§ 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination).

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph, there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C).

(5) Special rules relating to non-discrimination requirements.

(A) Salaried or Clerical Employees.—A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) Contributions and benefits may bear uniform relationship to compensation.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) Certain disparity permitted.—A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan

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favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (i).

(D) INTEGRATED DEFINED BENEFIT PLAN.—
(i) IN GENERAL.—A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of—
(I) the participant’s final pay with the employer, over
(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause, the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) FINAL PAY.—For purposes of this subparagraph, the participant’s final pay is the compensation (as defined in section 414(q)(4)) paid to the participant by the employer for any year—
(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and
(II) for which the participant’s total compensation from the employer was highest.

(E) 2 OR MORE PLANS TREATED AS SINGLE PLAN.—For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan—
(i) CONTRIBUTIONS.—If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(e)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) BENEFITS.—If the employees’ rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(F) SOCIAL SECURITY RETIREMENT AGE.—For purposes of testing for discrimination under paragraph (4)—
(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and
(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employ-

(G) GOVERNMENTAL PLANS.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) REQUIRED DISTRIBUTIONS.—
(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless the plan provides that the entire interest of each employee—
(i) will be distributed to such employee not later than the required beginning date, or
(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—
(i) WHERE DISTRIBUTIONS HAVE BEEN UNDER SUBPARAGRAPH (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—
(I) the distribution of the employee’s interest has begun in accordance with subparagraph (A)(ii), and
(II) the employee dies before his entire interest has been distributed to him, the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-YEAR RULE FOR OTHER CASES.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee’s interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—IF—
(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary.

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe.

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) Special Rule for Surviving Spouse of Employee.—If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause (ii)(III) shall not be earlier than the date on which the employee would have attained age 70 1/2, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) Required Beginning Date.—For purposes of this paragraph—

(i) In General.—The term "required beginning date" means April 1 of the calendar year following the later of—

(I) the calendar year in which the employee attains age 70 1/2, or

(II) the calendar year in which the employee retires.

(ii) Exception.—Subclause (II) of clause (i) shall not apply—

(I) except as provided in section 408(d), in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains age 70 1/2, or

(II) for purposes of section 408(a)(6) or (b)(3).

(iii) Actuarial Adjustment.—In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70 1/2, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70 1/2 in which the employee was not receiving any benefits under the plan.

(iv) Exception for Governmental and Church Plans.—Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause, the term "church plan" means a plan maintained by a church for church employees, and the term "church" means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(D) Life Expectancy.—For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be re-determined but not more frequently than annually.

(E) Designated Beneficiary.—For purposes of this paragraph the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(F) Treatment of Payments to Children.—Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) Treatment of Incidental Death Benefit Distributions.—For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph.

(10) Other Requirements.—

(A) Plans Benefitting Owner-Employees.—In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) Top-Heavy Plans.—

(i) In General.—In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) Plans Which May Become Top-Heavy.—Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) Exemption for Governmental Plans.—This subparagraph shall not apply to any governmental plan.

(11) Requirement of Joint and Survivor Annuity and Preretirement Survivor Annuity.—

(A) In General.—In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

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

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.
(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant’s nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant’s surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2), to a designated beneficiary).

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

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

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

(C) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

(i) IN GENERAL.—In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee’s accrued benefit to which the requirements of section 409(h) apply.

(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) SPECIAL RULE WHERE PARTICIPANT AND SPOUSE MARRIED LESS THAN 1 YEAR.—A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant’s annuity starting date or the date of the participant’s death.

(E) EXCEPTION FOR PLANS DESCRIBED IN SECTION 404(c).—This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) CROSS REFERENCE.—For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant’s accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) SPECIAL RULES FOR DOMESTIC RELATIONS ORDERS.—Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(C) SPECIAL RULE FOR CERTAIN JUDGMENTS AND SETTLEMENTS.—Subparagraph (A) shall not apply to any offset of a participant’s benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if—

(i) the order or requirement to pay arises—

(I) under a judgment of conviction for a crime involving such plan,

(II) under a civil judgment (including a consent order or decree) entered by a
court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

(iii) pursuant to a settlement agreement between the Secretary of Labor and the participant, or a settlement agreement between the Pension Benefit Guaranty Corporation and the participant, in connection with a violation (or alleged violation) of part 4 of such subtitle by a fiduciary or any other person,

(ii) the judgment, order, decree, or settlement agreement expressly provides for the offset of all or part of the amount ordered or required to be paid to the plan against the participant's benefits provided under the plan, and

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a).

(II) such spouse is ordered or required in such judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation of part 4 of such subtitle, or

(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii), determined in accordance with subparagraph (D).

A plan shall not be treated as failing to meet the requirements of this subsection, subsection (k), section 403(b), or section 409(d) solely by reason of an offset described in this subparagraph.

(D) SURVIVOR ANNUITY.—

(i) IN GENERAL.—The survivor annuity described in subparagraph (C)(iii)(II) shall be determined as if—

(I) the participant terminated employment on the date of the offset,

(II) there was no offset,

(III) the plan permitted commencement of benefits only on or after normal retirement age,

(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(ii) DEFINITION.—For purposes of this subparagraph, the term "minimum-required qualified joint and survivor annuity" means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which—

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

In the case of a plan which provides for the payment of an early retirement benefit, a trust forming a part of such plan shall not constitute a qualified trust under this section unless a participant who satisfied the service requirements for such early retirement benefit, but separated from the service (with any nonforfeitable right to an accrued benefit) before satisfying the age requirement referred to above, is entitled upon satisfaction of that age requirement to receive a benefit not less than the benefit to which he would be entitled at the normal retirement age, actuarially, reduced under regulations prescribed by the Secretary.

(15) a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part—

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which

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such trust is a part provides for benefits or contributions which exceed the limitations of section 415.

(17) COMPENSATION LIMIT.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000.

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $200,000 amount in subparagraph (A) 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 shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.


(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant’s accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (related to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes 1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan. This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution. For purposes of this paragraph, rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 521 of the Unemployment Compensation Amendments of 1992) shall apply.


(22) If a defined contribution plan (other than a profit-sharing plan)—

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409. The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409, except that in applying section 409(h) for purposes of this paragraph, the term “employer securities” shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) REQUIREMENT THAT ACTUARIAL ASSUMPTIONS BE SPECIFIED.—A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) IN GENERAL.—In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of—

(i) 50 employees of the employer, or

(ii) the greater of—

(I) 40 percent of all employees of the employer, or

(II) 2 employees (or if there is only 1 employee, such employee).

(B) TREATMENT OF EXCLUDABLE EMPLOYEES.—

(i) IN GENERAL.—A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4) of section 410(b).

(ii) SEPARATE APPLICATION FOR CERTAIN EXCLUDABLE EMPLOYEES.—If employees de-
scribed in section 410(b)(4)(B) are covered
under a plan which meets the require-
ments of subparagraph (A) separately with
respect to such employees, such employees
may be excluded from consideration in de-
termining whether any plan of the em-
ployer meets such requirements if—
(I) the benefits for such employees are
provided under the same plan as benefits
for other employees,
(II) the benefits provided to such em-
ployees are not greater than comparable
benefits provided to other employees
under the plan, and
(III) no highly compensated employee
(within the meaning of section 414(q)) is
included in the group of such employees
for more than 1 year.

(C) SPECIAL RULE FOR COLLECTIVE BARGAIN-
ing UNITS.—Except to the extent provided in
regulations, a plan covering only employees
described in section 410(b)(3)(A) may exclude
from consideration any employees who are
not included in the unit or units in which
the covered employees are included.

(D) PARAGRAPHS NOT TO APPLY TO MULTIME-
PLOYER PLANS.—Except to the extent pro-
vided in regulations, this paragraph shall
not apply to employees in a multiemployer
plan (within the meaning of section 414(f))
who are covered by collective bargaining
agreements.

(E) SPECIAL RULE FOR CERTAIN DISPOSITIONS
OR ACQUISITIONS.—Rules similar to the rules
of section 410(b)(6)(C) shall apply for pur-
poses of this paragraph.

(F) SEPARATE LINES OF BUSINESS.—At the
election of the employer and with the con-
sent of the Secretary, this paragraph may be
applied separately with respect to each sepa-
rate line of business of the employer. For
purposes of this paragraph, the term “sepa-
rate line of business” has the meaning given
such term by section 414(r) (without regard to
paragraph (2)(A) or (7) thereof).

(G) EXCEPTION FOR GOVERNMENTAL PLANS.—
This paragraph shall not apply to a govern-
mental plan (within the meaning of section
414(d)).

(H) REGULATIONS.—The Secretary may by
regulation provide that any separate benefit
structure, any separate trust, or any other
separate arrangement is to be treated as a
separate plan for purposes of applying this
paragraph.

(27) DETERMINATIONS AS TO PROFIT-SHARING
PLANS.—

(A) CONTRIBUTIONS NEED NOT BE BASED ON
PROFITS.—The determination of whether the
plan under which any contributions are
made is a profit-sharing plan shall be made
without regard to current or accumulated
profits of the employer and without regard
to whether the employer is a tax-exempt or-
ganization.

(B) PLAN MUST DESIGNATE TYPE.—In the
case of a plan which is intended to be a
money purchase pension plan or a profit-
sharing plan, a trust forming part of such
plan shall not constitute a qualified trust
under this subsection unless the plan des-
ignates such intent at such time and in such
manner as the Secretary may prescribe.

(28) ADDITIONAL REQUIREMENTS RELATING TO
EMPLOYER STOCK OWNERSHIP PLANS.—

(A) IN GENERAL.—In the case of a trust
which is part of an employee stock own-
ership plan (within the meaning of section
4975(e)(7)) or a plan which meets the re-
quirements of section 409(a), such trust shall not
constitute a qualified trust under this sec-
tion unless such plan meets the require-
ments of subparagraphs (B) and (C).

(B) DIVERSIFICATION OF INVESTMENTS.—

(i) IN GENERAL.—A plan meets the re-
quirements of this subparagraph if each
qualified participant in the plan may elect
within 90 days after the close of each plan
year in the qualified election period to di-
rect the plan as to the investment of at
least 25 percent of the participant’s ac-
count in the plan (to the extent such por-
tion exceeds the amount to which a prior
election under this subparagraph applies).

In the case of the election year in which
the participant can make his last election,
the preceding sentence shall be applied by
substituting “50 percent” for “25 percent”.

(ii) METHOD OF MEETING REQUIREMENTS.—
A plan shall be treated as meeting the re-
quirements of clause (i) if—

(I) the portion of the participant’s ac-
count covered by the election under
clause (i) is distributed within 90 days
after the period during which the election
may be made, or

(II) the plan offers at least 3 invest-
ment options (not inconsistent with reg-
ulations prescribed by the Secretary) to
each participant making an election
under clause (i) within 90 days after
the period during which the election
may be made, the plan invests the por-
tion of the participant’s account covered
by the election in accordance with such
election.

(iii) QUALIFIED PARTICIPANT.—For pur-
poses of this subparagraph, the term
“qualified participant” means any em-
ployee who has completed at least 10 years
of participation under the plan and has at-
tained age 55.

(iv) QUALIFIED ELECTION PERIOD.—For
purposes of this subparagraph, the term
“qualified election period” means the 6-
plan-year period beginning with the later
of—

(I) the 1st plan year in which the indi-
vidual first became a qualified partici-
pant, or

(II) the 1st plan year beginning after
December 31, 1986.

For purposes of the preceding sentence, an
employer may elect to treat an individual
first becoming a qualified participant in the
1st plan year beginning in 1987 as hav-
ing become a participant in the 1st plan
year beginning in 1988.

(v) EXCEPTION.—This subparagraph shall
not apply to an applicable defined con-
contracts, or arrangements of an employer the plan provides that the amount of such de-

tion 402(g)(1)(A) for taxable years beginning in

amount of the limitation in effect under sec-

which the plan is a part shall not constitute a

meaning of section 402(g)(3)) may be made

DISTRIBUTIONS

(30) LIMITATIONS ON ELECTIVE DEFERRALS.—In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a cal-

ER TRANSFER OF ELIGIBLE ROLLOVER

(A) IN GENERAL.—A trust shall not con-

(b) such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligi-

B) CERTAIN MANDATORY DISTRIBUTIONS.—

(i) any payment, in excess of the month-

(35)(30).

(C) LIMITATION.—Subparagraphs (A) and

(D) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this paragraph, the term “eligi-

9 So in original.
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TAIN DEFINED CONTRIBUTION PLANS

SPONSOR IS IN BANKRUPTCY

nation, transfers benefits of missing partici-
portion merely because the pension plan of

such plan shall not be treated as fail-

ered by title IV of the Employee Retirement

Income Security Act of 1974, a trust forming

section if an amendment to such plan is

adopted while the employer is a debtor in a
case under title 11. United States Code, or

similar Federal or State law, if such amend-

ment increases liabilities of the plan by rea-

son of—

(i) any increase in benefits,

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

(iii) any change in the rate at which ben-

efits become nonforfeitable under the plan,

with respect to employees of the debtor, and

such amendment is effective prior to the ef-

cfective date of such employer’s plan of reor-

ganization

EXCEPTIONS.—This paragraph shall not

apply to any plan amendment if—

(i) the plan, were such amendment to
take effect, would have a funding target
attainment percentage (as defined in sec-

tion 430(d)(2)) of 100 percent or more,

(ii) the Secretary determines that such

amendment is reasonable and provides for

only de minimis increases in the liabilities of the plan with respect to employees of the
derbor

amendment only repeals an amendment described in section 412(d)(2), or

(iv) such amendment is required as a

condition of qualification under this part.

PLANS TO WHICH THIS PARAGRAPH AP-

plies.—This paragraph shall apply only to

plans (other than multiemployer plans or
CSEC plans) covered under section 4021 of

the Employee Retirement Income Security

Act of 1974

EMPLOYER.—For purposes of this para-

graph, the term “employer” means the em-

ployer referred to in section 412(b)(1), with-

out regard to section 412(b)(2).

BENEFITS OF MISSING PARTICIPANTS ON

PLAN TERMINATION.—In the case of a plan cov-

ered by title IV of the Employee Retirement

Income Security Act of 1974, a trust forming

part of such plan shall not be treated as fail-

ing to constitute a qualified trust under this

section merely because the pension plan of

which such trust is a part, upon its termina-

tion, transfers benefits of missing partici-

pants to the Pension Benefit Guaranty Cor-

poration in accordance with section 4050 of

such act.

DIVERSIFICATION REQUIREMENTS FOR CE-

RAIN DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—A trust which is part of

an applicable defined contribution plan shall

not be treated as a qualified trust unless the

plan meets the diversification requirements of

subparagraphs (B), (C), and (D).

(B) EMPLOYER CONTRIBUTIONS AND ELECTIVE

DEFERRALS INVESTED IN EMPLOYER SECURI-

TIES.—In the case of the portion of an appli-
cable individual’s account attributable to

employee contributions and elective deferr-
als which is invested in employer securi-

ties, a plan meets the requirements of this

subsection if the applicable individual de-

ects to direct the plan to divest any

such securities and to reinvest an equivalent

amount in other investment options meeting

the requirements of subparagraph (D).

(C) EMPLOYER CONTRIBUTIONS INVESTED IN

EMPLOYER SECURITIES.—In the case of the

portion of the account attributable to em-

ployer contributions other than elective de-

ferrals which is invested in employer securi-

ties, a plan meets the requirements of this

subsection if each applicable individual who—

(i) is a participant who has completed at

least 3 years of service, or

(ii) is a beneficiary of a participant de-

scribed in clause (i) or of a deceased par-

ticipant,

may elect to direct the plan to divest any

such securities and to reinvest an equivalent

amount in other investment options meeting

the requirements of subparagraph (D).

(D) INVESTMENT OPTIONS.—

(i) IN GENERAL.—The requirements of

this subparagraph are met if the plan of-
fers not less than 3 investment options,

other than employer securities, to which

an applicable individual may direct the

proceeds from the divestment of employer

securities pursuant to this paragraph, each

of which is diversified and has materially
different risk and return characteristics.

(ii) TREATMENT OF CERTAIN RESTRICTIONS

AND CONDITIONS.—

(I) TIME FOR MAKING INVESTMENT

CHOICES.—A plan shall not be treated as

failing to meet the requirements of this

subsection merely because the plan limits the time for divestment and rein-

vestment to periodic, reasonable oppor-

tunities occurring no less frequently

than quarterly.

(ii) CERTAIN RESTRICTIONS AND CONDI-

TIONS NOT ALLOWED.—Except as provided

in regulations, a plan shall not meet the

requirements of this subparagraph if the

plan imposes restrictions or conditions

with respect to the investment of em-

ployer securities which are not imposed

on the investment of other assets of the

plan. This subclause shall not apply to

any restrictions or conditions imposed

by reason of the application of securities

laws.

Applicable Defined Contribution Plan.—

For purposes of this paragraph—

(i) IN GENERAL.—The term “applicable
defined contribution plan” means any de-

fined contribution plan which holds any

publicly traded employer securities.
(ii) Exception for certain ESOPs.—Such term does not include an employee stock ownership plan if—
(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m), and
(II) such plan is a separate plan for purposes of section 414(l) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

(iii) Exception for one participant plans.—Such term does not include a one-participant retirement plan.

(iv) One-participant retirement plan.—For purposes of clause (iii), the term “one-participant retirement plan” means a retirement plan that on the first day of the plan year—
(I) covered only one individual (or the individual and the individual’s spouse) and the individual (or the individual and the individual’s spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or
(II) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(F) Certain plans treated as holding publicly traded employer securities.—

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

(ii) Exception for certain controlled groups with publicly traded securities.—Clause (i) shall not apply to a plan if—
(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and
(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) Definitions.—For purposes of this subparagraph, the term—
(I) “controlled group of corporations” has the meaning given such term by section 1563(a), except that “50 percent” shall be substituted for “80 percent” each place it appears,
(II) “employer corporation” means a corporation which is an employer maintaining the plan, and
(III) “parent corporation” has the meaning given such term by section 424(e).

(G) Other definitions.—For purposes of this paragraph—

(i) Applicable individual.—The term “applicable individual” means—
(I) any participant in the plan, and
(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

(ii) Elective deferral.—The term “elective deferral” means an employer contribution described in section 402(g)(3)(A).

(iii) Employer security.—The term “employer security” has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

(iv) Employee stock ownership plan.—The term “employee stock ownership plan” has the meaning given such term by section 4975(e)(7).

(v) Publicly traded employer securities.—The term “publicly traded employer securities” means employer securities which are readily tradable on an established securities market.

(vi) Year of service.—The term “year of service” has the meaning given such term by section 411(a)(5).

(H) Transition rule for securities attributable to employer contributions.—

(i) Rules phased in over 3 years.—

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

(ii) Applicable percentage.—For purposes of clause (i), the applicable percentage shall be determined as follows:

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<tr>
<th>Plan year to which subparagraph (C) applies</th>
<th>The applicable percentage is</th>
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<td>2d ............................................</td>
<td>66</td>
</tr>
<tr>
<td>3d and following ................................</td>
<td>100</td>
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(36) Distributions during working retirement.—A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 62 and who is not separated from employment at the time of such distribution.

(37) Death benefits under usERRA-Qualified active military service.—A trust shall
not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

(b) Certain retroactive changes in plan

A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of subsection (a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary may designate, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes for the whole of such period.

(c) Definitions and rules relating to self-employed individuals and owner-employees

For purposes of this section—

(1) Self-employed individual treated as employee

(A) In general

The term “employee” includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) Self-employed individual

The term “self-employed individual” means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income

(A) In general

The term “earned income” means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the tax-

payer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items,

(v) with regard to the deductions allowed by section 404 to the taxpayer, and

(vi) with regard to the deduction allowed to the taxpayer by section 164(f).

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date. For purposes of this section only (other than sections 419 and 419A), this subparagraph shall be applied as if the term “trade or business” for purposes of section 1402 included service described in section 1402(c)(6).

(B) Repealed

(C) Income from disposition of certain property

For purposes of this section, the term “earned income” includes gains (other than any gain which is treated under any provision of this chapter as gain from the sale or exchange of a capital asset) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

(3) Owner-employee

The term “owner-employee” means an employee who—

(A) owns the entire interest in an unincorporated trade or business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

To the extent provided in regulations prescribed by the Secretary, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on behalf of owner-employees

The term “contribution on behalf of an owner-employee” includes, except as the con-
text otherwise requires, a contribution under a plan—
(A) by the employer for an owner-employee, and
(B) by an owner-employee as an employee.

(6) Special rule for certain fishermen

For purposes of this subsection, the term "self-employed individual" includes an individual described in section 3121(b)(20) (relating to certain fishermen).

(d) Contribution limit on owner-employees

A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the plan provides that contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.


(f) Certain custodial accounts and contracts

For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

(1) the custodial account or contract would, except for the fact that it is not a trust, constitute a qualified trust under this section, and

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

(g) Annuity defined

For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a)(15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a–2); but does not include any contract or certificate issued after December 31, 1962, which is transferable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., benefits for retired employees and their spouses and dependents

Under regulations prescribed by the Secretary, and subject to the provisions of section 420, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

(1) such benefits are subordinate to the retirement benefits provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a key employee, a separate account is established and maintained for such benefits payble to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a key employee) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term "key employee" means any employee, who at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a key employee as defined in section 416(1). In no event shall the requirements of paragraph (1) be treated as met if the aggregate actual contributions for medical benefits, when added to actual contributions for life insurance protection under the plan, exceed 25 percent of the total actual contributions to the plan (other than contributions to fund past service credits) after the date on which the account is established. For purposes of this subsection, the term "dependent" shall include any individual who is a child (as defined in section 152(f)(1)) of a retired employee who as of the end of the calendar year has not attained age 27.

(i) Certain union-negotiated pension plans

In the case of a trust forming part of a pension plan which has been determined by the Secretary to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary determined that the trust constituted a qualified trust, substantially com-
plied with the terms of the trust, and the plan of which the trust is a part, as subsequently qualified, and

(3) before the time as of which the Secretary determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries.

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).


(k) Cash or deferred arrangements

(1) General rule

A profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement

A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

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

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee’s election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) severance from employment, death, or disability,

(II) an event described in paragraph (10),

(III) in the case of a profit-sharing or stock bonus plan, the attainment of age 59½,

(IV) in the case of contributions to a profit-sharing or stock bonus plan to which section 402(e)(3) applies, upon hardship of the employee, or

(V) in the case of a qualified reservist distribution (as defined in section 72(t)(2)(G)(ii)), the date on which a period referred to in subclause (III) of such section begins, and

(ii) will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years;

(C) which provides that an employee’s right to his accrued benefit derived from employer contributions made to the trust pursuant to his election is nonforfeitable, and

(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof).

(3) Application of participation and discrimination standards

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of section 410(b)(1), and

(ii) the actual deferral percentage for eligible highly compensated employees (as defined in paragraph (5)) for the plan year bears a relationship to the actual deferral percentage for all other eligible employees for the preceding plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.25.

(II) The excess of the actual deferral percentage for the group of eligible highly compensated employees over that of all other eligible employees is not more than 2 percentage points, and the actual deferral percentage for the group of eligible highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 401(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

If any highly compensated employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement. An arrangement may apply clause (ii) by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee’s compensation for such plan year.
(C) A cash or deferred arrangement shall be treated as meeting the requirements of subsection (a)(4) with respect to contributions if the requirements of subparagraph (A)(ii) are met.

(D) For purposes of subparagraph (B), the employer contributions on behalf of any employee—

(i) shall include any employer contributions made pursuant to the employee’s election under paragraph (2), and

(ii) under such rules as the Secretary may prescribe, may, at the election of the employer, include—

(I) matching contributions (as defined in 401(m)(4)(A)) which meet the requirements of paragraph (2)(B) and (C), and

(II) qualified nonelective contributions (within the meaning of section 401(m)(4)(C)).

(E) For purposes of this paragraph, in the case of the first plan year of any plan (other than a successor plan), the amount taken into account as the actual deferral percentage of nonhighly compensated employees for the preceding plan year shall be—

(i) 3 percent, or

(ii) if the employer makes an election under this subclause, the actual deferral percentage of nonhighly compensated employees determined for such first plan year.

(F) SPECIAL RULE FOR EARLY PARTICIPATION.—If an employer elects to apply section 410(b)(4)(B) in determining whether a cash or deferred arrangement meets the requirements of subparagraph (A)(i), the employer may, in determining whether the arrangement meets the requirements of subparagraph (A)(ii), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(G) GOVERNMENTAL PLAN.—A governmental plan (within the meaning of section 414(d)) shall be treated as meeting the requirements of this paragraph.

(4) Other requirements

(A) Benefits (other than matching contributions) must not be contingent on election to defer

A cash or deferred arrangement of any employer shall not be treated as a qualified cash or deferred arrangement if any other benefit is conditioned (directly or indirectly) on the employee electing to have the employer make or not make contributions under the arrangement in lieu of receiving cash. The preceding sentence shall not apply to any matching contribution (as defined in section 401(m)) made by reason of such an election.

(B) Eligibility of State and local governments and tax-exempt organizations

(i) Tax-exempts eligible

Except as provided in clause (ii), any organization exempt from tax under this subtitle may include a qualified cash or deferred arrangement as part of a plan maintained by it.

(ii) Governments ineligible

A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of a plan maintained by a State or local government or political subdivision thereof, or any agency or instrumentality thereof. This clause shall not apply to a rural cooperative plan or to a plan of an employer described in clause (iii).

(iii) Treatment of Indian tribal governments

An employer which is 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)), an agency or instrumentality of an Indian tribal government or subdivision thereof, or a corporation chartered under Federal, State, or tribal law which is owned in whole or in part by any of the foregoing may include a qualified cash or deferred arrangement as part of a plan maintained by the employer.

(C) Coordination with other plans

Except as provided in section 401(m), any employer contribution made pursuant to an employee’s election under a qualified cash or deferred arrangement shall not be taken into account for purposes of determining whether any other plan meets the requirements of section 401(a) or 410(b). This subparagraph shall not apply for purposes of determining whether a plan meets the average benefit requirement of section 410(b)(2)(A)(i).

(5) Highly compensated employee

For purposes of this subsection, the term “highly compensated employee” has the meaning given such term by section 414(q).

(6) Pre-ERISA money purchase plan

For purposes of this subsection, the term “pre-ERISA money purchase plan” means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(7) Rural cooperative plan

For purposes of this subsection—

(A) In general

The term “rural cooperative plan” means any pension plan—

(i) which is a defined contribution plan (as defined in section 414(i)), and

(ii) which is established and maintained by a rural cooperative.
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(8) Arrangement not disqualified if excess contributions distributed

(A) In general

A cash or deferred arrangement shall not be treated as failing to meet the requirements of clause (ii) of paragraph (3)(A) for any plan year if, before the close of the following plan year—

(i) the amount of the excess contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed, or

(ii) to the extent provided in regulations, the employee elects to treat the amount of the excess contributions as an amount distributed to the employee and then contributed by the employee to the plan.

Any distribution of excess contributions (and income) may be made without regard to any other provision of law.

(B) Excess contributions

For purposes of subparagraph (A), the term “excess contributions” means, with respect to any plan year, the excess of—

(i) the aggregate amount of employer contributions actually paid over to the trust on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of clause (ii) of paragraph (3)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of the actual deferral percentages beginning with the highest of such percentages).

(C) Method of distributing excess contributions

Any distribution of the excess contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions by, or on behalf of, each of such employees.

(D) Additional tax under section 72(t) not to apply

No tax shall be imposed under section 72(t) on any amount required to be distributed under this paragraph.

(E) Treatment of matching contributions forfeited by reason of excess deferral or contribution or permissible withdrawal

For purposes of paragraph (2)(C), a matching contribution (within the meaning of subsection (m)) shall not be treated as forfeitable merely because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under subparagraph (B), an excess deferral under section 402(g)(2)(A), a permissible withdrawal under section 414(w), or an excess aggregate contribution under section 401(m)(6)(B).

(F) Cross reference

For excise tax on certain excess contributions, see section 4979.

(9) Compensation

For purposes of this subsection, the term “compensation” has the meaning given such term by section 414(s).

(10) Distributions upon termination of plan

(A) In general

An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) Distributions must be lump sum distributions

(i) In general

A termination shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of the termination.
(ii) Lump-sum distribution

For purposes of this subparagraph, the term “lump-sum distribution” has the meaning given such term by section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof).

Such term includes a distribution of an annuity contract from—
(I) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or
(II) an annuity plan described in section 403(a).

(11) Adoption of simple plan to meet nondiscrimination tests

(A) In general

A cash or deferred arrangement maintained by an eligible employer shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement meets—
(i) the contribution requirements of subparagraph (B),
(ii) the exclusive plan requirements of subparagraph (C), and
(iii) the vesting requirements of section 408(p)(3).

(B) Contribution requirements

(i) In general

The requirements of this subparagraph are met if, under the arrangement—
(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds the amount in effect under section 408(p)(2)(A)(ii),
(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (I) as does not exceed 3 percent of compensation for the year, and
(III) no other contributions may be made other than contributions described in subclause (I) or (II).

(ii) Employer may elect 2-percent nonelective contribution

An employer shall be treated as making the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects (pursuant to the terms of the arrangement) to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60th day before the beginning of such year.

(iii) Administrative requirements

(I) In general

Rules similar to the rules of subparagraphs (B) and (C) of section 408(p)(5) shall apply for purposes of this subparagraph.

(II) Notice of election period

The requirements of this subparagraph shall not be treated as met with respect to any year unless the employer notifies each employee eligible to participate, within a reasonable period of time before the 60th day before the beginning of such year (and, for the first year the employee is so eligible, the 60th day before the first day such employee is so eligible), of the rules similar to the rules of section 408(p)(5)(C) which apply by reason of subclause (I).

(C) Exclusive plan requirement

The requirements of this subparagraph are met for any year to which this paragraph applies if no contributions were made, or benefits were accrued, for services during such year under any qualified plan of the employer on behalf of any employee eligible to participate in the cash or deferred arrangement, other than contributions described in subparagraph (B).

(D) Definitions and special rule

(i) Definitions

For purposes of this paragraph, any term used in this paragraph which is also used in section 408(p) shall have the meaning given such term by such section.

(ii) Coordination with top-heavy rules

A plan meeting the requirements of this paragraph for any year shall not be treated as a top-heavy plan under section 416 for such year if such plan allows only contributions required under this paragraph.

(12) Alternative methods of meeting nondiscrimination requirements

(A) In general

A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement—
(i) meets the contribution requirements of subparagraph (B) or (C), and
(ii) meets the notice requirements of subparagraph (D).

(B) Matching contributions

(i) In general

The requirements of this subparagraph are met if, under the arrangement, the employer makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to—
(I) 100 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 3 percent of the employee’s compensation, and
(II) 50 percent of the elective contributions of the employee to the extent that such elective contributions exceed 3 percent but do not exceed 5 percent of the employee’s compensation.

(ii) Rate for highly compensated employees

The requirements of this subparagraph are not met if, under the arrangement, the
rate of matching contribution with respect to any elective contribution of a highly compensated employee at any rate of elective contribution is greater than that with respect to an employee who is not a highly compensated employee.

(iii) Alternative plan designs
If the rate of any matching contribution with respect to any rate of elective contribution is not equal to the percentage required under clause (i), an arrangement shall not be treated as failing to meet the requirements of clause (i) if—
(I) the rate of an employer’s matching contribution does not increase as an employee’s rate of elective contributions increase, and
(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (i).

(C) Nonelective contributions
The requirements of this subparagraph are met if, under the arrangement, the employer is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee’s compensation.

(D) Notice requirement
An arrangement meets the requirements of this paragraph if, under the arrangement, each employee eligible to participate is, within a reasonable period before any year, given written 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 eligible to participate.

(E) Other requirements
(i) Withdrawal and vesting restrictions
An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) of this paragraph unless the requirements of subparagraphs (B) and (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraphs (B) and (C) of this paragraph are met.

(ii) Social security and similar contributions not taken into account
An arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l), and, for purposes of subsection (l), employer contributions under subparagraph (B) or (C) shall not be taken into account.

(F) Other plans
An arrangement shall be treated as meeting the requirements under subparagraph (A)(i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

(13) Alternative method for automatic contribution arrangements to meet nondiscrimination requirements
(A) In general
A qualified automatic contribution arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii).

(B) Qualified automatic contribution arrangement
For purposes of this paragraph, the term “qualified automatic contribution arrangement” means any cash or deferred arrangement which meets the requirements of subparagraphs (C) through (E).

(C) Automatic deferral
(i) In general
The requirements of this subparagraph are met if, under the arrangement, 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 a qualified percentage of compensation.

(ii) Election out
The election treated as having been made under clause (i) shall cease to apply with respect to any employee if such employee makes an affirmative election—
(I) to not have such contributions made, or
(II) to make elective contributions at a level specified in such affirmative election.

(iii) Qualified percentage
For purposes of this subparagraph, the term “qualified percentage” means, with respect to any employee, any percentage determined under the arrangement if such percentage is applied uniformly, does not exceed 10 percent, and is at least—
(I) 3 percent during the period ending on the last day of the first plan year which begins after the date on which the first elective contribution described in clause (i) is made with respect to such employee,
(II) 4 percent during the first plan year following the plan year described in subclause (I),
(III) 5 percent during the second plan year following the plan year described in subclause (I), and
(IV) 6 percent during any subsequent plan year.

(iv) Automatic deferral for current employees not required
Clause (i) may be applied without taking into account any employee who—
(I) was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the date on which such arrangement becomes a qualified automatic contribution arrangement (determined after application of this clause), and  
(II) had an election in effect on such date either to participate in the arrangement or to not participate in the arrangement.

(D) Matching or nonelective contributions  
(i) In general  
The requirements of this subparagraph are met if, under the arrangement, the employer—  
(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to the sum of 100 percent of the elective contributions of the employee to the extent that such contributions do not exceed 1 percent of compensation plus 50 percent of so much of such contributions as exceed 1 percent but do not exceed 6 percent of compensation, or  
(II) is required, without regard to whether the employee makes an elective contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 3 percent of the employee's compensation.

(ii) Application of rules for matching contributions  
The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of subparagraph (i)(I).

(iii) Withdrawal and vesting restrictions  
An arrangement shall not be treated as meeting the requirements of clause (i) unless, with respect to employer contributions (including matching contributions) taken into account in determining whether the requirements of clause (i) are met—  
(I) any employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from such employer contributions, and  
(II) the requirements of subparagraph (B) of paragraph (2) are met with respect to all such employer contributions.

(iv) Application of certain other rules  
The rules of subparagraphs (E)(ii) and (F) of paragraph (12) shall apply for purposes of subclauses (I) and (II) of clause (i).

(E) Notice requirements  
(i) In general  
The requirements of this subparagraph are met if, within a reasonable period before each plan year, each employee eligible to participate in the arrangement for such year receives written 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.

(ii) Timing and content requirements  
A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—  
(I) the notice explains 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) in the case of an arrangement under which the employee may elect among 2 or more investment options, the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and  
(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

(f) Permitted disparity in plan contributions or benefits  
(1) In general  
The requirements of this subsection are met with respect to a plan if—  
(A) in the case of a defined contribution plan, the requirements of paragraph (2) are met, and  
(B) in the case of a defined benefit plan, the requirements of paragraph (3) are met.

(2) Defined contribution plan  
(A) In general  
A defined contribution plan meets the requirements of this paragraph if the excess contribution percentage does not exceed the base contribution percentage by more than the lesser of—  
(i) the base contribution percentage, or  
(ii) the greater of—  
(I) 5.7 percentage points, or  
(II) the percentage equal to the portion of the rate of tax under section 3111(a) (in effect as of the beginning of the year) which is attributable to old-age insurance.

(B) Contribution percentages  
For purposes of this paragraph—  
(i) Excess contribution percentage  
The term “excess contribution percentage” means the percentage of compensation which is contributed by the employer under the plan with respect to that portion of each participant’s compensation in excess of the integration level.
(ii) Base contribution percentage

The term “base contribution percentage” means the percentage of compensation contributed by the employer under the plan with respect to that portion of each participant’s compensation not in excess of the integration level.

(3) Defined benefit plan

A defined benefit plan meets the requirements of this paragraph if—

(A) Excess plans

(i) In general

In the case of a plan other than an offset plan—

(I) the excess benefit percentage does not exceed the base benefit percentage by more than the maximum excess allowance,

(II) any optional form of benefit, pre-retirement benefit, actuarial factor, or other benefit or feature provided with respect to compensation in excess of the integration level is provided with respect to compensation not in excess of such level, and

(III) benefits are based on average annual compensation.

(ii) Benefit percentages

For purposes of this subparagraph, the excess and base benefit percentages shall be computed in the same manner as the excess and base contribution percentages under paragraph (2)(B), except that such determination shall be made on the basis of benefits attributable to employer contributions rather than contributions.

(B) Offset plans

In the case of an offset plan, the plan provides that—

(i) a participant’s accrued benefit attributable to employer contributions (within the meaning of section 411(c)(1)) may not be reduced (by reason of the offset) by more than the maximum offset allowance, and

(ii) benefits are based on average annual compensation.

(4) Definitions relating to paragraph (3)

For purposes of paragraph (3)—

(A) Maximum excess allowance

The maximum excess allowance is equal to—

(i) in the case of benefits attributable to any year of service with the employer taken into account under the plan, ¾ percent of the participant’s final average compensation, and

(ii) in the case of total benefits, ¾ percent of the participant’s final average compensation, multiplied by the participant’s years of service (not in excess of 35) with the employer taken into account under the plan.

In no event shall the maximum excess allowance exceed 50 percent of the benefit which would have accrued without regard to the offset reduction.

(C) Reductions

(i) In general

The Secretary shall prescribe regulations requiring the reduction of the ¾ percentage factor under subparagraph (A) or (B)—

(I) in the case of a plan other than an offset plan which has an integration level in excess of covered compensation, or

(II) with respect to any participant in an offset plan who has final average compensation in excess of covered compensation.

(ii) Basis of reductions

Any reductions under clause (i) shall be based on the percentages of compensation replaced by the employer-derived portions of primary insurance amounts under the Social Security Act for participants with compensation in excess of covered compensation.

(D) Offset plan

The term “offset plan” means any plan with respect to which the benefit attributable to employer contributions for each participant is reduced by an amount specified in the plan.

(5) Other definitions and special rules

For purposes of this subsection—

(A) Integration level

(i) In general

The term “integration level” means the amount of compensation specified under the plan (by dollar amount or formula) at or below which the rate at which contributions or benefits are provided (expressed as a percentage) is less than such rate above such amount.

(ii) Limitation

The integration level for any year may not exceed the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(iii) Level to apply to all participants

A plan’s integration level shall apply with respect to all participants in the plan.

(iv) Multiple integration levels

Under rules prescribed by the Secretary, a defined benefit plan may specify multiple integration levels.
(B) Compensation

The term “compensation” has the meaning given such term by section 414(s).

(C) Average annual compensation

The term “average annual compensation” means the participant’s highest average annual compensation for—

(i) any period of at least 3 consecutive years, or
(ii) if shorter, the participant’s full period of service.

(D) Final average compensation

(i) In general

The term “final average compensation” means the participant’s average annual compensation for—

(I) the 3-consecutive year period ending with the current year, or
(II) if shorter, the participant’s full period of service.

(ii) Limitation

A participant’s final average compensation shall be determined by not taking into account in any year compensation in excess of the contribution and benefit base in effect under section 230 of the Social Security Act for such year.

(E) Covered compensation

(i) In general

The term “covered compensation” means, with respect to an employee, the average of the contribution and benefit bases in effect under section 230 of the Social Security Act for each year in the 35-year period ending with the year in which the employee attains the social security retirement age.

(ii) Computation for any year

For purposes of clause (i), the determination for any year preceding the year in which the employee attains the social security retirement age shall be made by assuming that there is no increase in the bases described in clause (i) after the determination year and before the employee attains the social security retirement age.

(iii) Social security retirement age

For purposes of this subparagraph, the term “social security retirement age” has the meaning given such term by section 415(b)(8).

(F) Regulations

The Secretary shall prescribe such regulations as are necessary or appropriate to carry out the purposes of this subsection, including—

(i) in the case of a defined benefit plan which provides for unreduced benefits commencing before the social security retirement age (as defined in section 415(b)(8)), rules providing for the reduction of the maximum excess allowance and the maximum offset allowance, and
(ii) in the case of an employee covered by 2 or more plans of the employer which fail to meet the requirements of subsection (a)(4) (without regard to this subsection), rules preventing the multiple use of the disparity permitted under this subsection with respect to any employee.

For purposes of clause (i), unreduced benefits shall not include benefits for disability (within the meaning of section 223(d) of the Social Security Act).

(6) Special rule for plan maintained by railroads

In determining whether a plan which includes employees of a railroad employer who are entitled to benefits under the Railroad Retirement Act of 1974 meets the requirements of this subsection, rules similar to the rules set forth in this subsection shall apply. Such rules shall take into account the employer-derived portion of the employees’ tier 2 railroad retirement benefits and any supplemental annuity under the Railroad Retirement Act of 1974.

(m) Nondiscrimination test for matching contributions and employee contributions

(1) In general

A defined contribution plan shall be treated as meeting the requirements of subsection (a)(4) with respect to the amount of any matching contribution or employee contribution for any plan year only if the contribution percentage requirement of paragraph (2) of this subsection is met for such plan year.

(2) Requirements

(A) Contribution percentage requirement

A plan meets the contribution percentage requirement of this paragraph for any plan year if the contribution percentage for eligible highly compensated employees for such plan year does not exceed the greater of—

(i) 125 percent of such percentage for all other eligible employees for the preceding plan year, or
(ii) the lesser of 200 percent of such percentage for all other eligible employees for the preceding plan year, or such percentage for all other eligible employees for the preceding plan year plus 2 percentage points.

This subparagraph may be applied by using the plan year rather than the preceding plan year if the employer so elects, except that if such an election is made, it may not be changed except as provided by the Secretary.

(B) Multiple plans treated as a single plan

If two or more plans of an employer to which matching contributions, employee contributions, or elective deferrals are made are treated as one plan for purposes of section 410(b), such plans shall be treated as one plan for purposes of this subsection. If a highly compensated employee participates in two or more plans of an employer to which contributions to which this subsection applies are made, all such contributions shall be aggregated for purposes of this subsection.
(3) Contribution percentage

For purposes of paragraph (2), the contribution percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(A) the sum of the matching contributions and employee contributions paid under the plan on behalf of each such employee for such plan year, to

(B) the employee’s compensation (within the meaning of section 414(s)) for such plan year.

Under regulations, an employer may elect to take into account (in computing the contribution percentage) elective deferrals and qualified nonelective contributions under the plan or any other plan of the employer. If matching contributions are taken into account for purposes of subsection (k)(3)(A)(ii) for any plan year, such contributions shall not be taken into account under subparagraph (A) for such year. Rules similar to the rules of subsection (k)(3)(E) shall apply for purposes of this subsection.

(4) Definitions

For purposes of this subsection—

(A) Matching contribution

The term “matching contribution” means—

(i) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee contribution made by such employee, and

(ii) any employer contribution made to a defined contribution plan on behalf of an employee on account of an employee’s elective deferral.

(B) Elective deferral

The term “elective deferral” means any employer contribution described in section 402(g)(3).

(C) Qualified nonelective contributions

The term “qualified nonelective contribution” means any employer contribution (other than a matching contribution) with respect to which—

(i) the employee may not elect to have the contribution paid to the employee in cash instead of being contributed to the plan, and

(ii) the requirements of subparagraphs (B) and (C) of subsection (k)(2) are met.

(5) Employees taken into consideration

(A) In general

Any employee who is eligible to make an employee contribution (or, if the employer takes elective contributions into account, elective contributions) or to receive a matching contribution under the plan being tested under paragraph (1) shall be considered an eligible employee for purposes of this subsection.

(B) Certain nonparticipants

If an employee contribution is required as a condition of participation in the plan, any employee who would be a participant in the plan if such employee made such a contribution shall be treated as an eligible employee on behalf of whom no employer contributions are made.

(C) Special rule for early participation

If an employer elects to apply section 410(b)(4)(A) in determining whether a plan meets the requirements of section 410(b), the employer may, in determining whether the plan meets the requirements of paragraph (2), exclude from consideration all eligible employees (other than highly compensated employees) who have not met the minimum age and service requirements of section 410(a)(1)(A).

(6) Plan not disqualified if excess aggregate contributions distributed before end of following plan year

(A) In general

A plan shall not be treated as failing to meet the requirements of paragraph (1) for any plan year if, before the close of the following plan year, the amount of the excess aggregate contributions for such plan year (and any income allocable to such contributions through the end of such year) is distributed (or, if forfeitable, is forfeited). Such contributions (and such income) may be distributed without regard to any other provision of law.

(B) Excess aggregate contributions

For purposes of subparagraph (A), the term “excess aggregate contributions” means, with respect to any plan year, the excess of—

(i) the aggregate amount of the matching contributions and employee contributions (and any qualified nonelective contribution or elective contribution taken into account in computing the contribution percentage) actually made on behalf of highly compensated employees for such plan year, over

(ii) the maximum amount of such contributions permitted under the limitations of paragraph (2)(A) (determined by reducing contributions made on behalf of highly compensated employees in order of their contribution percentages beginning with the highest of such percentages).

(C) Method of distributing excess aggregate contributions

Any distribution of the excess aggregate contributions for any plan year shall be made to highly compensated employees on the basis of the amount of contributions on behalf of, or by, each such employee. Forfeitures of excess aggregate contributions may not be allocated to participants whose contributions are reduced under this paragraph.

(D) Coordination with subsection (k) and 402(g)

The determination of the amount of excess aggregate contributions with respect to a plan shall be made after—
(i) first determining the excess deferrals (within the meaning of section 402(g)), and
(ii) determining the excess contributions under subsection (k).

(7) Treatment of distributions

(A) Additional tax of section 72(t) not applicable

No tax shall be imposed under section 72(t) on any amount required to be distributed under paragraph (6).

(B) Exclusion of employee contributions

Any distribution attributable to employee contributions shall not be included in gross income except to the extent attributable to income on such contributions.

(8) Highly compensated employee

For purposes of this subsection, the term “highly compensated employee” has the meaning given to such term by section 414(q). "highly compensated employee" has the meaning given to such term by section 414(q).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.

(10) Alternative method of satisfying tests

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) meets the contribution requirements of subparagraph (B) of subsection (k)(11),

(B) meets the exclusive plan requirements of subsection (k)(11)(C), and

(C) meets the vesting requirements of section 408(p)(3).

(11) Additional alternative method of satisfying tests

(A) In general

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(i) meets the contribution requirements of subparagraph (B) of subsection (k)(12),

(ii) meets the notice requirements of subsection (k)(12)(D), and

(iii) meets the requirements of subparagraph (B).

(B) Limitation on matching contributions

The requirements of this subparagraph are met if—

(i) matching contributions on behalf of any employee may not be made with respect to any employee’s contributions or elective deferrals in excess of 6 percent of the employee’s compensation,

(ii) the rate of an employer’s matching contribution does not increase as the rate of an employee’s contributions or elective deferrals increase, and

(iii) the matching contribution with respect to any highly compensated employee at any rate of an employee contribution or rate of elective deferral is not greater than that with respect to an employee who is not a highly compensated employee.

(12) Alternative method for automatic contribution arrangements

A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

(A) is a qualified automatic contribution arrangement (as defined in subsection (k)(13)), and

(B) meets the requirements of paragraph (11)(B).

(13) Cross reference

For excise tax on certain excess contributions, see section 4979.

(n) Coordination with qualified domestic relations orders

The Secretary shall prescribe such rules or regulations as may be necessary to coordinate the requirements of subsection (a)(13)(B) and section 414(p) (and the regulations issued by the Secretary of Labor thereunder) with the other provisions of this chapter.

(o) Cross reference

For exemption from tax of a trust qualified under this section, see section 501(a).

The Social Security Act, referred to in subsecs. (a)(15), (b)(4)(C) or (I), (b)(4)(H), (D)(ii), (E)(ii), (F), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 13 of subtitle B of Title II of the Social Security Act and subchapter III of chapter 18 of Title 29, Labor. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of Title 42. For purposes of this subsection, the term ‘‘one-participant retirement plan’’ means a retirement plan that—

‘‘(I) on the first day of the plan year covered only one individual (or the individual and the individual’s spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or covered only one or more partners (or partners and their spouses) in the plan sponsor,

‘‘(II) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the plan sponsor (whether or not incorporated), or covered only one or more partners (or partners and their spouses),

For further details and complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

REFERENCES IN TEXT


Inflation Adjusted Items for Certain Years

For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table below.
“(IV) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

“(V) does not cover a business that uses the services of leased employees (within the meaning of section 414(n)).

For purposes of this clause, the term “partner” includes a 2-percent shareholder (as defined in section 1372(b)) of an S corporation.”


Subsec. (k)(13)(D)(i)(1). Pub. L. 110–458, §109(b)(1), substituted “such contributions as exceed 1 percent but do not” for “such compensation as exceeds 1 percent but does not”.

2006—Subsec. (a)(5)(G). Pub. L. 109–280, §861(a)(1), (b)(1), substituted “Governmental” for “State and local governmental” in heading and “section 414(d)(3)” for “section 414(d)(3) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)” in text.

Subsec. (a)(26)(C). Pub. L. 109–280, §861(a)(1), (b)(2), substituted “Exception for” for “Exception for state and local” in heading and “section 414(d)(4)” for “section 414(d)(4) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)” in text.


Subsec. (a)(33)(B)(i). Pub. L. 109–280, §901(a)(3)(A), which directed amendment of cl. (i) by substituting “funding target attainment percentage (as defined in section 430(d)(2))” for “funded current liability percentage (within the meaning of section 430(h)(B))”, was executed by substituting “fund current liability percentage” for “funded current liability percentage”, to reflect the probable intent of Congress.


Subsec. (a)(33)(D). Pub. L. 109–280, §901(a)(3)(C), substituted “section 412(c)(8)” for “section 412(c)(11) (without regard to subparagraph (B) thereof)”.


Subsec. (k)(3)(G). Pub. L. 109–280, §861(a)(2), (b)(3), inserted heading and struck out “maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)” after “(H) in text.

Subsec. (k)(8)(A)(i). Pub. L. 109–280, §902(c)(3)(B)(i), inserted “through the end of such year” after “such contributions”.

Subsec. (k)(8)(E). Pub. L. 109–280, §902(d)(2)(C), (D), inserted “or erroneous automatic contribution” after “or contribution” in heading and inserted an “erroneous automatic contribution under section 414(w)” after “$2,000” in text.


Subsec. (m)(6)(A). Pub. L. 109–280, §902(e)(3)(B)(ii), inserted “through the end of such year” after “such contributions”.

Subsec. (m)(12), (13). Pub. L. 109–280, §902(b), added par. (12) and redesignated former par. (12) as (13).

2004—Subsec. (a)(26)(C) to (I). Pub. L. 108–311 redesignated subpars. (D) to (I) as (C) to (H), respectively, and struck out heading and text of former subpar. (E). Text read as follows: “In the case of contributions under section 401(k) or 401(m), employees who are eligible to contribute (or may elect to have contributions made on their behalf) shall be treated as benefiting under the plan.”

2002—Subsec. (a)(30). Pub. L. 107–147, §411(c)(2), substituted “402(g)(1)(A)” for “402(g)(1)(I)”. Pub. L. 107–147, §411(g)(1), inserted “is a qualified trust which is part of a plan which is a defined contribution plan and” before “agrees”.


Subsec. (a)(17)(B). Pub. L. 107–16, §611(c)(2), substituted “July 1, 2001” for “October 1, 1993” and substituted “$5,000” for “$10,000” in two places.


Pub. L. 107–16, §653(b), inserted at end “The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

“(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

“(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).”

Pub. L. 107–16, §641(c)(3), substituted “403(a)(4), 403(b)(8), and 457(e)(16)”, for “and 403(a)(4)”. Subsec. (a)(31)(C). Pub. L. 107–16, §657(a)(2)(B), substituted “Subparagraphs (A) and (B)” for “Subparagraphs (A)”. Pub. L. 107–16, §657(a)(1), redesignated subpar. (C) as (B) and redesignated (C).

Subsec. (a)(31)(D). Pub. L. 107–16, §657(a)(1), redesignated subpar. (B) as (C), Former subpar. (C) redesignated (D).


Subsec. (k)(10)(B). Pub. L. 107–16, §646(a)(1)(C)(i), substituted “A termination” for “An event” and “the termination” for “the event”.

Subsec. (k)(10)(C). Pub. L. 107–16, §646(a)(1)(C)(i), struck out heading and text of subpar. (C). Text read as follows: “An event shall not be treated as described in clause (i) or (ii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.”

under subparagraph (B)(i)(I) at the same time and in the same manner as under section 408(p)(2)(E)."

Prior to amendment, text read as follows: "The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

"(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

"(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term 'alternative limitation' means the limitation of section 401(k)(3)(A)(i)(II) and the limitation of section (2)(A)(iii) of this subsection."

Prior to amendment, text read as follows: "For purposes of this paragraph, the term 'alternative limitation' means the limitation of section 401(k)(3)(A)(i)(II) and the limitation of section 401(k)(3)(A)(i)(III) of this subsection."


"(i) a trust which forms a part of a plan described in section 401(a) and which is exempt from tax under section 501(a), or

"(ii) an annuity plan described in section 403(a)."

1997—Subsec. (a)(1). Pub. L. 105-34, § 1503(c)(1), inserted by a charitable remainder trust pursuant to a qualified charitable transfer (as defined in section 664(g)(1))," after 'stock bonus plans'),",.


Subsec. (a)(13)(C), (D). Pub. L. 105-34, § 1502(b), added subpars. (C) and (D).

Subsec. (a)(26)(H). Pub. L. 105-34, § 1505(b), amended heading and text of subpar. (H) generally. Prior to amendment, text read as follows:

"(i) In general.—An employer may elect to have this paragraph applied separately with respect to any classification of qualified public safety employees for whom a separate plan is maintained.

"(ii) Qualified public safety employee.—For purposes of this paragraph, the term 'qualified public safety employee' means any employee of any police department or fire department organized and operated by a State or political subdivision if the employee provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision."


Subsec. (k)(7)(B)(iii) to (v). Pub. L. 105-34, § 1525(a), struck out "and" at end of cl. (iii), added cl. (iv), redesignated former cl. (iv) as (v), and in cl. (v), substituted "An arrangement shall not be treated as a qualified cash or qualified stock transfer for purposes of this paragraph if—

"(i) the arrangement is a lump sum distribution under section 402(d)(4)(A) or in determining whether section 402(c)(10) applies.

"(ii) the arrangement is a lump sum distribution under section 401(a) and which is exempt from tax under section 501(a), or

"(iii) the arrangement is a charitable remainder trust described in section 403(a), or

"(iv) the arrangement is a charitable remainder unitrust described in section 404(a) or a charitable remainder annuity trust described in section 404(c) and the payments made under the arrangement are treated as installment payments for purposes of section 752(c).

"(B) In general.—The Secretary shall prescribe such regulations as may be necessary to provide for the proper determination of the amount of any distribution from a qualified cash or qualified stock transfer made to an employee under this paragraph."

Subsec. (m)(11). Pub. L. 105-34, § 1505(b), added cl. (m).
“(I) is exempt from tax under this subtitle or which is a State or local government or political subdivision thereof (or agency or instrumentality thereof), and

“(II) is engaged primarily in providing electric service on a mutual or cooperative basis,”


Subsec. (k)(8)(C). Pub. L. 104–188, §1433(e)(1), substituted “on the basis of the amount of contributions by, or on behalf of, each of such employees” for “on the basis of the respective portions of the excess contributions attributable to each of such employees”.

Subsec. (k)(10)(B)(ii). Pub. L. 104–188, §1401(b)(6), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows:

“(II) LUMP SUM DISTRIBUTION.—For purposes of this subparagraph, the term ‘lump sum distribution’ has the meaning given such term by section 402(d)(4), without regard to clauses (i), (ii), (iii), and (iv) of subparagraph (A), subparagraph (B), or subparagraph (F) thereof.”


Subsec. (m)(2)(A). Pub. L. 104–188, §1433(c)(2), inserted “for such plan year” after “for the calendar year, over” in section 736(b), which directed amendment of subsec. (a) by adding par. (33) at end, was executed by adding par. (33) after par. (32) to reflect the probable intent of Congress.

Subsec. (a)(33). Pub. L. 103–465, §766(b), which directed amendment of subsec. (a) by adding par. (33) at end, was executed by adding par. (33) after par. (32) to reflect the probable intent of Congress.


1993—Subsec. (a)(17). Pub. L. 103–66 inserted par. heading, designated existing provisions as subpar. (A), inserted subpar. heading, substituted “$150,000, increased by the cost-of-living adjustment for the calendar year, over $10,000, then the $50,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased under this subparagraph) for any taxable year beginning in the calendar year, over $10,000, then the $50,000 amount under subparagraph (A) (as previously adjusted under this subparagraph) for any taxable year beginning in any subsequent calendar year shall be increased by the amount of such excess, rounded to the next lowest multiple of $10,000.

“(II) COST-OF-LIVING ADJUSTMENT.—The cost-of-living adjustment for any calendar year shall be the adjustment made under section 415(d) for such calendar year, except that the base period for purposes of section 415(d)(1)(A) shall be the calendar quarter beginning October 1, 1993.”

Subsec. (a)(32). Pub. L. 103–465, §751(a)(9)(C), which directed amendment of subsec. (a) by adding par. (32) at end, was executed by adding par. (32) after par. (31) to reflect the probable intent of Congress.


1992—Subsec. (a)(20). Pub. L. 102–318, §521(b)(5), substituted “1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan” for “a qualified total distribution described in section 402(a)(5)(E)(i)(I)” and inserted at end “For purposes of this section, figures for a plan year shall be increased by the cost-of-living adjustment made under section 736(b), which directed amendment of subsec. (a) by adding par. (33) at end, was executed by adding par. (33) after par. (32) to reflect the probable intent of Congress.

Subsec. (a)(33). Pub. L. 103–465, §766(b), which directed amendment of subsec. (a) by adding par. (33) at end, was executed by adding par. (33) after par. (32) to reflect the probable intent of Congress.
church plan (as defined in section 89(i)(4)), the required beginning date shall be the later of the date determined under the preceding sentence or April 1 of the calendar year following the calendar year in which the employee retires."


Subsec. (a)(17). Pub. L. 100–647, § 1011(d)(4), inserted at end: "In determining the compensation of an employee, the rules of section 414(q)(6) shall apply, except that in applying such rules, the term 'family' shall include only the spouse of the employee and any lineal descendants of the employee who have not attained age 19 before the close of the year."

Subsec. (a)(22). Pub. L. 100–647, § 1011(k)(1), (2), substituted "is not readily tradable on an established market" for "is not publicly traded" in subpar. (A) and in last sentence, and inserted at end: "For purposes of the preceding sentence, subsections (b), (c), (m), and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market."

Subsec. (a)(26)(F). Pub. L. 100–647, § 1011(b)(3), added subpars. (F) and (G). Former subpar. (F) redesignated (H).


Pub. L. 100–647, § 1011(d)(4), inserted at end: "This subsection shall not apply to a rural electric cooperative plan."


Subsec. (k)(1)(2). Pub. L. 100–647, § 1011(c)(7)(A), struck out "electric" after "or a rural".

Subsec. (k)(2)(B). Pub. L. 100–647, § 1011(k)(2)(B), inserted: "amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election" after "under which."


Subsec. (k)(5)(C). Pub. L. 100–647, § 1011(g)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: "The term 'average annual compensation' means the greater of—

"(i) the participant's final average compensation (determined without regard to subparagraph (D)(ii)), or

"(ii) the participant's highest average annual compensation for any other period of at least 3 consecutive years."
59% and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and"

Subsec. (k)(2)(C). Pub. L. 99–514, 1182(g)(2), substituted "for "are nonforfeitable" for "are not nonforfeitable."


Subsec. (k)(3). Pub. L. 99–514, 1116(d)(3), which directed that the last sentence of subpar. (B) be struck out was executed by striking out the last sentence of par. (3) as the probable intent of Congress because subpar. (B) is composed of only one sentence. Prior to being stricken, such last sentence read as follows: "For purposes of the preceding sentence, the compensation of any employee for a plan year shall be the amount of his compensation which is taken into account under the plan in calculating the contribution which may be made on his behalf for such plan year."


Pub. L. 99–514, 1182(g)(2), substituted "If an employee is a participant under 2 or more cash or deferred arrangements of the employer, for purposes of determining the deferral percentage with respect to such employee, all such cash or deferred arrangements shall be treated as 1 cash or deferred arrangement" for "The deferral percentage taken into account under this subparagraph for any employee who is a participant under 2 or more cash or deferred arrangements of the employer shall be the sum of the deferral percentages for such employee under each of such arrangements".


Subsec. (k)(3)(A)(ii). Pub. L. 99–514, 1118(c)(2), substituted "paragraph (5) for "paragraph (4)"

Pub. L. 99–514, 1116(a), substituted "1.25 for "1.5" in subcl. (I), and "2 percentage points" for "3 percentage points" and "2" for "2.5" in subcl. (II).


Subsec. (k)(3)(D). Pub. L. 99–514, 1116(e), added subpar. (C) relating to employer contributions.


Paragraph (4) (redesignated 5).

Subsec. (k)(4)(A). Pub. L. 99–514, 1116(b)(3), (d)(1), redesignated former par. (4) (as 5) and substituted "the term ‘highly compensated employee’ has the meaning given such term by section 414(q)" for "the term ‘highly compensated employee’ means any employee who is more highly compensated than two-thirds of all eligible employees, taking into account only compensation which is considered in applying paragraph (3)".

Subsec. (k)(4)(B). Pub. L. 99–514, 1116(b)(3), redesignated former par. (5) (as 6), Former par. (6) (redesignated (7)).


Subsec. (k)(8). Pub. L. 99–514, 1116(a), amended subsec. (l) generally, substituting provisions relating to permitted disparity in plan contributions or benefits for provisions relating to nondiscriminatory coordination of defined contribution plans with OASP.


Pub. L. 99–514, 11898(c)(3), redesignated subsec. (o) as (n).
Subsec. (j). Pub. L. 97–248, § 238(b), struck out subsec. (j) which related to general requirements, regulation guidelines, applicable percentage, certain contributions and benefits not taken into account, definitions, and special rules with respect to defined benefit plans providing benefits for self-employed individuals and shareholders.


1981—Subsec. (a)(17). Pub. L. 97–34, § 312(b)(1), redesignated provision relating to the annual compensation of each employee as subpar. (A), and in subpar. (A) as so redesignated, substituted “$200,000” for “$100,000”, and added subpar. (B).

Subsec. (a)(22). Pub. L. 97–34, § 338(a), inserted “(other than a profit-sharing plan)” and substituted “‘I’ for ‘1’ and ‘such plan’ for ‘said plan’.

Subsec. (a)(23). Pub. L. 97–34, § 335, substituted “409A(h)” except that in applying section 409A(h) for purposes of this paragraph, the term ‘employer securities’ shall include any securities of the employer held by the plan” for ‘409A(h)(2)’.

Subsec. (d)(4). Pub. L. 97–34, § 312(e)(2), inserted provision making subpar. (B) inapplicable to any distribution to which section 72(m)(9) applies.

Subsec. (j)(3). Pub. L. 97–34, § 312(c)(2), substituted “for such taxable year exceeds $15,000″ for “for all such years exceeds $7,500”.

Subsec. (j). Pub. L. 97–34, § 312(c)(3), (4), substituted in par. (2)(A) “$100,000” for “$50,000” and in par. (3) inserted provision that for purposes of this paragraph, a change in the annual compensation taken into account under subpar. (A) of subsec. (j)(2) be treated as beginning a new period of plan participation.

1980—Subsec. (a)(2). Pub. L. 96–364, §§ 208(e), 410(b), inserted provisions relating to applicability to multiemployer plans and return of contributions made by a mistake of law or fact, or return of withdrawal liability payment.


Subsec. (a)(12). Pub. L. 96–605, § 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. (a)(22)(B). Pub. L. 96–622, § 401(a)(9), substituted “are securities” for “as securities”.


1979—Subsec. (a)(5). Pub. L. 95–600, § 152(e), inserted provision that for purposes of determining whether one or more plans of the employer satisfy the requirements of section 410(b)(4), an employer may take into account all simplified employee pensions to which only the employer contributes.

Subsec. (a)(21). Pub. L. 95–600, § 141(f)(3), substituted “ESOP” for “employee stock option plan which satisfies the requirements of section 301(d) of the Tax Reform Act of 1975” and the additional exceptional provisions of section 401(h)” for “section (d)(6) or (e)(3) of section 301 of the Tax Reform Act of 1975”.


Subsec. (d). Pub. L. 97–248, § 237(a), redesignated pars. (9) to (11) as (1) to (3), respectively. Former pars. (1) to (7) which related to trusteed qualified plans which were not trusteed before or after October 10, 1962, contributions under the plan, benefits under the plan for employees, contributions or benefits under the plan, limitations pursuant to the plan, applicability of regulations to employee pensions, and distributions under the plan, respectively, were struck out.
Subsec. (a)(22). Pub. L. 95–600, § 143(a), added par. (22).

Subsecs. (k) and redesignated former subsec. (k) as (l).

Subsec. (a). Pub. L. 94–455, §§ 883(b)(2), 1901(a)(56), 1906(b)(13)(A), struck out “or his delegate” after “Secretary” in pars. (5), (11), and (14), substituted references to Sept. 2, 1974, for references to the enactment of the Employee Retirement Income Security Act of 1974 in pars. (12), (13), (15), and (19), added par. (21), and inserted reference to par. (20) in provisions following par. (21), such addition of reference to par. (20) duplicating amendment by Pub. L. 94–267, § 102(c).

Pub. L. 94–267, § 102(c), substituted “(19) and (20)” for “and (19)”.


Subsecs. (b), (c), (d). Pub. L. 94–455, § 1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (f). Pub. L. 94–455, §105(b), inserted reference to contracts (other than life, health, or accident, property, casualty, or liability insurance contracts) issued by an insurance company qualified to do a business in a State and struck out “or his delegate” after “Secretary”.

Subsecs. (h), (i), (j). Pub. L. 94–455, §105(b), inserted provisions covering the determination of contributions to cover annuity contracts.

Subsec. (a)(4). Pub. L. 93–406, §1022(a), struck out provisions referring to persons whose principal duties consist in supervising the work of other employees and inserted provisions directing the exclusion from consideration of employees described in section 410(b)(2)(A) and (C).

Subsec. (a)(5). Pub. L. 93–406, §§1022(b)(1), 1036(a)(2)(B), inserted provisions covering the determination of whether two or more plans of an employer satisfy the requirements of par. (4) when considered as a single plan and substituted “shall not be considered discriminatory within the meaning of paragraph (4) of section 410(b)” for “shall not be considered discriminatory within the meaning of paragraph (3)(B) or (C)”. Subsec. (a)(7). Pub. L. 93–406, §1036(a)(2)(C), substituted provisions referring simply to the satisfaction by the plan of the requirements of section 410(b) without regard to subsection (a)(1) thereof” for “shall not be considered discriminatory within the meaning of paragraph (3)(B) or (C)”. Subsec. (a)(8). Pub. L. 93–406, §1036(b)(2)(A), substituted provisions referring to a trust, trusts, or trust or trusts and annuity plan or plans designated by the employer as constituting parts of a plan intended to qualify under subsec. (a) and spelling out the requisite coverage of the plan.

Subsec. (a)(9). Pub. L. 93–406, §1022(a), struck out provisions referring to employees described in section 410(b)(2)(A) and (C).


Subsec. (b). Pub. L. 93–406, §1023, substituted reference to the requirements of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect, or for the period beginning with the earlier of the date on which there was adopted or put into effect any amendment which caused the plan to fail to satisfy such requirements, and ending with the time prescribed by law for filing the return of the employer for his taxable year in which such plan or amendment was adopted (including extensions thereof) or such later time as the Secretary or his delegate may designate for reference to the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which a stock bonus, pension, profit-sharing, or annuity plan was put into effect and ending with the 15th day of the third month following the close of the taxable year in which the plan was put in effect.

Subsec. (d)(1). Pub. L. 93–406, §1022(c), (f), substituted “October 10, 1962” for “the date of the enactment of this subsection” and “assets thereof are held by a bank or other person who demonstrates to the satisfaction of the Secretary or his delegate that the manner in which he will administer the trust will be consistent with the requirements of this section. A trust shall not be disqualified under this paragraph merely because a person (including the employer) other than the trustee or custodian so administering the trust for “trustee” is a bank, but a person (including the employer) other than the bank and inserted reference to an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act) in definition of “bank”.

Subsec. (d)(3). Pub. L. 93–406, §1022(b)(2)(A), inserted reference to the section 410(a)(3) definition of “years of service” and substituted reference to employees included in a unit of employees covered by a collective-bargaining agreement described in section 410(b)(2)(A) and employees who are nonresident aliens described in section 410(b)(2)(C) for reference to employees whose customary employment was for not more than 20 hours in any one week or was for not more than 5 months in any calendar year.


Subsec. (d)(5). Pub. L. 93–406, §2001(e)(1), substituted “Subparagraphs (A) and (B) do not apply to contributions described in subsection (e) for Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3)” for “Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e)(1)) by reason of the application of subsection (e)(3)”.


Subsec. (e). Pub. L. 93–406, §2001(e)(3), struck out pars. (1) and (2) which defined and described the effect of excess contributions, redesignated par. (3) as the entire subsec. (e) and in provisions as thus carried forward as the entire subsec. (e) substituted “$7,500” for “$2,500” and inserted references to section 4972(b).

Subsec. (f). Pub. L. 93–406, §1122(d), expanded provisions to cover annuity contracts.


1971—Subsec. (i). Pub. L. 91–691 struck out “multi-employer” before “pension plans” in heading, and substituted “one or more employers” for “two or more employers who are not related (determined under regulations prescribed by the Secretary or his delegate)” in par. (1).


Subsec. (c)(2)(A). Pub. L. 89–809, §204(c), struck out “to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B))” after “The term ‘earned income’ means the net earnings from self-employment (as defined in section 1402(a))”, added cl. (1) and redesignated former cls. (1) to (11) as (1) to (iv)
respective, and struck out references to section 911(b) and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, in text following cl. (iv).

Subsec. (c)(2)(B), Pub. L. 89–809, §206(a), struck out subpar. (B) relating to earned income when both personal services and capital are material income-producing factors. See subsec. (c)(2)(A)(ii).

Subsec. (c)(2)(C), Pub. L. 89–809, §206(a), added subpar. (C).

Subsecs. (d)(5)(A), (B), (d)(6)(A), (c)(1)(A), (B)(1), (3). Pub. L. 89–809, §204(b)(1)(B) to (E), struck out “(determined without regard to section 404(a)(10))” wherever appearing.

1965—Subsec. (d)(4)(B), Pub. L. 88–272 added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (a)(5), Pub. L. 87–792, §2(1), inserted provisions defining total compensation for purposes of par. (b) and par. (10) of this subsection.

Subsec. (a)(7) to (10), Pub. L. 87–792, §2(2), added paras. (7) to (10).

Subsec. (c) to (g), Pub. L. 87–792, §2(3), added subsec. (c) to (g). Former subsec. (c) redesignated (h).

Subsec. (h), Pub. L. 87–863 added subsec. (h). Former subsec. (h) redesignated (i).

Pub. L. 87–792, §2(3), redesignated former subsec. (c) as (h).

Subsec. (i), Pub. L. 87–863 redesignated former subsec. (h) as (i).

Effective Date of 2014 Amendment

Effective Date of 2010 Amendment
Pub. L. 111–192, title II, §202(c), June 25, 2010, 124 Stat. 1299, provided that: “The amendment made by subsection (a) (amending sections 1021, 1023, 1033, 1054, 1056, 1057, 1103, 1108, 1301, 1303, 1310, 1392, 1371, and 1423 of Title 29, Labor, and section 106 of 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, enacting provisions set out as a note under this section, and amending provisions set out as a note under section 1021 of Title 29 shall take effect as if included in the Pension Protection Act of 2006 [Pub. L. 110–238].”

Effective Date of 2008 Amendment
Amendment by sections 101(d)(2)(A)–(C) and 109(a)–(b)(2) of Pub. L. 110–280 effective as if included in the provisions of Pub. L. 110–280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110–280, set out as a note under section 72 of this title.

Pub. L. 110–280, title II, §201(c), Dec. 23, 2008, 122 Stat. 5117, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and section 402 of this title] shall apply to calendar years beginning after December 31, 2008.

“(2) PROVISIONS RELATING TO PLAN OR CONTRACT AMENDMENTS.—

“(A) IN GENERAL.—If this paragraph applies to any pension plan or contract amendment, such pension plan or contract shall not fail to be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(ii) solely because the plan operates in accordance with this section.

“(B) AMENDMENTS TO WHICH PARAGRAPH APPLIES.—

“(I) IN GENERAL.—This paragraph shall apply to any amendment to any pension plan or annuity contract which—

“(I) is made pursuant to the amendments made by this section, and

“(II) is made on or before the last day of the first plan year beginning on or after January 1, 2011.

In the case of a governmental plan, subclause (II) shall be applied by substituting ‘2012' for ‘2011'.

“(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless during the period beginning on the effective date of the amendment and ending on December 31, 2008, the plan or contract is operated as if such plan or contract amendment were in effect.”

Pub. L. 110–245, title I, §104(d), June 17, 2008, 122 Stat. 1627, provided that:

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403, 404, 414, and 457 of this title] shall apply with respect to deaths and disabilities occurring on or after January 1, 2007.

“(2) PROVISIONS RELATING TO PLAN AMENDMENTS.—

“(A) IN GENERAL.—If this subparagraph applies to any plan or contract amendment, such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subparagraph (B)(iii).

“(B) AMENDMENTS TO WHICH SUBPARAGRAPH (A) APPLIES.—

“(I) IN GENERAL.—Subparagraph (A) shall apply to any amendment to any plan or annuity contract which is made—

“(I) pursuant to the amendments made by subsection (a) [amending this section] or pursuant to any regulation issued by the Secretary of the Treasury under subsection (a), 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 clause shall be applied by substituting ‘2012' for ‘2010’ in subclause (II).

“(ii) CONDITIONS.—This paragraph shall not apply to any amendment unless—

“(I) the plan or contract is operated as if such plan or contract amendment were in effect for the period described in clause (ii), and

“(II) such plan or contract amendment applies retroactively for such period.

“(iii) PERIOD DESCRIBED.—The period described in this clause is the period—

“(I) beginning on the effective date specified by the plan, and

“(II) ending on the date described in clause (i)(II) or, if earlier, the date the plan or contract amendment is adopted.”

Effective Date of 2006 Amendment

“(1) IN GENERAL.—The amendments made by this section [amending this section and sections 411, 414, 420, 4971, 4972, and 6059 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years described in paragraph (1) which end with or within any such taxable year.

“(2) EXCISE TAX.—The amendments made by subsection (e) [amending sections 4971 and 4972 of this title] shall apply to taxable years beginning after 2007, but only with respect to plan years described in paragraph (1) which end with or within any such taxable year.

Amendment by section 827(b)(1) of Pub. L. 109–280 applicable to distributions after Sept. 11, 2001, with waiver of limitations if refund or credit of overpayment of tax resulting from such amendment is prevented before the close of the 1-year period beginning on Aug. 17, 2006, see section 827(c) of Pub. L. 109–280, set out as a note under section 72 of this title.

Pub. L. 109–280, title VIII, §861(c), Aug. 17, 2006, 120 Stat. 1201, provided that: “The amendments made by this section [amending this section and provisions set out as a note under this section] shall apply to any
year beginning after the date of the enactment of this Act [Aug. 17, 2006].

"(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act [Aug. 17, 2006], paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for 'December 31, 2006' the earlier of—

"(A) the later of—

"(i) December 31, 2007, or

"(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or


"(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

"(A) IN GENERAL.—In the case of employer securities to which this paragraph applies, the amendments made by this section [amending this section, sections 409 and 4980 of this title, and sections 1054 and 1107 of Title 29, Labor] shall apply to plan years beginning after the earlier of—

"(i) December 31, 2007, or

"(ii) the first date on which the fair market value of such securities exceeds the guaranteed minimum value described in subparagraph (B)(ii).

"(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which are attributable to employer contributions other than elective deferrals, and which, on September 17, 2003—

"(i) consist of preferred stock, and

"(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

"(C) COORDINATION WITH TRANSITION RULE.—In applying this section 401(a)(36)(H) of the Internal Revenue Code of 1986 and section 204(c)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001(c)(7)] (as added by this section) to employer securities to which this paragraph applies, the applicable percentage shall be determined without regard to this paragraph.

Pub. L. 109–280, title IX, §902(g), Aug. 17, 2006, 120 Stat. 1039, provided that: "The amendments made by this section [amending this section, sections 411, 414, 416, and 4979 of this title, and sections 1053, 1132, and 1144 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007, except that the amendments made by subsection (f) (amending sections 1132 and 1144 of Title 29) shall take effect on the date of the enactment of this Act [Aug. 17, 2006]."

Pub. L. 109–280, title IX, §905(c), Aug. 17, 2006, 120 Stat. 1051, provided that: "The amendments made by this section [amending this section and section 1002 of Title 29, Labor] shall apply to distributions in plan years beginning after December 31, 2006."

Effective Date of 2001 Amendment

Amendment by section 611(c), (f)(3), (g)(1) of Pub. L. 107–16 applicable to years beginning after Dec. 31, 2001, see section 611(i)(1) of Pub. L. 107–16, set out as a note under section 415 of this title.


Pub. L. 107–16, title VI, §646(d), June 7, 2001, 115 Stat. 125, provided that: "The amendments made by this section [amending this section and sections 402 and 403 of this title] shall apply to distributions made after December 31, 2001."

Pub. L. 107–16, title VI, §646(b), June 7, 2001, 115 Stat. 126, provided that: "The amendments made by this section [amending this section and sections 403 and 457 of this title] shall apply to distributions after December 31, 2001."

Effective Date of 2000 Amendment


Effective Date of 1997 Amendment

Pub. L. 105–34, title XV, §1505(d), Aug. 5, 1997, 111 Stat. 1061, provided that: "The amendments made by this section [amending this section and section 1056 of Title 29, Labor] shall apply to judgments, orders, and decrees issued, and settlement agreements entered into, on or after the date of the enactment of this Act [Aug. 5, 1997]."


"(1) IN GENERAL.—The amendments made by this section [amending this section and sections 403 and 410 of this title] apply to taxable years beginning on or after the date of enactment of this Act [Aug. 5, 1997]."

"(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) shall be treated as satisfying the requirements of sections 401(a)(33), 401(a)(41), 401(a)(26), 401(k), 401(m), 401(b)(10), and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act."


Pub. L. 105–34, title XV, §1530(d), Aug. 5, 1997, 111 Stat. 1080, provided that: "The amendments made by this section [amending this section and sections 404, 415, 416, 419, 439, 455, 457, and 4975A of this title] shall apply to transfers made by trusts to, or for the use of, an employee stock ownership plan after the date of the enactment of this Act [Aug. 5, 1997]."

Effective Date of 1996 Amendment

Amendment by section 1401(b)(5), (6) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, with retention of certain transition rules, see section 1401(c) of Pub. L. 104–188, set out as a note under section 402 of this title.


Amendment by section 1431(b)(2) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, and amendment by section 1431(c)(1)(B) of Pub. L. 104–188 applicable to years beginning after Dec. 31, 1996, except that in determining whether an employee is a highly compensated employee for years beginning in 1997, amendment by section 1431(c)(1)(B) to be treated as having been in effect for years beginning in 1996, see section 1431(d) of Pub. L. 104–188, set out as a note under section 414 of this title.


Pub. L. 104–188, title I, §1433(f), Aug. 20, 1996, 110 Stat. 1807, provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to years beginning after December 31, 1998.

"(2) EXCEPTIONS.—The amendments made by subsections (c), (d), and (e) [amending this section] shall apply to years beginning after December 31, 1996.


Pub. L. 104–188, title I, §1443(c), Aug. 20, 1996, 110 Stat. 1809, provided that:

"(1) DISTRIBUTIONS.—The amendments made by subsection (a) [amending this section] shall apply to distributions after the date of the enactment of this Act [Aug. 20, 1996].

"(2) PUBLIC UTILITY DISTRICTS.—The amendments made by subsection (b) [amending this section] shall apply to plan years beginning after December 31, 1996.


Effective Date of 1994 Amendment

Pub. L. 103–465, title VII, §732(e), Dec. 8, 1994, 108 Stat. 5005, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402, 408, and 415 of this title] shall apply to years beginning after December 31, 1994.

"(2) ROUNDING NOT TO RESULT IN DECREASES.—The amendments made by this section providing for the rounding of indexed amounts shall not apply to any year to the extent the rounding would require the indexed amount to be reduced below the amount in effect for years beginning in 1994.


"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 404, 412, and 4971 of this title] shall apply to plan years beginning after December 31, 1994.

"(2) REFERENCE.—The amendment made by subsection (a)(1) [amending section 404 of this title] shall take effect on the date of the enactment of this Act [Dec. 8, 1994].

Pub. L. 103–465, title VII, §766(d), Dec. 8, 1994, 108 Stat. 5037, provided that: "The amendments made by this section [amending this section and sections 1054 and 1322 of Title 29, Labor] shall apply to plan amendments adopted on or after the date of enactment of this Act [Dec. 8, 1994]."

Amendment by section 776(d) of Pub. L. 103–465 effective with respect to distributions that occur in plan years commencing on or after Jan. 1, 1996, see section 776(e) of Pub. L. 103–465, set out as a note under section 1056 of Title 29.

Pub. L. 103–465, title VII, §781, Dec. 8, 1994, 108 Stat. 5050, provided that: "Except as otherwise provided in this subtitle [subtitle F (§§750–781) of title VII of Pub. L. 103–465, enacting sections 1310, 1311, and 1350 of Title 29, Labor, amending this section, sections 404, 411, 412, 415, 417, 4971, and 4972 of this title, and sections 1053 to 1056, 1082, 1132, 1301, 1303, 1305, 1306, 1322, 1341, 1342, and 1343 of Title 29, and enacting provisions set out as notes under this section, sections 411, 412, and 4972 of this title, and sections 1056, 1082, 1303, 1306, 1310, 1311, 1322, 1341, and 1342 of Title 29], the amendments made by this subtitle shall be effective on the date of enactment of this Act [Dec. 8, 1994]."

Effective Date of 1993 Amendment


"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and sections 404, 408, and 505 of this title] shall apply to benefits accruing in plan years beginning after December 31, 1993.

"(2) COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives of 1 or more employers ratified before the date of the enactment of this Act [Aug. 10, 1993], the amendments made by this section shall not apply to contributions or benefits pursuant to such agreements for plan years beginning before the earlier of:

"(A) the latest of—


"(ii) the date on which the last of such collective bargaining agreements terminates (without regard to any extension, amendment, or modification of such agreements on or after such date of enactment), or

"(iii) in the case of a plan maintained pursuant to collective bargaining under the Railway Labor Act [45 U.S.C. 151 et seq.], the date of execution of an extension or replacement of the last of such collective bargaining agreements in effect on such date of enactment,

"(B) January 1, 1997.

"(2) TRANSITION RULE FOR STATE AND LOCAL PLANS.—"(A) IN GENERAL.—In the case of an eligible participant in a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986), the dollar limitation under section 401(a)(17) of such Code shall not apply to the extent the amount of compensation which is allowed to be taken into ac-
count under the plan would be reduced below the amount which was allowed to be taken into account under the plan as in effect on July 1, 1989.

"(B) ELIGIBLE PARTICIPANT.—For purposes of subparagraph (A), an eligible participant is an individual who first became a participant in the plan during a plan year beginning before the 1st plan year beginning after the earlier of—

"(i) the plan year in which the plan is amended to reflect the amendments made by this section, or


"(C) PLAN MUST BE AMENDED TO INCORPORATE LIMITS.—This paragraph shall not apply to any eligible participant of a plan unless the plan is amended so that the plan incorporates by reference the dollar limitation under section 401(a)(7) of the Internal Revenue Code of 1986, effective with respect to non-eligible participants for plan years beginning after December 31, 1986 (or earlier if the plan amendment so provided).

**Effective Date of 1992 Amendment**

Amendment by section 521(b)(5)–(8) of 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.

Pub. L. 102–318, title V, §522(d), July 3, 1992, 106 Stat. 315, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 402 to 404, 3402, 3406, 6047, and 6852 of this title] shall apply to distributions after December 31, 1992.

"(2) TRANSITION RULE FOR CERTAIN ANNUITY CONTRACTS.—If, as of July 1, 1992, a State law prohibits a direct trustee-to-trustee transfer from an annuity contract described in section 403(b) of the Internal Revenue Code of 1986 which was purchased for an employee by an employer which is a State or a political subdivision thereof (or an agency or instrumentality of any 1 or more of either), the amendments made by this section shall not apply to distributions before the earlier of—

"(A) 90 days after the first day after July 1, 1992, on which such transfer is allowed under State law, or


**Effective Date of 1990 Amendment**

Amendment by Pub. L. 101–508 applicable to transfers in taxable years beginning after Dec. 31, 1990, see section 12911(c)(1) of Pub. L. 101–508, set out as an Effective Date note under section 420 of this title.

**Effective Date of 1989 Amendment**


**Effective Date of 1988 Amendment**

Amendment by Pub. L. 101–140 applicable to transfers in taxable years beginning after Dec. 31, 1987, see section 10191(a) of Pub. L. 101–140, set out as an Effective Date note under section 79 of this title.

**Effective Date of 1986 Amendment**

Amendment by Pub. L. 100–647 applicable to transfers in taxable years beginning after Dec. 31, 1986, see section 10111(c)(7)(F), Nov. 10, 1988, 102 Stat. 3458, provided that:

"(i) Except as provided in clause (ii), the amendments made by this paragraph [amending this section and sections 403, 406, and 501 of this title] shall apply to plan years beginning after December 31, 1987.

"(ii) In the case of a plan described in section 1105(c)(2) of the Reform Act [section 1105(c)(2) of Pub. L. 99–514], set out as an Effective Date of 1986 Amendment note under section 402 of this title], the amendments made by this paragraph shall not apply to contributions made pursuant to an agreement described in such section for plan years beginning before the earlier of—

"(I) the latter of January 1, 1988, or the date on which the last of such agreements terminates (determined without regard to any extension thereof after February 28, 1986), or


Pub. L. 100–647, title I, §1011(k)(1)(C), Nov. 10, 1988, 102 Stat. 3469, provided that:

"(i) Subparagraph (A)(i) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after October 16, 1987.

"(ii) Subparagraph (B) of section 401(k)(10) of the 1986 Code (as added by subparagraph (B)) shall apply to distributions after March 31, 1988.


Amendment by sections 1011(d)(4), (e)(3), (g)(1)–(3), (h)(3), (k)(1)(A), (B), (2)–(7), (8), (l)(1)–(4), (6), (7), 1011A(j), (l), and 1011B(j)(1), (2), (6), (k)(1), (2) 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.

Pub. L. 100–647, title I, §6053(b), Nov. 10, 1988, 102 Stat. 3686, provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 1121 of the Reform Act [Pub. L. 99–514]."

Pub. L. 100–647, title VI, §6055(b), Nov. 10, 1988, 102 Stat. 3687, provided that: "The amendment made by this section [amending this section] shall take effect as if included in the amendments made by section 1122(b) of the Reform Act [Pub. L. 99–514]."
this section [amending this section and section 457 of
this title] shall apply to taxable years beginning after
the date of the enactment of this Act [Nov. 10, 1988]."

**Effective Date of 1987 Amendment**

§7881(i)(5), Dec. 19, 1989, 103 Stat. 2442, provided that:

"(1) IN GENERAL.—Except as provided in this sub-
section, the amendments made by this section [enact-
ing title 1083b of Title 26, Labor, and amending this
section] shall apply to plan amendments adopted after
the date of the enactment of this Act [Dec. 22, 1987].

"(2) COLLECTIVE BARGAINING AGREEMENTS.—In
the case of a plan maintained pursuant to 1 or more collec-
tive bargaining agreements between employee rep-
resentatives and 1 or more employers ratified before
the date of the enactment of this Act, the amendments
made by this section shall not apply to plan amend-
ments adopted pursuant to collective bargaining agree-
ments ratified before the date of enactment (without
regard to any extension, amendment, or modification
of such agreements on or after such date of enact-
ment)."

**Effective Date of 1986 Amendment**

Amendment by section 1106(d)(1) of Pub. L. 99–514
applicable to benefits accruing in years beginning after
Dec. 31, 1988, except as otherwise provided, see section
1106(i)(5) of Pub. L. 99–514, set out as a note under
section 415 of this title.

2440, as amended by Pub. L. 100–647, title I, §1011(c)(4),
Nov. 10, 1988, 102 Stat. 3464, provided that:

"(1) SUBSECTION (a).—The amendments made by sub-
section (a) [amending this section] shall apply to bene-
fits attributable to plan years beginning after Decem-

"(2) SUBSECTION (b).—The amendments made by sub-
section (b) [amending this section] shall apply to years

"(3) SPECIAL RULE FOR COLLECTIVE BARGAINING
AGREEMENTS.—In the case of a plan maintained pursuant to 1
or more collective bargaining agreements between em-
ployee representatives and 1 or more employers ratified
before March 1, 1986, the amendments made by this sec-
ction shall not apply to plan years beginning before the
earlier of—

"(A) the later of—

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective
bargaining agreements terminates (determined
without regard to any extension thereof after
February 28, 1986), or


2445, as amended by Pub. L. 100–647, title I, §1011(b)(4),
Nov. 10, 1988, 102 Stat. 3464, provided that:

"(1) IN GENERAL.—The amendments made by this
section [amending this section and sections 402, 404, 406,
407, 408, 410, and 818 of this title] shall apply to plan years

"(2) SPECIAL RULE FOR COLLECTIVE BARGAINING
AGREEMENTS.—In the case of a plan maintained pursuant to 1
or more collective bargaining agreements between em-
ployee representatives and 1 or more employers ratified
before March 1, 1986, the amendments made by this sec-
ction shall not apply to plan years beginning before the
earlier of—

"(A) the later of—

"(i) January 1, 1989, or

"(ii) the date on which the last of such collective
bargaining agreement terminates (determined
without regard to any extension thereof after
February 28, 1986), or


"(3) WAIVER OF EXCESS TAX ON REVERSIONS.—

"(A) IN GENERAL.—If—

"(i) a plan is in existence on August 16, 1986,

"(ii) such plan would fail to meet the require-
ments of section 401(a)(26) of the Internal Revenue
Code of 1986 (as added by subsection (b) of this
section) were in effect for the plan year including Au-
gust 16, 1986, and

"(iii) there is no transfer of assets to or liabilities
from the plan or spinoff or merger involving such
plan after August 16, 1986,

then no tax shall be imposed under section 4980 of
such Code on any employer reversion by reason of the
termination or merger of such plan before the 1st
year to which the amendment made by subsection (b)
applies.

"(B) INTEREST RATE FOR DETERMINING ACCRUED BEN-
EFIT OF HIGHLY COMPENSATED EMPLOYEES FOR CERTAIN
PURPOSES.—In the case of a termination, transfer, or
distribution of assets of a plan described in subpara-
graph (A) or (ii) before the 1st year to which the amend-
ment made by subsection (b) applies—

"(i) AMOUNT ELIGIBLE FOR ROLLOVER, INCOME
AVERAGING, OR TAX-FREE TRANSFER.—For pur-
poses of determining any eligible amount, the present
value of the accrued benefit of any highly com-

compensated employee shall be determined by using an
interest rate not less than the highest of—

"(I) the applicable rate under the plan’s method in
effect under the plan on August 16, 1986,

"(II) the highest rate (as of the date of the ter-
mination, transfer, or distribution) determined
under any of the methods applicable under the
plan at any time after August 15, 1986, and before
the termination, transfer, or distribution in cal-
culating the present value of the accrued benefit
of an employee who is not a highly compensated
employee under the plan (or any other plan used
in determining whether the plan meets the re-
quirements of section 401 of the Internal Revenue
Code of 1986), or

"(III) 5 percent.

"(ii) ELIGIBLE AMOUNT.—For purposes of clause (i),
the term ‘eligible amount’ means any amount with
respect to a highly compensated employee which—

"(I) may be rolled over under section 402(a)(26) of
such Code,

"(II) is eligible for income averaging under sec-

tion 402(a)(1) of such Code, or capital gains treat-
ment under section 402(a)(2) or 403(a)(2) of such
Code (as in effect before this Act), or

"(III) may be transferred to another plan with-
out inclusion in gross income.

"(iii) AMOUNTS SUBJECT TO EARLY WITHDRAWAL OR
EXCESS DISTRIBUTION TAX.—For purposes of sections
72(t) and 4980A of such Code, there shall not be
taken into account the excess (if any) of—

"(I) the amount distributed to a highly com-

compensated employee by reason of such termina-

tion or distribution, over

"(II) the amount determined by using the inter-

cest rate applicable under clause (i).

"(iv) DISTRIBUTIONS OF ANNUITY CONTRACTS.—If an
annuity contract purchased after August 16, 1986, is
distributed to a highly compensated employee in
connection with such termination or distribution,
there shall be included in gross income for the tax-
able year of such distribution an amount equal to the
excess of—

"(I) the purchase price of such contract, over

"(II) the present value of the benefits payable
under such contract determined by using the in-
terest rate applicable under clause (i).

Such excess shall not be taken into account for pur-
poses of sections 72(t) and 4980A of such Code.

"(v) HIGHLY COMPENSATED EMPLOYEE.—For pur-
poses of this subparagraph, the term ‘highly com-

compensated employee’ has the meaning given such
term by section 414(q) of such Code.

"(vi) SPECIAL RULE FOR PLANS WHICH MAY NOT TER-
MINATE.—To the extent provided in regulations prescrib-
ed by the Secretary of the Treasury or his delegate, if a
plan is prohibited from terminating under title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1301 et seq.) before the 1st year to which the amendment made by subsection (b) would apply, the amendment made by subsection (b) shall only apply to years after the 1st year in which the plan is able to terminate.


"(1) In general.—Except as provided in this subsection, the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

"(2) Nondiscrimination rules.—

"(A) In general.—Except as provided in subparagraph (B), the amendments made by subsections (a), (b)(4), and (d) [amending this section], and the provisions of section 401(k)(4) of the Internal Revenue Code of 1986 (as added by this section), shall apply to years beginning after December 31, 1986.

"(B) Transition rules for certain governmental and tax-exempt plans.—Subparagraph (B) of section 401(k)(4) of the Internal Revenue Code of 1986 (relating to governments and tax-exempt organizations not eligible for cash or deferred arrangements), as added by this section, shall not apply to any cash or deferred arrangement adopted by—

"(i) A State or local government or political subdivision thereof, or any agency or instrumentality thereof, before May 6, 1986, or

"(ii) A tax-exempt organization before July 2, 1986.

In the case of an arrangement described in clause (i), the amendments made by subsections (a), (b)(4), and (d) shall apply to years beginning after December 31, 1988. If clause (i) or (ii) applies to any arrangement adopted by a governmental unit, any cash or deferred arrangement adopted by such unit on or after the date referred to in the applicable clause shall be treated as adopted before such date.

"(3) Aggregation and excess contributions.—The amendments made by subsections (c) and (e) [amending this section] shall apply to years beginning after December 31, 1986.

"(4) Collective bargaining agreements.—

"(A) In general.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to years beginning before the earlier of—

"(i) the later of—

"(I) January 1, 1989, or

"(II) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or


"(B) Special rule for nondiscrimination rules.—In the case of a plan described in subparagraph (A), the amendments and provisions described in paragraph (2) shall not apply to years beginning before the earlier of—

"(i) the date determined under subparagraph (A)(ii), or


"(5) Special rule for qualified offset arrangements.—

"(A) In general.—A cash or deferred arrangement shall not be treated as failing to meet the requirements of section 401(k)(4) of the Internal Revenue Code of 1986 (as added by this section) to the extent such arrangement is part of a qualified offset arrangement consisting of such cash or deferred arrangement and a defined benefit plan.

"(B) Qualified offset arrangement.—For purposes of subparagraph (A), a cash or deferred arrangement is part of a qualified offset arrangement with a defined benefit plan to the extent such offset arrangement satisfies each of the following conditions with respect to the employer maintaining the arrangement on April 16, 1986, and at all times thereafter:

"(i) The benefit under the defined benefit plan is directly and uniformly conditioned on the initial elective deferrals (up to 4 percent of compensation).

"(ii) The benefit provided under the defined benefit plan is reduced by the benefit attributable to the employee's elective deferrals under the plan (up to 4 percent of compensation) and the income allocable thereto. The interest rate used to calculate the reduction shall not exceed the greater of the rate under section 411(a)(11)(B)(ii) of such Code or the interest rate applicable under section 411(c)(2)(C)(iii) of such Code, taking into account section 411(c)(2)(D) of such Code.

For purposes of applying section 401(k)(3) of such Code to the cash or deferred arrangement, the benefits under the defined benefit plan conditioned on initial elective deferrals may be treated as matching contributions under such rules as the Secretary of the Treasury or his delegate may prescribe. The Secretary shall provide rules for the application of this paragraph in the case of successor plans.

"(C) Definition of employer.—For purposes of this paragraph, the term 'employer' includes any research and development center which is federally funded and engaged in cancer research, but only with respect to employees of contractor-operators whose salaries are reimbursed as direct costs against the operator's contract to perform work at such center.

"(6) Withdrawals on sale of assets.—Subclauses (II), (III), and (IV) of section 401(k)(2)(B)(i) of the Internal Revenue Code of 1986 (as added by subsection (b)(1)) shall apply to distributions after December 31, 1984.

"(7) Distributions before plan amendment.—

"(A) In general.—If a plan amendment is required to allow a plan to make any distribution described in section 401(k)(8) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1110 [set out as a note below], shall be treated as made in accordance with the provisions of such plan.

"(B) Distributions pursuant to model amendment.—

"(i) Secretary to prescribe amendment.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(k)(8) of such Code.

"(ii) Adoption by plan.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.


"(1) In general.—The amendments made by this section [enacting section 4979 of this title and amending section 401(h)] shall apply to plan years beginning after December 31, 1986.

"(2) Collective bargaining agreements.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to plan years beginning before the earlier of—

"(A) January 1, 1989, or

"(B) the date on which the last of such collective bargaining agreements terminates (determined with-
out regard to any extension thereof after February 28, 1986.

(3) ANNUITY CONTRACTS.—In the case of an annuity contract under section 497(b) of the Internal Revenue Code of 1986—

"(A) the amendments made by this section shall apply to plan years beginning after December 31, 1988, and

"(B) in the case of a collective bargaining agreement described in paragraph (2), the amendments made by this section shall not apply to years beginning before the earlier of—

"(i) the later of—

"(I) January 1, 1989, or

"(II) the date determined under paragraph (2)(B), or


(4) DISTRIBUTIONS BEFORE PLAN AMENDMENT.—

"(A) IN GENERAL.—If a plan amendment is required to allow a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986, any such distribution which is made before the close of the 1st plan year for which such amendment is required to be in effect under section 1110 [set out as a note below] shall be treated as made in accordance with the provisions of the plan.

"(B) DISTRIBUTIONS PURSUANT TO MODEL AMENDMENT.—

"(i) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment which allows a plan to make any distribution described in section 401(m)(6) of the Internal Revenue Code of 1986.

"(ii) ADOPTION BY PLAN.—If a plan adopts the amendment prescribed under clause (i) and makes a distribution in accordance with such amendment, such distribution shall be treated as made in accordance with the provisions of the plan.

Pub. L. 99–514, title XI, §1191(b), Oct. 22, 1986, 100 Stat. 2463, provided that: ‘‘The amendment made by this subsection (a) [amending this section] shall apply to plan years beginning after December 31, 1995.’’


(2) Subsection (c).—The amendments made by subsection (c) [amending sections 402 and 408 of this title] shall apply to years beginning after December 31, 1986.

(3) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, the amendments made by this section shall not apply to distributions to individuals covered by such agreements in years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after February 28, 1986), or

(ii) January 1, 1989, or

(B) January 1, 1991.

(4) TRANSITION RULES.—

The amendments made by subsections (a) and (b) [amending this section and section 4974 of this title] shall not apply with respect to any benefits with respect to which a designation is in effect under section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 242(b)(2) of Pub. L. 97–248, formerly set out as a note below].

(B)(i) Except as provided in clause (i), the amendment made by subsection (b) [amending this section] shall not apply in the case of any individual who has attained age 70½ before January 1, 1988.

(ii) Clause (i) shall not apply to any individual who is a 5-percent owner (as defined in section 416(i) of the Internal Revenue Code of 1986) at any time during—

(I) the plan year ending with or within the calendar year in which such owner attains age 66½, and

(II) any subsequent plan year.

(5) PLANS MAY INCORPORATE SECTION 401(a)(9) REQUIREMENTS BY REFERENCE.—Notwithstanding any other provision of law, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, a plan may incorporate by reference the requirements of section 401(a)(9) of the Internal Revenue Code of 1986.’’


Pub. L. 99–514, title XI, §1143(b), Oct. 22, 1986, 100 Stat. 2490, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1986.’’


Amendment by section 1171(b)(5) of Pub. L. 99–514 applicable to compensation paid or accrued after Dec. 31, 1986, in taxable years ending after such date, except as otherwise provided, see section 1171(c) of Pub. L. 99–514, set out as a note under section 3503 of this title.


Pub. L. 99–514, title XI, §1176(c), Oct. 22, 1986, 100 Stat. 2520, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall be effective December 31, 1986. The amendment made by subsection (b) [amending section 409 of this title] shall apply to acquisitions of securities after December 31, 1986.’’


Amendment by sections 1848(b) and 1852(a)(4)(A), (6), (b)(8), (g), (h)(1) 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 49 of this title.

Pub. L. 99–514, title XVIII, §1888(1), Oct. 22, 1986, 100 Stat. 2597, provided that: ‘‘Except as otherwise provided in this section, any amendment made by this section [amending this section, sections 402, 411, 414, 415, 417, and 2563 of this title, and sections 1053 to 1056 of Title 29, Labor, and provisions set out as notes under section 1001 of Title 29] shall take effect as if included in the provisions of the Retirement Equity Act of 1984 [Pub. L. 96–367] to which such amendment relates.’’

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 283(a) of Pub. L. 98–397 applicable to plan years beginning after Dec. 31, 1984, amendment by section 204(a) of Pub. L. 98–397 effective Jan. 1, 1985, and amendment by section 301(b) of Pub. L. 98–397
applicable to plan amendments made after July 30, 1984, but not applicable to the termination of a certain defined benefit plan, except as otherwise provided, see section 302 and 303 of Pub. L. 98-369, set out as a note under section 1001 of Title 29, Labor.

Nothing in amendment by section 203(a) of Pub. L. 98-369 to prevent any distribution required by reason of a failure to comply with the terms of a loan made on or before Aug. 18, 1983, and secured by a portion of the participant’s accrued benefit, see section 1806(m)(5) of Pub. L. 98-554, set out as an Effective Date of 1986 Amendment note under section 417 of this title.

Amendment by section 211(b)(5) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(13) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Pub. L. 98-369, div. A, title IV, § 491(c)(3), July 18, 1984, 98 Stat. 853, provided that: ‘‘The amendments made by subsection (e) [ redesignating section 409A as section 409 of this title and amending sections 415, 4975, and 6609 of this title] shall take effect on January 1, 1984.’’


‘‘(2) special rule for governmental plans.—In the case of a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) which was maintained by a State on June 8, 1982, and on or before the date of the enactment of this Act [July 18, 1984],—

(A) I R C provisions formerly set out below shall apply with respect to plan years beginning after the date of the enactment of this Act [July 18, 1984].

(B) transitional rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 (section 135(c)(2) of Pub. L. 95-404, set out below) shall apply with respect to any pre—ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1986 (formerly I. R. C. 1984)) for plan years beginning after December 31, 1983, and on or before the date of the enactment of this Act.’’

Pub. L. 98-369, div. A, title V, § 526(c), July 18, 1984, 98 Stat. 877, provided that: ‘‘The amendments made by this section [amending this section] shall apply to years beginning after March 31, 1984.’’


Effective Date of 1983 Amendment

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the proviso of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

Effective Date of 1982 Amendment


Pub. L. 97-248, title II, § 249(b), Sept. 3, 1982, 96 Stat. 528, provided that: ‘‘The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 1983.’’

Pub. L. 97-248, title II, § 254(b), Sept. 3, 1982, 96 Stat. 535, provided that: ‘‘The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1981.


Effective Date of 1981 Amendment

Amendment by section 312(b)(1), (c)(2)–(4), (e)(2) of Pub. L. 97-34 applicable to plans which include employees within the meaning of subsection (c)(1) of this section with respect to taxable years beginning after Dec. 31, 1981, see section 312(c)(1) of Pub. L. 97-34, set out as a note under section 72 of this title.
Amendment by section 1901(a)(56) 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.

Pub. L. 94-287, §1(e), Apr. 15, 1976, 90 Stat. 369, provided that: “The amendments made by this Act [amending this section and sections 402 to 405 of this title, and enacting provisions set out as a note under section 402 of this title] shall apply with respect to payments made to an employee on or after July 4, 1974.”

**Effective Date of 1974 Amendment**

Amendment by sections 1012(b) and 1016(a)(2) of Pub. L. 93-406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93-406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by sections 1012(b) and 196(a)(2) of Pub. L. 93-406 applicable for plan years beginning after Dec. 31, 1973, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.

Pub. L. 93-406, title II, §1022(d), Sept. 2, 1974, 88 Stat. 938, provided that: “Except as otherwise provided in section 1022(c) of this Act, the amendments made by this section are effective as of Jan. 1, 1974.

Pub. L. 93-406, title II, §1022(f), Sept. 2, 1974, 88 Stat. 940, provided that: “Except as otherwise provided in section 1021, the amendments made by section 1021 [amending this section] shall apply to plan years to which part I applies. [For description of plan years to which part I applies, see section 1017 of Pub. L. 93-406, set out as an Effective Date; Transitional Rules note under section 410 of this title.] Except as otherwise provided in section 1022, the amendments made by section 1022 [amending this section and section 6051 of this title] shall apply to plan years to which part I applies. Section 1022 [amending this section] shall take effect on the date of the enactment of this Act [Sept. 2, 1974].”

Pub. L. 93-406, title II, §2001(i)(2)-(4), Sept. 2, 1974, 88 Stat. 958, provided that:

1. The amendments made by subsection (c) [amending this section] apply to—
   (A) taxable years beginning after December 31, 1975, and
   (B) any other taxable years beginning after December 31, 1973, for which contributions were made under the plan in excess of the amounts permitted to be made under sections 404(e) and 179(b) [of this title] as in effect on the date of the enactment of this Act [Sept. 2, 1974].

2. The amendments made by subsection (d) [amending this section] apply to taxable years beginning after December 31, 1975.

3. The amendments made by subsections (e) and (f) [enacting section 4972 of this title and amending this section and section 72 of this title] apply to contributions made in taxable years beginning after December 31, 1975.

4. The amendments made by subsections (e) and (f) [enacting section 4972 of this title and amending this section and section 72 of this title] apply to contributions made in taxable years beginning after December 31, 1975.

Amendment by section 2001(b)(1) of Pub. L. 93-406 applicable to taxable years ending after Sept. 2, 1974, see section 2001(b)(6) of Pub. L. 93-406, set out as a note under section 72 of this title.

Amendment by section 2001(a)(1) of Pub. L. 93-406 applicable to years beginning after Dec. 31, 1975, see section 2001(d) of Pub. L. 93-406, set out as an Effective Date; Transitional Provisions note under section 415 of this title.

**Effective Date of 1971 Amendment**

Pub. L. 91-691, §1(b), Jan. 12, 1971, 84 Stat. 2074, provided that: “The amendments made by subsection (a) [amending this section] shall apply to taxable years be-
of section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that if an event (including the occurrence of a medical expense) would constitute a hardship under the plan if it occurred with respect to the participant’s spouse or dependent (as defined in section 152 of such Code), such event shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary under the plan with respect to the participant. The Secretary of the Treasury shall issue similar rules for purposes of determining whether a participant has had—

(1) a hardship for purposes of section 403(b)(11)(B) of such Code; or

(2) an unforeseen financial emergency for purposes of sections 409A(a)(2)(A)(vi), 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such Code.

Pub. L. 107–16, title VI, §467(c)(2), June 7, 2001, 115 Stat. 136, provided that:

“(A) AUTOMATIC ROLLOVER SAFE HARBOR.—Not later than 3 years after the date of enactment of this Act [June 7, 2001], the Secretary of Labor shall prescribe regulations providing for safe harbors under which the designation of an institution and investment of funds in accordance with section 401(a)(31)(B) of the Internal Revenue Code of 1986 is deemed to satisfy the fiduciary requirements of section 404(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(a)).

(B) USE OF LOW-COST INDIVIDUAL RETIREMENT PLANS.—The Secretary of the Treasury and the Secretary of Labor may, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of transfers under section 401(a)(31)(B) of the Internal Revenue Code of 1986 and for other uses that promote the preservation of assets for retirement income purposes.

Pub. L. 99–514, title XI, §1141, Oct. 22, 1986, 100 Stat. 2490, provided that: ‘‘The Secretary of the Treasury or his delegate shall issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by—

(1) section 1111 (amending this section), relating to application of nondiscrimination rules to integrated plans

(2) section 1112 (amending this section and sections 402, 404, 406, 407, 410, and 818 of this title), relating to coverage requirements for qualified plans,

(3) section 1113 (amending sections 410 and 411 of this title and sections 1052 to 1054 of Title 29, Labor), relating to minimum vesting standards,

(4) section 1114 (amending this section, sections 106, 117, 129, 127, 129, 274, 404A, 406, 409, 411, 414, 415, 423, 501, 505, and 4975 of this title, and section 1108 of Title 29), relating to the definition of highly compensated employee,

(5) section 1115 (amending section 414 of this title), relating to separate lines of business and the definition of compensation,

(6) section 1116 (amending this section), relating to rules for section 401(k) plans,

(7) section 1117 (enacting section 4797 of this title and amending this section and section 414 of this title), relating to nondiscrimination requirements for employer matching and employer contribution,

(8) section 1120 (amending section 403 of this title), relating to nondiscrimination requirements for tax sheltered annuities, and

(9) section 1133 (enacting section 4981A [now 4980A] of this title), relating to tax on excess distributions.’’

SPECIAL RULES FOR MULTIPLE EMPLOYER PLANS OF CERTAIN COOPERATIVES


“(a) GENERAL RULE.—Except as provided in this section, if a plan in existence on July 26, 2005, was an eligible cooperative plan or an eligible charity plan for its plan year which includes such date, the amendments made by this subtitle [subtitle A (§§101 to 108) of title
I of Pub. L. 109–280, enacting sections 1082 and 1083 of Title 29, Labor, amending sections 1021, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1303, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of Title 78, Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and as a note under section 1001 of Title 29, and repealing sections 1057, 1082 to 1086 of Title 29 and subtitle B [subtitle B (title 29 U.S.C.)] of title I of Pub. L. 109–280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title [shall not apply to plan years beginning before the earlier of—

(1) the first plan year for which the plan ceases to be an eligible cooperative plan or an eligible charity plan, or

(2) January 1, 2017.

(b) Interest Rate.—In applying section 302(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(b)(5)(B)] and section 412(b)(5)(B) of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle and subtitle B) to an eligible cooperative plan or an eligible charity plan for plan years beginning after December 31, 2007, and before the first plan year to which such amendments apply, the third segment rate determined under section 303(b)(2)(C)(iii) of such Act [29 U.S.C. 1083(b)(2)(C)(iii)] and section 430(b)(2)(C)(iii) of such Code (as added by such amendments) shall be used in lieu of the interest rate otherwise determined.

(c) Eligible Cooperative Plan Defined.—For purposes of this section, a plan shall be treated as an eligible cooperative plan for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are—

(1) rural cooperatives (as defined in section 401(k)(7)(B) of such Code without regard to clause (iv) thereof), or

(2) organizations which are—

(A) cooperative organizations described in section 1361(a) of such Code which are more than 50 percent owned by agricultural producers or by cooperatives owned by agricultural producers, or

(B) more than 50 percent owned, or controlled by, one or more cooperative organizations described in subparagraph (A).

A plan shall also be treated as an eligible cooperative plan for any plan year for which it is described in section 210(a) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1060(a)] and is maintained by a rural telephone cooperative association described in section 340(b)(v) of such Act [29 U.S.C. 1082(b)(5)(B)].

(d) Eligible Charity Plan Defined.—

(1) In General.—For purposes of this section, a plan shall be treated as an eligible charity plan for a plan year if the plan is maintained by more than one employer (determined without regard to section 414(c) of the Internal Revenue Code) and 100 percent of the employers are described in section 501(c)(3) of such Code.

(2) Election Not to Be an Eligible Charity Plan.—A plan sponsor may elect for a plan to cease to be treated as an eligible charity plan for plan years beginning after December 31, 2013. Such election shall be made at such time and in such form and manner as shall be prescribed by the Secretary of the Treasury. Any such election may be revoked only with the consent of the Secretary of the Treasury.

(B) Under the rules described in this subparagraph, for the first plan year beginning after December 31, 2013, a plan has—

(i) an 11-year shortfall amortization base, and

(ii) a 12-year shortfall amortization base, and

(iii) a 7-year shortfall amortization base.

(c) Under the rules described in this subparagraph, section 303(c)(7) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(7)] and section 430(c)(7) of the Internal Revenue Code of 1986 shall apply to a plan for which an election has been made under subparagraph (A). Such provisions shall apply in the following manner:

(i) The first plan year beginning after December 31, 2013, shall be treated as an election year, and no other plan years shall be so treated.

(ii) All references in section 303(c)(7) of such Act [29 U.S.C. 1083(c)(7)] and section 430(c)(7) of the Internal Revenue Code of 1986 to 'February 28, 2010' or 'March 1, 2010' shall be treated as references to 'February 28, 2013' or 'March 1, 2013', respectively.

(iii) For purposes of this paragraph, the 11-year amortization base is an amount, determined for the first plan year beginning after December 31, 2013, equal to the unamortized principal amount of the shortfall amortization base (as defined in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(3)] and section 430(c)(3) of the Internal Revenue Code of 1986) that would have applied to the plan for the first plan year beginning after December 31, 2009, if—

(1) the plan had never been an eligible charity plan.

(iv) The plan sponsor had made the election described in section 303(c)(2)(D)(i) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(2)(D)(i)] and in section 430(c)(2)(D)(i) of the Internal Revenue Code of 1986 to have section 303(c)(2)(D)(i) of such Act and section 430(c)(2)(D)(i) of such Code apply with respect to the shortfall amortization base for the first plan year beginning after December 31, 2009, and

(v) no event had occurred under paragraph (6) or (7) of section 303(c) of such Act [29 U.S.C. 1083(c)(6), (7)] or paragraph (6) or (7) of section 430(c) of such Code that, as of the first day of the first plan year beginning after December 31, 2013, would have modified the shortfall amortization base or the shortfall amortization installments with respect to the first plan year beginning after December 31, 2009.

(F) For purposes of this paragraph, the 12-year amortization base is an amount, determined for the first plan year beginning after December 31, 2013, equal to the unamortized principal amount of the shortfall amortization base (as defined in section 303(c)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(3)] and section 430(c)(3) of the Internal Revenue Code of 1986) that would have applied to the plan for the first plan year beginning after December 31, 2010, if—

(1) the plan had never been an eligible charity plan.

(2) the plan sponsor had made the election described in section 303(c)(2)(D)(i) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(c)(2)(D)(i)] and in section 430(c)(2)(D)(i) of the
Internal Revenue Code of 1986 to have section 303(c)(2)(D)(i) of such Act and section 430(c)(2)(D)(iii) of such Code apply with respect to the
shortfall amortization base for the first plan year beginning after December 31, 2010, and
"(iii) no event had occurred under paragraph (6)
or (7) of section 303(c) of such Act [29 U.S.C. 1082(c)(6), (7)] or paragraph (6) or (7) of section
430(c) of such Code that, as of the first day of the first plan year beginning after December 31, 2013,
would have modified the shortfall amortization base or the shortfall amortization installments
with respect to the first plan year beginning after December 31, 2010.
"(G) For purposes of this paragraph, the 7-year
shortfall amortization base is an amount, determined
for the first plan year beginning after December 31, 2013, equal to
"(i) the sum of the 11-year shortfall amortization
base and the 12-year shortfall amortization base.
"(4) RETROACTIVE ELECTION.—Not later than Decem-
ber 31, 2014, a plan sponsor may make a one-time, ir-
revocable, retroactive election to not be treated as an
eligible charity plan. Such election shall be effective
for plan years beginning after December 31, 2007, and
shall be made by providing reasonable notice to the
Secretary of the Treasury.
Stat. 1299, provided that: “The amendments made by
subsection (b) [amending section 104 of Pub. L. 109–280,
set out above] shall apply to plan years beginning after
December 31, 2007, except that a plan sponsor may elect
to apply such amendments to plan years beginning after
December 31, 2008. Any such election shall be
made at such time, and in such form and manner, to
shall be prescribed by the Secretary of the Treasury,
and may be revoked only with the consent of the Sec-
retary of the Treasury.”]
TEMPORARY RELIEF FOR CERTAIN PBGC SETTLEMENT
PLANS
817, provided that:
"(a) GENERAL RULE.—Except as provided in this sec-
"tion, if a plan in existence on July 26, 2005, was a PBGC
settlement plan and—
"(1) which was sponsored by an employer which was
in bankruptcy, giving rise to a claim by the Pension
Benefit Guaranty Corporation of not greater than
$150,000,000, and the sponsorship of which was as-
sumed by another employer that was not a member of
the same controlled group as the plan sponsor and
the claim of the Pension Benefit Guaranty Corpor-
ation was settled or withdrawn in connection with
the assumption of the sponsorship, or
"(2) which, by agreement with the Pension Benefit
Guaranty Corporation, was spun off from a plan sub-
sequently terminated by such Corporation under sec-
"tion 4042 of the Employee Retirement Income Secu-
"rity Act of 1974 (29 U.S.C. 1442),
SPECIAL RULES FOR PLANS OF CERTAIN GOVERNMENT
CONTRACTORS
817, provided that:
"(a) GENERAL RULE.—Except as provided in this sec-
tion, if a plan is an eligible government contractor
plan, this subtitle [subtitle A (§§101 to 108) of title I of
Pub. L. 109–280, enacting sections 1082 and 1083 of Title
29, Labor, amending sections 1021, 1023, 1053, 1054, 1056,
1064, 1123, 1128, 1198, 1199, 1301, 1309, 1310, 1311, 1312,
was a PBGC settlement plan for plan years beginning
Any such election shall be
made at such time, and in such form and manner, to
shall be prescribed by the Secretary of the Treasury,
and may be revoked only with the consent of the Sec-
retary of the Treasury.”
"(b) INTEREST RATE.—In applying section 302(b)(5)(B)
of the Internal Revenue Code of 1986 (as in effect before
the amendments made by this subtitle and subtitle B)
to an eligible government contractor plan for plan
years beginning after December 31, 2007, and before the
first plan year to which such amendments apply,
the third segment rate determined under section
303(b)(2)(C)(i) of such Act [29 U.S.C. 1083(b)(2)(C)(i)]
and section 430(b)(2)(C)(i) of such Code (as added by
such amendments) shall be used in lieu of the interest
rate otherwise used.
"(c) PBGC SETTLEMENT PLAN.—For purposes of this
section, the term “PBGC settlement plan” means a de-
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APPLICATION OF EXTENDED AMORTIZATION PERIODS TO PLANS WITH DELAYED EFFECTIVE DATE

Pub. L. 119-280, title I, §107, as added by Pub. L. 111-192, title II, §4202(a), June 25, 2010, 124 Stat. 1297, provided that:

“(a) IN GENERAL.—If the plan sponsor of a plan to which section 1001 or 106 of this Act [see notes above] applies elects to have this section apply for any eligible plan year (in this section referred to as an ‘election year’), section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and section 412 of the Internal Revenue Code of 1986 (as in effect before the amendments made by this subtitle [subtitle A (§§101 to 106) of title I of Pub. L. 119-280, enacting sections 1025 and 1033 of Title 29, Labor, amending sections 1023, 1023, 1053, 1054, 1056, 1103, 1108, 1132, 1301, 1363, 1310, 1362, 1371, and 1423 of Title 29 and section 106 of Title 1978 Reorg. Plan No. 4, set out in the Appendix to Title 5, Government Organization and Employees, and applying in a plan as a note under section 1001 of Title 29, and repealing sections 1057, 1062 to 1066 of Title 29) and subtitle B [subtitle B (§§111 to 116) of title I of Pub. L. 119-280, enacting sections 430 and 436 of this title, amending this section and sections 409A, 411, 412, 414, 420, 4971, 4972, and 6059 of this title, and amending provisions set out as a note under section 412 of this title) shall apply to such plan in the manner described in subsection (b) or (c), whichever is specified in the election. All references in this section to such Act or such Code shall be to such Act or such Code as in effect before the amendments made by this subtitle and subtitle B.

“(b) APPLICATION OF 2 AND 7 RULE.—In the case of an election year to which this subsection applies—

“(1) 2-YEAR LOOKBACK FOR DETERMINING DEFICIT REDUCTION CONTRIBUTIONS FOR CERTAIN PLANS.—For purposes of applying section 302(d)(9) of such Act [29 U.S.C. 1082(d)(9)] and section 412(l)(9) of such Code, the funded current liability percentage (as defined in subparagraph (C) thereof) for such plan for the second plan year preceding the first election year of such plan.

“(2) CALCULATION OF DEFICIT REDUCTION CONTRIBUTION.—For purposes of applying section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(l) of such Code to a plan to which such subsections apply (after taking into account paragraph (1))—

“(A) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act [29 U.S.C. 1082(d)(4)(C)] and section 412(l)(4)(C) of such Code shall be the third segment rate described in sections 109(b), 105(b), and 106(b) of this Act [see notes above], and

“(B) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

“(c) APPLICATION OF 15-YEAR AMORTIZATION.—In the case of an election year to which this subsection applies, for purposes of applying section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(l) of such Code—

“(1) in the case of the increased unfunded new liability of the plan, the applicable percentage described in section 302(d)(4)(C) of such Act [29 U.S.C. 1082(d)(4)(C)] and section 412(l)(4)(C) of such Code for any pre-effective date plan year beginning with or after the first election year shall be the ratio of—

*(a) the annual installments payable in each year if the increased unfunded new liability for such plan year were amortized over 15 years, using an interest rate equal to the third segment rate described in sections 109(b), 105(b), and 106(b) of this Act, to

*(b) the increased unfunded new liability for such plan year, and

“(2) in the case of the excess of the unfunded new liability over the increased unfunded new liability, such applicable percentage shall be determined without regard to this section.

“(d) ELECTION.—

“(1) IN GENERAL.—The plan sponsor of a plan may elect to have this section apply to any eligible plan year in the manner described in subsection (b) or (c) shall apply to an election year, except that if a plan sponsor elected to have this section apply to 2 eligible plan years, the plan sponsor must elect the same rule for both years.

“(2) AMORTIZATION SCHEDULE.—Such election shall specify whether the rule of subsection (b) or (c) shall apply to an election year, except that if a plan sponsor elected to have this section apply to 2 eligible plan years, the plan sponsor must elect the same rule for both years.

“(3) OTHER RULES.—Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury.

(e) DEFINITIONS.—For purposes of this section—

“(1) ELIGIBLE PLAN YEAR.—The term ‘eligible plan year’ means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year beginning in 2008 shall only be treated as an eligible plan year if the due date for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subsection.

“(2) PRE-EFFECTIVE DATE PLAN YEAR.—The term ‘pre-effective date plan year’ means, with respect to a plan, any plan year prior to the first year in which the amendments made by this subtitle and subtitle B apply to the plan.

“(3) INCREASED UNFUNDED NEW LIABILITY.—The term ‘increased unfunded new liability’ means, with respect to a year, the excess (if any) of the unfunded new liability over the amount of unfunded new liability determined as if the value of the plan’s assets determined under subsection 302(c)(2) of such Act [29 U.S.C. 1082(c)(2)] and section 412(c)(2) of such Code equaled the product of the current liability of the plan for the year multiplied by the funded current liability percentage (as defined in section 302(d)(4)(B) of such Act [29 U.S.C. 1082(d)(4)(B)] and section 412(l)(4)(C) of such Code) of the plan for the second plan year preceding the first election year of such plan.

“(4) OTHER DEFINITIONS.—The terms ‘unfunded new liability’ and ‘current liability’ shall have the meanings set forth in section 302(d) of such Act [29 U.S.C. 1082(d)] and section 412(l) of such Code.”

GRANDFATHER RULE FOR CHURCH PLANS WHICH SELF-ANNUITIZE

Pub. L. 119-280, title VIII, §865, Aug. 17, 2006, 120 Stat. 1025, provided that:

“(A) IN GENERAL.—In the case of any plan year ending after the date of the enactment of this Act [Aug. 17, 2006], annuity payments provided with respect to any account maintained for a participant or beneficiary under a qualified church plan shall not fail to satisfy the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 merely because the payments are not made under an annuity contract purchased from an insurance company if such payments would not fail such requirements if provided with respect to a retirement income account described in section 403(b)(9) of such Code.

“(b) QUALIFIED CHURCH PLAN.—For purposes of this section, the term ‘qualified church plan’ means any money purchase pension plan described in section 401(a) of such Code which—

“(1) is a church plan (as defined in section 414(e) of such Code) with respect to which the election pro-
vided by section 410(d) of such Code has not been made, and
"(2) was in existence on April 17, 2002."

NEW TECHNOLOGIES IN RETIREMENT PLANS
1068, provided that:
"(a) IN GENERAL.—Not later than December 31, 1998, the Secretary of the Treasury and the Secretary of Labor shall each issue guidance which is designed to—
"(1) interpret the notice, election, consent, disclosure, and time requirements (and related record-keeping requirements) under the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] relating to retirement plans as applied to the use of new technologies by plan sponsors and administrators while maintaining the protection of the rights of participants and beneficiaries, and
"(2) clarify the extent to which writing requirements under the Internal Revenue Code of 1986 relating to retirement plans shall be interpreted to permit paperless transactions.

"(b) APPLICABILITY OF FINAL REGULATIONS.—Final regulations applicable to the guidance regarding new technologies described in subsection (a) shall not be effective until the first plan year beginning at least 6 months after the issuance of such final regulations."

TREATMENT OF QUALIFIED FOOTBALL COACHES PLAN
1082, provided that:
"(1) IN GENERAL.—For purposes of the Internal Revenue Code of 1986, a qualified football coaches plan—
"(A) shall be treated as a multiemployer collectively bargained plan, and
"(B) notwithstanding section 401(k)(4)(B) of such Code, may include a qualified cash and deferred arrangement under section 401(k) of such Code.

"(2) QUALIFIED FOOTBALL COACHES PLAN.—For purposes of this subsection, the term ‘qualified football coaches plan’ means any defined contribution plan which is established and maintained by an organization which—
"(A) which is described in section 501(c) of such Code,
"(B) the membership of which consists entirely of individuals who primarily coach football as full-time employees of 4-year colleges or universities described in section 170(b)(1)(A)(ii) of such Code, and
"(C) which was in existence on September 18, 1986.

"(3) EFFECTIVE DATE.—This subsection shall apply to plan years beginning after December 22, 1987."

APPLICABILITY OF SUBSECTION (a)(26)
3702, provided that: "In the case of plan years beginning before January 1, 1993, section 401(a)(26) of the 1986 Code shall not apply to any governmental plan (within the meaning of section 414(d) of such Code) with respect to employees who were participants in such plan on July 14, 1988."

COORDINATION OF INTERNAL REVENUE CODE OF 1986 WITH EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974
1339-372, provided that: "Except to the extent specifically provided in the Internal Revenue Code of 1986 or as determined by the Secretary of the Treasury, titles I and IV of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq., 1301 et seq.] are not applicable in interpreting such Code."

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998
1825, provided that: "If any amendment made by this subtitle [subtitle D (§§1440-1465)] of title I of Pub. L. 104-188, see Tables for classification] requires 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 January 1, 1998, if—
"(1) during the period after such amendment takes effect and before such first plan year, the plan or contract is operated in accordance with the requirements of such amendment, and
"(2) such plan amendment applies retroactively to such period.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this section shall be applied by substituting ‘2000’ for ‘1998.’"

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1994
Pub. L. 102-318, title V, §523, July 3, 1992, 106 Stat. 315, provided that: "If any amendment made by this title [subtitle B (§§521-523) of title V of Pub. L. 102-318, amending this section and sections 55, 62, 72, 219, 402 to 404, 406 to 408, 411, 414, 415, 457, 691, 671, 877, 1441, 3121, 3106, 3402, 3405, 4973, 4980A, 6047, 6652, and 7701 of this title] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1994, if—

"(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and
"(2) such plan amendment applies retroactively to such period.”

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989
"(a) IN GENERAL.—If any amendment made by this title [subtitle C (subtitles A (§§1101-1147) and C (§§1171-1177) of title XI of Pub. L. 99-514, enacting sections 2607, 4972, 4973, 4980A, and 6693A of this title and amending sections 38, 56, 72, 106, 108, 117, 120, 127, 129, 132, 133, 219, 274, 402 to 404A, 406 to 411, 414 to 417, 423, 457, 601, 656, 832, 3211, 3306, 3405, 4973 to 4975, 4978A, 6051, 6693, and 7701 of this title, and sections 1052 to 1055 and 1108 of Title 29, Labor, repealing sections 41 and 6699 of this title, and amending provisions set out as a note under section 1001 of Title 29, or title XVIII of this Act [see Tables for classification] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

"(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment or in accordance with an amendment prescribed by the Secretary and adopted by the plan, and
"(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

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

"(b) MODEL AMENDMENT.—

"(1) SECRETARY TO PRESCRIBE AMENDMENT.—The Secretary of the Treasury or his delegate shall prescribe an amendment or amendments which allow a plan to meet the requirements of any amendment made by this subtitle or subtitle C—

"(A) which requires an amendment to such plan, and
"(B) is effective before the first plan year beginning after December 31, 1988.
“(2) ADOPTION BY PLAN.—If a plan adopts the amendment or amendments prescribed under paragraph (1) and operates in accordance with such amendment or amendments, such plan shall not be treated as failing to provide definitely determinable benefits or contributions or to be operated in accordance with the provisions of the plan.

(c) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, subsection (a) shall be applied by substituting for the first plan year beginning on or after January 1, 1989, the first plan year beginning after the later of—

“(1) December 31, 1986, or

“(2) the earlier of—

“(A) December 31, 1990, or

“(B) the date on which the last of such collective bargaining agreements terminates (without regard to any extension after February 28, 1986).

For purposes of paragraph (1)(B) [(2)(B)] and any other provision of this title [see Tables for classification], an agreement shall not be treated as terminated merely because the plan is amended pursuant to such agreement to meet the requirements of any amendment made by this title or title XVIII of this Act.”

SECRETARY TO ACCEPT APPLICATIONS WITH RESPECT TO SECTION 401(k) PLANS


TREATMENT OF INDIVIDUALS HAVING BEGINNING DATE AFFECTED BY PLAN

Pub. L. 99–514, title XVIII, §1852(a)(4)(C), as added by Pub. L. 100–647, title I, §1018(a)(3)(A), Nov. 10, 1988, 102 Stat. 3888, provided that: “An individual whose required beginning date would, but for the amendment made by subparagraph (A) [amending this section], occur after December 31, 1986, but whose required beginning date occurs before January 1, 1987, shall be treated as if such individual had become a 5-percent owner during the plan year ending in 1986.”

DISTRIBUTION REQUIREMENTS FOR ACCOUNTS AND ANNUITIES OF AN INSURER IN A REHABILITATION PROCEEDING


“(a) IN GENERAL.—For purposes of sections 401(a)(9), 403(b)(3) and (7), and 408(b)(3) and (4) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]—

“(1) a trust, custodial account, or annuity or other contract forming part of a pension or profit-sharing plan, or a retirement annuity, or

“(2) a grantor of an individual retirement account or an individual retirement annuity, shall not be treated as failing to meet the requirements of such sections if such account, annuity, or contract was issued by an insurance company which, on March 15, 1984, was a party to a rehabilitation proceeding under the applicable State insurance law.

“(b) LIMITATION.—Subsection (a) shall apply only during the period during which—

“(1) the insurance company continues to be a party to the proceeding described in subsection (a), and

“(2) distributions under the trust, custodial account, or annuity or other contract may not be made by reason of such proceeding.”

QUALIFICATION REQUIREMENTS MODIFIED IF REGULATIONS NOT ISSUED


“(1) IN GENERAL.—If the Secretary of the Treasury or his delegate does not publish final regulations under section 415 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) before January 1, 1985, the Secretary shall publish before such date plan amendment provisions which may be incorporated in a plan to meet the requirements of section 401(a)(10)(B)(ii) of such Code.

“(2) EFFECT OF INCORPORATION.—If a plan is amended to incorporate the plan amendment provisions described in paragraph (1), such plan shall be treated as meeting the requirements of sections 401(a)(10)(B)(ii) of the Internal Revenue Code of 1986 during the period such amendment is in effect but not later than 6 months after the final regulations described in paragraph (1) are published.

“(3) FAILURE BY SECRETARY TO PUBLISH.—If the Secretary of the Treasury or his delegate does not publish plan amendment provisions described in paragraph (1), the plan shall be treated as meeting the requirements of section 401(a)(10)(B) of the Internal Revenue Code of 1986 if—

“(A) such plan is amended to incorporate such requirements by reference, except that

“(B) in the case of any optional requirement under section 416 of such Code, if such amendment does not specify the manner in which such requirement will be met, the employer shall be treated as having elected the requirement with respect to each employee which provides the maximum vested accrued benefit for such employee.”

TRANSITIONAL RULE


“(A) the qualification of the plan and the trust under section 401 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954];

“(B) the exemption of the trust under section 501(a) of such Code;

“(C) the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust; and

“(D) the excludability of the interest of the employee in the trust under sections 2039 and 2517 of such Code, shall be determined for plan years beginning before January 1, 1980 in a manner consistent with Revenue Ruling 56–497 (1956–2 C.B. 284), Revenue Ruling 63–180 (1963–2 C.B. 189), and Revenue Ruling 68–89 (1968–1 C.B. 402).”

SALARY REDUCTION REGULATIONS


“(a) INCLUSION OF CERTAIN CONTRIBUTIONS IN INCOME.—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1980, to an employees’ trust described in section 401(a), 403(a) or 406(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the em-
employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

(b) Administration in the case of certain qualified profit-sharing plans, etc., in existence on June 27, 1974.—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1980, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

``(1) provided for contributions to an employee’s trust described in section 401(a), 403(a), or 405(a) of the Internal Revenue Code of 1986 [subsec. (a) of this section, section 403(a) of this title, or section 405(a) of this title] which is exempt from tax under section 501(a) of such Code [section 501(a) of this title], or

``(2) was maintained as part of an arrangement under which an employee was permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986 [this title]."

(c) Administration of law with respect to certain plans.—

``(1) Administration in the case of plans described in subsection (b).—Until salary reduction regulations have been issued in final form, the law with respect to plans or arrangements described in subsection (b) shall be administered—

``(A) without regard to the proposed salary reduction regulations (37 FR 25938) and without regard to any other proposed salary reduction regulations, and

``(B) in the manner in which such law was administered before January 1, 1972.

``(2) Administration in the case of qualified profit-sharing plans.—In the case of plans or arrangements described in subsection (b), in applying this section to the tax treatment of contributions to qualified profit-sharing plans where the contributed amounts are distributable only after a period of deferral, the law shall be administered in a manner consistent with—

``(A) Revenue Ruling 56–497 (1956–2 C.B. 284),

``(B) Revenue Ruling 63–180 (1963–2 C.B. 189), and

``(C) Revenue Ruling 68–89 (1968–1 C.B. 802).

``(3) Administration in retroactivity of final regulations.—In the case of any salary reduction regulations which become final after December 31, 1979—

``(1) for purposes of chapter 1 of the Internal Revenue Code of 1986 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1980; and

``(2) for purposes of chapter 21 of such Code (relating to Federal Insurance Contributions Act) and for purposes of chapter 24 of such Code (relating to collection of income tax at source on wages), such regulations shall not apply before the day on which such regulations are issued in final form.

``(e) Salary reduction regulations defined.—For purposes of this section, the term ‘salary reduction regulations’ means regulations dealing with the includability in gross income (at the time of contribution) of amounts contributed to a plan which includes a trust that qualifies under section 401(a) [subsec. (a) of this section], or a plan described in section 403(a) or 405(a), including plans or arrangements described in subsection (b)(2), if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation, or under an arrangement under which the employee is permitted to elect to receive part of his compensation in one or more alternative forms if one of such forms results in the inclusion of amounts in income under the Internal Revenue Code of 1986.""

[Pub. L. 95–613, §210(b), Nov. 8, 1978, 92 Stat. 3199, provided that: “Section 5 of this Act [amending section 401(a) of the Internal Revenue Code of 1954, set out above] shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978 [Pub. L. 95–600, see Short Title of 1978 Amendment note set out under section 1 of this title].”]

Inflation Adjusted Items for Certain Years

Provisions relating to inflation adjustment of items in sections 25B, 45A, 219, 401, 402, 404, 408, 408A, 409, 414 to 416, 430, 432, 457, and 664 of this title for certain years were contained in the following:

2018—Internal Revenue Notice 2017–64.
2016—Internal Revenue Notice 2015–75.
2015—Internal Revenue Notice 2014–70.
2012—Internal Revenue Notice 2011–90.
2011—Internal Revenue Notice 2010–78.
2010—Internal Revenue Notice 2009–94.
1999—Internal Revenue Notice 98–53.
1998—Internal Revenue Notice 97–58.

§ 402. Taxability of beneficiary of employees’ trust

(a) Taxability of beneficiary of exempt trust

Except as otherwise provided in this section, any amount actually distributed to any distributee by any employees’ trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

(b) Taxability of beneficiary of nonexempt trust

(1) Contributions

Contributions to an employees’ trust made by an employer during a taxable year of the employer which ends with or within a taxable year of the trust for which the trust is not exempt from tax under section 501(a) shall be included in the gross income of the employee in accordance with section 83 (relating to property transferred in connection with performance of services), except that the value of the employee’s interest in the trust shall be substituted for the fair market value of the property for purposes of applying such section.

(2) Distributions

The amount actually distributed or made available to any distributee by any trust described in paragraph (1) shall be taxable to the distributee, in the taxable year in which so distributed or made available, under section 72 (relating to annuities), except that distributions of income of such trust before the annuity starting date (as defined in section 72(c)(4)) shall be included in the gross income of the employee without regard to section 72(e)(5) (relating to amounts not received as annuities).

(3) Grantor trusts

A beneficiary of any trust described in paragraph (1) shall not be considered the owner of