

to present their views, and shall publish in the Federal Register the provisions of such alternative method.

(Pub. L. 93-406, title I, § 110, Sept. 2, 1974, 88 Stat. 851.)

#### REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

#### § 1031. Repeal and effective date

(a)(1) The Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.] is repealed except that such Act shall continue to apply to any conduct and events which occurred before the effective date of this part.

(2)(A) Section 664 of title 18 is amended by striking out “any such plan subject to the provisions of the Welfare and Pension Plans Disclosure Act” and inserting in lieu thereof “any employee benefit plan subject to any provisions of title I of the Employee Retirement Income Security Act of 1974”.

(B)(i) Section 1027 of such title 18 is amended by striking out “Welfare and Pension Plans Disclosure Act” and inserting in lieu thereof “title I of the Employee Retirement Income Security Act of 1974”, and by striking out “Act” each place it appears and inserting in lieu thereof “title”.

(ii) The heading for such section is amended by striking out “WELFARE AND PENSION PLANS DISCLOSURE ACT” and inserting in lieu thereof “EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974”.

(iii) The table of sections of chapter 47 of such title 18 is amended by striking out “Welfare and Pension Plans Disclosure Act” in the item relating to section 1027 and inserting in lieu thereof “Employee Retirement Income Security Act of 1974”.

(C) Section 1954 of such title 18 is amended by striking out “any plan subject to the provisions of the Welfare and Pension Plans Disclosure Act as amended” and inserting in lieu thereof “any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of title I of the Employee Retirement Income Security Act of 1974”; and by striking out “sections 3(3) and 5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended” and inserting in lieu thereof “sections 3(4) and (3)(16)<sup>1</sup> of the Employee Retirement Income Security Act of 1974”.

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 441) is amended by striking out “Welfare and Pension Plans Disclosure Act” and inserting in lieu thereof “Employee Retirement Income Security Act of 1974”.

(b)(1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a)) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may post-

pone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2)) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

(c) The provisions of this subchapter authorizing the Secretary to promulgate regulations shall take effect on September 2, 1974.

(d) Subsections (b) and (c) shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.

(Pub. L. 93-406, title I, § 111, Sept. 2, 1974, 88 Stat. 851; Pub. L. 101-239, title VII, § 7894(h)(1), Dec. 19, 1989, 103 Stat. 2451.)

#### REFERENCES IN TEXT

The Welfare and Pension Plans Disclosure Act, referred to in subsecs. (a) and (b)(2), is Pub. L. 85-836, Aug. 28, 1958, 72 Stat. 997, as amended, which was classified generally to chapter 10 (§301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 301 of this title and Tables.

Title I of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(A) to (C), means title I of Pub. L. 93-406, which enacted this subchapter, amended section 441 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 664, 1027, and 1954 of Title 18, Crimes and Criminal Procedure, and repealed sections 301 to 309 of this title.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(2)(B)(ii), (iii), (D), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended. 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

1989—Subsec. (d). Pub. L. 101-239 added subsec. (d).

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by 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.

#### PART 2—PARTICIPATION AND VESTING

#### § 1051. Coverage

This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title) other than—

(1) an employee welfare benefit plan;

(2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(3)(A) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan, or

(B) a trust described in section 501(c)(18) of title 26;

(4) a plan which is established and maintained by a labor organization described in

<sup>1</sup> So in original. Probably should be “3(16)”.

section 501(c)(5) of title 26 and which does not at any time after September 2, 1974, provide for employer contributions;

(5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of title 26;

(6) an individual retirement account or annuity described in section 408 of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);

(7) an excess benefit plan; or

(8) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

(Pub. L. 93-406, title I, § 201, Sept. 2, 1974, 88 Stat. 852; Pub. L. 96-364, title IV, § 411(a), Sept. 26, 1980, 94 Stat. 1308; Pub. L. 101-239, title VII, §§ 7891(a)(1), 7894(c)(1)(A), (11)(A), Dec. 19, 1989, 103 Stat. 2445, 2448, 2449.)

#### REFERENCES IN TEXT

Section 409 of title 26, referred to in par. (6), means section 409 of Title 26, Internal Revenue Code, prior to its repeal by Pub. L. 98-369, div. A, title IV, § 491(b), July 18, 1984, 98 Stat. 848, applicable to obligations issued after Dec. 31, 1983.

This chapter, referred to in par. (8), 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

1989—Pars. (3)(A), (4), (5). 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.

Par. (6). Pub. L. 101-239, § 7891(a)(1), substituted "section 408 of the Internal Revenue Code of 1986" for "section 408 of the Internal Revenue Code of 1954", which for purposes of codification was translated as "section 408 of title 26" thus requiring no change in text.

Pub. L. 101-239, § 7894(c)(11)(A), substituted "section 409 of title 26 (as effective for obligations issued before January 1, 1984)" for "section 409 of title 26".

Pub. L. 101-239, § 7894(c)(1)(A)(i), struck out "or" after semicolon at end.

Par. (7). Pub. L. 101-239, § 7894(c)(1)(A)(ii), substituted "plan; or" for "plan."

Par. (8). Pub. L. 101-239, § 7894(c)(1)(A)(iii), substituted "any plan" for "Any plan".

1980—Par. (8). Pub. L. 96-364 added par. (8).

#### 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.

Pub. L. 101-239, title VII, § 7894(c)(1)(B), Dec. 19, 1989, 103 Stat. 2449, provided that: "The amendments made by subparagraph (A) [amending this section] shall take

effect as if included in section 411 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96-364]."

Pub. L. 101-239, title VII, § 7894(c)(11)(B), Dec. 19, 1989, 103 Stat. 2449, provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in section 491(b) of Public Law 98-369."

#### 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.

#### § 1052. Minimum participation standards

(a)(1)(A) No pension plan may require, 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)(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 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 organization (as defined in section 170(b)(1)(A)(ii) of title 26) by an employer which is exempt from tax under section 501(a) of title 26, 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 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) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age.

(3)(A) For purposes of this section, 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, in accordance with regulations prescribed by the Secretary, 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) 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.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary.

(D) For purposes of this section, in the case of any maritime industry, 125 days of service shall

be treated as 1,000 hours of service. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(4) 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.

(b)(1) Except as otherwise provided in paragraphs (2), (3), and (4), 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 subsection (a)(1).

(2) In the case of any employee who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title) under a plan to which the service requirements of clause (i) of subsection (a)(1)(B) apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) in the case of any participant who has any 1-year break in service (as defined in section 1053(b)(3)(A) of this title), 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 subsection (a)(3)) after his return.

(4)(A) 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 consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(i) 5, or

(ii) the aggregate number of years of service before such period.

(B) If any years of service are not required to be taken into account by reason of a period of breaks in service to which subparagraph (A) applies, such years of service shall not be taken into account in applying subparagraph (A) to a subsequent period of breaks in service.

(C) For purposes of subparagraph (A), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(5)(A) In the case of each individual who is absent from work for any period—

(i) by reason of the pregnancy of the individual,

(ii) by reason of the birth of a child of the individual,

(iii) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(iv) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this subsection whether a 1-year break in service (as defined in section 1053(b)(3)(A) of this title) has occurred, the hours described in subparagraph (B).

(B) The hours described in this subparagraph are—

(i) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(ii) in any case in which the plan is unable to determine the hours described in clause (i), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this subparagraph by reason of any such pregnancy or placement shall not exceed 501 hours.

(C) The hours described in subparagraph (B) shall be treated as hours of service as provided in this paragraph—

(i) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in subparagraph (A); or

(ii) in any other case, in the immediately following year.

(D) For purposes of this paragraph, the term "year" means the period used in computations pursuant to subsection (a)(3)(A).

(E) A plan may provide that no credit will be given pursuant to this paragraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(i) that the absence from work is for reasons referred to in subparagraph (A), and

(ii) the number of days for which there was such an absence.

(Pub. L. 93-406, title I, §202, Sept. 2, 1974, 88 Stat. 853; Pub. L. 98-397, title I, §102(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1426, 1427; Pub. L. 99-509, title IX, §9203(a)(1), Oct. 21, 1986, 100 Stat. 1979; Pub. L. 99-514, title XI, §1113(e)(3), Oct. 22, 1986, 100 Stat. 2448; Pub. L. 101-239, title VII, §§7861(a)(2), 7891(a)(1), 7892(a), 7894(c)(2), Dec. 19, 1989, 103 Stat. 2430, 2445, 2447, 2449.)

#### AMENDMENTS

1989—Subsec. (a)(1)(B)(i). Pub. L. 101-239, §7861(a)(2), made technical correction to directory language of Pub. L. 99-514. See 1986 Amendment note below.

Subsec. (a)(1)(B)(ii). Pub. L. 101-239, §7894(c)(2)(A), substituted "educational organization" for "educational institution".

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. (a)(2). Pub. L. 101-239, §7892(a), struck out comma after "specified age".

Subsec. (b)(2). Pub. L. 101-239, §7894(c)(2)(B), substituted "a plan" for "the plan".

1986—Subsec. (a)(1)(B)(i). Pub. L. 99-514, as amended by Pub. L. 101-239, §7861(a)(2), substituted "2 years of service" for "3 years of service" in two places.

Subsec. (a)(2). Pub. L. 99-509 substituted a period for "unless—

“(A) the plan is a—  
 “(i) defined benefit plan, or  
 “(ii) target benefit plan (as defined under regulations prescribed by the Secretary of the Treasury), and  
 “(B) such employees begin employment with the employer after they have attained a specified age which is not more than 5 years before the normal retirement age under the plan.”

1984—Subsec. (a)(1). Pub. L. 98-397, §102(a), substituted “21” for “25” in subpar. (A)(i) and “26” for “21” for “30” for “25” in subpar. (B)(ii).

Subsec. (b)(4). Pub. L. 98-397, §102(d)(1), amended par. (4) generally. Prior to amendment, par. (4) read as follows: “In the case of an employee who does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service with the employer or employers maintaining the plan before a break in service shall not be required to be taken into account in computing the period of service for purposes of subsection (a)(1) if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service before such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this paragraph by reason of any prior break in service.”

Subsec. (b)(5). Pub. L. 98-397, §102(e)(1), added par. (5).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7861(a)(2) of 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 Title 26, Internal Revenue Code.

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.

Pub. L. 101-239, title VII, §7892(c), Dec. 19, 1989, 103 Stat. 2447, provided that: “Any amendment made by this section [amending this section and section 1082 of this title] shall take effect as if included in the provision of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100-203, probably should refer to Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509] or Pension Protection Act [Pub. L. 100-203, §§9302-9346, probably should refer to Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203] to which such amendment relates.”

Amendment by section 7894(c)(2) 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.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1113(e)(3) of Pub. L. 99-514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99-514, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 99-509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only with respect to service performed on or after such date, see section 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise pro-

vided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of this title.

REGULATIONS

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission each to issue before Feb. 1, 1988, final regulations to carry out amendments made by Pub. L. 99-509, see section 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 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 Title 26, Internal Revenue Code.

For provisions directing that if any amendments made by Pub. L. 99-509 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 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

§ 1053. Minimum vesting standards

(a) Nonforfeitable requirements

Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) A plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2)(A)(i) In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

(B)(i) In the case of an individual account plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

Years of service:	The nonforfeitable percentage is:
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.

(3)(A) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 1055 of this title).

(B) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits—

(i) in the case of a plan other than a multiemployer plan, by an employer who maintains the plan under which such benefits were being paid; and

(ii) in the case of a multiemployer plan, in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subparagraph, including regulations with respect to the meaning of the term "employed".

(C) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 1082(d)(2) of this title.

(D)(i) A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that, in the case of a participant who does not have a nonforfeitable right to at least 50 percent of his accrued benefit derived from employer contributions, such accrued benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to the benefit derived from mandatory contributions (as defined in the last sentence of section 1054(c)(2)(C) of this title) made by such participant.

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the with-

drawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of section 1054(c)(2)(C) of this title (if such subsection applies) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(iii) In the case of accrued benefits derived from employer contributions which accrued before September 2, 1974, a right to such accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that an amount of such accrued benefit may be forfeited on account of the withdrawal by the participant of an amount attributable to the benefit derived from mandatory contributions, made by such participant before September 2, 1974, if such amount forfeited is proportional to such amount withdrawn. This clause shall not apply to any plan to which any mandatory contribution is made after September 2, 1974. The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this clause.

(iv) For purposes of this subparagraph, in the case of any class-year plan, a withdrawal of employee contributions shall be treated as a withdrawal of such contributions on a plan year by plan year basis in succeeding order of time.

(v) Cross reference.—

**For nonforfeatability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 1056(c) of this title.**

(E)(i) A right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because the plan provides that benefits accrued as a result of service with the participant's employer before the employer had an obligation to contribute under the plan may not be payable if the employer ceases contributions to the multiemployer plan.

(ii) A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because—

(I) the plan is amended to reduce benefits under section 1425<sup>1</sup> or 1441 of this title, or

(II) benefit payments under the plan may be suspended under section 1426 or 1441 of this title.

(F) A matching contribution (within the meaning of section 401(m) of title 26) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution

<sup>1</sup> See References in Text note below.

to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) of title 26, an excess deferral under section 402(g)(2)(A) of title 26, an erroneous automatic contribution under section 414(w) of title 26, or an excess aggregate contribution under section 401(m)(6)(B) of title 26.

**(b) Computation of period of service**

(1) In computing the period of service under the plan for purposes of determining the non-forfeitable percentage under subsection (a)(2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,<sup>2</sup>

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions,<sup>2</sup>

(C) years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan, defined by the Secretary of the Treasury;

(D) service not required to be taken into account under paragraph (3);

(E) years of service before January 1, 1971, unless the employee has had at least 3 years of service after December 31, 1970;

(F) years of service before this part first applies to the plan if such service would have been disregarded under the rules of the plan with regard to breaks in service, as in effect on the applicable date; and

(G) in the case of a multiemployer plan, years of service—

(i) with an employer after—

(I) a complete withdrawal of such employer from the plan (within the meaning of section 1383 of this title), or

(II) to the extent permitted by regulations prescribed by the Secretary of the Treasury, a partial withdrawal described in section 1385(b)(2)(A)(i) of this title in connection with the decertification of the collective bargaining representative; and

(ii) with any employer under the plan after the termination date of the plan under section 1348 of this title.

(2)(A) For purposes of this section, except as provided in subparagraph (C), the term “year of service” means a calendar year, plan year, or other 12-consecutive month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has completed 1,000 hours of service.

(B) For purposes of this section, the term “hour of service” has the meaning provided by section 1052(a)(3)(C) of this title.

(C) 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 determined under regulations of the Secretary.

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

(3)(A) For purposes of this paragraph, the term “1-year break in service” means a calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 1054(b)(1)(F) of this title who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the non-forfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D)(i) 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 consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) For purposes of clause (i), the term “nonvested participant” means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E)(i) In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of

<sup>2</sup> So in original. The comma probably should be a semicolon.

such pregnancy or placement shall not exceed 501 hours.

(iii) The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) For purposes of this subparagraph, the term “year” means the period used in computations pursuant to paragraph (2).

(v) A plan may provide that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(4) Cross references.—

(A) For definitions of “accrued benefit” and “normal retirement age”, see sections 1002(23) and (24) of this title.

(B) For effect of certain cash out distributions, see section 1054(d)(1) of this title.

**(c) Plan amendments altering vesting schedule**

(1)(A) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

(B) A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of subsection (a)(2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

(2) Subsection (a) shall not apply to benefits which may not be provided for designated employees in the event of early termination of the plan under provisions of the plan adopted pursuant to regulations prescribed by the Secretary of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of title 26.

**(d) Nonforfeitable benefits after lesser period and in greater amounts than required**

A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part.

**(e) Consent for distribution; present value; covered distributions**

(1) If the present value of any nonforfeitable benefit with respect to a participant in a plan exceeds \$5,000, the plan shall provide that such

benefit may not be immediately distributed without the consent of the participant.

(2) For purposes of paragraph (1), the present value shall be calculated in accordance with section 1055(g)(3) of this title.

(3) This subsection shall not apply to any distribution of dividends to which section 404(k) of title 26 applies.

(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term “rollover contributions” means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of title 26.

**(f) Special rules for plans computing accrued benefits by reference to hypothetical account balance or equivalent amounts**

**(1) In general**

An applicable defined benefit plan shall not be treated as failing to meet—

(A) subject to paragraph (2), the requirements of subsection (a)(2), or

(B) the requirements of section 1054(c) or 1055(g) of this title, or the requirements of subsection (e), with respect to accrued benefits derived from employer contributions,

solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in the hypothetical account described in paragraph (3) or as an accumulated percentage of the participant’s final average compensation.

**(2) 3-year vesting**

In the case of an applicable defined benefit plan, such plan shall be treated as meeting the requirements of subsection (a)(2) only if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions.

**(3) Applicable defined benefit plan and related rules**

For purposes of this subsection—

**(A) In general**

The term “applicable defined benefit plan” means a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant’s final average compensation.

**(B) Regulations to include similar plans**

The Secretary of the Treasury shall issue regulations which include in the definition of an applicable defined benefit plan any defined benefit plan (or any portion of such a plan) which has an effect similar to an applicable defined benefit plan.

(Pub. L. 93-406, title I, §203, Sept. 2, 1974, 88 Stat. 854; Pub. L. 96-364, title III, §303, Sept. 26, 1980,

94 Stat. 1292; Pub. L. 98-397, title I, §§102(b), (c), (d)(2), (e)(2), 105(a), Aug. 23, 1984, 98 Stat. 1426-1428, 1436; Pub. L. 99-514, title XI, §§1113(e)(1), (2), (4)(A), 1139(c)(1), title XVIII, §1898(a)(1)(B), (4)(B)(i), (d)(1)(B), (2)(B), Oct. 22, 1986, 100 Stat. 2447, 2448, 2487, 2942, 2944, 2955; Pub. L. 101-239, title VII, §§7861(a)(1), (5)(B), (6)(B), 7862(d)(4), (5), (10), 7891(a)(1), (b)(1), (2), 7894(c)(3), Dec. 19, 1989, 103 Stat. 2430, 2434, 2445, 2449; Pub. L. 103-465, title VII, §767(c)(1), Dec. 8, 1994, 108 Stat. 5039; Pub. L. 104-188, title I, §1442(b), Aug. 20, 1996, 110 Stat. 1808; Pub. L. 105-34, title X, §1071(b)(1), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107-16, title VI, §§633(b), 648(a)(2), June 7, 2001, 115 Stat. 116, 127; Pub. L. 108-311, title IV, §408(b)(8), Oct. 4, 2004, 118 Stat. 1193; Pub. L. 109-280, title I, §108(a)(4), formerly §107(a)(4), title VII, §701(a)(2), title IX, §§902(d)(2)(E), 904(b), Aug. 17, 2006, 120 Stat. 819, 984, 1038, 1049, renumbered Pub. L. 111-192, title II, §202(a), June 25, 2010, 124 Stat. 1297; Pub. L. 110-458, title I, §107(a)(1), Dec. 23, 2008, 122 Stat. 5107.)

## REFERENCES IN TEXT

Section 1425 of this title, referred to in subsec. (a)(3)(E)(ii)(I), was repealed by Pub. L. 113-235, div. O, title I, §108(a)(1), Dec. 16, 2014, 128 Stat. 2786.

## AMENDMENTS

2008—Subsec. (f)(1)(B). Pub. L. 110-458 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “the requirements of section 1054(c) of this title or section 1055(g) of this title with respect to contributions other than employee contributions.”

2006—Subsec. (a)(2). Pub. L. 109-280, §904(b)(1), amended par. (2) generally, substituting provisions relating to satisfaction of requirements in the case of a defined benefit plan and in the case of an individual account plan for provisions relating to satisfaction of requirements if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions or if an employee has a nonforfeitable right to a percentage of such benefit based upon number of years of service.

Subsec. (a)(3)(C). Pub. L. 109-280, §108(a)(4), formerly §107(a)(4), as renumbered by Pub. L. 111-192, substituted “1082(d)(2)” for “1082(c)(8)”.

Subsec. (a)(3)(F). Pub. L. 109-280, §902(d)(2)(E), inserted “an erroneous automatic contribution under section 414(w) of title 26,” before “or an excess aggregate contribution”.

Subsec. (a)(4). Pub. L. 109-280, §904(b)(2), struck out par. (4), which related to application of par. (2) in the case of matching contributions, as defined in section 401(m)(4)(A) of title 26.

Subsec. (f). Pub. L. 109-280, §701(a)(2), added subsec. (f).

2004—Subsec. (a)(4)(B). Pub. L. 108-311 substituted “6 or more” for “6” in table.

2001—Subsec. (a)(2). Pub. L. 107-16, §633(b)(1), substituted “Except as provided in paragraph (4), a plan” for “A plan” in introductory provisions.

Subsec. (a)(4). Pub. L. 107-16, §633(b)(2), added par. (4).  
Subsec. (e)(4). Pub. L. 107-16, §648(a)(2), added par. (4).  
1997—Subsec. (e)(1). Pub. L. 105-34 substituted “\$5,000” for “\$3,500”.

1996—Subsec. (a)(2). Pub. L. 104-188, §1442(b)(1), substituted “subparagraph (A) or (B)” for “subparagraph (A), (B), or (C)” in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 104-188, §1442(b)(2), struck out subpar. (C) which read as follows: “A plan satisfies the requirements of this subparagraph if—

“(i) the plan is a multiemployer plan (within the meaning of section 1002(37)), and

“(ii) under the plan—

“(I) an employee who is covered pursuant to a collective bargaining agreement described in sec-

tion 1002(37)(A)(ii) of this title and who has completed at least 10 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions, and

“(II) the requirements of subparagraph (A) or (B) are met with respect to employees not described in subclause (I).”

1994—Subsec. (e)(2). Pub. L. 103-465 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “(2)(A) For purposes of paragraph (1), the present value shall be calculated—

“(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of \$25,000, and

“(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds \$25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than \$25,000.

“(B) For purposes of subparagraph (A), the term ‘applicable interest rate’ means 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.”

1989—Subsec. (a)(2). Pub. L. 101-239, §7861(a)(1)(A), substituted “satisfies the requirements” for “satisfies the following requirements” in introductory provisions.

Subsec. (a)(2)(C)(ii)(I). Pub. L. 101-239, §7861(a)(1)(B), substituted “section 1002(37)(A)(ii) of this title” for “section 414(f)(1)(B)”.

Subsec. (a)(3)(D)(v). Pub. L. 101-239, §7894(c)(3), substituted “nonforfeitable” for “nonforfeitably”.

Subsec. (a)(3)(F). Pub. L. 101-239, §7861(a)(5)(B), added subpar. (F).

Subsec. (b)(1)(A). Pub. L. 101-239, §7861(a)(6)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: “years of service before age 18, except that in case of a plan which does not satisfy subparagraph (A) or (B) of subsection (a)(2), the plan may not disregard any such year of service during which the employee was a participant;”

Subsec. (c)(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. (e)(1). Pub. L. 101-239, §7862(d)(10), which directed amendment of par. (1) by substituting “nonforfeitable benefit” for “vested accrued benefit”, could not be executed because the language “vested accrued benefit” did not appear after the amendment by Pub. L. 101-239, §7862(d)(5), see below.

Pub. L. 101-239, §7862(d)(5), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “If the present value of any vested accrued benefit exceeds \$3,500, a pension plan shall provide that such benefit may not be immediately distributed without the consent of the participant.”

Pub. L. 101-239, §7862(d)(4), made technical correction to Pub. L. 99-514, §1898(d)(1)(B), see 1986 Amendment note below.

Subsec. (e)(2). Pub. L. 101-239, §7891(b)(1), (2), realigned margins of subpars. (A) and (B) and struck out subpar. (B) heading “Applicable interest rate”.

Subsec. (e)(3). 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.

1986—Subsec. (a)(2). Pub. L. 99-514, §1113(e)(1), amended par. (2) generally, substituting provisions covering 5-year vesting, 3- to 7-year vesting, and multiemployer plans, for former provisions which covered 10-year vesting, 5- to 15-year vesting, and the “rule of 45” under which a plan satisfied the requirements of this paragraph if an employee who had completed at least 5 years of service and with respect to whom the sum of



his age and years of service equalled or exceeded 45 had a right to a percentage of his accrued benefits derived from employer contributions.

Subsec. (a)(3)(D)(ii). Pub. L. 99-514, §1898(a)(4)(B)(i), inserted last sentence and struck out former last sentence which read as follows: "In the case of a defined contribution plan the plan provision required under this clause may provide that such repayment must be made before the participant has any 1-year break in service commencing after the withdrawal."

Subsec. (c)(1)(B). Pub. L. 99-514, §1113(e)(4)(A), substituted "3 years" for "5 years".

Subsec. (c)(3). Pub. L. 99-514, §1113(e)(2), struck out par. (3) which provided for class year vesting.

Pub. L. 99-514, §1898(a)(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th year following the plan year for which such contributions were made. For purposes of this part, the term 'class year plan' means a profit sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitable of employees' rights to or derived from the contributions for each plan year."

Subsec. (e)(1). Pub. L. 99-514, §1898(d)(1)(B), as amended by Pub. L. 101-239, §7862(d)(4), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "If the present value of any accrued benefit exceeds \$3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant."

Subsec. (e)(2). Pub. L. 99-514, §1139(c)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "For purposes of paragraph (1), the present value shall be calculated 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."

Pub. L. 99-514, §1898(d)(2)(B), added par. (3).  
1984—Subsec. (b)(1)(A). Pub. L. 98-397, §102(b), substituted "18" for "22".

Subsec. (b)(3)(C). Pub. L. 98-397, §102(c), substituted "5 consecutive 1-year breaks in service" for "any 1-year break in service" and substituted "such 5-year period" for "such break" in two places.

Subsec. (b)(3)(D). Pub. L. 98-397, §102(d)(2), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "For purposes of paragraph (1), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service."

Subsec. (b)(3)(E). Pub. L. 98-397, §102(e)(2), added subpar. (E).

Subsec. (e). Pub. L. 98-397, §105(a), added subsec. (e).  
1980—Subsec. (a)(3)(E). Pub. L. 96-364, §303(1), added subpar. (E).

Subsec. (b)(1)(G). Pub. L. 96-364, §303(2)-(4), added subpar. (G).

#### 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 108(a)(4) 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.

Amendment by section 701(a)(2) of Pub. L. 109-280 applicable to periods beginning on or after June 29, 2005, and to distributions made after Aug. 17, 2006, with provisions relating to vesting and interest credit requirements for plans in existence on June 29, 2005, special rule for collectively bargained plans, and provisions relating to conversions of plan amendments adopted after, and taking effect after, June 29, 2005, see section 701(e) of Pub. L. 109-280, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 902(d)(2)(E) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109-280, set out as a note under section 401 of Title 26, Internal Revenue Code.

Amendment by section 904(b) of Pub. L. 109-280 applicable to contributions for plan years beginning after Dec. 31, 2006, with provisions relating to collective bargaining agreements and amount of service required in any plan year and special rule for stock ownership plans, see section 904(c) of Pub. L. 109-280, set out as a note under section 411 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 633(b) of Pub. L. 107-16 applicable to contributions for plan years beginning after Dec. 31, 2001, with exception in the case of a plan maintained pursuant to one or more collective bargaining agreements ratified by June 7, 2001, and service requirement with respect to any plan, see section 633(c) of Pub. L. 107-16, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 648(a)(2) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 648(c) of Pub. L. 107-16, set out as a note under section 411 of Title 26, Internal Revenue Code.

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to plan years beginning on or after the earlier of (1) the later of (A) Jan. 1, 1997, or (B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after Aug. 20, 1996), or (2) Jan. 1, 1999, but such amendment not applicable to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendment applies, see section 1442(c) of Pub. L. 104-188, set out as a note under section 411 of Title 26, Internal Revenue Code.

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7861(a)(1), (5)(B), (6)(B) and 7862(d)(4), (5), (10) of 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 Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1), (b)(1), (2) 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)(3) 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.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1113(e)(1), (2), (4)(A) of Pub. L. 99-514 applicable to plan years beginning after Dec. 31, 1988, with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99-514, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 1139(c)(1) 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 Title 26.

Amendment by section 1898(a)(1)(B) of Pub. L. 99-514 applicable to contributions made for plan years beginning after Oct. 22, 1986, except that in the case of a plan described in section 302(b) of Pub. L. 98-397, set out as a note under section 1001 of this title, such amendments shall not apply to any plan year to which amendments made by Pub. L. 98-397 do not apply by reason of such section 302(b), see section 1898(a)(1)(C) of Pub. L. 99-514, set out as a note under section 411 of Title 26.

Amendment by section 1898(a)(4)(B)(i), (d)(1)(B), (2)(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 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.

#### 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.

#### REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1113 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of Title 26, Internal Revenue Code.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 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, 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.

### § 1054. Benefit accrual requirements

#### (a) Satisfaction of requirements by pension plans

Each pension plan shall satisfy the requirements of subsection (b)(3), and—

(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1); and

(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2).

#### (b) Enumeration of plan requirements

(1)(A) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than—

(i) 3 percent of the normal retirement benefit to which he would be entitled at the normal retirement age if he commenced participation at the earliest possible entry age under the plan and served continuously until the earlier of age 65 or the normal retirement age specified under the plan, multiplied by

(ii) the number of years (not in excess of 33 $\frac{1}{3}$ ) of his participation in the plan.

In the case of a plan providing retirement benefits based on compensation during any period, the normal retirement benefit to which a participant would be entitled shall be determined as if he continued to earn annually the average rate of compensation which he earned during consecutive years of service, not in excess of 10, for which his compensation was the highest. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(B) A defined benefit plan satisfies the requirements of this paragraph of a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the

plan for any later plan year is not more than 133 $\frac{1}{3}$  percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph—

(i) any amendment to the plan which is in effect for the current year shall be treated as in effect for all other plan years;

(ii) any change in an accrual rate which does not apply to any individual who is or could be a participant in the current year shall be disregarded;

(iii) the fact that benefits under the plan may be payable to certain employees before normal retirement age shall be disregarded; and

(iv) social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after the current year.

(C) A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled upon his separation from the service is not less than a fraction of the annual benefit commencing at normal retirement age to which he would be entitled under the plan as in effect on the date of his separation if he continued to earn annually until normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed under the plan, determined as if he had attained normal retirement age on the date any such determination is made (but taking into account no more than the 10 years of service immediately preceding his separation from service). Such fraction shall be a fraction, not exceeding 1, the numerator of which is the total number of his years of participation in the plan (as of the date of his separation from the service) and the denominator of which is the total number of years he would have participated in the plan if he separated from the service at the normal retirement age. For purposes of this subparagraph, social security benefits and all other relevant factors used to compute benefits shall be treated as remaining constant as of the current year for all years after such current year.

(D) Subparagraphs (A), (B), and (C) shall not apply with respect to years of participation before the first plan year to which this section applies but a defined benefit plan satisfies the requirements of this subparagraph with respect to such years of participation only if the accrued benefit of any participant with respect to such years of participation is not less than the greater of—

(i) his accrued benefit determined under the plan, as in effect from time to time prior to September 2, 1974, or

(ii) an accrued benefit which is not less than one-half of the accrued benefit to which such participant would have been entitled if subparagraph (A), (B), or (C) applied with respect to such years of participation.

(E) Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of ben-

efits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term "year of service" has the meaning provided by section 1052(a)(3)(A) of this title.

(F) Notwithstanding subparagraphs (A), (B), and (C), a defined benefit plan satisfies the requirements of this paragraph if such plan

(i) is funded exclusively by the purchase of insurance contracts, and

(ii) satisfies the requirements of paragraphs (2) and (3) of section 1081(b) of this title (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of paragraphs (4), (5), and (6) of section 1081(b) of this title were satisfied.

(G) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if the participant's accrued benefit is reduced on account of any increase in his age or service. The preceding sentence shall not apply to benefits under the plan commencing before benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which benefits under the plan—

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(H)(i) Notwithstanding the preceding subparagraphs, a defined benefit plan shall be treated as not satisfying the requirements of this paragraph if, under the plan, an employee's benefit accrual is ceased, or the rate of an employee's benefit accrual is reduced, because of the attainment of any age.

(ii) A plan shall not be treated as failing to meet the requirements of this subparagraph solely because the plan imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(iii) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(I) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title, then any requirement of this subparagraph for continued accrual of benefits under such plan with re-

spect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The preceding provisions of this clause shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations may provide for the application of the preceding provisions of this clause, in the case of any such employee, with respect to any period of time within a plan year.

(iv) Clause (i) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(v) A plan shall not be treated as failing to meet the requirements of clause (i) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(vi) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 shall apply with respect to the requirements of this subparagraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(1)(H).

(2)(A) A defined contribution plan satisfies the requirements of this paragraph if, under the plan, allocations to the employee's account are not ceased, and the rate at which amounts are allocated to the employee's account is not reduced, because of the attainment of any age.

(B) A plan shall not be treated as failing to meet the requirements of subparagraph (A) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals.

(C) Any regulations prescribed by the Secretary of the Treasury pursuant to subparagraphs (B) and (C) of section 411(b)(2) of title 26 shall apply with respect to the requirements of this paragraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411(b)(2).

(3) A plan satisfies the requirements of this paragraph if—

(A) in the case of a defined benefit plan, the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted under the plan; and

(B) in the case of any plan which is not a defined benefit plan, the plan requires separate accounting for each employee's accrued benefit.

(4)(A) For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 1052(b) of this title, deter-

mined without regard to section 1052(b)(5) of this title) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(B) For purposes of this paragraph, except as provided in subparagraph (C), in the case of any employee whose customary employment is less than full time, the calculation of such employee's service on any basis which provides less than a ratable portion of the accrued benefit to which he would be entitled under the plan if his customary employment were full time shall not be treated as made on a reasonable and consistent basis.

(C) For purposes of this paragraph, in the case of any employee whose service is less than 1,000 hours during any calendar year, plan year or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) 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 participation" shall be such period as determined under regulations prescribed by the Secretary.

(E) For purposes of this subsection in the case of any maritime industry, 125 days of service shall be treated as a year of participation. The Secretary may prescribe regulations to carry out the purposes of this subparagraph.

(5) SPECIAL RULES RELATING TO AGE.—

(A) COMPARISON TO SIMILARLY SITUATED YOUNGER INDIVIDUAL.—

(i) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) SIMILARLY SITUATED.—For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) DISREGARD OF SUBSIDIZED EARLY RETIREMENT BENEFITS.—In determining the accrued benefit as of any date for purposes of this subparagraph, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) ACCRUED BENEFIT.—For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) APPLICABLE DEFINED BENEFIT PLANS.—

(i) INTEREST CREDITS.—

(I) IN GENERAL.—An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) PRESERVATION OF CAPITAL.—An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the plan provides that an interest credit (or equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) MARKET RATE OF RETURN.—The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I).

(ii) SPECIAL RULE FOR PLAN CONVERSIONS.—If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) RATE OF BENEFIT ACCRUAL.—Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) SPECIAL RULES FOR EARLY RETIREMENT SUBSIDIES.—For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount<sup>1</sup> with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the

plan for entitlement to such benefit or subsidy.

(v) APPLICABLE PLAN AMENDMENT.—For purposes of this subparagraph—

(I) IN GENERAL.—The term “applicable plan amendment” means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) SPECIAL RULE FOR COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) MULTIPLE AMENDMENTS.—The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) APPLICABLE DEFINED BENEFIT PLAN.—For purposes of this subparagraph, the term “applicable defined benefit plan” has the meaning given such term by section 1053(f)(3) of this title.

(vi) TERMINATION REQUIREMENTS.—An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) CERTAIN OFFSETS PERMITTED.—A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are otherwise allowable in applying the requirements of section 401(a) of title 26.

(D) PERMITTED DISPARITIES IN PLAN CONTRIBUTIONS OR BENEFITS.—A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of title 26 are met.

(E) INDEXING PERMITTED.—

(i) IN GENERAL.—A plan shall not be treated as failing to meet the requirements of

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

paragraph (1)(H) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) PROTECTION AGAINST LOSS.—Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) INDEXING.—For purposes of this subparagraph, the term “indexing” means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) EARLY RETIREMENT BENEFIT OR RETIREMENT-TYPE SUBSIDY.—For purposes of this paragraph, the terms “early retirement benefit” and “retirement-type subsidy” have the meaning given such terms in subsection (g)(2)(A).

(G) BENEFIT ACCRUED TO DATE.—For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

**(c) Employee’s accrued benefits derived from employer and employee contributions**

(1) For purposes of this section and section 1053 of this title an employee’s accrued benefit derived from employer contributions as of any applicable date is the excess (if any) of the accrued benefit for such employee as of such applicable date over the accrued benefit derived from contributions made by such employee as of such date.

(2)(A) In the case of a plan other than a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is—

(i) except as provided in clause (ii), the balance of the employee’s separate account consisting only of his contributions and the income, expenses, gains, and losses attributable thereto, or

(ii) if a separate account is not maintained with respect to an employee’s contributions under such a plan, the amount which bears the same ratio to his total accrued benefit as the total amount of the employee’s contributions (less withdrawals) bears to the sum of such contributions and the contributions made on his behalf by the employer (less withdrawals).

(B) DEFINED BENEFIT PLANS.—In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee’s accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 1055(g)(3) of this title (as of the determination date).

(C) For purposes of this subsection, the term “accumulated contributions” means the total of—

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which section

1053(a)(2) of this title does not apply (by reason of the applicable effective date), and

(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually—

(I) at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year for the period beginning with the 1st plan year to which subsection (a)(2) applies by reason of the applicable effective date) and ending with the date on which the determination is being made, and

(II) at the interest rate which would be used under the plan under section 1055(g)(3) of this title (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

For purposes of this subparagraph, the term “mandatory contributions” means amounts contributed to the plan by the employee which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury is authorized to adjust by regulation the conversion factor described in subparagraph (B) from time to time as he may deem necessary. No such adjustment shall be effective for a plan year beginning before the expiration of 1 year after such adjustment is determined and published.

(3) For purposes of this section, in the case of any defined benefit plan, if an employee’s accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, or if the accrued benefit derived from contributions made by an employee is to be determined with respect to a benefit other than an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the employee’s accrued benefit, or the accrued benefits derived from contributions made by an employee, as the case may be, shall be the actuarial equivalent of such benefit or amount determined under paragraph (1) or (2).

(4) In the case of a defined benefit plan which permits voluntary employee contributions, the portion of an employee’s accrued benefit derived from such contributions shall be treated as an accrued benefit derived from employee contributions under a plan other than a defined benefit plan.

**(d) Employee service which may be disregarded in determining employee’s accrued benefits under plan**

Notwithstanding section 1053(b)(1) of this title, for purposes of determining the employee’s accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(1) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 1053(e)(1) of this title) permitted under regulations prescribed by the Secretary of the Treasury, or

(2) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary of the Treasury.

**(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service**

For purposes of determining the employee's accrued benefit, the plan shall not disregard service as provided in subsection (d) unless the plan provides an opportunity for the participant to repay the full amount of a distribution described in subsection (d) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subsection shall apply only in the case of a participant who—

- (1) received such a distribution in any plan year to which this section applies which distribution was less than the present value of his accrued benefit,
- (2) resumes employment covered under the plan, and
- (3) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

The plan provision required under this subsection may provide that such repayment must be made (A) in the case of a withdrawal on account of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (B) in the case of any other withdrawal, 5 years after the date of the withdrawal.

**(f) Employer treated as maintaining a plan**

For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

**(g) Decrease of accrued benefits through amendment of plan**

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(d)(2) or 1441 of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

- (A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or
- (B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reduc-

ing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

(3) For purposes of this subsection, any—

- (A) tax credit employee stock ownership plan (as defined in section 409(a) of title 26, or
- (B) employee stock ownership plan (as defined in section 4975(e)(7) of title 26),

shall not be treated as failing to meet the requirements of this subsection merely because it modifies distribution options in a nondiscriminatory manner.

(4)(A) A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the "transferor plan") to the extent that—

(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

(v) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimi-

nation of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

**(h) Notice of significant reduction in benefit accruals**

(1) An applicable pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless the plan administrator provides the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals) and to each employer who has an obligation to contribute to the plan.

(2) The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(6)(A) In the case of any egregious failure to meet any requirement of this subsection with respect to any plan amendment, the provisions of the applicable pension plan shall be applied as if such plan amendment entitled all applicable individuals to the greater of—

(i) the benefits to which they would have been entitled without regard to such amendment, or

(ii) the benefits under the plan with regard to such amendment.

(B) For purposes of subparagraph (A), there is an egregious failure to meet the requirements of this subsection if such failure is within the control of the plan sponsor and is—

(i) an intentional failure (including any failure to promptly provide the required notice or information after the plan administrator dis-

covers an unintentional failure to meet the requirements of this subsection),

(ii) a failure to provide most of the individuals with most of the information they are entitled to receive under this subsection, or

(iii) a failure which is determined to be egregious under regulations prescribed by the Secretary of the Treasury.

(7) The Secretary of the Treasury may by regulations allow any notice under this subsection to be provided by using new technologies.

(8) For purposes of this subsection—

(A) The term “applicable individual” means, with respect to any plan amendment—

(i) each participant in the plan; and

(ii) any beneficiary who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(B) The term “applicable pension plan” means—

(i) any defined benefit plan; or

(ii) an individual account plan which is subject to the funding standards of section 412 of title 26.

(9) For purposes of this subsection, a plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of reducing the rate of future benefit accrual.

**(i) Prohibition on benefit increases where plan sponsor is in bankruptcy**

(1) In the case of a plan described in paragraph (3) which is maintained by an employer that is a debtor in a case under title 11 or similar Federal or State law, no amendment of the plan which increases the liabilities of the plan by reason of—

(A) any increase in benefits,

(B) any change in the accrual of benefits, or

(C) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, shall be effective prior to the effective date of such employer's plan of reorganization.

(2) Paragraph (1) shall not apply to any plan amendment that—

(A) the Secretary of the Treasury determines to be reasonable and that provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(B) only repeals an amendment described in section 1082(d)(2) of this title,

(C) is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26, or

(D) was adopted prior to, or pursuant to a collective bargaining agreement entered into prior to, the date on which the employer became a debtor in a case under title 11 or similar Federal or State law.

(3) This subsection shall apply only to plans (other than multiemployer plans or CSEC plans)



covered under section 1321 of this title for which the funding target attainment percentage (as defined in section 1083(d)(2) of this title) is less than 100 percent after taking into account the effect of the amendment.

(4) For purposes of this subsection, the term “employer” has the meaning set forth in section 1082(b)(1) of this title, without regard to section 1082(b)(2) of this title.

**(j) Diversification requirements for certain individual account plans**

**(1) In general**

An applicable individual account plan shall meet the diversification requirements of paragraphs (2), (3), and (4).

**(2) Employee contributions and elective deferrals invested in employer securities**

In the case of the portion of an applicable individual’s account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

**(3) Employer contributions invested in employer securities**

In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual who—

(A) is a participant who has completed at least 3 years of service, or

(B) is a beneficiary of a participant described in subparagraph (A) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

**(4) Investment options**

**(A) In general**

The requirements of this paragraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics.

**(B) Treatment of certain restrictions and conditions**

**(i) Time for making investment choices**

A plan shall not be treated as failing to meet the requirements of this paragraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

**(ii) Certain restrictions and conditions not allowed**

Except as provided in regulations, a plan shall not meet the requirements of this

paragraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan. This subparagraph shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

**(5) Applicable individual account plan**

For purposes of this subsection—

**(A) In general**

The term “applicable individual account plan” means any individual account plan (as defined in section 1002(34) of this title) which holds any publicly traded employer securities.

**(B) Exception for certain ESOPS**

Such term does not include an employee stock ownership plan if—

(i) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m) of section 401 of title 26, and

(ii) such plan is a separate plan (for purposes of section 414(l) of title 26) with respect to any other defined benefit plan or individual account plan maintained by the same employer or employers.

**(C) Exception for one participant plans**

Such term shall not include a one-participant retirement plan (as defined in section 1021(i)(8)(B) of this title).

**(D) Certain plans treated as holding publicly traded employer securities**

**(i) In general**

Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

**(ii) Exception for certain controlled groups with publicly traded securities**

Clause (i) shall not apply to a plan if—

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

**(iii) Definitions**

For purposes of this subparagraph, the term—

(I) “controlled group of corporations” has the meaning given such term by sec-

tion 1563(a) of title 26, except that “50 percent” shall be substituted for “80 percent” each place it appears,

(II) “employer corporation” means a corporation which is an employer maintaining the plan, and

(III) “parent corporation” has the meaning given such term by section 424(e) of title 26.

**(6) Other definitions**

For purposes of this paragraph—

**(A) Applicable individual**

The term “applicable individual” means—

- (i) any participant in the plan, and
- (ii) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

**(B) Elective deferral**

The term “elective deferral” means an employer contribution described in section 402(g)(3)(A) of title 26.

**(C) Employer security**

The term “employer security” has the meaning given such term by section 1107(d)(1) of this title.

**(D) Employee stock ownership plan**

The term “employee stock ownership plan” has the meaning given such term by section 4975(e)(7) of title 26.

**(E) Publicly traded employer securities**

The term “publicly traded employer securities” means employer securities which are readily tradable on an established securities market.

**(F) Year of service**

The term “year of service” has the meaning given such term by section 1053(b)(2) of this title.

**(7) Transition rule for securities attributable to employer contributions**

**(A) Rules phased in over 3 years**

**(i) In general**

In the case of the portion of an account to which paragraph (3) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, paragraph (3) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

**(ii) Exception for certain participants aged 55 or over**

Clause (i) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

**(B) Applicable percentage**

For purposes of subparagraph (A), the applicable percentage shall be determined as follows:

Plan year to which paragraph (3) applies:	The applicable percentage is:
1st .....	33

Plan year to which paragraph (3) applies:	The applicable percentage is:
2d .....	66
3d .....	100.

**(k) Special rule for determining normal retirement age for certain existing defined benefit plans**

**(1) In general**

Notwithstanding section 1002(24) of this title, an applicable plan shall not be treated as failing to meet any requirement of this subchapter, or as failing to have a uniform normal retirement age for purposes of this subchapter, solely because the plan provides for a normal retirement age described in paragraph (2).

**(2) Applicable plan**

For purposes of this subsection—

**(A) In general**

The term “applicable plan” means a defined benefit plan the terms of which, on or before December 8, 2014, provided for a normal retirement age which is the earlier of—

- (i) an age otherwise permitted under section 1002(24) of this title, or
- (ii) the age at which a participant completes the number of years (not less than 30 years) of benefit accrual service specified by the plan.

A plan shall not fail to be treated as an applicable plan solely because the normal retirement age described in the preceding sentence only applied to certain participants or only applied to employees of certain employers in the case of a plan maintained by more than 1 employer.

**(B) Expanded application**

Subject to subparagraph (C), if, after December 8, 2014, an applicable plan is amended to expand the application of the normal retirement age described in subparagraph (A) to additional participants or to employees of additional employers maintaining the plan, such plan shall also be treated as an applicable plan with respect to such participants or employees.

**(C) Limitation on expanded application**

A defined benefit plan shall be an applicable plan only with respect to an individual who—

- (i) is a participant in the plan on or before January 1, 2017, or
- (ii) is an employee at any time on or before January 1, 2017, of any employer maintaining the plan, and who becomes a participant in such plan after such date.

**(l) Cross reference**

For special rules relating to plan provisions adopted to preclude discrimination, see section 1053(c)(2) of this title.

(Pub. L. 93-406, title I, §204, Sept. 2, 1974, 88 Stat. 858; Pub. L. 98-397, title I, §§102(e)(3), (f), 105(b), title III, §301(a)(2), Aug. 23, 1984, 98 Stat. 1429, 1436, 1451; Pub. L. 99-272, title XI, §11006(a), Apr. 7, 1986, 100 Stat. 243; Pub. L. 99-509, title IX,

§ 9202(a), Oct. 21, 1986, 100 Stat. 1975; Pub. L. 99-514, title XI, § 1113(e)(4)(B), title XVIII, §§ 1879(u)(1), 1898(a)(4)(B)(ii), (f)(1)(B), (2), Oct. 22, 1986, 100 Stat. 2448, 2913, 2944, 2956; Pub. L. 100-203, title IX, § 9346(a), Dec. 22, 1987, 101 Stat. 1330-374; Pub. L. 101-239, title VII, §§ 7862(b)(1)(A), (2), 7871(a)(1), (3), 7881(m)(2)(A)-(C), 7891(a)(1), 7894(c)(4)-(6), Dec. 19, 1989, 103 Stat. 2432, 2434, 2435, 2444, 2445, 2449; Pub. L. 103-465, title VII, § 766(a), Dec. 8, 1994, 108 Stat. 5036; Pub. L. 105-34, title X, § 1071(b)(2), Aug. 5, 1997, 111 Stat. 948; Pub. L. 107-16, title VI, §§ 645(a)(2), (b)(2), 659(b), June 7, 2001, 115 Stat. 124, 125, 139; Pub. L. 107-147, title IV, § 411(u)(2), Mar. 9, 2002, 116 Stat. 52; Pub. L. 109-280, title I, § 108(a)(5)-(8), formerly § 107(a)(5)-(8), title V, § 502(c)(1), title VII, § 701(a)(1), title IX, § 901(b)(1), Aug. 17, 2006, 120 Stat. 819, 941, 981, 1029, renumbered Pub. L. 111-192, title II, § 202(a), June 25, 2010, 124 Stat. 1297; Pub. L. 110-458, title I, § 107(a)(2), (3), Dec. 23, 2008, 122 Stat. 5107; Pub. L. 113-97, title I, § 102(b)(4), Apr. 7, 2014, 128 Stat. 1116; Pub. L. 113-235, div. P, § 2(a), Dec. 16, 2014, 128 Stat. 2827.)

## REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(G), 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.

## AMENDMENTS

2014—Subsec. (i)(3). Pub. L. 113-97 substituted “multi-employer plans or CSEC plans” for “multiemployer plans”.

Subsecs. (k), (l). Pub. L. 113-235 added subsec. (k) and redesignated former subsec. (k) as (l).

2008—Subsec. (b)(5)(A)(iii). Pub. L. 110-458, § 107(a)(2)(A), substituted “subparagraph” for “clause”.

Subsec. (b)(5)(B)(i)(II). Pub. L. 110-458, § 107(a)(3), amended subcl. (II) generally. Prior to amendment, text read as follows: “An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.”

Subsec. (b)(5)(C). Pub. L. 110-458, § 107(a)(2)(B), inserted “otherwise” before “allowable”.

2006—Subsec. (b)(5). Pub. L. 109-280, § 701(a)(1), added par. (5).

Subsec. (g)(1). Pub. L. 109-280, § 108(a)(5), formerly § 107(a)(5), as renumbered by Pub. L. 111-192, substituted “1082(d)(2)” for “1082(c)(8)”.

Subsec. (h)(1). Pub. L. 109-280, § 502(c)(1), inserted before period at end “and to each employer who has an obligation to contribute to the plan”.

Subsec. (i)(2)(B). Pub. L. 109-280, § 108(a)(6), formerly § 107(a)(6), as renumbered by Pub. L. 111-192, substituted “1082(d)(2)” for “1082(c)(8)”.

Subsec. (i)(3). Pub. L. 109-280, § 108(a)(7), formerly § 107(a)(7), as renumbered by Pub. L. 111-192, substituted “funding target attainment percentage (as defined in section 1083(d)(2) of this title)” for “funded current liability percentage (within the meaning of section 1082(d)(8) of this title)”.

Subsec. (i)(4). Pub. L. 109-280, § 108(a)(8), formerly § 107(a)(8), as renumbered by Pub. L. 111-192, substituted “section 1082(b)(1) of this title, without regard to section 1082(b)(2) of this title” for “section 1082(c)(11)(A) of this title, without regard to section 1082(c)(11)(B) of this title”.

Subsecs. (j), (k). Pub. L. 109-280, § 901(b)(1), added subsec. (j) and redesignated former subsec. (j) as (k).

2002—Subsec. (h)(9). Pub. L. 107-147 struck out “significantly” before “reduces” and before “reducing”.

2001—Subsec. (g)(2). Pub. L. 107-16, § 645(b)(2), inserted after second sentence “The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner.”

Subsec. (g)(4), (5). Pub. L. 107-16, § 645(a)(2), added pars. (4) and (5).

Subsec. (h). Pub. L. 107-16, § 659(b), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

“(1) A plan described in paragraph (2) may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to—

“(A) each participant in the plan,

“(B) each beneficiary who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title), and

“(C) each employee organization representing participants in the plan,

except that such notice shall instead be provided to a person designated, in writing, to receive such notice on behalf of any person referred to in subparagraph (A), (B), or (C).

“(2) A plan is described in this paragraph if such plan is—

“(A) a defined benefit plan, or

“(B) an individual account plan which is subject to the funding standards of section 1082 of this title.”

1997—Subsec. (d)(1). Pub. L. 105-34 substituted “the dollar limit under section 1053(e)(1) of this title” for “\$3,500”.

1994—Subsecs. (i), (j). Pub. L. 103-465 added subsec. (i) and redesignated former subsec. (i) as (j).

1989—Subsec. (b)(1)(A). Pub. L. 101-239, § 7894(c)(4), substituted “subparagraph” for “suparagraph” in last sentence.

Subsec. (b)(1)(E). Pub. L. 101-239, § 7894(c)(5), substituted “term ‘year of service’” for “term ‘years of service’”.

Subsec. (b)(2)(B). Pub. L. 101-239, § 7871(a)(1), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “Subparagraph (A) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.”

Subsec. (b)(2)(C). Pub. L. 101-239, § 7871(a)(3), substituted “subparagraphs (B) and (C)” for “subparagraphs (C) and (D)”.

Pub. L. 101-239, § 7871(a)(1), redesignated subpar. (D) as (C). Former subpar. (C) redesignated (B).

Subsec. (b)(2)(D). Pub. L. 101-239, § 7871(a)(1), redesignated subpar. (D) as (C).

Subsec. (c)(2)(B). Pub. L. 101-239, § 7881(m)(2)(B), inserted heading and amended text generally. Prior to amendment, text read as follows:

“(i) In the case of a defined benefit plan providing an annual benefit in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, the accrued benefit derived from contributions made by an employee as of any applicable date is the annual benefit equal to the employee’s accumulated contributions multiplied by the appropriate conversion factor.

“(ii) For purposes of clause (i), the term ‘appropriate conversion factor’ means the factor necessary to convert an amount equal to the accumulated contributions

to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary of the Treasury or his delegate.”

Subsec. (c)(2)(C)(iii). Pub. L. 101-239, §7881(m)(2)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: “interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year) from the beginning of the first plan year to which section 1053(a)(2) of this title applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age.”

Subsec. (c)(2)(E). Pub. L. 101-239, §7881(m)(2)(C), struck out subpar. (E) which read as follows: “The accrued benefit derived from employee contributions shall not exceed the greater of—

“(i) the employee’s accrued benefit under the plan, or

“(ii) the accrued benefit derived from employee contributions determined as though the amounts calculated under clauses (ii) and (iii) of subparagraph (C) were zero.”

Subsec. (d). Pub. L. 101-239, §7894(c)(6), removed the indentation of the term “Paragraph” where first appearing in concluding provisions.

Subsec. (g)(3)(A). 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. (h). Pub. L. 101-239, §7862(b)(1)(A), made technical correction to directory language of Pub. L. 99-514, §1879(u)(1), see 1986 Amendment note below.

Subsec. (h)(2). Pub. L. 101-239, §7862(b)(2), adjusted left-hand margin of introductory provisions to full measure.

1987—Subsec. (c)(2)(C)(iii). Pub. L. 100-203, §9346(a)(1), substituted “120 percent of the Federal mid-term rate (as in effect under section 1274 of title 26 for the 1st month of a plan year)” for “5 percent per annum”.

Subsec. (c)(2)(D). Pub. L. 100-203, §9346(a)(2), struck out “, the rate of interest described in clause (iii) of subparagraph (C), or both,” before “from time to time” in first sentence and struck out second sentence which read as follows: “The rate of interest shall bear the relationship to 5 percent which the Secretary of the Treasury determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973.”

1986—Subsec. (a). Pub. L. 99-509, §9202(a)(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “Each pension plan shall satisfy the requirements of subsection (b)(2), and in the case of a defined benefit plan shall also satisfy the requirements of subsection (b)(1).”

Subsec. (b)(1)(H). Pub. L. 99-509, §9202(a)(2), added subpar. (H).

Subsec. (b)(2) to (4). Pub. L. 99-509, §9202(a)(3), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (e). Pub. L. 99-514, §1898(a)(4)(B)(ii), inserted last sentence and struck out former last sentence which read as follows: “In the case of a defined contribution plan, the plan provision required under this subsection may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal”.

Subsec. (g)(1). Pub. L. 99-514, §1898(f)(2), inserted reference to section 1441.

Subsec. (g)(3). Pub. L. 99-514, §1898(f)(1)(B), added par. (3).

Subsec. (h). Pub. L. 99-514, §1879(u)(1), as amended by Pub. L. 101-239, §7862(b)(1)(A), designated existing provisions as par. (1), substituted “plan described in paragraph (2)” for “single-employer plan”, redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, substituted “subparagraph (A), (B), or (C)” for “paragraph (1), (2), or (3)” in concluding provisions, and added par. (2).

Pub. L. 99-272 added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99-514, §1113(e)(4)(B), amended subsec. (i) generally, striking out reference to class year plans under section 1053(c)(3) of this title.

Pub. L. 99-272 redesignated former subsec. (h) as (i). 1984—Subsec. (b)(3)(A). Pub. L. 98-397, §102(e)(3), inserted “, determined without regard to section 1052(b)(5) of this title” after “section 1052(b) of this title”.

Subsec. (d)(1). Pub. L. 98-397, §105(b), substituted “\$3,500” for “\$1,750”.

Subsec. (e). Pub. L. 98-397, §102(f), substituted “5 consecutive 1-year breaks in service” for “any 1-year break in service”.

Subsec. (g). Pub. L. 98-397, §301(a)(2), designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-235 applicable to all periods before, on, and after Dec. 16, 2014, see section 2(c) of div. P of Pub. L. 113-235, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 113-97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### 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 108(a)(5) to (8) 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.

Amendment by section 502(c)(1) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, see section 502(d) of Pub. L. 109-280, set out as a note under section 4980F of Title 26, Internal Revenue Code.

Amendment by section 701(a)(1) of Pub. L. 109-280 applicable to periods beginning on or after June 29, 2005, with provisions relating to vesting and interest credit requirements for plans in existence on June 29, 2005, special rule for collectively bargained plans, and provisions relating to conversions of plan amendments adopted after, and taking effect after, June 29, 2005, see section 701(e) of Pub. L. 109-280, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 901(b)(1) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2006, with special rules for collectively bargained agreements and certain employer securities held in an ESOP, see section 901(c) of Pub. L. 109-280, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 645(a)(2) of Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see sec-

tion 645(a)(3) of Pub. L. 107-16, set out as a note under section 411 of Title 26, Internal Revenue Code.

Amendment by section 659(b) of Pub. L. 107-16 applicable to plan amendments taking effect on or after June 7, 2001, with transition provisions and special notice rule, see section 659(c) of Pub. L. 107-16, set out as an Effective Date note under section 4980F of Title 26, Internal Revenue Code.

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-465 applicable to plan amendments adopted on or after Dec. 8, 1994, see section 766(d) of Pub. L. 103-465, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7862(b)(1)(A), (2) of 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 Title 26, Internal Revenue Code.

Amendment by section 7871(a)(1), (3) of Pub. L. 101-239 effective as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99-509, see section 7871(a)(4) of Pub. L. 101-239, set out as a note under section 411 of Title 26.

Amendment by section 7881(m)(2)(A)-(C) of Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Pension Protection Act, Pub. L. 100-203, §§9302-9346, to which such amendment relates, see section 7882 of Pub. L. 101-239, set out as a note under section 401 of Title 26.

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)(4)-(6) 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.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100-203, title IX, §9346(c), Dec. 22, 1987, 101 Stat. 1330-374, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 411 of Title 26, Internal Revenue Code] shall apply to plan years beginning after December 31, 1987.

“(2) PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989.—If any amendment made by this section requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

“(A) during the period after such amendments made by this section take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments or in accordance with an amendment prescribed by the Secretary of the Treasury and adopted by the plan, and

“(B) such plan amendment applies retroactively to the period after such amendments take effect and such first plan year.

A plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.”

#### EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1113(e)(4)(B) of Pub. L. 99-514 applicable to plan years beginning after Dec. 31, 1988,

with special rule for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and not applicable to employees who do not have 1 hour of service in any plan year to which the amendment applies, see section 1113(f) of Pub. L. 99-514, as amended, set out as a note under section 411 of Title 26, Internal Revenue Code.

Pub. L. 99-514, title XVIII, §1879(u)(5), formerly §1879(u)(4), Oct. 22, 1986, 100 Stat. 2913, as redesignated and amended by Pub. L. 101-239, title VII, §7862(b)(1)(A), (B), Dec. 19, 1989, 103 Stat. 2432, provided that:

“(A) GENERAL RULE.—Except as provided in subparagraph (B), the preceding provisions of this subsection [amending this section and sections 1002 and 1349 of this title] shall be effective as if such provisions were included in the enactment of the Single-Employer Pension Plan Amendments Act of 1986 [Pub. L. 99-272, title XI].

“(B) SPECIAL RULE.—Subparagraph (B) of section 204(h)(2) of the Employee Retirement Income Security Act of 1974 (as amended by paragraph (1)) [29 U.S.C. 1054(h)(2)(B)] shall apply only with respect to plan amendments adopted on or after the date of the enactment of this Act [Oct. 22, 1986].”

Amendment by section 1898(a)(4)(B)(ii), (f)(1)(B), (2) 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.

Amendment by Pub. L. 99-509 applicable only with respect to plan years beginning on or after Jan. 1, 1988, and only to employees who have 1 hour of service in any plan year to which amendment applies, with special rule for collectively bargained plans, see section 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendments note under section 623 of this title.

Pub. L. 99-272, title XI, §11006(b), Apr. 7, 1986, 100 Stat. 243, provided that: “The amendments made by subsection (a) [amending this section] shall apply with respect to plan amendments adopted on or after January 1, 1986, except that, in the case of plan amendments adopted on or after January 1, 1986, and on or before the date of the enactment of this Act [Apr. 7, 1986], the requirements of section 204(h) of the Employee Retirement Income Security Act of 1974 [subsec. (h) of this section] (as added by this section) shall be treated as met if the written notice required under such section 204(h) is provided before 60 days after the date of the enactment of this Act.”

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 102(e)(3), (f), and 105(b) of 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.

Amendment by section 301(a)(2) of Pub. L. 98-397 not applicable to the termination of a certain defined benefit plan, see section 303(f) of Pub. L. 98-397.

#### REGULATIONS

Secretary of Labor, Secretary of the Treasury, and Equal Employment Opportunity Commission each to issue before Feb. 1, 1988, final regulations to carry out amendments made by Pub. L. 99-509, see section 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 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 REFLECTING AMENDMENTS BY SECTION 7881(m) OF PUB. L. 101-239 NOT TREATED AS REDUCING ACCRUED BENEFIT**

Pub. L. 101-239, title VII, §7881(m)(3), Dec. 19, 1989, 103 Stat. 2444, provided that: "If—

"(A) during the period beginning December 22, 1987, and ending June 21, 1988, a plan was amended to reflect the amendments made by section 9346 of the Pension Protection Act [Pub. L. 100-203, amending this section and section 411 of Title 26, Internal Revenue Code], and

"(B) such plan is amended to reflect the amendments made by this subsection [amending this section, section 1002 of this title, and section 411 of Title 26],

any plan amendment described in subparagraph (B) shall not be treated as reducing accrued benefits for purposes of section 411(d)(6) of the Internal Revenue Code of 1986 [section 411(d)(6) of Title 26] or section 204(g) of ERISA [subsec. (g) of this section]."

**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.

For provisions directing that if any amendments made by Pub. L. 99-509 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 9204 of Pub. L. 99-509, set out as an Effective and Termination Dates of 1986 Amendment note under section 623 of this title.

**§ 1055. Requirement of joint and survivor annuity and preretirement survivor annuity**

**(a) Required contents for applicable plans**

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

**(b) Applicable plans**

(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 1082 of this title, and

(C) any participant under any other individual account plan unless—

(i) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death

of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2), to a designated beneficiary),

(ii) such participant does not elect the payment of benefits in the form of a life annuity, and

(iii) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in subparagraph (A) or (B) or to which this clause applied with respect to the participant.

Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(2)(A) In the case of—

(i) a tax credit employee stock ownership plan (as defined in section 409(a) of title 26), or

(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of title 26),

subsection (a) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of title 26 apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause<sup>1</sup> (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(4)<sup>2</sup> This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in section 404(c) of title 26 (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(4)<sup>2</sup> A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

**(c) Plans meeting requirements of section**

(1) A plan meets the requirements of this section 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).

(2) Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

<sup>1</sup> So in original. Probably should be "clauses".

<sup>2</sup> So in original. There are two pars. designated (4) and no par. (3).

(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 of the Treasury 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)(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury 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)(i) 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) 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 this section 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) Each plan shall provide that, if this section 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)(A) 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) 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) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

(7) 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.

(8) Notwithstanding any other provision of this subsection—

(A)(i) 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 (7) shall not end before the 30th day after the date on which such explanation is provided.

(ii) The Secretary of the Treasury 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) 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.

**(d) “Qualified joint and survivor annuity” and “qualified optional survivor annuity” defined**

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

(A) 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

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

(i) 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

(ii) 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.

(B)(i) For purposes of subparagraph (A), 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.

(ii) For purposes of clause (i), 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.

**(e) “Qualified preretirement survivor annuity” defined**

For purposes of this section—

(1) 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 partici-

pant 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) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1), 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 non-forfeitable right (within the meaning of section 1053 of this title).

(3) 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.

**(f) Marriage requirements for plan**

(1) Except as provided in paragraph (2), a plan may provide 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) 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.

**(g) Distribution of present value of annuity; written consent; determination of present value**

(1) 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



1053(e) of this title. 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) consent in writing to such distribution.

(2) 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 1053(e) of this title, 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)(A) 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) For purposes of subparagraph (A)—

(i) The term “applicable mortality table” means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under subparagraph (A) of section 1083(h)(3) of this title (without regard to subparagraph (C) or (D) of such section).

(ii) The term “applicable interest rate” means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 1083(h)(2)(C) of this title (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 of the Treasury may by regulations prescribe.

(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 1083(h)(2)(C) of this title (determined by not taking into account any adjustment under clause (iv) thereof) if section 1083(h)(2)(D) of this title were applied by substituting the average yields for the month described in clause (ii) for the average yields for the 24-month period described in such section.

#### (h) Definitions

For purposes of this section—

(1) The term “vested participant” means any participant who has a nonforfeitable right (within the meaning of section 1002(19) of this title) to any portion of such participant's accrued benefit.

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

#### (i) Increased costs from providing annuity

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

#### (j) Use of participant's accrued benefit as security for loan as not preventing distribution

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

#### (k) Spousal consent

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

#### (l) Regulations; consultation of Secretary of the Treasury with Secretary of Labor

In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

(Pub. L. 93-406, title I, §205, Sept. 2, 1974, 88 Stat. 862; Pub. L. 98-397, title I, §103(a), Aug. 23, 1984, 98 Stat. 1429; Pub. L. 99-514, title XI, §§1139(c)(2), 1145(b), title XVIII, §1898(b)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), (12)(B), (13)(B), (14)(B), Oct. 22, 1986, 100 Stat. 2488, 2491, 2945-2951; Pub. L. 101-239, title VII, §§7861(d)(2), 7862(d)(1)(B), (3), (6)-(9), 7891(a)(1), (b)(3), (c), (e), 7894(c)(7)(A), Dec. 19, 1989, 103 Stat. 2431, 2434, 2445, 2447, 2449; Pub. L. 103-465, title VII, §767(c)(2), Dec. 8, 1994, 108 Stat. 5039; Pub. L. 104-188, title I, §1451(b), Aug. 20, 1996, 110 Stat. 1815; Pub. L. 105-34, title X, §1071(b)(2), title XVI, §1601(d)(5), Aug. 5, 1997, 111 Stat. 948, 1089; Pub. L. 107-147, title IV, §411(r)(2), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109-280, title III, §302(a), title X, §1004(b), title XI, §1102(a)(2)(A), Aug. 17, 2006, 120 Stat. 920, 1054, 1056; Pub. L. 110-458, title I, §103(b)(1), Dec. 23, 2008, 122 Stat. 5103; Pub. L. 112-141, div. D, title II, §40211(b)(3)(B), July 6, 2012, 126 Stat. 849; Pub. L. 113-295, div. A, title II, §221(a)(57)(B)(ii), Dec. 19, 2014, 128 Stat. 4046.)

#### AMENDMENTS

2014—Subsec. (g)(3)(B)(iii). Pub. L. 113-295 struck out dash after “if” and subcl. (I) designation before “section 1083(h)(2)(D)”, substituted “described in such section.” for “described in such section.”, and struck out subcls. (II) and (III) which related to methods for calculating rates based on section 1083(h)(2)(G) of this title.

2012—Subsec. (g)(3)(B)(ii), (iii). Pub. L. 112-141 substituted “section 1083(h)(2)(C) of this title (determined by not taking into account any adjustment under clause (iv) thereof)” for “section 1083(h)(2)(C) of this title”.

2008—Subsec. (g)(3)(B)(iii)(II). Pub. L. 110-458 substituted “section 1055(g)(3)(A)(ii)(II)” for “section 1055(g)(3)(B)(iii)(II)”.

2006—Subsec. (c)(1)(A). Pub. L. 109-280, §1004(b)(1), substituted comma for “, and” at end of cl. (i), added cl. (ii), and redesignated former cl. (ii) as (iii).

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

Subsec. (c)(7)(A). Pub. L. 109-280, §1102(a)(2)(A), substituted “180-day” for “90-day”.

Subsec. (d). Pub. L. 109-280, §1004(b)(2), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (g)(3). Pub. L. 109-280, §302(a), struck out heading and amended text of par. (3) generally. Prior to amendment, par. (3) stated general rule for determination of present value, defined “applicable mortality table” and “applicable interest rate”, and set forth exception from general rule in the case of a distribution from a plan that was adopted and in effect prior to Dec. 8, 1994.

2002—Subsec. (g)(1). Pub. L. 107-147, §411(r)(2)(A), substituted “exceed the amount that can be distributed without the participant’s consent under section 1053(e) of this title” for “exceed the dollar limit under section 1053(e)(1) of this title”.

Subsec. (g)(2)(A). Pub. L. 107-147, §411(r)(2)(B), substituted “exceeds the amount that can be distributed without the participant’s consent under section 1053(e) of this title” for “exceeds the dollar limit under section 1053(e)(1) of this title”.

1997—Subsec. (c)(8)(A)(ii). Pub. L. 105-34, §1601(d)(5), substituted “Secretary of the Treasury” for “Secretary”.

Subsec. (g)(1), (2)(A). Pub. L. 105-34, §1071(b)(2), substituted “the dollar limit under section 1053(e)(1) of this title” for “\$3,500”.

1996—Subsec. (c)(8). Pub. L. 104-188 added par. (8).

1994—Subsec. (g)(3). Pub. L. 103-465 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “(3)(A) For purposes of paragraphs (1) and (2), the present value shall be calculated—

“(i) by using an interest rate no greater than the applicable interest rate if the vested accrued benefit (using such rate) is not in excess of \$25,000, and

“(ii) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds \$25,000 (as determined under clause (i)).

In no event shall the present value determined under subclause (II) be less than \$25,000.

“(B) For purposes of subparagraph (A), the term ‘applicable interest rate’ means 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.”

1989—Subsec. (b)(1)(C)(i). Pub. L. 101-239, §7862(d)(7), made technical correction to directory language of Pub. L. 99-514, §1898(b)(7)(B), see 1986 Amendment note below.

Subsec. (b)(2)(A)(i). 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. (b)(3), (4). Pub. L. 101-239, §7862(d)(9), amended directory language of Pub. L. 99-514, §1898(b)(14)(B), see 1986 Amendment note below, and redesignated par. (3), as added by Pub. L. 99-514, §1898(b)(14)(B), as par. (4).

Pub. L. 101-239, §§7861(d)(2), 7891(c), realigned margins of par. (3), as added by Pub. L. 99-514, §1145(b), and redesignated such par. (3) as (4).

Subsec. (c)(3)(B)(ii). Pub. L. 101-239, §7862(d)(1)(B), inserted at end “In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.”

Subsec. (c)(3)(B)(ii)(IV). Pub. L. 101-239, §7862(d)(6), substituted “after this section” for “after section 1101(a)(11) of this title”.

Subsec. (c)(3)(B)(ii)(V). Pub. L. 101-239, §7862(d)(1)(B), struck out subcl. (V) which read as follows: “A reasonable period after separation from service in case of a participant who separates before attaining age 35.”

Subsec. (c)(6). Pub. L. 101-239, §7894(c)(7)(A), substituted “such Act” for “such act”.

Subsec. (e)(2). Pub. L. 101-239, §7862(d)(8), substituted “nonforfeitable right (within the meaning of section 1053 of this title)” for “nonforfeitable accrued benefit”.

Subsec. (g)(3)(A). Pub. L. 101-239, §7891(b)(3), realigned margins of subpar. (A).

Subsec. (h)(1). Pub. L. 101-239, §§7862(d)(3)(A), 7891(e)(1), amended par. (1) identically, substituting “The term” for “the term” and “benefit.” for “benefit.”.

Subsec. (h)(3). Pub. L. 101-239, §§7862(d)(3)(B), 7891(e)(2), amended par. (3) identically, substituting “The term” for “the term”.

1986—Subsec. (a)(1). Pub. L. 99-514, §1898(b)(3)(B), substituted “who does not die before the annuity starting date” for “who retires under the plan”.

Subsec. (b)(1). Pub. L. 99-514, §1898(b)(2)(B)(ii), inserted at end “Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.”

Subsec. (b)(1)(C)(i). Pub. L. 99-514, §1898(b)(13)(B), substituted “(c)(2)” for “(c)(2)(A)”.

Pub. L. 99-514, §1898(b)(7)(B), as amended by Pub. L. 101-239, §7862(d)(7), inserted “(reduced by any security interest held by the plan by reason of a loan outstanding to such participant)”.

Subsec. (b)(1)(C)(iii). Pub. L. 99-514, §1898(b)(2)(B)(i), substituted “a direct or indirect transferee (in a transfer after December 31, 1984)” for “a transferee”.

Subsec. (b)(3). Pub. L. 99-514, §1898(b)(14)(B), as amended by Pub. L. 101-239, §7862(d)(9)(A), added par. (3) relating to treatment of plan as meeting requirements of par. (1)(C) or (2) of subsec. (b).

Pub. L. 99-514, §1145(b), added par. (3) relating to applicability of this section to plans described in section 404(c) of title 26.

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

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

Subsec. (c)(4). Pub. L. 99-514, §1898(b)(4)(B)(ii), added par. (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 99-514, §1898(b)(4)(B)(ii), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (c)(5)(A). Pub. L. 99-514, §1898(b)(11)(B), inserted “if such benefit may not be waived (or another beneficiary selected) and”.

Subsec. (c)(6), (7). Pub. L. 99-514, §1898(b)(4)(B)(ii), redesignated pars. (5) and (6) as (6) and (7), respectively.

Subsec. (e)(1). Pub. L. 99-514, §1898(b)(1)(B), inserted at end “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. (e)(2). Pub. L. 99-514, §1898(b)(9)(B)(i), substituted “the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable accrued benefit” for “the account balance of the participant as of the date of death”.

Subsec. (e)(3). Pub. L. 99-514, §1898(b)(9)(B)(ii), added par. (3).

Subsec. (g)(3). Pub. L. 99-514, §1139(c)(2), 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. (h)(1). Pub. L. 99-514, §1898(b)(8)(B), substituted “such participant’s accrued benefit” for “the accrued benefit derived from employer contributions”.

Subsec. (h)(2). Pub. L. 99-514, §1898(b)(12)(B), 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), and”.

Subsec. (j). Pub. L. 99-514, §1898(b)(4)(B)(iii), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 99-514, §1898(b)(10)(B), added subsec. (k). Former subsec. (k) redesignated (l).

Pub. L. 99-514, §1898(b)(4)(B)(iii), redesignated subsec. (j) as (k).

Subsec. (l). Pub. L. 99-514, §1898(b)(10)(B), redesignated subsec. (k) as (l).

1984—Subsec. (a). Pub. L. 98-397 substituted provisions relating to provisions to be included in applicable plans for former provisions relating to form of payment of annuity benefits.

Subsec. (b). Pub. L. 98-397 substituted provisions relating to applicable plans under this section for former provisions relating to plans providing for payment of benefits before normal retirement age.

Subsec. (c). Pub. L. 98-397 substituted provisions relating to conditions under which plans meet the requirements of this section for former provisions relating to election of qualified joint and survivor annuity form.

Subsec. (d). Pub. L. 98-397 substituted provisions defining “qualified joint and survivor annuity” for former provisions relating to the participant’s spouse not being entitled to receive survivor annuity.

Subsec. (e). Pub. L. 98-397 substituted provisions defining “qualified preretirement survivor annuity” for former provisions relating to election to take annuity.

Subsec. (f). Pub. L. 98-397 substituted provisions to the effect that plans may provide that annuities will not be provided unless the participant and spouse had been married for a certain 1-year period, for former provisions relating to plan provisions which render election or revocation ineffective if participant dies within period of up to 2 years following the date of election or revocation.

Subsec. (g). Pub. L. 98-397 substituted provisions relating to plan provisions for immediate distribution of present value if such value does not exceed \$3,500 and for written consent from the participant and spouse for former provisions setting forth definitions. See subsec. (h) of this section.

Subsec. (h). Pub. L. 98-397 substituted provisions setting forth definitions for former provisions relating to increased costs resulting from providing joint and survivor annuity benefits. See subsec. (i) of this section.

Subsec. (i). Pub. L. 98-397 substituted provisions relating to increased costs resulting from providing annuities under applicable plans for former provisions setting forth the effective date of this section.

Subsec. (j). Pub. L. 98-397 added subsec. (j).

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 applicable with respect to plan years beginning after Dec. 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112-141, set out as a note under section 404 of Title 26, Internal Revenue Code.

#### 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 302(a) of Pub. L. 109-280 applicable with respect to plan years beginning after Dec. 31, 2007, see section 302(c) of Pub. L. 109-280, set out as a note under section 417 of Title 26, Internal Revenue Code.

Amendment by section 1004(b) of Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2007, with special rule for collectively bargained plans, see section 1004(c) of Pub. L. 109-280, set out as a note under section 417 of Title 26, Internal Revenue Code.

Amendments and modifications made or required by section 1102(a)(2)(A) of Pub. L. 109-280 applicable to years beginning after Dec. 31, 2006, see section 1102(a)(3) of Pub. L. 109-280, set out as a note under section 417 of Title 26, Internal Revenue Code.

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 1071(b)(2) of 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 Title 26, Internal Revenue Code.

Amendment by section 1601(d)(5) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 36C of Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 applicable to plan years beginning after Dec. 31, 1996, see section 1451(c) of Pub. L. 104-188, set out as a note under section 417 of Title 26, Internal Revenue Code.

#### 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 Title 26, Internal Revenue Code.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by sections 7861(d)(2) and 7862(d)(1)(B), (3), (6)–(9) of 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 Title 26, Internal Revenue Code.

Amendment by section 7891(a)(1), (b)(3), (c), (e) 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.

Section 7894(c)(7)(B) of Pub. L. 101-239 provided that: "The amendment made by subparagraph (A) [amending this section] shall take effect as if included in section 103 of the Retirement Equity Act of 1984 [Pub. L. 98-397] in reference to the new section 205(c)(5) of ERISA [subsec. (c)(5) of this section] as added by such section 3113."

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1139(c)(2) 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 Title 26, Internal Revenue Code.

Amendment by section 1145(b) of Pub. L. 99-514 applicable as if included in the amendments made by the Retirement Equity Act of 1984, Pub. L. 98-397, see section 1145(d) of Pub. L. 99-514, set out as a note under section 401 of Title 26.

Amendment by section 1898(b)(4)(B) of Pub. L. 99-514 applicable with respect to loans made after Aug. 18, 1985, see section 1898(b)(4)(C) of Pub. L. 99-514, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(6)(B) of Pub. L. 99-514 applicable to plan years beginning after Oct. 22, 1986, see section 1898(b)(6)(C) of Pub. L. 99-514, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(8)(B) of Pub. L. 99-514 applicable to distributions after Oct. 22, 1986, see section 1898(b)(8)(C) of Pub. L. 99-514, as added, set out as a note under section 417 of Title 26.

Amendment by section 1898(b)(1)(B), (2)(B), (3)(B), (5)(B), (7)(B), (9)(B), (10)(B), (11)(B), (12)(B), (13)(B), (14)(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 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.

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

(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.

(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 rea-

son 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 meaning 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 per-

centage of such plan (determined by not taking into account any adjustment of segment rates under section 1083(h)(2)(C)(iv) of this title) 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

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



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—

(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 contribu-

tion 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 result 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**

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.

**(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) Repealed. Pub. L. 113-295, div. A, title II, § 221(a)(57)(G)(ii), Dec. 19, 2014, 128 Stat. 4047 ]****(12) CSEC plans**

This subsection shall not apply to a CSEC plan (as defined in section 1060(f) of this title).

(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; Pub. L. 113-97, title I, §102(b)(3), Apr. 7, 2014, 128 Stat. 1116; Pub. L. 113-159, title II, §2003(c)(2), Aug. 8, 2014, 128 Stat. 1850; Pub. L. 113-295, div. A, title II, §221(a)(57)(E)(ii), (F)(ii), (G)(ii), Dec. 19, 2014, 128 Stat. 4046, 4047.)

## 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

2014—Subsec. (g)(3)(B). Pub. L. 113-159 substituted “of such plan (determined by not taking into account any adjustment of segment rates under section 1083(h)(2)(C)(iv) of this title)” for “of such plan”.

Subsec. (g)(9)(C). Pub. L. 113-295, §221(a)(57)(E)(ii), struck out cl. (i) designation and heading and struck out cls. (ii) and (iii) which related to transition rule for plan years 2008 to 2010 and limitation on transition rule, respectively.

Subsec. (g)(9)(D). Pub. L. 113-295, §221(a)(57)(F)(ii), struck out subpar. (D) which related to special rule for certain years.

Subsec. (g)(11). Pub. L. 113-295, §221(a)(57)(G)(ii), struck out par. (11). Text read as follows: “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.”

Subsec. (g)(12). Pub. L. 113-97 added par. (12).

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 title, 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 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 Title 26, Internal Revenue Code.

Amendment by Pub. L. 113-159 applicable to plan years beginning after Dec. 31, 2014, except as otherwise

provided, see section 2003(c)(3) of Pub. L. 113-159, set out as a note under section 436 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 113-97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as a note under section 401 of Title 26, Internal Revenue Code.

#### 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 regulations as the Secretary may prescribe, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 1053(b)(3)(A) of this title).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be in the same form, and contain the same information, as periodic benefit statements under section 1025(a) of this title.

(2) If more than one employer adopts a plan, each such employer shall furnish to the plan administrator the information necessary for the administrator to maintain the records, and make the reports, required by paragraph (1). Such administrator shall maintain the records, and make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a), to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of \$10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

(Pub. L. 93-406, title I, § 209, Sept. 2, 1974, 88 Stat. 865; Pub. L. 110-458, title I, § 105(f), Dec. 23, 2008, 122 Stat. 5105.)

## AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-458, § 105(f)(1), in introductory provisions, substituted “such regulations as the Secretary may prescribe” for “regulations prescribed by the Secretary” and, in concluding provisions, inserted last sentence and struck out former last sentence which read as follows: “The report required

under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.”

Subsec. (a)(2). Pub. L. 110-458, § 105(f)(2), added par. (2) and struck out former par. (2) which read as follows: “If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary, make the reports, required by paragraph (1).”

## 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.

## REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

**§ 1060. Multiple employer plans and other special rules****(a) Plan maintained by more than one employer**

Notwithstanding any other provision of this part or part 3, the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 1052 of this title shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 1053 and 1054 of this title shall be applied as if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 1082 of this title shall be determined as if all participants in the plan were employed by a single employer.

**(b) Maintenance of plan of predecessor employer**

For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

**(c) Plan maintained by controlled group of corporations**

For purposes of sections 1052, 1053, and 1054 of this title, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a) of title 26, determined without regard to section 1563(a)(4) and (e)(3)(C) of title 26) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such cor-

poration, the minimum funding standard of section 1082 of this title shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

**(d) Plan of trades or businesses under common control**

For purposes of sections 1052, 1053, and 1054 of this title, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c).

**(e) Special rules for eligible combined defined benefit plans and qualified cash or deferred arrangements**

**(1) General rule**

Except as provided in this subsection, this chapter shall be applied to any defined benefit plan or applicable individual account plan which are<sup>1</sup> part of an eligible combined plan in the same manner as if each such plan were not a part of the eligible combined plan. In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.

**(2) Eligible combined plan**

For purposes of this subsection—

**(A) In general**

The term “eligible combined plan” means a plan—

- (i) which is maintained by an employer which, at the time the plan is established, is a small employer,
- (ii) which consists of a defined benefit plan and an applicable individual account plan each of which qualifies under section 401(a) of title 26,
- (iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable individual account plan to the extent necessary for the separate application of this chapter under paragraph (1), and
- (iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

For purposes of this subparagraph, the term “small employer” has the meaning given such term by section 4980D(d)(2) of title 26, except that such section shall be applied by substituting “500” for “50” each place it appears.

**(B) Benefit requirements**

**(i) In general**

The benefit requirements of this subparagraph are met with respect to the de-

defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant’s final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

**(ii) Applicable percentage**

For purposes of clause (i), the applicable percentage is the lesser of—

- (I) 1 percent multiplied by the number of years of service with the employer, or
- (II) 20 percent.

**(iii) Special rule for applicable defined benefit plans**

If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 1053(f)(3)(B) of this title which meets the interest credit requirements of section 1054(b)(5)(B)(i) of this title, the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives pay credit for the year which is not less than the percentage of compensation determined in accordance with the following table:

If the participant’s age as of the beginning of the year is—	The percentage is—
30 or less .....	2
Over 30 but less than 40 .....	4
40 or over but less than 50 ....	6
50 or over .....	8.

**(iv) Years of service**

For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (1), (2), and (3) of section 1053(b) of this title, except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

**(C) Contribution requirements**

**(i) In general**

The contribution requirements of this subparagraph with respect to any applicable individual account plan forming part of an eligible combined plan are met if—

- (I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and
- (II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

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

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) of title 26 shall apply for purposes of this clause.

**(ii) Nonelective contributions**

An applicable individual account plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

**(D) Vesting requirements**

The vesting requirements of this subparagraph are met if—

(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable individual account plan forming part of eligible combined plan—

(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 1053 of this title shall apply to the extent not inconsistent with this subparagraph.

**(E) Uniform provision of contributions and benefits**

In the case of a defined benefit plan or applicable individual account plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

**(F) Requirements must be met without taking into account social security and similar contributions and benefits or other plans**

**(i) In general**

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

**(ii) Social security and similar contributions**

The requirements of this clause are met if—

(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(l) of title 26, and

(II) the requirements of sections 401(a)(4) and 410(b) of title 26 are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(l) of title 26.

**(iii) Other plans and arrangements**

The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) of title 26 without being combined with any other plan.

**(3) Automatic contribution arrangement**

For purposes of this subsection—

**(A) In general**

A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee's compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

(ii) meets the notice requirements under subparagraph (B).

**(B) Notice requirements**

**(i) In general**

The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

**(ii) Reasonable period to make election**

The requirements of this clause are met if each employee to whom subparagraph (A)(i) applies—

(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf or to have the contributions made at a different rate, and

(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make such election.

**(iii) Annual notice of rights and obligations**

The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of this subparagraph shall not be treated as met unless the requirements of clauses (i) and (ii) of section 401(k)(12)(D) of title 26 are met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

**(4) Coordination with other requirements****(A) Treatment of separate plans**

The except clause in section 1002(35) of this title shall not apply to an eligible combined plan.

**(B) Reporting**

An eligible combined plan shall be treated as a single plan for purposes of section 1023 of this title.

**(5) Applicable individual account plan**

For purposes of this subsection—

**(A) In general**

The term “applicable individual account plan” means an individual account plan which includes a qualified cash or deferred arrangement.

**(B) Qualified cash or deferred arrangement**

The term “qualified cash or deferred arrangement” has the meaning given such term by section 401(k)(2) of title 26.

**(f) Cooperative and small employer charity pension plans****(1) In general**

For purposes of this subchapter, except as provided in this subsection, a CSEC plan is an employee pension benefit plan (other than a multiemployer plan) that is a defined benefit plan—

(A) to which section 104 of the Pension Protection Act of 2006 applies, without regard to—

- (i) section 104(a)(2) of such Act;
- (ii) the amendments to such section 104 by section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010; and
- (iii) paragraph (3)(B);

(B) that, as of June 25, 2010, was maintained by more than one employer and all of the employers were organizations described in section 501(c)(3) of title 26; or

(C) that, as of June 25, 2010, was maintained by an employer—

- (i) described in section 501(c)(3) of such title,
- (ii) chartered under part B of subtitle II of title 36,
- (iii) with employees in at least 40 States, and
- (iv) whose primary exempt purpose is to provide services with respect to children.

**(2) Aggregation**

All employers that are treated as a single employer under subsection (b) or (c) of section 414 of title 26 shall be treated as a single employer for purposes of determining if a plan was maintained by more than one employer under subparagraph<sup>2</sup> (B) and (C) of paragraph (1).

**(3) Election****(A) In general**

If a plan falls within the definition of a CSEC plan under this subsection (without

regard to this paragraph), such plan shall be a CSEC plan unless the plan sponsor elects not later than the close of the first plan year of the plan beginning after December 31, 2013, not to be treated as a CSEC plan. An election under the preceding sentence shall take effect for such plan year and, once made, may be revoked only with the consent of the Secretary of the Treasury.

**(B) Special rule**

If a plan described in subparagraph (A) is treated as a CSEC plan, section 104 of the Pension Protection Act of 2006, as amended by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, shall cease to apply to such plan as of the first date as of which such plan is treated as a CSEC plan.

(Pub. L. 93-406, title I, §210, Sept. 2, 1974, 88 Stat. 866; Pub. L. 101-239, title VII, §§7891(a)(1), 7894(c)(10), Dec. 19, 1989, 103 Stat. 2445, 2449; Pub. L. 109-280, title IX, §903(b)(1), (2)(A), Aug. 17, 2006, 120 Stat. 1044, 1048; Pub. L. 110-458, title I, §109(c)(2), Dec. 23, 2008, 122 Stat. 5111; Pub. L. 113-97, title I, §§101, 103(a), Apr. 7, 2014, 128 Stat. 1102, 1117; Pub. L. 113-235, div. P, §3(a), Dec. 16, 2014, 128 Stat. 2829.)

## REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(1), (2)(A)(iii), 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.

Section 104 of the Pension Protection Act of 2006, referred to in subsec. (f)(1)(A), (3)(B), is section 104 of Pub. L. 109-280, which is set out as a note under section 401 of Title 26, Internal Revenue Code.

The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, referred to in subsec. (f)(3)(B), is Pub. L. 111-192, June 25, 2010, 124 Stat. 1280. For complete classification of this Act to the Code, see Short Title of 2010 Amendment note set out under section 1001 of this title and Tables.

## AMENDMENTS

2014—Subsec. (f). Pub. L. 113-97, §101, added subsec. (f).

Subsec. (f)(1)(C). Pub. L. 113-235, §3(a)(1), added subpar. (C).

Subsec. (f)(2). Pub. L. 113-235, §3(a)(2), substituted “subparagraph (B) and (C) of paragraph (1)” for “paragraph (1)(B)”.

Subsec. (f)(3). Pub. L. 113-97, §103(a), added par. (3).

2008—Subsec. (e)(1). Pub. L. 110-458, §109(c)(2)(A), inserted at end “In the case of a termination of the defined benefit plan and the applicable defined contribution plan forming part of an eligible combined plan, the plan administrator shall terminate each such plan separately.”

Subsec. (e)(3) to (6). Pub. L. 110-458, §109(c)(2)(B), struck out par. (3) and redesignated pars. (4) to (6) as (3) to (5), respectively. Former par. (3) related to non-discrimination requirements for qualified cash or deferred arrangement.

2006—Pub. L. 109-280, §903(b)(2)(A), inserted “and other special rules” after “plans” in section catchline.

Subsec. (e). Pub. L. 109-280, §903(b)(1), added subsec. (e).

1989—Subsec. (c). Pub. L. 101-239, §7894(c)(10), substituted “and (e)(3)(C) of such Code” for “and (e)(3)(C) of such code”, which for purposes of codification was translated as “and (e)(3)(C) of title 26” thus requiring no change in text.

<sup>2</sup>So in original. Probably should be “subparagraphs”.



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.

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendments by Pub. L. 113-235 effective as if included in the amendments made by the Cooperative and Small Employer Charity Pension Flexibility Act, Pub. L. 113-97, see section 3(c) of Pub. L. 113-235, set out as a note under section 414 of Title 26, Internal Revenue Code.

Amendment by section 101 of Pub. L. 113-97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as a note under section 401 of Title 26, Internal Revenue Code.

Pub. L. 113-97, title I, §103(d), Apr. 7, 2014, 128 Stat. 1120, provided that: “The amendments made by this section [amending this section and provisions set out as a note under section 401 of Title 26, Internal Revenue Code] shall apply as of the date of enactment of this Act [Apr. 7, 2014].”

#### 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 Pub. L. 109-280 applicable to plan years beginning after Dec. 31, 2009, see section 903(c) of Pub. L. 109-280, set out as a note under section 414 of Title 26, Internal Revenue Code.

#### 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)(10) 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.

#### REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

### § 1061. Effective dates

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b)(1) Except as otherwise provided in subsection (d), sections 1055, 1056(d) and 1058 of this title shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 1054 and 1055 of this title by reason of a supplementary or special plan provision (within

the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

- (A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after September 2, 1974), or
- (B) December 31, 1980.

For purposes of subparagraph (A) and section 1086(c)<sup>1</sup> of this title, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this chapter or title 26 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on September 2, 1974, are not less favorable to participants, in the aggregate, than the rules provided under sections 1052, 1053, and 1054 of this title.

(2) For purposes of paragraph (1), the term “supplementary or special plan provision” means any plan provision which—

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of title 26 relating to participation, vesting, funding, and form of benefit, this part shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 1052 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1052 of this title first becomes effective with respect to such plan) which provides that any employee’s participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 1052(b) of this title, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 1053 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on

<sup>1</sup> See References in Text note below.

which section 1053 of this title first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 1052(b)(3) of this title, or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.

(Pub. L. 93-406, title I, § 211, Sept. 2, 1974, 88 Stat. 867; Pub. L. 99-272, title XI, § 11015(a)(1)(B), Apr. 7, 1986, 100 Stat. 265; Pub. L. 101-239, title VII, §§ 7891(a)(1), 7894(h)(2), Dec. 19, 1989, 103 Stat. 2445, 2451.)

#### REFERENCES IN TEXT

Section 1086(c) of this title, referred to in subsec. (c)(1), was in the original “section 307(c)”, meaning section 307(c) of Pub. L. 93-406, the Employee Retirement Income Security Act of 1974. Section 307(c) was renumbered section 308(c) by Pub. L. 100-203, title IX, § 9341(b)(1), Dec. 22, 1987, 101 Stat. 1330-370 and subsequently was repealed by Pub. L. 109-280, title I, § 101(a), Aug. 17, 2006, 120 Stat. 784.

This chapter, referred to in subsec. (c)(1), 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.

Section 1017(d) of this Act, referred to in subsec. (d), is section 1017 of Pub. L. 93-406, which is set out as an Effective Date; Transitional Rules note under section 410 of Title 26.

#### AMENDMENTS

1989—Subsecs. (c)(1), (d). 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”.

Subsec. (f). Pub. L. 101-239, § 7894(h)(2), added subsec. (f).

1986—Subsec. (c)(1). Pub. L. 99-272 made a technical amendment to the reference to section 1086(c) of this title to reflect the renumbering of the corresponding section of the original act.

#### 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(h)(2) 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.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable with respect to applications for waivers, extensions, and modifica-

tions filed on or after Apr. 7, 1986, see section 11015(a)(3) of Pub. L. 99-272, set out as an Effective Date note under section 412 of Title 26, Internal Revenue Code.

#### PART 3—FUNDING

### § 1081. Coverage

#### (a) Plans excepted from applicability of this part

This part shall apply to any employee pension benefit plan described in section 1003(a) of this title, (and not exempted under section 1003(b) of this title), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b);

(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(4)(A) a plan which is established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan; or

(B) a trust described in section 501(c)(18) of title 26;

(5) a plan which has not at any time after September 2, 1974, provided for employer contributions;

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of title 26;

(7) an individual retirement account or annuity as described in section 408(a) of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 1002(35)(B) of this title;

(9) an excess benefit plan; or

(10) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

#### (b) “Insurance contract plan” defined

For the purposes of paragraph (2) of subsection (a) a plan is an “insurance contract plan” if—

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase became effective),