

vision 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.

PART 2—PARTICIPATION AND VESTING

§ 1051. Coverage

This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title) other than—

- (1) an employee welfare benefit plan;
- (2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;
- (3)(A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan, or
 - (B) a trust described in section 501(c)(18) of title 26;
- (4) a plan which is established and maintained by a labor organization described in section 501(c)(5) of title 26 and which does not at any time after September 2, 1974, provide for employer contributions;
- (5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of title 26;
- (6) an individual retirement account or annuity described in section 408 of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);
- (7) an excess benefit plan; or
- (8) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

(Pub. L. 93-406, title I, § 201, Sept. 2, 1974, 88 Stat. 852; Pub. L. 96-364, title IV, § 411(a), Sept. 26, 1980, 94 Stat. 1308; Pub. L. 101-239, title VII, §§ 7891(a)(1), 7894(c)(1)(A), (11)(A), Dec. 19, 1989, 103 Stat. 2445, 2448, 2449.)

REFERENCES IN TEXT

Section 409 of title 26, referred to in par. (6), means section 409 of Title 26, Internal Revenue Code, prior to its repeal by Pub. L. 98-369, div. A, title IV, § 491(b), July 18, 1984, 98 Stat. 848, applicable to obligations issued after Dec. 31, 1983.

This chapter, referred to in par. (8), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

1989—Pars. (3)(A), (4), (5). Pub. L. 101-239, § 7891(a)(1), substituted "Internal Revenue Code of 1986" for "Inter-

nal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Par. (6). Pub. L. 101-239, § 7891(a)(1), substituted "section 408 of the Internal Revenue Code of 1986" for "section 408 of the Internal Revenue Code of 1954", which for purposes of codification was translated as "section 408 of title 26" thus requiring no change in text.

Pub. L. 101-239, § 7894(c)(11)(A), substituted "section 409 of title 26 (as effective for obligations issued before January 1, 1984)" for "section 409 of title 26".

Pub. L. 101-239, § 7894(c)(1)(A)(i), struck out "or" after semicolon at end.

Par. (7). Pub. L. 101-239, § 7894(c)(1)(A)(ii), substituted "plan; or" for "plan."

Par. (8). Pub. L. 101-239, § 7894(c)(1)(A)(iii), substituted "any plan" for "Any plan".

1980—Par. (8). Pub. L. 96-364 added par. (8).

EFFECTIVE DATE OF 1989 AMENDMENT

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.

Pub. L. 101-239, title VII, § 7894(c)(1)(B), Dec. 19, 1989, 103 Stat. 2449, provided that: "The amendments made by subparagraph (A) [amending this section] shall take effect as if included in section 411 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96-364]."

Pub. L. 101-239, title VII, § 7894(c)(11)(B), Dec. 19, 1989, 103 Stat. 2449, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in section 491(b) of Public Law 98-369."

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.

§ 1052. Minimum participation standards

(a)(1)(A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

- (i) the date on which the employee attains the age of 21; or
- (ii) the date on which he completes 1 year of service.

(B)(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "2 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational organization (as defined in section 170(b)(1)(A)(ii) of title 26) by an employer which is exempt from tax under section 501(a) of title 26, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "26" for "21". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age.

(3)(A) For purposes of this section, the term “year of service” means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee’s employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

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

(C) For purposes of this section, the term “hour of service” means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements,

unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of subsection (a)(1) of this section.

(2) In the case of any employee who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title) under a plan to which the service requirements of clause (i) of subsection (a)(1)(B) of this section apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee’s period of service for purposes of subsection (a)(1) of this section in the case of any participant who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3) of this section) after his return.

(4)(A) For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year

breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(i) 5, or

(ii) the aggregate number of years of service before such period.

(B) If any years of service are not required to be taken into account by reason of a period of breaks in service to which subparagraph (A) applies, such years of service shall not be taken into account in applying subparagraph (A) to a subsequent period of breaks in service.

(C) For purposes of subparagraph (A), the term “nonvested participant” means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(5)(A) In the case of each individual who is absent from work for any period—

(i) by reason of the pregnancy of the individual,

(ii) by reason of the birth of a child of the individual,

(iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(iv) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this subsection whether a 1-year break in service (as defined in section 1053(b)(3)(A) of this title) has occurred, the hours described in subparagraph (B).

(B) The hours described in this subparagraph are—

(i) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(ii) in any case in which the plan is unable to determine the hours described in clause (i), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this subparagraph by reason of any such pregnancy or placement shall not exceed 501 hours.

(C) The hours described in subparagraph (B) shall be treated as hours of service as provided in this paragraph—

(i) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in subparagraph (A); or

(ii) in any other case, in the immediately following year.

(D) For purposes of this paragraph, the term “year” means the period used in computations pursuant to subsection (a)(3)(A) of this section.

(E) A plan may provide that no credit will be given pursuant to this paragraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(i) that the absence from work is for reasons referred to in subparagraph (A), and

(ii) the number of days for which there was such an absence.

(Pub. L. 93-406, title I, § 202, Sept. 2, 1974, 88 Stat. 853; Pub. L. 98-397, title I, § 102(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1426, 1427; Pub. L. 99-509, title IX, § 9203(a)(1), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99-514, title XI, § 1113(e)(3), Oct. 22, 1986, 100 Stat. 2448; Pub. L. 101-239, title VII, §§ 7861(a)(2), 7891(a)(1), 7892(a), 7894(c)(2), Dec. 19, 1989, 103 Stat. 2430, 2445, 2447, 2449.)

AMENDMENTS

1989—Subsec. (a)(1)(B)(i). Pub. L. 101-239, § 7861(a)(2), made technical correction to directory language of Pub. L. 99-514. See 1986 Amendment note below.

Subsec. (a)(1)(B)(ii). Pub. L. 101-239, § 7894(c)(2)(A), substituted “educational organization” for “educational institution”.

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. (a)(2). Pub. L. 101-239, § 7892(a), struck out comma after “specified age”.

Subsec. (b)(2). Pub. L. 101-239, § 7894(c)(2)(B), substituted “a plan” for “the plan”.

1986—Subsec. (a)(1)(B)(i). Pub. L. 99-514, as amended by Pub. L. 101-239, § 7861(a)(2), substituted “2 years of service” for “3 years of service” in two places.

Subsec. (a)(2). Pub. L. 99-509 substituted a period for “unless—

“(A) the plan is a—

“(i) defined benefit plan, or

“(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and

“(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.”

1984—Subsec. (a)(1). Pub. L. 98-397, § 102(a), substituted “21” for “25” in subpar. (A)(i) and “26” for “21” for “30” for “25” in subpar. (B)(ii).

Subsec. (b)(4). Pub. L. 98-397, § 102(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) of this section if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service.”

Subsec. (b)(5). Pub. L. 98-397, § 102(e)(1), added par. (5).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7861(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 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.

Pub. L. 101-239, title VII, § 7892(c), Dec. 19, 1989, 103 Stat. 2447, provided that: “Any amendment made by this section [amending this section and section 1082 of this title] shall take effect as if included in the provi-

sion of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203, probably should refer to Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509] or Pension Protection Act [Pub. L. 100-203, §§ 9302-9346, probably should refer to Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203] to which such amendment relates.”

Amendment by section 7894(c)(2) 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 AMENDMENTS

Amendment by section 1113(e)(3) 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 Pub. L. 99-509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, see section 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

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

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.

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.

§ 1053. Minimum vesting standards

(a) Nonforfeability requirements

Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.