

Amendment by section 1431(c)(1)(B), (C) of Pub. L. 104-188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendment to be treated as having been in effect for years beginning in 1996, see section 1431(d)(1) of Pub. L. 104-188, set out as a note under section 414 of this title.

Amendment by section 1452(c)(7) of Pub. L. 104-188 applicable to limitation years beginning after Dec. 31, 1999, see section 1452(d) of Pub. L. 104-188, set out as a note under section 415 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1011(j)(3)(B), Nov. 10, 1988, 102 Stat. 3468, provided that: "The amendment made by this paragraph [amending this section] shall apply to years beginning after December 31, 1988."

Amendment by section 1011(d)(8), (i)(4)(B) of Pub. L. 100-647 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 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(A), (B) of Pub. L. 99-514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99-514, set out as a note under section 415 of this title.

Pub. L. 99-514, title XI, §1118(b), Oct. 22, 1986, 100 Stat. 2463, provided that: "The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1986."

Amendment by section 1852(d) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title V, §524(a)(2), July 18, 1984, 98 Stat. 872, provided that: "The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1983."

Pub. L. 98-369, div. A, title V, §524(b)(2), July 18, 1984, 98 Stat. 872, provided that: "The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984."

Pub. L. 98-369, div. A, title V, §524(c)(2), July 18, 1984, 98 Stat. 872, provided that: "The amendment made by this subsection [amending this section] shall apply to plan years beginning after December 31, 1984."

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

#### EFFECTIVE DATE

Pub. L. 97-248, title II, §241, Sept. 3, 1982, 96 Stat. 520, provided that:

"(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this part [part II (§§237-241) of subtitle C of title II of Pub. L. 97-248, enacting this section, amending sections 72, 401, 404, 408, 414, 415, and 1379 of this title, and repealing section 4972 of this title] shall apply to years beginning after December 31, 1983.

"(b) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT FOR SELF-EMPLOYED INDIVIDUALS.—The amendment made by section 239 [amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1983."

#### 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 this title.

#### 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 this title.

### § 417. Definitions and special rules for purposes of minimum survivor annuity requirements

#### (a) Election to waive qualified joint and survivor annuity or qualified preretirement survivor annuity

##### (1) In general

A plan meets the requirements of section 401(a)(11) 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) of this subsection.

##### (2) Spouse must consent to election

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 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) Plan to provide written explanations

###### (A) Explanation of joint and survivor annuity

Each plan shall provide to each participant, within a reasonable period of time be-

fore the annuity starting date (and consistent with such regulations as the Secretary 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).

**(B) Explanation of qualified preretirement survivor annuity**

**(i) In general**

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) Applicable period**

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 section 401(a)(11) 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) Requirement of spousal consent for using plan assets as security for loans**

Each plan shall provide that, if section 401(a)(11) 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) Special rules where plan fully subsidizes costs**

**(A) In general**

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) Definition**

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) Applicable election period defined**

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.

**(7) Special rules relating to time for written explanation**

Notwithstanding any other provision of this subsection—

**(A) Explanation may be provided after annuity starting date**

**(i) In general**

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 (6) shall not end before the 30th day after the date on which such explanation is provided.

**(ii) Regulatory authority**

The Secretary 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) Waiver of 30-day period**

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.

**(b) Definition of qualified joint and survivor annuity**

For purposes of this section and section 401(a)(11), the term “qualified joint and survivor annuity” means an annuity—

- (1) 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
- (2) 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.

**(c) Definition of qualified preretirement survivor annuity**

For purposes of this section and section 401(a)(11)—

**(1) In general**

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) Special rule for defined contribution plans**

In the case of any defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B), 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 411(a)).

**(3) Security interests taken into account**

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.

**(d) Survivor annuities need not be provided if participant and spouse married less than 1 year****(1) In general**

Except as provided in paragraph (2), a plan shall not be treated as failing to meet the requirements of section 401(a)(11) merely because the plan provides 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) Treatment of certain marriages within 1 year of annuity starting date for purposes of qualified joint and survivor annuities**

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.

**(e) Restrictions on cash-outs****(1) Plan may require distribution if present value not in excess of dollar limit**

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 411(a)(11). 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) consents in writing to such distribution.

**(2) Plan may distribute benefit in excess of dollar limit only with consent**

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 411(a)(11), 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) Determination of present value**

**(A) In general**

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) Applicable mortality table**

For purposes of subparagraph (A), the term “applicable mortality table” means a mortality table, modified as appropriate by the Secretary, based on the mortality table specified for the plan year under subparagraph (A) of section 430(h)(3) (without regard to subparagraph (C) or (D) of such section).

**(C) Applicable interest rate**

For purposes of subparagraph (A), the term “applicable interest rate” means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 430(h)(2)(C) (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 may by regulations prescribe.

**(D) Applicable segment rates**

For purposes of subparagraph (C), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof) if section 430(h)(2)(D) were applied by substituting the average yields for the month described in subparagraph (C) for the average yields for the 24-month period described in such section.

**(f) Other definitions and special rules**

For purposes of this section and section 401(a)(11)—

**(1) Vested participant**

The term “vested participant” means any participant who has a nonforfeitable right (within the meaning of section 411(a)) to any portion of such participant’s accrued benefit.

**(2) Annuity starting date**

**(A) In general**

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) Special rule for disability benefits**

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) Earliest retirement age**

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

**(4) Plan may take into account increased costs**

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

**(5) Distributions by reason of security interests**

If the use of any participant’s accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (a)(4), nothing in this section or section 411(a)(11) shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

**(6) Requirements for certain spousal consents**

No consent of a spouse shall be effective for purposes of subsection (e)(1) or (e)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (a)(1)(A) are met.

**(7) Consultation with the Secretary of Labor**

In prescribing regulations under this section and section 401(a)(11), the Secretary shall consult with the Secretary of Labor.

**(g) Definition of qualified optional survivor annuity**

**(1) In general**

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

(A) 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

(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) Applicable percentage**

**(A) In general**

For purposes of paragraph (1), 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.

**(B) Survivor annuity percentage**

For purposes of subparagraph (A), 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.

(Added Pub. L. 98-397, title II, §203(b), Aug. 23, 1984, 98 Stat. 1441; amended Pub. L. 99-514, title

XI, §1139(b), title XVIII, §1898(b)(1)(A), (4)(A), (5)(A), (6)(A), (8)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (B), Oct. 22, 1986, 100 Stat. 2487, 2944, 2945, 2947–2951; Pub. L. 100–647, title I, §1018(u)(9), Nov. 10, 1988, 102 Stat. 3590; Pub. L. 101–239, title VII, §7862(d)(1)(A), Dec. 19, 1989, 103 Stat. 2433; Pub. L. 103–465, title VII, §767(a)(2), Dec. 8, 1994, 108 Stat. 5038; Pub. L. 104–188, title I, §1451(a), Aug. 20, 1996, 110 Stat. 1815; Pub. L. 105–34, title X, §1071(a)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107–147, title IV, §411(r)(1), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title III, §302(b), title X, §1004(a), title XI, §1102(a)(1)(A), Aug. 17, 2006, 120 Stat. 920, 1053, 1056; Pub. L. 110–458, title I, §103(b)(2)(A), Dec. 23, 2008, 122 Stat. 5103; Pub. L. 112–141, div. D, title II, §40211(a)(2)(C), July 6, 2012, 126 Stat. 847; Pub. L. 113–295, div. A, title II, §221(a)(57)(B)(i), Dec. 19, 2014, 128 Stat. 4046.)

## AMENDMENTS

2014—Subsec. (e)(3)(D). Pub. L. 113–295 substituted “if section 430(h)(2)(D)” for “if—

“(i) section 430(h)(2)(D)” and “described in such section.” for “described in such section,” and struck out cls. (ii) and (iii) which applied section 430(h)(2)(G)(i)(II) of this title by substituting “section 417(e)(3)(A)(ii)(II)” for “section 412(b)(5)(B)(ii)(II)” and listed the applicable percentage under section 430(h)(2)(G) for plan years beginning in 2008 to 2011.

2012—Subsec. (e)(3)(C), (D). Pub. L. 112–141 substituted “section 430(h)(2)(C) (determined by not taking into account any adjustment under clause (iv) thereof)” for “section 430(h)(2)(C)”.

2008—Subsec. (e)(3)(D)(i). Pub. L. 110–458 substituted “subparagraph (C)” for “clause (ii)”.

2006—Subsec. (a)(1)(A)(ii), (iii). Pub. L. 109–280, §1004(a)(1), added cl. (ii) and redesignated former cl. (ii) as (iii).

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

Subsec. (a)(6)(A). Pub. L. 109–280, §1102(a)(1)(A), substituted “180-day” for “90-day”.

Subsec. (e)(3). Pub. L. 109–280, §302(b), reenacted heading without change and amended text of par. (3) generally, substituting provisions relating to determination of present value by using the applicable mortality table and the applicable interest rate, provisions defining “applicable mortality table” and “applicable interest rate”, and provisions relating to determination of the adjusted first, second, and third segment rates, for provisions relating to determination of present value, provisions defining “applicable mortality table” and “applicable interest rate”, and provisions stating exception for a distribution from a plan that was adopted and in effect before the date of the enactment of the Retirement Protection Act of 1994.

Subsec. (g). Pub. L. 109–280, §1004(a)(2), added subsec. (g).

2002—Subsec. (e)(1). Pub. L. 107–147, §411(r)(1)(A), substituted “exceed the amount that can be distributed without the participant’s consent under section 411(a)(11)” for “exceed the dollar limit under section 411(a)(11)(A)”.

Subsec. (e)(2)(A). Pub. L. 107–147, §411(r)(1)(B), substituted “exceeds the amount that can be distributed without the participant’s consent under section 411(a)(11)” for “exceeds the dollar limit under section 411(a)(11)(A)”.

1997—Subsec. (e)(1), (2). Pub. L. 105–34 substituted “dollar limit” for “\$3,500” in headings of pars. (1) and (2) and “the dollar limit under section 411(a)(11)(A)” for “\$3,500” in text of pars. (1) and (2)(A).

1996—Subsec. (a)(7). Pub. L. 104–188 added par. (7).

1994—Subsec. (e)(3). Pub. L. 103–465 amended par. (3) generally, substituting present provisions for provi-

sions directing that present value be calculated by using a rate no greater than the applicable interest rate or 120 percent of such rate, depending upon amount of vested accrued benefit, and defining “applicable interest rate”.

1989—Subsec. (a)(3)(B)(ii). Pub. L. 101–239 added sentence at end and struck out former subcl. (V) which read as follows: “A reasonable period after separation from service in case of a participant who separates before attaining age 35.”

1988—Subsec. (e)(3)(A). Pub. L. 100–647 substituted “clause (ii)” for “subclause (II)” in last sentence.

1986—Subsec. (a)(1). Pub. L. 99–514, §1898(b)(15)(A), substituted “section 401(a)(11)” for “section 401(a)(ii)”.

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

Subsec. (a)(2)(A). Pub. L. 99–514, §1898(b)(6)(A), 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. (a)(3)(B). Pub. L. 99–514, §1898(b)(5)(A), 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 may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).”

Subsec. (a)(4). Pub. L. 99–514, §1898(b)(4)(A)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (a)(5), (6). Pub. L. 99–514, §1898(b)(4)(A)(ii), (1)(A), redesignated former par. (4) as (5) and inserted in subpar. (A) “if such benefit may not be waived (or another beneficiary selected) and” before “if the plan”. Former par. (5) redesignated (6).

Subsec. (c)(1). Pub. L. 99–514, §1898(b)(15)(B), substituted “survivor annuity for the life of” for “survivor annuity or the life of”.

Pub. L. 99–514, §1898(b)(1)(A), inserted “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. (c)(2). Pub. L. 99–514, §1898(b)(9)(A)(i), substituted “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 411(a))” for “the account balance of the participant as of the date of death”.

Subsec. (c)(3). Pub. L. 99–514, §1898(b)(9)(A)(ii), added par. (3).

Subsec. (e)(3). Pub. L. 99–514, §1139(b), 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. (f)(1). Pub. L. 99–514, §1898(b)(8)(A), substituted “such participant’s accrued benefit” for “the accrued benefit derived from employer contributions”.

Subsec. (f)(2). Pub. L. 99–514, §1898(b)(12)(A), 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).”

Subsec. (f)(5). Pub. L. 99–514, §1898(b)(4)(A)(iii), added par. (5) and redesignated former par. (5) as (6).

Subsec. (f)(6), (7). Pub. L. 99–514, §1898(b)(10)(A), added par. (6) and redesignated former par. (6) as (7).

Pub. L. 99-514, §1898(b)(4)(A)(iii), redesignated former par. (5) as (6).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 2012 AMENDMENT

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

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 III, §302(c), Aug. 17, 2006, 120 Stat. 921, provided that: "The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2007."

Pub. L. 109-280, title X, §1004(c), Aug. 17, 2006, 120 Stat. 1055, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.

"(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) the later of—

"(i) January 1, 2008, or

"(ii) the date on which the last collective bargaining agreement related to the plan terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

"(B) January 1, 2009."

Pub. L. 109-280, title XI, §1102(a)(3), Aug. 17, 2006, 120 Stat. 1056, provided that: "The amendments and modifications made or required by this subsection [amending this section and section 1055 of Title 29, Labor] shall apply to years beginning after December 31, 2006."

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 this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by 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 this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1451(c), Aug. 20, 1996, 110 Stat. 1816, provided that: "The amendments made by this section [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after December 31, 1996."

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 this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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 this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 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 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1139(b) 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 this title.

Pub. L. 99-514, title XVIII, §1898(b)(4)(C), Oct. 22, 1986, 100 Stat. 2946, provided that:

"(i) The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply with respect to loans made after August 18, 1985.

"(ii) In the case of any loan which was made on or before August 18, 1985, and which is secured by a portion of the participant's accrued benefit, nothing in the amendments made by sections 103 and 203 of the Retirement Equity Act of 1984 [sections 103 and 203 of Pub. L. 98-397, enacting this section and amending section 401 of this title and section 1055 of Title 29] shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

"(iii) For purposes of this subparagraph, any loan which is revised, extended, renewed, or renegotiated after August 18, 1985, shall be treated as made after August 18, 1985.

Section 1898(b)(6)(C) of Pub. L. 99-514 provided that: "The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to plan years beginning after the date of the enactment of this Act [Oct. 22, 1986]."

Section 1898(b)(8)(C) of Pub. L. 99-514, as added by Pub. L. 101-239, title VII, §7862(d)(2), Dec. 19, 1989, 103 Stat. 2434, provided that: "The amendments made by this paragraph [amending this section and section 1055 of Title 29, Labor] shall apply to distributions after the date of the enactment of this Act [Oct. 22, 1986]."

Amendment by section 1898(b)(1)(A), (5)(A), (9)(A), (10)(A), (11)(A), (12)(A), (15)(A), (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 this title.

EFFECTIVE DATE

Section 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 an Effective Date of 1984 Amendment note under section 1001 of Title 29, Labor.

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 this title.

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 this title.

SUBPART C—INSOLVENT PLANS

Sec.

[418 to 418D. Repealed.]

418E. Insolvent plans.

AMENDMENTS

2014—Pub. L. 113–235, div. O, title I, §108(b)(3)(B), (C), Dec. 16, 2014, 128 Stat. 2789, substituted “Insolvent Plans” for “Special Rules for Multiemployer Plans” in subpart heading and struck out items 418 “Reorganization status”, 418A “Notice of reorganization and funding requirements”, 418B “Minimum contribution requirement”, 418C “Overburden credit against minimum contribution requirement”, and 418D “Adjustments in accrued benefits”.

1980—Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1271, added subpart C heading “Special Rules for Multiemployer Plans” and items 418 to 418E.

**[§§ 418 to 418D. Repealed. Pub. L. 113–235, div. O, title I, §108(b)(1), Dec. 16, 2014, 128 Stat. 2787]**

Section 418, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1271, related to reorganization status.

Section 418A, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1274, related to notice of reorganization and funding requirements.

Section 418B, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1274, related to minimum contribution requirement.

Section 418C, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1278, related to overburden credit against minimum contribution requirement.

Section 418D, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1280, related to adjustments in accrued benefits.

EFFECTIVE DATE OF REPEAL

Pub. L. 113–235, div. O, title I, §108(c), Dec. 16, 2014, 128 Stat. 2789, provided that: “The amendments made by this section [amending sections 418E and 431 of this title and sections 1084, 1301, and 1426 of Title 29, Labor, and repealing sections 418 to 418D of this title and sections 1421 to 1425 of Title 29] shall apply with respect to plan years beginning after December 31, 2014.”

**§ 418E. Insolvent plans**

**(a) Suspension of certain benefit payments**

Notwithstanding section 411, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accord-

ance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974.

**(b) Definitions**

For purposes of this section, for a plan year—

**(1) Insolvency**

A multiemployer plan is insolvent if the plan’s available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d).

**(2) Resource benefit level**

The term “resource benefit level” means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) to be the highest level which can be paid out of the plan’s available resources.

**(3) Available resources**

The term “available resources” means the plan’s cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the Pension Benefit Guaranty Corporation under section 4261(b)(2) of the Employee Retirement Income Security Act of 1974.

**(4) Insolvency year**

The term “insolvency year” means a plan year in which a plan is insolvent.

**(c) Benefit payments under insolvent plans**

**(1) Determination of resource benefit level**

The plan sponsor of a plan in critical status, as described in subsection<sup>1</sup> 432(b)(2), shall determine in writing the plan’s resource benefit level for each insolvency year, based on the plan sponsor’s reasonable projection of the plan’s available resources and the benefits payable under the plan.

**(2) Uniformity of the benefit suspension**

(A) The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary, apply in substantially uniform proportions to the benefits of all persons in pay status under the plan, except that the Secretary may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

(B) For purposes of this paragraph—

(i) the term “person in pay status” means—

(I) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

<sup>1</sup> So in original. Probably should be “section”.