

§ 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 clause¹ (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(4)² 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)² 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).

¹ So in original. Probably should be "clauses".

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

(B)(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) For purposes of clause (i), the term “applicable period” means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after this section applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant’s accrued benefit is to be used as security for a loan, no portion of the participant’s accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5)(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

(7) For purposes of this subsection, the term “applicable election period” means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant’s death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(8) Notwithstanding any other provision of this subsection—

(A)(i) A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (7) shall not end before the 30th day after the date on which such explanation is provided.

(ii) The Secretary of the Treasury may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(d)(1) “Qualified joint and survivor annuity” defined

For purposes of this section, the term “qualified joint and survivor annuity” means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2)(A) For purposes of this section, the term “qualified optional survivor annuity” means an annuity—

(i) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(ii) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(B)(i) For purposes of subparagraph (A), if the survivor annuity percentage—

(I) is less than 75 percent, the applicable percentage is 75 percent, and

(II) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(ii) For purposes of clause (i), the term “survivor annuity percentage” means the percentage which the survivor annuity under the plan’s qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(e) “Qualified preretirement survivor annuity” defined

For purposes of this section—

(1) Except as provided in paragraph (2), the term “qualified preretirement survivor annuity” means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant’s date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual’s death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1) of this section, the term “qualified preretirement survivor annuity” means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 1053 of this title).

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(f) Marriage requirements for plan

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant’s annuity starting date, or

(B) the date of the participant’s death.

(2) For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant’s spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant’s death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant’s annuity starting date.

(g) Distribution of present value of annuity; written consent; determination of present value

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant’s consent under section 1053(e) of this title. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant’s consent under section 1053(e) of this title, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3)(A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) For purposes of subparagraph (A)—

(i) The term “applicable mortality table” means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under subparagraph (A) of section 1083(h)(3) of this title (without regard to subparagraph (C) or (D) of such section).

(ii) The term “applicable interest rate” means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 1083(h)(2)(C) of this title (determined by not taking into account any adjustment under clause (iv) thereof) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 1083(h)(2)(C) of this title (determined by not taking into account any adjustment under clause (iv) thereof) if—

(I) section 1083(h)(2)(D) of this title were applied by substituting the average yields for the month described in clause (ii) for the average yields for the 24-month period described in such section,

(II) section 1083(h)(2)(G)(i)(II) of this title were applied by substituting “section 1055(g)(3)(A)(ii)(II) of this title” for “section 1082(b)(5)(B)(ii)(II) of this title”, and

(III) the applicable percentage under section 1083(h)(2)(G) of this title were determined in accordance with the following table:

In the case of plan years beginning in:	The applicable percentage is:
2008	20 percent
2009	40 percent
2010	60 percent
2011	80 percent.

(h) Definitions

For purposes of this section—

(1) The term “vested participant” means any participant who has a nonforfeitable right (within the meaning of section 1002(19) of this title) to any portion of such participant’s accrued benefit.

(2)(A) The term “annuity starting date” means—

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) The term “earliest retirement age” means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) Increased costs from providing annuity

A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) Use of participant’s accrued benefit as security for loan as not preventing distribution

If the use of any participant’s accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4) of this section, nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) Spousal consent

No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) of this sec-

tion (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) of this section are met.

(l) Regulations; consultation of Secretary of the Treasury with Secretary of Labor

In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

(Pub. L. 93-406, title I, §205, Sept. 2, 1974, 88 Stat. 862; Pub. L. 98-397, title I, §103(a), Aug. 23, 1984, 98 Stat. 1429; Pub. L. 99-514, title XI, §§1139(c)(2), 1145(b), title XVIII, §1898(b)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), (12)(B), (13)(B), (14)(B), Oct. 22, 1986, 100 Stat. 2488, 2491, 2945-2951; Pub. L. 101-239, title VII, §§7861(d)(2), 7862(d)(1)(B), (3), (6)-(9), 7891(a)(1), (b)(3), (c), (e), 7894(c)(7)(A), Dec. 19, 1989, 103 Stat. 2431, 2434, 2445, 2447, 2449; Pub. L. 103-465, title VII, §767(c)(2), Dec. 8, 1994, 108 Stat. 5039; Pub. L. 104-188, title I, §1451(b), Aug. 20, 1996, 110 Stat. 1815; Pub. L. 105-34, title X, §1071(b)(2), title XVI, §1601(d)(5), Aug. 5, 1997, 111 Stat. 948, 1089; Pub. L. 107-147, title IV, §411(r)(2), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109-280, title III, §302(a), title X, §1004(b), title XI, §1102(a)(2)(A), Aug. 17, 2006, 120 Stat. 920, 1054, 1056; Pub. L. 110-458, title I, §103(b)(1), Dec. 23, 2008, 122 Stat. 5103; Pub. L. 112-141, div. D, title II, §40211(b)(3)(B), July 6, 2012, 126 Stat. 849.)

AMENDMENTS

2012—Subsec. (g)(3)(B)(ii), (iii). Pub. L. 112-141 substituted “section 1083(h)(2)(C) of this title (determined by not taking into account any adjustment under clause (iv) thereof)” for “section 1083(h)(2)(C) of this title”.

2008—Subsec. (g)(3)(B)(iii)(II). Pub. L. 110-458 substituted “section 1055(g)(3)(A)(ii)(II)” for “section 1055(g)(3)(B)(iii)(II)”.

2006—Subsec. (c)(1)(A). Pub. L. 109-280, §1004(b)(1), substituted comma for “, and” at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

Subsec. (c)(3)(A)(i). Pub. L. 109-280, §1004(b)(3), inserted “and of the qualified optional survivor annuity” before comma at end.

Subsec. (c)(7)(A). Pub. L. 109-280, §1102(a)(2)(A), substituted “180-day” for “90-day”.

Subsec. (d). Pub. L. 109-280, §1004(b)(2), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (g)(3). Pub. L. 109-280, §302(a), struck out heading and amended text of par. (3) generally. Prior to amendment, par. (3) stated general rule for determination of present value, defined “applicable mortality table” and “applicable interest rate”, and set forth exception from general rule in the case of a distribution from a plan that was adopted and in effect prior to Dec. 8, 1994.

2002—Subsec. (g)(1). Pub. L. 107-147, §411(r)(2)(A), substituted “exceed the amount that can be distributed without the participant’s consent under section 1053(e) of this title” for “exceed the dollar limit under section 1053(e)(1) of this title”.

Subsec. (g)(2)(A). Pub. L. 107-147, §411(r)(2)(B), substituted “exceeds the amount that can be distributed without the participant’s consent under section 1053(e) of this title” for “exceeds the dollar limit under section 1053(e)(1) of this title”.

1997—Subsec. (c)(8)(A)(ii). Pub. L. 105-34, §1601(d)(5), substituted “Secretary of the Treasury” for “Secretary”.

Subsec. (g)(1), (2)(A). Pub. L. 105-34, §1071(b)(2), substituted “the dollar limit under section 1053(e)(1) of this title” for “\$3,500”.

1996—Subsec. (c)(8). Pub. L. 104-188 added par. (8).

1994—Subsec. (g)(3). Pub. L. 103-465 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated—

“(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of \$25,000, and

“(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds \$25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than \$25,000.

“(B) For purposes of subparagraph (A), the term ‘applicable interest rate’ means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.”

1989—Subsec. (b)(1)(C)(i). Pub. L. 101-239, § 7862(d)(7), made technical correction to directory language of Pub. L. 99-514, § 1898(b)(7)(B), see 1986 Amendment note below.

Subsec. (b)(2)(A)(i). 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. (b)(3), (4). Pub. L. 101-239, § 7862(d)(9), amended directory language of Pub. L. 99-514, § 1898(b)(14)(B), see 1986 Amendment note below, and redesignated par. (3), as added by Pub. L. 99-514, § 1898(b)(14)(B), as par. (4).

Pub. L. 101-239, §§ 7861(d)(2), 7891(c), realigned margins of par. (3), as added by Pub. L. 99-514, § 1145(b), and redesignated such par. (3) as (4).

Subsec. (c)(3)(B)(ii). Pub. L. 101-239, § 7862(d)(1)(B), inserted at end “In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.”

Subsec. (c)(3)(B)(ii)(IV). Pub. L. 101-239, § 7862(d)(6), substituted “after this section” for “after section 1101(a)(11) of this title”.

Subsec. (c)(3)(B)(ii)(V). Pub. L. 101-239, § 7862(d)(1)(B), struck out subcl. (V) which read as follows: “A reasonable period after separation from service in case of a participant who separates before attaining age 35.”

Subsec. (c)(6). Pub. L. 101-239, § 7894(c)(7)(A), substituted “such Act” for “such act”.

Subsec. (e)(2). Pub. L. 101-239, § 7862(d)(8), substituted “nonforfeitable right (within the meaning of section 1053 of this title)” for “nonforfeitable accrued benefit”.

Subsec. (g)(3)(A). Pub. L. 101-239, § 7891(b)(3), realigned margins of subpar. (A).

Subsec. (h)(1). Pub. L. 101-239, §§ 7862(d)(3)(A), 7891(e)(1), amended par. (1) identically, substituting “The term” for “the term” and “benefit.” for “benefit.”.

Subsec. (h)(3). Pub. L. 101-239, §§ 7862(d)(3)(B), 7891(e)(2), amended par. (3) identically, substituting “The term” for “the term”.

1986—Subsec. (a)(1). Pub. L. 99-514, § 1898(b)(3)(B), substituted “who does not die before the annuity starting date” for “who retires under the plan”.

Subsec. (b)(1). Pub. L. 99-514, § 1898(b)(2)(B)(ii), inserted at end “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.”

Subsec. (b)(1)(C)(i). Pub. L. 99-514, § 1898(b)(13)(B), substituted “(c)(2)” for “(c)(2)(A)”.

Pub. L. 99-514, § 1898(b)(7)(B), as amended by Pub. L. 101-239, § 7862(d)(7), inserted “(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)”.

Subsec. (b)(1)(C)(iii). Pub. L. 99-514, § 1898(b)(2)(B)(i), substituted “a direct or indirect transferee (in a transfer after December 31, 1984)” for “a transferee”.

Subsec. (b)(3). Pub. L. 99-514, § 1898(b)(14)(B), as amended by Pub. L. 101-239, § 7862(d)(9)(A), added par. (3)

relating to treatment of plan as meeting requirements of par. (1)(C) or (2) of subsec. (b).

Pub. L. 99-514, § 1145(b), added par. (3) relating to applicability of this section to plans described in section 404(c) of title 26.

Subsec. (c)(1)(B). Pub. L. 99-514, § 1898(b)(4)(B)(i), substituted “paragraphs (2), (3), and (4)” for “paragraphs (2) and (3)”.

Subsec. (c)(2)(A). Pub. L. 99-514, § 1898(b)(6)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “the spouse of the participant consents in writing to such election, and the spouse’s consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or”.

Subsec. (c)(3)(B). Pub. L. 99-514, § 1898(b)(5)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 (and consistent with such regulations as the Secretary of the Treasury may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).”

Subsec. (c)(4). Pub. L. 99-514, § 1898(b)(4)(B)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 99-514, § 1898(b)(4)(B)(ii), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(5)(A). Pub. L. 99-514, § 1898(b)(11)(B), inserted “if such benefit may not be waived (or another beneficiary selected) and”.

Subsec. (c)(6), (7). Pub. L. 99-514, § 1898(b)(4)(B)(ii), redesignated pars. (5) and (6) as (6) and (7), respectively.

Subsec. (e)(1). Pub. L. 99-514, § 1898(b)(1)(B), inserted at end “In the case of an individual who separated from service before the date of such individual’s death, subparagraph (A)(ii)(I) shall not apply.”

Subsec. (e)(2). Pub. L. 99-514, § 1898(b)(9)(B)(i), substituted “the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable accrued benefit” for “the account balance of the participant as of the date of death”.

Subsec. (e)(3). Pub. L. 99-514, § 1898(b)(9)(B)(ii), added par. (3).

Subsec. (g)(3). Pub. L. 99-514, § 1139(c)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.”

Subsec. (h)(1). Pub. L. 99-514, § 1898(b)(8)(B), substituted “such participant’s accrued benefit” for “the accrued benefit derived from employer contributions”.

Subsec. (h)(2). Pub. L. 99-514, § 1898(b)(12)(B), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “the term ‘annuity starting date’ means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability), and”.

Subsec. (j). Pub. L. 99-514, § 1898(b)(4)(B)(iii), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99-514, § 1898(b)(10)(B), added subsec. (k). Former subsec. (k) redesignated (l).

Pub. L. 99-514, § 1898(b)(4)(B)(iii), redesignated subsec. (j) as (k).

Subsec. (l). Pub. L. 99-514, § 1898(b)(10)(B), redesignated subsec. (k) as (l).

1984—Subsec. (a). Pub. L. 98-397 substituted provisions relating to provisions to be included in applicable plans for former provisions relating to form of payment of annuity benefits.

Subsec. (b). Pub. L. 98-397 substituted provisions relating to applicable plans under this section for former provisions relating to plans providing for payment of benefits before normal retirement age.

Subsec. (c). Pub. L. 98-397 substituted provisions relating to conditions under which plans meet the requirements of this section for former provisions relating to election of qualified joint and survivor annuity form.

Subsec. (d). Pub. L. 98-397 substituted provisions defining “qualified joint and survivor annuity” for former provisions relating to the participant’s spouse not being entitled to receive survivor annuity.

Subsec. (e). Pub. L. 98-397 substituted provisions defining “qualified preretirement survivor annuity” for former provisions relating to election to take annuity.

Subsec. (f). Pub. L. 98-397 substituted provisions to the effect that plans may provide that annuities will not be provided unless the participant and spouse had been married for a certain 1-year period, for former provisions relating to plan provisions which render election or revocation ineffective if participant dies within period of up to 2 years following the date of election or revocation.

Subsec. (g). Pub. L. 98-397 substituted provisions relating to plan provisions for immediate distribution of present value if such value does not exceed \$3,500 and for written consent from the participant and spouse for former provisions setting forth definitions. See subsec. (h) of this section.

Subsec. (h). Pub. L. 98-397 substituted provisions setting forth definitions for former provisions relating to increased costs resulting from providing joint and survivor annuity benefits. See subsec. (i) of this section.

Subsec. (i). Pub. L. 98-397 substituted provisions relating to increased costs resulting from providing annuities under applicable plans for former provisions setting forth the effective date of this section.

Subsec. (j). Pub. L. 98-397 added subsec. (j).

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 applicable with respect to plan years beginning after Dec. 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112-141, set out as a note under section 404 of Title 26, Internal Revenue Code.

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 302(a) of Pub. L. 109-280 applicable with respect to plan years beginning after Dec. 31, 2007, see section 302(c) of Pub. L. 109-280, set out as a note under section 417 of Title 26, Internal Revenue Code.

Amendment by section 1004(b) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, with special rule for collectively bargained plans, see section 1004(c) of Pub. L. 109-280, set out as a note under section 417 of Title 26, Internal Revenue Code.

Amendments and modifications made or required by section 1102(a)(2)(A) of Pub. L. 109-280 applicable to years beginning after Dec. 31, 2006, see section 1102(a)(3) of Pub. L. 109-280, set out as a note under section 417 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 1997 AMENDMENT

Amendment by section 1071(b)(2) of 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.

Amendment by section 1601(d)(5) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 36C of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to plan years beginning after Dec. 31, 1996, see section 1451(c) of Pub. L. 104-188, set out as a note under section 417 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(d)(2) and 7862(d)(1)(B), (3), (6)-(9) 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)(3), (c), (e) 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.

Section 7894(c)(7)(B) of Pub. L. 101-239 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if included in section 103 of the Retirement Equity Act of 1984 [Pub. L. 98-397] in reference to the new section 205(c)(5) of ERISA [subsec. (c)(5) of this section] as added by such section 3113.”

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1139(c)(2) 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, Internal Revenue Code.

Amendment by section 1145(b) of Pub. L. 99-514 applicable as if included in the amendments made by the Retirement Equity Act of 1984, Pub. L. 98-397, see section 1145(d) of Pub. L. 99-514, set out as a note under section 401 of Title 26.

Amendment by section 1898(b)(4)(B) of Pub. L. 99-514 applicable with respect to loans made after Aug. 18, 1985, see section 1898(b)(4)(C) of Pub. L. 99-514, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(6)(B) of Pub. L. 99-514 applicable to plan years beginning after Oct. 22, 1986, see section 1898(b)(6)(C) of Pub. L. 99-514, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(8)(B) of Pub. L. 99-514 applicable to distributions after Oct. 22, 1986, see section 1898(b)(8)(C) of Pub. L. 99-514, as added, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(1)(B), (2)(B), (3)(B), (5)(B), (7)(B), (9)(B), (10)(B), (11)(B), (12)(B), (13)(B), (14)(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 provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

Nothing in amendment by Pub. L. 98-397 to prevent any distribution required by reason of failure to comply with terms of loan made on or before Aug. 18, 1985, and secured by portion of participant's accrued benefit, see section 1898(b)(4)(C)(ii) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 417 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.

§ 1056. Form and payment of benefits

(a) Commencement date for payment of benefits

Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

- (1) occurs the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,
- (2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or
- (3) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, such plan shall provide that a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement for such early retirement benefit, is entitled upon satisfaction of such age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially reduced under regulations prescribed by the Secretary of the Treasury.

(b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937

If—

- (1) a participant or beneficiary is receiving benefits under a pension plan, or

- (2) a participant is separated from the service and has non-forfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] or the Railroad Retirement Act of 1937 [45 U.S.C. 231 et seq.] or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) Forfeiture of accrued benefits derived from employer contributions

No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 1053(a)(3)(D)(iii) of this title.

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit and is exempt from the tax imposed by section 4975 of title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of title 26.

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term "qualified domestic relations order" means a domestic relations order—

- (I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and