the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99-272, title XI].

“(B) SPECIAL RULE.—Subparagraph (B) of section 204(h)(2) of the Employee Retirement Income Security Act of 1974 (as amended by paragraph (1)) [29 U.S.C. 1054(h)(2)(B)] shall apply only with respect to plan amendments adopted on or after the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 1898(a)(4)(B)(ii), (f)(1)(B), (2) of Pub. L. 99-514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98-397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99-514, set out as a note under section 401 of this title.

Amendment by Pub. L. 99-509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only to employees who have 1 hour of service in any plan year to which amendment applies, with special rule for collectively bargained plans, see section 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of this title.

Pub. L. 99-272, title XI, §11006(b), Apr. 7, 1986, 100 Stat. 243, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to plan amendments adopted on or after January 1, 1986, except that, in the case of plan amendments adopted on or after January 1, 1986, and on or before the date of the enactment of this Act [Apr. 7, 1986], the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974 [subsec. (h) of this section] (as added by this section) shall be treated as met if the written notice required under such section

204(h) is provided before 60 days after the date of the enactment of this Act.”

## EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 102(e)(3), (f), and 105(b) of Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

Amendment by section 301(a)(2) of Pub. L. 98-397 not applicable to the termination of a certain defined benefit plan, see section 303(f) of Pub. L. 98-397.

## REGULATIONS

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission each to issue before Feb. 1, 1988, final regulations to carry out amendments made by Pub. L. 99-509, see section 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

## APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§101-108) and B (§§111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

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

Pub. L. 101-239, title VII, §7881(m)(3), Dec. 19, 1989, 103 Stat. 2444, provided that: “If—

“(A) during the period beginning December 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments made by section 9346 of the Pension Protection Act [Pub. L. 100-203, amending this section and section 411 of Title 26, Internal Revenue Code], and

“(B) such plan is amended to reflect the amendments made by this subsection [amending this section, section 1002 of this title, and section 411 of Title 26],

any plan amendment described in subparagraph (B) shall not be treated as reducing accrued benefits for purposes of section 411(d)(6) of the Internal Revenue Code of 1986 [section 411(d)(6) of Title 26] or section 204(g) of ERISA [subsec. (g) of this section].”

## PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101-1147 and 1171-1177] or title XVIII [§§1800-1899A] of Pub. L. 99-514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99-514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

For provisions directing that if any amendments made by Pub. L. 99-509 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

**§ 1055. Requirement of joint and survivor annuity and preretirement survivor annuity**

**(a) Required contents for applicable plans**

Each pension plan to which this section applies shall provide that—

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

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

**(b) Applicable plans**

(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 1082 of this title, and

(C) any participant under any other individual account plan unless—

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

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

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

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

(2)(A) In the case of—

(i) a tax credit employee stock ownership plan (as defined in section 409(a) of title 26), or

(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of title 26),

subsection (a) of this section shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of title 26 apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause<sup>1</sup> (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(4)<sup>2</sup> This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in section 404(c) of title 26 (or a continuation thereof) in which participation is substantially limited

to individuals who, before January 1, 1976, ceased employment covered by the plan.

(4)<sup>2</sup> A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

**(c) Plans meeting requirements of section**

(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3)(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

<sup>1</sup> So in original. Probably should be "clauses".

<sup>2</sup> So in original. There are two pars. designated (4) and no par. (3).