

2006—Subsec. (b)(3). Pub. L. 109-280, §116(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 109-280 redesignated pars. (3) and (4) as (4) and (5), respectively, and substituted “paragraph (1), (2), or (3)” for “paragraph (1) or (2)” wherever appearing.

2005—Subsec. (a)(4)(C)(ii). Pub. L. 109-135 struck out “first” after “requires that the”.

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 this title.

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title I, §116(c), Aug. 17, 2006, 120 Stat. 858, provided that: “The amendments made by this section [amending this section] shall apply to transfers or other reservation of assets after the date of the enactment of this Act [Aug. 17, 2006].”

EFFECTIVE DATE OF 2005 AMENDMENT

Amendment by Pub. L. 109-135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108-357, to which such amendment relates, see section 403(nm) of Pub. L. 109-135, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 109-135, title IV, §403(hh)(3)(A), Dec. 21, 2005, 119 Stat. 2631, provided that: “Notwithstanding section 885(d)(1) of the American Jobs Creation Act of 2004 [Pub. L. 108-357, set out below], subsection (b) of section 409A of the Internal Revenue Code of 1986 shall take effect on January 1, 2005.”

Pub. L. 108-357, title VIII, §885(d), Oct. 22, 2004, 118 Stat. 1640, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting this section and amending sections 3401, 6041, and 6051 of this title] shall apply to amounts deferred after December 31, 2004.

“(2) SPECIAL RULES.—

“(A) EARNINGS.—The amendments made by this section shall apply to earnings on deferred compensation only to the extent that such amendments apply to such compensation.

“(B) MATERIAL MODIFICATIONS.—For purposes of this subsection, amounts deferred in taxable years beginning before January 1, 2005, shall be treated as amounts deferred in a taxable year beginning on or after such date if the plan under which the deferral is made is materially modified after October 3, 2004, unless such modification is pursuant to the guidance issued under subsection (f) [set out as a note below].

“(3) EXCEPTION FOR NONELECTIVE DEFERRED COMPENSATION.—The amendments made by this section shall not apply to any nonelective deferred compensation to which section 457 of the Internal Revenue Code of 1986 does not apply by reason of section 457(e)(12) of such Code, but only if such compensation is provided under a nonqualified deferred compensation plan—

“(A) which was in existence on May 1, 2004,

“(B) which was providing nonelective deferred compensation described in such section 457(e)(12) on such date, and

“(C) which is established or maintained by an organization incorporated on July 2, 1974.

If, after May 1, 2004, a plan described in the preceding sentence adopts a plan amendment which provides a material change in the classes of individuals eligible to participate in the plan, this paragraph shall not apply to any nonelective deferred compensation provided under the plan on or after the date of the adoption of the amendment.”

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 this title.

GUIDANCE RELATING TO CONFORMANCE WITH FUNDING RULES

Pub. L. 109-135, title IV, §403(hh)(3)(B), Dec. 21, 2005, 119 Stat. 2631, provided that: “Not later than 90 days after the date of the enactment of this Act [Dec. 21, 2005], the Secretary of the Treasury shall issue guidance under which a nonqualified deferred compensation plan which is in violation of the requirements of section 409A(b) of such Code shall be treated as not having violated such requirements if such plan comes into conformance with such requirements during such limited period as the Secretary may specify in such guidance.”

GUIDANCE RELATING TO CHANGE OF OWNERSHIP OR CONTROL

Pub. L. 108-357, title VIII, §885(e), Oct. 22, 2004, 118 Stat. 1640, provided that: “Not later than 90 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance on what constitutes a change in ownership or effective control for purposes of section 409A of the Internal Revenue Code of 1986, as added by this section.”

GUIDANCE RELATING TO TERMINATION OF CERTAIN EXISTING ARRANGEMENTS

Pub. L. 108-357, title VIII, §885(f), Oct. 22, 2004, 118 Stat. 1641, as amended by Pub. L. 109-135, title IV, §403(hh)(4), Dec. 21, 2005, 119 Stat. 2632, provided that: “Not later than 60 days after the date of the enactment of this Act [Oct. 22, 2004], the Secretary of the Treasury shall issue guidance providing a limited period during which a nonqualified deferred compensation plan adopted before January 1, 2005, may, without violating the requirements of paragraphs (2), (3), and (4) of section 409A(a) of the Internal Revenue Code of 1986 (as added by this section), be amended—

“(1) to provide that a participant may terminate participation in the plan, or cancel an outstanding deferral election with regard to amounts deferred after December 31, 2004, but only if amounts subject to the termination or cancellation are includible in income of the participant as earned (or, if later, when no longer subject to substantial risk of forfeiture), and

“(2) to conform to the requirements of such section 409A with regard to amounts deferred after December 31, 2004.”

SUBPART B—SPECIAL RULES

- Sec. 410. Minimum participation standards.
- 411. Minimum vesting standards.
- 412. Minimum funding standards.
- 413. Collectively bargained plans.<sup>1</sup>
- 414. Definitions and special rules.
- 415. Limitations on benefits and contribution under qualified plans.
- 416. Special rules for top-heavy plans.
- 417. Definitions and special rules for purposes of minimum survivor annuity requirements.

AMENDMENTS

1984—Pub. L. 98-397, title II, §203(c), Aug. 23, 1984, 98 Stat. 1445, added item 417.

1982—Pub. L. 97-248, title II, §240(d), Sept. 3, 1982, 96 Stat. 520, added item 416.

1974—Pub. L. 93-406, title II, §1011, Sept. 2, 1974, 88 Stat. 898, added subpart heading and analysis of sections.

<sup>1</sup> So in original. Does not conform to section catchline.

**§ 410. Minimum participation standards****(a) Participation****(1) Minimum age and service conditions****(A) General rule**

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

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

**(B) Special rules for certain plans**

(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting “2 years of service” for “1 year of service”.

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting “26” for “21”. This clause shall not apply to any plan to which clause (i) applies.

**(2) Maximum age conditions**

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part excludes from participation (on the basis of age) employees who have attained a specified age.

**(3) Definition of year of service****(A) General rule**

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

**(B) Seasonal industries**

In the case of any seasonal industry where the customary period of employment is less

than 1,000 hours during a calendar year, the term “year of service” shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

**(C) Hours of service**

For purposes of this subsection, the term “hour of service” means a time of service determined under regulations prescribed by the Secretary of Labor.

**(D) Maritime industries**

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

**(4) Time of participation**

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

- (A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or
- (B) the date 6 months after the date on which he satisfied such requirements,

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

**(5) Breaks in service****(A) General rule**

Except as otherwise provided in subparagraphs (B), (C), and (D), all years of service with the employer or employers maintaining the plan shall be taken into account in computing the period of service for purposes of paragraph (1).

**(B) Employees under 2-year 100 percent vesting**

In the case of any employee who has any 1-year break in service (as defined in section 411(a)(6)(A)) under a plan to which the service requirements of clause (i) of paragraph (1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

**(C) 1-year break in service**

In computing an employee’s period of service for purposes of paragraph (1) in the case of any participant who has any 1-year break in service (as defined in section 411(a)(6)(A)), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in paragraph (3)) after his return.

**(D) Nonvested participants****(i) In general**

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