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.

SPECIAL RULE FOR CERTAIN PLANS IN EFFECT ON SEPTEMBER 2, 1974

Pub. L. 93–406, title II, § 2004(a)(3), Sept. 2, 1974, 88 Stat. 985, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case in which, on the date of enactment of this Act [Sept. 2, 1974], an individual is a participant in both a defined benefit plan and a defined contribution plan maintained by the same employer, and the sum of the defined benefit plan fraction and the defined contribution plan fraction for the year during which such date occurs exceeds 1.4, the sum of such fractions may continue to exceed 1.4 if—

''(A) the defined benefit plan fraction is not increased, by amendment of the plan or otherwise, after

''(B) no contributions are made under the defined contribution plan after such date.

A trust which is part of a pension, profit-sharing, or stock bonus plan described in the preceding sentence shall not be treated as not constituting a qualified trust under section 401(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] on account of the provisions of section 415(e) of such Code, as long as it is described in the preceding sentence of this subsection.''

§ 416. Special rules for top-heavy plans

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) for any plan year if the plan of which it is a part is a top-heavy plan for such plan year unless such plan meets—

(1) the vesting requirements of subsection (b), and

(2) the minimum benefit requirements of subsection (c).

(b) Vesting requirements

(1) In general

A plan satisfies the requirements of this subsection if it satisfies the requirements of either of the following subparagraphs:

(A) 3-year vesting

A plan satisfies the requirements of this subparagraph if an employee who has completed at least 3 years of service with the employer or employers maintaining the plan has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(B) 6-year graded vesting

A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

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

(2) Certain rules made applicable

Except to the extent inconsistent with the provisions of this subsection, the rules of section 411 shall apply for purposes of this subsection.

(c) Plan must provide minimum benefits

(1) Defined benefit plans

(A) In general

A defined benefit plan meets the requirements of this subsection if the accrued benefit derived from employer contributions of each participant who is a non-key employee, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's average compensation for years in the testing period.

(B) Applicable percentage

For purposes of subparagraph (A), the term ''applicable percentage'' means the lesser of—

(i) 2 percent multiplied by the number of years of service with the employer, or

(ii) 20 percent.

(C) Years of service

For purposes of this paragraph—

(i) In general

Except as provided in clause (ii) or (iii), years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a).

(ii) Exception for years during which plan was not top-heavy

A year of service with the employer shall not be taken into account under this paragraph if—

(I) the plan was not a top-heavy plan for any plan year ending during such year of service, or

(II) such year of service was completed in a plan year beginning before January 1, 1984.

(iii) Exception for plan under which no key employee (or former key employee) benefits for plan year

For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when the plan benefits (within the meaning of section 410(b)) no key employee or former key employee.

(D) Average compensation for high 5 years

For purposes of this paragraph—

(i) In general

A participant's testing period shall be the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

(ii) Year must be included in year of service

The years taken into account under clause (i) shall be properly adjusted for years not included in a year of service.

(iii) Certain years not taken into account

Except to the extent provided in the plan, a year shall not be taken into account under clause (i) if—

(I) such year ends in a plan year beginning before January 1, 1984, or

(II) such year begins after the close of the last year in which the plan was a top-heavy plan.

(E) Annual retirement benefit

For purposes of this paragraph, the term ''annual retirement benefit'' means a benefit payable annually in the form of a single life annuity (with no ancillary benefits) beginning at the normal retirement age under the plan.

(2) Defined contribution plans

(A) In general

A defined contribution plan meets the requirements of the subsection if the employer contribution for the year for each participant who is a non-key employee is not less than 3 percent of such participant's compensation (within the meaning of section 415). Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).

(B) Special rule where maximum contribution less than 3 percent

(i) In general

The percentage referred to in subparagraph (A) for any year shall not exceed the percentage at which contributions are made (or required to be made) under the plan for the year for the key employee for whom such percentage is the highest for the year.

(ii) Treatment of aggregation groups

(I) For purposes of this subparagraph, all defined contribution plans required to be included in an aggregation group under subsection (g)(2)(A)(i) shall be treated as one plan.

(II) This subparagraph shall not apply to any plan required to be included in an aggregation group if such plan enables a defined benefit plan required to be included in such group to meet the requirements of section 401(a)(4) or 410.

(C) Application to employees not meeting age and service requirements

Any employees not meeting the age or service requirements of section 410(a)(1) (without regard to subparagraph (B) thereof) may be excluded from consideration in determining whether any plan of the employer meets the requirements of subparagraphs (A) and (B).

[(d) Repealed. Pub. L. 99–514, title XI, § 1106(d)(3)(B)(i), Oct. 22, 1986, 100 Stat. 2424]

(e) Plan must meet requirements without taking into account social security and similar contributions and benefits

A top-heavy plan shall not be treated as meeting the requirement of subsection (b) or (c) unless such plan meets such requirement without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law.

(f) Coordination where employer has 2 or more plans

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section where the employer has 2 or more plans including (but not limited to) regulations to prevent inappropriate omissions or required duplication of minimum benefits or contributions.

(g) Top-heavy plan defined

For purposes of this section—

(1) In general

(A) Plans not required to be aggregated

Except as provided in subparagraph (B), the term ''top-heavy plan'' means, with respect to any plan year—

(i) any defined benefit plan if, as of the determination date, the present value of the cumulative accrued benefits under the plan for key employees exceeds 60 percent of the present value of the cumulative accrued benefits under the plan for all employees, and

(ii) any defined contribution plan if, as of the determination date, the aggregate of the accounts of key employees under the plan exceeds 60 percent of the aggregate of the accounts of all employees under such plan.

(B) Aggregated plans

Each plan of an employer required to be included in an aggregation group shall be treated as a top-heavy plan if such group is a top-heavy group.

(2) Aggregation

For purposes of this subsection—

(A) Aggregation group

(i) Required aggregation

The term ''aggregation group'' means—

(I) each plan of the employer in which a key employee is a participant, and

(II) each other plan of the employer which enables any plan described in subclause (I) to meet the requirements of section 401(a)(4) or 410.

(ii) Permissive aggregation

The employer may treat any plan not required to be included in an aggregation

group under clause (i) as being part of such group if such group would continue to meet the requirements of sections 401(a)(4) and 410 with such plan being taken into account.

(B) Top-heavy group

The term ''top-heavy group'' means any aggregation group if—

(i) the sum (as of the determination date) of—

(I) the present value of the cumulative accrued benefits for key employees under all defined benefit plans included in such group, and

(II) the aggregate of the accounts of key employees under all defined contribution plans included in such group,

(ii) exceeds 60 percent of a similar sum determined for all employees.

(3) Distributions during last year before determination date taken into account

(A) In general

For purposes of determining—

(i) the present value of the cumulative accrued benefit for any employee, or

(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

(B) 5-year period in case of in-service distribution

In the case of any distribution made for a reason other than severance from employment, death, or disability, subparagraph (A) shall be applied by substituting ''5-year period'' for ''1-year period''.

(4) Other special rules

For purposes of this subsection—

(A) Rollover contributions to plan not taken into account

Except to the extent provided in regulations, any rollover contribution (or similar transfer) initiated by the employee and made after December 31, 1983, to a plan shall not be taken into account with respect to the transferee plan for purposes of determining whether such plan is a top-heavy plan (or whether any aggregation group which includes such plan is a top-heavy group).

(B) Benefits not taken into account if employee ceases to be key employee

If any individual is a non-key employee with respect to any plan for any plan year, but such individual was a key employee with respect to such plan for any prior plan year, any accrued benefit for such employee (and the account of such employee) shall not be taken into account.

(C) Determination date

The term ''determination date'' means, with respect to any plan year—

(i) the last day of the preceding plan year, or

(ii) in the case of the first plan year of any plan, the last day of such plan year.

(D) Years

To the extent provided in regulations, this section shall be applied on the basis of any year specified in such regulations in lieu of plan years.

(E) Benefits not taken into account if employee not employed for last year before determination date

If any individual has not performed services for the employer maintaining the plan at any time during the 1-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.

(F) Accrued benefits treated as accruing ratably

The accrued benefit of any employee (other than a key employee) shall be determined—

(i) under the method which is used for accrual purposes for all plans of the employer, or

(ii) if there is no method described in clause (i), as if such benefit accrued not more rapidly than the slowest accrual rate permitted under section 411(b)(1)(C).

(G) Simple retirement accounts

The term ''top-heavy plan'' shall not include a simple retirement account under section 408(p).

(H) Cash or deferred arrangements or plans using alternative methods of meeting nondiscrimination requirements

The term ''top-heavy plan'' shall not include a plan which consists solely of—

(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12) or 401(k)(13) and matching contributions with respect to which the requirements of paragraph (11), (12), or (13) of section 401(m) are met, or

(ii) a starter 401(k) deferral-only arrangement described in section 401(k)(16)(B) or a safe harbor deferral-only plan described in section 403(b)(16).

Such term shall not include a plan solely because such plan does not provide nonelective or matching contributions to employees described in section 401(k)(15)(B)(i). If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).

[(h) Repealed. Pub. L. 104–188, title I, § 1452(c)(7), Aug. 20, 1996, 110 Stat. 1816]

(i) Definitions

For purposes of this section—

(1) Key employee

(A) In general

The term ''key employee'' means an employee who, at any time during the plan year, is—

(i) an officer of the employer having an annual compensation greater than $130,000,

(ii) a 5-percent owner of the employer, or

(iii) a 1-percent owner of the employer having an annual compensation from the employer of more than $150,000.

For purposes of clause (i), no more than 50 employees (or, if lesser, the greater of 3 or 10 percent of the employees) shall be treated as officers. In the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000. Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans). For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(5) shall be excluded.

(B) Percentage owners

(i) 5-percent owner

For purposes of this paragraph, the term ''5-percent owner'' means—

(I) if the employer is a corporation, any person who owns (or is considered as owning within the meaning of section 318) more than 5 percent of the outstanding stock of the corporation or stock possessing more than 5 percent of the total combined voting power of all stock of the corporation, or

(II) if the employer is not a corporation, any person who owns more than 5 percent of the capital or profits interest in the employer.

(ii) 1-percent owner

For purposes of this paragraph, the term ''1-percent owner'' means any person who would be described in clause (i) if ''1 percent'' were substituted for ''5 percent'' each place it appears in clause (i).

(iii) Constructive ownership rules

For purposes of this subparagraph—

(I) subparagraph (C) of section 318(a)(2) shall be applied by substituting ''5 percent'' for ''50 percent'', and

(II) in the case of any employer which is not a corporation, ownership in such employer shall be determined in accordance with regulations prescribed by the Secretary which shall be based on principles similar to the principles of section 318 (as modified by subclause (I)).

(C) Aggregation rules do not apply for purposes of determining ownership in the employer

The rules of subsections (b), (c), and (m) of section 414 shall not apply for purposes of determining ownership in the employer.

(D) Compensation

For purposes of this paragraph, the term ''compensation'' has the meaning given such term by section 414(q)(4).

(2) Non-key employee

The term ''non-key employee'' means any employee who is not a key employee.

(3) Self-employed individuals

In the case of a self-employed individual described in section 401(c)(1)—

(A) such individual shall be treated as an employee, and

(B) such individual's earned income (within the meaning of section 401(c)(2)) shall be treated as compensation.

(4) Treatment of employees covered by collective bargaining agreements

The requirements of subsections (b), (c), and (d) shall not apply with respect to any employee included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and 1 or more employers if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(5) Treatment of beneficiaries

The terms ''employee'' and ''key employee'' include their beneficiaries.

(6) Treatment of simplified employee pensions

(A) Treatment as defined contribution plans

A simplified employee pension shall be treated as a defined contribution plan.

(B) Election to have determinations based on employer contributions

In the case of a simplified employee pension, at the election of the employer, paragraphs (1)(A)(ii) and (2)(B) of subsection (g) shall be applied by taking into account aggregate employer contributions in lieu of the aggregate of the accounts of employees.

(Added Pub. L. 97–248, title II, §240(a), Sept. 3, 1982, 96 Stat. 514; amended Pub. L. 98–369, div. A, title V, §524(a)(1), (b)(1), (c)(1), title VII, §713(f)(1), (4), (5)(A), (6), July 18, 1984, 98 Stat. 872, 958–960; Pub. L. 99–514, title XI, §§1106(d)(3)(A), (B), 1118(a), title XVIII, §1852(d), Oct. 22, 1986, 100 Stat. 2424, 2463, 2867; Pub. L. 100–647, title I, §1011(d)(8), (i)(4)(B), (j)(3)(A), Nov. 10, 1988, 102 Stat. 3460, 3467, 3468; Pub. L. 104–188, title I, §§1421(b)(7), 1431(c)(1)(B), (C), 1452(c)(7), Aug. 20, 1996, 110 Stat. 1797, 1803, 1816; Pub. L. 107–16, title VI, §613(a)–(e), June 7, 2001, 115 Stat. 100–102; Pub. L. 107–147, title IV, §411(k), Mar. 9, 2002, 116 Stat. 47; Pub. L. 108–311, title IV, §408(a)(16), Oct. 4, 2004, 118 Stat. 1192; Pub. L. 109–280, title IX, §902(c), Aug. 17, 2006, 120 Stat. 1036; Pub. L. 117–328, div. T, title I, §§121(c),

125(e), title III, §310(a), Dec. 29, 2022, 136 Stat. 5311, 5315, 5346.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

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

Editorial Notes

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsec. (e), is act Aug. 16, 1954, ch. 736, §§3101, 3102, 3111, 3112, 3121 to 3128, 68A Stat. 415, which is classified generally to chapter 21 (§3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3128 of this title and Tables.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2022—Subsec. (c)(2)(C). Pub. L. 117–328, §310(a), added subpar. (C).

Subsec. (g)(4)(H). Pub. L. 117–328, §125(e), inserted ''Such term shall not include a plan solely because such plan does not provide nonelective or matching contributions to employees described in section 401(k)(15)(B)(i).'' before ''If, but'' in concluding provisions.

Pub. L. 117–328, §121(c), substituted ''arrangements or plans'' for ''arrangements'' in heading and ''and matching contributions with respect to which the requirements of paragraph (11), (12), or (13) of section 401(m) are met, or'' for '', and'' in cl. (i), added cl. (ii), and struck out former cl. (ii) which read as follows: ''matching contributions with respect to which the requirements of section 401(m)(11) or 401(m)(12) are met.''

2006—Subsec. (g)(4)(H)(i). Pub. L. 109–280, §902(c)(1), inserted ''or 401(k)(13)'' after ''401(k)(12)''.

Subsec. (g)(4)(H)(ii). Pub. L. 109–280, §902(c)(2), inserted ''or 401(m)(12)'' after ''401(m)(11)''.

2004—Subsec. (i)(1)(A). Pub. L. 108–311 substituted ''In the case of plan years'' for ''in the case of plan years'' in concluding provisions.

2002—Subsec. (c)(1)(C)(iii). Pub. L. 107–147, §411(k)(1), substituted ''Exception for plan under which no key employee (or former key employee) benefits for plan year'' for ''Exception for frozen plan'' in heading.

Subsec. (g)(3)(B). Pub. L. 107–147, §411(k)(2), substituted ''severance from employment'' for ''separation from service''.

2001—Subsec. (c)(1)(C)(i). Pub. L. 107–16, §613(e)(A), substituted ''clause (ii) or (iii)'' for ''clause (ii)''.

Subsec. (c)(1)(C)(iii). Pub. L. 107–16, §613(e)(B), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 107–16, §613(b), inserted at end ''Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph (and any reduction under this sentence shall not be taken into account in determining whether section 401(k)(4)(A) applies).''

Subsec. (g)(3). Pub. L. 107–16, §613(c)(1), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''For purposes of determining—

''(A) the present value of the cumulative accrued benefit for any employee, or

''(B) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.''

Subsec. (g)(4)(E). Pub. L. 107–16, §613(c)(2), in heading substituted ''last year before determination date'' for ''last 5 years'' and in text substituted ''1-year period'' for ''5-year period''.

Subsec. (g)(4)(H). Pub. L. 107–16, §613(d), added subpar. (H).

Subsec. (i)(1)(A). Pub. L. 107–16, §613(a)(1)(D), in concluding provisions, substituted ''in the case of plan years beginning after December 31, 2002, the $130,000 amount in clause (i) shall be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase under this sentence which is not a multiple of $5,000 shall be rounded to the next lower multiple of $5,000.'' for ''For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest.''

Pub. L. 107–16, §613(a)(1)(A), struck out ''or any of the 4 preceding plan years'' after ''plan year'' in introductory provisions.

Subsec. (i)(1)(A)(i). Pub. L. 107–16, §613(a)(1)(B), added cl. (i) and struck out former cl. (i) which read as follows: ''an officer of the employer having an annual compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for any such plan year,''.

Subsec. (i)(1)(A)(ii)–(iv). Pub. L. 107–16, §613(a)(1)(C), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318) the largest interests in the employer,''.

Subsec. (i)(1)(B)(iii). Pub. L. 107–16, §613(a)(2), struck out ''and subparagraph (A)(ii)'' after ''this subparagraph'' in introductory provisions.

1996—Subsec. (g)(4)(G). Pub. L. 104–188, §1421(b)(7), added subpar. (G).

Subsec. (h). Pub. L. 104–188, §1452(c)(7), struck out subsec. (h) which related to adjustments in section 415 limits for top-heavy plans.

Subsec. (i)(1)(A). Pub. L. 104–188, §1431(c)(1)(C), substituted ''section 414(q)(5)'' for ''section 414(q)(8)'' in closing provisions.

Subsec. (i)(1)(D). Pub. L. 104–188, §1431(c)(1)(B), substituted ''section 414(q)(4)'' for ''section 414(q)(7)''.

1988—Subsec. (i)(1)(A). Pub. L. 100–647, §1011(i)(4)(B), inserted at end ''For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(8) shall be excluded.''

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

Subsec. (i)(1)(D). Pub. L. 100–647, §1011(j)(3)(A), added subpar. (D).

1986—Subsec. (a)(3). Pub. L. 99–514, §1106(d)(3)(A), struck out par. (3) which read as follows: ''the limitation on compensation requirement of subsection (d).''

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 99–514, §1106(d)(3)(B)(ii), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''DETERMINATION OF PERCENTAGE.—The determination referred to in clause (i) shall be determined for each key employee by dividing the contributions for such employee by so much of his total compensation for the year as does not exceed $200,000.''

Subsec. (d). Pub. L. 99–514, §1106(d)(3)(B)(i), repealed subsec. (d) which provided for a $200,000 limitation on the amount of annual compensation of each employee taken into account.

Subsec. (g)(4)(E). Pub. L. 99–514, §1852(d)(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''If any individual has not received any compensation from any employer maintaining the plan (other than benefits under the plan) at any time during the 5-year period ending on the determination date, any accrued benefit for such individual (and the ac-

count of such individual) shall not be taken into account.''

Subsec. (g)(4)(F). Pub. L. 99–514, §1118(a), added subpar. (F).

Subsec. (i)(1)(A). Pub. L. 99–514, §1852(d)(1), inserted at end ''Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans).''

1984—Subsec. (c)(2)(C). Pub. L. 98–369, §524(c)(1), struck out subpar. (C) which provided that for purposes of this paragraph, any employer contribution attributable to a salary reduction or similar arrangement shall not be taken into account.

Subsec. (d)(2). Pub. L. 98–369, §713(f)(5)(A), inserted ''at the same time and''.

Subsec. (f). Pub. L. 98–369, §713(f)(6)(A), substituted ''required'' for ''require''.

Subsec. (g)(3). Pub. L. 98–369, §713(f)(4), inserted at end ''The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.''

Subsec. (g)(4)(E). Pub. L. 98–369, §524(b)(1), added subpar. (E).

Subsec. (i)(1)(A). Pub. L. 98–369, §713(f)(1)(A), (C), substituted in provisions preceding cl. (i) ''an employee'' for ''any participant in an employer plan'' and inserted at end thereof provision for treatment of an employee with the greater annual compensation as having a larger interest in the employer where, for purposes of cl. (ii), 2 employees have the same interest in the employer.

Subsec. (i)(1)(A)(i). Pub. L. 98–369, §524(a)(1), inserted ''having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for any plan year''.

Subsec. (i)(1)(A)(ii). Pub. L. 98–369, §713(f)(1)(B), required a key employee to have annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A).

Subsec. (i)(1)(B)(iii). Pub. L. 98–369, §713(f)(6)(B), substituted subparagraph ''(A)(ii)'' for ''(A)(ii)(II)''.

Subsec. (i)(1)(C). Pub. L. 98–369, §713(f)(1)(A), substituted in heading ''ownership in the employer'' for ''5-percent or 1-percent owners''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Amendment by section 121(c) 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(e) of Pub. L. 117–328 effective as if included in the enactment of section 112 of div. O of Pub. L. 116–94, see section 125(f)(2) of Pub. L. 117–328, set out as a note under section 401 of this title.

Pub. L. 117–328, div. T, title III, §310(b), Dec. 29, 2022, 136 Stat. 5347, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plan years beginning after December 31, 2023.''

EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by Pub. L. 109–280 applicable to plan years beginning after Dec. 31, 2007, see section 902(g) of Pub. L. 109–280, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

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

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title VI, §613(f), June 7, 2001, 115 Stat. 102, provided that: ''The amendments made by this section [amending this section] shall apply to years beginning after December 31, 2001.''

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1421(b)(7) of Pub. L. 104–188 applicable to taxable years beginning after Dec. 31, 1996, see section 1421(e) of Pub. L. 104–188, set out as a note under section 72 of this title.

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

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

EFFECTIVE DATE OF 1988 AMENDMENT

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

Amendment by section 1011(d)(8), (i)(4)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

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

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

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

EFFECTIVE DATE OF 1984 AMENDMENT

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

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

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

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

EFFECTIVE DATE

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

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

''(b) ALLOWANCE OF EXCLUSION OF DEATH BENEFIT FOR SELF-EMPLOYED INDIVIDUALS.—The amendment made

by section 239 [amending section 101 of this title] shall apply with respect to decedents dying after December 31, 1983.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1998

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

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

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

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

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

(1) In general

A plan meets the requirements of section 401(a)(11) only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4) of this subsection.

(2) Spouse must consent to election

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

(A)(i) the spouse of the participant consents in writing to such election, (ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) Plan to provide written explanations

(A) Explanation of joint and survivor annuity

Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B) Explanation of qualified preretirement survivor annuity

(i) In general

Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) Applicable period

For purposes of clause (i), the term ''applicable period'' means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after section 401(a)(11) applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Requirement of spousal consent for using plan assets as security for loans

Each plan shall provide that, if section 401(a)(11) applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and