

Subtitle B

Part 2

Participation and Vesting

1051. Coverage

This part shall apply to any employee benefit plan described in section 1003 (a) of this title (and not exempted under section 1003 (b) of this title) other than—

- (1) an employee welfare benefit plan;
- (2) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;
- (3)
 - (A) a plan established and maintained by a society, order, or association described in section 501 (c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan, or
 - (B) a trust described in section 501 (c)(18) of title 26;
- (4) a plan which is established and maintained by a labor organization described in section 501 (c)(5) of title 26 and which does not at any time after September 2, 1974, provide for employer contributions;
- (5) any agreement providing payments to a retired partner or a deceased partner's successor in interest, as described in section 736 of title 26;
- (6) an individual retirement account or annuity described in section 408 of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);
- (7) an excess benefit plan; or
- (8) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

1052. Minimum participation standards

- (a)
 - (1)
 - (A) No pension plan may require, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—
 - (i) the date on which the employee attains the age of 21; or
 - (ii) the date on which he completes 1 year of service.
 - (B)

(i) In the case of any plan which provides that after not more than 2 years of service each participant has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (ii) of subparagraph (A) shall be applied by substituting "2 years of service" for "1 year of service".

(ii) In the case of any plan maintained exclusively for employees of an educational organization (as defined in section 170 (b)(1)(A)(ii) of title 26) by an employer which is exempt from tax under section 501 (a) of title 26, which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "26" for "21". This clause shall not apply to any plan to which clause (i) applies.

(2) No pension plan may exclude from participation (on the basis of age) employees who have attained a specified age.

(3)

(A) For purposes of this section, the term "year of service" means a 12-month period during which the employee has not less than 1,000 hours of service. For purposes of this paragraph, computation of any 12-month period shall be made with reference to the date on which the employee's employment commenced, except that, in accordance with regulations prescribed by the Secretary, such computation may be made by reference to the first day of a plan year in the case of an employee who does not complete 1,000 hours of service during the 12-month period beginning on the date his employment commenced.

(B) 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.

(C) For purposes of this section, the term "hour of service" means a time of service determined under regulations prescribed by the Secretary.

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

(4) A plan shall be treated as not meeting the requirements of paragraph (1) unless it provides that any employee who has satisfied the minimum age and service requirements specified in such paragraph, and who is otherwise entitled to participate in the plan, commences participation in the plan no later than the earlier of—

(A) the first day of the first plan year beginning after the date on which such employee satisfied such requirements, or

(B) the date 6 months after the date on which he satisfied such requirements, unless such employee was separated from the service before the date referred to in subparagraph (A) or (B), whichever is applicable.

(b)

(1) Except as otherwise provided in paragraphs (2), (3), and (4), all years of service with the employer or employers maintaining the plan shall be taken into

account in computing the period of service for purposes of subsection (a)(1) of this section.

(2) In the case of any employee who has any 1-year break in service (as defined in section 1053 (b)(3)(A) of this title) under a plan to which the service requirements of clause (i) of subsection (a)(1)(B) of this section apply, if such employee has not satisfied such requirements, service before such break shall not be required to be taken into account.

(3) In computing an employee's period of service for purposes of subsection (a)(1) of this section in the case of any participant who has any 1-year break in service (as defined in section 1053 (b)(3)(A) of this title), service before such break shall not be required to be taken into account under the plan until he has completed a year of service (as defined in subsection (a)(3) of this section) after his return.

(4)

(A) For purposes of paragraph (1), 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 in computing the period of service 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.

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

(C) For purposes of subparagraph (A), 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.

(5)

(A) 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 subsection whether a 1-year break in service (as defined in section 1053

(b)(3)(A) of this title) has occurred, the hours described in subparagraph (B).

(B) The hours described in this subparagraph 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 clause (i), 8 hours of service per day of such absence,

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

(C) The hours described in subparagraph (B) shall be treated as hours of service as provided in this paragraph—

(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 subparagraph (A); or

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

(D) For purposes of this paragraph, the term “year” means the period used in computations pursuant to subsection (a)(3)(A) of this section.

(E) A plan may provide that no credit will be given pursuant to this paragraph 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 subparagraph (A), and
(ii) the number of days for which there was such an absence.

1053. Minimum vesting standards

(a) Nonforfeitable requirements

Each pension plan shall provide that an employee’s right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) 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) Except as provided in paragraph (4), a plan satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A) or (B).

(A) 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) 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:

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

(3)

(A) 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 1055 of this title).

(B) 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 an 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, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced.

The Secretary 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) 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 1082 (c)(8) of this title.

(D)

(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 the last sentence of section 1054 (c)(2)(C) of this title) 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 section 1054 (c)(2)(C) of this title (if such subsection applies) 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, 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 of the Treasury 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 such contributions on a plan year by plan year basis in succeeding order of time.

(v) Cross reference.—

For nonforfeatability where the employee has a nonforfeitable right to at least 50 percent of his accrued benefit, see section 1056 (c) of this title.

(E)

(i) 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.

(ii) 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 1425 or 1441 of this title, or

(II) benefit payments under the plan may be suspended under section 1426 or 1441 of this title.

(F) A matching contribution (within the meaning of section 401 (m) of title 26) 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) of title 26, an excess deferral under section 402 (g)(2)(A) of title 26, or an excess aggregate contribution under section 401 (m)(6)(B) of title 26.

(4) In the case of matching contributions (as defined in section 401 (m)(4)(A) of title 26), 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):

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

(b) Computation of period of service

(1) In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under subsection (a)(2) of this section, 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,^[1]

(B) years of service during a period for which the employee declined to contribute to a plan requiring employee contributions,^[1]

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

(D) service not required to be taken into account under paragraph (3);

(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 this part first applies to the plan 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 such employer from the plan (within the meaning of section 1383 of this title), or
(II) to the extent permitted by regulations prescribed by the Secretary of the Treasury, a partial withdrawal described in section 1385 (b)(2)(A)(i) of this title in connection 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 1348 of this title.

(2)

(A) For purposes of this section, 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) during which the participant has completed 1,000 hours of service.

(B) For purposes of this section, the term “hour of service” has the meaning provided by section 1052 (a)(3)(C) of this title.

(C) 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 determined under regulations of the Secretary.

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

(3)

(A) 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) during which the participant has not completed more than 500 hours of service.

(B) For purposes of paragraph (1), 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) For purposes of paragraph (1), in the case of any participant in an individual account plan or an insured defined benefit plan which satisfies the requirements of subsection 1054(b)(1)(F) of this title 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)

(i) For purposes of paragraph (1), 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) 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) 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)

(i) 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) 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 such pregnancy or placement shall not exceed 501 hours.

(iii) 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) For purposes of this subparagraph, the term “year” means the period used in computations pursuant to paragraph (2).

(v) A plan may provide 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.

(4) Cross references.—

(A) For definitions of “accrued benefit” and “normal retirement age”, see sections 1002 (23) and (24) of this title.

(B) For effect of certain cash out distributions, see section 1054 (d)(1) of this title.

(c) Plan amendments altering vesting schedule

(1)

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

(2) Subsection (a) of this section 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 of the Treasury to preclude the discrimination prohibited by section 401(a)(4) of title 26.

(d) Nonforfeitable benefits after lesser period and in greater amounts than required

A pension plan may allow for nonforfeitable benefits after a lesser period and in greater amounts than are required by this part.

(e) Consent for distribution; present value; covered distributions

(1) If the present value of any nonforfeitable benefit with respect to a participant in a plan exceeds \$5,000, the plan shall provide that such benefit may not be immediately distributed without the consent of the participant.

(2) For purposes of paragraph (1), the present value shall be calculated in accordance with section 1055 (g)(3) of this title.

(3) This subsection shall not apply to any distribution of dividends to which section 404 (k) of title 26 applies.

(4) A plan shall not fail to meet the requirements of this subsection 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) of title 26.

1054. Benefit accrual requirements

(a) Satisfaction of requirements by pension plans

Each pension plan shall satisfy the requirements of subsection (b)(3) of this section, and—

(1) in the case of a defined benefit plan, shall satisfy the requirements of subsection (b)(1) of this section; and

(2) in the case of a defined contribution plan, shall satisfy the requirements of subsection (b)(2) of this section.

(b) Enumeration of plan requirements

(1)

(A) 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 at the normal retirement age 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 $33\frac{1}{3}$) 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) A defined benefit plan satisfies the requirements of this paragraph of 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 $133\frac{1}{3}$ 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) 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 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) 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) 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 “year of service” has the meaning provided by section 1052 (a)(3)(A) of this title.

(F) 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 paragraphs (2) and (3) of section 1081 (b) of this title (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 paragraphs (4), (5), and (6) of section 1081 (b) of this title were satisfied.

(G) 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 benefits payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] which benefits under the plan—

(i) do not exceed social security benefits, and

(ii) terminate when such social security benefits commence.

(H)

(i) 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) 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) 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 1056 (a)(3) of this title, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053 (a)(3)(B) of this title, 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 of the Treasury. 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) Clause (i) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414 (q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(v) 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.

(vi) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411 (b)(1)(H) of title 26 shall apply with respect to the requirements of this subparagraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411 (b)(1)(H).

(2)

(A) 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) 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.

(C) Any regulations prescribed by the Secretary of the Treasury pursuant to subparagraphs (B) and (C) of section 411 (b)(2) of title 26 shall apply with respect to the requirements of this paragraph in the same manner and to the same extent as such regulations apply with respect to the requirements of such section 411 (b)(2).

(3) 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)

(A) 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 1052 (b) of this title, determined without regard to section 1052 (b)(5) of this title) as determined under regulations prescribed by the Secretary which provide for the calculation of such period on any reasonable and consistent basis.

(B) 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) 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) the calculation of his period of service shall not be treated as not made on a reasonable and consistent basis merely because such service is not taken into account.

(D) 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.

(E) 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 may prescribe regulations to carry out the purposes of this subparagraph.

(c) Employee's accrued benefits derived from employer and employee contributions

(1) For purposes of this section and section 1053 of this title 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)

(A) 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 1055 (g)(3) of this title (as of the determination date).

(C) 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 section 1053 (a)(2) of this title 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 of title 26 for the 1st month of a plan year for the period beginning with the 1st plan year to which subsection (a)(2) of this section 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 1055 (g)(3) of this title (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 plans, or as a condition of obtaining benefits under the plan attributable to employer contributions.

(D) The Secretary of the Treasury 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) 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).

(4) 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.

(d) Employee service which may be disregarded in determining employee's accrued benefits under plan

Notwithstanding section 1053 (b)(1) of this title, 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—

(1) 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 1053 (e)(1) of this title) permitted under regulations prescribed by the Secretary of the Treasury, or

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

Paragraph (1) shall apply only if such distribution was made on termination of the employee's participation in the plan. Paragraph (2) 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 of the Treasury.

(e) Opportunity to repay full amount of distributions which have been reduced through disregarded employee service

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

(1) 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,

(2) resumes employment covered under the plan, and

(3) 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) of this section.

The plan provision required under this subsection may provide that such repayment must be made

(A) 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

(B) in the case of any other withdrawal, 5 years after the date of the withdrawal.

(f) Employer treated as maintaining a plan

For the purposes of this part, an employer shall be treated as maintaining a plan if any employee of such employer accrues benefits under such plan by reason of service with such employer.

(g) Decrease of accrued benefits through amendment of plan

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082

(c)(8) or 1441 of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

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

(B) 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 of the Treasury shall by regulations provide that this paragraph 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 of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

(3) For purposes of this subsection, any—

(A) tax credit employee stock ownership plan (as defined in section 409 (a) of title 26, or

(B) employee stock ownership plan (as defined in section 4975 (e)(7) of title 26), shall not be treated as failing to meet the requirements of this subsection merely because it modifies distribution options in a nondiscriminatory manner.

(4)

(A) 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 clause (i);

(iii) the transfer described in clause (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 clause (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 clause (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.

(B) Subparagraph (A) 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.

(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

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

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

(h) Notice of significant reduction in benefit accruals

(1) An applicable pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless the plan administrator provides the notice described in paragraph (2) to each applicable individual (and to each employee organization representing applicable individuals).

(2) The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(6)

(A) In the case of any egregious failure to meet any requirement of this subsection with respect to any plan amendment, the provisions of the applicable

pension plan shall be applied as if such plan amendment entitled all applicable individuals to the greater of—

(i) the benefits to which they would have been entitled without regard to such amendment, or

(ii) the benefits under the plan with regard to such amendment.

(B) For purposes of subparagraph (A), there is an egregious failure to meet the requirements of this subsection if such failure is within the control of the plan sponsor and is—

(i) an intentional failure (including any failure to promptly provide the required notice or information after the plan administrator discovers an unintentional failure to meet the requirements of this subsection),

(ii) a failure to provide most of the individuals with most of the information they are entitled to receive under this subsection, or

(iii) a failure which is determined to be egregious under regulations prescribed by the Secretary of the Treasury.

(7) The Secretary of the Treasury may by regulations allow any notice under this subsection to be provided by using new technologies.

(8) For purposes of this subsection—

(A) The term “applicable individual” means, with respect to any plan amendment—

(i) each participant in the plan; and

(ii) any beneficiary who is an alternate payee (within the meaning of section 1056 (d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056 (d)(3)(B)(i) of this title),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(B) The term “applicable pension plan” means—

(i) any defined benefit plan; or

(ii) an individual account plan which is subject to the funding standards of section 412 of title 26.

(9) For purposes of this subsection, a plan amendment which eliminates or reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A) of this section) shall be treated as having the effect of reducing the rate of future benefit accrual.

(i) Prohibition on benefit increases where plan sponsor is in bankruptcy

(1) In the case of a plan described in paragraph (3) which is maintained by an employer that is a debtor in a case under title 11 or similar Federal or State law, no amendment of the plan which increases the liabilities of the plan by reason of—

(A) any increase in benefits,

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

(C) any change in the rate at which benefits become nonforfeitable under the plan,

with respect to employees of the debtor, shall be effective prior to the effective date of such employer’s plan of reorganization.

(2) Paragraph (1) shall not apply to any plan amendment that—

(A) the Secretary of the Treasury determines to be reasonable and that provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(B) only repeals an amendment described in section 1082 (c)(8) of this title,

(C) is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26, or

(D) was adopted prior to, or pursuant to a collective bargaining agreement entered into prior to, the date on which the employer became a debtor in a case under title 11 or similar Federal or State law.

(3) This subsection shall apply only to plans (other than multiemployer plans) covered under section 1321 of this title for which the funded current liability percentage (within the meaning of section 1082 (d)(8) of this title) is less than 100 percent after taking into account the effect of the amendment.

(4) For purposes of this subsection, the term “employer” has the meaning set forth in section 1082 (c)(11)(A) of this title, without regard to section 1082 (c)(11)(B) of this title.

(j) Cross reference

For special rules relating to plan provisions adopted to preclude discrimination, see section 1053 (c)(2) of this title.

1055. Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that—

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

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b) Applicable plans

(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 1082 of this title, and

(C) any participant under any other individual account plan unless—

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

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

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

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

(2)

(A) In the case of—

(i) a tax credit employee stock ownership plan (as defined in section 409 (a) of title 26), or

(ii) an employee stock ownership plan (as defined in section 4975 (e)(7) of title 26),

subsection (a) of this section shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409 (h) of title 26 apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause ^[1] (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(4) ^[2] This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in section 404 (c) of title 26 (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(4) ^[2] A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(c) Plans meeting requirements of section

(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

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

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

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

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

(A)

(i) the spouse of the participant consents in writing to such election,

(ii) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and

(iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or
(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe. Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3)

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

- (i) the terms and conditions of the qualified joint and survivor annuity,
- (ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,
- (iii) the rights of the participant's spouse under paragraph (2), and
- (iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B)

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

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

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

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

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

(IV) A reasonable period ending after this section applies to the participant.

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

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

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

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5)

(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement

survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

(7) For purposes of this subsection, the term “applicable election period” means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 90-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant’s death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(8) Notwithstanding any other provision of this subsection—

(A)

(i) A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (7) shall not end before the 30th day after the date on which such explanation is provided.

(ii) The Secretary of the Treasury may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more than 7 days after such explanation is provided.

(d) “Qualified joint and survivor annuity” defined

For purposes of this section, the term “qualified joint and survivor annuity” means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(e) “Qualified preretirement survivor annuity” defined

For purposes of this section—

(1) Except as provided in paragraph (2), the term “qualified preretirement survivor annuity” means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant’s date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individual’s death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1) of this section, the term “qualified preretirement survivor annuity” means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 1053 of this title).

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(f) Marriage requirements for plan

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant’s annuity starting date, or

(B) the date of the participant's death.

(2) For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(g) Distribution of present value of annuity; written consent; determination of present value

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 1053 (e) of this title. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2) If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 1053 (e) of this title, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) Determination of present value.—

(A) In general.—

(i) Present value.— Except as provided in subparagraph (B), for purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(ii) Definitions.— For purposes of clause (i)—

(I) Applicable mortality table.— The term "applicable mortality table" means the table prescribed by the Secretary of the Treasury. Such table shall be based on the prevailing commissioners' standard table (described in section 807 (d)(5)(A) of title 26) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of section 807(d)(5) of such title).

(II) Applicable interest rate.— The term "applicable interest rate" means the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(B) Exception.— In the case of a distribution from a plan that was adopted and in effect prior to December 8, 1994, the present value of any distribution made before the earlier of—

(i) the later of when a plan amendment applying subparagraph (A) is adopted or made effective, or

(ii) the first day of the first plan year beginning after December 31, 1999,

shall be calculated, for purposes of paragraphs (1) and (2), using the interest rate determined under the regulations of the Pension Benefit Guaranty Corporation for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the provisions of the plan as in effect on the day before December 8, 1994; but only if such provisions of the plan met the requirements of this paragraph as in effect on the day before December 8, 1994.

(h) Definitions

For purposes of this section—

(1) The term “vested participant” means any participant who has a nonforfeitable right (within the meaning of section 1002 (19) of this title) to any portion of such participant’s accrued benefit.

(2)

(A) The term “annuity starting date” means—

(i) the first day of the first period for which an amount is payable as an annuity, or
(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3) The term “earliest retirement age” means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) Increased costs from providing annuity

A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) Use of participant’s accrued benefit as security for loan as not preventing distribution

If the use of any participant’s accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4) of this section, nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) Spousal consent

No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) of this section (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) of this section are met.

(l) Regulations; consultation of Secretary of the Treasury with Secretary of Labor
In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

1056. Form and payment of benefits

(a) Commencement date for payment of benefits

Each pension plan shall provide that unless the participant otherwise elects, the payment of benefits under the plan to the participant shall begin not later than the 60th day after the latest of the close of the plan year in which—

- (1) occurs the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,
- (2) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or
- (3) the participant terminates his service with the employer.

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

(b) Decrease in plan benefits by reason of increases in benefit levels under Social Security Act or Railroad Retirement Act of 1937

If—

- (1) a participant or beneficiary is receiving benefits under a pension plan, or
- (2) a participant is separated from the service and has non-forfeitable rights to benefits,

a plan may not decrease benefits of such a participant by reason of any increase in the benefit levels payable under title II of the Social Security Act [42 U.S.C. 401 et seq.] or the Railroad Retirement Act of 1937 [45 U.S.C. 231 et seq.] or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first entitlement of such benefits or the date of such separation.

(c) Forfeiture of accrued benefits derived from employer contributions

No pension plan may provide that any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable) is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant.

The preceding sentence shall not apply

- (1) to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit, or
- (2) to the extent that an accrued benefit is permitted to be forfeited in accordance with section 1053 (a)(3)(D)(iii) of this title.

(d) Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to

any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit and is exempt from the tax imposed by section 4975 of title 26 (relating to tax on prohibited transactions) by reason of section 4975 (d)(1) of title 26.

(3)

(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term “qualified domestic relations order” means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term “domestic relations order” means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies—

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

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

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

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

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

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(E)

(i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee—
(I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,
(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and
(III) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term “earliest retirement age” means the earlier of—

(I) the date on which the participant is entitled to a distribution under the plan, or
(II) the later of the date of the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(F) To the extent provided in any qualified domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 1055 (f) of this title.

(G)

(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan’s procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

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

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to the alternate payee with respect to a domestic relations order.

(H)

(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the “segregated amounts”) which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v)—

(I) it is determined that the order is not a qualified domestic relations order, or
(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

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

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan’s obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term “alternate payee” means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 1673 (a) of title 15.

(N) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

(4) Paragraph (1) shall not apply to any offset of a participant's benefits provided under an employee pension benefit plan against an amount that the participant is ordered or required to pay to the plan if—

(A) the order or requirement to pay arises—

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

(ii) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of this subtitle, or

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

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

(C) in a case in which the survivor annuity requirements of section 1055 of this title apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made—

(i) either—

(I) such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 1055 (c)(2)(B) of this title), or

(II) an election to waive the right of the spouse to a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 1055 (c) of this title,

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

(iii) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section 1055 (a)(1) of this title and under a qualified preretirement survivor annuity provided pursuant to section 1055 (a)(2) of this title, determined in accordance with paragraph (5).

A plan shall not be treated as failing to meet the requirements of section 1055 of this title solely by reason of an offset under this paragraph.

(5)

(A) The survivor annuity described in paragraph (4)(C)(iii) shall be determined as if—

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

(ii) there was no offset,

(iii) the plan permitted commencement of benefits only on or after normal retirement age,
(iv) the plan provided only the minimum-required qualified joint and survivor annuity, and
(v) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(B) For purposes of this paragraph, the term “minimum-required qualified joint and survivor annuity” means the qualified joint and survivor annuity which is the actuarial equivalent of the participant’s accrued benefit (within the meaning of section 1002 (23) of this title) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

(e) Limitation on distributions other than life annuities paid by plan

(1) In general

Notwithstanding any other provision of this part, the fiduciary of a pension plan that is subject to the additional funding requirements of section 1082 (d) of this title shall not permit a prohibited payment to be made from a plan during a period in which such plan has a liquidity shortfall (as defined in section 1082 (e)(5) of this title).

(2) Prohibited payment

For purposes of paragraph (1), the term “prohibited payment” means—

(A) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 1054 (b)(1)(G) of this title), to a participant or beneficiary whose annuity starting date (as defined in section 1055 (h)(2) of this title), that occurs during the period referred to in paragraph (1),

(B) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(C) any other payment specified by the Secretary of the Treasury by regulations.

(3) Period of shortfall

For purposes of this subsection, a plan has a liquidity shortfall during the period that there is an underpayment of an installment under section 1082 (e) of this title by reason of paragraph (5)(A) thereof.

(4) Coordination with other provisions

Compliance with this subsection shall not constitute a violation of any other provision of this chapter.

(f) Missing participants in terminated plans

In the case of a plan covered by subchapter III of this chapter, the plan shall provide that, upon termination of the plan, benefits of missing participants shall be treated in accordance with section 1350 of this title.

1057. Temporary variances from certain vesting requirements

In the case of any plan maintained on January 1, 1974, if not later than 2 years after September 2, 1974, the administrator petitions the Secretary, the Secretary

may prescribe an alternate method which shall be treated as satisfying the requirements of section 1053 (a)(2) or 1054 (b)(1) (other than subparagraph (D) thereof) of this title or both 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 1083 or 1084 of this title 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 administrator petitions the Secretary 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.

1058. Mergers and consolidations of plans or transfers of plan assets

A pension plan may not merge or consolidate with, or transfer its assets or liabilities to, any other plan after September 2, 1974, unless each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence shall not apply to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which subchapter III of this chapter applies.

1059. Recordkeeping and reporting requirements

(a)

(1) Except as provided by paragraph (2) every employer shall, in accordance with regulations prescribed by the Secretary, maintain records with respect to each of his employees sufficient to determine the benefits due or which may become due to such employees. The plan administrator shall make a report, in such manner and at such time as may be provided in regulations prescribed by the Secretary, to each employee who is a participant under the plan and who—

(A) requests such report, in such manner and at such time as may be provided in such regulations,

(B) terminates his service with the employer, or

(C) has a 1-year break in service (as defined in section 1053 (b)(3)(A) of this title).

The employer shall furnish to the plan administrator the information necessary for the administrator to make the reports required by the preceding sentence. Not more than one report shall be required under subparagraph (A) in any 12-month period. Not more than one report shall be required under subparagraph (C) with respect to consecutive 1-year breaks in service. The report required under this paragraph shall be sufficient to inform the employee of his accrued benefits under the plan and the percentage of such benefits which are nonforfeitable under the plan.

(2) If more than one employer adopts a plan, each such employer shall, in accordance with regulations prescribed by the Secretary, furnish to the plan administrator the information necessary for the administrator to maintain the records and make the reports required by paragraph (1). Such administrator shall maintain the records and, to the extent provided under regulations prescribed by the Secretary, make the reports, required by paragraph (1).

(b) If any person who is required, under subsection (a) of this section, to furnish information or maintain records for any plan year fails to comply with such requirement, he shall pay to the Secretary a civil penalty of \$10 for each employee with respect to whom such failure occurs, unless it is shown that such failure is due to reasonable cause.

1060. Multiple employer plans

(a) Plan maintained by more than one employer

Notwithstanding any other provision of this part or part 3, the following provisions of this subsection shall apply to a plan maintained by more than one employer:

(1) Section 1052 of this title shall be applied as if all employees of each of the employers were employed by a single employer.

(2) Sections 1053 and 1054 of this title shall be applied as if all such employers constituted a single employer, except that the application of any rules with respect to breaks in service shall be made under regulations prescribed by the Secretary.

(3) The minimum funding standard provided by section 1082 of this title shall be determined as if all participants in the plan were employed by a single employer.

(b) Maintenance of plan of predecessor employer

For purposes of this part and part 3—

(1) in any case in which the employer maintains a plan of a predecessor employer, service for such predecessor shall be treated as service for the employer, and

(2) in any case in which the employer maintains a plan which is not the plan maintained by a predecessor employer, service for such predecessor shall, to the extent provided in regulations prescribed by the Secretary of the Treasury, be treated as service for the employer.

(c) Plan maintained by controlled group of corporations

For purposes of sections 1052, 1053, and 1054 of this title, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563 (a) of title 26, determined without regard to section 1563

(a)(4) and (e)(3)(C) of title 26) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 1082 of this title shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary of the Treasury.

(d) Plan of trades or businesses under common control

For purposes of sections 1052, 1053, and 1054 of this title, under regulations prescribed by the Secretary of the Treasury, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (c) of this section.

1061. Effective dates

(a) Except as otherwise provided in this section, this part shall apply in the case of plan years beginning after September 2, 1974.

(b)

(1) Except as otherwise provided in subsection (d) of this section, sections 1055, 1056 (d) and 1058 of this title shall apply with respect to plan years beginning after December 31, 1975.

(2) Except as otherwise provided in subsections (c) and (d) of this section in the case of a plan in existence on January 1, 1974, this part shall apply in the case of plan years beginning after December 31, 1975.

(c)

(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 1054 and 1055 of this title by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of—

(A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after September 2, 1974), or

(B) December 31, 1980.

For purposes of subparagraph (A) and section 1086 (c) ^[1] of this title, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained in this chapter or the Internal Revenue Code of 1986 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on September 2, 1974, are not less favorable to participants, in the aggregate, than the rules provided under sections 1052, 1053, and 1054 of this title.

(2) For purposes of paragraph (1), the term “supplementary or special plan provision” means any plan provision which—

(A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b) of this section.

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of the Internal Revenue Code of 1986 relating to participation, vesting, funding, and form of benefit, this part shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e)

(1) No pension plan to which section 1052 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1052 of this title first becomes effective with respect to such plan) which provides that any employee’s participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 1052 (b) of this title, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 1053 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1053 of this title first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 1052 (b)(3) of this title, or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.