(c)(4)(B), is the date of enactment of Pub. L. 100–647, which was approved Nov. 10, 1988.

AMENDMENTS

1990—Subsec. (c)(7)(B). Pub. L. 101–508 substituted ''Assets'' for ''Asset'' in heading.

1988—Subsec. (b)(9). Pub. L. 100–647, § 1011(h)(10), added par. (9).

Subsec. (c). Pub. L. 100–647, § 6058(c), struck out at end ''Allocations of amounts under paragraphs (4), (5), and (6), among the employers maintaining the plan, shall not be inconsistent with regulations prescribed for this purpose by the Secretary.''

Subsec. (c)(4). Pub. L. 100–647, § 6058(a), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The minimum funding standard provided by section 412 shall be determined as if all participants in the plan were employed by a single employer.''

Subsec. (c)(6). Pub. L. 100–647, § 6058(b), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''Each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. The amounts contributed to or under the plan by each employer who maintains the plan, for the portion of this taxable year which is included within such a plan year, shall be considered not to exceed such a limitation if the anticipated employer contributions for such plan year (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. If such anticipated contributions exceed such a limitation, the portion of each such employer's contributions which is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.''

Subsec. (c)(7). Pub. L. 100–647, § 6058(c), added par. (7).

1980—Subsec. (b)(6). Pub. L. 96–364 inserted provisions relating to withdrawal liability of employer.

1976—Subsecs. (b), (c). Pub. L. 94–455 struck out ''or his delegate'' after ''Secretary''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(h)(10) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 6058(d) of Pub. L. 100–647 provided that: ''Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to plan years beginning after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

§ 414. Definitions and special rules

(a) Service for predecessor employer

For purposes of this part—

(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, be treated as service for the employer.

(b) Employees of controlled group of corporations

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the applicable limitations provided by section 404(a) 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.

(c) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of sections 401, 408(k), 408(p), 410, 411, 415, and 416, under regulations prescribed by the Secretary, 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 (b).

(d) Governmental plan

For purposes of this part, the term ''governmental plan'' means a plan established and maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing. The term ''governmental plan'' also includes any plan to which the Railroad Retirement Act of 1935 or 1937 applies and which is financed by contributions required under that Act and any plan of an international organization which is exempt from taxation by reason of the International Organizations Immunities Act (59 Stat. 669). The term ''governmental plan'' includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).

(e) Church plan

(1) In general

For purposes of this part, the term ''church plan'' means a plan established and maintained (to the extent required in paragraph (2)(B)) for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501.

(2) Certain plans excluded

The term ''church plan'' does not include a plan—

(A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or

(B) if less than substantially all of the individuals included in the plan are individuals described in paragraph (1) or (3)(B) (or their beneficiaries).

(3) Definitions and other provisions

For purposes of this subsection—

(A) Treatment as church plan

A plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches includes a plan maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

(B) Employee defined

The term employee of a church or a convention or association of churches shall include—

(i) a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry, regardless of the source of his compensation;

(ii) an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or associated with a church or a convention or association of churches; and

(iii) an individual described in subparagraph (E).

(C) Church treated as employer

A church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

(D) Association with church

An organization, whether a civil law corporation or otherwise, is associated with a church or a convention or association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

(E) Special rule in case of separation from plan

If an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph (3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan—

(i) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan; or

(ii) receives contributions on the employee's behalf after the employee's separation from such service, but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7)) at the time of such separation from service.

(4) Correction of failure to meet church plan requirements

(A) In general

If a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years.

(B) Failure to correct

If a correction is not made within the correction period, the plan shall be deemed not to meet the requirements of this subsection beginning with the date on which the earliest failure to meet one or more of such requirements occurred.

(C) Correction period defined

The term ''correction period'' means—

(i) the period, ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the requirements of this subsection;

(ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or

(iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default,

whichever has the latest ending date.

(5) Special rules for chaplains and self-employed ministers

(A) Certain ministers may participate

For purposes of this part—

(i) In general

A duly ordained, commissioned, or licensed minister of a church is described in paragraph (3)(B) if, in connection with the exercise of their ministry, the minister—

(I) is a self-employed individual (within the meaning of section 401(c)(1)(B), or

(II) is employed by an organization other than an organization which is described in section 501(c)(3) and with re-

spect to which the minister shares common religious bonds.

(ii) Treatment as employer and employee

For purposes of sections 403(b)(1)(A) and 404(a)(10), a minister described in clause (i)(I) shall be treated as employed by the minister's own employer which is an organization described in section 501(c)(3) and exempt from tax under section 501(a).

(B) Special rules for applying section 403(b) to self-employed ministers

In the case of a minister described in subparagraph (A)(i)(I)—

(i) the minister's includible compensation under section 403(b)(3) shall be determined by reference to the minister's earned income (within the meaning of section 401(c)(2)) from such ministry rather than the amount of compensation which is received from an employer, and

(ii) the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) with respect to such ministry shall be included for purposes of section 403(b)(4).

(C) Effect on non-denominational plans

If a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry participates in a church plan (within the meaning of this section) and in the exercise of such ministry is employed by an employer not otherwise participating in such church plan, then such employer may exclude such minister from being treated as an employee of such employer for purposes of applying sections 401(a)(3), 401(a)(4), and 401(a)(5), as in effect on September 1, 1974, and sections 401(a)(4), 401(a)(5), 401(a)(26), 401(k)(3), 401(m), 403(b)(1)(D) (including section 403(b)(12)), and 410 to any stock bonus, pension, profit-sharing, or annuity plan (including an annuity described in section 403(b) or a retirement income account described in section 403(b)(9)). The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purpose of, and prevent the abuse of, this subparagraph.

(D) Compensation taken into account only once

If any compensation is taken into account in determining the amount of any contributions made to, or benefits to be provided under, any church plan, such compensation shall not also be taken into account in determining the amount of any contributions made to, or benefits to be provided under, any other stock bonus, pension, profit-sharing, or annuity plan which is not a church plan.

(E) Exclusion

In the case of a contribution to a church plan made on behalf of a minister described in subparagraph (A)(i)(II), such contribution shall not be included in the gross income of the minister to the extent that such contribution would not be so included if the minister was an employee of a church.

(f) Multiemployer plan

(1) Definition

For purposes of this part, the term ''multiemployer plan'' means a plan—

(A) to which more than one employer is required to contribute,

(B) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and

(C) which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

(2) Cases of common control

For purposes of this subsection, all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

(3) Continuation of status after termination

Notwithstanding paragraph (1), a plan is a multiemployer plan on and after its termination date under title IV of the Employee Retirement Income Security Act of 1974 if the plan was a multiemployer plan under this subsection for the plan year preceding its termination date.

(4) Transitional rule

For any plan year which began before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, the term ''multiemployer plan'' means a plan described in this subsection as in effect immediately before that date.

(5) Special election

Within one year after the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan may irrevocably elect, pursuant to procedures established by the Pension Benefit Guaranty Corporation and subject to the provisions of section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974, that the plan shall not be treated as a multiemployer plan for any purpose under such Act or this title, if for each of the last 3 plan years ending prior to the effective date of the Multiemployer Pension Plan Amendments Act of 1980—

(A) the plan was not a multiemployer plan because the plan was not a plan described in section 3(37)(A)(iii) of the Employee Retirement Income Security Act of 1974 and section 414(f)(1)(C) (as such provisions were in effect on the day before the date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980); and

(B) the plan had been identified as a plan that was not a multiemployer plan in substantially all its filings with the Pension Benefit Guaranty Corporation, the Secretary of Labor and the Secretary.

(6) Election with regard to multiemployer status

(A) Within 1 year after the enactment of the Pension Protection Act of 2006—

(i) An election under paragraph (5) may be revoked, pursuant to procedures prescribed

by the Pension Benefit Guaranty Corporation, if, for each of the 3 plan years prior to the date of the enactment of that Act, the plan would have been a multiemployer plan but for the election under paragraph (5), and

(ii) a plan that meets the criteria in subparagraph (A) and (B) of paragraph (1) of this subsection or that is described in subparagraph (E) may, pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation, elect to be a multiemployer plan, if—

(I) for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan, the plan has met those criteria or is so described,

(II) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were exempt from tax under section 501, and

(III) the plan was established prior to September 2, 1974.

(B) An election under this paragraph shall be effective for all purposes under this Act[1] and under the Employee Retirement Income Security Act of 1974, starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii).

(C) Once made, an election under this paragraph shall be irrevocable, except that a plan described in subparagraph (A)(ii) shall cease to be a multiemployer plan as of the plan year beginning immediately after the first plan year for which the majority of its employer contributions were made or required to be made by organizations that were not exempt from tax under section 501.

(D) The fact that a plan makes an election under subparagraph (A)(ii) does not imply that the plan was not a multiemployer plan prior to the date of the election or would not be a multiemployer plan without regard to the election.

(E) A plan is described in this subparagraph if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.

(F) MAINTENANCE UNDER COLLECTIVE BARGAINING AGREEMENT.—For purposes of this title and the Employee Retirement Income Security Act of 1974, a plan making an election under this paragraph shall be treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement, regardless of whether the plan was created, established, or maintained for such employees by virtue of another document that is not a collective bargaining agreement.

(g) Plan administrator

For purposes of this part, the term ''plan administrator'' means—

(1) the person specifically so designated by the terms of the instrument under which the plan is operated;

(2) in the absence of a designation referred to in paragraph (1)—

(A) in the case of a plan maintained by a single employer, such employer,

(B) in the case of a plan maintained by two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who maintained the plan, or

(C) in any case to which subparagraph (A) or (B) does not apply, such other person as the Secretary may by regulation, prescribe.

(h) Tax treatment of certain contributions

(1) In general

Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

(A) to an employees' trust described in section 401(a), or

(B) under a plan described in section 403(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.

(2) Designation by units of government

For purposes of paragraph (1), in the case of any plan established by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), where the contributions of employing units are designated as employee contributions but where any employing unit picks up the contributions, the contributions so picked up shall be treated as employer contributions.

(i) Defined contribution plan

For purposes of this part, the term ''defined contribution plan'' means a plan which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.

(j) Defined benefit plan

For purposes of this part, the term ''defined benefit plan'' means any plan which is not a defined contribution plan.

(k) Certain plans

A defined benefit plan which provides a benefit derived from employer contributions which is based partly on the balance of the separate account of a participant shall—

(1) for purposes of section 410 (relating to minimum participation standards), be treated as a defined contribution plan.

[1] So in original. Probably should be ''title''.

(2) for purposes of sections 72(d) (relating to treatment of employee contributions as separate contract), 411(a)(7)(A) (relating to minimum vesting standards), 415 (relating to limitations on benefits and contributions under qualified plans), and 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions), be treated as consisting of a defined contribution plan to the extent benefits are based on the separate account of a participant and as a defined benefit plan with respect to the remaining portion of benefits under the plan, and

(3) for purposes of section 4975 (relating to tax on prohibited transactions), be treated as a defined benefit plan.

(*l*) Merger and consolidations of plans or transfers of plan assets

(1) In general

A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, 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 does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which Title IV of the Employee Retirement Income Security Act of 1974 applies.

(2) Allocation of assets in plan spin-offs, etc.

(A) In general

In the case of a plan spin-off of a defined benefit plan, a trust which forms part of—

(i) the original plan, or

(ii) any plan spun off from such plan,

shall not constitute a qualified trust under this section unless the applicable percentage of excess assets are allocated to each of such plans.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means, with respect to each of the plans described in clauses (i) and (ii) of subparagraph (A), the percentage determined by dividing—

(i) the excess (if any) of—

(I) the sum of the funding target and target normal cost determined under section 430, over

(II) the amount of the assets required to be allocated to the plan after the spin-off (without regard to this paragraph), by

(ii) the sum of the excess amounts determined separately under clause (i) for all such plans.

(C) Excess assets

For purposes of subparagraph (A), the term ''excess assets'' means an amount equal to the excess (if any) of—

(i) the fair market value of the assets of the original plan immediately before the spin-off, over

(ii) the amount of assets required to be allocated after the spin-off to all plans (determined without regard to this paragraph).

(D) Certain spun-off plans not taken into account

(i) In general

A plan involved in a spin-off which is described in clause (ii), (iii), or (iv) shall not be taken into account for purposes of this paragraph, except that the amount determined under subparagraph (C)(ii) shall be increased by the amount of assets allocated to such plan.

(ii) Plans transferred out of controlled groups

A plan is described in this clause if, after such spin-off, such plan is maintained by an employer who is not a member of the same controlled group as the employer maintaining the original plan.

(iii) Plans transferred out of multiple employer plans

A plan as described in this clause if, after the spin-off, any employer maintaining such plan (and any member of the same controlled group as such employer) does not maintain any other plan remaining after the spin-off which is also maintained by another employer (or member of the same controlled group as such other employer) which maintained the plan in existence before the spin-off.

(iv) Terminated plans

A plan is described in this clause if, pursuant to the transaction involving the spin-off, the plan is terminated.

(v) Controlled group

For purposes of this subparagraph, the term ''controlled group'' means any group treated as a single employer under subsection (b), (c), (m), or (*o*).

(E) Paragraph not to apply to multiemployer plans

This paragraph does not apply to any multiemployer plan with respect to any spin-off to the extent that participants either before or after the spin-off are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(F) Application to similar transaction

Except as provided by the Secretary, rules similar to the rules of this paragraph shall apply to transactions similar to spin-offs.

(G) Special rules for bridge banks[2]

For purposes of this paragraph, in the case of a bridge depository institution estab-

[2] So in original. Probably should be ''bridge depository institutions''

lished under section 11(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(i))—

(i) such bank shall be treated as a member of any controlled group which includes any insured bank (as defined in section 3(h) of such Act (12 U.S.C. 1813(h)))—

(I) which maintains a defined benefit plan,

(II) which is closed by the appropriate bank regulatory authorities, and

(III) any asset and liabilities of which are received by the bridge depository institution, and

(ii) the requirements of this paragraph shall not be treated as met with respect to such plan unless during the 180-day period beginning on the date such insured bank is closed—

(I) the bridge depository institution has the right to require the plan to transfer (subject to the provisions of this paragraph) not more than 50 percent of the excess assets (as defined in subparagraph (C)) to a defined benefit plan maintained by the bridge depository institution with respect to participants or former participants (including retirees and beneficiaries) in the original plan employed by the bridge depository institution or formerly employed by the closed bank, and

(II) no other merger, spin-off, termination, or similar transaction involving the portion of the excess assets described in subclause (I) may occur without the prior written consent of the bridge depository institution.

(m) Employees of an affiliated service group

(1) In general

For purposes of the employee benefit requirements listed in paragraph (4), except to the extent otherwise provided in regulations, all employees of the members of an affiliated service group shall be treated as employed by a single employer.

(2) Affiliated service group

For purposes of this subsection, the term ''affiliated service group'' means a group consisting of a service organization (hereinafter in this paragraph referred to as the ''first organization'') and one or more of the following:

(A) any service organization which—

(i) is a shareholder or partner in the first organization, and

(ii) regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons, and

(B) any other organization if—

(i) a significant portion of the business of such organization is the performance of services (for the first organization, for organizations described in subparagraph (A), or for both) of a type historically performed in such service field by employees, and

(ii) 10 percent or more of the interests in such organization is held by persons who are highly compensated employees (within the meaning of section 414(q)) of the first organization or an organization described in subparagraph (A).

(3) Service organizations

For purposes of this subsection, the term ''service organization'' means an organization the principal business of which is the performance of services.

(4) Employee benefit requirements

For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a), and

(B) sections 408(k), 408(p), 410, 411, 415, and 416.

(5) Certain organizations performing management functions

For purposes of this subsection, the term ''affiliated service group'' also includes a group consisting of—

(A) an organization the principal business of which is performing, on a regular and continuing basis, management functions for 1 organization (or for 1 organization and other organizations related to such 1 organization), and

(B) the organization (and related organizations) for which such functions are so performed by the organization described in subparagraph (A).

For purposes of this paragraph, the term ''related organizations'' has the same meaning as the term ''related persons'' when used in section 144(a)(3).

(6) Other definitions

For purposes of this subsection—

(A) Organization defined

The term ''organization'' means a corporation, partnership, or other organization.

(B) Ownership

In determining ownership, the principles of section 318(a) shall apply.

(n) Employee leasing

(1) In general

For purposes of the requirements listed in paragraph (3), with respect to any person (hereinafter in this subsection referred to as the ''recipient'') for whom a leased employee performs services—

(A) the leased employee shall be treated as an employee of the recipient, but

(B) contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient shall be treated as provided by the recipient.

(2) Leased employee

For purposes of paragraph (1), the term ''leased employee'' means any person who is not an employee of the recipient and who provides services to the recipient if—

(A) such services are provided pursuant to an agreement between the recipient and any

other person (in this subsection referred to as the ''leasing organization''),

(B) such person has performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, and

(C) such services are performed under primary direction or control by the recipient.

(3) Requirements

For purposes of this subsection, the requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), (16), (17), and (26) of section 401(a),

(B) sections 408(k), 408(p), 410, 411, 415, and 416, and

(C) sections 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505, and 4980B.

(4) Time when first considered as employee

(A) In general

In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the requirements listed in paragraph (3) are met for periods after the close of the period referred to in paragraph (2)(B).

(B) Years of service

In the case of a person who is an employee of the recipient (whether by reason of this subsection or otherwise), for purposes of the requirements listed in paragraph (3), years of service for the recipient shall be determined by taking into account any period for which such employee would have been a leased employee but for the requirements of paragraph (2)(B).

(5) Safe harbor

(A) In general

In the case of requirements described in subparagraphs (A) and (B) of paragraph (3), this subsection shall not apply to any leased employee with respect to services performed for a recipient if—

(i) such employee is covered by a plan which is maintained by the leasing organization and meets the requirements of subparagraph (B), and

(ii) leased employees (determined without regard to this paragraph) do not constitute more than 20 percent of the recipient's nonhighly compensated work force.

(B) Plan requirements

A plan meets the requirements of this subparagraph if—

(i) such plan is a money purchase pension plan with a nonintegrated employer contribution rate for each participant of at least 10 percent of compensation,

(ii) such plan provides for full and immediate vesting, and

(iii) each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization) immediately participates in such plan.

Clause (iii) shall not apply to any individual whose compensation from the leasing organization in each plan year during the 4-year period ending with the plan year is less than $1,000.

(C) Definitions

For purposes of this paragraph—

(i) Highly compensated employee

The term ''highly compensated employee'' has the meaning given such term by section 414(q).

(ii) Nonhighly compensated work force

The term ''nonhighly compensated work force'' means the aggregate number of individuals (other than highly compensated employees)—

(I) who are employees of the recipient (without regard to this subsection) and have performed services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, or

(II) who are leased employees with respect to the recipient (determined without regard to this paragraph).

(iii) Compensation

The term ''compensation'' has the same meaning as when used in section 415; except that such term shall include—

(I) any employer contribution under a qualified cash or deferred arrangement to the extent not included in gross income under section 402(e)(3) or 402(h)(1)(B),

(II) any amount which the employee would have received in cash but for an election under a cafeteria plan (within the meaning of section 125), and

(III) any amount contributed to an annuity contract described in section 403(b) pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).

(6) Other rules

For purposes of this subsection—

(A) Related persons

The term ''related persons'' has the same meaning as when used in section 144(a)(3).

(B) Employees of entities under common control

The rules of subsections (b), (c), (m), and (*o*) shall apply.

(*o*) Regulations

The Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in subsections (m) and (n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in subsection (m)(4) or (n)(3) or any requirement under section 457 through the use of—

(1) separate organizations,

(2) employee leasing, or

(3) other arrangements.

The regulations prescribed under subsection (n) shall include provisions to minimize the recordkeeping requirements of subsection (n) in the case of an employer which has no top-heavy plans (within the meaning of section 416(g)) and

which uses the services of persons (other than employees) for an insignificant percentage of the employer's total workload.

(p) Qualified domestic relations order defined

For purposes of this subsection and section 401(a)(13)—

(1) In general

(A) Qualified domestic relations order

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 paragraphs (2) and (3) are met.

(B) Domestic relations order

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).

(2) Order must clearly specify certain facts

A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) 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,

(B) 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,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits

A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(C) 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.

(4) Exception for certain payments made after earliest retirement age

(A) In general

A domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) 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 the 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 clause (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.

(B) Earliest retirement age

For purposes of this paragraph, 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—

(I) the date the participant attains age 50, or

(II) the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits

To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(B) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 417(d).

(6) Plan procedures with respect to orders

(A) Notice and determination by administrator

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 no-

tify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures

Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made

(A) In general

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 paragraph 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.

(B) Payment to alternate payee if order determined to be qualified domestic relations order

If within the 18-month period described in subparagraph (E) 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.

(C) Payment to plan participant in certain cases

If within the 18-month period described in subparagraph (E)—

(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.

(D) Subsequent determination or order to be applied prospectively only

Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in subparagraph (E) shall be applied prospectively only.

(E) Determination of 18-month period

For purposes of this paragraph, the 18-month period described in this subparagraph 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.

(8) Alternate payee defined

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.

(9) Subsection not to apply to plans to which section 401(a)(13) does not apply

This subsection shall not apply to any plan to which section 401(a)(13) does not apply. For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.

(10) Waiver of certain distribution requirements

With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), section 409(d), and section 457(d), a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

(11) Application of rules to certain other plans

For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) or an eligible deferred compensation plan (within the meaning of section 457(b)) shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

(12) Tax treatment of payments from a section 457 plan

If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.

(13) Consultation with the Secretary

In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

(q) Highly compensated employee

(1) In general

The term ''highly compensated employee'' means any employee who—

(A) was a 5-percent owner at any time during the year or the preceding year, or

(B) for the preceding year—

(i) had compensation from the employer in excess of $80,000, and

(ii) if the employer elects the application of this clause for such preceding year, was in the top-paid group of employees for such preceding year.

The Secretary shall adjust the $80,000 amount under subparagraph (B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1996.

(2) 5-percent owner

An employee shall be treated as a 5-percent owner for any year if at any time during such year such employee was a 5-percent owner (as defined in section 416(i)(1)) of the employer.

(3) Top-paid group

An employee is in the top-paid group of employees for any year if such employee is in the

group consisting of the top 20 percent of the employees when ranked on the basis of compensation paid during such year.

(4) Compensation

For purposes of this subsection, the term ''compensation'' has the meaning given such term by section 415(c)(3).

(5) Excluded employees

For purposes of subsection (r) and for purposes of determining the number of employees in the top-paid group, the following employees shall be excluded—

(A) employees who have not completed 6 months of service,

(B) employees who normally work less than 17½ hours per week,

(C) employees who normally work during not more than 6 months during any year,

(D) employees who have not attained age 21, and

(E) except to the extent provided in regulations, employees who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and the employer.

Except as provided by the Secretary, the employer may elect to apply subparagraph (A), (B), (C), or (D) by substituting a shorter period of service, smaller number of hours or months, or lower age for the period of service, number of hours or months, or age (as the case may be) than that specified in such subparagraph.

(6) Former employees

A former employee shall be treated as a highly compensated employee if—

(A) such employee was a highly compensated employee when such employee separated from service, or

(B) such employee was a highly compensated employee at any time after attaining age 55.

(7) Coordination with other provisions

Subsections (b), (c), (m), (n), and (*o*) shall be applied before the application of this subsection.

(8) Special rule for nonresident aliens

For purposes of this subsection and subsection (r), employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)) shall not be treated as employees.

(9) Certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans

In the case of a church plan (as defined in subsection (e)), no employee shall be considered an officer, a person whose principal duties consist of supervising the work of other employees, or a highly compensated employee for any year unless such employee is a highly compensated employee under paragraph (1) for such year.

(r) Special rules for separate line of business

(1) In general

For purposes of sections 129(d)(8) and 410(b), an employer shall be treated as operating separate lines of business during any year if the employer for bona fide business reasons operates separate lines of business.

(2) Line of business must have 50 employees, etc.

A line of business shall not be treated as separate under paragraph (1) unless—

(A) such line of business has at least 50 employees who are not excluded under subsection (q)(5),

(B) the employer notifies the Secretary that such line of business is being treated as separate for purposes of paragraph (1), and

(C) such line of business meets guidelines prescribed by the Secretary or the employer receives a determination from the Secretary that such line of business may be treated as separate for purposes of paragraph (1).

(3) Safe harbor rule

(A) In general

The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

(i) not less than one-half, and

(ii) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of clause (i) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.

(B) Determination may be based on preceding year

The requirements of subparagraph (A) shall be treated as met with respect to any line of business if such requirements were met with respect to such line of business for the preceding year and if—

(i) no more than a de minimis number of employees were shifted to or from the line of business after the close of the preceding year, or

(ii) the employees shifted to or from the line of business after the close of the preceding year contained a substantially proportional number of highly compensated employees.

(4) Highly compensated employee percentage defined

For purposes of this subsection, the term ''highly compensated employee percentage'' means the percentage which highly compensated employees performing services for the line of business are of all employees performing services for the line of business.

(5) Allocation of benefits to line of business

For purposes of this subsection, benefits which are attributable to services provided to a line of business shall be treated as provided by such line of business.

(6) Headquarters personnel, etc.

The Secretary shall prescribe rules providing for—

(A) the allocation of headquarters personnel among the lines of business of the employer, and

(B) the treatment of other employees providing services for more than 1 line of business of the employer or not in lines of business meeting the requirements of paragraph (2).

(7) Separate operating units

For purposes of this subsection, the term ''separate line of business'' includes an operating unit in a separate geographic area separately operated for a bona fide business reason.

(8) Affiliated service groups

This subsection shall not apply in the case of any affiliated service group (within the meaning of section 414(m)).

(s) Compensation

For purposes of any applicable provision—

(1) In general

Except as provided in this subsection, the term ''compensation'' has the meaning given such term by section 415(c)(3).

(2) Employer may elect not to treat certain deferrals as compensation

An employer may elect not to include as compensation any amount which is contributed by the employer pursuant to a salary reduction agreement and which is not includible in the gross income of an employee under section 125, 132(f)(4), 402(e)(3), 402(h), or 403(b).

(3) Alternative determination of compensation

The Secretary shall by regulation provide for alternative methods of determining compensation which may be used by an employer, except that such regulations shall provide that an employer may not use an alternative method if the use of such method discriminates in favor of highly compensated employees (within the meaning of subsection (q)).

(4) Applicable provision

For purposes of this subsection, the term ''applicable provision'' means any provision which specifically refers to this subsection.

(t) Application of controlled group rules to certain employee benefits

(1) In general

All employees who are treated as employed by a single employer under subsection (b), (c), or (m) shall be treated as employed by a single employer for purposes of an applicable section. The provisions of subsection (*o*) shall apply with respect to the requirements of an applicable section.

(2) Applicable section

For purposes of this subsection, the term ''applicable section'' means section 79, 106, 117(d), 120, 125, 127, 129, 132, 137, 274(j), 505, or 4980B.

(u) Special rules relating to veterans' reemployment rights under USERRA and to differential wage payments to members on active duty

(1) Treatment of certain contributions made pursuant to veterans' reemployment rights

If any contribution is made by an employer or an employee under an individual account plan with respect to an employee, or by an employee to a defined benefit plan that provides for employee contributions, and such contribution is required by reason of such employee's rights under chapter 43 of title 38, United States Code, resulting from qualified military service, then—

(A) such contribution shall not be subject to any otherwise applicable limitation contained in section 402(g), 402(h), 403(b), 404(a), 404(h), 408, 415, or 457, and shall not be taken into account in applying such limitations to other contributions or benefits under such plan or any other plan, with respect to the year in which the contribution is made,

(B) such contribution shall be subject to the limitations referred to in subparagraph (A) with respect to the year to which the contribution relates (in accordance with rules prescribed by the Secretary), and

(C) such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 401(m), 403(b)(12), 408(k)(3), 408(k)(6), 408(p), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

For purposes of the preceding sentence, any elective deferral or employee contribution made under paragraph (2) shall be treated as required by reason of the employee's rights under such chapter 43.

(2) Reemployment rights under USERRA with respect to elective deferrals

(A) In general

For purposes of this subchapter and section 457, if an employee is entitled to the benefits of chapter 43 of title 38, United States Code, with respect to any plan which provides for elective deferrals, the employer sponsoring the plan shall be treated as meeting the requirements of such chapter 43 with respect to such elective deferrals only if such employer—

(i) permits such employee to make additional elective deferrals under such plan (in the amount determined under subparagraph (B) or such lesser amount as is elected by the employee) during the period which begins on the date of the reemployment of such employee with such employer and has the same length as the lesser of—

(I) the product of 3 and the period of qualified military service which resulted in such rights, and

(II) 5 years, and

(ii) makes a matching contribution with respect to any additional elective deferral made pursuant to clause (i) which would have been required had such deferral actually been made during the period of such qualified military service.

(B) Amount of makeup required

The amount determined under this subparagraph with respect to any plan is the maximum amount of the elective deferrals that the individual would have been permitted to make under the plan in accordance with the limitations referred to in paragraph (1)(A) during the period of qualified military service if the individual had continued to be employed by the employer during such period and received compensation as determined under paragraph (7). Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during the period of such qualified military service.

(C) Elective deferral

For purposes of this paragraph, the term ''elective deferral'' has the meaning given such term by section 402(g)(3); except that such term shall include any deferral of compensation under an eligible deferred compensation plan (as defined in section 457(b)).

(D) After-tax employee contributions

References in subparagraphs (A) and (B) to elective deferrals shall be treated as including references to employee contributions.

(3) Certain retroactive adjustments not required

For purposes of this subchapter and subchapter E, no provision of chapter 43 of title 38, United States Code, shall be construed as requiring—

(A) any crediting of earnings to an employee with respect to any contribution before such contribution is actually made, or

(B) any allocation of any forfeiture with respect to the period of qualified military service.

(4) Loan repayment suspensions permitted

If any plan suspends the obligation to repay any loan made to an employee from such plan for any part of any period during which such employee is performing service in the uniformed services (as defined in chapter 43 of title 38, United States Code), whether or not qualified military service, such suspension shall not be taken into account for purposes of section 72(p), 401(a), or 4975(d)(1).

(5) Qualified military service

For purposes of this subsection, the term ''qualified military service'' means any service in the uniformed services (as defined in chapter 43 of title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service.

(6) Individual account plan

For purposes of this subsection, the term ''individual account plan'' means any defined contribution plan [3](including any tax-sheltered annuity plan under section 403(b), any simplified employee pension under section 408(k), any qualified salary reduction arrangement under section 408(p), and any eligible deferred compensation plan (as defined in section 457(b)).

(7) Compensation

For purposes of sections 403(b)(3), 415(c)(3), and 457(e)(5), an employee who is in qualified military service shall be treated as receiving compensation from the employer during such period of qualified military service equal to—

(A) the compensation the employee would have received during such period if the employee were not in qualified military service, determined based on the rate of pay the employee would have received from the employer but for absence during the period of qualified military service, or

(B) if the compensation the employee would have received during such period was not reasonably certain, the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

(8) USERRA requirements for qualified retirement plans

For purposes of this subchapter and section 457, an employer sponsoring a retirement plan shall be treated as meeting the requirements of chapter 43 of title 38, United States Code, only if each of the following requirements is met:

(A) An individual reemployed under such chapter is treated with respect to such plan as not having incurred a break in service with the employer maintaining the plan by reason of such individual's period of qualified military service.

(B) Each period of qualified military service served by an individual is, upon reemployment under such chapter, deemed with respect to such plan to constitute service with the employer maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

(C) An individual reemployed under such chapter is entitled to accrued benefits that are contingent on the making of, or derived from, employee contributions or elective deferrals only to the extent the individual makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the individual would have been permitted or required to contribute had the individual remained continuously employed by the employer throughout the period of qualified military service. Any payment to such plan shall be made during the period beginning with the date of reemployment and whose duration is 3 times the period of the qualified military service (but not greater than 5 years).

(9) Treatment in the case of death or disability resulting from active military service

(A) In general

For benefit accrual purposes, an employer sponsoring a retirement plan may treat an

[3] So in original. There is no closing parenthesis.

individual who dies or becomes disabled (as defined under the terms of the plan) while performing qualified military service with respect to the employer maintaining the plan as if the individual has resumed employment in accordance with the individual's reemployment rights under chapter 43 of title 38, United States Code, on the day preceding death or disability (as the case may be) and terminated employment on the actual date of death or disability. In the case of any such treatment, and subject to subparagraphs (B) and (C), any full or partial compliance by such plan with respect to the benefit accrual requirements of paragraph (8) with respect to such individual shall be treated for purposes of paragraph (1) as if such compliance were required under such chapter 43.

(B) Nondiscrimination requirement

Subparagraph (A) shall apply only if all individuals performing qualified military service with respect to the employer maintaining the plan (as determined under subsections (b), (c), (m), and (*o*)) who die or became disabled as a result of performing qualified military service prior to reemployment by the employer are credited with service and benefits on reasonably equivalent terms.

(C) Determination of benefits

The amount of employee contributions and the amount of elective deferrals of an individual treated as reemployed under subparagraph (A) for purposes of applying paragraph (8)(C) shall be determined on the basis of the individual's average actual employee contributions or elective deferrals for the lesser of—

(i) the 12-month period of service with the employer immediately prior to qualified military service, or

(ii) if service with the employer is less than such 12-month period, the actual length of continuous service with the employer.

(10) Plans not subject to title 38

This subsection shall not apply to any retirement plan to which chapter 43 of title 38, United States Code, does not apply.

(11) References

For purposes of this section, any reference to chapter 43 of title 38, United States Code, shall be treated as a reference to such chapter as in effect on December 12, 1994 (without regard to any subsequent amendment).

(12) Treatment of differential wage payments

(A) In general

Except as provided in this paragraph, for purposes of applying this title to a retirement plan to which this subsection applies—

(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

(ii) the differential wage payment shall be treated as compensation, and

(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of any contribution or benefit which is based on the differential wage payment.

(B) Special rule for distributions

(i) In general

Notwithstanding subparagraph (A)(i), for purposes of section 401(k)(2)(B)(i)(I), 403(b)(7)(A)(ii), 403(b)(11)(A), or 457(d)(1)(A)(ii), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(h)(2)(A).

(ii) Limitation

If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

(C) Nondiscrimination requirement

Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (*o*)) performing service in the uniformed services described in section 3401(h)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a retirement plan maintained by the employer, to make contributions based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

(D) Differential wage payment

For purposes of this paragraph, the term ''differential wage payment'' has the meaning given such term by section 3401(h)(2).

(v) Catch-up contributions for individuals age 50 or over

(1) In general

An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) Limitation on amount of additional deferrals

(A) In general

A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

(i) the applicable dollar amount, or

(ii) the excess (if any) of—

(I) the participant's compensation (as defined in section 415(c)(3)) for the year, over

(II) any other elective deferrals of the participant for such year which are made without regard to this subsection.

(B) Applicable dollar amount

For purposes of this paragraph—

(i) In the case of an applicable employer plan other than a plan described in section 401(k)(11) or 408(p), the applicable dollar amount shall be determined in accordance with the following table:

For taxable years beginning in:	The applicable dollar amount is:
2002	$1,000
2003	$2,000
2004	$3,000
2005	$4,000
2006 and thereafter	$5,000.

(ii) In the case of an applicable employer plan described in section 401(k)(11) or 408(p), the applicable dollar amount shall be determined in accordance with the following table:

For taxable years beginning in:	The applicable dollar amount is:
2002	$500
2003	$1,000
2004	$1,500
2005	$2,000
2006 and thereafter	$2,500.

(C) Cost-of-living adjustment

In the case of a year beginning after December 31, 2006, the Secretary shall adjust annually the $5,000 amount in subparagraph (B)(i) and the $2,500 amount in subparagraph (B)(ii) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2005, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(D) Aggregation of plans

For purposes of this paragraph, plans described in clauses (i), (ii), and (iv) of paragraph (6)(A) that are maintained by the same employer (as determined under subsection (b), (c), (m) or (*o*)) shall be treated as a single plan, and plans described in clause (iii) of paragraph (6)(A) that are maintained by the same employer shall be treated as a single plan.

(3) Treatment of contributions

In the case of any contribution to a plan under paragraph (1)—

(A) such contribution shall not, with respect to the year in which the contribution is made—

(i) be subject to any otherwise applicable limitation contained in sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3)), or

(ii) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan, and

(B) except as provided in paragraph (4), such plan shall not be treated as failing to meet the requirements of section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416 by reason of the making of (or the right to make) such contribution.

(4) Application of nondiscrimination rules

(A) In general

An applicable employer plan shall be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

(B) Aggregation

For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (*o*) of section 414 shall be treated as 1 plan, except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section).

(5) Eligible participant

For purposes of this subsection, the term ''eligible participant'' means a participant in a plan—

(A) who would attain age 50 by the end of the taxable year,

(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan (or other applicable) year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation or restriction contained in the terms of the plan.

(6) Other definitions and rules

For purposes of this subsection—

(A) Applicable employer plan

The term ''applicable employer plan'' means—

(i) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(iii) an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A), and

(iv) an arrangement meeting the requirements of section 408(k) or (p).

(B) Elective deferral

The term ''elective deferral'' has the meaning given such term by subsection (u)(2)(C).

(C) Exception for section 457 plans

This subsection shall not apply to a participant for any year for which a higher limitation applies to the participant under section 457(b)(3).

(w) Special rules for certain withdrawals from eligible automatic contribution arrangements

(1) In general

If an eligible automatic contribution arrangement allows an employee to elect to make permissible withdrawals—

(A) the amount of any such withdrawal shall be includible in the gross income of the employee for the taxable year of the employee in which the distribution is made,

(B) no tax shall be imposed under section 72(t) with respect to the distribution, and

(C) the arrangement shall not be treated as violating any restriction on distributions under this title solely by reason of allowing the withdrawal.

In the case of any distribution to an employee by reason of an election under this paragraph, employer matching contributions shall be forfeited or subject to such other treatment as the Secretary may prescribe.

(2) Permissible withdrawal

For purposes of this subsection—

(A) In general

The term ''permissible withdrawal'' means any withdrawal from an eligible automatic contribution arrangement meeting the requirements of this paragraph which—

(i) is made pursuant to an election by an employee, and

(ii) consists of elective contributions described in paragraph (3)(B) (and earnings attributable thereto).

(B) Time for making election

Subparagraph (A) shall not apply to an election by an employee unless the election is made no later than the date which is 90 days after the date of the first elective contribution with respect to the employee under the arrangement.

(C) Amount of distribution

Subparagraph (A) shall not apply to any election by an employee unless the amount of any distribution by reason of the election is equal to the amount of elective contributions made with respect to the first payroll period to which the eligible automatic contribution arrangement applies to the employee and any succeeding payroll period beginning before the effective date of the election (and earnings attributable thereto).

(3) Eligible automatic contribution arrangement

For purposes of this subsection, the term ''eligible automatic contribution arrangement'' means an arrangement under an applicable employer plan—

(A) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

(B) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage), and

(C) which meets the requirements of paragraph (4).

(4) Notice requirements

(A) In general

The administrator of a plan containing an arrangement described in paragraph (3) shall, within a reasonable period before each plan year, give to each employee to whom an arrangement described in paragraph (3) applies for such plan year notice of the employee's rights and obligations under the arrangement which—

(i) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

(ii) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

(B) Time and form of notice

A notice shall not be treated as meeting the requirements of subparagraph (A) with respect to an employee unless—

(i) the notice includes an explanation of the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have such contributions made at a different percentage),

(ii) the employee has a reasonable period of time after receipt of the notice described in clause (i) and before the first elective contribution is made to make such election, and

(iii) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee.

(5) Applicable employer plan

For purposes of this subsection, the term ''applicable employer plan'' means—

(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a),

(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b),

(C) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A),

(D) a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), and

(E) a simple retirement account (as defined in section 408(p)).

(6) Special rule

A withdrawal described in paragraph (1) (subject to the limitation of paragraph (2)(C)) shall not be taken into account for purposes of section 401(k)(3) or for purposes of applying the limitation under section 402(g)(1).

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

(1) General rule

Except as provided in this subsection, the requirements of this title shall be applied to any defined benefit plan or applicable defined contribution plan which are[4] 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 defined contribution plan,

(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 defined contribution plan to the extent necessary for the separate application of this title 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), 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 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 411(a)(13)(B) which meets the interest credit requirements of section 411(b)(5)(B)(i), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives a 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 (4), (5), and (6) of section 411(a), 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 defined contribution 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.

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

(ii) Nonelective contributions

An applicable defined contribution 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

[4] So in original. Probably should be ''is''.

to 100 percent of the employee's accrued benefit under the plan derived from employer contributions, and

(ii) in the case of an applicable defined contribution 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 411 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 defined contribution 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*), and

(II) the requirements of sections 401(a)(4) and 410(b) 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*).

(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) without being combined with any other plan.

(3) Nondiscrimination requirements for qualified cash or deferred arrangement

(A) In general

A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

(B) Matching contributions

In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

(4) Satisfaction of top-heavy rules

A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

(5) 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 clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

(6) Coordination with other requirements

(A) Treatment of separate plans

Section 414(k) shall not apply to an eligible combined plan.

(B) Reporting

An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

(7) Applicable defined contribution plan

For purposes of this subsection—

(A) In general

The term ''applicable defined contribution plan'' means a defined contribution 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).

(Added Pub. L. 93–406, title II, §1015, Sept. 2, 1974, 88 Stat. 925; amended Pub. L. 94–455, title XIX, §§1901(a)(64), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 95–600, title I, §152(d), Nov. 6, 1978, 92 Stat. 2799; Pub. L. 96–364, title II, §§207, 208(a), title IV, §407(b), Sept. 26, 1980, 94 Stat. 1288, 1289, 1305; Pub. L. 96–605, title II, §201(a), Dec. 28, 1980, 94 Stat. 3526; Pub. L. 96–613, §5(a), Dec. 28, 1980, 94 Stat. 3580; Pub. L. 97–248, title II, §§240(c), 246(a), 248(a), Sept. 3, 1982, 96 Stat. 520, 525, 526; Pub. L. 98–369, div. A, title IV, §491(d)(26), (27), title V, §526(a)(1), (b)(1), (d)(1), (2), title VII, §713(i), July 18, 1984, 98 Stat. 850, 874, 875, 960; Pub. L. 98–397, title II, §204(b), Aug. 23, 1984, 98 Stat. 1445; Pub. L. 99–514, title XI, §§1114(a), (b)(11), 1115(a), 1117(c), 1146(a), (b), 1151(e)(1), (i), title XIII, §1301(j)(4), title XVIII, §§1852(f), 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii), 1899A(12), Oct. 22, 1986, 100 Stat. 2448, 2451, 2452, 2462, 2491, 2506, 2507, 2657, 2868, 2951, 2953, 2954, 2958; Pub. L. 100–203, title IX, §9305(c), Dec. 22, 1987, 101 Stat. 1330–352; Pub. L. 100–647, title I, §§1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), 1018(t)(8)(E)–(G), title II, §2005(c)(1), (2), title III, §§3011(b)(4), (5), 3021(b)(1), (2)(A), title VI, §6067(a), Nov. 10, 1988, 102 Stat. 3460, 3461, 3465, 3467, 3468, 3473, 3485, 3589, 3611, 3612, 3625, 3631, 3632, 3703; Pub. L. 101–140, title II, §§203(a)(6), 204(b)(2), Nov. 8, 1989, 103 Stat. 831, 833; Pub. L. 101–239, title VII, §§7811(m)(5), 7813(b), 7841(a)(2), Dec. 19, 1989, 103 Stat. 2412, 2413, 2427; Pub. L. 101–508, title XI, §11703(b)(1), Nov. 5, 1990, 104 Stat. 1388–517; Pub. L. 102–318, title V, §521(b)(20)–(22), July 3, 1992, 106 Stat. 311; Pub. L. 104–188, title I, §§1421(b)(9)(C), 1431(a), (b)(1), (c)(1)(A), (D), (E), 1434(b), 1454(a), 1461(a), 1462(a), 1704(n)(1), Aug. 20, 1996, 110 Stat. 1798, 1802, 1803, 1807, 1817, 1822, 1824, 1883; Pub. L. 105–34, title XV, §1522(a), title XVI, §1601(d)(6)(A), (7), (h)(2)(D)(i), (ii), Aug. 5, 1997, 111 Stat. 1070, 1089, 1090, 1092; Pub. L. 105–206, title VI, §6018(c), July 22, 1998, 112 Stat. 822; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§631(a), 635(a)–(c), June 7, 2001, 115 Stat. 111, 117; Pub. L. 107–147, title IV, §411(*o*)(3)–(8), Mar. 9, 2002, 116 Stat. 48, 49; Pub. L. 108–311, title IV, §408(a)(15), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title I, §114(c), title IX, §§902(d)(1), 903(a), 906(a)(1), (b)(1)(C), title XI, §1106(b), Aug. 17, 2006, 120 Stat. 853, 1036, 1040, 1051, 1052, 1062; Pub. L. 110–28, title VI, §6611(a)(2), (b)(2), May 25, 2007, 121 Stat. 180, 181; Pub. L. 110–245, title I, §§104(b), 105(b)(1), June 17, 2008, 122 Stat. 1626, 1628; Pub. L. 110–289, div. A, title VI, §1604(b)(4), July 30, 2008, 122 Stat. 2829; Pub. L. 110–458, title I, §§101(d)(2)(E), 109(b)(4)–(c)(1), Dec. 23, 2008, 122 Stat. 5099, 5111.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.

REFERENCES IN TEXT

The Railroad Retirement Act of 1935 or 1937, referred to in subsec. (d), means act Aug. 29, 1935, ch. 812, 49 Stat. 867, known as the Railroad Retirement Act of 1935. The Railroad Retirement Act of 1935 was amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and was known as the Railroad Retirement Act of 1937. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–444, title I, Oct. 16, 1974, 88 Stat. 1305 and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

The International Organizations Immunities Act (59 Stat. 669), referred to in subsec. (d), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22, Foreign Relations and Intercourse. The Act also amended several other laws including the Internal Revenue Code of 1939. For exemption from taxation of income of international organizations and of the compensation of employees thereof, see sections 892 and 893 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (f)(3), (5), (6)(B), (F) and (*l*)(1), (2)(E), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Section 3(37)(A)(iii) of the Act is classified to section 1002(37)(A)(iii) of Title 29. Section 4403(b) and (c) of the Employee Retirement Income Security Act of 1974 probably means section 4303(b) and (c) of such Act which is classified to section 1453(b) and (c) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(4), (5), means the date of the enactment of Pub. L. 96–364, which was approved Sept. 26, 1980.

Effective date of the Multiemployer Pension Plan Amendments Act of 1980, referred to in subsec. (f)(5), probably means the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, which was approved Sept. 26, 1980.

AMENDMENTS

2008—Subsec. (*l*)(2)(B)(i)(I). Pub. L. 110–458, §101(d)(2)(E), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount determined under section 431(c)(6)(A)(i) in the case of a multiemployer plan (and the sum of the funding shortfall and target normal cost determined under section 430 in the case of any other plan), over''.

Subsec. (*l*)(2)(G). Pub. L. 110–289, §1604(b)(4), which directed substitution of ''bridge depository institution''

for ''bridge bank'', was executed by making the substitution wherever appearing in text, to reflect the probable intent of Congress.

Subsec. (u). Pub. L. 110–245, § 105(b)(1)(B), inserted ''and to differential wage payments to members on active duty'' after ''USERRA'' in heading.

Subsec. (u)(9) to (11). Pub. L. 110–245, § 104(b), added par. (9) and redesignated former pars. (9) and (10) as (10) and (11), respectively.

Subsec. (u)(12). Pub. L. 110–245, § 105(b)(1)(A), added par. (12).

Subsec. (w)(3)(B) to (D). Pub. L. 110–458, § 109(b)(4), inserted ''and'' after comma at end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which read as follows: ''under which, in the absence of an investment election by the participant, contributions described in subparagraph (B) are invested in accordance with regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974, and''.

Subsec. (w)(5)(D), (E). Pub. L. 110–458, § 109(b)(5), added subpars. (D) and (E).

Subsec. (w)(6). Pub. L. 110–458, § 109(b)(6), inserted ''or for purposes of applying the limitation under section 402(g)(1)'' before period at end.

Subsec. (x)(1). Pub. L. 110–458, § 109(c)(1), 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.''

2007—Subsec. (f)(6)(A)(ii)(I). Pub. L. 110–28, § 6611(a)(2)(A), substituted ''for each of the 3 plan years immediately preceding the first plan year for which the election under this paragraph is effective with respect to the plan,'' for ''for each of the 3 plan years immediately before the date of enactment of the Pension Protection Act of 2006,''.

Subsec. (f)(6)(B). Pub. L. 110–28, § 6611(a)(2)(B), substituted ''starting with any plan year beginning on or after January 1, 1999, and ending before January 1, 2008, as designated by the plan in the election made under subparagraph (A)(ii)'' for ''starting with the first plan year ending after the date of the enactment of the Pension Protection Act of 2006''.

Subsec. (f)(6)(E). Pub. L. 110–28, § 6611(b)(2), substituted ''if it is a plan sponsored by an organization which is described in section 501(c)(5) and exempt from tax under section 501(a) and which was established in Chicago, Illinois, on August 12, 1881.'' for ''if it is a plan—

''(i) that was established in Chicago, Illinois, on August 12, 1881; and

''(ii) sponsored by an organization described in section 501(c)(5) and exempt from tax under section 501(a).''

Subsec. (f)(6)(F). Pub. L. 110–28, § 6611(a)(2)(C), added subpar. (F).

2006—Subsec. (d). Pub. L. 109–280, § 906(a)(1), inserted at end ''The term 'governmental plan' includes a plan which is established and maintained by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), or an agency or instrumentality of either, and all of the participants of which are employees of such entity substantially all of whose services as such an employee are in the performance of essential governmental functions but not in the performance of commercial activities (whether or not an essential government function).''

Subsec. (f)(6). Pub. L. 109–280, § 1106(b), added par. (6).

Subsec. (h)(2). Pub. L. 109–280, § 906(b)(1)(C), inserted ''or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments),'' after ''foregoing,''.

Subsec. (*l*)(2)(B)(i)(I). Pub. L. 109–280, § 114(c), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''the amount determined under section 412(c)(7)(A)(i) with respect to the plan, over''.

Subsec. (w). Pub. L. 109–280, § 902(d)(1), added subsec. (w).

Subsec. (x). Pub. L. 109–280, § 903(a), added subsec. (x).

2004—Subsec. (q)(7). Pub. L. 108–311 substituted ''subsection'' for ''section''.

2002—Subsec. (v)(2)(D). Pub. L. 107–147, § 411(*o*)(3), added subpar. (D).

Subsec. (v)(3)(A)(i). Pub. L. 107–147, § 411(*o*)(4), substituted ''sections 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3))'' for ''section 402(g), 402(h), 403(b), 404(a), 404(h), 408(k), 408(p), 415, or 457''.

Subsec. (v)(3)(B). Pub. L. 107–147, § 411(*o*)(5), substituted ''section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416'' for ''section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 403(b)(12), 408(k), 408(p), 408B, 410(b), or 416''.

Subsec. (v)(4)(B). Pub. L. 107–147, § 411(*o*)(6), inserted before period at end '', except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section)''.

Subsec. (v)(5). Pub. L. 107–147, § 411(*o*)(7)(A), struck out '', with respect to any plan year,'' before ''a participant'' in introductory provisions.

Subsec. (v)(5)(A). Pub. L. 107–147, § 411(*o*)(7)(B), amended subpar. (A) generally. Prior to amendment, subpar (A) read as follows: ''who has attained the age of 50 before the close of the plan year, and''.

Subsec. (v)(5)(B). Pub. L. 107–147, § 411(*o*)(7)(C), substituted ''plan (or other applicable) year'' for ''plan year''.

Subsec. (v)(6)(C). Pub. L. 107–147, § 411(*o*)(8), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: ''This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.''

2001—Subsec. (p)(10). Pub. L. 107–16, § 635(b), substituted ''section 409(d), and section 457(d)'' for ''and section 409(d)''.

Subsec. (p)(11). Pub. L. 107–16, § 635(a), in heading substituted ''certain other plans'' for ''governmental and church plans'' and in text inserted ''or an eligible deferred compensation plan (within the meaning of section 457(b))'' after ''subsection (e))''.

Subsec. (p)(12), (13). Pub. L. 107–16, § 635(c), added par. (12) and redesignated former par. (12) as (13).

Subsec. (v). Pub. L. 107–16, § 631(a), added subsec. (v).

2000—Subsec. (s)(2). Pub. L. 106–554 substituted ''section 125, 132(f)(4), 402(e)(3)'' for ''section 125, 402(e)(3)''.

1998—Subsec. (q)(5). Pub. L. 105–206 made technical amendment to Pub. L. 104–188, § 1434(c)(1)(E). See 1996 Amendment note below.

1997—Subsec. (e)(5)(A). Pub. L. 105–34, § 1601(d)(6)(A), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''For purposes of this part—

''(i) IN GENERAL.—An employee of a church or a convention or association of churches shall include a duly ordained, commissioned, or licensed minister of a church who, in connection with the exercise of his or her ministry—

''(I) is a self-employed individual (within the meaning of section 401(c)(1)(B)), or

''(II) is employed by an organization other than an organization described in section 501(c)(3).

''(ii) TREATMENT AS EMPLOYER AND EMPLOYEE.—

''(I) SELF-EMPLOYED.—A minister described in clause (i)(I) shall be treated as his or her own employer which is an organization described in section 501(c)(3) and which is exempt from tax under section 501(a).

''(II) OTHERS.—A minister described in clause (i)(II) shall be treated as employed by an organization described in section 501(c)(3) and exempt from tax under section 501(a).''

Subsec. (e)(5)(C). Pub. L. 105–34, § 1522(a)(1), substituted ''not otherwise participating'' for ''not eligible to participate''.

Subsec. (e)(5)(E). Pub. L. 105–34, § 1522(a)(2), added subpar. (E).

Subsec. (n)(3)(C). Pub. L. 105–34, §1601(h)(2)(D)(i), inserted ''137,'' after ''132,''.

Subsec. (q)(7), (9). Pub. L. 105–34, §1601(d)(7), redesignated par. (7), relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans, as (9).

Subsec. (t)(2). Pub. L. 105–34, §1601(h)(2)(D)(ii), inserted ''137,'' after ''132,''.

1996—Subsecs. (b), (c). Pub. L. 104–188, §1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (e)(5). Pub. L. 104–188, §1461(a), added par. (5).

Subsec. (m)(4)(B). Pub. L. 104–188, §1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (n)(2)(C). Pub. L. 104–188, §1454(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''such services are of a type historically performed, in the business field of the recipient, by employees.''

Subsec. (n)(3)(B). Pub. L. 104–188, §1421(b)(9)(C), inserted ''408(p),'' after ''408(k),''.

Subsec. (q)(1). Pub. L. 104–188, §1431(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''IN GENERAL.—The term 'highly compensated employee' means any employee who, during the year or the preceding year—

''(A) was at any time a 5-percent owner,

''(B) received compensation from the employer in excess of $75,000,

''(C) received compensation from the employer in excess of $50,000 and was in the top-paid group of employees for such year, or

''(D) was at any time an officer and received compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for such year.

The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).''

Subsec. (q)(2), (3). Pub. L. 104–188, §1431(c)(1)(A), redesignated pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''SPECIAL RULE FOR CURRENT YEAR.—In the case of the year for which the relevant determination is being made, an employee not described in subparagraph (B), (C), or (D) of paragraph (1) for the preceding year (without regard to this paragraph) shall not be treated as described in subparagraph (B), (C), or (D) of paragraph (1) unless such employee is a member of the group consisting of the 100 employees paid the greatest compensation during the year for which such determination is being made.''

Subsec. (q)(4). Pub. L. 104–188, §1434(b)(1), amended heading and text of par. (4) generally. Prior to amendment, text read as follows: ''For purposes of this subsection—

''(A) IN GENERAL.—The term 'compensation' means compensation within the meaning of section 415(c)(3).

''(B) CERTAIN PROVISIONS NOT TAKEN INTO ACCOUNT.—The determination under subparagraph (A) shall be made—

''(i) without regard to sections 125, 402(e)(3), and 402(h)(1)(B), and

''(ii) in the case of employer contributions made pursuant to a salary reduction agreement, without regard to section 403(b).''

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (7) as (4).

Subsec. (q)(5). Pub. L. 104–188, §1434(c)(1)(E), as amended by Pub. L. 105–206, §6018(c), struck out ''under paragraph (4) or the number of officers taken into account under paragraph (5)'' after ''top-paid group'' in introductory provisions.

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (8) as (5) and struck out former par. (5) which read as follows: ''SPECIAL RULES FOR TREATMENT OF OFFICERS.—

''(A) NOT MORE THAN 50 OFFICERS TAKEN INTO ACCOUNT.—For purposes of paragraph (1)(D), no more than 50 employees (or, if lesser, the greater of 3 employees or 10 percent of the employees) shall be treated as officers.

''(B) AT LEAST 1 OFFICER TAKEN INTO ACCOUNT.—If for any year no officer of the employer is described in paragraph (1)(D), the highest paid officer of the employer for such year shall be treated as described in such paragraph.''

Subsec. (q)(6). Pub. L. 104–188, §1431(b)(1), (c)(1)(A), redesignated par. (9) as (6) and struck out former par. (6) which related to treatment of families of 5-percent owners or of highly compensated employees.

Subsec. (q)(7). Pub. L. 104–188, §1462(a), added par. (7) relating to certain employees not considered highly compensated and excluded employees under pre-ERISA rules for church plans.

Pub. L. 104–188, §1431(c)(1)(A), redesignated par. (10), relating to coordination with other provisions, as (7). Former par. (7) redesignated (4).

Subsec. (q)(8) to (12). Pub. L. 104–188, §1431(c)(1)(A), redesignated pars. (8) to (11) as (5) to (8), respectively, and struck out par. (12) which related to simplified method for determining highly compensated employees.

Subsec. (r)(2)(A). Pub. L. 104–188, §1431(c)(1)(D), substituted ''subsection (q)(5)'' for ''subsection (q)(8)''.

Subsec. (s)(2). Pub. L. 104–188, §1434(b)(2), inserted ''not'' after ''elect'' in heading and in text.

Subsec. (u). Pub. L. 104–188, §1704(n)(1), added subsec. (u).

1992—Subsec. (n)(5)(C)(iii)(I). Pub. L. 102–318, §521(b)(20), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (q)(7)(B)(i). Pub. L. 102–318, §521(b)(21), substituted ''402(e)(3)'' for ''402(a)(8)''.

Subsec. (s)(2). Pub. L. 102–318, §521(b)(22), substituted ''402(e)(3)'' for ''402(a)(8)''.

1990—Subsec. (n)(2)(B). Pub. L. 101–508 struck out ''(6 months in the case of core health benefits)'' after ''1 year''.

1989—Subsec. (n)(3)(C). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(4), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(A), struck out ''89,'' after ''79,''.

Subsec. (p)(10). Pub. L. 101–239, §7811(m)(5), inserted ''section'' before ''403(b)''.

Subsec. (p)(11). Pub. L. 101–239, §7841(a)(2), added par. (11) and redesignated former par. (11) as (12).

Subsec. (r)(1). Pub. L. 101–140, §204(b)(2), substituted ''sections 129(d)(8) and 410(b)'' for ''section 410(b)''.

Pub. L. 101–140, §203(a)(6)(B), substituted ''section 410(b)'' for ''sections 89 and 410(b)''.

Subsec. (t)(2). Pub. L. 101–239, §7813(b), amended directory language of Pub. L. 100–647, §3011(b)(5), see 1988 Amendment note below.

Pub. L. 101–140, §203(a)(6)(C), struck out ''89,'' after ''79,''.

1988—Subsec. (k)(2). Pub. L. 100–647, §1011A(b)(3), inserted ''72(d) (relating to treatment of employee contributions as separate contract),'' after ''purposes of sections''.

Subsec. (*l*). Pub. L. 100–647, §2005(c)(1), (2), substituted ''Merger'' for ''Mergers'' in heading, designated existing provision as par. (1), inserted par. (1) heading, and added par. (2).

Subsec. (*l*)(2)(G). Pub. L. 100–647, §6067(a), added subpar. (G).

Subsec. (m)(4)(A). Pub. L. 100–647, §1011(h)(5), substituted ''(16), (17), and (26)'' for ''and (16)''.

Subsec. (m)(4)(C), (D). Pub. L. 100–647, §1011B(a)(16), struck out subpars. (C) and (D) which read as follows: ''(C) section 105(h), and

''(D) section 125.''

Subsec. (n)(3)(A). Pub. L. 100–647, §1011(h)(5), substituted ''(16), (17), and (26)'' for ''and (16)''.

Subsec. (n)(3)(C). Pub. L. 100–647, §3011(b)(4), as amended by Pub. L. 101–239, §7813(b), struck out ''162(i)(2), 162(k),'' after ''132,'' and substituted ''505, and 4980B'' for ''and 505''.

Pub. L. 100–647, §1011B(a)(19), inserted ''162(i)(2), 162(k),'' after ''132,''.

Subsec. (*o*). Pub. L. 100–647, §1011(e)(4), inserted ''or any requirement under section 457'' after ''or (n)(3)''.

Subsec. (p)(4)(B). Pub. L. 100–647, §1018(t)(8)(E), substituted ''means the earlier of'' for ''means earlier of'' and struck out ''in'' at beginning of cls. (i) and (ii).

Subsec. (p)(9). Pub. L. 100–647, § 1018(t)(8)(G), inserted at end ''For purposes of this title, except as provided in regulations, any distribution from an annuity contract under section 403(b) pursuant to a qualified domestic relations order shall be treated in the same manner as a distribution from a plan to which section 401(a)(13) applies.''

Subsec. (p)(10). Pub. L. 100–647, § 1018(t)(8)(F), inserted '', 403(b),'' after ''section 401''.

Subsec. (q)(1). Pub. L. 100–647, § 1011(i)(1), inserted at end ''The Secretary shall adjust the $75,000 and $50,000 amounts under this paragraph at the same time and in the same manner as under section 415(d).''

Subsec. (q)(1)(D). Pub. L. 100–647, § 1011(d)(8), substituted ''50'' for ''150'' and ''415(b)(1)(A)'' for ''415(c)(1)(A)''.

Subsec. (q)(6)(C). Pub. L. 100–647, § 1011(i)(2), added subpar. (C).

Subsec. (q)(8). Pub. L. 100–647, § 1011(i)(4)(A), inserted ''or the number of officers taken into account under paragraph (5)'' after ''under paragraph (4)''.

Pub. L. 100–647, § 1011(i)(3)(A)(ii), substituted ''Except as provided by the Secretary, the employer'' for ''The employer'' in last sentence.

Subsec. (q)(8)(F). Pub. L. 100–647, § 1011(i)(3)(A)(i), struck out subpar. (F) which read as follows: ''employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).''

Subsec. (q)(11). Pub. L. 100–647, § 1011(i)(3)(B), added par. (11).

Subsec. (q)(12). Pub. L. 100–647, § 3021(b)(1), added par. (12).

Subsec. (r)(3). Pub. L. 100–647, § 3021(b)(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The requirements of subparagraph (C) of paragraph (2) shall not apply to any line of business if the highly compensated employee percentage with respect to such line of business is—

''(A) not less than one-half, and

''(B) not more than twice,

the percentage which highly compensated employees are of all employees of the employer. An employer shall be treated as meeting the requirements of subparagraph (A) if at least 10 percent of all highly compensated employees of the employer perform services solely for such line of business.''

Subsec. (s). Pub. L. 100–647, § 1011(j)(1), substituted ''any applicable provision'' for ''this part'' in introductory provisions.

Subsec. (s)(1). Pub. L. 100–647, § 1011(j)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'compensation' means compensation for service performed for an employer which (taking into account the provisions of this chapter) is currently includible in gross income.''

Subsec. (s)(2) to (4). Pub. L. 100–647, § 1011(j)(2), added par. (4), redesignated former pars. (3) and (4) as (2) and (3), respectively, and struck out former par. (2) which read as follows: ''The Secretary shall prescribe regulations for the determination of the compensation of an employee who is a self-employed individual (within the meaning of section 401(c)(1)) which are based on the principles of paragraph (1).''

Subsec. (t)(1). Pub. L. 100–647, § 1011B(a)(20), struck out ''of section 414'' before ''shall be treated'' and ''shall apply with''.

Subsec. (t)(2). Pub. L. 100–647, § 3011(b)(5), as amended by Pub. L. 101–239, § 7813(b), struck out ''162(i)(2), 162(k),'' after ''132,'' and substituted ''505, or 4980B'' for ''or 505''.

Pub. L. 100–647, § 1011B(a)(17), inserted ''162(i)(2), 162(k),'' after ''132,''.

1987—Subsec. (b). Pub. L. 100–203 struck out ''the minimum funding standard of section 412, the tax imposed by section 4971, and'' after ''one such corporation,''.

1986—Subsec. (k)(2). Pub. L. 99–514, § 1117(c), inserted reference to section 401(m) (relating to nondiscrimination tests for matching requirements and employee contributions).

Subsec. (m)(2)(B)(ii). Pub. L. 99–514, § 1114(b)(11), substituted ''highly compensated employees (within the meaning of section 414(q))'' for ''officers, highly compensated employees, or owners''.

Subsec. (m)(5). Pub. L. 99–514, § 1301(j)(4), substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)''.

Subsec. (m)(7). Pub. L. 99–514, § 1852(f), amended directory language of Pub. L. 98–369, § 526(d)(2), to correct an error, and did not involve any change in text. See 1984 Amendment note below.

Subsec. (n)(1). Pub. L. 99–514, § 1151(i)(1), substituted ''requirements'' for ''pension requirements''.

Pub. L. 99–514, § 1146(b)(2), struck out ''except to the extent otherwise provided in regulations,'' after ''listed in paragraph (3),''.

Subsec. (n)(2)(B). Pub. L. 99–514, § 1151(i)(2), inserted ''(6 months in the case of core health benefits)'' after ''1 year''.

Subsec. (n)(3). Pub. L. 99–514, § 1151(i)(3), substituted ''Requirements'' for ''Pension requirements'' in heading, substituted ''requirements'' for ''pension requirements'' in text, and added subpar. (C).

Subsec. (n)(4). Pub. L. 99–514, § 1146(a)(2), substituted ''Time when first considered as employee'' for ''Time when leased employee is first considered as employee'' in heading and amended text generally. Prior to amendment, text read as follows: ''In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the pension requirements listed in paragraph (3) are met for periods after the close of the 1-year period referred to in paragraph (2); except that years of service for the recipient shall be determined by taking into account the entire period for which the leased employee performed services for the recipient (or related persons).''

Subsec. (n)(5). Pub. L. 99–514, § 1146(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''This subsection shall not apply to any leased employee if such employee is covered by a plan which is maintained by the leasing organization if, with respect to such employee, such plan—

''(A) is a money purchase pension plan with a nonintegrated employer contribution rate of at least 7½ percent, and

''(B) provides for immediate participation and for full and immediate vesting.''

Subsec. (n)(6). Pub. L. 99–514, § 1301(j)(4), substituted ''section 144(a)(3)'' for ''section 103(b)(6)(C)'' in subpar. (A).

Pub. L. 99–514, § 1146(a)(3), substituted ''Other rules'' for ''Related persons'' in heading and amended text generally. Prior to amendment, text read as follows: ''For purposes of this subsection, the term 'related persons' has the same meaning as when used in section 103(b)(6)(C).''

Subsec. (*o*). Pub. L. 99–514, § 1146(b)(1), inserted provision relating to regulations to minimize recordkeeping requirements in case of employer which has no top-heavy plans and uses the services of persons other than employees for an insignificant percentage of the employer's total workload.

Subsec. (p)(1)(B)(i). Pub. L. 99–514, § 1898(c)(7)(A)(ii), inserted ''former spouse,''.

Subsec. (p)(3)(B). Pub. L. 99–514, § 1899A(12), struck out the comma after ''benefits''.

Subsec. (p)(4)(A). Pub. L. 99–514, § 1898(c)(7)(A)(vi), 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 cl. (i).

Subsec. (p)(4)(B). Pub. L. 99–514, § 1898(c)(7)(A)(vii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, the term 'earliest retirement age' has the meaning given such term by section 417(f)(3), except that in the case of any defined contribution plan, the earliest retirement age shall be the date which is 10 years be-

fore the normal retirement age (within the meaning of section 411(a)(8)).''

Subsec. (p)(5). Pub. L. 99–514, §1898(c)(7)(A)(v), struck out last sentence which read as follows: ''A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order.''

Subsec. (p)(5)(A). Pub. L. 99–514, §1898(c)(6)(A), inserted ''(and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)''.

Subsec. (p)(5)(B). Pub. L. 99–514, §1898(c)(7)(A)(iv), substituted ''the surviving former spouse'' for ''the surviving spouse''.

Subsec. (p)(6)(A)(i). Pub. L. 99–514, §1898(c)(7)(A)(iii), substituted ''each alternate payee'' for ''any other alternate payee''.

Subsec. (p)(7)(A). Pub. L. 99–514, §1898(c)(2)(A)(i), substituted ''shall separately account for the amounts (hereinafter in this paragraph referred to as the 'segregated amounts')'' for ''shall segregate in a separate account in the plan or in an escrow account the amounts''.

Subsec. (p)(7)(B). Pub. L. 99–514, §1898(c)(2)(A)(ii), substituted ''the 18-month period described in subparagraph (E)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (p)(7)(C). Pub. L. 99–514, §1898(c)(2)(A)(iii), substituted ''the 18-month period described in subparagraph (E)'' for ''18 months'' and ''including any interest'' for ''plus any interest''.

Subsec. (p)(7)(D). Pub. L. 99–514, §1898(c)(2)(A)(iv), inserted ''described in subparagraph (E)''.

Subsec. (p)(7)(E). Pub. L. 99–514, §1898(c)(2)(A)(v), added subpar. (E).

Subsec. (p)(9). Pub. L. 99–514, §1898(c)(4)(A), added par. (9). Former par. (9) redesignated (11).

Subsec. (p)(10). Pub. L. 99–514, §1898(c)(7)(A)(v), added par. (10).

Subsec. (p)(11). Pub. L. 99–514, §1898(c)(4)(A), redesignated former par. (9) as (11).

Subsec. (q). Pub. L. 99–514, §1114(a), added subsec. (q).

Subsecs. (r), (s). Pub. L. 99–514, §1115(a), added subsecs. (r) and (s).

Subsec. (t). Pub. L. 99–514, §1151(e)(1), added subsec. (t).

1984—Subsec. (h)(1)(B). Pub. L. 98–369, §491(d)(26), struck out ''or 405(a)'' after ''section 403(a)''.

Subsec. (*l*). Pub. L. 98–369, §491(d)(27), struck out ''or 405'' after ''section 403(a)''.

Subsec. (m)(6)(B). Pub. L. 98–369, §526(a)(1), substituted ''section 318(a)'' for ''section 267(c)''.

Subsec. (m)(7). Pub. L. 98–369, §526(d)(2), as amended by Pub. L. 99–514, §1852(f), struck out par. (7) relating to regulations. See subsec. (*o*) of this section.

Subsec. (n)(2). Pub. L. 98–369, §§526(b)(1), 713(i), made identical amendments, substituting ''any person who is not an employee of the recipient and'' for ''any person'' in text preceding subpar. (A).

Subsec. (*o*). Pub. L. 98–369, §526(d)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 98–397 added subsec. (p).

1982—Subsecs. (b), (c). Pub. L. 97–248, §240(c)(1), inserted reference to section 416.

Subsec. (m)(4)(B). Pub. L. 97–248, §240(c)(2), inserted reference to section 416.

Subsec. (m)(5) to (7). Pub. L. 97–248, §246(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (n). Pub. L. 97–248, §248(a), added subsec. (n).

1980—Subsec. (e). Pub. L. 96–364, §407(b), substituted provisions defining ''church plan'' with respect to general requirements, exclusion of certain plans, definitions and other provisions, and correction of failures to meet church plan requirements, for provisions defining ''church plan'' with respect to general requirements, certain unrelated business or multiemployer plans, and special temporary rules for certain church agencies under church plan.

Subsec. (f). Pub. L. 96–364, §207, substituted provisions setting forth definition, cases of common control, continuation of status after termination, transitional rule, and special election with respect to a multiemployer plan, for provisions setting forth definition and special rules with respect to a multiemployer plan.

Subsec. (*l*). Pub. L. 96–364, §208(a), substituted provisions relating to applicability to multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 of provisions of preceding sentence, for provisions relating to applicability of paragraph to multiemployer plans to extent determined by Corporation.

Subsec. (m). Pub. L. 96–605 and Pub. L. 96–613 added an identical subsec. (m).

1978—Subsecs. (b), (c). Pub. L. 95–600 inserted ''408(k),'' after ''sections 401,'' wherever appearing.

1976—Subsecs. (a) to (c). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (f). Pub. L. 94–455, §1901(a)(64)(A), substituted ''Plan'' for ''plan'' in heading.

Subsec. (g)(2)(C). Pub. L. 94–455, §1906(b)(13)(A), struck out ''or his delegate'' after ''Secretary''.

Subsec. (*l*). Pub. L. 94–455, §1901(a)(64)(B), substituted reference to Sept. 2, 1974, for reference to the date of enactment of the Employee Retirement Income Security Act of 1974.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110–458 effective as if included in the provisions of Pub. L. 109–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–458, set out as a note under section 72 of this title.

Amendment by section 104(b) of Pub. L. 110–245 applicable with respect to deaths and disabilities occurring on or after Jan. 1, 2007, see section 104(d)(1) of Pub. L. 110–245, set out as a note under section 401 of this title.

Amendment by section 105(b)(1) of Pub. L. 110–245 applicable to years beginning after December 31, 2008, see section 105(b)(3) of Pub. L. 110–245, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–28, title VI, §6611(c), May 25, 2007, 121 Stat. 181, provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall take effect as if included in section 1106 of the Pension Protection Act of 2006 [Pub. L. 109–280].''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 114(c) of Pub. L. 109–280 applicable to plan years beginning after 2007, see section 114(g)(1) of Pub. L. 109–280, as added by Pub. L. 110–458, set out as a note under section 401 of this title.

Amendment by section 902(d)(1) 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 this title.

Pub. L. 109–280, title IX, §903(c), Aug. 17, 2006, 120 Stat. 1048, provided that: ''The amendments made by this section [amending this section and section 1060 of Title 29, Labor] shall apply to plan years beginning after December 31, 2009.''

Pub. L. 109–280, title IX, §906(c), Aug. 17, 2006, 120 Stat. 1052, provided that: ''The amendments made by this section [amending this section, section 415 of this title, and sections 1002 and 1321 of Title 29, Labor] shall apply to any year beginning on or after the date of the enactment of this Act [Aug. 17, 2006].''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §631(b), June 7, 2001, 115 Stat. 113, provided that: ''The amendment made by this sec-

tion [amending this section] shall apply to contributions in taxable years beginning after December 31, 2001.''

Pub. L. 107–16, title VI, § 635(d), June 7, 2001, 115 Stat. 117, provided that: ''The amendment made by this section [amending this section] shall apply to transfers, distributions, and payments made after December 31, 2001.''

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106–554 effective as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 1(a)(7) [title III, § 314(g)] of Pub. L. 106–554, set out as a note under section 56 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6018 of Pub. L. 105–206 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which such amendment relates, see section 6018(h) of Pub. L. 105–206, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 1522(b) of Pub. L. 105–34 provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1997.''

Amendment by section 1601(d)(6)(A), (7), (h)(2)(D)(i), (ii) 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 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(9)(C) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

Section 1431(d) of Pub. L. 104–188 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section, sections 129, 401, 404, 408, and 416 of this title, and provisions set out as a note below] shall apply to years beginning after December 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, such amendments shall be treated as having been in effect for years beginning in 1996.

''(2) FAMILY AGGREGATION.—The amendments made by subsection (b) [amending this section and sections 401 and 404 of this title] shall apply to years beginning after December 31, 1996.''

Section 1434(c) of Pub. L. 104–188 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply to years beginning after December 31, 1997.''

Section 1454(b) of Pub. L. 104–188 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996, but shall not apply to any relationship determined under an Internal Revenue Service ruling issued before the date of the enactment of this Act [Aug. 20, 1996] pursuant to section 414(n)(2)(C) of the Internal Revenue Code of 1986 (as in effect on the day before such date) not to involve a leased employee.''

Amendment by section 1461(a) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, see section 1461(c) of Pub. L. 104–188, set out as a note under section 404 of this title.

Section 1462(c) of Pub. L. 104–188 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1996.''

Section 1704(n)(3) of Pub. L. 104–188 provided that: ''The amendments made by this subsection [amending this section and section 1108 of Title 29, Labor] shall be effective as of December 12, 1994.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–318 applicable to distributions after Dec. 31, 1992, see section 521(e) of Pub. L. 102–318, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11703(b)(2) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [probably means par. (1), which amended this section] shall take effect as if included in the amendments made by section 1151 of the Tax Reform Act of 1986 [Pub. L. 99–514].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by sections 7811(m)(5) and 7813(b) of Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

Amendment by section 7841(a)(2) of Pub. L. 101–239 applicable to transfers after Dec. 19, 1989, in taxable years ending after such date, see section 7841(a)(3) of Pub. L. 101–239, set out as a note under section 408 of this title.

Amendment by section 203(a)(6) of Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of this title.

Amendment by section 204(b)(2) of Pub. L. 101–140 applicable to years beginning after Dec. 31, 1988, see section 204(d)(1) of Pub. L. 101–140, set out as a note under section 129 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1011(d)(8), (e)(4), (h)(5), (i)(1)–(4)(A), (j)(1), (2), 1011A(b)(3), 1011B(a)(16), (17), (19), (20), and 1018(t)(8)(E)–(G) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Section 2005(c)(3) of Pub. L. 100–647 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply with respect to transactions occurring after July 26, 1988.

''(B) The amendments made by this subsection shall not apply to any transaction occurring after July 26, 1988, if on or before such date the board of directors of the employer, approves such transaction or the employer took similar binding action.''

Amendment by section 3011(b)(4), (5) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of this title (as in effect on the day before Nov. 10, 1988) did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of this title.

Amendment by section 3021(b)(1), (2)(A) of Pub. L. 100–647 applicable to years beginning after Dec. 31, 1986, see section 3021(d)(2) of Pub. L. 100–647, set out as a note under section 129 of this title.

Section 6067(c) of Pub. L. 100–647, as amended by Pub. L. 101–239, title VII, § 7816(k), Dec. 19, 1989, 103 Stat. 2421, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 2005(c) of this Act [amending this section].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to plan years beginning after Dec. 31, 1987, see section 9305(d) of Pub. L. 100–203, set out as a note under section 412 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1114(c) of Pub. L. 99–514, as amended by Pub. L. 104–188, title I, § 1431(c)(2), Aug. 20, 1996, 110 Stat. 1803;

Pub. L. 107–16, title VI, §663(a), June 7, 2001, 115 Stat. 142, provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendment made by this section [amending this section and sections 106, 274, 423, and 501 of this title] shall apply to years beginning after December 31, 1986.

''(2) CONFORMING AMENDMENTS TO EMPLOYEE BENEFIT PROVISIONS.—The amendments made by paragraphs (2), (3), (4), (5), and (16) of subsection (b) [amending sections 117, 120, 127, 129, 132, and 505 of this title] shall apply to years beginning after December 31, 1987.

''(3) CONFORMING AMENDMENTS TO PENSION PROVISIONS.—The amendments made by paragraphs (7), (8), (9), (10), (11), (12), and (15) of subsection (b) [amending this section and sections 401, 404A, 406, 407, 411, 415, and 4975 of this title and section 1108 of Title 29, Labor] shall apply to years beginning after December 31, 1988.''

[Pub. L. 107–16, title VI, §663(b), June 7, 2001, 115 Stat. 143, provided that: ''The repeal made by subsection (a) [repealing par. (4) of section 1114(c) of Pub. L. 99–514, set out above] shall apply to plan years beginning after December 31, 2001.'']

Section 1115(b) of Pub. L. 99–514 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to years beginning after December 31, 1986.''

Amendment by section 1117(c) of Pub. L. 99–514 applicable to plan years beginning after Dec. 31, 1986, with special provisions for plans maintained pursuant to collective bargaining agreements ratified before Mar. 1, 1986, and for annuity contracts under section 403(b) of this title, see section 1117(d) of Pub. L. 99–514, set out as a note under section 401 of this title.

Section 1146(c) of Pub. L. 99–514 provided that:

''(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983.

''(2) SUBSECTION (a)(1).—The amendment made by subsection (a)(1) shall apply to services performed after December 31, 1986.

''(3) RECORDKEEPING REQUIREMENTS.—In the case of years beginning before the date of the enactment of this Act [Oct. 22, 1986], the last sentence of section 414(*o*) shall be applied without regard to the requirement that an insignificant percentage of the workload be performed by persons other than employees.''

Amendment by section 1151(e)(1), (i) of Pub. L. 99–514 applicable, with certain qualifications and exceptions, to years beginning after Dec. 31, 1988, see section 1151(k) of Pub. L. 99–514, as amended, set out as a note under section 79 of this title.

Amendment by section 1301(j)(4) of Pub. L. 99–514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99–514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

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

Amendment by section 1898(c)(2)(A), (4)(A), (6)(A), (7)(A)(ii)–(vii) of Pub. L. 99–514 effective as if included in the provision of the Retirement Equity Act of 1984, Pub. L. 98–397, to which such amendment relates, except as otherwise provided, see section 1898(j) of Pub. L. 99–514, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

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 Title 29, Labor.

Amendment by section 491(d)(26), (27) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of this title.

Section 526(a)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1984.''

Section 526(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by this subsection [amending this section] shall apply to taxable years beginning after December 31, 1983.''

Section 526(d)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984].''

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

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 240(c) of Pub. L. 97–248, applicable to years beginning after Dec. 31, 1983, see section 241(a) of Pub. L. 97–248, set out as a note under section 416 of this title.

Section 246(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

Section 248(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 201(c) of Pub. L. 96–605 and section 5(c) of Pub. L. 96–613, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years ending after November 30, 1980.

''(2) PLANS IN EXISTENCE ON NOVEMBER 30, 1980.—In the case of a plan in existence on November 30, 1980, the amendments made by this section [amending this section and sections 105 and 125 of this title] shall apply to plan years beginning after November 30, 1980.''

Section 407(c) of Pub. L. 96–364 provided that: ''The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall be effective as of January 1, 1974.''

Amendment by sections 207 and 208(a) of Pub. L. 96–364 effective Sept. 26, 1980, see section 210(a) of Pub. L. 96–364, set out as an Effective Date note under section 418 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95–600, set out as a note under section 408 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 1901(a)(64) of Pub. L. 94–455 effective for taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94–455, set out as a note under section 2 of this title.

EFFECTIVE DATE

Section applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, and, in the case of plans in existence on Jan. 1, 1974, for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

REGULATIONS

Pub. L. 109–280, title X, §1001, Aug. 17, 2006, 120 Stat. 1052, provided that: ''Not later than 1 year after the date of the enactment of this Act [Aug. 17, 2006], the

Secretary of Labor shall issue regulations under section 206(d)(3) of the Employee Retirement Security Act of 1974 [29 U.S.C. 1056(d)(3)] and section 414(p) of the Internal Revenue Code of 1986 which clarify that—

''(1) a domestic relations order otherwise meeting the requirements to be a qualified domestic relations order, including the requirements of section 206(d)(3)(D) of such Act and section 414(p)(3) of such Code, shall not fail to be treated as a qualified domestic relations order solely because—

''(A) the order is issued after, or revises, another domestic relations order or qualified domestic relations order; or

''(B) of the time at which it is issued; and

''(2) any order described in paragraph (1) shall be subject to the same requirements and protections which apply to qualified domestic relations orders, including the provisions of section 206(d)(3)(H) of such Act and section 414(p)(7) of such Code.''

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by sections 1114, 1115, and 1117 of Pub. L. 99–514, see section 1141 of Pub. L. 99–514, set out as a note under section 401 of this title.

Provisions Relating to Plan Amendments Pursuant to Pub. L. 110–245

Pub. L. 110–245, title I, §105(c), June 17, 2008, 122 Stat. 1629, provided that:

''(1) IN GENERAL.—If this subsection applies to any plan or annuity contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i).

''(2) AMENDMENTS TO WHICH SECTION APPLIES.—

''(A) IN GENERAL.—This subsection shall apply to any amendment to any plan or annuity contract which is made—

''(i) pursuant to any amendment made by subsection (b)(1) [amending this section], and

''(ii) on or before the last day of the first plan year beginning on or after January 1, 2010.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this subparagraph shall be applied by substituting '2012' for '2010' in clause (ii).

''(B) CONDITIONS.—This subsection shall not apply to any plan or annuity contract amendment unless—

''(i) during the period beginning on the date the amendment described in subparagraph (A)(i) takes effect and ending on the date described in subparagraph (A)(ii) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect, and

''(ii) such plan or contract amendment applies retroactively for such period.''

Applicability of Amendments by Subtitles A and B of Title I of Pub. L. 109–280

For special rules on applicability of amendments by subtitles A (§§101–108) and B (§§111–116) of title I of Pub. L. 109–280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109–280, set out as notes under section 401 of this title.

Sample Language for Spousal Consent and Qualified Domestic Relations Forms

Section 1457 of Pub. L. 104–188 provided that:

''(a) DEVELOPMENT OF SAMPLE LANGUAGE.—Not later than January 1, 1997, the Secretary of the Treasury shall develop—

''(1) sample language for inclusion in a form for the spousal consent required under section 417(a)(2) of the Internal Revenue Code of 1986 and section 205(c)(2) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1055(c)(2)] which—

''(A) is written in a manner calculated to be understood by the average person, and

''(B) discloses in plain form—

''(i) whether the waiver to which the spouse consents is irrevocable, and

''(ii) whether such waiver may be revoked by a qualified domestic relations order, and

''(2) sample language for inclusion in a form for a qualified domestic relations order described in section 414(p)(1)(A) of such Code and section 206(d)(3)(B)(i) of such Act [29 U.S.C. 1056(d)(3)(B)(i)] which—

''(A) meets the requirements contained in such sections, and

''(B) the provisions of which focus attention on the need to consider the treatment of any lump sum payment, qualified joint and survivor annuity, or qualified preretirement survivor annuity.

''(b) PUBLICITY.—The Secretary of the Treasury shall include publicity for the sample language developed under subsection (a) in the pension outreach efforts undertaken by the Secretary.''

Safeharbor Authority

Section 1462(b) of Pub. L. 104–188 provided that: ''The Secretary of the Treasury may design nondiscrimination and coverage safe harbors for church plans.''

Application of Line of Business Test for Period Before Guidelines Issued

Section 204(b)(1) of Pub. L. 101–140 provided that: ''In the case of any plan year beginning on or before the date the Secretary of the Treasury or his delegate issues guidelines and begins issuing determinations under section 414(r)(2)(C) of the Internal Revenue Code of 1986, an employer shall be treated as operating separate lines of business if the employer reasonably determines that it meets the requirements of section 414(r) (other than paragraph (2)(C) thereof) of such Code.''

[Section 204(d)(3) of Pub. L. 101–140 provided that: ''The provisions of subsection (b)(1) [set out above] shall apply to years beginning after December 31, 1986.'']

Nonenforcement of Amendment Made by Section 1151 of Pub. L. 99–514 for Fiscal Year 1990

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of this title.

Study Reflecting Allocation of Assets

Section 6067(b) of Pub. L. 100–647 directed Secretary of the Treasury or his delegate, in consultation with Federal Deposit Insurance Corporation, to conduct a study with respect to proper method of allocating assets in case of a transaction to which the amendment made by such section and, not later than Jan. 1, 1990 (due date extended to Jan. 1, 1992, by Pub. L. 101–508, title XI, §11831(b), Nov. 5, 1990, 104 Stat. 1388–559) to report results of such study to Committee on Ways and Means of House of Representatives and to Committee on Finance of Senate.

Plan Amendments Not Required Until January 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

Plan Amendments Not Required Until January 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521–523] of title V of Pub. L. 102–318 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, 1994, see section 523 of Pub. L. 102–318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 415. Limitations on benefits and contribution under qualified plans

(a) General rule

(1) Trusts

A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if—

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b), or

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c).

(2) Section applies to certain annuities and accounts

In the case of—

(A) an employee annuity plan described in section 403(a),

(B) an annuity contract described in section 403(b), or

(C) a simplified employee pension described in section 408(k),

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate.

(b) Limitation for defined benefit plans

(1) In general

Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

(A) $160,000, or

(B) 100 percent of the participant's average compensation for his high 3 years.

(2) Annual benefit

(A) In general

For purposes of paragraph (1), the term ''annual benefit'' means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)) are made.

(B) Adjustment for certain other forms of benefit

If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417) shall not be taken into account.

(C) Adjustment to $160,000 limit where benefit begins before age 62

If the retirement income benefit under the plan begins before age 62, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 62.

(D) Adjustment to $160,000 limit where benefit begins after age 65

If the retirement income benefit under the plan begins after age 65, the determination as to whether the $160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $160,000 annual benefit beginning at age 65.

(E) Limitation on certain assumptions

(i) For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.

(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the interest rate assumption shall not be less than the greatest of—