

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.

**§ 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.

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