LEXSTAT IRC 411

INTERNAL REVENUE CODE
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*** CURRENT THROUGH P.L. 109-346, APPROVED 10/13/2006 ***

SUBTITLE A. INCOME TAXES
CHAPTER 1. NORMAL TAXES AND SURTAXES
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PART I. PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.
SUBPART B. SPECIAL RULES

IRC Sec. 411

Sec. 411. Minimum vesting standards [Caution: See prospective amendment notes below.].

(a) General rule. A trust shall not constitute a qualified trust under section 401(a) [*26 USCS § 401(a)*] unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) Employee contributions. Except as provided in paragraph (12), a plan satisfies the requirements of this paragraph if an employee's rights in his accrued benefit derived from his own contributions are nonforfeitable.

(2) Employer contributions. A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A) or (B).

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

(B) 3 to 7 year vesting. A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

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

(C) [Deleted]

(3) Certain permitted forfeitures, suspensions, etc. For purposes of this subsection--

(A) Forfeiture on account of death. A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that it is not payable if the participant dies (except in the case of a survivor annuity which is payable as provided in section 401(a)(11) [*26 USCS § 401(a)(11)*]).

(B) Suspension of benefits upon reemployment of retiree. A right to an accrued benefit derived from employer

contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits is suspended for such period as the employee is employed, subsequent to the commencement of payment of such benefits--

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

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

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

(C) Effect of retroactive plan amendments. A right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because plan amendments may be given retroactive application as provided in section 412(c)(2) [*26 USCS § 412(c)(2)*].

(D) Withdrawal of mandatory contribution.

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

(ii) Clause (i) shall not apply to a plan unless the plan provides that any accrued benefit forfeited under a plan provision described in such clause shall be restored upon repayment by the participant of the full amount of the withdrawal described in such clause plus, in the case of a defined benefit plan, interest. Such interest shall be computed on such amount at the rate determined for purposes of subsection (c)(2)(C) on the date of such repayment (computed annually from the date of such withdrawal). The plan provision required under this clause may provide that such repayment must be made (I) in the case of a withdrawal on account of separation from service,before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or (II) in the case of any other withdrawal, 5 years after the date of the withdrawal.

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

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

(v) For nonforfeitability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 401(a)(19) [*26 USCS § 401(a)(19)*].

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

(F) Reduction and suspension of benefits by a multiemployer plan. A participant's right to an accrued benefit derived from employer contributions under a multiemployer plan shall not be treated as forfeitable solely because--

(i) the plan is amended to reduce benefits under section 418D [*26 USCS § 418D*] or under section 4281 of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1441*], or

(ii) benefit payments under the plan may be suspended under section 418E [*26 USCS § 418E*] or under section 4281 of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1441*].

(G) Treatment of matching contributions forfeited by reason of excess deferral or contribution. A matching contribution (within the meaning of section 401(m) [*26 USCS § 401(m)*]) shall not be treated as forfeitable merely

because such contribution is forfeitable if the contribution to which the matching contribution relates is treated as an excess contribution under section 401(k)(8)(B) [*26 USCS § 401(k)(8)(B)*], an excess deferral under section 402(g)(2)(A) [*26 USCS § 402(g)(2)(A)*], or an excess aggregate contribution under section 401(m)(6)(B) [*26 USCS § 401(m)(6)(B)*].

(4) Service included in determination of nonforfeitable percentage. In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18,

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions;

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

(D) service not required to be taken into account under paragraph (6);

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

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

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

(i) with an employer after--

(I) a complete withdrawal of that employer from the plan (within the meaning of section 4203 of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1383*]), or

(II) to the extent permitted in regulations prescribed by the Secretary, a partial withdrawal described in section 4205(b)(2)(A)(i) of such Act [*29 USCS § 1385(b)(2)(A)(i)*] in conjunction with the decertification of the collective bargaining representative, and

(ii) with any employer under the plan after the termination date of the plan under section 4048 of such Act [*29 USCS § 1348*].

(5) Year of service.

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

(B) Hours of service. For purposes of this subsection, the term "hours of service" has the meaning provided by section 410(a)(3)(C) [*26 USCS § 410(a)(3)(C)*].

(C) Seasonal industries. In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of service" shall be such period as may be determined under regulations prescribed by the Secretary of Labor.

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

(6) Breaks in service.

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

(B) 1 year of service after 1-year break in service. For purposes of paragraph (4), in the case of any employee who has any 1-year break in service, years of service before such break shall not be required to be taken into account until he has completed a year of service after his return.

(C) 5 consecutive 1-year breaks in service under defined contribution plan. For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall

not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D) Nonvested participants.

(i) In general. For purposes of paragraph (4), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of--

(I) 5, or

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

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

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

(E) Special rule for maternity or paternity absences.

(i) General rule. In the case of each individual who is absent from work for any period--

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

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

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

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

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

(ii) Hours treated as hours of service. The hours described in this clause are--

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

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

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

(iii) Year to which hours are credited. The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph--

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

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

(iv) Year defined. For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (5).

(v) Information required to be filed. A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish--

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

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

(7) Accrued benefit.

(A) In general. For purposes of this section, the term "accrued benefit" means--

(i) in the case of a defined benefit plan, the employee's accrued benefit determined under the plan and, except as provided in subsection (c)(3), expressed in the form of an annual benefit commencing at normal retirement age, or

(ii) in the case of a plan which is not a defined benefit plan, the balance of the employee's account.

(B) Effect of certain distributions. Notwithstanding paragraph (4), for purposes of determining the employee's

accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received--

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than the dollar limit under section 411(a)(11)(A) [*26 USCS § 411(a)(11)(A)*]) permitted under regulations prescribed by the Secretary, or

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

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

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

(i) received such a distribution in any plan year to which this section applies, which distribution was less than the present value of his accrued benefit,

(ii) resumes employment covered under the plan, and

(iii) repays the full amount of such distribution with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C).

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

(D) Accrued benefit attributable to employee contributions. The accrued benefit of an employee shall not be less than the amount determined under subsection (c)(2)(B) with respect to the employee's accumulated contributions.

(8) Normal retirement age. For purposes of this section, the term "normal retirement age" means the earlier of--

(A) the time a plan participant attains normal retirement age under the plan, or

(B) the later of--

(i) the time a plan participant attains age 65, or

(ii) the 5th anniversary of the time a plan participant commenced participation in the plan.

(9) Normal retirement benefit. For purposes of this section, the term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. The normal retirement benefit shall be determined without regard to--

(A) medical benefits, and

(B) disability benefits not in excess of the qualified disability benefit.

For purposes of this paragraph, a qualified disability benefit is a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if he separated from the service at normal retirement age. For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any benefits commencing before benefits payable under title II of the Social Security Act [*42 USCS §§ 401* et seq.] become payable which--

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(10) Changes in vesting schedule.

(A) General rule. A plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes

effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

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

(11) Restrictions on certain mandatory distributions.

(A) In general. If the present value of any nonforfeitable accrued benefit exceeds $ 5,000, a plan meets the requirements of this paragraph only if such plan provides that such benefit may not be immediately distributed without the consent of the participant.

(B) Determination of present value. For purposes of subparagraph (A), the present value shall be calculated in accordance with section 417(e)(3) [*26 USCS § 417(e)(3)*].

(C) Dividend distributions of ESOPs arrangement. This paragraph shall not apply to any distribution of dividends to which section 404(k) [*26 USCS § 404(k)*] applies.

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

(12) Faster vesting for matching contributions. In the case of matching contributions (as defined in section 401(m)(4)(A) [*26 USCS § 401(m)(4)(A)*]), paragraph (2) shall be applied--

(A) by substituting "3 years" for "5 years" in subparagraph (A), and

(B) by substituting the following table for the table contained in subparagraph (B):

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

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

(A) In general. An applicable defined benefit plan shall not be treated as failing to meet--

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

(ii) the requirements of subsection (c) or section 417(e) [*26 USCS § 417(e)*] with respect to contributions other than employee contributions,

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

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

(C) Applicable defined benefit plan and related rules. For purposes of this subsection--

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

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

(b) Accrued benefit requirements.

(1) Defined benefit plans.

(A) 3-percent method. A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which each participant is entitled upon his separation from the service is not less than--

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

(ii) the number of years (not in excess of 33 1/3) of his participation in the plan.

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

(B) 133 1/3 percent rule. A defined benefit plan satisfies the requirements of this paragraph for a particular plan year if under the plan the accrued benefit payable at the normal retirement age is equal to the normal retirement benefit and the annual rate at which any individual who is or could be a participant can accrue the retirement benefits payable at normal retirement age under the plan for any later plan year is not more than 133 1/3 percent of the annual rate at which he can accrue benefits for any plan year beginning on or after such particular plan year and before such later plan year. For purposes of this subparagraph--

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

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

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

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

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

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

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

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

(E) First two years of service. Notwithstanding subparagraphs (A), (B), and (C) of this paragraph, a plan shall not be treated as not satisfying the requirements of this paragraph solely because the accrual of benefits under the plan does not become effective until the employee has two continuous years of service. For purposes of this subparagraph, the term

"years of service" has the meaning provided by section 410(a)(3)(A) [*26 USCS § 410(a)(3)(A)*].

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

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

(ii) satisfies the requirements of subparagraphs (B) and (C) of section 412(e)(3) [*26 USCS § 412(e)(3)*] (relating to certain insurance contract plans),

but only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value his insurance contracts would have on such applicable date if the requirements of subparagraphs (D), (E), and (F) of section 412(e)(3) [*26 USCS § 412(e)(3)*] were satisfied.

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

(i) do not exceed such social security benefits, and

(ii) terminate when such social security benefits commence.

(H) Continued accrual beyond normal retirement age.

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

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

(iii) Adjustments under plan for delayed retirement taken into account. In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan--

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

(II) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 401(a)(14)(C) [*26 USCS § 401(a)(14)(C)*], and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to subsection (a)(3)(B), then any requirement of this subparagraph for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

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

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

(v) Coordination with other requirements. The Secretary shall provide by regulation for the coordination of the requirements of this subparagraph with the requirements of subsection (a), sections 404, 410, and 415 [*26 USCS §§ 404, 410*, and *415*], and the provisions of this subchapter [*26 USCS §§ 401* et seq.] precluding discrimination in favor of highly compensated employees.

(2) Defined contribution plans.

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

reduced, because of the attainment of any age.

(B) Application to target benefit plans. The Secretary shall provide by regulation for the application of the requirements of this paragraph to target benefit plans.

(C) Coordination with other requirements. The Secretary may provide by regulation for the coordination of the requirements of this paragraph with the requirements of subsection (a), sections 404, 410, and 415 [*26 USCS §§ 404, 410*, and *415*], and the provisions of this subchapter [*26 USCS §§ 401* et seq.] precluding discrimination in favor of highly compensated employees.

(3) Separate accounting required in certain cases. A plan satisfies the requirements of this paragraph if--

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

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

(4) Year of participation.

(A) Definition. For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5) [*26 USCS § 410(a)(5)*], determined without regard to section 410(a)(5)(E) [*26 USCS § 410(a)(5)(E)*]) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

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

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

(D) Seasonal industries. In the case of any seasonal industry where the customary period of employment is less than 1,000 hours during a calendar year, the term "year of participation" shall be such period as determined under regulations prescribed by the Secretary of Labor.

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

(5) Special rules relating to age.

(A) Comparison to similarly situated younger individual.

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

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

(iii) Disregard of subsidized early retirement benefits. In determining the accrued benefit as of any date for purposes of this clause, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

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

(B) Applicable defined benefit plans.

(i) Interest credits.

(I) In general. An applicable defined benefit plan shall be treated as failing to meet the requirements of

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

(II) Preservation of capital. An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

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

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

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

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

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

(iv) Special rules for early retirement subsidies. For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment. For purposes of this subparagraph--

(I) In general. The term "applicable plan amendment" means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

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

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

(IV) Applicable defined benefit plan. For purposes of this subparagraph, the term "applicable defined benefit plan" has the meaning given such term by section 411(a)(13) [*26 USCS § 411(a)(13)*].

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

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

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

(C) Certain offsets permitted. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H)(i) solely because the plan provides offsets against benefits under the plan to the extent such offsets are allowable in applying the requirements of section 401(a) [*26 USCS § 401(a)*].

(D) Permitted disparities in plan contributions or benefits. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) [*26 USCS § 401(l)*] are met.

(E) Indexing permitted.

(i) In general. A plan shall not be treated as failing to meet the requirements of paragraph (1)(H) solely because the plan provides for indexing of accrued benefits under the plan.

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

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

(F) Early retirement benefit or retirement-type subsidy. For purposes of this paragraph, the terms "early retirement benefit" and "retirement-type subsidy" have the meaning given such terms in subsection (d)(6)(B)(i).

(G) Benefit accrued to date. For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(c) Allocation of accrued benefits between employer and employee contributions.

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

(2) Accrued benefit derived from employee contributions.

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

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

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

(B) Defined benefit plans. In the case of a defined benefit plan, the accrued benefit derived from contributions made by an employee as of any applicable date is the amount equal to the employee's accumulated contributions expressed as an annual benefit commencing at normal retirement age, using an interest rate which would be used under the plan under section 417(e)(3) [*26 USCS § 417(e)(3)*] (as of the determination date).

(C) Definition of accumulated contributions. For purposes of this subsection, the term "accumulated contributions" means the total of--

(i) all mandatory contributions made by the employee,

(ii) interest (if any) under the plan to the end of the last plan year to which subsection (a)(2) does not apply (by reason of the applicable effective date), and

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

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

(II) at the interest rate which would be used under the plan under section 417(e)(3) [*26 USCS § 417(e)(3)*] (as of the determination date) for the period beginning with the determination date and ending on the date on which the employee attains normal retirement age.

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

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

(3) Actuarial adjustment. For purposes of this section, in the case of any defined benefit plan, if an employee's

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

(d) Special rules.

(1) Coordination with section 401(a)(4). A plan which satisfies the requirements of this section shall be treated as satisfying any vesting requirements resulting from the application of section 401(a)(4) [*26 USCS § 401(a)(4)*] unless--

(A) there has been a pattern of abuse under the plan (such as a dismissal of employees before their accrued benefits become nonforfeitable) tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q) [*26 USCS § 414(q)*]), or

(B) there have been, or there is reason to believe there will be, an accrual of benefits or forfeitures tending to discriminate in favor of employees who are highly compensated employees (within the meaning of section 414(q) [*26 USCS § 414(q)*]).

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

(3) Termination or partial termination; discontinuance of contributions. Notwithstanding the provisions of subsection (a), a trust shall not constitute a qualified trust under section 401(a) [*26 USCS § 401(a)*] unless the plan of which such trust is a part provides that--

(A) upon its termination or partial termination, or

(B) in the case of a plan to which section 412 [*26 USCS § 412*] does not apply, upon complete discontinuance of contributions under the plan,

the rights of all affected employees to benefits accrued to the date of such termination, partial termination, or discontinuance, to the extent funded as of such date, or the amounts credited to the employees' accounts, are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary to preclude the discrimination prohibited by section 401(a)(4) [*26 USCS § 401(a)(4)*], may not be used for designated employees in the event of early termination of the plan. For purposes of this paragraph, in the case of the complete discontinuance of contributions under a profit-sharing or stock bonus plan, such plan shall be treated as having terminated on the day on which the plan administrator notifies the Secretary (in accordance with regulations) of the discontinuance.

(4) Repealed.

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

(6) Accrued benefit not to be decreased by amendment.

(A) In general. A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(e)(2) [*26 USCS § 412(e)(2)*], or *section 4281* of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1441*].

(B) Treatment of certain plan amendments. For purposes of subparagraph (A), a plan amendment which has the effect of--

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely

affects the rights of any participant in a more than de minimis manner. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

(C) Special rule for ESOPs. For purposes of this paragraph, any--

(i) tax credit employee stock ownership plan (as defined in section 409(a) [*26 USCS § 409(a)*]), or

(ii) employee stock ownership plan (as defined in section 4975(e)(7) [*26 USCS § 4975(e)(7)*]),

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

(D) Plan transfers.

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

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

(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I),

(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan,

(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election, and

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

(ii) Special rule for mergers, etc. Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(E) Elimination of form of distribution. Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless--

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

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

(e) Application of vesting standards to certain plans.

(1) The provisions of this section (other than paragraph (2)) shall not apply to--

(A) a governmental plan (within the meaning of section 414(d) [*26 USCS § 414(d)*]),

(B) a church plan (within the meaning of section 414(e) [*26 USCS § 414(e)*]) with respect to which the election provided by section 410(d) [*26 USCS § 410(d)*] has not been made,

(C) a plan which has not, at any time after September 2, 1974, provided for employer contributions, and

(D) a plan established and maintained by a society, order, or association described in section 501(c)(8) or (9) [*26 USCS § 501(c)(8)* or (9)], if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) A plan described in paragraph (1) shall be treated as meeting the requirements of this section, for purposes of section 401(a) [*26 USCS § 401(a)*], if such plan meets the vesting requirements resulting from the application of sections 401(a)(4) and 401(a)(7) [*26 USCS §§ 401(a)(4)* and *401(a)(7)*] as in effect on September 1, 1974.

HISTORY:

(Added Sept. 2, 1974, P.L. 93-406, Title II, § 1012(a), 88 Stat. 901; Oct. 4, 1976, P.L. 94-455, Title XIX, §§ 1901(a)(62), 1906(b)(13)(A), 90 Stat. 1774, 1834; Sept. 26, 1980, P.L. 96-364, Title II, § 206, 94 Stat. 1287; Aug. 23, 1984, P.L. 98-397, Title II, §§ 202(b), (c), (d)(2), (e)(2), (3), (f), 205, Title III, § 301(a)(1), 98 Stat. 1437, 1439, 1440, 1449, 1450; Oct. 21, 1986, P.L. 99-509, Title IX, §§ 9202(b), 9203(b)(2), 100 Stat. 1977, 1979; Oct. 22, 1986, P.L. 99-514, Title XI, §§ 1113(a), (b), (d)(B), 1114(b)(10), 1139(a), Title XVIII, § 1898(a)(1)(A), (4)(A), (d)(1)(A), (2)(A), (f)(1)(A), 100 Stat. 2446, 2447, 2451, 2487, 2941, 2943, 2955, 2956; Dec. 22, 1987, P.L. 100-203, Title IX, § 9346(b), 101 Stat. 1330-374; Nov. 10, 1988, P.L. 100-647, Title I, § 1018(t)(8)(B), 102 Stat. 3589; Dec. 19, 1989, P.L. 101-239, Title VII, §§ 7861(a)(5)(A), (6)(A), 7871(a)(1), (2), (b)(1), 7881(m)(1), 103 Stat. 2430, 2435, 2443; July 3, 1992, P.L. 102-318, Title V, § 521(b)(44), 106 Stat. 313; Dec. 8, 1994, P.L. 103-465, Title VII, § 767(a)(1), 108 Stat. 5037; Aug. 20, 1996, P.L. 104-188, Title I, § 1442(a), 110 Stat. 1808; Aug. 5, 1997, P.L. 105-34, Title X, § 1071(a)(1), (2)(A), 111 Stat. 948; June 7, 2001, P.L. 107-16, Title VI, §§ 633(a), 645(a)(1), (b)(1), 648(a)(1), 115 Stat. 115, 123, 125, 127; Oct. 4, 2004, P.L. 108-311, Title IV, § 408(a)(14), 118 Stat. 1192.)

(As amended Aug. 17, 2006, P.L. 109-280, Title I, Subtitle B, § 114(b), Title VII, § 701(b), Title IX, §§ 902(d)(2)(A), (B), 904(a), 120 Stat. 853, 984, 1038, 1048.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prospective amendment:

Amendment of subsec. (a)(3)(G), applicable to plan years beginning after Dec. 31, 2007. Act Aug. 17, 2006, P.L. 109-280, Title IX, § 902(d)(2)(A), (B), 120 Stat. 1038, provides:

"(A) Section 411(a)(3)(G) of such Code [the Internal Revenue Code of 1986] is amended by inserting 'an erroneous automatic contribution under section 414(w),' after '402(g)(2)(A),'.

"(B) The heading of section 411(a)(3)(G) of such Code [the Internal Revenue Code of 1986] is amended by inserting 'or erroneous automatic contribution' before the period.".

Amendment of subsec. (a), applicable to contributions for plan years beginning after Dec. 31, 2006. Act Aug. 17, 2006, P.L. 109-280, Title IX, § 904(a), 120 Stat. 1048, provides:

"(1) In general. Paragraph (2) of *section 411(a) of the Internal Revenue Code of 1986* (relating to employer contributions) is amended to read as follows:

" '(2) Employer contributions.

" '(A) Defined benefit plans.

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

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

" '(iii) 3 to 7 year vesting. A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

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

" '(B) Defined contribution plans.

" '(i) In general. In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

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

" '(iii) 2 to 6 year vesting. A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

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

"(2) Conforming amendment. Section 411(a) of such Code (relating to general rule for minimum vesting standards) is amended by striking paragraph (12).".

Amendments:

In 2006, P.L. 109-280, Sec. 114(b), amended subsec. (a)(3) by subtituting "section 412(c)(2)" for "section 412(c)(8)" in subpara. (C); amended subsec. (b)(1) by substituting "subparagraphs (B) and (C) of section 412(e)(3)" for "paragraphs (2) and (3) of section 412(i)" in cl. (ii) and by substituting "subparagraphs (D), (E), and (F) of section 412(e)(3)" for "paragraphs (4), (5), and (6) of section 412(i)" in the concluding matter of subpara. (F); and amended subsec. (d)(6) by substituting "section 412(e)(2)" for "section 412(c)(8)" in subpara. (A).

--P.L. 109-280, Sec. 701(b) (applicable as provided by Sec. 701(e) of P.L. 109-280, which appears as a note to this section), added subsecs. (a)(13) and (b)(5).

In 2004, P.L. 108-311, Sec. 408(a)(14), amended subsec. (a)(12)(B) by substituting "6 or more . . . 100" for "6 . . . 100" in the table.

In 2001, P.L. 107-16, Sec. 633(a) (applicable as provided by Sec. 633(c) of P.L. 107-16, which appears as a note to this section), amended subsec. (a) by substituting "Except as provided in paragraph (12), a plan" for "A plan" in para. (1), and adding para. (12).

--P.L. 107-16, Sec. 645(a)(1) (applicable to years beginning after 12/31/2001, as provided by Sec. 645(a)(3) of P.L. 107-16, which appears as a note to this section), amended subsec. (d)(6) by adding subparas. (D) and (E).

--P.L. 107-16, Sec. 645(b)(1), amended subsec. (d)(6)(B) by inserting the sentence beginning "The Secretary shall . . .".

--P.L. 107-16, Sec. 648(a)(1) (applicable to distributions after 12/31/2001, as provided by Sec. 648(c) of P.L. 107-16, which appears as a note to this section), amended subsec. (a)(11) by adding subpara. (D).

In 1997, P.L. 105-34, Sec. 1071(a)(1), (2)(A) (applicable as provided by Sec. 1071(c) of P.L. 105-34, which appears as a note to this section), amended subsec. (a) by substituting "the dollar limit under section 411(a)(11)(A)" for "$ 3,500" in para. (7)(B)(i) and by substituting "$ 5,000" for "$ 3,500" in para. (11)(A).

In 1994, P.L. 103-465, Sec. 767(a)(1) (applicable to plan years and limitation years beginning after 12/31/94, except that an employer may elect to treat amendments as being effective on or after 12/8/94, as provided by § 767(d) of such Act, which appears as a note to this section), substituted subsec. (a)(11)(B) for one which read:

"(B) Determination of present value.

"(i) In general. For purposes of subparagraph (A), the present value shall be calculated--

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

"(II) by using an interest rate no greater than 120 percent of the applicable interest rate if the vested accrued benefit exceeds $ 25,000 (as determined under subclause (I)).

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

"(ii) Applicable interest rate. For purposes of clause (i), the term 'applicable interest rate' means the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.".

In 1992, P.L. 102-318, Sec. 521(b)(44), added a sentence to the end of para. (d)(3), applicable as provided by Sec. 521(e) of such Act, which appears as a note to Code Sec. 402.

In 1989, P.L. 101-239, Sec. 7861(a)(5)(A), added subpara. (a)(3)(G) . . . Sec. 7861(a)(6)(A), amended subpara. (a)(4)(A), effective as if included in the provision of P.L. 99-514 to which the amendment relates, as provided by Sec. 7863 of P.L. 101-239, which appears as a note to Code Sec. 106.

Prior to amendment, subpara. (a)(4)(A) read as follows:

"(A) years of service before age 18, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant; "

--P.L. 101-239, Sec. 7871(a)(1), deleted subpara. (b)(2)(B) and redesignated subparas. (b)(2)(C) and (D) as subparas. (b)(2)(B) and (C) . . . Sec. 7871(a)(2), substituted "paragraph" for "subparagraph" in subpara. (b)(2)(C) [as redesignated], effective as provided by Sec. 7871(a)(4) of such Act, which appears as a note to this section.

Prior to deletion, subpara. (b)(2)(B) read as follows:

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

--P.L. 101-239, Sec. 7871(b)(1), amended subpara. (a)(8)(B), effective as provided by Sec. 7871(b)(3) of such Act, which appears as a note to this section.

Prior to amendment, subpara. (a)(8)(B) read as follows:

"(B) the latest of--

"(i) the time a plan participant attains age 65,

"(ii) in the case of a plan participant who commences participation in the plan within 5 years before attaining normal retirement age under the plan, the 5th anniversary of the time the plan participant commences participation in the plan, or

"(iii) in the case of a plan participant not described in clause (ii), the 10th anniversary of the time the plan participant commences participation in the plan."

--P.L. 101-239, Sec. 7881(m)(1)(A), amended clause (c)(2)(C)(iii) . . . Sec. 7881(m)(1)(B), amended subpara. (c)(2)(B) . . . Sec. 7881(m)(1)(C), deleted subpara. (c)(2)(E) . . . Sec. 7881(m)(1)(D), added subpara. (a)(7)(D), effective

as if included in the provision of the Pension Protection Act (P.L. 100-203, §§ 9302-9346) to which the amendment relates, as provided by Sec. 7882 of P.L. 101-239, which appears as a note to Code Sec. 401.

Prior to amendment, clause (c)(2)(C)(iii) read as follows:

"(iii) interest on the sum of the amounts determined under clauses (i) and (ii) compounded annually at the rate of 120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year) from the beginning of the first plan year to which subsection (a)(2) applies (by reason of the applicable effective date) to the date upon which the employee would attain normal retirement age."

Prior to amendment, subpara. (c)(2)(B) read as follows:

"(B) Defined benefit plans.

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

"(ii) Appropriate conversion factor. For purposes of clause (i), the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the conversion factor shall be determined in accordance with regulations prescribed by the Secretary or his delegate."

Prior to deletion subpara. (c)(2)(E) read as follows:

"(E) Limitation. The accrued benefit derived from employee contributions shall not exceed the greater of--

"(i) the employee's accrued benefit under the plan, or

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

In 1988, P.L. 100-647, Sec. 1018(t)(8)(B), amended subsec. (a)(11)(A) by substituting "nonforfeitable" for "vested", effective as if included in the provision of P.L. 99-514 to which the amendment relates, as provided by Sec. 1019(a) of P.L. 100-647, which appears as a note to Code Sec. 1.

In 1987, P.L. 100-203, Sec. 9346(b)(1), substituted "120 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of a plan year)" for "5 percent per annum" in clause (c)(2)(C)(iii) . . . Sec. 9346(b)(2)(A), deleted ", the rate of interest described in clause (iii) of subparagraph (C), or both," in the first sentence of subpara. (c)(2)(D) . . . Sec. 9346(b)(2)(B), deleted the second sentence of subpara. (c)(2)(D), applicable as provided by Sec. 9346(c) of such Act, which appears as *29 USCS § 1054* note.

Prior to deletion, the second sentence of subpara. (c)(2)(D) read as follows:

"The rate of interest shall bear the relationship to 5 percent which the Secretary determines to be comparable to the relationship which the long-term money rates and investment yields for the last period of 10 calendar years ending at least 12 months before the beginning of the plan year bear to the long-term money rates and investment yields for the 10-calendar year period 1964 through 1973.".

In 1986, P.L. 99-514, Sec. 1113(a), amended para. (a)(2) . . . Sec. 1113(b), repealed para. (d)(4) . . . Sec. 1113(d)(B), substituted "3 years" for "5 years" in subpara. (a)(10)(B), applicable as provided by Sec. 1113(f) of such Act, which appears as a note to this section.

Prior to amendment, para. (a)(2) read as follows:

"(2) Employer contributions. A plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A), (B), or (C).

"(A) 10-year vesting. A plan satisfies the requirements of this subparagraph if an employee who has at least 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

"(B) 5- to 15-year vesting. A plan satisfies the requirements of this subparagraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which percentage is not less than the percentage determined under the following table:

"Years of service:	Nonforfeitable percentage
5	25
6	30
7	35
8	40
9	45
10	50
11	60
12	70
13	80
14	90
15 or more	100

"(C) Rule of 45.

"(i) A plan satisfies the requirements of this subparagraph if an employee who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

"If years of service equal or exceed--	and sum of age and service equals or exceeds--	then the non-forfeitable percentage is--
5	45	50
6	47	60
7	49	70
8	51	80
9	53	90
10	55	100.

"(ii) Notwithstanding clause (i), a plan shall not be treated as satisfying the requirements of this subparagraph unless any employee who has completed at least 10 years of service has a nonforfeitable right to not less than 50 percent of his accrued benefit derived from employer contributions and to not less than an additional 10 percent for each additional year of service thereafter."

Prior to repeal, para. (d)(4) [as amended by P.L. 99-514, Sec. 1898(a)(1)(A), see below] read as follows:

"(4) Class-year plans.

"(A) In general. The requirements of subsection (a)(2) shall be treated as satisfied in the case of a class-year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on the employee's behalf with respect to any plan year is nonforfeitable not later than when such participant was performing services for the employer as of the close of each of 5 plan years (whether or not consecutive) after the plan year for which the contributions were made.

"(B) 5-year break in service. For purposes of subparagraph (A) if--

"(i) any contributions are made on behalf of a participant with respect to any plan year, and

"(ii) before such participant meets the requirements of subparagraph (A), such participant was not performing services for the employer as of the close of each of any 5 consecutive plan years after such plan year,

then the plan may provide that the participant forfeits any right to or derived from the contributions made with

respect to such plan year.

"(C) Class-year plan. For purposes of this section, the term "class-year plan" means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year."

--P.L. 99-514, Sec. 1114(b)(10), substituted "highly compensated employees (within the meaning of section 414(q))" for "officers, shareholders, or highly compensated" in subparas. (d)(1)(A) and (B), effective for yrs. begin. after 12/31/88.

--P.L. 99-514, Sec. 1139(a), amended subpara. (a)(11)(B), applicable as provided by Sec. 1139(d) of such Act, which appears as a note to this section.

Prior to amendment, subpara. (a)(11)(B) read as follows:

"(B) Determination of present value. For purposes of subparagraph (A), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination."

--P.L. 99-514, Sec. 1898(a)(1)(A), amended para. (d)(4) [before repeal by Sec. 1113(b) of this Act, see above], effective as provided in Sec. 1898(a)(1)(C) of P.L. 99-514, which reads:

"(C) Effective date.--The amendments made by [Sec. 1898(a)(1), P.L. 99-514] shall apply to contributions made for plan years beginning after the date of the enactment of this Act [10/22/86]; except that, in the case of a plan described in section 302(b) of the Retirement Equity Act of 1984 [P.L. 98-397], such amendments shall not apply to any plan year to which the amendments made by such Act do not apply by reason of such section 302(b)."

Prior to amendment, para. (d)(4) read as follows:

"(4) Class year plans. The requirements of subsection (a)(2) shall be deemed to be satisfied in the case of a class year plan if such plan provides that 100 percent of each employee's right to or derived from the contributions of the employer on his behalf with respect to any plan year are nonforfeitable not later than the end of the 5th plan year following the plan year for which such contributions were made. For purposes of this section, the term "class year plan" means a profit-sharing, stock bonus, or money purchase plan which provides for the separate nonforfeitability of employees' rights to or derived from the contributions for each plan year."

--P.L. 99-514, Sec. 1898(a)(4)(A)(i), amended the last sentence of clause (a)(3)(D)(ii) . . . Sec. 1898(a)(4)(A)(ii), amended the last sentence of subpara. (a)(7)(C) . . . Sec. 1898(d)(1)(A)(i), amended subpara. (a)(11)(A) . . . Sec. 1898(d)(2)(A)(ii), substituted "paragraphs (1), (2), and (11)" for "paragraphs (1) and (2)" in subsec. (a) . . . Sec. 1898(d)(2)(A), added subpara. (a)(11)(C), effective as if included in the provision of P.L. 98-397 to which the amendment relates, as provided by Sec. 1898(j) of P.L. 99-514, which appears as a note to Code Sec. 401.

Prior to amendment, the last sentence of clause (a)(3)(D)(ii) read as follows:

"In the case of a defined contribution plan, the plan provision required under this clause may provide that such repayment must be made before the participant has any one-year break in service commencing after the withdrawal."

Prior to amendment, the last sentence of subpara. (a)(7)(C) read as follows:

"In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal."

Prior to amendment, subpara. (a)(11)(A) read as follows:

"(A) In general. If the present value of any accrued benefit exceeds $ 3,500, such benefit shall not be treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant."

--P.L. 99-514, Sec. 1898(f)(1)(A), added subpara. (d)(6)(C), effective as if included in the provision of P.L. 98-397 to which the amendment relates, as provided by Sec. 1898(j) of P.L. 99-514, which appears as a note to Code Sec. 401.

--P.L. 99-509, Sec. 9202(b)(1)(A), amended the heading of para. (b)(1) . . . Sec. 9202(b)(1)(B), added subpara. (b)(1)(H) . . . Sec. 9202(b)(2), redesignated paras. (b)(2) and (b)(3) as paras. (b)(3) and (b)(4), and added new para. (b)(2) . . . Sec. 9202(b)(3), amended the first sentence of subsec. (a), applicable as provided by Sec. 9204 of such Act, which appears as *29 USCS § 623* note.

Prior to amendment, the heading for para. (b)(1) read as follows:

"(1) General rules."

Prior to amendment, the first sentence of subsec. (a) read as follows:

"A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b)."

--P.L. 99-509, Sec. 9203(b)(2), amended subpara. (a)(8)(B), applicable as provided by Sec. 9204 of such Act, which appears as *29 USCS § 623* note.

Prior to amendment, subpara. (a)(8)(B) read as follows:

"(B) the latter of--

"(i) the time a plan participant attains age 65, or

"(ii) the 10th anniversary of the time a plan participant commenced participation in the plan.".

In 1984, P.L. 98-397, Sec. 202(b), substituted "18" for "22" in subpara. (a)(4)(A) . . . Sec. 202(c), substituted "5 consecutive 1-year breaks in service" for "1-year break in service" each place it appeared and substituted "such 5-year period" for "such break" in subpara. (a)(6)(C) . . . Sec. 202(d)(2), amended subpara. (a)(6)(D) . . . Sec. 202(e)(2), added subpara. (a)(6)(E) . . . Sec. 202(e)(3), added ", determined without regard to section 410(a)(5)(E)" after "section 410(a)(5)" in subpara. (b)(3)(A) . . . Sec. 202(f), substituted "5 consecutive 1-year breaks in service" for "any one-year break in service" in subpara. (a)(7)(C) . . . Sec. 205(a), added para. (a)(11) . . . Sec. 205(b), substituted "3,500" for "1,750" in subpara. (a)(7)(B), applicable as provided by Secs. 302 and 303 of such Act, which appear as *29 USCS § 1001* note.

Prior to amendment, para. (a)(6)(D) read as follows:

"(D) Nonvested participants. For purposes of paragraph (4), in the case of a participant who, under the plan, does not have any nonforfeitable right to an accrued benefit derived from employer contributions, years of service before any 1-year break in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service equals or exceeds the aggregate number of such years of service prior to such break. Such aggregate number of years of service before such break shall be deemed not to include any years of service not required to be taken into account under this subparagraph by reason of any prior break in service."

--P.L. 98-397, Sec. 301(a), amended para. (d)(6), applicable as provided by Secs. 302 and 303 of such Act, which appear as *29 USCS § 1001* note.

Prior to amendment, para. (d)(6) read as follows:

"(6) Accrued benefit not to be decreased by amendment. A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974."

In 1980, P.L. 96-364, Sec. 206, added subparas. (a)(3)(E) and (F), deleted "and" at the end of subpara. (a)(4)(E), substituted "; and" for the period at the end of subpara. (a)(4)(F), added subpara. (a)(4)(G), substituted "section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974" for "section 412(c)(8)" in subsec. (d)(6), effective 9/26/80.

In 1976, P.L. 94-455, Sec. 1901(a)(62), substituted "paragraph (8)" for "subsection (a)(8)" in subsec. (a), substituted "September 2, 1974" for "the date of the enactment of the Employee Retirement Income Security Act of 1974" and substituted "September 2, 1974," for "the date of the enactment of the Act" in clause (a)(3)(D)(iii), amended the heading for subpara. (a)(7)(C), substituted "September 2, 1974" for "the date of the enactment of the Employee Retirement Income Security Act of 1974" in clause (b)(1)(D)(i) and subpara. (e)(1)(C), substituted "September 1, 1974" for "the date before the date of the enactment of the Employee Retirement Income Security Act of 1974" in para. (e)(2),

effective for tax. yrs. begin. after 12/31/76.

Prior to amendment, the heading of subpara. (a)(7)(C) read as follows:

"(C) Repayment of subparagraph (b) distributions."

--P.L. 94-455, Sec. 1906(b)(13)(A), substituted "Secretary" for "Secretary or his delegate" each place it appeared in subsecs. (a) and (c), effective for tax. yrs. begin. after 12/31/76.

In 1974, P.L. 93-406, Sec. 1012(a), added Code Sec. 411, effective 9/2/74 or other date as specified in Sec. 1017 of the Act (reproduced following Code Sec. 410).

Other provisions:

Alternate methods of satisfying requirements for vesting and accrued benefits. Act Sept. 2, 1974, P.L. 93-406, Title II, § 1012(c), 88 Stat. 913, provides:

"In the case of any plan maintained on January 1, 1974, if, not later than 2 years after the date of the enactment of this Act, the plan administrator petitions the Secretary of Labor, the Secretary of Labor may prescribe an alternate method which shall be treated as satisfying the requirements of subsection (a)(2) of *section 411 of the Internal Revenue Code of 1954* [1986], or of subsection (b)(1) (other than subparagraph (D) thereof) of such section 411, or of both such provisions for a period of not more than 4 years. The Secretary may prescribe such alternate method only when he finds that--

"(1) the application of such requirements would increase the costs of the plan to such an extent that there would result a substantial risk to the voluntary continuation of the plan or a substantial curtailment of benefit levels or the levels of employees' compensation,

"(2) the application of such requirements or discontinuance of the plan would be adverse to the interests of plan participants in the aggregate, and

"(3) a waiver or extension of time granted under section 412(d) or (e) would be inadequate.

In the case of any plan with respect to which an alternate method has been prescribed under the preceding provisions of this subsection for a period of not more than 4 years, if, not later than 1 year before the expiration of such period, the plan administrator petitions the Secretary of Labor for an extension of such alternate method, and the Secretary makes the findings required by the preceding sentence, such alternate method may be extended for not more than 3 years.".

Application of amendments made by § 1113 of Act Oct. 22, 1986. Act Oct. 22, 1986, P.L. 99-514, Title XI, Subtitle A, Part II, § 1113(f)[(e)], 100 Stat. 2448; Dec. 19, 1989, P.L. 101-239, Title VII, § 7861(a)(3), (4), 103 Stat. 2430, provides:

"(1) In general. Except as provided in paragraph (2), the amendments made by this subsection [amending *26 USCS §§ 410* and *411* and *29 USCS §§ 1052-1054*] shall apply to plan years beginning after December 31, 1988.

"(2) Special rule for 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 employees covered by any such agreement in plan years beginning before the earlier of--

"(A) the later of--

"(i) January 1, 1989, or

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

"(B) January 1, 1991.

"(3) Participation required. The amendments made by this section shall not apply to any employee who does not have 1 hour of service in any plan year to which the amendments made by this section apply.

"(4) Repeal of class year vesting. If a plan amendment repealing class year vesting is adopted after October 22, 1986, such amendment shall not apply to any employee for the 1st plan year to which the amendments made by subsections (b) and (e)(2) [amending this section and *29 USCS § 1053*] apply (and any subsequent plan year) if--

"(A) such plan amendment would reduce the nonforfeitable right of such employee for such year, and

"(B) such employee has at least 1 hour of service before the adoption of such plan amendment and after the beginning of such 1st plan year.

This paragraph shall not apply to an employee who has 5 consecutive 1-year breaks in service (as defined in *section 411(a)(6)(A) of the Internal Revenue Code of 1986*) which include the 1st day of the 1st plan year to which the amendments made by subsection (b) and (e)(2) apply. A plan shall not be treated as failing to meet the requirements of section 401(a)(26) of such Code by reason of complying with the provisions of this paragraph.".

Application of amendments made by § 1139 of Act Oct. 22, 1986. Act Oct. 22, 1986, P.L. 99-514, Title XI, Subtitle A, Part IV, § 100 Stat. 2488; Nov. 10, 1988, P.L. 100-647, Title I, § 1011A(k), 102 Stat. 3483, provides:

"(1) In general. The amendments made by this section [amending *26 USCS §§ 411* and *417* and *29 USCS §§ 1053* and *1055*] shall apply to distributions in plan years beginning after December 31, 1984, except that such amendments shall not apply to any distributions in plan years beginning after December 31, 1984, and before January 1, 1987, if such distributions were made in accordance with the requirements of the regulations issued under the Retirement Equity Act of 1984 [P.L. 98-397].

"(2) Reduction in accrued benefits.

(A) In general. If a plan--

"(i) adopts a plan amendment before the close of the first plan year beginning on or after January 1, 1989, which provides for the calculation of the present value of the accrued benefits in the manner provided by the amendments made by this section, and

"(ii) the plan reduces the accrued benefits for any plan year to which such plan amendment applies in accordance with such plan amendment,

such reduction shall not be treated as a violation of *section 411(d)(6) of the Internal Revenue Code of 1986* or section 204(g) of the Employee Retirement Income Security Act of 1974 (*29 U.S.C. 1054(g)*).

"(B) Special rule. In the case of a plan maintained by a corporation incorporated on April 11, 1934, which is headquartered in Tarrant County, Texas--

"(i) such plan may be amended to remove the option of an employee to receive a lump sum distribution (within the meaning of section 402(e)(5) of such Code) if such amendment--

"(I) is adopted within 1 year of the date of the enactment of this Act, and

"(II) is not effective until 2 years after the employees are notified of such amendment, and

"(ii) the present value of any vested accrued benefit of such plan determined during the 3-year period beginning on the date of the enactment of this Act shall be determined under the applicable interest rate (within the meaning of section 411(a)(11)(B)(ii) of such Code), except that if such value (as so determined) exceeds $ 50,000, then the value of any excess over $ 50,000 shall be determined by using the interest rate specified in the plan as of August 16, 1986.".

Effective date of amendments made by § 7871(a) of Act Dec. 19, 1989. Act Dec. 19, 1989, P.L. 101-239, Title VII, Subtitle H, Part V, Subpart B, § 7871(a)(4), 103 Stat. 2435, provides: "The amendments made by this subsection [amending this section and *29 USCS § 1054*] shall take effect as if included in the amendments made by section 9202 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99-509].".

Effective date of amendments made by § 7871(b) of Act Dec. 19, 1989. Act Dec. 19, 1989, P.L. 101-239, Title VII, Subtitle H, Part V, Subpart B, § 7871(b)(3), 103 Stat. 2435, provides: "The amendments made by this subsection [amending this section and *29 USCS § 1002*] shall take effect as if included in the amendments made by section 9203 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99-509].".

Application of amendments made by § 767 of Act Dec. 8, 1994. Act Dec. 8, 1994, P.L. 103-465, Title VII, Subtitle F, Part I, Subpart C, § 767(d), 108 Stat. 5040; Aug. 20, 1996, P.L. 104-188, Title I, Subtitle D, Ch 4, § 1449(a), 110 Stat. 1814 (effective as if included in the provisions of § 767 of Act Dec. 8, 1994, as provided by § 1445(c), which appears as *26 USCS § 415* note); Aug. 5, 1997, P.L. 105-34, Title XVI, § 1604(b)(3), 111 Stat. 1097 (effective as if included in the sections of P.L. 103-465 to which it relates, as provided by Sec. 1604(b)(4), which appears as *26 USCS § 412* note), provides:

"(1) In general. The amendments made by this section [for full classification, consult USCS Tables volumes] shall apply to plan years and limitation years beginning after December 31, 1994; except that an employer may elect to treat the amendments made by this section as being effective on or after the date of the enactment of this Act.

"(2) No reduction in accrued benefits. A participant's accrued benefit shall not be considered to be reduced in violation of *section 411(d)(6) of the Internal Revenue Code of 1986* or section 204(g) of the Employee Retirement Income Security Act of 1974 merely because (A) the benefit is determined in accordance with section 417(e)(3)(A) of such Code, as amended by this Act, or section 205(g)(3) of the Employee Retirement Income Security Act of 1974, as amended by this Act, or (B) the plan applies section 415(b)(2)(E) of such Code, as amended by this Act.

"(3) Section 415.

(A) Exception. A plan that was adopted and in effect before December 8, 1994, shall not be required to apply the amendments made by subsection (b) with respect to benefits accrued before the earlier of--

"(i) the later of the date a plan amendment applying the amendments made by subsection (b) is adopted or made effective, or

"(ii) the first day of the first limitation year beginning after December 31, 1999.

Determinations under *section 415(b)(2)(E) of the Internal Revenue Code of 1986* before such earlier date shall be made with respect to such benefits on the basis of such section as in effect on December 7, 1994, and the provisions of the plan as in effect on December 7, 1994, but only if such provisions of the plan meet the requirements of such section (as so in effect).

"(B) Timing of plan amendment. A plan that operates in accordance with the amendments made by subsection (b) shall not be treated as failing to satisfy *section 401(a) of the Internal Revenue Code of 1986* or as not being operated in accordance with the provisions of the plan until such date as the Secretary of the Treasury provides merely because the plan has not been amended to include the amendments made by subsection (b).".

Application of amendments made by § 1442 of Act Aug. 20, 1996. Act Aug. 20, 1996, P.L. 104-188, Title I, Subtitle D, Ch 4, § 1442(c), 110 Stat. 1808, provides:

"The amendments made by this section [amending subsec. (a)(2) of this section and *29 USCS § 1053(a)(2)*] shall apply to plan years beginning on or after the earlier of--

"(1) the later of--

"(A) January 1, 1997, or

"(B) the date on which the last of the collective bargaining agreements pursuant to which the plan is maintained terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

"(2) January 1, 1999.

Such amendments shall not apply to any individual who does not have more than 1 hour of service under the plan on or after the 1st day of the 1st plan year to which such amendments apply.".

Transitional rule. Act Aug. 20, 1996, P.L. 104-188, Title I, Subtitle D, Ch 4, § 1449(d), 110 Stat. 1814, provides:

"In the case of a plan that was adopted and in effect before December 8, 1994, if--

"(1) a plan amendment was adopted or made effective on or before the date of the enactment of this Act applying the amendments made by section 767 of the Uruguay Round Agreements Act [§ 767 of P.L. 103-465; amending *26 USCS §§ 411*, *415*, *417* and *29 USCS § 1053*], and

"(2) within 1 year after the date of the enactment of this Act, a plan amendment is adopted which repeals the amendment referred to in paragraph (1),

the amendment referred to in paragraph (1) shall not be taken into account in applying section 767(d)(3)(A) of the Uruguay Round Agreements Act [note to this section], as amended by subsection (a).".

Application of amendments made by § 1072 of Act Aug. 5, 1997. Act Aug. 5, 1997, P.L. 105-34, Title X, Subtitle H, § 1071(c), 111 Stat. 948, provides: "The amendments made by this section [amending *26 USCS §§ 411*, *417*, and *457* and *29 USCS §§ 1053-1055*] shall apply to plan years beginning after the date of the enactment of this Act.".

Provisions relating to plan amendments. Act Aug. 5, 1997, P.L. 105-34, Title XV, Subtitle D, § 1541, 111 Stat. 1085, provides:

"(a) In general. If this section applies to any plan or contract amendment--

"(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

"(2) such plan shall not fail to meet the requirements of *section 411(d)(6) of the Internal Revenue Code of 1986* or section 204(g) of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1054(g)*] by reason of such amendment.

"(b) Amendments to which section applies.

(1) In general. This section shall apply to any amendment to any plan or annuity contract which is made--

"(A) pursuant to any amendment made by this title or subtitle H of title X [for full classification, consult USCS Tables volumes], and

"(B) before the first day of the first plan year beginning on or after January 1, 1999.

In the case of a governmental plan (as defined in *section 414(d) of the Internal Revenue Code of 1986*), this paragraph shall be applied by substituting '2001' for '1999'.

"(2) Conditions. This section shall not apply to any amendment unless--

"(A) during the period--

"(i) beginning on the date the legislative amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative amendment, the effective date specified by the plan), and

"(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

"(B) such plan or contract amendment applies retroactively for such period.".

Application of amendments made by § 633 of Act June 7, 2001. Act June 7, 2001, P.L. 107-16, Title VI, Subtitle C, § 633(c), 115 Stat. 116, provides:

"(1) In general. Except as provided in paragraph (2), the amendments made by this section [amending subsec. (a) of this section and *29 USCS § 1053(a)*] shall apply to contributions for plan years beginning after December 31, 2001.

"(2) Collective bargaining agreements. In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified by the date of the enactment of this Act, the amendments made by this section [amending subsec. (a) of this section and *29 USCS § 1053(a)*] shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of--

"(A) the later of--

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

"(ii) January 1, 2002; or

"(B) January 1, 2006.

"(3) Service required. With respect to any plan, the amendments made by this section [amending subsec. (a) of this section and *29 USCS § 1053(a)*] shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.".

Application of amendments made by § 645(a) of Act June 7, 2001. Act June 7, 2001, P.L. 107-16, Title VI, Subtitle D, § 645(a)(3), 115 Stat. 125, provides: "The amendments made by this subsection [adding subsec. (d)(6)(D), (E) of this section and *29 USCS § 1054(g)(4)*, (5)] shall apply to years beginning after December 31, 2001.".

Issuance of regulations under *26 USCS § 411(d)(6)* and *29 USCS § 1054(g)*. Act June 7, 2001, P.L. 107-16, Title VI, Subtitle D, P.L. 107-16, Title VI, Subtitle D, § 645(b)(3), 115 Stat. 126, provides: "Not later than December 31, 2003, the Secretary of the Treasury is directed to issue regulations under *section 411(d)(6) of the Internal Revenue Code of 1986* [subsec. (d)(6) of this section] and section 204(g) of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1054(g)*], including the regulations required by the amendment made by this subsection [amending subsec. (d)(6)(B) of this section and *29 USCS § 1054(g)(2)*]. Such regulations shall apply to plan years beginning after December 31, 2003, or such earlier date as is specified by the Secretary of the Treasury.".

Application of amendments made by § 648 of Act June 7, 2001. Act June 7, 2001, P.L. 107-16, Title VI, Subtitle D, § 648(c), 115 Stat. 128, provides: "The amendments made by this section [amending *26 USCS §§ 411(a)(11), 457(e)(9)(A)(i)*, and *29 USCS § 1053(e)(4)*] shall apply to distributions after December 31, 2001.".

Provisions relating to plan amendments. Act April 10, 2004, P.L. 108-218, Title I, § 101(c), 118 Stat. 598; Aug. 17, 2006, P.L. 109-280, Title III, § 301(c), 120 Stat. 920, provides:

"(1) In general. If this subsection applies to any plan or annuity contract amendment--

"(A) such plan or contract shall be treated as being operated in accordance with the terms of the plan or contract during the period described in paragraph (2)(B)(i), and

"(B) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of *section*

411(d)(6) of the Internal Revenue Code of 1986 [*26 USCS § 411(d)(6)*] and *section 204(g)* of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1054(g)*] by reason of such amendment.

"(2) Amendments to which section applies.

(A) In general. This subsection shall apply to any amendment to any plan or annuity contract which is made--

"(i) pursuant to any amendment made by this section [amending *26 USCS §§ 404, 412, 415*, and *29 USCS §§ 1082, 1306*], and

"(ii) on or before the last day of the first plan year beginning on or after January 1, 2008.

"(B) Conditions. This subsection shall not apply to any plan or annuity contract amendment unless--

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

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

Construction of amendments made by § 701 of Act Aug. 17, 2006. Act Aug. 17, 2006, P.L. 109-280, Title VII, § 701(d), 120 Stat. 991, provides:

"Nothing in the amendments made by this section [amending *26 USCS § 411* and *29 USCS §§ 623, 1053*, and *1054*] shall be construed to create an inference with respect to--

"(1) the treatment of applicable defined benefit plans or conversions to applicable defined benefit plans under sections 204(b)(1)(H) of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1054(b)(1)(H)*], *4(i)(1)* of the Age Discrimination in Employment Act of 1967 [*29 USCS § 623(i)(1)*], and *411(b)(1)(H)* of the Internal Revenue Code of 1986 [subsec. (b)(1)(H) of this section], as in effect before such amendments, or

"(2) the determination of whether an applicable defined benefit plan fails to meet the requirements of sections 203(a)(2), 204(c), or 204(g) of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1053(a)(2), 1054(c)*, or *1054(g)*] or *sections 411(a)(2), 411(c)*, or 417(e) of such Code [*26 USCS § 411(a)(2), 411(c)*, or *417(e)*], as in effect before such amendments, solely because the present value of the accrued benefit (or any portion thereof) of any participant is, under the terms of the plan, equal to the amount expressed as the balance in a hypothetical account or as an accumulated percentage of the participant's final average compensation.

For purposes of this subsection, the term 'applicable defined benefit plan' has the meaning given such term by section 203(f)(3) of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1053(f)(3)*] and *section 411(a)(13)(C)* of such Code [subsec. (a)(13)(C) of this section], as in effect after such amendments.".

Application of amendments made by § 701 of Act Aug. 17, 2006. Act Aug. 17, 2006, P.L. 109-280, Title VII, § 701(e), 120 Stat. 991, provides:

"(1) In general. The amendments made by this section [amending *26 USCS § 411* and *29 USCS §§ 623, 1053*, and *1054*] shall apply to periods beginning on or after June 29, 2005.

"(2) Present value of accrued benefit. The amendments made by subsections (a)(2) and (b)(2) [adding *26 USCS § 411(a)(13)* and *29 USCS § 1053(f)*] shall apply to distributions made after the date of the enactment of this Act.

"(3) Vesting and interest credit requirements. In the case of a plan in existence on June 29, 2005, the requirements of clause (i) of *section 411(b)(5)(B) of the Internal Revenue Code of 1986* [*26 USCS § 411(b)(5)(B)*], clause (i) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1054(b)(5)(B)*], and clause (i) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [*29 USCS § 623(i)(10)(B)*] (as added by this Act) and the requirements of 203(f)(2) of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1053(f)(2)*] and *section 411(a)(13)(B)* of the Internal Revenue Code of 1986 [*29 USCS § 411(a)(13)(B)*] (as so added) shall, for purposes of applying the amendments made by subsections (a) and (b), apply to years beginning after December 31, 2007, unless the plan sponsor elects the application of such requirements for any period after June 29, 2005, and before the first year beginning after December 31, 2007.

"(4) Special rule for collectively bargained plans. In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, the requirements described in paragraph (3) shall, for purposes of applying the amendments made by subsections (a) and (b), not apply to plan years beginning before--

"(A) the earlier of--

"(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to

any extension thereof on or after such date of enactment), or

"(ii) January 1, 2008, or

"(B) January 1, 2010.

"(5) Conversions. The requirements of clause (ii) of *section 411(b)(5)(B) of the Internal Revenue Code of 1986* [*26 USCS § 411(b)(5)(B)*], clause (ii) of section 204(b)(5)(B) of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1054(b)(5)(B)*], and clause (ii) of section 4(i)(10)(B) of the Age Discrimination in Employment Act of 1967 [*29 USCS § 623(i)(10)(B)*] (as added by this Act), shall apply to plan amendments adopted after, and taking effect after, June 29, 2005, except that the plan sponsor may elect to have such amendments apply to plan amendments adopted before, and taking effect after, such date.".

Regulations relating to mergers and acquisitions. Act Aug. 17, 2006, P.L. 109-280, Title VII, § 702, 120 Stat. 992, provides: "The Secretary of the Treasury or his delegate shall, not later than 12 months after the date of the enactment of this Act, prescribe regulations for the application of the amendments made by, and the provisions of, this title [amending *26 USCS § 411* and *29 USCS §§ 623*, *1053*, and *1054* and appearing in part as notes to this section] in cases where the conversion of a plan to an applicable defined benefit plan is made with respect to a group of employees who become employees by reason of a merger, acquisition, or similar transaction.".

Sunset provision not applicable. Section 901(a)(1), (b) of Act June 7, 2001, P.L. 107-16 (*26 USCS § 1* note), provided that the amendments made to this section by such Act should not apply to taxable, plan, or limitation years beginning after December 31, 2010, and the Internal Revenue Code of 1986 should be applied and administered to such years as if the amendments had never been enacted; however, Act Aug. 17, 2006, P.L. 109-280, Title VIII, Subtitle B, § 811, 120 Stat. 996, which appears as *26 USCS § 1* note, provides that such § 901 shall not apply to the amendments made by Subtitles A through F of Title VI of the 2001 Act.

Application of amendments made by § 904 of Act Aug. 17, 2006. Act Aug. 17, 2006, P.L. 109-280, Title IX, § 904(c), 120 Stat. 1050, provides:

"(1) In general. Except as provided in paragraphs (2) and (4), the amendments made by this section [amending *26 USCS § 411(a)* and *29 USCS § 1053(a)*] shall apply to contributions for plan years beginning after December 31, 2006.

"(2) Collective bargaining agreements. In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of--

"(A) the later of--

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

"(ii) January 1, 2007; or

"(B) January 1, 2009.

"(3) Service required. With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

"(4) Special rule for stock ownership plans. Notwithstanding paragraph (1) or (2), in the case of an employee stock ownership plan (as defined in *section 4975(e)(7) of the Internal Revenue Code of 1986* [*26 USCS § 4975(e)(7)*]) which had outstanding on September 26, 2005, a loan incurred for the purpose of acquiring qualifying employer securities (as defined in section 4975(e)(8) of such Code [*26 USCS § 4975(e)(8)*]), the amendments made by this section shall not apply to any plan year beginning before the earlier of--

"(A) the date on which the loan is fully repaid, or

"(B) the date on which the loan was, as of September 26, 2005, scheduled to be fully repaid.".

Notification of right to defer. Act Aug. 17, 2006, P.L. 109-280, Title XI, § 1102(b), 120 Stat. 1056, provides:

"(1) In general. The Secretary of the Treasury shall modify the regulations under *section 411(a)(11) of the Internal Revenue Code of 1986* [*26 USCS § 411(a)(11)*] and under section 205 of the Employee Retirement Income Security Act of 1974 [*29 USCS § 1055*] to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

"(2) Effective date.

(A) In general. The modifications required by paragraph (1) shall apply to years beginning after December 31, 2006.

"(B) Reasonable notice. A plan shall not be treated as failing to meet the requirements of section 411(a)(11) of such Code [*26 USCS § 411(a)(11)*] or *section 205* of such Act [*29 USCS § 1055*] with respect to any description of consequences described in paragraph (1) made within 90 days after the Secretary of the Treasury issues the modifications required by paragraph (1) if the plan administrator makes a reasonable attempt to comply with such requirements.".

Provisions relating to plan amendments. Act Aug. 17, 2006, P.L. 109-280, Title XI, § 1107, 120 Stat. 1063, provides:

"(a) In general. If this section applies to any pension plan or contract amendment--

"(1) such pension plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

"(2) except as provided by the Secretary of the Treasury, such pension plan shall not fail to meet the requirements of *section 411(d)(6) of the Internal Revenue Code of 1986* [subsec. (d)(6) of this section] and section 204(g) of the Employee Retirement Income Security Act of 1974 *[29 USCS § 1154*(g)] by reason of such amendment.

"(b) Amendments to which section applies.

(1) In general. This section shall apply to any amendment to any pension plan or annuity contract which is made--

"(A) pursuant to any amendment made by this Act or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act, and

"(B) on or before the last day of the first plan year beginning on or after January 1, 2009.

In the case of a governmental plan (as defined in *section 414(d) of the Internal Revenue Code of 1986* [*26 USCS § 414(d)*]), this paragraph shall be applied by substituting '2011' for '2009'.

"(2) Conditions. This section shall not apply to any amendment unless--

"(A) during the period--

"(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

"(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted), the plan or contract is operated as if such plan or contract amendment were in effect; and

"(B) such plan or contract amendment applies retroactively for such period.".

NOTES:

Code of Federal Regulations:

Internal Revenue Service, Department of the Treasury--Income taxes, 26 CFR Part 1.

Employee Benefits Security Administration, Department of Labor--Rules and regulations for minimum standards for employee pension benefit plans, 29 CFR Part 2530.

Related Statutes & Rules:

This section is referred to in *26 USCS §§ 401, 404, 408, 410, 412, 413, 414, 416, 417, 418D, 418E, 457, 4978, 4980F; 29 USCS §§ 623, 1054, 1082, 1202, 1222, 1322a, 1343, 1390*.

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33A Am Jur 2d, Federal Taxation (2006) §§ 8182, 8701, 8725, 8739, 8740, 8742, 8743, 8752-8756, 8758, 8762.

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48 Am Jur 2d, Labor and Labor Relations § 263.
60A Am Jur 2d, Pensions and Retirement Funds §§ 15, 139, 150, 188, 192, 195, 197-207, 213, 214, 216, 222-229, 232, 233, 235, 239, 241-247, 249, 250, 255, 257, 258, 349, 352, 353, 355, 361, 365, 368, 645, 713.

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6 Labor and Employment Law (Matthew Bender), ch 150, Qualified Employee Pension Plans § 150.06.
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