

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

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term “domestic relations order” means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant’s benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(E)(i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee—

(I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(III) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term “earliest retirement age” means the earlier of—

(I) the date on which the participant is entitled to a distribution under the plan, or

(II) the later of the date of<sup>1</sup> the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(F) To the extent provided in any qualified domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 1055(f) of this title.

(G)(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan’s procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H)(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the “segregated amounts”) which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

<sup>1</sup> So in original. The word “of” probably should not appear.

(iii) If within the 18-month period described in clause (v)—

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

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

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 1673(a) of title 15.

(N) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

(4) Paragraph (1) shall not apply to any offset of a participant's benefits provided under an employee pension benefit plan against an amount that the participant is ordered or required to pay to the plan if—

(A) the order or requirement to pay arises—

(i) under a judgment of conviction for a crime involving such plan,

(ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of this subtitle, or

(iii) pursuant to a settlement agreement between the Secretary and the participant,

or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of this subtitle by a fiduciary or any other person,

(B) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(C) in a case in which the survivor annuity requirements of section 1055 of this title apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(i) either—

(I) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 1055(c)(2)(B) of this title), or

(II) an election to waive the right of the spouse to a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 1055(c) of this title,

(ii) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of this subtitle, or

(iii) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 1055(a)(1) of this title and under a qualified preretirement survivor annuity provided pursuant to section 1055(a)(2) of this title, determined in accordance with paragraph (5).

A plan shall not be treated as failing to meet the requirements of section 1055 of this title solely by reason of an offset under this paragraph.

(5)(A) The survivor annuity described in paragraph (4)(C)(iii) shall be determined as if—

(i) the participant terminated employment on the date of the offset,

(ii) there was no offset,

(iii) the plan permitted commencement of benefits only on or after normal retirement age,

(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and

(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(B) For purposes of this paragraph, the term "minimum-required qualified joint and survivor annuity" means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the mean-

ing of section 1002(23) of this title) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

**(e) Limitation on distributions other than life annuities paid by plan**

**(1) In general**

Notwithstanding any other provision of this part, the fiduciary of a pension plan that is subject to the additional funding requirements of section 1083(j)(4) of this title shall not permit a prohibited payment to be made from a plan during a period in which such plan has a liquidity shortfall (as defined in section 1083(j)(4)(E)(i) of this title).

**(2) Prohibited payment**

For purposes of paragraph (1), the term “prohibited payment” means—

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 1054(b)(1)(G) of this title), to a participant or beneficiary whose annuity starting date (as defined in section 1055(h)(2) of this title), that occurs during the period referred to in paragraph (1),

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary of the Treasury by regulations.

**(3) Period of shortfall**

For purposes of this subsection, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 1083(j)(3) of this title by reason of section 1083(j)(4)(A) of this title.

**(4) Coordination with other provisions**

Compliance with this subsection shall not constitute a violation of any other provision of this chapter.

**(f) Missing participants in terminated plans**

In the case of a plan covered by section 1350 of this title, upon termination of the plan, benefits of missing participants shall be treated in accordance with section 1350 of this title.

**(g) Funding-based limits on benefits and benefit accruals under single-employer plans**

**(1) Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans**

**(A) In general**

If a participant of a defined benefit plan which is a single-employer plan is entitled to an unpredictable contingent event benefit payable with respect to any event occurring during any plan year, the plan shall provide that such benefit may not be provided if the adjusted funding target attainment percentage for such plan year—

(i) is less than 60 percent, or

(ii) would be less than 60 percent taking into account such occurrence.

**(B) Exemption**

Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the

first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 1083 of this title) equal to—

(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 1083 of this title) for the plan year attributable to the occurrence referred to in subparagraph (A), and

(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

**(C) Unpredictable contingent event benefit**

For purposes of this paragraph, the term “unpredictable contingent event benefit” means any benefit payable solely by reason of—

(i) a plant shutdown (or similar event, as determined by the Secretary of the Treasury), or

(ii) an event other than the attainment of any age, performance of any service, receipt or derivation of any compensation, or occurrence of death or disability.

**(2) Limitations on plan amendments increasing liability for benefits**

**(A) In general**

No amendment to a defined benefit plan which is a single-employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable may take effect during any plan year if the adjusted funding target attainment percentage for such plan year is—

(i) less than 80 percent, or

(ii) would be less than 80 percent taking into account such amendment.

**(B) Exemption**

Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment), upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 1083 of this title) equal to—

(i) in the case of subparagraph (A)(i), the amount of the increase in the funding target of the plan (under section 1083 of this title) for the plan year attributable to the amendment, and

(ii) in the case of subparagraph (A)(ii), the amount sufficient to result in an adjusted funding target attainment percentage of 80 percent.

**(C) Exception for certain benefit increases**

Subparagraph (A) shall not apply to any amendment which provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment.

**(3) Limitations on accelerated benefit distributions**

**(A) Funding percentage less than 60 percent**

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, the plan may not pay any prohibited payment after the valuation date for the plan year.

**(B) Bankruptcy**

A defined benefit plan which is a single-employer plan shall provide that, during any period in which the plan sponsor is a debtor in a case under title 11 or similar Federal or State law, the plan may not pay any prohibited payment. The preceding sentence shall not apply on or after the date on which the enrolled actuary of the plan certifies that the adjusted funding target attainment percentage of such plan is not less than 100 percent.

**(C) Limited payment if percentage at least 60 percent but less than 80 percent**

**(i) In general**

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is 60 percent or greater but less than 80 percent, the plan may not pay any prohibited payment after the valuation date for the plan year to the extent the amount of the payment exceeds the lesser of—

(I) 50 percent of the amount of the payment which could be made without regard to this subsection, or

(II) the present value (determined under guidance prescribed by the Pension Benefit Guaranty Corporation, using the interest and mortality assumptions under section 1055(g) of this title) of the maximum guarantee with respect to the participant under section 1322 of this title.

**(ii) One-time application**

**(I) In general**

The plan shall also provide that only 1 prohibited payment meeting the requirements of clause (i) may be made with respect to any participant during any period of consecutive plan years to which the limitations under either subparagraph (A) or (B) or this subparagraph applies.

**(II) Treatment of beneficiaries**

For purposes of this clause, a participant and any beneficiary on his behalf (including an alternate payee, as defined in subsection (d)(3)(K)) shall be treated as 1 participant. If the accrued benefit of a participant is allocated to such an alternate payee and 1 or more other persons, the amount under clause (i) shall be allocated among such persons in the same manner as the accrued benefit is allocated unless the qualified domestic

relations order (as defined in subsection (d)(3)(B)(i)) provides otherwise.

**(D) Exception**

This paragraph shall not apply to any plan for any plan year if the terms of such plan (as in effect for the period beginning on September 1, 2005, and ending with such plan year) provide for no benefit accruals with respect to any participant during such period.

**(E) Prohibited payment**

For purpose<sup>2</sup> of this paragraph, the term "prohibited payment" means—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 1054(b)(1)(G) of this title), to a participant or beneficiary whose annuity starting date (as defined in section 1055(h)(2) of this title) occurs during any period a limitation under subparagraph (A) or (B) is in effect,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary of the Treasury by regulations.

Such term shall not include the payment of a benefit which under section 1053(e) of this title may be immediately distributed without the consent of the participant.

**(4) Limitation on benefit accruals for plans with severe funding shortfalls**

**(A) In general**

A defined benefit plan which is a single-employer plan shall provide that, in any case in which the plan's adjusted funding target attainment percentage for a plan year is less than 60 percent, benefit accruals under the plan shall cease as of the valuation date for the plan year.

**(B) Exemption**

Subparagraph (A) shall cease to apply with respect to any plan year, effective as of the first day of the plan year, upon payment by the plan sponsor of a contribution (in addition to any minimum required contribution under section 1083 of this title) equal to the amount sufficient to result in an adjusted funding target attainment percentage of 60 percent.

**(5) Rules relating to contributions required to avoid benefit limitations**

**(A) Security may be provided**

**(i) In general**

For purposes of this subsection, the adjusted funding target attainment percentage shall be determined by treating as an asset of the plan any security provided by a plan sponsor in a form meeting the requirements of clause (ii).

**(ii) Form of security**

The security required under clause (i) shall consist of—

<sup>2</sup> So in original. Probably should be "purposes".

(I) a bond issued by a corporate surety company that is an acceptable surety for purposes of section 1112 of this title,

(II) cash, or United States obligations which mature in 3 years or less, held in escrow by a bank or similar financial institution, or

(III) such other form of security as is satisfactory to the Secretary of the Treasury and the parties involved.

**(iii) Enforcement**

Any security provided under clause (i) may be perfected and enforced at any time after the earlier of—

(I) the date on which the plan terminates,

(II) if there is a failure to make a payment of the minimum required contribution for any plan year beginning after the security is provided, the due date for the payment under section 1083(j) of this title, or

(III) if the adjusted funding target attainment percentage is less than 60 percent for a consecutive period of 7 years, the valuation date for the last year in the period.

**(iv) Release of security**

The security shall be released (and any amounts thereunder shall be refunded together with any interest accrued thereon) at such time as the Secretary of the Treasury may prescribe in regulations, including regulations for partial releases of the security by reason of increases in the adjusted funding target attainment percentage.

**(B) Prefunding balance or funding standard carryover balance may not be used**

No prefunding balance or funding standard carryover balance under section 1083(f) of this title may be used under paragraph (1), (2), or (4) to satisfy any payment an employer may make under any such paragraph to avoid or terminate the application of any limitation under such paragraph.

**(C) Deemed reduction of funding balances**

**(i) In general**

Subject to clause (iii), in any case in which a benefit limitation under paragraph (1), (2), (3), or (4) would (but for this subparagraph and determined without regard to paragraph (1)(B), (2)(B), or (4)(B)) apply to such plan for the plan year, the plan sponsor of such plan shall be treated for purposes of this chapter as having made an election under section 1083(f) of this title to reduce the prefunding balance or funding standard carryover balance by such amount as is necessary for such benefit limitation to not apply to the plan for such plan year.

**(ii) Exception for insufficient funding balances**

Clause (i) shall not apply with respect to a benefit limitation for any plan year if the application of clause (i) would not re-

sult in the benefit limitation not applying for such plan year.

**(iii) Restrictions of certain rules to collectively bargained plans**

With respect to any benefit limitation under paragraph (1), (2), or (4), clause (i) shall only apply in the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers.

**(6) New plans**

Paragraphs (1), (2), and (4) shall not apply to a plan for the first 5 plan years of the plan. For purposes of this paragraph, the reference in this paragraph to a plan shall include a reference to any predecessor plan.

**(7) Presumed underfunding for purposes of benefit limitations**

**(A) Presumption of continued underfunding**

In any case in which a benefit limitation under paragraph (1), (2), (3), or (4) has been applied to a plan with respect to the plan year preceding the current plan year, the adjusted funding target attainment percentage of the plan for the current plan year shall be presumed to be equal to the adjusted funding target attainment percentage of the plan for the preceding plan year until the enrolled actuary of the plan certifies the actual adjusted funding target attainment percentage of the plan for the current plan year.

**(B) Presumption of underfunding after 10th month**

In any case in which no certification of the adjusted funding target attainment percentage for the current plan year is made with respect to the plan before the first day of the 10th month of such year, for purposes of paragraphs (1), (2), (3), and (4), such first day shall be deemed, for purposes of such paragraph, to be the valuation date of the plan for the current plan year and the plan's adjusted funding target attainment percentage shall be conclusively presumed to be less than 60 percent as of such first day.

**(C) Presumption of underfunding after 4th month for nearly underfunded plans**

In any case in which—

(i) a benefit limitation under paragraph (1), (2), (3), or (4) did not apply to a plan with respect to the plan year preceding the current plan year, but the adjusted funding target attainment percentage of the plan for such preceding plan year was not more than 10 percentage points greater than the percentage which would have caused such paragraph to apply to the plan with respect to such preceding plan year, and

(ii) as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual adjusted funding target attainment percentage of the plan for the current plan year,

until the enrolled actuary so certifies, such first day shall be deemed, for purposes of

such paragraph, to be the valuation date of the plan for the current plan year and the adjusted funding target attainment percentage of the plan as of such first day shall, for purposes of such paragraph, be presumed to be equal to 10 percentage points less than the adjusted funding target attainment percentage of the plan for such preceding plan year.

**(8) Treatment of plan as of close of prohibited or cessation period**

For purposes of applying this part—

**(A) Operation of plan after period**

Unless the plan provides otherwise, payments and accruals will resume effective as of the day following the close of the period for which any limitation of payment or accrual of benefits under paragraph (3) or (4) applies.

**(B) Treatment of affected benefits**

Nothing in this paragraph shall be construed as affecting the plan's treatment of benefits which would have been paid or accrued but for this subsection.

**(9) Terms relating to funding target attainment percentage**

For purposes of this subsection—

**(A) In general**

The term “funding target attainment percentage” has the same meaning given such term by section 1083(d)(2) of this title.

**(B) Adjusted funding target attainment percentage**

The term “adjusted funding target attainment percentage” means the funding target attainment percentage which is determined under subparagraph (A) by increasing each of the amounts under subparagraphs (A) and (B) of section 1083(d)(2) of this title by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in section 414(q) of title 26) which were made by the plan during the preceding 2 plan years.

**(C) Application to plans which are fully funded without regard to reductions for funding balances**

**(i) In general**

In the case of a plan for any plan year, if the funding target attainment percentage is 100 percent or more (determined without regard to the reduction in the value of assets under section 1083(f)(4) of this title), the funding target attainment percentage for purposes of subparagraphs (A) and (B) shall be determined without regard to such reduction.

**(ii) Transition rule**

Clause (i) shall be applied to plan years beginning after 2007 and before 2011 by substituting for “100 percent” the applicable percentage determined in accordance with the following table:

| In the case of a plan year beginning in calendar year: | The applicable percentage is |
|--------------------------------------------------------|------------------------------|
|--------------------------------------------------------|------------------------------|

|            |     |
|------------|-----|
| 2008 ..... | 92  |
| 2009 ..... | 94  |
| 2010 ..... | 96. |

**(iii) Limitation**

Clause (ii) shall not apply with respect to any plan year beginning after 2008 unless the funding target attainment percentage (determined without regard to the reduction in the value of assets under section 1083(f)(4) of this title) of the plan for each preceding plan year beginning after 2007 was not less than the applicable percentage with respect to such preceding plan year determined under clause (ii).

**(D) Special rule for certain years**

Solely for purposes of any applicable provision—

**(i) In general**

For plan years beginning on or after October 1, 2008, and before October 1, 2010, the adjusted funding target attainment percentage of a plan shall be the greater of—

(I) such percentage, as determined without regard to this subparagraph, or

(II) the adjusted funding target attainment percentage for such plan for the plan year beginning after October 1, 2007, and before October 1, 2008, as determined under rules prescribed by the Secretary of the Treasury.

**(ii) Special rule**

In the case of a plan for which the valuation date is not the first day of the plan year—

(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

(II) clause (i)(II) shall apply based on the last plan year beginning before November 1, 2007, as determined under rules prescribed by the Secretary of the Treasury.

**(iii) Applicable provision**

For purposes of this subparagraph, the term “applicable provision” means—

(I) paragraph (3), but only for purposes of applying such paragraph to a payment which, as determined under rules prescribed by the Secretary of the Treasury, is a payment under a social security leveling option which accelerates payments under the plan before, and reduces payments after, a participant starts receiving social security benefits in order to provide substantially similar aggregate payments both before and after such benefits are received, and

(II) paragraph (4).

**(10) Secretarial authority for plans with alternate valuation date**

In the case of a plan which has designated a valuation date other than the first day of the plan year, the Secretary of the Treasury may prescribe rules for the application of this subsection which are necessary to reflect the alternate valuation date.

**(11) Special rule for 2008**

For purposes of this subsection, in the case of plan years beginning in 2008, the funding

target attainment percentage for the preceding plan year may be determined using such methods of estimation as the Secretary of the Treasury may provide.

(Pub. L. 93-406, title I, § 206, Sept. 2, 1974, 88 Stat. 864; Pub. L. 98-397, title I, § 104(a), Aug. 23, 1984, 98 Stat. 1433; Pub. L. 99-514, title XVIII, § 1898(c)(2)(B), (4)(B), (5), (6)(B), (7)(B), Oct. 22, 1986, 100 Stat. 2952-2954; Pub. L. 101-239, title VII, §§ 7891(a)(1), 7894(c)(8), (9)(A), Dec. 19, 1989, 103 Stat. 2445, 2449; Pub. L. 103-465, title VII, §§ 761(a)(9)(B)(i), 776(c)(2), Dec. 8, 1994, 108 Stat. 5033, 5048; Pub. L. 105-34, title XV, § 1502(a), Aug. 5, 1997, 111 Stat. 1058; Pub. L. 109-280, title I, §§ 103(a), 108(a)(9), (10), formerly § 107(a)(9), (10), title IV, § 410(b), Aug. 17, 2006, 120 Stat. 809, 819, 935, renumbered Pub. L. 111-192, title II, § 202(a), June 25, 2010, 124 Stat. 1297; Pub. L. 110-458, title I, § 101(c)(1)(B)-(G), Dec. 23, 2008, 122 Stat. 5097; Pub. L. 111-192, title II, § 203(a)(1), June 25, 2010, 124 Stat. 1299.)

#### REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b), 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.

The Railroad Retirement Act of 1937, referred to in subsec. (b), is act Aug. 29, 1935, ch. 812, 49 Stat. 967, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and which was classified principally to subchapter III (§ 228a et seq.) of chapter 9 of Title 45, Railroads. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93-445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45. For complete classification of these acts to the Code, see Tables.

This chapter, referred to in subsecs. (e)(4) and (g)(5)(C)(i), 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

2010—Subsec. (g)(9)(D). Pub. L. 111-192, § 203(a)(1), added subpar. (D).

2008—Subsec. (g)(1)(B)(ii). Pub. L. 110-458, § 101(c)(1)(B), substituted “an adjusted funding” for “a funding”.

Subsec. (g)(1)(C). Pub. L. 110-458, § 101(c)(1)(C), inserted “benefit” after “event” in heading.

Subsec. (g)(3)(E). Pub. L. 110-458, § 101(c)(1)(D), inserted concluding provisions.

Subsec. (g)(5)(A)(iv). Pub. L. 110-458, § 101(c)(1)(E), inserted “adjusted” before “funding”.

Subsec. (g)(9)(C). Pub. L. 110-458, § 101(c)(1)(F), in cl. (i), struck out “without regard to this subparagraph and” before “without regard to the reduction” and, in cl. (iii), substituted “without regard to the reduction in the value of assets under section 1083(f)(4) of this title” for “without regard to this subparagraph” and inserted “beginning” before “after” in two places.

Subsec. (g)(10), (11). Pub. L. 110-458, § 101(c)(1)(G), added par. (10) and redesignated former par. (10) as (11).

2006—Subsec. (e)(1). Pub. L. 109-280, § 108(a)(9), formerly § 107(a)(9), as renumbered by Pub. L. 111-192, § 202(a), substituted “1083(j)(4)” for “1082(d)” and “1083(j)(4)(E)(i)” for “1082(e)(5)”.

Subsec. (e)(3). Pub. L. 109-280, § 108(a)(10), formerly § 107(a)(10), as renumbered by Pub. L. 111-192, § 202(a),

substituted “section 1083(j)(3) of this title by reason of section 1083(j)(4)(A) of this title” for “section 1082(e) of this title by reason of paragraph (5)(A) thereof”.

Subsec. (f). Pub. L. 109-280, § 410(b), substituted “section 1350 of this title” for “subchapter III of this chapter, the plan shall provide that”.

Subsec. (g). Pub. L. 109-280, § 103(a), added subsec. (g). 1997—Subsec. (d)(4), (5). Pub. L. 105-34 added pars. (4) and (5).

1994—Subsec. (e). Pub. L. 103-465, § 761(a)(9)(B)(i), added subsec. (e).

Subsec. (f). Pub. L. 103-465, § 776(c)(2), added subsec. (f).

1989—Subsec. (a)(1). Pub. L. 101-239, § 7894(c)(8), inserted “occurs” before “the date”.

Subsec. (d)(2). 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. (d)(3)(I). Pub. L. 101-239, § 7894(c)(9)(A), substituted “such Act” for “such act”.

1986—Subsec. (d)(3)(E)(i). Pub. L. 99-514, § 1898(c)(7)(B)(iii), substituted “A” for “In the case of any payment before a participant has separated from service, a” in introductory provisions and inserted “in the case of any payment before a participant has separated from service,” in subcl. (I).

Subsec. (d)(3)(E)(ii). Pub. L. 99-514, § 1898(c)(7)(B)(iv), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “For purposes of this subparagraph, the term ‘earliest retirement age’ has the meaning given such term by section 1055(h)(3) of this section, except that in the case of any individual account plan, the earliest retirement age shall be the date which is 10 years before the normal retirement age.”

Subsec. (d)(3)(F)(i). Pub. L. 99-514, § 1898(c)(6)(B), inserted “(and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)”.

Subsec. (d)(3)(F)(ii). Pub. L. 99-514, § 1898(c)(7)(B)(i), inserted “surviving” before “former spouse”.

Subsec. (d)(3)(G)(i)(I). Pub. L. 99-514, § 1898(c)(7)(B)(ii), substituted “each” for “any other”.

Subsec. (d)(3)(H)(i). Pub. L. 99-514, § 1898(c)(2)(B)(i), substituted “shall separately account for the amounts (hereinafter in this subparagraph referred to as the ‘segregated amounts’)” for “shall segregate in a separate account in the plan or in an escrow account the amounts”.

Subsec. (d)(3)(H)(ii), (iii). Pub. L. 99-514, § 1898(c)(2)(B)(ii), (iii), substituted “the 18-month period described in clause (v)” for “18 months” and “including any interest” for “plus any interest”.

Subsec. (d)(3)(H)(iv). Pub. L. 99-514, § 1898(c)(2)(B)(iv), inserted “described in clause (v)”.

Subsec. (d)(3)(H)(v). Pub. L. 99-514, § 1898(c)(2)(B)(v), added cl. (v).

Subsec. (d)(3)(L). Pub. L. 99-514, § 1898(c)(4)(B), added subpar. (L) and redesignated former subpar. (L) as (N).

Subsec. (d)(3)(M). Pub. L. 99-514, § 1898(c)(5), added subpar. (M).

Subsec. (d)(3)(N). Pub. L. 99-514, § 1898(c)(4)(B), redesignated subpar. (L) as (N).

1984—Subsec. (d)(3). Pub. L. 98-397 added par. (3).

#### 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 103(a) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, with collective bargaining exception, see section 103(c) of Pub. L. 109-280, set out as a note under section 1021 of this title.

Amendment by section 108(a)(9), (10) 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.

Pub. L. 109-280, title IV, § 410(c), Aug. 17, 2006, 120 Stat. 935, provided that: “The amendments made by this section [amending this section and section 1350 of this title] shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1350(c), (d)] (as added by subsection (a)), respectively, are prescribed.”

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to judgments, orders, and decrees issued, and settlement agreements entered into, on or after Aug. 5, 1997, see section 1502(c) of Pub. L. 105-34, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Pub. L. 103-465, title VII, § 761(b), Dec. 8, 1994, 108 Stat. 5034, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1082, 1132, and 1301 of this title] shall apply to plan years beginning after December 31, 1994.

“(2) CONTRIBUTING SPONSOR.—The amendment made by subsection (a)(11) [amending section 1301 of this title] shall be effective as if included in the Pension Protection Act [Pub. L. 100-203, title IX, subtitle D, part II, §§ 9302-9346].”

Pub. L. 103-465, title VII, § 776(e), Dec. 8, 1994, 108 Stat. 5048, provided that: “The provisions of this section [enacting section 1350 of this title and amending this section and sections 1303, 1305, and 1341 of this title and section 401 of Title 26, Internal Revenue Code] shall be effective with respect to distributions that occur in plan years commencing after final regulations implementing these provisions are prescribed by the Pension Benefit Guaranty Corporation.” [Final implementing regulations were issued Nov. 22, 1995, effective for distributions in plan years beginning on or after Jan. 1, 1996. See 60 F.R. 61740.]

#### 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.

Amendment by section 7894(c)(8) 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.

Pub. L. 101-239, title VII, § 7894(c)(9)(B), Dec. 19, 1989, 103 Stat. 2449, provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if included in section 104 of the Retirement Equity Act of 1984 [Pub. L. 98-397].”

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by 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, Internal Revenue Code.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98-397, set out as a note under section 1001 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, 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, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### § 1057. Repealed. Pub. L. 109-280, title I, § 108(d), formerly § 107(d), Aug. 17, 2006, 120 Stat. 820, renumbered Pub. L. 111-192, title II, § 202(a), June 25, 2010, 124 Stat. 1297

Section, Pub. L. 93-406, title I, § 207, Sept. 2, 1974, 88 Stat. 865, related to temporary variances from certain vesting requirements.

#### EFFECTIVE DATE OF REPEAL

Repeal applicable to plan years beginning after 2007, see section 108(e) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1021 of this title.

#### § 1058. Mergers and consolidations of plans or transfers of plan assets

A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after September 2, 1974, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence shall not apply to any transaction to the extent that participants either before or after the transaction are covered under a multi-employer plan to which subchapter III of this chapter applies.

(Pub. L. 93-406, title I, § 208, Sept. 2, 1974, 88 Stat. 865; Pub. L. 96-364, title IV, § 402(b)(1), Sept. 26, 1980, 94 Stat. 1299.)

#### AMENDMENTS

1980—Pub. L. 96-364 substituted provisions respecting applicability of preceding sentence to transactions under a covered multiemployer plan to which subchapter III applies, for provisions relating to applicability of paragraph to a multiemployer plan only to extent determined by Corporation.

#### 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.

#### § 1059. Recordkeeping and reporting requirements

(a)(1) Except as provided by paragraph (2) every employer shall, in accordance with such