

(5) *Mandatory distribution rules not to apply before death*

Notwithstanding sections 403(b)(10) and 457(d)(2), the following provisions shall not apply to any designated Roth account:

(A) *Section 401(a)(9)(A).*

(B) *The incidental death benefit requirements of section 401(a).*

See 2022 Amendment note below.

Editorial Notes

REFERENCES IN TEXT

Section 403(b)(7)(A)(ii), referred to in subsec. (c)(4)(E)(iii), probably means section 403(b)(7)(A)(ii) of this title prior to amendment by Pub. L. 116–94, div. O, title I, § 109(c)(2), Dec. 20, 2019, 133 Stat. 3151.

AMENDMENTS

2022—Subsec. (a). Pub. L. 117–328, § 604(a), added pars. (2) and (3) and redesignated former par. (2) as (4).

Subsec. (b)(1). Pub. L. 117–328, § 604(b), inserted “, or to have made on the employee’s behalf,” after “elect to make” and “, or of matching contributions or nonelective contributions which may otherwise be made on the employee’s behalf,” after “otherwise eligible to make”.

Subsec. (c)(1). Pub. L. 117–328, § 604(c), inserted “, matching contribution, or nonelective contribution” after “elective deferral” in introductory provisions.

Subsec. (d)(5). Pub. L. 117–328, § 325(a), added par. (5).
Subsec. (e). Pub. L. 117–328, § 127(e)(1), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(3). Pub. L. 117–328, § 604(d), which amended subsec. (f), “as redesignated by this Act”, by adding par. (3), applicable to contributions made after Dec. 29, 2022, is shown here with par. (3) added to subsec. (e), because the amendment by Pub. L. 117–328, § 127(e)(1), redesignating subsec. (e) as (f), applicable to plan years beginning after Dec. 31, 2023, has not yet been executed.

Subsec. (f). Pub. L. 117–328, § 127(e)(1), redesignated subsec. (e) as (f).

2014—Subsec. (c)(4)(E)(iii). Pub. L. 113–295 substituted “403(b)(7)(A)(ii)” for “403(b)(7)(A)(i)”.

2013—Subsec. (c)(4)(E). Pub. L. 112–240 added subpar. (E).

2010—Subsec. (c)(4). Pub. L. 111–240, § 2112(a), added par. (4).

Subsec. (e)(1)(C). Pub. L. 111–240, § 2111(a), added subpar. (C).

Subsec. (e)(2). Pub. L. 111–240, § 2111(b), amended par. (2) generally. Prior to amendment, text read as follows: “The term ‘elective deferral’ means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3).”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by section 127 of Pub. L. 117–328 applicable to plan years beginning after Dec. 31, 2023, see section 127(g) of Pub. L. 117–328, set out as a note under section 72 of this title.

Pub. L. 117–328, div. T, title III, § 325(b), Dec. 29, 2022, 136 Stat. 5359, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2023.

“(2) SPECIAL RULE.—The amendment made by this section shall not apply to distributions which are required with respect to years beginning before January 1, 2024, but are permitted to be paid on or after such date.”

Pub. L. 117–328, div. T, title VI, § 604(e), Dec. 29, 2022, 136 Stat. 5393, provided that: “The amendments made by this section [amending this section] shall apply to contributions made after the date of the enactment of this Act [Dec. 29, 2022].”

EFFECTIVE DATE OF 2013 AMENDMENT

Pub. L. 112–240, title IX, § 902(b), Jan. 2, 2013, 126 Stat. 2371, provided that: “The amendment made by this section [amending this section] shall apply to transfers after December 31, 2012, in taxable years ending after such date.”

EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111–240, title II, § 2111(c), Sept. 27, 2010, 124 Stat. 2566, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2010.”

Pub. L. 111–240, title II, § 2112(b), Sept. 27, 2010, 124 Stat. 2566, provided that: “The amendments made by this section [amending this section] shall apply to distributions after the date of the enactment of this Act [Sept. 27, 2010].”

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2005, see section 617(f) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 402 of this title.

REGULATORY AUTHORITY

Pub. L. 117–328, div. T, title I, § 127(f), Dec. 29, 2022, 136 Stat. 5329, provided that: “The Secretary of Labor and the Secretary of the Treasury (or a delegate of either such Secretary) shall have authority to issue regulations or other guidance, and to coordinate in developing regulations or other guidance, to carry out the purposes of this Act [div. T of Pub. L. 117–328, see Tables for classification], including—

“(1) adjustment of the limitation under section 801(d)(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1193(d)(1)] and section 402A(e)(3) of the Internal Revenue Code of 1986, as added by this Act, to account for inflation;

“(2) expansion of corrections programs, if necessary;

“(3) model plan language and notices relating to pension-linked emergency savings accounts; and

“(4) with regard to interactions with section 401(k)(13) of the Internal Revenue Code of 1986.”

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

(1) Distributee taxable under section 72

If an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the amount actually distributed to any distributee under the contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities).

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Self-employed individuals

For purposes of this subsection, the term “employee” includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer under section 401(c)(4).

(4) Rollover amounts**(A) General rule**

If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7) and (11) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

(5) Direct trustee-to-trustee transfer

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of such transfer.

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school**(1) General rule**

If—

(A) an annuity contract is purchased—

(i) for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),

(ii) for an employee (other than an employee described in clause (i)), who performs services for an educational organization described in section 170(b)(1) (A)(ii), by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing, or

(iii) for the minister described in section 414(e)(5)(A) by the minister or by an employer,

(B) such annuity contract is not subject to subsection (a),

(C) the employee's rights under the contract are nonforfeitable, except for failure to pay future premiums,

(D) except in the case of a contract purchased by a church, such contract is purchased under a plan which meets the non-discrimination requirements of paragraph (12), and

(E) in the case of a contract purchased under a salary reduction agreement, the contract meets the requirements of section 401(a)(30),

then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and addi-

tions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.

(2) Special rule for health and long-term care insurance

To the extent provided in section 402(l), paragraph (1) shall not apply to the amount distributed under the contract which is otherwise includible in gross income under this subsection.

(3) Includible compensation

For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service, and which precedes the taxable year by no more than five years. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies. Such term includes—

(A) any elective deferral (as defined in section 402(g)(3)), and

(B) any amount which is contributed or deferred by the employer at the election of the employee and which is not includible in the gross income of the employee by reason of section 125, 132(f)(4), or 457.

(4) Years of service

In determining the number of years of service for purposes of this subsection, there shall be included—

(A) one year for each full year during which the individual was a full-time employee of the organization purchasing the annuity for him, and

(B) a fraction of a year (determined in accordance with regulations prescribed by the Secretary) for each full year during which such individual was a part-time employee of such organization and for each part of a year during which such individual was a full-time or part-time employee of such organization.

In no case shall the number of years of service be less than one.

(5) Application to more than one annuity contract

If for any taxable year of the employee this subsection applies to 2 or more annuity contracts purchased by the employer, such contracts shall be treated as one contract.

[(6) Repealed. Pub. L. 107-147, title IV, § 411(p)(2), Mar. 9, 2002, 116 Stat. 50]

(7) Custodial accounts

(A) Amounts paid treated as contributions

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if the amounts are to be held in that custodial account and are invested in regulated investment company stock or a group trust intended to satisfy the requirements of Internal Revenue Service Revenue Ruling 81-100 (or any successor guidance), and under the custodial account—

(i) no such amounts may be paid or made available to any distributee (unless such amount is a distribution to which section 72(t)(2)(G) applies) before—

(I) the employee dies,

(II) the employee attains age 59½,

(III) the employee has a severance from employment,

(IV) the employee becomes disabled (within the meaning of section 72(m)(7)),

(V) in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), the employee encounters financial hardship, or

(VI) except as may be otherwise provided by regulations, with respect to amounts invested in a lifetime income investment (as defined in section 401(a)(38)(B)(ii)), the date that is 90 days prior to the date that such lifetime income investment may no longer be held as an investment option under the contract, and

(ii) in the case of amounts described in clause (i)(VI), such amounts will be distributed only in the form of a qualified distribution (as defined in section 401(a)(38)(B)(i)) or a qualified plan distribution annuity contract (as defined in section 401(a)(38)(B)(iv)).

(B) Account treated as plan

For purposes of this title, a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as an organization described in section 401(a) solely for purposes of subchapter F and subtitle F with respect to amounts received by it (and income from investment thereof).

(C) Regulated investment company

For purposes of this paragraph, the term “regulated investment company” means a domestic corporation which is a regulated investment company within the meaning of section 851(a).

(D) Employee certification

In determining whether a distribution is upon the financial hardship of an employee, the administrator of the plan may rely on a written certification by the employee that the distribution is—

(i) on account of a financial need of a type which is deemed in regulations prescribed by the Secretary to be an immediate and heavy financial need, and

(ii) not in excess of the amount required to satisfy such financial need, and

that the employee has no alternative means reasonably available to satisfy such financial need. The Secretary may provide by regulations for exceptions to the rule of the preceding sentence in cases where the plan administrator has actual knowledge to the contrary of the employee’s certification, and for procedures for addressing cases of employee misrepresentation.

(8) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)),

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

The rules of paragraphs (2) through (7), (9), and (11) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

(9) Retirement income accounts provided by churches, etc.

(A) Amounts paid treated as contributions

For purposes of this title—

(i) a retirement income account shall be treated as an annuity contract described in this subsection, and

(ii) amounts paid by an employer described in paragraph (1)(A) to a retirement income account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained.

(B) Retirement income account

For purposes of this paragraph, the term “retirement income account” means a defined contribution program established or maintained by a church, or a convention or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) (including an employee described in section 414(e)(3)(B)) or his beneficiaries.

(10) Distribution requirements

Under regulations prescribed by the Secretary, this subsection shall not apply to any

annuity contract (or to any custodial account described in paragraph (7) or retirement income account described in paragraph (9)) unless requirements similar to the requirements of sections 401(a)(9) and 401(a)(31) are met (and requirements similar to the incidental death benefit requirements of section 401(a) are met) with respect to such annuity contract (or custodial account or retirement income account). Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.

(11) Requirement that distributions not begin before age 59½, severance from employment, death, or disability

This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, has a severance from employment, dies, or becomes disabled (within the meaning of section 72(m)(7)),

(B) in the case of hardship,

(C) for distributions to which section 72(t)(2)(G) applies, or

(D) except as may be otherwise provided by regulations, with respect to amounts invested in a lifetime income investment (as defined in section 401(a)(38)(B)(ii))—

(i) on or after the date that is 90 days prior to the date that such lifetime income investment may no longer be held as an investment option under the contract, and

(ii) in the form of a qualified distribution (as defined in section 401(a)(38)(B)(i)) or a qualified plan distribution annuity contract (as defined in section 401(a)(38)(B)(iv)).

Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship. In determining whether a distribution is upon hardship of an employee, the administrator of the plan may rely on a written certification by the employee that the distribution is on account of a financial need of a type which is deemed in regulations prescribed by the Secretary to be an immediate and heavy financial need and is not in excess of the amount required to satisfy such financial need, and that the employee has no alternative means reasonably available to satisfy such financial need. The Secretary may provide by regulations for exceptions to the rule of the preceding sentence in cases where the plan administrator has actual knowledge to the contrary of the employee's certification, and for procedures for addressing cases of employee misrepresentation.

(12) Nondiscrimination requirements

(A) In general

For purposes of paragraph (1)(D), a plan meets the nondiscrimination requirements of this paragraph if—

(i) with respect to contributions not made pursuant to a salary reduction agree-

ment, such plan meets the requirements of paragraphs (4), (5), (17), and (26) of section 401(a), section 401(m), and section 410(b) in the same manner as if such plan were described in section 401(a), and

(ii) all employees of the organization may elect to have the employer make contributions of more than \$200 pursuant to a salary reduction agreement if any employee of the organization may elect to have the organization make contributions for such contracts pursuant to such agreement.

For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement involving a one-time irrevocable election specified in regulations. For purposes of clause (ii), there may be excluded any employee who is a participant in an eligible deferred compensation plan (within the meaning of section 457) or a qualified cash or deferred arrangement of the organization or another annuity contract described in this subsection. Any non-resident alien described in section 410(b)(3)(C) may also be excluded. Subject to the conditions applicable under section 410(b)(4), there may be excluded for purposes of this subparagraph employees who are students performing services described in section 3121(b)(10) and employees who normally work less than 20 hours per week. The fact that the employer offers matching contributions on account of qualified student loan payments as described in section 401(m)(13) shall not be taken into account in determining whether the arrangement satisfies the requirements of clause (ii) (and any regulation thereunder).¹ A plan shall not fail to satisfy clause (ii) solely by reason of offering a de minimis financial incentive (not derived from plan assets) to employees to elect to have the employer make contributions pursuant to a salary reduction agreement.

(B) Church

For purposes of paragraph (1)(D), the term “church” has the meaning given to such term by section 3121(w)(3)(A). Such term shall include any qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(C) State and local governmental plans

For purposes of paragraph (1)(D), the requirements of subparagraph (A)(i) (other than those relating to section 401(a)(17)) shall not apply to a governmental plan (within the meaning of section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).

¹ As to preceding sentence, see Effective Date of 2022 Amendment note below for section 110(e) of Pub. L. 117-328.

(13) Trustee-to-trustee transfers to purchase permissive service credit

No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.

(14) Death benefits under USERRA-qualified active military service

This subsection shall not apply to an annuity contract unless such contract meets the requirements of section 401(a)(37).

(15) Multiple employer plans

(A) In general

Except in the case of a church plan, this subsection shall not be treated as failing to apply to an annuity contract solely by reason of such contract being purchased under a plan maintained by more than 1 employer.

(B) Treatment of employers failing to meet requirements of plan

(i) In general

In the case of a plan maintained by more than 1 employer, this subsection shall not be treated as failing to apply to an annuity contract held under such plan merely because of one or more employers failing to meet the requirements of this subsection if such plan satisfies rules similar to the rules of section 413(e)(2) with respect to any such employer failure.

(ii) Additional requirements in case of non-governmental plans

A plan shall not be treated as meeting the requirements of this subparagraph unless the plan satisfies rules similar to the rules of subparagraph (A) or (B) of section 413(e)(1), except in the case of a multiple employer plan maintained solely by any of the following: A State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing.

(c) Taxability of beneficiary under nonqualified annuities or under annuities purchased by exempt organizations

Premiums paid by an employer for an annuity contract which is not subject to subsection (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 such contract shall be substituted for the fair market value of the property for purposes of applying such section. The preceding sentence shall not apply to that portion of the premiums paid which is excluded from gross income under subsection (b). In the case of any portion of any contract which is attributable to premiums to which this subsection applies, the amount actually paid or made available under such contract to any beneficiary which is attributable to such

premiums shall be taxable to the beneficiary (in the year in which so paid or made available) under section 72 (relating to annuities).

(Aug. 16, 1954, ch. 736, 68A Stat. 137; Pub. L. 85–866, title I, §23(a)–(c), Sept. 2, 1958, 72 Stat. 1620–1622; Pub. L. 87–370, §3(a), Oct. 4, 1961, 75 Stat. 801; Pub. L. 87–792, §4(d), Oct. 10, 1962, 76 Stat. 825; Pub. L. 88–272, title II, §232(e)(4)–(6), Feb. 26, 1964, 78 Stat. 111; Pub. L. 91–172, title III, §321(b)(2), title V, §515(a)(2), Dec. 30, 1969, 83 Stat. 591, 644; Pub. L. 93–406, title II, §§1022(e), 2002(g)(6), 2004(c)(4), 2005(b)(2), Sept. 2, 1974, 88 Stat. 940, 969, 986, 991; Pub. L. 94–267, §1(b), Apr. 15, 1976, 90 Stat. 366; Pub. L. 94–455, title XIV, §1402(b)(1)(D), (2), title XV, §1504(a), title XIX, §§1901(a)(58), (b)(8)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1731, 1732, 1738, 1774, 1794, 1834; Pub. L. 95–458, §4(b), Oct. 14, 1978, 92 Stat. 1259; Pub. L. 95–600, title I, §§154(a), 156(a), (b), 157(g)(2), Nov. 6, 1978, 92 Stat. 2801, 2802, 2808; Pub. L. 96–222, title I, §101(a)(12), (13)(C), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97–34, title III, §311(b)(3)(B), Aug. 13, 1981, 95 Stat. 280; Pub. L. 97–248, title II, §251(a), (b), (c)(3), Sept. 3, 1982, 96 Stat. 529–531; Pub. L. 97–448, title I, §103(c)(8)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98–21, title I, §122(c)(4), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98–369, div. A, title IV, §491(d)(12), title V, §§521(c), 522(a)(2), (3), (d)(9)–(11), title X, §1001(b)(4), (e), July 18, 1984, 98 Stat. 849, 867, 869–871, 1011, 1012; Pub. L. 99–514, title XI, §§1120(a), (b), 1122(b)(1)(B), (d), 1123(c), title XVIII, §1852(a)(3)(A), (B), (5)(B), (b)(10), Oct. 22, 1986, 100 Stat. 2463, 2466, 2469, 2474, 2865, 2867; Pub. L. 100–647, title I, §1011(c)(7)(B), (12), (m)(1), (2), title VI, §6052(a)(1), Nov. 10, 1988, 102 Stat. 3458, 3459, 3471, 3696; Pub. L. 101–508, title XI, §11701(k), Nov. 5, 1990, 104 Stat. 1388–513; Pub. L. 102–318, title V, §§521(b)(12), (13), 522(a)(3), (c)(2), (3), July 3, 1992, 106 Stat. 311, 314, 315; Pub. L. 104–188, title I, §§1450(c)(1), 1704(t)(69), Aug. 20, 1996, 110 Stat. 1815, 1891; Pub. L. 105–34, title XV, §§1504(a)(1), 1505(c), title XVI, §1601(d)(6)(B), Aug. 5, 1997, 111 Stat. 1063, 1064, 1090; Pub. L. 105–206, title VI, §6005(c)(2)(B), July 22, 1998, 112 Stat. 800; Pub. L. 106–554, §1(a)(7) [title III, §314(e)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–643; Pub. L. 107–16, title VI, §§632(a)(2), 641(b)(1), (e)(7), 642(b)(1), 646(a)(2), 647(a), June 7, 2001, 115 Stat. 113, 120, 121, 126, 127; Pub. L. 107–147, title IV, §411(p)(1)–(3), Mar. 9, 2002, 116 Stat. 49, 50; Pub. L. 108–311, title IV, §§404(e), 408(a)(11), Oct. 4, 2004, 118 Stat. 1188, 1191; Pub. L. 109–135, title IV, §412(w), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109–280, title VIII, §§827(b)(2), (3), 829(a)(2), (3), 845(b)(1), (2), Aug. 17, 2006, 120 Stat. 1000, 1002, 1015; Pub. L. 110–245, title I, §104(c)(2), June 17, 2008, 122 Stat. 1627; Pub. L. 116–94, div. O, title I, §§109(c), 111(a), Dec. 20, 2019, 133 Stat. 3151, 3152; Pub. L. 117–328, div. T, title I, §§106(a), 110(e), 113(b), 121(b), 125(a)(2)(A), (B)(i), 128(a), (b), title III, §§312(b), 334(b)(2)–(4), title VI, §602(a), (b), Dec. 29, 2022, 136 Stat. 5286, 5293, 5295, 5310, 5314, 5315, 5330, 5347, 5370, 5391.)

AMENDMENT OF SECTION

Pub. L. 117–328, div. T, title I, §121(b), (d), title VI, §602, Dec. 29, 2022, 136 Stat. 5310, 5311, 5391, provided that, applicable to plan years beginning after Dec. 31, 2023, subsection (b) of this section is amended as follows:

(1) in paragraph (7)(A)(i)(V), by striking “in the case of contributions made pursuant to a

salary reduction agreement (within the meaning of section 3121(a)(5)(D))” and inserting “subject to the provisions of paragraph (17)”;

(2) in paragraph (11)—

(A) by striking “in” in subparagraph (B) and inserting “subject to the provisions of paragraph (17), in”, and

(B) by striking the second sentence;

(3) by adding at the end the following new paragraph (16):

“(16) Safe harbor deferral-only plans for employers with no retirement plan

“(A) In general

“A safe harbor deferral-only plan maintained by an eligible employer shall be treated as meeting the requirements of paragraph (12).

“(B) Safe harbor deferral-only plan

“For purposes of this paragraph, the term ‘safe harbor deferral-only plan’ means any plan which meets—

“(i) the automatic deferral requirements of subparagraph (C),

“(ii) the contribution limitations of subparagraph (D), and

“(iii) the requirements of subparagraph (E) of section 401(k)(13).

“(C) Automatic deferral

“(i) In general

“The requirements of this subparagraph are met if, under the plan, each eligible employee 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 eligible employee if such eligible 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 plan if such percentage is applied uniformly and is not less than 3 or more than 15 percent.

“(D) Contribution limitations

“(i) In general

“The requirements of this subparagraph are met if, under the plan—

“(I) the only contributions which may be made are elective contributions of eligible employees, and

“(II) the aggregate amount of such elective contributions which may be made with respect to any employee for any calendar year shall not exceed \$6,000.

“(ii) Cost-of-living adjustment

“In the case of any calendar year beginning after December 31, 2024, the \$6,000 amount under clause (i) shall be adjusted in

the same manner as under section 402(g)(4), except that ‘2023’ shall be substituted for ‘2005’.

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

“In the case of an individual who has attained the age of 50 before the close of the taxable year, the limitation under clause (i)(II) shall be increased by the applicable amount determined under section 219(b)(5)(B)(ii) (after the application of section 219(b)(5)(C)(iii)).

“(E) Eligible employer

“For purposes of this paragraph—

“(i) In general

“The term ‘eligible employer’ means any employer if the employer does not maintain a qualified plan with respect to which contributions are made, or benefits are accrued, for service in the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees described in such subparagraph are eligible to participate.

“(ii) Relief for acquisitions, etc.

“Rules similar to the rules of section 408(p)(10) shall apply for purposes of clause (i).

“(iii) Qualified plan

“The term ‘qualified plan’ means a plan, contract, pension, account, or trust described in subparagraph (A) or (B) of paragraph (5) of section 219(g) (determined without regard to the last sentence of such paragraph (5)).

“(F) Eligible employee

“For purposes of this paragraph, the term ‘eligible employee’ means any employee of the employer other than an employee who is permitted to be excluded under paragraph (12)(A).”; and

(4) by adding at the end the following new paragraph (17):

“(17) Special rules relating to hardship withdrawals

“For purposes of paragraphs (7) and (11)—

“(A) Amounts which may be withdrawn

“The following amounts may be distributed upon hardship of the employee:

“(i) Contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)).

“(ii) Qualified nonelective contributions (as defined in section 401(m)(4)(C)).

“(iii) Qualified matching contributions described in section 401(k)(3)(D)(ii)(I).

“(iv) Earnings on any contributions described in clause (i), (ii), or (iii).

“(B) No requirement to take available loan

“A distribution shall not be treated as failing to be made upon the hardship of an employee solely because the employee does not take any available loan under the plan.”

See 2022 Amendment notes below.

Pub. L. 117-328, div. T, title I, § 125(a)(2)(A), (B)(i), (f)(1), Dec. 29, 2022, 136 Stat. 5314-5316, provided that, applicable to plan years beginning after Dec. 31, 2024, subsection (b)(12) of this section is amended as follows:

(1) in the last sentence of subparagraph (A), by inserting “and section 202(c) of the Employee Retirement Income Security Act of 1974” after “under section 410(b)(4)”; and

(2) by adding at the end the following new subparagraph:

“(D) Rules relating to certain part-time employees

“(i) In general

“In the case of employees who are eligible to participate in the agreement solely by reason of section 202(c)(1)(B) of the Employee Retirement Income Security Act of 1974—

“(I) notwithstanding section 401(a)(4), an employer shall not be required to make non-elective or matching contributions on behalf of such employees even if such contributions are made on behalf of other employees eligible to participate in the plan, and

“(II) the employer may elect to exclude such employees from the application of subsections (a)(4), (k)(3), (k)(12), (k)(13), and (m)(2) of section 401 and section 410(b).”

See 2022 Amendment notes below.

Pub. L. 117-328, div. T, title III, § 334(b)(2)–(4), (e), Dec. 29, 2022, 136 Stat. 5370, 5372, provided that, applicable to distributions made after the date which is 3 years after Dec. 29, 2022, this section is amended as follows:

(1) in subsection (a), by adding at the end the following new paragraph:

(6) Qualified long-term care distributions

“An annuity contract shall not fail to be subject to this subsection solely by reason of allowing distributions to which section 401(a)(39) applies.”; and

(2) in subsection (b)—

(A) in paragraph (7)(A)(i), by striking “or” at the end of subclause (V), by striking “and” at the end of subclause (VI) and inserting “or”, and by adding at the end the following new subclause:

“(VII) as provided for distributions to which section 401(a)(39) applies, and”; and

(B) in paragraph (11), by striking “or” at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting “, or”, and by inserting after subparagraph (D) the following new subparagraph:

“(E) for distributions to which section 401(a)(39) applies.”

See 2022 Amendment notes below.

Editorial Notes

AMENDMENTS

2022—Subsec. (a)(6). Pub. L. 117-328, § 334(b)(2), added par. (6).

Subsec. (b)(7). Pub. L. 117-328, § 128(b), struck out “for regulated investment company stock” after “Custodial accounts” in heading.

Subsec. (b)(7)(A). Pub. L. 117-328, § 128(a), in introductory provisions, substituted “if the amounts are to be

held in that custodial account and are invested in regulated investment company stock or a group trust intended to satisfy the requirements of Internal Revenue Service Revenue Ruling 81-100 (or any successor guidance)” for “if the amounts are to be invested in regulated investment company stock to be held in that custodial account”.

Subsec. (b)(7)(A)(i)(V). Pub. L. 117-328, § 602(b)(1), substituted “subject to the provisions of paragraph (17)” for “in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D))”.

Subsec. (b)(7)(A)(i)(VII). Pub. L. 117-328, § 334(b)(3), added subcl. (VII).

Subsec. (b)(7)(D). Pub. L. 117-328, § 312(b)(1), added subpar. (D).

Subsec. (b)(11). Pub. L. 117-328, § 602(b)(2)(B), in concluding provisions, struck out “Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.” before “In determining”.

Pub. L. 117-328, § 312(b)(2), in concluding provisions, inserted at end “In determining whether a distribution is upon hardship of an employee, the administrator of the plan may rely on a written certification by the employee that the distribution is on account of a financial need of a type which is deemed in regulations prescribed by the Secretary to be an immediate and heavy financial need and is not in excess of the amount required to satisfy such financial need, and that the employee has no alternative means reasonably available to satisfy such financial need. The Secretary may provide by regulations for exceptions to the rule of the preceding sentence in cases where the plan administrator has actual knowledge to the contrary of the employee’s certification, and for procedures for addressing cases of employee misrepresentation.”

Subsec. (b)(11)(B). Pub. L. 117-328, § 602(b)(2)(A), substituted “subject to the provisions of paragraph (17), in” for “in”.

Subsec. (b)(11)(E). Pub. L. 117-328, § 334(b)(4), added subpar. (E).

Subsec. (b)(12)(A). Pub. L. 117-328, § 125(a)(2)(B)(i), which directed that the “last sentence” of subpar. (A) be amended by inserting “and section 202(c) of the Employee Retirement Income Security Act of 1974” after “under section 410(b)(4)”, was executed by making the insertion after “under section 410(b)(4)” in what had been the last sentence of concluding provisions prior to amendments by Pub. L. 117-328, §§ 110(e), 113(b), to reflect the probable intent of Congress. See notes below.

Pub. L. 117-328, § 113(b), in concluding provisions, inserted at end “A plan shall not fail to satisfy clause (ii) solely by reason of offering a de minimis financial incentive (not derived from plan assets) to employees to elect to have the employer make contributions pursuant to a salary reduction agreement.”

Pub. L. 117-328, § 110(e), in concluding provisions, inserted at end “The fact that the employer offers matching contributions on account of qualified student loan payments as described in section 401(m)(13) shall not be taken into account in determining whether the arrangement satisfies the requirements of clause (ii) (and any regulation thereunder).”

Subsec. (b)(12)(D). Pub. L. 117-328, § 125(a)(2)(A), added subpar. (D).

Subsec. (b)(15). Pub. L. 117-328, § 106(a), added par. (15).

Subsec. (b)(16). Pub. L. 117-328, § 121(b), added par. (16).

Subsec. (b)(17). Pub. L. 117-328, § 602(a), added par. (17).

2019—Subsec. (b)(7)(A). Pub. L. 116-94, § 109(c)(2), substituted “if the amounts are to be invested in regulated investment company stock to be held in that custodial account, and under the custodial account—” for “if—” and cls. (i) and (ii) for former cls. (i) and (ii) which read as follows:

“(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

“(ii) under the custodial account no such amounts may be paid or made available to any distributee (un-

less such amount is a distribution to which section 72(t)(2)(G) applies) before the employee dies, attains age 59½, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(5)(D)), encounters financial hardship.”

Subsec. (b)(9)(B). Pub. L. 116-94, §111(a), inserted “(including an employee described in section 414(e)(3)(B))” after “employee described in paragraph (1)”.

Subsec. (b)(11)(D). Pub. L. 116-94, §109(c)(1), added subpar. (D).

2008—Subsec. (b)(14). Pub. L. 110-245 added par. (14).

2006—Subsec. (a)(2). Pub. L. 109-280, §845(b)(1), added par. (2).

Subsec. (a)(4)(B). Pub. L. 109-280, §829(a)(2), inserted “and (11)” after “(7)”.

Subsec. (b)(2). Pub. L. 109-280, §845(b)(2), added par. (2).

Subsec. (b)(7)(A)(ii). Pub. L. 109-280, §827(b)(2), inserted “(unless such amount is a distribution to which section 72(t)(2)(G) applies)” after “distributee”.

Subsec. (b)(8)(B). Pub. L. 109-280, §829(a)(3), substituted “, (9), and (11)” for “and (9)”.

Subsec. (b)(11)(C). Pub. L. 109-280, §827(b)(3), added subpar. (C).

2005—Subsec. (b)(9)(B). Pub. L. 109-135 inserted “or” before “a convention”.

2004—Subsec. (a)(4)(B). Pub. L. 108-311, §404(e), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Rules similar to the rules of paragraphs (2) through (7) of section 402(c) shall apply for purposes of subparagraph (A).”

Subsec. (b)(7)(A)(ii). Pub. L. 108-311, §408(a)(11), substituted “3121(a)(5)(D)” for “3121(a)(1)(D)”.

2002—Subsec. (b)(1). Pub. L. 107-147, §411(p)(1), inserted concluding provisions and struck out former concluding provisions which read as follows: “then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.”

Subsec. (b)(3). Pub. L. 107-147, §411(p)(3), in first sentence, inserted “, and which precedes the taxable year by no more than five years” before period at end and, in second sentence, struck out “or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated” after “this subsection applies”.

Subsec. (b)(6). Pub. L. 107-147, §411(p)(2), struck out heading and text of par. (6). Text read as follows: “For purposes of this subsection and section 72(f) (relating to special rules for computing employees’ contributions to annuity contracts), if rights of the employee under an annuity contract described in subparagraphs (A) and (B) of paragraph (1) change from forfeitable to nonforfeitable rights, then the amount (determined without regard to this subsection) includible in gross income by reason of such change shall be treated as an amount contributed by the employer for such annuity contract as of the time such rights become nonforfeitable.”

2001—Subsec. (b)(1). Pub. L. 107-16, §642(b)(1), substituted “section 408(d)(3)(A)(ii)” for “section 408(d)(3)(A)(iii)” in concluding provisions.

Pub. L. 107-16, §632(a)(2)(A), substituted “the applicable limit under section 415” for “the exclusion allowance for such taxable year” in concluding provisions.

Subsec. (b)(2). Pub. L. 107-16, §632(a)(2)(B), struck out par. (2), which described exclusion allowance for purposes of subsec. (b) providing general criteria, determination under section 415 rules, number of years of service for duly ordained, commissioned, or licensed ministers or lay employees, and alternative exclusion allowance for such ministers or lay employees.

Subsec. (b)(3). Pub. L. 107-16, §632(a)(2)(C), inserted “or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated” before period at end of second sentence.

Subsec. (b)(7)(A)(ii). Pub. L. 107-16, §646(a)(2)(A), substituted “has a severance from employment” for “separates from service”.

Subsec. (b)(8)(A)(ii). Pub. L. 107-16, §641(b)(1), substituted “such distribution to an eligible retirement plan described in section 402(c)(8)(B), and” for “such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and”.

Subsec. (b)(8)(B). Pub. L. 107-16, §641(e)(7), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A).”

Subsec. (b)(11). Pub. L. 107-16, §646(a)(2)(B), substituted “severance from employment” for “separation from service” in heading.

Subsec. (b)(11)(A). Pub. L. 107-16, §646(a)(2)(A), substituted “has a severance from employment” for “separates from service”.

Subsec. (b)(13). Pub. L. 107-16, §647(a), added par. (13). 2000—Subsec. (b)(3)(B). Pub. L. 106-554 substituted “section 125, 132(f)(4), or” for “section 125 or”.

1998—Subsec. (b)(8)(B). Pub. L. 105-206 inserted “(including paragraph (4)(C) thereof)” after “section 402(c)”.

1997—Subsec. (b)(1)(A)(iii). Pub. L. 105-34, §1601(d)(6)(B), added cl. (iii).

Subsec. (b)(3). Pub. L. 105-34, §1504(a)(1), inserted at end “Such term includes—” and subpars. (A) and (B).

Subsec. (b)(12)(C). Pub. L. 105-34, §1505(c), added subpar. (C).

1996—Subsec. (b)(1)(E). Pub. L. 104-188, §1450(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: “in the case of a contract purchased under a plan which provides a salary reduction agreement, the plan meets the requirements of section 401(a)(30).”

Subsec. (b)(10). Pub. L. 104-188, §1704(t)(69), substituted “a direct” for “an direct” in last sentence.

1992—Subsec. (a)(4)(A)(i). Pub. L. 102-318, §521(b)(12)(A), inserted before comma at end “in an eligible rollover distribution (within the meaning of section 402(c)(4))”.

Subsec. (a)(4)(B). Pub. L. 102-318, §521(b)(12)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “Rules similar to the rules of subparagraphs (B) through (G) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).”

Subsec. (a)(5). Pub. L. 102-318, §522(c)(2), added par. (5).

Subsec. (b)(8)(A)(i). Pub. L. 102-318, §521(b)(13)(A), inserted before comma at end “in an eligible rollover distribution (within the meaning of section 402(c)(4))”.

Subsec. (b)(8)(B) to (D). Pub. L. 102-318, §521(b)(13)(B), added subpar. (B) and struck out former subpars. (B) to (D), which related to special rules for partial distributions, applicability of certain similar rules, and eligibility for rollover treatment of required distributions.

Subsec. (b)(10). Pub. L. 102-318, §522(a)(3), (c)(3), substituted “sections 401(a)(9) and 401(a)(31)” for “section 401(a)(9)” and inserted at end “Any amount transferred in an direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of the transfer.”

1990—Subsec. (b)(12)(A). Pub. L. 101-508 inserted “involving a one-time irrevocable election” after “similar arrangement” in second sentence.

1988—Subsec. (b)(1)(D). Pub. L. 100-647, § 1011(m)(1)(B), substituted “paragraph (12)” for “paragraph (10)”.

Subsec. (b)(1)(E). Pub. L. 100-647, § 1011(c)(7)(B), added subpar. (E).

Subsec. (b)(10). Pub. L. 100-647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12). Pub. L. 100-647, § 1011(m)(1)(A), redesignated par. (10), relating to nondiscrimination requirements, as (12).

Subsec. (b)(12)(A). Pub. L. 100-647, § 1011(m)(2), inserted “(17),” after “paragraphs (4), (5),” and “,” section 401(m),” after “of section 401(a)” in cl. (i).

Pub. L. 100-647, § 1011(c)(12), inserted after cl. (ii) “For purposes of clause (i), a contribution shall be treated as not made pursuant to a salary reduction agreement if under the agreement it is made pursuant to a 1-time irrevocable election made by the employee at the time of initial eligibility to participate in the agreement or is made pursuant to a similar arrangement specified in regulations.”

Pub. L. 100-647, § 6052(a)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: “For purposes of this subparagraph, students who normally work less than 20 hours per week may (subject to the conditions applicable under section 410(b)(4)) be excluded.”

1986—Subsec. (a)(1). Pub. L. 99-514, § 1122(d)(1), substituted “Distributee taxable under section 72” for “General rule” in heading and amended par. (1) generally. Prior to amendment, par. (1) read as follows: “Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).”

Subsec. (a)(2). Pub. L. 99-514, § 1122(b)(1)(B), struck out par. (2) which read as follows:

“(A) General rule

“If—

“(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

“(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

“(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

“(B) Cross reference

“For imposition of separate tax on ordinary income portion of lump sum distribution, see section 402(e).”

Subsec. (a)(4)(B). Pub. L. 99-514, § 1852(a)(5)(B)(i), substituted “through (G)” for “through (F)”.

Subsec. (b)(1). Pub. L. 99-514, § 1122(d)(2), amended second sentence generally. Prior to amendment, second sentence read as follows: “The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).”

Subsec. (b)(1)(D). Pub. L. 99-514, § 1120(a), added subpar. (D).

Subsec. (b)(7)(A)(ii). Pub. L. 99-514, § 1123(c)(2), inserted “in the case of contributions made pursuant to

a salary reduction agreement (within the meaning of section 3121(a)(1)(D)),” after “section 72(m)(7), or”.

Subsec. (b)(7)(D). Pub. L. 99-514, § 1852(a)(3)(B), struck out subpar. (D) “Distribution requirements” which read as follows: “For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract.”

Subsec. (b)(8)(C). Pub. L. 99-514, § 1852(b)(10), inserted “and” before “(F)(i)”.

Subsec. (b)(8)(D). Pub. L. 99-514, § 1852(a)(5)(B)(ii), added subpar. (D).

Subsec. (b)(10). Pub. L. 99-514, § 1120(b), added par. (10) relating to nondiscrimination requirements.

Pub. L. 99-514, § 1852(a)(3)(A), added par. (10) relating to distribution requirements.

Subsec. (b)(11). Pub. L. 99-514, § 1123(c)(1), added par. (11).

Subsec. (c). Pub. L. 99-514, § 1122(d)(3), amended last sentence generally. Prior to amendment, last sentence read as follows: “The amount actually paid or made available to any beneficiary under such contract shall be taxable to him in the year in which so paid or made available under section 72 (relating to annuities).”

1984—Subsec. (a)(2)(A). Pub. L. 98-369, § 1001(b)(4), substituted “6 months” for “1 year”, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Subsec. (a)(4)(A)(i). Pub. L. 98-369, § 522(a)(2), substituted “any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,” for “the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.”

Subsec. (a)(4)(B). Pub. L. 98-369, § 522(d)(9), substituted “(B) through (F)” for “(B) through (E)”.

Subsec. (b)(1). Pub. L. 98-369, § 491(d)(12), struck out “or 409(b)(3)(C)” after “408(d)(3)(A)(iii)”.

Subsec. (b)(7)(D). Pub. L. 98-369, § 521(c), added subpar. (D).

Subsec. (b)(8)(A)(i). Pub. L. 98-369, § 522(a)(3), substituted “any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him” for “the balance to the credit of an employee is paid to him in a qualifying distribution”.

Subsec. (b)(8)(B). Pub. L. 98-369, § 522(d)(10), substituted provisions relating to special rules for partial distributions for provisions relating to definition of qualifying distributions.

Subsec. (b)(8)(C). Pub. L. 98-369, § 522(d)(11), substituted “(F)(i)” for “(D)(v), and (E)(i)”.

1983—Subsec. (b)(3). Pub. L. 98-21 substituted “section 911” for “sections 105(d) and 911”.

Subsec. (b)(8)(C). Pub. L. 97-448 substituted “subparagraphs (B), (C), (D)(v), and (E)(i) of section 402(a)(5)” for “subparagraphs (B), (C), and (E)(i) of section 402(a)(5)”.

1982—Subsec. (b)(2)(B). Pub. L. 97-248, § 251(a)(1), (c)(3), substituted “home health service agencies, and certain churches, etc.” for “and home health service agencies”, and “(under section 415 without regard to section 415(c)(8))” for “(under section 415)”.

Subsec. (b)(2)(C), (D). Pub. L. 97-248, § 251(a)(2), added subpars. (C) and (D).

Subsec. (b)(9). Pub. L. 97-248, § 251(b), added par. (9).

1981—Subsec. (b)(8)(B)(i). Pub. L. 97-34 inserted “, or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(b)(5))” after “subsection (a)”.

1980—Subsec. (b). Pub. L. 96-222 substituted in par. (1) “409(b)(3)(C)” for “409(d)(3)(C)”, and in par. (7)(A) “which satisfies” for “which satisfied”.

1978—Subsec. (a)(4). Pub. L. 95-600, § 157(g)(2), in subpar. (B) substituted “paragraphs (6) and (7)” for “paragraph (6)”.

Pub. L. 95-458, among other changes, substituted provision permitting tax free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement ac-

count or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5). Pub. L. 95-458 struck out par. (5) which related to special rules concerning time of termination of a profit-sharing plan and the treatment of the sale of a corporate subsidiary or assets as payment or distribution on account of termination of a plan of which an annuity trust was a part.

Subsec. (b)(1). Pub. L. 95-600, §156(b), inserted provision relating to application of rules of this subsection to amounts contributed by an employer for a taxable year.

Subsec. (b)(7)(A). Pub. L. 95-600, §154(a), struck out “the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account” after “contract for his employee if”, and added cls. (i) and (ii).

Subsec. (b)(8). Pub. L. 95-600, §156(a), added par. (8). 1976—Subsec. (a)(2)(A). Pub. L. 94-455, §1402(b)(2), provided that “9 months” would be changed to “1 year”.

Pub. L. 94-455, §1402(b) (1)(D), provided that “6 months” would be changed to “9 months” for taxable years beginning in 1977.

Subsec. (a)(4). Pub. L. 94-455, §1901(a)(58), reenacted provisions following subpar. (C) without substantive change.

Pub. L. 94-267, §1(b)(2), substituted “a payment” for “the lump-sum distribution”.

Subsec. (a)(4)(A). Pub. L. 94-267, §1(b)(1), restructured provisions by adding cl. (i) and designating existing provision as cl. (ii).

Subsec. (a)(5). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary” wherever appearing.

Pub. L. 94-267, §1(b)(3), added par. (5).

Subsec. (b)(1)(A)(ii). Pub. L. 94-455, §1901(b)(8)(A), substituted “educational organization described in section 170(b)(1)(A)(ii)” for “educational institution (as defined in section 151(e)(4))”.

Subsec. (b)(4)(B). Pub. L. 94-455, §1906(b)(13)(A), struck out “or his delegate” after “Secretary”.

Subsec. (b)(7)(C). Pub. L. 94-455, §1504(a), struck out “, and which issues only redeemable stock” after “regulated investment company within the meaning of section 851(a)”.

1974—Subsec. (a)(2). Pub. L. 93-406, §2005(b)(2), substituted “a lump sum distribution (as defined in section 4002(e)(4)(A)) is paid to the recipient” for “the total amounts payable by reason of an employee’s death or other separation from the service, or by reason of the death of an employee after the employee’s separation from the service, are paid to the payee within one taxable year of the payee” as cl. (iii) of subpar. (A), substituted “so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph” for “then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1)” following cl. (iii) of

subpar. (A), substituted provisions setting out a cross reference to section 402(e) for provisions defining “total amounts” as subpar. (B), and struck out subpar. (C) setting out limitations on capital gains treatment.

Subsec. (a)(4). Pub. L. 93-406, §2002(g)(6), added par. (4).

Subsec. (b)(2). Pub. L. 93-406, §2004(c)(4), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 93-406, §1022(e), added par. (7). 1969—Subsec. (a)(2)(C). Pub. L. 91-172, §515(a)(2), added subpar. (C).

Subsec. (c). Pub. L. 91-172, §321(b)(2), consolidated provisions of subsec. (c) providing for taxability of beneficiary under a nonqualified annuity, the employees gross income to include amount contributed by employer for annuity contract in the year in which amount is contributed, the amount to be included as provided in section 72 of this title and of subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers’ cooperatives, the gross income to include amount contributed by employer after Dec. 31, 1957, in the year of change from forfeitable to nonforfeitable rights, the new provisions including premiums paid by an employer in accordance with section 83, except that value of the contract shall be substituted for fair market value of the property for purposes of applying such section 83, such provision not to be applicable to that portion of premiums paid which is excluded from gross income under subsec. (b) of this section.

Subsec. (d). Pub. L. 91-172, §321(b)(2), struck out subsec. (d) providing for taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations, including farmers’ cooperatives, gross income of the employee to include (amount contributed by employer after Dec. 31, 1957), in year of change from forfeitable to nonforfeitable rights. See subsec. (c) of this section.

1964—Subsecs. (a)(1), (b)(1), (c). Pub. L. 88-272, §232(e)(4)–(6), struck out “except that section 72(e)(3) shall not apply” after “(relating to annuities)”.

1962—Subsec. (a)(2)(A). Pub. L. 87-792, §4(d)(1), (2), substituted “described in paragraph (1)” for “which meets the requirements of section 401(a)(3), (4), (5), and (6)” in cl. (i), and inserted sentence at end thereof providing that this subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

Subsec. (a)(3). Pub. L. 87-792, §4(d)(3), added par. (3).

1961—Subsec. (b). Pub. L. 87-370, §3(a)(3), inserted “or public school” in heading.

Subsec. (b)(1)(A). Pub. L. 87-370, §3(a)(1), included annuity contracts purchased for an employee, other than one described in clause (i) of this subpar., who performs services for an educational institution, as defined in section 151(e)(4) of this title, by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of either.

Subsec. (b)(3). Pub. L. 87-370, §(3)(a)(2), substituted “the employer described in paragraph (1)(A)” for “the employer described in section 501(c)(3) and exempt from tax under section 501(a)”.

1958—Subsec. (a)(1). Pub. L. 85-866, §23(b), substituted “which meets the requirements of section 404(a)(2) (whether or not the employer deducts the amounts paid for the contract under such section),” for “with respect to which the employer’s contribution is deductible under section 404(a)(2), or if an annuity contract is purchased for an employee by an employer described in section 501(c)(3) which is exempt from tax under section 501(a),”.

Subsecs. (b) to (d). Pub. L. 85-866, §23(a), added subsec. (b), redesignated former subsec. (b) as (c), and added subsec. (d).

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2022 AMENDMENT**

Pub. L. 117-328, div. T, title I, §106(h)(1), Dec. 29, 2022, 136 Stat. 5289, provided that: “The amendments made by this section [amending this section, sections 6057 and 6058 of this title, and section 1002 of Title 29, Labor] shall apply to plan years beginning after December 31, 2022.”

Amendment by section 110(e) of Pub. L. 117-328 applicable to contributions made for plan years beginning after Dec. 31, 2023, see section 110(h) of Pub. L. 117-328, set out as a note under section 401 of this title.

Amendment by section 113(b) of Pub. L. 117-328 applicable with respect to plan years beginning after Dec. 29, 2022, see section 113(e) of Pub. L. 117-328, set out as a note under section 401 of this title.

Amendment by section 121(b) of Pub. L. 117-328 applicable to plan years beginning after Dec. 31, 2023, see section 121(d) of Pub. L. 117-328, set out as a note under section 401 of this title.

Amendment by section 125(a)(2)(A), (B)(i) of Pub. L. 117-328 applicable to plan years beginning after Dec. 31, 2024, see section 125(f)(1) of Pub. L. 117-328, set out as a note under section 401 of this title.

Pub. L. 117-328, div. T, title I, §128(c), Dec. 29, 2022, 136 Stat. 5330, provided that: “The amendments made by this section [amending this section] shall apply to amounts invested after the date of the enactment of this Act [Dec. 29, 2022].”

Amendment by section 312(b) of Pub. L. 117-328 applicable to plan years beginning after Dec. 29, 2022, see section 312(d) of Pub. L. 117-328, set out as a note under section 401 of this title.

Amendment by section 334(b)(2)-(4) of Pub. L. 117-328 applicable to distributions made after the date which is 3 years after Dec. 29, 2022, see section 334(e) of Pub. L. 117-328, set out as a note under section 72 of this title.

Pub. L. 117-328, div. T, title VI, §602(c), Dec. 29, 2022, 136 Stat. 5391, provided that: “The amendments made by this section [amending this section] shall apply to plan years beginning after December 31, 2023.”

EFFECTIVE DATE OF 2019 AMENDMENT

Amendment by section 109(c) of Pub. L. 116-94 applicable to plan years beginning after Dec. 31, 2019, see section 109(e) of Pub. L. 116-94, set out as a note under section 401 of this title.

Pub. L. 116-94, div. O, title I, §111(b), Dec. 20, 2019, 133 Stat. 3152, provided that: “The amendment made by this section [amending this section] shall apply to years beginning before, on, or after the date of the enactment of this Act [Dec. 20, 2019].”

EFFECTIVE DATE OF 2008 AMENDMENT

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

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 827(b)(2), (3) 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.

Amendment by section 829(a)(2), (3) of Pub. L. 109-280 applicable to distributions after Dec. 31, 2006, see section 829(b) of Pub. L. 109-280, set out as a note under section 402 of this title.

Amendment by section 845(b)(1), (2) of Pub. L. 109-280 applicable to distributions in taxable years beginning after Dec. 31, 2006, see section 845(c) of Pub. L. 109-280, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by section 404(e) of Pub. L. 108-311 effective as if included in the provisions of the Economic

Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107-16, to which such amendment relates, see section 404(f) of Pub. L. 108-311, set out as a note under section 45A of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

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

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by section 632(a)(2) of Pub. L. 107-16 applicable to years beginning after Dec. 31, 2001, see section 632(a)(4) of Pub. L. 107-16, set out as a note under section 72 of this title.

Amendment by section 641(b)(1), (e)(7) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 641(f)(1) of Pub. L. 107-16, set out as a note under section 402 of this title.

Amendment by section 642(b)(1) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 642(c) of Pub. L. 107-16, set out as a note under section 408 of this title.

Amendment by section 646(a)(2) of Pub. L. 107-16 applicable to distributions after Dec. 31, 2001, see section 646(b) of Pub. L. 107-16, set out as a note under section 401 of this title.

Pub. L. 107-16, title VI, §647(c), June 7, 2001, 115 Stat. 127, provided that: “The amendments made by this section [amending this section and section 457 of this title] shall apply to trustee-to-trustee transfers after December 31, 2001.”

EFFECTIVE DATE OF 2000 AMENDMENT

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

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 6005 of Pub. L. 105-206 applicable to distributions after Dec. 31, 1998, see section 6005(c)(2)(C) of Pub. L. 105-206, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105-34, title XV, §1504(a)(2), Aug. 5, 1997, 111 Stat. 1063, provided that: “The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1997.”

Amendment by section 1505(c) of Pub. L. 105-34 applicable to taxable years beginning on or after Aug. 5, 1997, with certain governmental plans treated as satisfying requirements for all taxable years beginning before Aug. 5, 1997, see section 1505(d) of Pub. L. 105-34, set out as a note under section 401 of this title.

Amendment by section 1601(d)(6)(B) of Pub. L. 105-34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104-188, to which it relates, see section 1601(j) of Pub. L. 105-34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-188, title I, §1450(c)(2), Aug. 20, 1996, 110 Stat. 1815, provided that: “The amendment made by this subsection [amending this section] shall apply to years beginning after December 31, 1995, except a contract shall not be required to meet any change in any requirement by reason of such amendment before the 90th day after the date of the enactment of this Act [Aug. 20, 1996].”

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 521(b)(12), (13) 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.

Amendment by section 522(a)(3), (c)(2), (3) of Pub. L. 102-318 applicable, except as otherwise provided, to distributions after Dec. 31, 1992, see section 522(d) of Pub. L. 102-318, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101-508 effective, except as otherwise provided, as if included in the provision of the Revenue Reconciliation Act of 1989, Pub. L. 101-239, title VII, to which such amendment relates, see section 11701(n) of Pub. L. 101-508, set out as a note under section 42 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011(c)(7)(B) of Pub. L. 100-647 applicable to plan years beginning after Dec. 31, 1987, with exception in case of a plan described in section 1105(c)(2) of Pub. L. 99-514, see section 1011(c)(7)(E) of Pub. L. 100-647, set out as a note under section 401 of this title.

Amendment by section 1011(c)(12), (m)(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 VI, §6052(a)(2), Nov. 10, 1988, 102 Stat. 3696, provided that: "The amendment made by paragraph (1) [amending this section] shall take effect as if included in the amendment made by section 1120(b) of the Reform Act [Pub. L. 99-514]."

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XI, §1120(c), Oct. 22, 1986, 100 Stat. 2464, as amended by Pub. L. 100-647, title I, §1011(m)(3), Nov. 10, 1988, 102 Stat. 3471, provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to years beginning after December 31, 1988.

"(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, 1991, or

"(B) 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)."

Amendment by section 1122(b)(1)(B), (d) of Pub. L. 99-514 applicable, except as otherwise provided, to amounts distributed after Dec. 31, 1986, in taxable years ending after such date, see section 1122(h) of Pub. L. 99-514, set out as a note under section 402 of this title.

Amendment by section 1123(c) of Pub. L. 99-514 applicable to years beginning after Dec. 31, 1988, but only with respect to distributions from contracts described in subsec. (b) of this section which are attributable to assets other than assets held as of the close of the last year beginning before Jan. 1, 1989, with certain exceptions and transition rule, see section 1123(e) of Pub. L. 99-514, as amended, set out as a note under section 72 of this title.

Pub. L. 99-514, title XVIII, §1852(a)(3)(C), Oct. 22, 1986, 100 Stat. 2865, provided that: "The amendments made by this paragraph [amending this section] shall apply to benefits accruing after December 31, 1986, in taxable years ending after such date."

Amendment by section 1852(a)(5)(B), (b)(10) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984,

Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(12) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 62 of this title.

Amendment by section 521(c) of Pub. L. 98-369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 522 of Pub. L. 98-369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98-369, set out as a note under section 402 of this title.

Amendment by section 1001(b)(4) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision 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, §251(e), Sept. 3, 1982, 96 Stat. 531, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 114-113, div. Q, title III, §336(b)(1), Dec. 18, 2015, 129 Stat. 3110, provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending this section and section 415 of this title, and enacting a provision set out as a note below] shall apply to taxable years beginning after December 31, 1981.

"(2) RETIREMENT INCOME ACCOUNTS.—The amendments made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1974.

"(3) SECTION 415 AMENDMENTS.—The amendments made by subsection (c) [amending section 415 of this title] shall apply to years beginning after December 31, 1981.

"(4) CORRECTION PERIOD.—The amendment made by subsection (d) [enacting provisions set out below] shall take effect on July 1, 1982.

"(5) SPECIAL RULE FOR EXISTING DEFINED BENEFIT ARRANGEMENTS.—Any defined benefit arrangement which is established by a church or a convention or association of churches (including an organization described in section 414(e)(3)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) and which is in effect on the date of the enactment of this Act [Sept. 3, 1982] shall not be treated as failing to meet the requirements of section 403(b) of such Code merely because it is a defined benefit arrangement, and shall be subject to the applicable limitations of section 415(b) of such Code as if it were a defined benefit plan under section 401(a) of such Code (and not to the limitations of section 415(c) of such Code). [sic]"

[Pub. L. 114-113, div. Q, title III, §336(b)(2), Dec. 18, 2015, 129 Stat. 3110, provided that: "The amendments made by this subsection [amending section 251(e)(5) of Pub. L. 97-248, set out above] shall apply to years beginning before, on, or after the date of the enactment of this Act [Dec. 18, 2015]."]

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 311(i)(1) of Pub. L. 97-34, set out as a note under section 219 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title I, §154(b), Nov. 6, 1978, 92 Stat. 2801, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978."

Pub. L. 95-600, title I, §156(d), Nov. 6, 1978, 92 Stat. 2803, as amended by Pub. L. 96-222, title I, §101(a)(13)(A), Apr. 1, 1980, 94 Stat. 204, provided that: "The amendments made by this section [amending this section and sections 219, 220, 408, 409, 2039, and 4973] shall apply to distributions or transfers made after December 31, 1977, in taxable years beginning after such date."

Amendment by section 157(g)(2) of Pub. L. 95-600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95-600, set out as a note under section 402 of this title.

Amendment by Pub. L. 95-458 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 4(d) of Pub. L. 95-458, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, title XIV, §1402(b)(1), Oct. 4, 1976, 90 Stat. 1731, provided that the amendment made by that section is effective with respect to taxable years beginning in 1977.

Pub. L. 94-455, title XIV, §1402(b)(2), Oct. 4, 1976, 90 Stat. 1732, provided that the amendment made by that section is effective with respect to taxable years beginning after Dec. 31, 1977.

Pub. L. 94-455, title XIV, §1504(b), Oct. 4, 1976, 90 Stat. 1738, provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975."

Amendment by section 1901(a)(58), (b)(8)(A) 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.

Amendment by Pub. L. 94-267 applicable with respect to payments made to an employee on or after July 4, 1974, see section 1(e) of Pub. L. 94-267, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Pub. L. 93-406, title II, §1022(e), Sept. 2, 1974, 88 Stat. 940, provided that the amendment made by that section is effective Jan. 1, 1974.

Amendment by section 2002(g)(6) of Pub. L. 93-406 applicable on and after Sept. 2, 1974, with respect to contributions to an employees' trust described in section 401(a) which is exempt from tax under section 501(a) or an annuity plan described in section 403(a), see section 2002(i)(3) of Pub. L. 93-406, set out as a note under section 402 of this title.

Amendment by section 2004(c)(4) of Pub. L. 93-406 applicable to years beginning after Dec. 31, 1975, see section 2004(d) of Pub. L. 93-406, set out as an Effective Date; Transition Provisions note under section 415 of this title.

Amendment by section 2005(b)(2) of Pub. L. 93-406 applicable only with respect to distributions or payments made after Dec. 31, 1973, in taxable years beginning after Dec. 31, 1973, see section 2005(d) of Pub. L. 93-406, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 321(b)(2) of Pub. L. 91-172 applicable with respect to contributions made and premiums paid after Aug. 1, 1969, see section 321(d) of Pub. L. 91-172, set out as an Effective Date note under section 83 of this title.

Amendment by section 515(a)(2) of Pub. L. 91-172 applicable to taxable years ending after Dec. 31, 1969, see section 515(d) of Pub. L. 91-172, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88-272 applicable to taxable years beginning after Dec. 31, 1963, see section 232(g) of Pub. L. 88-272, set out as a note under section 5 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87-792 applicable to taxable years beginning after Dec. 31, 1962, see section 8 of Pub. L. 87-792, set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Pub. L. 87-370, §3(b), Oct. 4, 1961, 75 Stat. 801, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1957."

EFFECTIVE DATES OF 1958 AMENDMENT

Pub. L. 85-866, §23(g), Sept. 2, 1958, 72 Stat. 1623, provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending this section and section 101 of this title] shall apply with respect to taxable years beginning after December 31, 1957. The amendments made by subsection (e) [amending section 2039 of this title] shall apply with respect to estates of decedents dying after December 31, 1957. The amendments made by subsection (f) [amending section 2517 of this title] shall apply with respect to calendar years after 1957."

REGULATIONS

Pub. L. 117-328, div. T, title I, §106(e), Dec. 29, 2022, 136 Stat. 5288, provided that: "The Secretary of the Treasury (or the Secretary's delegate) shall prescribe such regulations as may be necessary to clarify, in the case of plans to which section 403(b)(15) of the Internal Revenue Code of 1986 applies, the treatment of an employer departing such plan in connection with such employer's failure to meet multiple employer plan requirements."

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1120 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

RULE OF CONSTRUCTION

Pub. L. 117-328, div. T, title I, §106(h)(2), Dec. 29, 2022, 136 Stat. 5289, provided that: "Nothing in the amendments made by subsection (a) [amending this section] shall be construed as limiting the authority of the Secretary of the Treasury or the Secretary's delegate (determined without regard to such amendment) to provide for the proper treatment of a failure to meet any requirement applicable under the Internal Revenue Code of 1986 with respect to one employer (and its employees) in the case of a plan to which section 403(b)(15) of the Internal Revenue Code of 1986 applies."

NO INFERENCE WITH RESPECT TO CHURCH PLANS

Pub. L. 117-328, div. T, title I, §106(g), Dec. 29, 2022, 136 Stat. 5288, provided that: "Regarding any application of section 403(b) of the Internal Revenue Code of 1986 to an annuity contract purchased under a church plan (as defined in section 414(e) of such Code) maintained by more than 1 employer, or to any application of rules similar to section 413(e) of such Code to such a plan, no inference shall be made from section 403(b)(15)(A) of such Code (as added by this Act [div. T of Pub. L. 117-328]) not applying to such plans."

TREATMENT OF CUSTODIAL ACCOUNTS ON TERMINATION
OF SECTION 403(b) PLANS

Pub. L. 116-94, div. O, title I, §110, Dec. 20, 2019, 133 Stat. 3152, provided that: “Not later than six months after the date of enactment of this Act [Dec. 20, 2019], the Secretary of the Treasury shall issue guidance to provide that, if an employer terminates the plan under which amounts are contributed to a custodial account under subparagraph (A) of section 403(b)(7), the plan administrator or custodian may distribute an individual custodial account in kind to a participant or beneficiary of the plan and the distributed custodial account shall be maintained by the custodian on a tax-deferred basis as a section 403(b)(7) custodial account, similar to the treatment of fully-paid individual annuity contracts under Revenue Ruling 2011-7, until amounts are actually paid to the participant or beneficiary. The guidance shall provide further (i) that the section 403(b)(7) status of the distributed custodial account is generally maintained if the custodial account thereafter adheres to the requirements of section 403(b) that are in effect at the time of the distribution of the account and (ii) that a custodial account would not be considered distributed to the participant or beneficiary if the employer has any material retained rights under the account (but the employer would not be treated as retaining material rights simply because the custodial account was originally opened under a group contract). Such guidance shall be retroactively effective for taxable years beginning after December 31, 2008.”

ELECTION TO MODIFY SECTION 403(b) EXCLUSION
ALLOWANCE TO CONFORM TO SECTION 415 MODIFICATION

Pub. L. 107-16, title VI, §632(b)(3), June 7, 2001, 115 Stat. 115, provided that: “In the case of taxable years beginning after December 31, 1999, and before January 1, 2002, a plan may disregard the requirement in the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance.”

MODIFICATIONS OF SUBSECTION (b) OF THIS SECTION

Pub. L. 105-34, title XVI, §1601(d)(4), Aug. 5, 1997, 111 Stat. 1089, as amended by Pub. L. 105-206, title VI, §6016(a)(2), July 22, 1998, 112 Stat. 822, provided that:

“(A) Paragraphs (7)(A)(ii) and (11) of section 403(b) of the Internal Revenue Code of 1986 shall not apply with respect to a distribution from a contract described in section 1450(b)(1) of such Act [Pub. L. 104-188, set out below] to the extent that such distribution is not includible in income by reason of—

“(i) in the case of distributions before January 1, 1998, section 403(b)(8) or (b)(10) of such Code (determined after the application of section 1450(b)(2) of such Act [Pub. L. 104-188, set out below]), and

“(ii) in the case of distributions on and after such date, such section 403(b)(10).

“(B) This paragraph shall apply as if included in section 1450 of the Small Business Job Protection Act of 1996 [Pub. L. 104-188, set out below].”

Pub. L. 104-188, title I, §1450(a), (b), Aug. 20, 1996, 110 Stat. 1814, provided that:

“(a) MULTIPLE SALARY REDUCTION AGREEMENTS PERMITTED.—

“(1) GENERAL RULE.—For purposes of section 403(b) of the Internal Revenue Code of 1986, the frequency that an employee is permitted to enter into a salary reduction agreement, the salary to which such an agreement may apply, and the ability to revoke such an agreement shall be determined under the rules applicable to cash or deferred elections under section 401(k) of such Code.

“(2) CONSTRUCTIVE RECEIPT.—[Amended section 402 of this title.]

“(3) EFFECTIVE DATE.—This subsection shall apply to taxable years beginning after December 31, 1995.

“(b) TREATMENT OF INDIAN TRIBAL GOVERNMENTS.—

“(1) IN GENERAL.—In the case of any contract purchased in a plan year beginning before January 1, 1995, section 403(b) of the Internal Revenue Code of 1986 shall be applied as if any reference to an employer described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from tax under section 501 of such Code included a reference to an employer which is an Indian tribal government (as defined by section 7701(a)(40) of such Code), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), 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.

“(2) ROLLOVERS.—Solely for purposes of applying section 403(b)(8) of such Code to a contract to which paragraph (1) applies, a qualified cash or deferred arrangement under section 401(k) of such Code shall be treated as if it were a plan or contract described in clause (ii) of section 403(b)(8)(A) of such Code.”

SAMPLING TO DETERMINE WHETHER PLAN MEETS
SUBSECTION (b)(12) REQUIREMENTS

Pub. L. 100-647, title VI, §6052(b), Nov. 10, 1988, 102 Stat. 3696, provided that: “In the case of plan years beginning in 1989, 1990, or 1991, determinations as to whether a plan meets the requirements of section 403(b)(12) of the 1986 Code may be made on the basis of a statistically valid random sample. The preceding sentence shall apply only if—

“(1) the sampling is conducted by an independent person in a manner not inconsistent with regulations prescribed by the Secretary, and

“(2) the statistical method and sample size result in a 95 percent probability that the results will have a margin of error not greater than 3 percent.”

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1994

For provisions directing that if any amendments made by subtitle B [§§521-523] of title V of Pub. L. 102-318 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1994, see section 523 of Pub. L. 102-318, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL
JANUARY 1, 1989

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

CORRECTION PERIOD FOR CHURCH PLANS

Pub. L. 97-248, title II, §251(d), Sept. 3, 1982, 96 Stat. 531, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “A church plan (within the meaning of section 414(e) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) shall not be treated as not meeting the requirements of section 401 or 403 of such Code if—

“(1) by reason of any change in any law, regulation, ruling, or otherwise such plan is required to be amended to meet such requirements, and

“(2) such plan is so amended at the next earliest church convention or such other time as the Secretary of the Treasury or his delegate may prescribe.”

TRANSITIONAL RULE FOR MAKING SECTION 403(b)(8) ROLLOVER IN THE CASE OF PAYMENTS DURING 1978

Pub. L. 96-222, title I, §101(a)(13)(B), Apr. 1, 1980, 94 Stat. 204, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “In the case of any payment made during 1978 in a qualifying distribution described in section 403(b)(8) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954], the applicable period specified in section 402(a)(5)(C) of such Code shall not expire before the close of December 31, 1980.”

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Applicable period specified in section 402(a)(5)(C) of this title shall not expire before close of Dec. 31, 1980 in case of any payment described in subsec. (a)(4)(A) of this section or section 402(a)(5)(A) of this title, see section 157(h)(3)(B) of Pub. L. 95-600, set out as a note under section 402 of this title.

§ 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) Pension trusts

(A) In general

In the taxable year when paid, if the contributions are paid into a pension trust (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a), in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o), and in the case of any other plan in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any

3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years,

(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 431, and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 431.

(B) Special rule in case of certain amendments

In the case of a multiemployer plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary), if the full funding limitation determined under section 431(c)(6) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 431(c)(6)(A)(ii) exceeds the amount determined under section 431(c)(6)(A)(i), and if the funding method and the actuarial assumptions used are those used for such year under section 431, the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of—

(i) the full funding limitation for such year determined by applying section 431(c)(6) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i).

In the case of any election under this subparagraph, the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary to carry out the purposes of this subparagraph.

(C) Certain collectively-bargained plans

In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and