

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.¹
- 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.

¹ So in original. Does not conform to section catchline.