§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Pennsylvania	Lebanon	Annville, township of	July 1, 1977, suspension withdrawn	Nov. 9, 1973 Sept. 3, 1976	420670A
Do	Northampton	Bangor, borough of	do	Feb. 1, 1974	420716A
Do	Lebanon	Cleona, borough of	do	Dec. 28, 1973	420571A
Do	Chester	Downingtown, borough of	do	Feb. 9, 1973	420275
Do	do	East Bradford, township of	do	Aug. 16, 1974 Oct. 24, 1975	420276A
Do	Luzerne	Edwardsville, borough of	do	Mar. 23, 1973	420604
Do	Wayne	Honesdale, borough of	do	Nov. 30, 1973	420864A
Do	Cambria	Johnstown, city of	do	Jan. 16, 1974	420231A
Do	Luzerne	Larksville, borough of	do	July 6, 1973	420614A
Do	Dauphin	Lower Swatara, township of	do	Jan. 9, 1974 June 4, 1976	420385A
Do	Luzerne	Luzerne, borough of	do	Nov. 23, 1973	420616
Do	Montour	Mahoning, township of	do	Sept. 13, 1974 Sept. 24, 1976	421234A
Do	Luzerne	Nanticoke, city of	do	Aug. 24, 1973 Dec. 14, 1973	420617B
Do	Lycoming	Old Lycoming, township of	do	Aug. 31, 1973 Aug. 13, 1976	420652A
Do	Clinton	Pine Creek, township of	do	Apr. 1, 1977	420332
Do	Luzerne	Plymouth, borough of	do	Mar. 30, 1973 Mar. 29, 1974	420622B
Do	Chester	Pocopson, township of	do	Apr. 15, 1977	420286
Do	Delaware	Rose Valley, borough of	do	May 25, 1973	420431C
Do	Dauphin	Royalton, borough of	do	June 15, 1973 Sept. 10, 1976	420394A
Do	Bradford	Sayre, borough of	do	May 17, 1974 June 4, 1976	420175A
Do	Centre	Spring, township of	do	June 21, 1974 June 25, 1976	420269A
Do	Dauphin	Steelton, borough of	do	Aug. 31, 1973 Dec. 26, 1975	420396A
Do	Monroe	Stroud, township of	do	Jan. 17, 1975	420693
Do	Schuylkill	St. Clair, borough of	do	Mar. 15, 1977	420786A
Do	Northumberland	West Chillisquaque, township of	do	May 10, 1974 June 4, 1976	421033A
*	*	*	*	*	*
California	Orange	Fullerton, city of	July 5, 1977, suspension withdrawn	June 28, 1974 July 2, 1976	060219A
Florida	Bay	Lynn Haven, city of	do	Sept. 26, 1974 Dec. 19, 1975	120009A
Do	do	Panama City Beach, city of	do	July 19, 1974 Mar. 26, 1976	120013A
Missouri	St. Louis	Eureka, city of	do	Jan. 9, 1974 Sept. 26, 1975	290349A
New York	Broome	Binghamton, city of	do	Apr. 12, 1974 Apr. 23, 1976	360038B
Do	Erie	Elma, town of	do	Sept. 21, 1973	360239
Do	Cattaraugus	Gowanda, village of	do	Feb. 8, 1973	360075
Do	Broome	Kirkwood, town of	do	Oct. 5, 1973	360048
Do	do	Vestal, town of	do	Apr. 5, 1974 Jan. 3, 1975	360057A
South Carolina	Horry	Myrtle Beach, city of	do	Sept. 20, 1974	450109
Texas	Erath	Stephenville, city of	do	June 28, 1974 Jan. 2, 1976	480220
Wisconsin	Eau Claire	Eau Claire, city of	do	Sept. 20, 1974 Sept. 24, 1976	550128A
*	*	*	*	*	*
Arizona	Santa Cruz	Patagonia, town of	July 13, 1977, emergency	Apr. 9, 1976	040092
North Dakota	Golden Valley	Beach, city of	do	July 11, 1975	380215
Texas	Bexar	Leon Valley, city of	June 25, 1973, emergency; June 1, 1977, regular; June 1, 1977, suspended; July 6, 1977, reinstated.	Oct. 12, 1973	480042-A

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: August 5, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24065 Filed 8-22-77;8:45 am]

[Docket No. FI-3216]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list those communities where the sale of flood insurance is authorized under the National Flood Insurance Program.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the State.

DATES: The date that appears in the fourth column of the table is the effective date of authorization for the sale of flood insurance.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator,
Office of Flood Insurance, 202–755–581 or Toll Free Line 800–424–8872,
Room 5270,
451 Seventh Street, SW.,
Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by Section 202(b) of the Act, as amended, unless the community has entered the program. Accordingly, for communities

listed under this part no such restriction exists, although insurance, if required, must be purchased.

The addresses of the National Flood Insurers Association Servicing companies, where flood insurance policies can be obtained, are published at § 1912.7 (24 CFR Part 1912).

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Minnesota	Hennepin	Champlin, city of	Mar. 30, 1973, emergency; July 18, 1977, regular	Nov. 2, 1973	270153A
Mississippi	Lincoln	Brookhaven, city of	Jan. 17, 1974, emergency; July 18, 1977, regular	Jan. 24, 1975	280107A
New Jersey	Essex	South Orange, village of	Jan. 7, 1972, emergency; July 18, 1977, regular	Nov. 30, 1973	340194A
Pennsylvania	Berks	Earl, township of	Apr. 18, 1973, emergency; July 18, 1977, regular	May 31, 1974 June 4, 1976	420132B
Do.	Cameron	Grove, township of	Mar. 4, 1974, emergency; July 18, 1977, regular	Nov. 8, 1974 July 9, 1976	421128B
Do.	Westmoreland	Mount Pleasant, township of	Sept. 26, 1973, emergency; July 18, 1977, regular	Dec. 6, 1974 Oct. 22, 1976	420888B
Do.	Huntingdon	Mount Union, borough of	Nov. 10, 1972, emergency; July 18, 1977, regular	Aug. 24, 1973 Aug. 20, 1976	420489B
Texas	Tarrant	Bedford, city of	Jan. 19, 1973, emergency; July 18, 1977, regular	Dec. 28, 1973	480585A
*	*	*	*	*	*
Michigan	Calhoun	Tekonsha, township of	July 20, 1977, emergency		[1] 260709
Ohio	Allen	Unincorporated areas	do		390758
Pennsylvania	Monroe	Eldred, township of	do	Dec. 6, 1974	421887
Texas	Bell	Troy, city of	do	Nov. 12, 1976	480709
Do.	Hill	Whitney, city of	do	July 2, 1976	480865
*	*	*	*	*	*
Louisiana	Papides Parish	Boyce, town of	July 21, 1977, emergency	Apr. 5, 1974	220147A
Pennsylvania	Cambria	Reade, township of	do	Dec. 6, 1974	421445
Texas	Tarrant	Dalworthington Gardens, city of	do	Aug. 6, 1976	481013
Do.	Navarro	Franklin, city of	do		[1] 481487
Do.	Shelby	Joaquin, city of	do	Oct. 22, 1976	481005
*	*	*	*	*	*
Ohio	Erie	Sandusky, city of	July 5, 1977, suspension withdrawn	June 21, 1974 July 30, 1976	390156A
Mississippi	Pontotoc	Unincorporated areas	July 22, 1977, emergency	Nov. 29, 1974	280234

[1] New.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: August 5, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24066 Filed 8-22-77;8:45 am]

[Docket No. FI3217]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to list communities where the sale of flood insurance as authorized under the National Flood Insurance Program will be suspended because of noncompliance with the program regulations.

DATES: The last date that appears in the fourth column is the effective date of the suspension of the sale of flood insurance.

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, 202–755–5581 or Toll Free Line 800–424–8872, Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93–234) requires the purchase of flood insurance as a condition of receiving any form of Federal or federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified by the Secretary of Housing and Urban Development.

The requirtment applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and insurance is purchased. Accordingly, for communities listed under this part such restriction exists as of the effective date of suspension because insurance, which is required, cannot be purchased.

Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities suspended in this notice no longer meet that statutory requirement for compliance with program regulations (24 CFR Part 1909 et seq.). Accordingly, the communities are suspended on the effective date in the list below.

The Federal Insurance Administrator finds that delayed effective dates would be contrary to the public interest. The Administrator also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community.

The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
•	•	•	•	•	•
Arizona	Mohave	Kingman, city of	Feb. 4, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	May 31, 1974 Oct. 15, 1976	040060A
Connecticut	Hartford	Bloomfield, town of	Feb. 18, 1972, emergency; Aug. 15, 1977, regular, Aug. 15, 1977, suspended.	Feb. 1, 1974	080122
Do.	do.	Farmington, town of	Nov. 26, 1971, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	June 28, 1974	090029
Florida	Pinellas	Bellair Bluffs, city of	May 1, 1973, emergency; Aug. 1, 1977, regular; Aug. 15, 1977, suspended.	do. June 11, 1976	120239A
Georgia	Dougherty	Albany, city of	Mar. 3, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	May 17, 1974 Feb. 13, 1976	130075A
Maine	Oxford	Mexico, township of	Nov. 17, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Mar. 8, 1974	230065
Massachusetts	Bristol	Dartmouth, town of	Sept. 10, 1971, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Feb. 28, 1975	250051
Do.	Berkshire	Williamstown, town of	Feb. 18, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Feb. 8, 1974	250046
Michigan	Monroe	Monroe, city of	Dec. 29, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	May 3, 1974	260153A
Minnesota	Brown	Unincorporated areas	Jan. 28, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Aug. 15, 1977	270034
•	•	•	•	•	•
New Jersey	Essex	Bloomfield, town of	May 12, 1972, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	June 15, 1973	340178
Do.	Bergen	Maywood, borough of	May 26, 1972, emergency; Aug. 15, 1977; regular; Aug. 15, 1977; suspended.	Aug. 15, 1977	340050
New York	Suffolk	Babylon, village of	Jan. 19, 1973, emergency; Aug. 1, 1977, regular; Aug. 15, 1977, suspended.	Dec. 7, 1973 June 11, 1976	360791A
Ohio	Lucas	Sylvania, city of	Feb. 18, 1972, emergency; July 5, 1977, regular; Aug. 15, 1977, suspended.	Dec. 17, 1973 Oct. 24, 1975	390364A
Pennsylvania	Berks	Douglass, township of	May 15, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Nov. 9, 1973 Oct. 1, 1976	421911
Do.	do.	Earl, township of	Apr. 18, 1973, emergency; July 18, 1977, regular; Aug. 15, 1977, suspended.	May 31, 1974 June 4, 1976	420132A
Do.	Northampton	Hanover, township of	Jan. 19, 1973, emergency; Aug. 1, 1977, regular; Aug. 15, 1977, suspended.	Nov. 23, 1973	420722
Do.	Carbon	Jim Thorpe, borough of	Aug. 7, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Apr. 5, 1974	420249
Do.	Lycoming	Montoursville, borough of	Feb. 9, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	June 15, 1973	420648
Do.	Huntingdon	Mount Union, borough of	Nov. 10, 1972, emergency; July 18, 1977, regular; Aug. 15, 1977, suspended.	Aug. 24, 1973 Aug. 20, 1976	420489A
Do.	Schuylkill	New Philadelphia, borough of	May 25, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	June 28, 1974 Apr. 23, 1976	420779
Do.	Delaware	Parkside, borough of	Dec. 10, 1971, emergency; July 5, 1977, regular; Aug. 15, 1977, suspended.	Mar. 30, 1973	420426A
Do.	Berks	Union, township of	July 9, 1973, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Jan. 16, 1974	420155
Wisconsin	Waupaca	Unincorporated areas	Dec. 17, 1971, emergency; Aug. 15, 1977, regular; Aug. 15, 1977, suspended.	Aug. 15, 1977	550492

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, (42 U.S.C. 4001–4128); and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: August 3, 1977.

PATRICIA ROBERTS HARRIS,
Secretary.

[FR Doc.77-24067 Filed 8-22-77;8:45 am]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7501]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Minimum Vesting Standards and Certain Plans Covering Subsidiary Corporation Employees

AGENCY: Internal Revenue Service, Terasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to vesting standards and certain plans covering subsidiary corporation employees. Changes in the applicable tax law were made by the Revenue Act of 1964, the Tax Reform Act of 1969 and the Employee Retirement Income Security Act of 1974. These regulations provide necessary guidance to the public for compliance with the law and affect employees covered by qualified retirement plans.

DATE: The regulations have varying effective dates. Most of the effective date rules are dependent upon the time when a retirement plan came into existence. For plans in existence on January 1, 1974, the regulations under the Employee Retirement Income Security Act of 1974 are effective for plan years beginning after December 31, 1975. For plans not in existence on January 1, 1974, the regulations are effective for plan years beginning after September 2, 1974.

FOR FURTHER INFORMATION CONTACT:

Richard J. Wickersham of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) 202-566-3289).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 6, 1975, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 406 and 407 of the Internal Revenue Code of 1954, 40 FR 10476. The amendments were proposed to conform the regulations to section 220 of the Revenue Act of 1964 (78 Stat. 58) and section 515(c) (2) and (3) of the Tax Reform Act of 1969 (83 Stat. 645, 646). A public hearing was neither requested nor held on these regulations.

On November 5, 1975, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 411 of the Internal Revenue Code of 1954, 40 FR 51445. The amendments were proposed to conform the regulations to section 1012(a) of the Employee Retirement Income Security Act of 1974 (88 Stat. 901) (hereinafter referred to as the "Act").

STATUTORY PROVISIONS

Sections 406 and 407 of the Code allow qualified plans of domestic corporations to cover citizens of the United States who are employees of their foreign subsidiaries or their domestic subsidiaries engaged in business outside the United States if certain requirements are satisfied.

Sections 401(a)(19) and 411 of the Code prescribe minimum vesting stand-

ards which are qualification requirements for pension, stock bonus, or profit-sharing plans (and their related trusts) described in section 401(a), 403(a), 405 of the Code. These new vesting standards impose various requirements on plans. Among the principal requirements are the manner in which plans must provide vesting for employees in their plan benefits and how these plan benefits must be determined for employees.

Some regulations prescribed by the Secretary of Labor are applicable for purposes of applying the vesting rules of section 411.

EFFECTIVE DATES

Section 1.411(a)–2, relating to the effective dates of section 411, has been clarified by the addition of a new paragraph (f) to provide that the new requirements are not applicable to certain separated employees.

DIFFERENT SCHEDULES

Section 1.411(a)–3, relating to vesting in employer-derived benefits, is revised to make it clear that plans can satisfy, under certain conditions, different statutory vesting schedules for different employee groups.

FORFEITURES

Section 1.411(a)–4 provides rules relating to permissible forfeitures, suspensions, etc. of vested rights.

The rules have been changed to make it clear that a multiemployer plan does not violate the vesting rules by disregarding accrued benefits to the extent that section 414(f) of the Code permits a forfeiture.

In the case of a plan integrated with Social Security, plan benefits may decrease prior to an employee's retirement or separation because of increasing Social Security benefits. The rules have been changed to make it clear that this is not a prohibited forfeiture.

Paragraph (b)(1) provides a general rule for an exception to the nonforfeitability requirements by reason of the death of an employee. This rule has been revised to provide that benefits derived from employee contributions are not treated as being forfeitable solely because payments received under an annuity option are less than such benefits.

SERVICE FOR VESTING

Section 1.411(a)–5, relating to service which counts toward the vesting percentage, has been expanded to clarify what service can be disregarded under break in service rules in effect prior to the effective date of the Act.

DEFINITIONS AND SPECIAL RULES

Section 1.411(a)–7, relating to definitions and special rules, has been modified in several respects.

The definition of "accrued benefit" in paragraph (a)(1) has been modified to provide that the term does not include ancillary benefits not directly related to retirement benefits. Ancillary benefits would include, for example, payment of medical expenses (or insurance premiums for such expenses) and life insurance benefits payable as a lump sum.

The definition of "normal retirement benefit" in paragraph (c) has been revised to make it clear that a plan's computation of its early retirement benefit can take into account the effect of integration with social security or similar laws occurring subsequent to early retirement age.

Paragraph (d), relating to certain distributions and cash-out rules, has been modified to consolidate in one paragraph the rules on cash-outs from a defined contribution plan. In the proposed regulations these rules were scattered among several sections of the regulations.

CHANGES IN VESTING SCHEDULES

Section 1.411(a)–8, relating to changes in vesting schedules, has been revised to make it clear that a plan does not have to provide for an election of a former vesting schedule where an employee cannot be disadvantaged by a plan amendment. Guidance has also been given as to what is meant by "a change in the vesting schedule."

ACCRUED BENEFITS

Section 1.411(b)–1, relating to accrued benefit requirements, has been modified to make it clear that a plan can compute accrued benefits under more than one formula provided that the aggregate benefits satisfy one of three statutory methods. Furthermore, the final regulations provide that a plan is not precluded from satisfying these requirements by separately testing accrued benefits for different employee classifications.

Paragraph (e) (pertaining to separate accounting) has been revised to provide clarification as to the accounting rules which are required of defined contribution plans.

Paragraph (f), relating to the determination of a year of participation, has been revised to provide that these rules are inapplicable to a defined contribution plan.

ALLOCATIONS

Section 1.411(c)–1, relating to allocating benefits between employer and employee contributions, has been modified to provide that actuarial adjustments, to benefits are not required because of suspension of benefits described in section 203(a)(3)(B) of the Act and section 411(a)(3)(B) of the Code.

TERMINATIONS

Section 1.411(d)–2, relating to required vesting on plan terminations, etc., has been revised to clarify the interrelationship between certain Code requirements and certain title IV provisions of the Act.

Paragraph (e) has been clarified to provide that the rule pertaining to vesting upon early plan termination under Code section 411(d)(2) and (3), present under pre-Act law, takes precedence over other rules, including those in section 4044 of the Act. This provision indicates that the Interal Revenue Service can require forfeitures to preclude prohibited discrimination when there is an early plan termination.

SPECIAL RULES

Section 1.411(d)–3, relating to other special rules, has been revised. First, the class year plan rules of paragraph (a) have been clarified to provide that certain distribution rules, in § 1.411(a)–7(d) of the final regulations, are applicable to these plans and are to be applied in a special manner. Second, the prohibition against accrued benefit decreases rules of paragraph (b) have been revised to identify more specifically the types of amendments which are proscribed.

WITHDRAWAL AND DELETION OF SECTIONS MERELY REPRODUCING STATUTORY MATERIAL

As part of the effort to reduce the bulk of the Code of Federal Regulations, those sections of the proposed regulations which merely reproduced various provisions of the Internal Revenue Code are withdrawn.

For the same reason several such sections are deleted from the Code of Federal Regulations by this document.

DRAFTING INFORMATION

The principal author of these regulations was Richard J. Wickersham of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly—1. The following sections of the proposed regulations are withdrawn:

(a) Section 1.406, as set forth in the appendix to the March 6, 1975, notice of proposed rulemaking and as modified in paragraph 5 of the appendix to the November 5, 1975, notice of proposed rulemaking.

(b) Section 1.407, as set forth in the appendix to the March 6, 1975, notice of proposed rulemaking and as modified in paragraph 7 of the appendix to the November 5, 1975, notice of proposed rulemaking.

(c) Sections 1.411(a), 1.411(b), 1.411(c), 1.411(d), and 1.411(e), all as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking.

(d) Section 1.413, as set forth in paragraph 10 of the appendix to the November 5, 1975, notice of proposed rulemaking.

2. The amendments to 26 CFR Part 1 as proposed are hereby adopted, subject to the changes indicated below.

PARAGRAPH 1. Sections 1.401, 1.401(a) and 1.401(b) are deleted.

PAR. 2. Section 1.401(a)–19 as set forth in paragraph 2 of the appendix to the November 5, 1976, notice of proposed

rule making is amended by adding a new sentence at the end of paragraph (b)(2), by revising paragraph (b)(3) and by adding a paragraph (c) to read as set forth below.

PAR. 3. Sections 1.404(a), 1.404(b), 1.404(c), 1.404(d) and 1.404(e) are deleted.

PAR. 4. Section 1.404(a)-8 as set forth in paragraph 4 of the appendix to the November 5, 1975, notice of proposed rule making is changed by revising subparagraphs (2) and (3)(ii)(B) of paragraph (a) to read as set forth below.

PAR. 5. Section 1.406-1 as set forth in the appendix to the March 6, 1975, notice of proposed rule making is changed by revising paragraphs (b)(2), (c)(1) and (2)(i), (d) and (e)(2) to read as set forth below.

PAR. 6. Section 1.407-1, as set forth in the appendix to the March 6, 1975, notice of proposed rule making is changed by revising paragraphs (b)(2), (c)(1) and (2)(i), (d) and (e)(2) to read as set forth below.

PAR. 7. Section 1.411(a)-1, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making is changed by adding a new paragraph (d) at the end thereof to read as set forth below.

PAR. 8. Section 1.411(a)-2, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by adding a new paragraph (f) at the end thereof to read as set forth below.

PAR. 9. Section 1.411(a)-3, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by revising subparagraph (2) of paragraph (a) to read as set forth below.

PAR. 10. Section 1.411(a)-4, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by revising paragraph (a), by revising subparagraphs (1) and (4) of paragraph (b), by deleting subparagraphs (5) and (6) of paragraph (b), and by adding new paragraphs (b)(5) and (6). These revised and added provisions are set forth below.

PAR. 11. Section 1.411(a)-5, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making is amended by revising paragraph (b)(1)(iii) and (2), the second sentence in subdivision (ii) and subdivisions (iii) and (iv) (B) and (C) of paragraph (b)(3), paragraph (b)(6), and paragraph (c) to read as set forth below.

PAR. 12. Section 1.411(a)-6, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking is changed by striking out "—(A) General rule" and deleting subdivisions (B) and (C) in paragraph (c)(1)(ii), by adding a new sentence following the first sentence in paragraph (c)(1)(iii), and by adding a new sentence following the first sentence in paragraph (c)(2). The added provisions are set forth below.

PAR. 13. Section 1.411(a)-7, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking, is changed by adding two new sentences immediately after subdivision (ii) of paragraph (a)(1), by adding two new sentences immediately after subdivision (ii)(B) of paragraph (b)(1), by adding a new subdivision (iii) to paragraph (c)(2), by revising subparagraphs (3), (4) and (5) of paragraph (c), and by revising paragraph (d). These amended and added provisions are set forth below.

PAR. 14. Section 1.411(a)-8, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking, is changed by revising so much of paragraph (a) as follows subparagraph (2), by revising subparagraphs (1) and (3) and adding a new subparagraph (6) to paragraph (b), and by adding a new paragraph (c). These revised and added provisions are set forth below.

PAR. 15. Section 1.411(a)-9, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rulemaking, is changed by adding a second sentence to paragraph (b) to read as set forth below.

PAR. 16. Section 1.411(b)-1, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making is changed by revising paragraphs (a)(1), (d)(3), (e) (1) and (2) and (f)(1) to read as set forth below.

PAR. 17. Section 1.411(c)-1, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by revising the last sentence of subparagraph (2) of paragraph (b), by adding a new sentence at the end of subparagraph (4) of paragraph (c), by revising so much of paragraph (d) as precedes subparagraph (1), by revising paragraph (e)(2), and by adding a new paragraph (f). These revised and added provisions read as set forth below.

PAR. 18. Section 1.411(d)-2, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is changed by adding a new sentence at the end of paragraph (a)(2)(i), by revising paragraphs (a)(2)(ii) and (b), by adding a new sentence at the end of paragraph (c)(2), and by revising paragraph (e). These revised and added provisions read as set forth below:

PAR. 19. Section 1.411(d)-3, as set forth in paragraph 9 of the appendix to the November 5, 1975, notice of proposed rule making, is revised as set forth below:

PAR. 20. Section 1.413-1, as set forth in paragraph 10 of the appendix to the November 5, 1975, of the notice of proposed rule making, is revised by striking out "§ 210 of" in the last sentence of paragraph (e), as set forth below.

PAR. 21. Section 1.413-2, as set forth in paragraph 10 of the appendix to the November 5, 1975, notice of proposed rule making, is revised by striking out "§ 210 of" in the last sentence of paragraph (d), as set forth below.

PAR. 22. Section 1.801 is deleted.

PAR. 23. Section 1.805 is deleted.

(Secs. 411, 7805, Internal Revenue Code of 1954 (88 Stat. 901, 68A Stat. 917; 26 U.S.C. 411 and 7805))

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved:

LAURENCE N. WOODWORTH,
Assistant Secretary of the Treasury.

§§ 1.401(a) and 1.401(b) [Deleted]

1. Sections 1.401, 1.401(a) and 1.401(b) are deleted.

2. The following new section is added immediately before § 1.401-1:

§ 1.401-0 Scope and definitions.

(a) *In general.* Sections 1.401 through 1.401-14 (inclusive) reflect the provisions of section 401 prior to amendment by the Employee Retirement Income Security Act of 1974. The sections following § 1.401-14 and preceding § 1.402(a) (hereafter referred to in this section as the "Post-ERISA Regulations") reflect the provisions of section 401 after amendment by such Act.

(b) *Definitions.* For purposes of the Post-ERISA regulations—

(1) *Qualified plan.* The term "qualified plan" means a plan which satisfies the requirements of section 401(a).

(2) *Qualified trust.* The term "qualified trust" means a trust which satisfies the requirements of section 401(a).

3. The following new section is added immediately after § 1.401(a)-19:

§ 1.401(a)-19 Nonforfeitability in case of certain withdrawals.

(a) *Application of section.* Section 401(a)(19) and this section apply to a plan to which section 411(a) applies. (See section 411(e) and § 1.411(a)-2 for applicability of section 411).

(b) *Prohibited forfeitures*—(1) *General rule.* A plan to which this section applies is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if, under such plan, any part of a participant's accrued benefit derived from employer contributions is forfeitable solely because a benefit derived from the participant's contributions under the plan is voluntarily withdrawn by him after he has become a 50 percent vested participant.

(2) *50 percent vested participant.* For purposes of subparagraph (1) of this paragraph, a participant is a 50 percent vested participant when he has a nonforfeitable right (within the meaning of section 411 and the regulations thereunder) to at least 50 percent of his accrued benefit derived from employer contributions. Whether or not a participant is 50 percent vested shall be determined by the ratio of the participant's total nonforfeitable employer-derived accrued benefit under the plan to his total employer-derived accrued benefit under the plan.

(3) *Certain forfeitures.* Paragraph (b)(1) of this section does not apply in the case of a forfeiture permitted by section 411(a)(3)(D)(iii) and § 1.411(a)-7(d)(3) (relating to forfeitures of certain

benefits accrued before September 2, 1974).

(c) *Supersession.* Section 11.401(a)–(19) of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 is superseded by this section.

§§ 1.404(a), 1.404(b), 1.404(c), 1.404(d) and 1.404(e) [Deleted]

4. Sections 1.404(a), 1.404(b), 1.404(c), 1.404(d) and 1.404(e) are deleted.

5. Section 1.404(a)–8 is amended to read as follows:

§ 1.404(a)–8 Contributions of employer under an employees' annuity plan which meets the requirements of sec- which meets the requirements of section 401(a); application of section 404(a)(2).

(a) If contributions are paid by an employer under an annuity plan for employees and the general conditions and limitations applicable to deductions for such contributions are satisfied (see § 1.404(a)–1), the contributions are deductible under section 404(a)(2) if the further conditions provided therein are satisfied. For the meaning of "annuity plan" as used here, see § 1.404(a)–3. In order that contributions by the employer may be deducted under section 404(a)(2), all of the following conditions must be satisfied:

(1) The contributions must be paid toward the purchase of retirement annuities (or for disability, severance, insurance, survivorship benefits incidental and directly related to such annuities, or medical benefits described in section 401(h) as defined in paragraph (a) of § 1.404(h)–1) under an annuity plan for the exclusive benefit of the employer's employees or their beneficiaries.

(2) The contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it meets the applicable requirements set forth in section 401(a)(3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), and (19). In the case of a plan which covers a self-employed individual, the contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it also meets the requirements of section 401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1)). In the case of a plan which covers a shareholder-employee within the meaning of section 1379(d), the contributions must be paid in a taxable year of the employer which ends with or within a year of the plan for which it also meets the requirements of section 401(a)(17) and (18). See section 401(a) and the regulations thereunder for the requirements and the applicable effective dates of the respective paragraphs set forth in section 401(a). Any contributions of an employer which are paid in a taxable year of the employer ending with or within a year of the plan for which it meets the applicable requirements of section 401 may be carried over and deducted in a succeeding taxable year of the employer in accordance with section 404(a)(1)(D), whether or not such succeeding taxable year ends with or within a taxable year of the plan for which it meets the requirements set out in section 401 (a) and (d). See section 401(b) and the regulations thereunder for special rules allowing certain plan amendments to be given retroactive effect. See section 404(a)(6) for a special rule for determining the time when a contribution is deemed to have been made.

(3) There must be a definite written arrangement between the employer and the insurer that refunds of premiums, if any, shall be applied within the taxable year of the employer in which received or within the next succeeding taxable year toward the purchase of retirement annuities (or for disability, severance, insurance, survivorship benefits incidental and directly related to such annuities, or medical benefits described in section 401(h) as defined in paragraph (a) of § 1.401(h)–1) under the plan. For the purpose of this condition, "refunds of premiums" means payments by the insurer on account of credits such as dividends, experience rating credits, or surrender or cancellation credits. The arrangement may be in the form of contract provisions or written directions of the employer or partly in one form and partly in another. This condition will be considered satisfied where—

(i) All credits are applied regularly, as they are determined, toward the premiums next due under the contracts before any further employer contributions are so applied, and

(ii) Under the arrangement,

(A) No refund of premiums may be made during continuance of the plan unless applied as aforesaid, and

(B) If refunds of premiums may be made after discontinuance or termination, whichever is applicable, of the plan on account of surrenders or cancellations before all retirement annuities provided under the plan with respect to service before its discontinuance or termination have been purchased, such refunds will be applied in the taxable year of the employer in which received, or in the next succeeding taxable year, to purchase retirement annuities for employees by a procedure which does not contravene the conditions of section 401(a)(4). If the plan also includes medical benefits described in section 401(h) as defined in paragraph (a) of § 1.401(h)–1, any refund of premiums attributable to such benefits must, in accordance with these rules, be applied toward the purchase of medical benefits described in section 401(h).

(4) Any amounts described in subparagraph (3) of this paragraph which are attributable to contributions on behalf of a self-employed individual must be applied toward the purchase of retirement benefits. Amounts which are so applied are not contributions and thus are not taken into consideration in determining—

(i) The amount deductible with respect to contributions on his behalf, nor

(ii) In the case of an owner-employee, the maximum amount of contributions that may be made on his behalf.

(b) Where the above conditions are satisfied, the amounts deductible under section 404(a)(2) are governed by the limitations provided in section 404(a)(1). See §§ 1.404(a)–3 to 1.404(a)–7, inclusive.

6. Section 1.406–1 is added to read as follows:

§ 1.406–1 Treatment of certain employees of foreign subsidiaries as employees of the domestic corporation.

(a) *Scope*—(1) *General rule.* For purposes of applying the rules in part 1 of subchapter D of chapter 1 of subtitle A of the Code and the regulations thereunder with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic corporation, an individual who is a citizen of the United States and who is an employee of a foreign subsidiary (as defined in section 3121(l)(8) and the regulations thereunder) of such domestic corporation shall be treated as an employee of such domestic corporation if the requirements of paragraph (b) of this section are satisfied.

(2) *Cross references.* For rules relating to nondiscrimination requirements and the determination of compensation, see paragraph (c) of this section. For rules under which termination of the status of an individual as an employee of the domestic corporation in certain instances will not be considered as separation from service for certain purposes, see paragraph (d) of this section. For rules regarding deductibility of contributions, see paragraph (e) of this section. For rules regarding treatment of such individual as an employee of the domestic corporation under related provisions, see paragraph (f) of this section.

(b) *Application of this section*—(1) *Requirements.* This section shall apply and the employee of the foreign subsidiary shall be treated as an employee of domestic corporation for the purposes set forth in paragraph (a)(1) of this section only if each of the following requirements is satisfied:

(i) The domestic corporation must have entered into an agreement under section 3121(l) to provide social security coverage which applies to the foreign subsidiary of which such individual is an employee and which has not been terminated under section 3121(l)(3) or (4).

(ii) The plan, referred to in paragraph (a)(1) of this section, must expressly provide for contributions or benefits for individuals who are citizens of the United States and who are employees of one or more of its foreign subsidiaries to which an agreement entered into by such domestic corporation under section 3121(l) applies. The plan must apply to all of the foreign subsidiaries to which such agreement applies.

(iii) Contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) must not be provided by any other person with respect to the remuneration paid to such individual by the foreign subsidiary.

(2) *Supplementary rules.* Subparagraph (1)(ii) of this paragraph does not modify the requirements for qualification of a plan described in section 401(a), 403(a), or 405(a) and the regulations thereunder. It is not necessary that the plan provide benefits or contributions for all United States citizens who are employees of such foreign subsidiaries. If the plan is amended to cover individuals who are employees by reason of paragraph (a)(1) of this section, the plan will not qualify unless it meets the coverage requirements of section 410(b)(1) (section 401(a)(3), as in effect on September 1, 1974, for plan years to which section 410 does not apply; see § 1.410(a)-2 for the effective dates of section 410) and the nondiscrimination requirements of section 401(a)(4). In addition, the administrative rules contained in § 1.401(a)-3(e) (relating to the determination of the contributions or benefits provided by the employer under the Social Security Act) will also apply for purposes of determining whether the plan meets the requirements of section 401. For purposes of subparagraph (1)(iii) of this paragraph, contributions will not be considered as provided under a funded plan merely because the foreign subsidiary is required under the laws of the foreign jurisdiction to pay social insurance taxes or to make similar payments with respect to the wages paid to the employee.

(c) *Special rules*—(1) *Nondiscrimination requirements.* For purposes of applying sections 401(a)(4) and 410(b)(1)(B) (section 401(a)(3)(B), as in effect on September 1, 1974, for plan years to which section 410 does not apply) and the regulations thereunder (relating to nondiscrimination concerning benefits and contributions and coverage of employees) with respect to an employee of the foreign subsidiary who is treated as an employee of the domestic corporation under paragraph (a)(1) of this section—

(i) If the employee is an officer, shareholder, or (with respect to plan years to which section 410 does not apply) person whose principal duties consist in supervising the work of other employees of the foreign subsidiary of the domestic corporation, he shall be treated as having such capacity with respect to the domestic corporation; and

(ii) The determination as to whether the employee is a highly compensated employee shall be made by comparing his total compensation (determined under subparagraph (2) of this paragraph) with the compensation of all the employees of the domestic corporation (including individuals treated as employees of the domestic corporation pursuant to section 406 and this section).

(2) *Determination of compensation.* For purposes of applying section 401(a)(5) and the regulations thereunder, relating to classifications that will not be considered discriminatory, with respect to an employee of the foreign subsidiary who is treated as an employee of the domestic corporation under paragraph (a)(1) of this section—

(i) The total compensation of the employee shall be the remuneration of the employee from the foreign subsidiary (including any allowances that are paid to the employee because of his employment in a foreign country) which would constitute his total compensation if his services had been performed for the domestic corporation;

(ii) The basic or regular rate of compensation of the employee shall be determined for the employee in the same manner as it is determined under section 401 for other employees of the domestic corporation; and

(iii) The amount paid by the domestic corporation which is equivalent to the tax imposed with respect to the employee by section 3101 (relating to the tax on employees under the Federal Insurance Contributions Act) shall be treated as having been paid by the employee and shall be included in his compensation.

(d) *Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax.* For purposes of applying the rules, relating to the treatment of certain distributions which are made after an employee's separation from service, set forth in section 72(n) as in effect on September 1, 1974 (with respect to taxable years ending after December 31, 1969, and to which section 402(e) does not apply), and in sections 402(a)(2) and (e) and 403(a)(2) (with respect to distributions or payments made after December 31, 1973, and in taxable years beginning after December 31, 1973) with respect to an employee of a foreign subsidiary who is treated as an employee of a domestic corporation under paragraph (a)(1) of this section, the employee shall not be considered as separated from the service of the domestic corporation solely by reason of the occurrence of any one or more of the following events:

(1) The termination, under the provisions of section 3121(l), of the agreement entered into by the domestic corporation under that section which covers the employment of the employee;

(2) The employee's becoming an employee of another foreign subsidiary of the domestic corporation with respect to which such agreement does not apply,

(3) The employee's ceasing to be an employee of the foreign subsidiary by reason of which employment he was treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation; or

(4) The termination of the provision of the plan described in paragraph (b)(1)(ii) of this section, for coverage of United States citizens who are employees of foreign subsidiaries covered by an agreement under section 3121(l).

For purposes of subparagraph (3) of this paragraph, a corporation is considered to be controlled by a domestic corporation if such domestic corporation owns directly or indirectly more than 50 percent of the voting stock of the corporation.

(e) *Deductibility of contributions*—(1) *In general.* For purposes of applying sections 404 and 405(c) with respect to the deduction for contributions made to or under a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), by a domestic corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an employee of a foreign subsidiary treated as an employee of the domestic corporation under paragraph (a)(1) of this section—

(i) Except as provided in subdivision (ii) of this subparagraph, no deduction shall be allowed to such domestic corporation or to any other corporation which would otherwise be entitled to deduct its contributions on behalf of such employee under one of such sections;

(ii) There shall be allowed as a deduction from the gross income of the foreign subsidiary which is effectively connected with the conduct of a trade or business within the United States (within the meaning of section 882 and the regulations thereunder) an amount which is allocable and apportionable to such gross income under the rules of § 1.861-8 and which in no event may exceed the amount which (but for subdivision (i) of this subparagraph) would be deductible under section 404 or section 405(c) by the domestic corporation if the individual were an employee of the domestic corporation and if his compensation were paid by the domestic corporation; and

(iii) Any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined by applying paragraph (c)(2) of this section).

(2) *Year of deduction.* Any amount deductible by the foreign subsidiary under section 406(d) and this paragraph shall be deductible for its taxable year with or within which ends the taxable year of the domestic corporation for which the contribution was made.

(3) *Special rules.* Whether contributions to a plan on behalf of an employee of the foreign subsidiary who is treated as an employee of the domestic corporation under paragraph (a)(1) of this section, or whether forfeitures with regard to such employee, will require an inclusion in the income of the domestic corporation or an adjustment in the basis of its stock in the foreign subsidiary, shall be determined in accordance with the rules of general application of subtitle A of chapter 1 of the Code (relating to income taxes). For example, an unreimbursed contribution by the domestic corporation to a plan which meets the requirements of section 401(a) will be treated, to the extent each employee's rights to the contribution are nonforfeitable, as a contribution of capital to the foreign subsidiary to the extent that such contributions are made on behalf of the employees of such subsidiary.

(f) *Treatment as an employee of the domestic corporation under related pro-*

visions. An individual who is treated as an employee of a domestic corporation under paragraph (a)(1) of this section shall also be treated as an employee of such domestic corporation, with respect to the plan having the provision described in paragraph (b)(1)(ii) of this section, for purposes of applying section 72(d) (relating to employees' annuities), section 72(f) (relating to special rules for computing employees' contributions), section 101(b) (relating to employees' death benefits), section 2039 (relating to annuities), and section 2517 (relating to certain annuities under qualified plans) and the regulations thereunder.

(g) *Nonexempt trust.* If the plan of the domestic corporation is a qualified plan described under section 401(a), the fact that a trust which forms a part of such plan is not exempt from tax under section 501(a) shall not affect the treatment of an employee of a foreign subsidiary as an employee of a domestic corporation under section 406(a) and paragraph (a)(1) of this section.

7. Section 1.407–1 is added to read as follows:

§ 1.407–1 Treatment of certain employees of domestic subsidiaries engaged in business outside the United States as employees of the domestic parent corporation.

(a) *Scope*—(1) *General rule.* For purposes of applying the rules in part 1 of subchapter D of chapter 1 of subtitle A of the Code and the regulations thereunder with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic parent corporation (as defined in paragraph (b)(3)(ii) of this section), an individual who is a citizen of the United States and who is an employee of a domestic subsidiary (as defined in paragraph (b)(3)(i) of this section) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation if the requirements of paragraph (b) of this section are satisfied.

(2) *Cross-references.* For rules relating to nondiscrimination requirements and the determination of compensation, see paragraph (c) of this section. For rules under which termination of the status of an individual as an employee of the domestic parent corporation in certain instances will not be considered as separation from service for certain purposes, see paragraph (d) of this section. For rules regarding deductibility of contributions, see paragraph (e) of this section. For rules regarding treatment of such individual as an employee of the domestic parent corporation under related provisions, see paragraph (f) of this section.

(b) *Application of this section*—(1) *Requirements.* This section shall apply and the employee of the domestic subsidiary shall be treated as an employee of the domestic parent corporation for the purposes set forth in paragraph (a)(1) of this section only if each of the following requirements is satisfied:

(i) The plan, referred to in paragraph (a)(1) of this section, must expressly provide for contributions or benefits for individuals who are citizens of the United States and who are employees of one or more of the domestic subsidiaries of the domestic parent corporation. The plan must apply to every domestic subsidiary.

(ii) Contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) must not be provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) *Supplementary rules.* Subparagraph (1)(i) of this paragraph does not modify the requirements for qualification of a plan described in section 401(a), 403(a), or 405(a) and the regulations thereunder. It is not necessary that the plan provide benefits or contributions for all United States citizens who are employees of such domestic subsidiaries. If the plan is amended to cover individuals who are employees by reason of paragraph (a)(1) of this section, the plan will not qualify unless it meets the coverage requirements of section 410(b)(1) (section 401(a)(3), as in effect on September 1, 1974, for plan years to which section 410 does not apply; see § 1.410(a)–2 for the effective dates of section 410) and the nondiscrimination requirements of section 410(a)(4). The administrative rules contained in § 1.401(a)–3(e) (relating to the determination of the contributions or benefits provided by the employer under the Social Security Act) will also apply for purposes of determining whether the plan meets the requirements of section 401. For purposes of subparagraph (1)(ii) of this paragraph, contributions will not be considered as provided under a funded plan merely because the domestic subsidiary employer pays the tax imposed by section 3111 (relating to tax on employers under the Federal Insurance Contributions Act) with respect to such employee or is required under the laws of a foreign jurisdiction to pay social insurance taxes or to make similar payments with respect to the wages paid to the employee.

(3) *Definitions*—(i) *Domestic subsidiary.* For purposes of this section, a corporation shall be treated as a domestic subsidiary for any taxable year only if each of the following requirements is satisfied:

(A) It is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(B) 95 percent of more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which it was in existence) was derived from sources without the United States, determined pursuant to sections 861 through 864 and the regulations thereunder; and

(C) 90 percent or more of its gross income for such period (or such part) was derived from the active conduct of a trade or business.

If for the period (or part thereof) referred to in (B) and (C) of this subdivision such corporation has no gross income, the provisions of (B) and (C) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, such provisions will be satisfied.

(ii) *Domestic parent corporation.* The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding voting stock of such domestic subsidiary.

(c) *Special rules*—(1) *Nondiscrimination requirements.* For purposes of applying sections 401(a)(4) and 410(b)(1)(B) (section 401(a)(3)(B), as in effect on September 1, 1974, for plan years to which section 410 does not apply) and the regulations thereunder (relating to nondiscrimination concerning benefits and contributions and coverage of employees) with respect to an employee of the domestic subsidiary who is treated as an employee of the domestic parent corporation under paragraph (a)(1) of this section—

(i) If the employee is an officer, shareholder, or (with respect to plan years to which section 410 does not apply) a person whose principal duties consist in supervising the work of other employees of the domestic subsidiary of the domestic parent corporation, he shall be treated as having such capacity with respect to the domestic parent corporation; and

(ii) The determination as to whether the employee is a highly compensated employee shall be made by comparing his total compensation (determined under subparagraph (2) of this paragraph with the compensation of all the employees of the domestic parent corporation (including individuals treated as employees of the domestic parent corporation pursuant to section 407 and this section).

(2) *Determination of compensation.* For purposes of applying section 401(a)(5) and the regulations thereunder, relating to classifications that will not be considered discriminatory, with respect to an employee of the domestic subsidiary who is treated as an employee of the domestic parent corporation under paragraph (a)(1) of this section—

(i) The sum of the total compensation of the employee shall be the remuneration of the employee from the domestic subsidiary (including any allowances that are paid to the employee because of his employment in a foreign country) which would constitute his total compensation if his services had been performed for such domestic parent corporation; and

(ii) The basic or regular rate of compensation of the employee shall be determined for the employee in the same manner as it is determined under section 401 for other employees of the domestic parent corporation.

(d) *Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax.* For purposes of applying the rules, relating to

treatment of certain distributions which are made after an employee's separation from service, set forth in section 72(n) as in effect on September 1, 1974 (with respect to taxable years ending after December 31, 1969, and to which section 402(e) does not apply), and in sections 402(a)(2) and (e) and 403(a)(2) (with respect to distributions or payments made after December 31, 1973, and in taxable years beginning after December 31, 1973) with respect to an employee of a domestic subsidiary who is treated as an employee of a domestic parent corporation under paragraph (a)(1) of this section, the employee shall not be considered as separated from the service of the domestic parent corporation solely by reason of the occurrence of any one or more of the following events:

(1) The fact that the corporation of which such individual is an employee ceases, for any taxable year, to be a domestic subsidiary within the meaning of paragraph (b)(3)(i) of this section;

(2) The employee's ceasing to be an employee of the domestic subsidiary of such domestic parent corporation, if he becomes an employee of another corporation controlled by such domestic parent corporation; or

(3) The termination of the provision of the plan described in paragraph (b)(1)(i) of this section, requiring coverage of United States citizens who are employees of domestic subsidiaries of the domestic parent corporation.

For purposes of subparagraph (2) of this paragraph, a corporation is considered to be controlled by a domestic parent corporation if the domestic parent corporation owns directly or indirectly more than 50 percent of the voting stock of the corporation.

(e) *Deductibility of contributions*—(1) *In general.* For purposes of applying sections 404 and 405(c) with respect to the deduction for contributions made to or under a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an employee of a domestic subsidiary treated as an employee of the domestic parent corporation under paragraph (a)(1) of this section—

(i) Except as provided in subdivision (ii) of this subparagraph, no deduction shall be allowed to the domestic parent corporation which would otherwise be entitled to deduct its contributions on behalf of such employee under one of such sections;

(ii) There shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for subdivision (i) of this subparagraph) would be deductible under section 404 or section 405(c) by the domestic parent corporation if the individual were an employee of the domestic parent corporation and if his compensation were paid by the domestic corporation; and

(iii) Any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined by applying paragraph (c)(2) of this section).

(2) *Year of deduction.* Any amount deductible by the domestic subsidiary under section 407(d) and this paragraph shall be deductible for its taxable year with or within which ends the taxable year of the domestic parent corporation for which the contribution was made.

(3) *Special rules.* Whether contributions to a plan on behalf of an employee of the domestic subsidiary who is treated as an employee of the domestic parent corporation under paragraph (a)(1) of this section, or whether forfeitures with regard to such employee, will require an inclusion in the income of the domestic parent corporation or an adjustment in the basis of its stock in the domestic subsidiary, shall be determined in accordance with the rules of general application of subtitle A of chapter 1 of the Code (relating to income taxes). For an example, an unreimbursed contribution by the domestic parent corporation to a plan which meets the requirements of section 401(a) will be treated, to the extent each employee's rights to the contribution are nonforfeitable, as a contribution of capital to the domestic subsidiary to the extent that such contributions are made on behalf of the employees of such subsidiary.

(f) *Treatment as an employee of the domestic parent corporation under related provisions.* An individual who is treated as an employee of a domestic parent corporation under paragraph (a)(1) of this section shall also be treated as an employee of such domestic corporation, with respect to the plan having the provision described in paragraph (b)(1)(i) of this section, for purposes of applying section 72(d) (relating to special rules for computing employees' contributions), section 72(f) (relating to special rules for computing employees' contributions), section 101(b) (relating to employees' death benefits), section 2039 (relating to annuities), and section 2517 (relating to certain annuities under qualified plans) and the regulations thereunder.

(g) *Nonexempt trust.* If the plan of the domestic parent corporation is a qualified plan described under section 401(a), the fact that a trust which forms a part of such plan is not exempt from tax under section 501(a) shall not affect the treatment of an employee of a domestic subsidiary as an employee of a domestic parent corporation under section 407(a) and paragraph (a)(1) of this section.

8. Sections 1.411(a)-1 through 1.411(a)-9 are added to read as follows:

§ 1.411(a)-1 Minimum vesting standards; general rules.

(a) *In general.* A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless—

(1) The plan provides that an employee's right to his normal retirement benefit (see § 1.411(a)-7(c)) is nonforfeitable (see § 1.411(a)-4) upon and after the attainment of normal retirement age (see § 1.411(a)-7(b)),

(2) The plan provides that an employee's rights in his accrued benefit derived from his own contributions (see § 1.411(c)-1) are nonforfeitable at all times, and

(3) The plan satisfies the requirements of—

(A) Section 411(a)(2) and § 1.411(a)-3 (relating to vesting in accrued benefit derived from employer contributions), and

(B) In the case of a defined benefit plan, section 411(b)(1) and § 1.411(b)-1 (relating to accrued benefit).

(b) *Organization of regulations relating to minimum vesting standards*—(1) *General rules.* This section prescribes general rules relating to the minimum vesting standards provided by section 411.

(2) *Effective dates.* Section 1.411(a)-2 provides rules under section 1017 of the Employee Retirement Income Security Act of 1974 relating to effective dates under section 411.

(3) *Employer contributions.* Section 1.411(a)-3 provides rules under section 411(a)(2) relating to vesting in employer-derived accrued benefits.

(4) *Certain forfeitures.* Section 1.411(a)-4 provides rules under section 411(a)(3) relating to certain permitted forfeitures, suspensions, etc. under qualified plans.

(5) *Nonforfeitable percentage.* Section 1.411(a)-5 provides rules under section 411(a)(4) relating to service included in the determination of an employee's nonforfeitable percentage under section 411(a)(2) and § 1.411(a)-3.

(6) *Years of service; break in service.* Section 1.411(a)-6 provides rules under section 411(a)(5) and (6) of the Internal Revenue Code of 1954 relating to years of service and breaks in service. Rules prescribed by the Secretary of Labor, relating to years of service and breaks in service under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are provided under 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(7) *Definitions and special rules.* Section 1.411(a)-7 provides definitions and special rules under section 411(a)(7), (8), and (9), for purposes of section 411 and the regulations thereunder.

(8) *Changes in vesting schedule.* Section 1.411(a)-8 provides rules under section 411(a)(10) relating to changes in the vesting schedule of a plan.

(9) *Breaks in service.* Section 1.411(a)-9 provides special rules relating to breaks in service.

(10) *Accrued benefits.* See § 1.411(b)-1 for rules under section 411(b) relating to accrued benefit requirements under defined benefit plans.

(11) *Allocation of accrued benefits.* See § 1.411(c)-1 for rules under section 411(c) relating to allocation of accrued benefits between employer and employee contributions.

(12) *Discrimination, etc.* See § 1.411(d)-1 for rules relating to the coordination of section 411 with section 401(a)(4) (relating to discrimination) and other rules under section 411(d).

(c) *Application of standards to certain plans*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, section 411 does not apply to—

(i) A governmental plan (within the meaning of section 414(d) and the regulations thereunder),

(ii) A church plan (within the meaning of section 414(e) and the regulations thereunder) which has not made the election provided by section 410(d) and the regulations thereunder,

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

(iv) A plan established and maintained by a society, order, or association described in section 501(c)(8) or (9), if no part of the contributions to or under such plan are made by employers of participants in such plan.

(2) *Vesting requirements.* A plan described in subparagraph (1) of this paragraph shall, for purposes of section 401(a), be treated as meeting the requirements of section 411 if such plan meets the vesting requirements resulting from the application of section 401(a)(4) and section 401(a)(7) as in effect on September 1, 1974.

(d) *Supersession.* Sections 11.411(a)-1 through 11.411(d)-3, inclusive, of the Temporary Income Tax Regulations under the Employee Retirement Income Security Act of 1974 are superseded by this section and §§ 1.411(a)-2 through 1.411(d)-3.

§ 1.411(a)-2 Effective dates.

(a) *Plan not in existence on January 1, 1974.* Under section 1017(a) of the Employee Retirement Income Security Act of 1974, in the case of a plan which was not in existence on January 1, 1974, section 411 and the regulations thereunder apply for plan years beginning after September 2, 1974. See paragraph (c) of this section for time plan is considered in existence.

(b) *Plans in existence on January 1, 1974.* Under section 1017(b) of the Employee Retirement Income Security Act of 1974, in the case of a plan which was in existence on January 1, 1974, section 411 and the regulations thereunder apply for plan years beginning after December 31, 1975. See paragraph (c) of this section for time plan is considered to be in existence.

(c) *Time of plan existence*—(1) *General rule.* For purposes of this section, a plan is considered to be in existence on a particular day if—

(i) The plan on or before that day was reduced to writing and adopted by the employer (including, in the case of a corporate employer, formal approval by the employer's board of directors and, if required, shareholders), even though no amounts had been contributed under the plan as of such day, and

(ii) The plan was not terminated on or before that day

For example, if a plan was adopted on January 2, 1974, effective as of January 1, 1974, the plan is not considered to have been in existence on January 1, 1974, because it was not both adopted and in writing on January 1, 1974.

(2) *Collectively-bargained plan.* Notwithstanding paragraph (c)(1) of this section, a plan described in section 413(a), relating to a plan maintained pursuant to a collective-bargaining agreement, is considered to be in existence on a particular day if—

(i) On or before that day there is a legally enforceable agreement to establish such a plan signed by the employer, and

(ii) The employer contributions to be made to the plan are set forth in the agreement.

(3) *Special rule.* If a plan is considered to be in existence under subparagraph (1) of this paragraph, any other plan with which such existing plan is merged or consolidated shall also be considered to be in existence on such date.

(d) *Existing plans under collective bargaining agreements.* For a special effective date rule for certain plans maintained pursuant to a collective bargaining agreement, see section 1017(c)(1) of the Employee Retirement Income Security Act of 1974 (88 Stat. 932).

(e) *Certain existing plans may elect new provisions.* The plan administrator may elect to have the provisions of the Code relating to participation, vesting, funding, and form of benefit apply to a selected plan year. See § 1.410(a)-2(d) for rules relating to such an election.

(f) *Application of rules.* The requirements of section 411 do not apply to employees who separate from service with the employer prior to the first plan year to which such requirements apply and who never return to service with the employer in a plan year to which section 411 applies.

§ 1.411(a)-3 Vesting in employer-derived benefits.

(a) *In general*—(1) *Alternative requirements.* A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless the plan satisfies the requirements of section 411(a)(2) and this section. A plan satisfies the requirements of this section if it satisfies the requirements of paragraph (b), (c), or (d) of this section.

(2) *Composite arrangements.* A plan will not be considered to satisfy the requirements of paragraph (b), (c), or (d) of this section unless it satisfies all requirements of a particular one of such paragraphs with respect to all of an employee's years of service. A plan which, for example, satisfies the requirements of paragraph (b) (but not (c) or (d)) for an employee's first 9 years of service and satisfies the requirements of paragraph (c) (but not (b)) for all of his remaining years of service, does not satisfy the requirements of this section. A plan is not precluded from satisfying the requirement of one such paragraph with respect to one group of employees and another such paragraph with respect to another group provided that the groups are not so structured as to evade the requirements of this paragraph. For example, if plan A provides that employees who commence participation before age 30 are subect to the "rule of 45" vesting schedule and employees who commence participation after age 30 are subject to the full vesting after 10 years schedule, plan A would be so structured as to evade the requirements of this paragraph.

(3) *Plan amendments.* A plan which satifies the requirements of a particular one of such paragraphs for each of an employee's years of service and which is amended so that, as amended, it satisfies the requirements of another such paragraph for all such years of service, satisfies the requirements of this section even though, as amended, it does not satisfy the requirements of the paragraph which were satisfied prior to the amendment. See § 1.411(a)-8 for rules relating to employee election where the vesting schedule is amended.

(b) *10-year vesting.* A plan satisfies the requirements of section 411(a)(2)(A) and this paragraph if an employee who has completed 10 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions.

(c) *5- to 15-year vesting.* A plan satisfies the requirements of section 411(a)(2)(B) and this paragraph if an employee who has completed at least 5 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contribution which percentage is not less than the nonforeitable percentage determined under the following table:

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

(d) *Rule of 45.* A plan satisfies the requirements of section 411(a)(2)(C) and this paragraph if an employee is entitled to the greater of the two percentages determined under paragraph (d)(1) or (2) of this section.

(1) *Age and service test.* An employee who is not separated from the service, who has completed at least 5 years of service, and with respect to whom the sum of his age and years of service equals or exceeds 45, has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions which is not less than the nonforfeitable percentage corresponding to his number of completed years of service or to the sum of his age and completed years of service (whichever percentage is the lesser) determined under the following table:

Completed years of service	Sum of age and service	Nonforfeitable percentage
5	45 or 46	50
6	47 or 48	60
7	49 or 50	70
8	51 or 52	80
9	53 or 54	90
10 or more	55 or more	100

(2) *Service test.* An employee who has completed at least 10 years of service has a nonforfeitable right to a percentage of his accrued benefit derived from employer contributions determined under the following table:

Completed years of service	Nonforfeitable percentage
10	50
11	60
12	70
13	80
14	90
15	100

(3) *Computation of age.* For purposes of subparagraph (1) of this paragraph, the age of an employee is his age on his last birthday.

(e) *Examples.* The rules provided by this section are illustrated by the following examples:

Example (1). Plan B provides that each employee's rights to his employer-derived accrued benefit are nonforfeitable as follows:

Completed years of service	Nonforfeitable percentage
2 or less	0
3	30
4	35
5	40
6	45
7	50
8	55
9	60
10	65
11	70
12	75
13	80
14	85
15	100

Plan B does not satisfy the requirements of paragraph (c) of this section (relating to 5–15-year vesting) because the nonforfeitable percentage provided by the plan after completion of 14 years of service (85 percent) is less than the percentage required by paragraph (c) of this section at that time (90 percent). The fact that the nonforfeitable percentage provided by the plan for years prior to the 13th year of service is greater than the percentage required under paragraph (c) of this section is immaterial. The plan fails to satisfy the requirements of paragraph (c) of this section even if it is demonstrated that the value of the vesting provided by the plan to the employee is at least equal to the value of the vesting rate required by that paragraph.

Example (2). Plan C provides for plan participation after the completion of 1 year of service. The plan provides that each employee's rights to his employer-derived accrued benefit are 100 percent nonforfeitable after 10 years of plan participation rather than service. The plan does not satisfy the requirements of paragraph (b) of this section because, under the plan, an employee obtains a 100 percent nonforfeitable right to his employer-derived accrued benefit only after completion of more than 10 years of service.

Example (3). Plan D provides that each employee's rights to his employer-derived accrued benefit are nonforfeitable in accordance with the following schedule:

Completed years of service	Nonforfeitable percentage
0–9	0
10	50
11	60
12	70
13	80
14	90
15	100

The plan does not satisfy the requirements of paragraph (b) of this section after the 9th year of service. It does not satisfy the requirements of paragraph (c) of this section for years prior to the 10th year of service. It does not satisfy the requirements of paragraph (d)(1) of this section for any year of service prior to the 10th year. The plan does not satisfy the requirements of this section because it does not satisfy the requirements of a particular one of the three paragraphs for each of an employee's years of service.

Example (4). Plan G provides that each employee's rights to his employer-derived accrued benefit are 100 percent nonforfeitable upon completion of 5 years of service. The plan satisfies the requirements of paragraphs (b), (c), and (d) of this section and, because it satisfies the requirements of at least one of such paragraphs for all of an employee's years of service, it satisfies the requirements of this section.

§ 1.411(a)–4 Forfeitures, suspensions, etc.

(a) *Nonforfeitability.* Certain rights in an accrued benefit must be nonforfeitable to satisfy the requirements of section 411(a). This section defines the term "nonforfeitable" for purposes of these requirements. For purposes of section 411 and the regulations thereunder, a right to an accrued benefit is considered to be nonforfeitable at a particular time if, at that time and thereafter, it is an unconditional right. Except as provided by paragraph (b) of this section, a right which, at a particular time, is conditioned under the plan upon a subsequent event, subsequent performance, or subsequent forbearance which will cause the loss of such right is a forfeitable right at that time. Certain adjustments to plan benefits such as adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable. Rights which are conditioned upon a sufficiency of plan assets in the event of a termination or partial termination are considered to be forfeitable because of such condition. However, a plan does not violate the nonforfeitability requirements merely because in the event of a termination an employee does not have any recourse toward satisfaction of his nonforfeitable benefits from other than the plan assets or the Pension Benefit Guaranty Corporation. Furthermore, nonforfeitable rights are not considered to be forfeitable by reason of the fact that they may be reduced to take into account benefits which are provided under the Social Security Act or under any other Federal or State law and which are taken into account in determining plan benefits. To the extent that rights are not required to be nonforfeitable to satisfy the minimum vesting standards, or the nondiscrimination requirements of section 401(a)(4), they may be forfeited without regard to the limitations on forfeitability required by this section. The right of an employee to repurchase his accrued benefit for example under section 411(a)(3)(D), is an example of a right which is required to satisfy such standards. Accordingly, such a right is subject to the limitations on forfeitability. Rights which are required to be prospectively nonforfeitable under the vesting standards are nonforfeitable and may not be forfeited until it is determined that such rights are, in fact, in excess of the vesting standards. Thus, employees have a right to vest in the accrued benefits if they continue in employment of employers maintaining the plan unless a forfeitable event recognized by section 411 occurs. For example, if a plan covered employees in Division A of Corporation X under a plan utilizing a 10-year-100 percent vesting schedule, the plan could not forfeit employees' rights on account of their moving to service in Division B of Corporation X prior to completion of 10 years of service even though employees are not vested at that time.

(b) *Special rules.* For purposes of paragraph (a) of this section a right is not treated as forfeitable—

(1) *Death.* (i) *General rule.* In the case of a participant's right to his employer-derived accrued benefit, merely because such accrued benefit is forfeitable by the participant to the extent it has not been paid or distributed to him prior to his death. This subparagraph shall not apply to a benefit which must be paid to a survivor in order to satisfy the requirements of section 401(a)(11).

(ii) *Employee contributions.* A participant's right in his accrued benefit derived from his own contributions must be nonforfeitable at all times. Such a right is not treated as forfeitable merely because, after commencement of annuity or pension payments in a benefit form provided under the plan, the participant dies without receiving payments equal in amount to his nonforfeitable accrued benefit derived from his contributions determined at the time of commencement.

(2) *Suspension of benefits upon reemployment of retiree.* In the case of certain suspensions of benefits under section 411(a)(3)(B), see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(3) *Retroactive plan amendment.* In the case of a participant's right to his employer-derived accrued benefit, merely because such benefit is subject to reduction to the extent provided by a plan amendment described in section 412(c)(8) and the regulations thereunder, which amendment is given retrocative effect in accordance with such section.

(4) *Other forfeiture rules*—(i) *Withdrawal of mandatory contributions.* For rules allowing forfeitures on account of the withdrawal of mandatory contributions, see § 1.411(a)–7(d)(2) and (3).

(ii) *Class year plans.* For forfeiture rules pertaining to class year plans, see § 1.411(d)–3(b).

(iii) *Additional requirements.* For additional requirements relating to nonforfeitability of benefits in the event of of a withdrawal by the employee, see section 401(a)(19) and § 1.401(a)-19.

(5) *Multiemployer plan.* In the case of a multiemployer plan described in section 414(f), merely because an employee's accrued benefit which results from service with an employer before such employer was required to contribute to the plan is forfeitable on account of the cessation of contributions by the employer of the employee. This subparagraph shall not apply to an employee's accrued benefit with respect to an employer which accrued under a plan maintained by that employer prior to the adoption by that employer of the multiemployer plan.

(6) *Lost beneficiary; escheat.* In the case of a benefit which is payable, merely because the benefit is forfeitable on account of the inability to find the participant or beneficiary to whom payment is due, provided that the plan provides for reinstatement of the benefit if a claim is made by the participant or beneficiary for the forfeited benefit. In addition, a benefit which is lost by reason of escheat under applicable state law is not treated as a forfeiture.

(c) *Examples.* The rules of this section are illustrated by the following examples:

Example (1). Corporation A's plan provides that an employee is fully vested in his employer-derived accrued benefit after completion of 5 years of service. The plan also provides that, if an employee works for a competitor he forfeits his rights in the plan. Such provision could result in the forfeiture of an employee's rights which are required to be nonforfeitable under section 411 and therefore the plan would not satisfy the requirements of section 411. If the plan limited the forfeiture to employees who completed less than 10 years of service, the plan would not fail to satisfy the requirements of section 411 because the forfeitures under this provision are limited to rights which are in excess of the minimum required to be nonforfeitable under section 411(a)(2)(A).

Example (2). Plan B provides that if an employee does not apply for benefits within 5 years after the attainment of normal retirement age, the employee loses his plan benefits. Such a plan provision could result in forfeiture of an employee's rights which are required to be nonforfeitable under section 411 and, therefore, the plan would not satisfy the requirements of section 411.

§ 1.411(a)-5 Service included in determination of nonforfeitable percentage.

(a) *In general.* Under section 411(a)(4), for purposes of determining the nonforfeitable percentage of an employee's right to his employer-derived accrued benefit under section 411(a)(2) and § 1.411(a)-3, all of an employee's years of service with an employer or employers maintaining the plan shall be taken into account except that years of service described in paragraph (b) of this section may be disregarded.

(b) *Certain service.* For purposes of paragraph (a) of this section, the following years of service may be disregarded:

(1) *Service before age 22.* (i) In the case of a plan which satisfies the requirements of section 411(a)(2)(A) or (B) (relating to 10-year vesting and 5-15-year vesting, respectively), a year of service completed by an employee before he attains age 22.

(ii) In the case of a plan which does not satisfy the requirements of section 411(a)(2)(A) or (B), a year of service completed by an employee before he attains age 22 if the employee is not a participant (for purposes of section 410) in the plan at any time during such year.

(iii) For purposes of this subparagraph in the case of a plan utilizing computation periods, service during a computation period described in section 411(a)(5)(A) within which the employee attains age 22 may not be disregarded. In the case of a plan utilizing the elapsed time method described in Department of Labor regulations, service on or after the date on which the employee attains age 22 may not be disregarded.

(2) *Contributory plans.* In the case of a plan utilizing computation periods, a year of service completed by an employee under a plan which requires mandatory contributions (within the meaning of section 411(c)(2)(C) and § 1.411(c)-1(c)(4)) to be made by the employee for such year, if the employee does not participate for such year solely because of his failure to make all mandatory contributions to the plan for such year. If the employee contributes any part of the mandatory contributions for the year, such year may not be excluded by reason of this subparagraph. In the case of a plan utilizing the elapsed time method described in Department of Labor regulations, the service which may be disregarded is the period with respect to which the mandatory contribution is not made.

(3) *Plan not maintained*—(i) *In general.* An employee's years of service with an employer during any period for which the employer did not maintain the plan or a predecessor plan may be disregarded for purposes of section 411(a)(2). Paragraph (b)(3)(ii) of this section provides rules regarding the period prior to the adoption of a plan. Paragraph (b)(3)(iii) of this section provides rules regarding the period after the termination of a plan. Paragraph (b)(3)(iv) of this section provides rules regarding employers who have certain relationships with other employers maintaining the plan.

(ii) *Period prior to adoption.* The period for which a plan is not maintained by an employer includes the period before the plan was established. For purposes of this subdivision, a plan is established on the first day of the plan year in which the plan is adopted even though the plan is adopted after such first day. Except as provided in paragraph (b)(3)(iv) of this section if an employer adopts a plan which has previously been established by another employer or group of employers, the plan is not maintained by the adopting employer prior to the first day of the plan year in which the plan is adopted by the adopting employer. In the case of a transfer of assets or liabilities (including a merger or consolidation) involving two plans maintained by a single employer, the successor (or transferee) plan is treated as if it was established at the same time as the date of the establishment of the earliest component plan. In the case of a plan merger, consolidation, or transfer of plan assets or liabilities involving plans of two or more employers, the successor plan is treated as if it were established on each of the separate dates on which such component plan was established for the employees of each employer. Thus, for example, if employer A establishes a plan January 1, 1970, and employer B establishes a plan January 1, 1980, and the plans were subsequently merged, then the merged plan would be treated as if it were in existence on January 1, 1970, with respect to A's employees and as if it were in existence on January 1, 1980, with respect to B's employees.

(iii) *Period after termination or withdrawal.* The period for which a plan is not maintained by an employer includes the period after the plan is terminated. For purposes of this section, a plan is terminated at the date there is a termination of the plan within the meaning of section 411(d)(3)(A) and the regulations thereunder. Notwithstanding the preceding sentence, if contributions to or under a plan are made after termination, the plan is treated as being maintained until such contributions cease, whether or not accruals are made after such termination. If, after termination of a plan in circumstances under which the employer may be liable to the Pension Benefit Guaranty Corporation under section 4062 of the Act, employer contributions are made to or under the plan to fund benefits accrued at the time of termination, such contributions shall, for purposes of this paragraph, be deemed to be payments in satisfaction of employer liability to such Corporation rather than contributions to or under the plan. In the case of a plan maintained by more than one employer, the period for which the plan is not maintained by the withdrawing employer includes the period after the withdrawal from the plan.

(iv) *Certain employers.* For purposes of this subparagraph—

(A) *Predecessor employers.* Service with a predecessor employer who maintained the plan of the current employer is treated as service with such current employer (see section 414(a)(1) and the regulations thereunder), and certain service with a predecessor employer who did not maintain the plan of the current employer is treated as service with the current employer (see section 414(a)(2) and the regulations thereunder).

(B) *Related employers.* Service with an employer is treated as service for certain related employers for the period during which the employers are related. These related employers include members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to subsections (a)(4) and

(e)(3)(C) thereof) and trades or businesses (whether or not incorporated) which are under common control (see section 414 (b) and (c) and 29 CFR Part 2530, Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(C) *Plan maintained by more than one employer.* Service with an employer who maintains a plan is treated as service for each other employer who maintains that plan for the period during which the employers are maintaining the plan (see section 413 (b)(4) and (c)(3) and 29 CFR Part 2530, Department of Labor regulations relating to minimum standards for employee pension benefit plans).

(v) *Predecessor plan*—(A) *General rule.* In the case of an employee who was covered by a predecessor plan, the time the successor of such plan is maintained for such employee includes the time the predecessor plan was maintained if, as of the later of the time the predecessor plan is terminated or the successor plan is established, the employee's years of service under the predecessor plan are not equalled or exceeded by the aggregate number of consecutive 1-year breaks in service occurring after such years of service. Years of service and breaks in in service, without regard to whether the employee has nonforfeitable rights under the predecessor plan, are determined under section 411(a) (5) and (6) except that years between the termination date of the predecessor plan and the date of establishment of the succcessor plan do not count as years of service.

(B) *Definition of predecessor plan.* For purposes of this section, if—

(*1*) An employer establishes a retirement plan (within the meaning of section 7476(d)) qualified under subchapter D of chapter 1 of the Code within the 5-year period immediately preceding or following the date another such plan terminates, and

(2) The other plan is terminated during a plan year to which this section applies.

The terminated plan is a predecessor plan with respect to such other plan.

(C) *Example.* The rules provided by this subparagraph are illustrated by the following example:

Example. (1) Employer X's qualified plan A terminated on January 1, 1977. Employer X established qualified plan B on January 1, 1981. Under paragraph (b)(3)(v)(B) of this section, plan A is a predecessor plan with respect to plan B because plan B is established within the 5-year period immediately following the date plan A terminated.

(2) Employee C was not covered by the A plan. Under the general rule in subdivision (v)(A) of this subparagraph, plan B is not maintained until January 1, 1981, with resect to Employee C.

(3) Employee D was covered by the A plan. On December 31, 1976, D had 4 years of service. D had 4 consecutive 1-year breaks in service because, during the years between the termination of plan A and the establishment of plan B, he did not have more than 500 hours of service in any applicable computation period. Because D's consecutive 1-year breaks (4) equal his years of service prior to his breaks (4), plan B is not maintained until January 1, 1981, with respect to employee D.

(4) Employee E was covered by the A plan. On December 31, 1975, E had 6 years of service. E had a 1-year break in service in 1976. E also had 4 consecutive 1-year breaks in service for the period between plan A's termination and plan B's establishment. Because E's years of service (6) are not less than his consecutive 1-year breaks (5), plan B is maintained for E as of the establishment date of plan A.

(4) *Break in service.* A year of service which is not required to be taken into account by reason of a break in service (within the meaning of section 411(a)(6) and § 1.411(a)–6)).

(5) *Service before January 1, 1971.* A year of service completed by an employee prior to January 1, 1971, unless the employee completes at least 3 years of service at any time after December 31, 1970. For purposes of determining if an employee completes 3 years of service, whether or not consecutive, the exceptions of section 411(a)(4) are not applicable. For the meaning of the term "year of service", see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(6) *Service before effective date.* A year of service completed before the first plan year for which this section applies to the plan, if such service would have been disregarded under the plan rules relating to breaks in service (whether or not such rules are so designated in the plan) as such rules were in effect from time to time under the plan. For this purpose, plan rules which result in the loss of prior vesting or benefit accruals of an employee, or which deny an employee eligibility to participate, by reason of separation or failure to complete a required period of service within a specified period of time (*e.g.*, 300 hours in one year) will be considered break in service rules. See § 1.411(a)–9 for requirements relating to certain amendments to the break in service rules of a plan.

(ii) *Examples.* The rules of this subparagraph are illustrated by the following examples:

Example 1. The A plan in 1971 provides for immediate participation and vesting at normal retirement age. Employees accrue a unit benefit based on their compensation in each year. The plan provides that if an employee is not employed on the last day of the calendar year, he loses all accrued benefits. The requirement of employment on the last day of the year is a break in service rule because employees can lose benefits by reason of their separation. Accordingly, in the case of employees who separate and do not return by the close of the year, service which is completed prior to separation may be disregarded.

Example 2. The B plan in 1971 excludes from plan participation employees who work less than 1200 hours per year. Because years of less than 1200 hours are not taken into account under the B plan for eligibility to participate, such years are excluded under rules relating to breaks in service. Therefore, the years can be disregarded under this subparagraph.

Example 3. The C plan in 1971 provides for immediate participation and provides accruals and vesting credit for 1,200 hours or more in a given year. The plan provides that if a participant works less than 300 hours in a given year, he loses all prior vesting and benefit credits. The 300 hour rule is a break in service rule because the failure to complete 300 hours results in the loss of vesting and prior service credit. The 1,200 hour requirement is not a break in service rule because even though employees do not increase vesting or accrue benefits for service between 300 and 1,200 hours, they can not lose prior vesting or benefits for such service. Accordingly, the C plan can disregard completed years only on account of less than 300 hours of service by an employee.

(c) *Special continuity rule for certain plans.* For special rules for computing years of service in the case of a plan maintained by more than one employer, see 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

§ 1.411(a)–6 Year of service; hour of service; breaks in service.

(a) *Year of service.* Under section 411(a)(5)(A), for purposes of the regulations thereunder, the term "year of service" is defined in regulations prescribed by the Secretary of Labor under section 203(b)(2)(A) of the Employee Retirement Income Security Act of 1974. For special rules applicable to seasonal industries and maritime industries, see regulations prescribed by the Secretary of Labor under subparagraphs (C) and (D) of section 203(b)(2) of the Employee Retirement Income Security Act of 1974.

(b) *Hours of service.* Under section 411(a)(5)(B), for purposes of the regulations thereunder, the term "hours of service" has the meaning provided by section 410(a)(3)(C). See regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(c) *Breaks in service.* Under section 411(a)(6), for purposes of § 1.411(a)–5(b)(4) and of this paragraph—

(1) *In general*—(i) *Year of service after 1-year break in service.* In the case of any employee who has incurred a 1-year break in service, years of service completed before such break are not required to be taken into account until the employee has completed one year of service after his return to service.

(ii) *Defined contribution plan.* In the case of a participant in a defined contribution plan or in an insured defined benefit plan (which plan satisfies the requirements of section 411 (b)(1)(F) and § 1.411(b)–1) who has incurred a 1-year break in service, years of service completed after such break are not required to be taken into account for purposes of determining the nonforfeitable percentage of the participant's right to employer-derived benefits which accrued before such break. This subdivision does not permit years of service completed before a 1-year break in service to be disregarded in determining the nonforfeitable percentage of a participant's right to employer-derived benefits which accrue after such break.

(iii) *Nonvested participants.* In the case of an employee who is a nonvested participant in employer-derived benefits at the time he incurs a 1-year break in service, years of service completed by

such participant before such break are not required to be taken into account for purposes of determining the nonforfeitable percentage of his right to employer-derived benefits if at such time the number of consecutive 1-year breaks in service included in his most recent break in service equals or exceeds the aggregate number of his years of service, whether or not consecutive, completed before such break. In the case of a plan utilizing the elapsed time method described in Department of Labor regulations, the condition in the preceding sentence shall be satisfied if the period of severance is at least one year and the consecutive period of severance equals or exceeds his prior period of service, whether or not consecutive, completed before such period of severance. In computing the aggregate number of years of service prior to such break, years of service which could have been disregarded under this subdivision by reason of any prior break in service may be disregarded.

(2) *One-year break in service defined.* The term "1-year break in service" means a calendar year, plan year, or other 12-consecutive month period designated by a plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service. In the case of a plan utilizing the elapsed time method, the term "1-year break in service" means a 12-consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date; provided, however, that the employee during such 12-consecutive-month period does not complete any hours of service within the meaning of 29 CFR Part 2530.200b–2(a) for the employer or employers maintaining the plan. See regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(d) *Examples.* The rules provided by this section are illustrated by the following examples:

Example (1). (i) X Corporation maintains a defined contribution plan to which section 411 applies. The plan uses the calendar year as the vesting computation period. In 1980, Employee A, who was hired at age 35, separates from the service of X Corporation after completing 4 years of service. At the time of his separation, Employee A had a nonforfeitable right to 25 percent of his employer-derived accrued benefit which was not distributed. In 1985, after incurring 5 consecutive one-year breaks in service, Employee A is re-employed by X Corporation and becomes an active participant in the plan. The plan provides that, for 1985 and all subsequent years, Employee A's previous years of service will not be taken into account for purposes of computing the nonforfeitable percentage of his employer-derived accrued benefit, solely because of his break in service.

(ii) The plan fails to satisfy section 411. Section 411(a)(6)(B) would permit the plan to disregard Employee A's prior service for purposes of computing his nonforfeitable percentage in 1985 only, but such service must be taken into account in subsequent years unless there is another break in service. Under section 411(a)(6)(C), the plan is not required to take Employee A's post-break service into account for purposes of computing his nonforfeitable right to his pre-break employer-derived accrued benefits. This provision, however, would not permit the plan to disregard pre-break service in determining his nonforfeitable right to his benefit accrued after the break. The exception provided by section 411(a)(6)(D) does not apply in the case of a participant who has any nonforfeitable right to his accrued benefit derived from employer contributions.

Example (2). (i) X Corporation maintains a qualified plan to which sections 410 and 411 (relating to minimum participation standards and minimum vesting standards, respectively) apply. The plan permits participation upon completion of a year of service and provides that 100% of an employee's employer-derived accrued benefit vests after 10 years of service. The plan uses the calendar year as the vesting computation period. The plan provides that an employee who completes at least 1,000 hours of service in a 12-month period is credited with a year of service for participation and vesting purposes. The plan also provides that an employee who does not complete more than 500 hours of service in that 12-month period incurs a one-year break in service. The plan includes the rule described in section 411(a)(6)(D) for participation and vesting purposes. Under this rule, an employee's years of service prior to a break in service may be disregarded under certain circumstances if he has no vested right to any employer-derived benefit under the plan. The plan does not contain the rule described in section 411(a)(6)(B) (relating to the requirement of one year of service after a one-year break in service).

(ii) Employee A commences employment with the X Corporation on January 1, 1977. Employee A's employment history for 1977 through 1989 is as follows:

Year ending December 31:	*Hours of service completed*
1977	1,000
1978	800
1979	1,000
1980	400
1981	1,000
1982	0
1983	400
1984	1,000
1985	0
1986	0
1987	500
1988	200
1989	1,000

Employee A's status as a participant during this period is determined as follows:

1978: Employee A was a plan participant on January 1, 1978, because he completed a year of service (1,000 hours) in 1977. He did not complete a year of service in 1978 because he completed fewer than 1,000 hours in that year. Because he completed more than 500 hours of service in 1978, however, Employee A did not incur a one-year break in service that year.

1979: Employee A completes a year of service in 1979. Because he did not incur a one-year break in service in 1978, the plan may not disregard his 1977 service for purposes of determining his years of service as of January 1, 1979.

1980: Employee A incurs a one-year break in service in 1980.

1981: Because Employee A had completed 2 years of service prior to 1981 and had incurred one 1-year break in service prior to 1981, under section 411(a)(6)(D), the plan may not disregard his pre-1980 service in 1981. Employee A completes a year of service in 1981.

1982: Employee A incurs a one-year break in service in 1982.

1983: Employee A incurs a one-year break in service in 1983. As of the end of 1983, he has completed 3 years of service and has incurred 2 consecutive one-year breaks in service.

1984: Employee A completes a year of service in 1984. Under section 411(a)(6)(D), his pre-1982 service may not be disregarded in 1984 because, as of the beginning of 1984, his pre-1984 years of service (3) exceed his consecutive one-year breaks in service (2).

1985–1988: Employee A incurs 4 consecutive one-year breaks in service during the years 1985 through 1988.

1989: Empoyee A's pre-1989 service is disregarded in 1989 and all subsequent plan years because his years of service as of January 1, 1989, equal the number of consecutive one-year breaks he has incurred as of that date. Therefore, as of the beginning of 1989, Employee A is not a plan participant. Employee A completes a year of service in 1989. (Although section 411(a)(6)(D) does not prohibit the plan provision under which Employee A's pre-1989 service is disregarded, that section does not require such a provision in a qualified plan.)

§ 1.411(a)–7 Definitions and special rules.

(a) *Accrued benefit.* For purposes of section 411 and the regulations thereunder, the term "accrued benefit" means—

(1) *Defined benefit plan.* In the case of a defined benefit plan—

(i) If the plan provides an accrued benefit in the form of an annual benefit commencing at normal retirement age, such accrued benefit, or

(ii) If the plan does not provide an accrued benefit in the form described in subdivision (i) of this subparagraph, an annual benefit commencing at normal retirement age which is the actuarial equivalent (determined under section 411(c)(3) and § 1.411(c)–5) of the accrued benefit determined under the plan. In general, the term "accrued benefits" refers only to pension or retirement benefits. Consequently, accrued benefits do not include ancillary benefits not directly related to retirement benefits such as payment of medical expenses (or insurance premiums for such expenses), disability benefits not in excess of the qualified disability benefit (see section 411(a)(9) and paragraph (c)(3) of this section), life inusrance benefits payable as a lump sum, incidental death benefits, current life insurance protection, or medical benefits described in section 401(h). For purposes of this paragraph a subsidized early retirement benefit which is provided by a plan is not taken into account, except to the extent of determining the normal retirement benefit under the plan (see section 411(a)(9) and paragraph (c) of this section). The accrued benefit includes any optional settlement at normal retirement age under actuarial assumptions no less favorable than those which would be applied if the employee were terminating his employment at normal retirement age. The accrued benefit does not include any subsidized value in a joint and survivor annuity to the extent that the annual benefit of the joint and survivor

annuity does not exceed the annual benefit of a single life annuity.

(2) *Defined contribution plan.* In the case of a defined contribution plan, the balance of the employee's account held under the plan.

(b) *Normal retirement age*—(1) *General rule.* For purposes of section 411 and the regulations thereunder, the term "normal retirement age" means the earlier of—

(i) The time specified by a plan at which a plan participant attains normal retirement age, or

(ii) The later of—

(A) The time the plan participant attains age 65, or

(B) The 10th anniversary of the date the plan participant commences participation in the plan.

If a plan, or the employer sponsoring the plan, imposes a requirement that an employee retire upon reaching a certain age, the normal retirement age may not exceed that mandatory retirement age. The preceding sentence will apply if the employer consistently enforces a mandatory retirement age rule, whether or not set forth in the plan or any related document. For purposes of subdivision (i) of this subparagraph, if an age is not specified by a plan as the normal retirement age, then the normal retirement age under the plan is the earliest age beyond which the participant's benefits under the plan are not greater solely on account of his age or service. For purposes of paragraph (b) (1) (ii) (B) of this section, participation commences on the first day of the first year in which the participant commenced his participation in the plan, except that years which may be disregarded under section 410(a) (5) (D) may be disregarded in determining when participation commenced.

(2) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). Plan A defines normal retirement age as age 65. Under the plan, benefits payable to participants who retire at or after age 60 are not reduced on account of early retirement. For purposes of section 411 and the vesting regulations, normal retirement age under Plan A is age 65 (determined under subparagraph (1) (i) of this paragraph). This is true even if in operation all participants retire at age 60.

Example (2). Plan B does not specify any age as the normal retirement age. Under the plan, participants who have attained age 55 are entitled to benefits commencing upon retirement but the benefits of participants who retire before attaining age 70 are subject to reduction on account of early retirement. For purposes of section 411 and the vesting regulations the normal retirement age under plan B is the later of (i) age 65, or (ii) the 10th anniversary of the date a plan participant commences participation in the plan (assuming such date is prior to age 70).

Example (3). The facts are the same as in example (2). Employee X first became a participant in Plan B on January 1, 1980 at age 53. His participation continued until December 31, 1980, when he separated from the service with no vested benefits. After incurring 5 consecutive 1-year breaks in service, Employee X again becomes an employee and a plan participant on January 1, 1986, at age 59. For purposes of section 411, Employee X's normal retirement age under Plan B is age 69, the 10th anniversary of the date on which his year of plan participation commenced. His participation in 1980 may be disregarded under the last sentence of paragraph (b) (1) of this section.

(c) *Normal retirement benefit*—(1) *In general.* For purposes of section 411 and the regulations thereunder, the term "normal retirement benefit" means the periodic benefit under the plan commencing upon early retirement (if any) or at normal retirement age, whichever benefit is greater.

(2) *Periodic benefit.* For purposes of subparagraph (1) of this paragraph—

(i) In the case of a plan under which a benefit is payable as an annuity in the same form upon early retirement and at normal retirement age, the greater benefit is determined by comparing the amount of such annuity payments.

(ii) In the case of a plan under which an annuity benefit payable upon early retirement is not in th same form as an annuity benefit payable at normal retirement age, the greater benefit is determined by converting the annuity benefit payable upon early retirement age into the same form of annuity benefit as is payable at normal retirement age and by comparing the amount of the converted early retirement benefit payment with the amount of the normal retirement benefit payment.

(iii) In the case of a plan which is integrated with the Social Security Act or any other Federal or State law, the periodic benefit payable upon and after early retirement age is adjusted for any increases in such benefits occurring on or after early retirement age which are taken into account under the plan. See however, section 401(a) (15) and the regulations thereunder.

(3) *Benefits included.* For purposes of this paragraph, the normal retirement benefit under a plan shall be determined without regard to ancillary benefits not directly related to retirement benefits such as medical benefits or disability benefits not in excess of the qualified disability benefit; see section 411(a) (7) and paragraph (a) (1) of this section. For this purpose, a qualified disability benefit is a disability benefit which is not in excess of the amount of the benefit which would be payable to the participant if he separated from service at normal retirement age.

(4) *Early retirement benefit; social security supplement.* (i) For purposes of this paragraph, the early retirement benefit under a plan shall be determined without regard to any social security supplement.

(ii) For purposes of this subparagraph, a social security supplement is a benefit for plan participants which—

(A) Commences before the age and terminates before the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act, as amended (see section 202 (a) and (g) of such Act), and

(B) Does not exceed such old-age insurance benefit.

(5) *Special limitation.* If a defined benefit plan bases its normal retirement benefits on employee compensation, the compensation must reflect the compensation which would have been paid for a full year of participation within the meaning of section 411(b) (3). If an employee works less than a full year of participation, the compensation used to determine benefits under the plan for such year of participation must be multiplied by the ratio of the number of hours for a complete year of participation to the number of hours worked in such year. A plan whose benefit formula is computed on a computation base which cannot decrease is not required to adjust employee compensation in the manner described in the previous sentence. Thus, for example, if a plan provided a benefit based on an employee's compensation for his highest five consecutive years or a separate benefit for each year of participation based on the employee's compensation for such year the plan would not have to so adjust compensation. However, if a plan provided a benefit based on an employee's compensation for the employee's last five years or the five highest consecutive years out of the last 10 years, the compensation, would have to be so adjusted. For special rules for applying the limitations on proration of a year of participation for benefit accrual, see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(6) *Examples.* The provisions of this paragraph are illustrated by the following examples:

Example (1). Plan A provide for a benefit equal to 1% of high 5 years compensation for each year of service and a normal retirement age of 65. The plan also provides for a full unreduced accrued benefit without any actuarial reduction for any employee at age 55 with 30 years of service. Even though the actuarial value of the early retirement benefit could exceed the value of the benefit at the normal retirement age, the normal retirement benefit would not include the greater value of the early retirement benefit because actuarial subsidies are ignored.

Example (2). Plan B provides the following benefits: (1) at normal retirement age 65, $300/mo. for life and (2) at early retirement age 60, $400/mo. for life. The normal retirement benefit is $400/mo., the greater of the benefit payable at normal retirement age ($300) or early retirement ($400).

Example (3). Assume the same facts as example (2) except that the early retirement benefit of $400 is reduced to $300 upon attainment of age 65. If each employee's social security benefit at age 65 is not less than $100, the $100 would be considered to be a social security supplement and would therefore be ignored. Consequently, the normal retirement benefit would be $300.

Example (4). Plan C provides a benefit at normal retirement age equal to 1% per year of service, multiplied by the participant's compensation averaged over the 5 years immediately prior to retirement. An early retirement benefit is provided upon attainment of age 60 equal to the benefit accrued to date of early retirement reduced by 4 percent for each year by which the early retirement date precedes the normal retirement age of 65. Employee A was hired at age 30, participated immediately, and retired at age 65. Employee A's annual compensation was $50,000 between ages 55–60 and was reduced to $33,000 after age 60. The following table indicates the amount of annual benefit that would have been provided by the plan formula if the employee retired at or after after 60:

Age	Final average computated (1)	Percent accrued benefit (2)	Reduction (3)	Annual benefit (4)
60	$50,000	30	0.80	$12,000
61	46,800	31	.84	12,135
62	43,200	32	.88	12,165
63	39,800	33	.92	12,083
64	36,400	34	.96	11,881
65	33,000	35	1.00	11,550

NOTE.—Col. (1) times col. (2) times col. (3) equals col. (4).

The normal retirement benefit is the greater of the benefit payable at normal retirement age or the early retirement benefit. Employee A's normal retirement benefit is $12,165, the greatest annual benefit Employee A would be entitled to.

(d) *Rules relating to certain distributions and cash-outs of accrued benefits*—(1) *In general.* This paragraph sets forth vesting rules applicable to certain distributions from qualified plans and their related trusts (other than class year plans). Subparagraphs (2) and (3) set forth the exceptions to nonforfeitability on account of withdrawal of mandatory contributions provided by section 411(a)(3)(D). When a plan utilizes these exceptions with respect to a given participant's accrued benefit, such accrued benefit is not subject to the cash-out rules or vesting rules of subparagraphs (4) or (5), respectively. Section 411 prescribes certain requirements with respect to accrued benefits under a qualified plan. These requirements would generally not be satisfied if the plan disregarded service in computing accrued benefits even though amounts were distributed on account of such service. Subparagraph (4) of this paragraph sets forth rules under section 411(a)(7)(B) which allow a plan to make distributions and compute accrued benefits without regard to the accrued benefit attributable to the distribution. When a defined contribution plan utilizes this exception with respect to an accrued benefit, the plan is not required to satisfy the rules of subparagraph (5) of this paragraph. Subparagraph (5) of this paragraph sets forth a vesting requirement applicable to certain distributions from defined contribution plans. Subparagraph (6) sets forth other rules which pertain to the distribution rules of this paragraph.

(2) *Withdrawal of mandatory contribution*—(i) *General rule.* In the case of a participant's right to his employer-derived accrued benefit, a right is not treated as forfeitable merely because all or a portion of such benefit may be forfeited on account of the withdrawal by the participant of any amount attributable to his accrued benefit derived from his mandatory contributions (within the meaning of section 411(c)(2)(C) and § 1.411(c)-1) before he has become a 50 percent vested participant (within the meaning of § 1.401(a)-19(b)(2)). For purposes of determining the vested percentage, the plan may disregard service after the withdrawal. For example, assume that a plan utilizes 1000 hours for computing years of service and that for the computation period employee A had 1000 hours of service. If A was 40 percent vested at the beginning of the period but only had 800 hours at the time of the withdrawal, the plan could treat A as only 40 percent vested because service after the withdrawal can be disregarded. On the other hand, if A had 1000 hours at the time of the withdrawal, he must receive a year of service for the computation period, even though service is not taken into account until the end of such period.

(ii) *Plan repayment provision.* (A) Subdivision (i) of this subparagraph shall not apply unless, at the time the amount described in such subdivision is withdrawn by the participant, the plan provides the employee with a right to restoration of his employer-derived accrued benefit to the extent forfeited in accordance with such subdivision upon repayment to the plan of the full amount of the withdrawal.

(B) In the case of a defined benefit plan (as defined in section 414(j)) the restoration of the employee's employer-derived accrued benefit may be conditioned upon repayment of interest on the full amount of the distribution. Such interest shall be computed on the amount of the distribution from the date of such distribution to the date of repayment, compounded annually from the date of distribution, at the rate determined under section 411(c)(2)(C) in effect on the date of repayment. A plan may provide for repayment of interest which is less than the amount determined under the preceding sentence.

(C) In the case of a defined contribution plan (as defined in section 414(i)) the plan repayment provision described in this subparagraph may provide that the employee must repay the full amount of the distribution before the close of the vesting computation period within which the participant has a one-year break in service within the meaning of section 411(a)(6)(C) and § 1.411(a)-6, or in the case of a plan utilizing the elapsed time method described in Department of Labor regulations, before the end of a 12-consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date during which the employee does not complete any hours of service within the meaning of 29 CFR Part 2530.200b-2(a) for the employer or employers maintaining the plan.

(D) A defined contribution plan or a defined benefit plan may require that such repayment be made by the employee not later than the earlier of (*1*) the end of the 2-year period beginning with the employee's resumption of employment covered by the plan, (2) the end of the 5-year period beginning with the date of withdrawal, or (*3*) in the case of a defined contribution plan, the time described in (C) of this subdivision.

(E) A plan using the break in service rule described in section 410(a)(5)(D) for determining employees' accrued benefits is not required to provide for repayment by an employee whose accrued benefit is disregarded by reason of that rule.

(iii) *Computation of benefit.* In the case of a defined contribution plan, the employer-derived accrued benefit required to be restored by this subparagraph shall not be less than the amount in the account balance of the employee which was forfeited, unadjusted by any subsequent gains or losses.

(iv) *Delayed forfeiture.* A defined contribution plan may, in lieu of the forfeiture and restoration described in this subparagraph, provide that the forfeiture does not occur until the expiration of the time for repayment described in subdivision (ii) of this subparagraph provided that the conditions of this subparagraph are satisfied.

(3) *Withdrawal of mandatory contributions; accruals before September 2, 1974*—(i) *General rule.* In the case of a participant's right to the portion of the employer-derived benefit which accrued prior to September 2, 1974, a right is not treated as forfeitable merely because all or part of such portion may be forfeited on account of the withdrawal by the participant of an amount attributable to his benefit derived from mandatory contributions (within the meaning of section 411(c)(2)(C) and § 1.411(c)-1(c)(4)) made by the participant before September 2, 1974, if the amount so subject to forfeiture is no more than proportional to such amounts withdrawn. This subparagraph shall not apply to any plan to which any mandatory contribution (within the meaning of section 411(c)(2)(C) and § 1.411(c)-1(c)(4)) is made after September 2, 1974.

(ii) *Defined contribution plan.* In the case of a defined contribution plan, the portion of a participant's employer-derived benefit which accrued prior to September 2, 1974, shall be determined on the basis of a separate accounting between benefits accruing before and after such date. Gains, losses, withdrawals, forfeitures, and other credits or charges must be separately allocated to such benefits. Any allocation made on a reasonable and consistent basis prior to September 1, 1977, shall satisfy the requirements of this subdivision.

(iii) *Defined benefit plan.* In the case of a defined benefit plan, the portion of a participant's employer-derived benefit which accrued prior to September 2, 1974, shall be determined in a manner consistent with the determination of an accrued benefit under section 411(b)(1)(D) (see § 1.411(b)-1(c)). Any method of determining such accrued benefit which the Commissioner finds to be reasonable shall satisfy the requirements of this subdivision.

(4) *Certain cash-outs of accrued benefits*—(i) *Involuntary cash-outs.* For

purposes of determining an employee's right to an accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his entire nonforfeitable benefit at the time of the distribution,

(B) The portion of such distribution which is attributable to the present value of the employer-derived accrued benefit is not in excess of $1,750.

(C) The distribution is made due to the termination of the employee's participation in the plan, and

(D) The plan has a repayment provision which satisfies the requirements of subdivision (iv) of this subparagraph in effect at the time of the distribution.

A distribution shall be deemed to be made due to the termination of an employee's participation in the plan if it is made no later than the close of the second plan year following the plan year in which such termination occurs. For purposes of determining the entire nonforfeitable benefit, the plan may disregard service after the distribution, as illustrated in subparagraph (2)(i) of this paragraph.

(ii) *Voluntary cash-outs.* For purposes of determining an employee's accrued benefit derived from employer contributions under a plan, the plan may disregard service performed by the employee with respect to which—

(A) The employee receives a distribution of the present value of his nonforfeitable benefit attributable to such service at the time of such distribution,

(B) The employee voluntarily elects to receive such distribution,

(C) The distribution is made on termination of the employee's participation in the plan, and

(D) The plan has a repayment provision in effect at the time of the distribution which satisfies the requirements of subdivision (iv) of this subparagraph.

A distribution shall be deemed to be made on termination of participation in the plan if it is made not later than the close of the second plan year following the plan year in which such termination occurs. For purposes of determining the nonforfeitable benefit, the plan may disregard service after the distribution as illustrated in subparagraph (2)(i) of this subparagraph.

(iii) *Disregard of service.* Service of an employee permitted to be disregarded under subdivision (i) or (ii) of this subparagraph is not required to be taken into account in computing the employee's accrued benefit under the plan. In the case of a voluntary distribution described in subdivision (ii) of this subparagraph which is less than the present value of the employee's total nonforfeitable benefit immediately prior to the distribution, the accrued benefit not required to be taken into account is such total accrued benefit multiplied by a fraction, the numerator of which is the amount of the distribution and the denominator of which is the present value of his total nonforfeitable benefit immediately prior to such distribution. For example, A who is 50 percent vested in an account balance of $1,000 receives a voluntary distribution of $250. The accrued benefit which can be disregarded equals $1,000 times $250/$500, or $500. However, such service may not by reason of this paragraph be disregarded for purposes of determining an employee's years of service under sections 410(a)(3) and 411(a)(4).

(iv) *Plan repayment provision.* (A) A plan repayment provision satisfies the requirements of this subdivision if, under the provision, the accrued benefit of an employee which is disregarded by a plan under subdivision (i) or (ii) of this subparagraph is restored upon repayment to the plan by the employee of the full amount of the distribution. A plan is not required to provide for such repayment unless the employee—

(*1*) Received a distribution which is in a plan year to which section 411 applies (see § 1.411(a)-2), which distribution is less than the present value of his accrued benefit, and

(*2*) Resumes employment covered under the plan.

For purposes of (*1*) of this subdivision (iv)(A), an employee receives a distribution which is less than the present value of his accrued benefit if any portion of such benefit is forfeitable at the time of such distribution.

(B) A plan may impose the same conditions on repayments for the restoration of employer-derived accrued benefits that are allowed as conditions for restoration of employer-derived accrued benefits upon repayment of mandatory contributions under subparagraph (2)(ii)(B), (C), (D) and (E) of this paragraph.

(v) In the case of a defined contribution plan, the employer-derived accrued benefit required to be restored by this subparagraph shall not be less than the amount in the account balance of the employee, both the amount distributed and the amount forfeited, unadjusted by any subsequent gains or losses. Thus, for example, if an employee received a distribution of $250 when he was 25 percent vested in an account balance of $1,000, upon repayment of $250 the account balance may not be less than $1,000 even if, because of plan losses, the account balance, if not distributed, would have been reduced to $500.

(5) *Vesting requirement for defined contribution plans*—(i) *Application.* The requirements of this subparagraph apply to a defined contribution plan which makes distributions to employees from their accounts attributable to employer contributions at a time when—

(A) Employees are less than 100 percent vested in such accounts, and

(B) Under the plan, employees can increase their percentage of vesting in such accounts after the distributions.

(ii) *Requirements.* In order for a plan, to which this subparagraph applies, to satisfy the vesting requirements of section 411, account balances under the plan (with respect to which percentage vesting can increase) must be computed in a manner which satisfies either subdivision (iii) (A) or (B) of this subparagraph.

(iii) *Permissible methods.* A plan may provide for either of the following methods, but not both, for computing account balances with respect to which percentage vesting can increase and from which distributions are made:

(A)(*1*) A separate account is established for the employee's interest in the plan as of the time of the distribution, and

(*2*) At any relevant time the employee's vested portion of the separate account is not less than an amount ("X") determined by the formula: $X=P(AB+(R\times D))-(R\times D)$. For purposes of applying the formula: P is the vested percentage at the relevant time; AB is the account balance at the relevant time; D is the amount of the distribution; R is the ratio of the account balance at the relevant time to the account balance after distribution; and the relevant time is the time at which, under the plan, the vested percentage in the account cannot increase.

A plan is not required to provide for separate accounts provided that account balances are maintained under a method that has the same effect as under this subdivision.

(B) At any relevant time the employee's vested portion is not less than an amount ("X") determined by the formula: $X=P(AB+D)-D$. For purposes of applying the formula, the terms have the same meaning as under subdivision (iii)(A)(*2*) of this subparagraph.

(C) An application of the methods described in subdivisions (iii) (A) and (B) of this subparagraph is illustrated by the following examples:

Example (1). The X defined contribution plan uses the method described in subdivision (iii)(A) of this subparagraph for computing account balances and the break in service rule described in section 411(a)(6)(C) (service after a 1-year break does not increase the vesting percentage in account balances accrued prior to the break). The plan distributes $250 to A when A's account balance prior to the distribution equals $1,000 and he is 25 percent vested. At the time of the distribution, A has not incurred a 1-year break so that his vesting percentage can increase. Six years later, when A is 60 percent vested, he incurs a 1-year break so that his vesting percentage cannot increase. At this time his separate account balance equals $1,500. $R=\frac{\$750}{\$1,500}$ or 2. A's separate account must equal 60 percent ($1,500+(2\times\$250)$) $-(2\times\$250)$ or 60 percent ($1,500+$500) $-$500, or $1,200$-$500 equals $700.

Example (2). The Y defined contribution plan uses the method described in subdivision (iii)(B) of this subparagraph for computing account balances and the break in service rule described in section 411(a)(6)(C). The plan distributes $250 to B when B's account balance prior to the distribution equals $1,000 and he is 25 percent vested. At the time of the distribution, B has not incurred a 1-year break so that his vesting percentage can increase. Six years later, when A is 60 percent vested, he incurs a 1-year break so that his vesting percentage cannot increase. At this time his account balance equals $1,500. B's separate account must

equal 60 percent ($1,500+$250)−$250, 60% of $1,750−$250 equals $800.

(6) *Other rules*—(i) *Distributions on separation or other event.* None of the rules of this paragraph preclude distributions to employees upon separation from service or any other event recognized by the plan for commencing distributions. Such a distribution must, of course, satisfy the applicable qualification requirements pertaining to such distributions. For example, a profit-sharing plan could pay the vested portion of an account balance to an employee when he separated from service, but in order to satisfy section 411 the plan might not be able to forfeit the nonvested account balance until the employee has a 1-year break in service. Similarly, the fact that a plan cannot disregard an accrued benefit attributable to service for which an employee has received a distribution because the plan does not satisfy the cash-out requirements of subparagraph (4) of this paragraph does not mean that the employee's accrued benefit (computed by taking into account such service) cannot be offset by the accrued benefit attributable to the distribution.

(ii) *Joint and survivor requirements.* See § 1.401 (a)–11(a)(2) (relating to joint and survivor annuities) for special rules applicable to certain distributions described in this paragraph.

(iii) *Plan repayments.* (A) Under subparagraphs (2) and (4) of this paragraph, a plan may be required to restore accrued benefits in the event of repayment by an employee.

(B) For purposes of applying the limitations of section 415 (c) and (e), in the case of a defined contribution plan, the repayment by the employee and the restoration by the employer shall not be treated as annual additions.

(C) In the case of a defined contribution plan, the permissible sources for restoration of the accrued benefit are: income or gain to the plan, forfeitures, or employer contributions. Notwithstanding the provisions of § 1.401–1(b)(1)(ii), contributions may be made for such an accrued benefit by a profit-sharing plan even though there are no profits. In order for such a plan to be qualified, account balances (accrued benefits) generally must correspond to assets in the plan. Accordingly, there cannot be an unfunded account balance. However, an account balance will not be deemed to be unfunded in the case of a restoration if assets for the restored benefit are provided by the end of the plan year following the plan year in which the repayment occurs.

§ 1.411(a)–8 Changes in vesting schedule.

(a) *Requirement of prior schedule.* Under section 411(a)(10)(A), for plan years for which section 411 applies, a plan will be treated as not meeting the minimum vesting standards of section 411(a)(2) if the plan does not satisfy the requirements of this paragraph. If the vesting schedule of a plan is amended, then as of the date such amendment is adopted, the plan satisfies the requirements of this paragraph if, under the plan as amended, in the case of an employee who is a participant on—

(1) The date the amendment is adopted, or

(2) The date the amendment is effective, if later

The nonforfeitable percentage (determined as of such date) of such employee's right to his employer-derived accrued benefit is not less than his percentage computed under the plan without regard to such amendment.

(b) *Election of former schedule*—(1) *In general.* Under section 411(a)(10)(B), for plan years for which section 411 applies, if the vesting schedule of a plan is amended, the plan will not be treated as meeting the minimum vesting standards of section 411(a)(2) unless the plan as amended, provides that each participant whose nonforfeitable percentage of his accrued benefit derived from employer contributions is determined under such schedule, and who has completed at least 5 years of service with the employer, may elect, during the election period, to have the nonforfeitable percentage of his accrued benefit derived from employer contributions determined without regard to such amendment. Notwithstanding the preceding sentence, no election need be provided for any participant whose nonforfeitable percentage under the plan, as amended, at any time cannot be less than such percentage determined without regard to such amendment.

(2) *Election period.* For purposes of subparagraph (1) of this paragraph, the election period under the plan must begin no later than the date the plan amendment is adopted and end no earlier than the latest of the following dates:

(i) The date which is 60 days after the day the plan amendment is adopted,

(ii) The date which is 60 days after the day the plan amendment becomes effective, or

(iii) The date which is 60 days after the day the participant is issued written notice of the plan amendment by the employer or plan administrator.

(3) *Service requirement.* For purposes of subparagraph (1) of this paragraph, a participant shall be considered to have completed 5 years of service if such participant has completed 5 years of service, whether or not consecutive, without regard to the exceptions of section 411(a)(4) prior to the expiration of the election period described in subparagraph (2) of this paragraph. For the meaning of the term "year of service", see regulations prescribed by the Secretary of Labor under 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(4) *Election only by participant.* The election described in subparagraph (1) of this paragraph is available only to an individual who is a participant in the plan at the time such election is made.

(5) *Election may be irrevocable.* A plan, as amended, shall not fail to meet the minimum vesting standards of section 411(a)(2) by reason of section 411(a)(10)(B) merely because such plan provides that the election described in subparagraph (1) of this paragraph is irrevocable.

(6) *Relationship with section 411(a)(2).* The election described in subparagraph (1) of this paragraph is available for a vesting schedule which does not satisfy the requirements of section 411(a)(2) only if under such schedule all participants have a 50 percent nonforfeitable right after 10 years of service, and a 100 percent nonforfeitable right after 15 years of service, in their employer-derived accrued benefit. If the vesting schedule provides less vesting than the percentages required by the preceding sentence, the plan can be amended to provide for such vesting.

(c) *Special rules*—(1) *Amendment of vesting schedule.* For purposes of this section, an amendment of a vesting schedule is each plan amendment which directly or indirectly affects the computation of the nonforfeitable percentage of employees' rights to employer-derived accrued benefits. Consequently, such an amendment, for example, includes each change in the plan which affects either the plan's computation of years of service or of vesting percentages for years of service.

(2) *Aggregation of amendments.* All plan amendments which are: (i) amendments of a vesting schedule within the meaning of subparagraph (1) of this paragraph and (ii) adopted and effective at the same time, shall be deemed to be a single amendment for purposes of applying the rules in paragraphs (a) and (b) of this section.

§ 1.411(a)–9 Amendment of break in service rules; transitional period.

(a) *In general.* Under section 1017(f)(2) of the Employee Retirement Income Security Act of 1974, a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if the rules of the plan relating to breaks in service are amended, and—

(1) Such amendment is effective after January 1, 1974, and before the effective date of section 411, and

(2) Under such amendment, the nonforfeitable percentage of any employee's right to his employer-derived accrued benefit is less than the lesser of the nonforfeitable percentage of such employee's right to such benefit—

(i) Under the break in service rules provided by section 411(a)(6) and § 1.411(a)–6(c), or

(ii) The greatest such percentage under the plan as in effect on or after January 1, 1974 (provided the break in service rules of the plan were not in violation of any law or rule of law on January 1, 1974).

(b) *Break in service rules.* For purposes of paragraph (a), the term "break in service rules" means the rules provided by a plan relating to circumstances under which a period of an employee's service or plan participation is disregarded, for purposes of determining the extent to which his rights to his accrued benefit under the plan are unconditional, if under such rules such

service is disregarded by reason of the employee's failure to complete a required period of service within a specified period of time. For this purpose, plan rules which result in the loss of prior vesting or benefit accruals of an employee, or which deny an employee eligibility to participate, by reason of separation or failure to complete a required period of service within a specified period of time (e.g. 300 hours in one year) will be considered break in service rules. For purposes of section 11(b)(3), service described under the plan's break in service rules, as in effect before the effective date of section 411, need not be counted.

9. Section 1.411(b)-1 is added to read as follows:

§ 1.411(b)-1 Accrued benefit requirements.

(a) *Accrued benefit requirements*—(1) *In general.* Under section 411(b), for plan years beginning after the applicable effective date of section 411, rules are provided for the determination of the accrued benefit to which a participant is entitled under a plan. Under a defined contribution plan, a participant's accrued benefit is the balance to the credit of the participant's account. Under a defined benefit plan, a participant's accrued benefit is his accrued benefit determined under the plan. A defined benefit plan is not a qualified plan unless the method provided by the plan for determining accrued benefits satisfies at least one of the alternative methods (described in paragraph (b) of this section) for determining accrued benefits with respect to all active participants under the plan. A defined benefit plan may provide that accrued benefits for participants are determined under more than one plan formula. In such a case, the accrued benefits under all such formulas must be aggregated in order to determine whether or not the accrued benefits under the plan for participants satisfy one of the alternative methods. A plan may satisfy different methods with respect to different classifications of employees, or separately satisfy one method with respect to the accrued benefits for each such classification, provided that such classifications are not so structured as to evade the accrued benefit requirements of section 411(b) and this section. (For example, if a plan provides that employees who commence participation at or before age 40 accrue benefits in a manner which satisfies the 133⅓ percent method of determining accrued benefits and employees who commence participation after age 40 accrue benefits in a manner which satisfies the 3 percent method of determining accrued benefits, the plan would be so structured as to evade the requirements of section 411(b).) A defined benefit plan does not satisfy the requirements of section 411(b) and this section merely because the accrued benefit is defined as the "reserve under the plan". Special rules are provided for the first two years of service by a participant, certain insured defined benefit plans, and certain reductions in accrued benefits due to increasing age or service. In addition, a special rule is provided with respect to accruals for service before the effective date of section 411.

(2) *Cross references*—

(i) *3 percent method.* For rules relating to the 3 percent method of determining accrued benefits, see paragraph (b)(1) of this section.

(ii) *133⅓ percent method.* For rules relating to the 133⅓ percent method of determining accrued benefits, see paragraph (b)(2) of this section.

(iii) *Fractional method.* For rules relating to the fractional method of determining accrued benefits, see paragraph (b)(3) of this section.

(iv) *Accruals before effective date.* For rules relating to accruals for service before the effective date of section 411, see paragraph (c) of this section.

(v) *First 2 years of service.* For special rules relating to determination of accrued benefit for first 2 continuous years of service, see paragraph (d)(1) of this section.

(vi) *Certain insured plans.* For special rules relating to determination of accrued benefit under a defined benefit plan funded exclusively by insurance contracts, see paragraph (d)(2) of this section.

(vii) *Accruals decreased by increasing age or service.* For special rules relating to prohibition of decrease in accrued benefit on account of increasing age or service, see paragraph (d)(3) of this section.

(viii) *Separate accounting.* For rules relating to requirements for separate accounting, see paragraph (e) of this section.

(ix) *Year of participation.* For definition of "year of participation", see paragraph (f) of this section.

(b) *Defined benefit plans.* A defined benefit plan satisfies the requirements of section 411(b)(1) and this paragraph for a plan year to which section 411 and this section apply if it satisfies the requirements of subparagraph (1), (2), or (3) of this paragraph for such year.

(1) *3 percent method*—(i) *General rule.* A defined benefit plan satisfies the requirements of this paragraph for a plan year if, as of the close of the plan year, the accrued benefit to which each participant is entitled, computed as if the participant separated from the service as of the close of such plan year, is not less than 3 percent of the 3 percent method benefit, multiplied by the number of years (not in excess of 33⅓) of his participation in the plan including years after his normal retirement age. For purposes of this subparagraph, the "3 percent method benefit" is the normal retirement benefit to which the participant would be entitled if he commenced participation at the earliest possible entry age for any individual who is or could be a participant under the plan and if he served continuously until the earlier of age 65 or the normal retirement age under the plan.

(ii) *Special rules*—(A) *Compensation.* In the case of a plan providing a retirement benefit based upon compensation during any period, the normal retirement benefit to which a participant would be entitled is 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 subdivision (A), the number of consecutive years of service used in computing average compensation shall be the number of years of service specified under the plan (not in excess of 10) for computing normal retirement benefits.

(B) *Social security, etc.* For purposes of this subparagraph, for any plan year, social security benefits and all relevant factors used to compute benefits, *e.g.*, consumer price index, are treated as remaining constant as of the beginning of the current plan year for all subsequent plan years.

(C) *Computation in certain cases.* In the case of any plan to which the provisions of section 411(b)(1)(D) and paragraph (c) of this section are applicable, for any plan year the accrued benefit of any participant shall not be less than the accrued benefit otherwise determined under this subparagraph, reduced by the excess of the accrued benefit determined under this subparagraph as of the first day of the first plan year to which section 411 applies over the accrued benefit determined under section 411(b)(1)(D) and paragraph (c) of this section and increased by the amount determined under paragraph (c)(2)(v) of this section.

(iii) *Examples.* The application of this subparagraph is illustrated by the following examples.

Example (1). The M Corporation's defined benefit plan provides an annual retirement benefit commencing at age 65 or $4 per month for each year of participation. As a condition of participation, the plan requires that an employee have attained age 25. The normal retirement age specified under the plan is age 65. The plan provides for no limit on the number of years of credited service. A, age 40, is a participant in the M Corporation's plan.

A has completed 12 years of participation in the plan of the M Corporation as of the close of the plan year. Under subdivision (i) of this subparagraph, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (25) under the plan and served continuously until normal retirement age (65) is an annual benefit of $1,920 [40×(12×$4)]. Under paragraph (b)(1)(i) of this section, the plan does not satisfy the requirements of this subparagraph unless A has accrued an annual benefit of at least $691 [0.03×($1,920×12)] as of the close of the plan year. Under the M Corporation plan, A is entitled to an accrued benefit of $576 [(12×12)×$4] as of the close of the plan year. Thus, with respect to A, the accrued benefit provided under the M Corporation plan does not satisfy the requirements of this subparagraph.

Example (2). Assume the same facts as in example (1) except that the M Corporation's plan provides that only the first 30 years of participation are taken into account. Under subdivision (i) of this subparagraph, the normal retirement benefit commencing at age 65 to which a participant

would be entitled if he commenced participation at the earliest possible entry age under the plan (25) and served continuously until normal retirement age (65) is an annual benefit of $1,440 [30×$48]. Under paragraph (b)(1)(i) of this section, the plan does not satisfy the requirements of this subparagraph unless A has accrued an annual benefit of at least $518 [0.03×($1,440×12)] as of the close of the plan year. Under the M Corporation plan, A is entitled to an accrued benefit of $576 [12×$48]. Thus, with respect to A, the accrued benefit provided under the M Corporation plan satisfies the requirements of this subparagraph.

Example (3). The N Corporation's defined benefit plan provides an annual retirement benefit commencing at age 65 of 50 percent of average compensation for the highest 3 consecutive years of compensation for an employee with 25 years of participation. A participant who separates from service before age 65 is entitled to 2 percent of average compensation for the highest 3 consecutive years of compensation for each year of participation not in excess of 25. The plan has no minimum age or service requirement for participation. The normal retirement age specified under the plan is age 65. On December 31, 1990, B, age 40, is a participant in the N Corporation's plan. B began employment with the N Corporation and became a participant in the N Corporation's plan on January 1, 1980. Under this subparagraph, the normal retirement benefit to which a partiicpant would be entitled if he commenced participation at the earliest possible entry age (0) under the plan and served continuously until normal retirement age (65) is 50 percent of average compensation for the highest 3 consecutive years of compensation per year commencing at age 65. Under this subparagraph, B must have accrued an annual benefit of at least 16.5 percent of his highest 3 consecutive years of compensation per year commencing at age 65 [0.03×50 percent of average compensation for the highest 3 consecutive years of compensation × 11] as of the close of the plan year. Under the N Corporation plan, B has accrued an annual benefit of 22 percent of average compensation for his highest 3 consecutive years of compensation per year commencing at age 65. Thus, with respect to B, the accrued benefit under the N Corporation plan satisfies the requirements of this subparagraph.

Example (4). The P Corporation's defined benefit plan provides an annual retirement benefit commencing at age 65 of 50 percent of average compensation for the 3 consecutive years of compensation from the P Corporation next preceding normal retirement age. The plan has no minimum age or service requirement for participation. The normal retirement age under the plan is age 65. On December 31, 1990, C, age 55, separates from service with the P Corporation. C began employment with the P Corporation and became a participant in the P Corporation's plan on January 1, 1980. As of December 31, 1990, C's average compensation for the 3 consecutive years preceding his separation from service is $15,000. Under this subparagraph, the normal retirement benefit to which a participant would be entitled if he commenced participation at the earliest possible entry age (0) under the plan and served continuously until normal retirement age (65) is an annual benefit of 50 percent of average compensation for the 3 consecutive years of compensation from the P corporation next preceding normal retirement age commencing at age 65. C must have accrued an annual benefit of at least $2,475 commencing at age 65 [0.03×(0.50×$15,000)×11] as of his separation from the service with the P Corporation in order for the P Corporation's plan to satisfy the requirements of this subparagraph with respect to C.

Example (5). On December 31, 1985, the R Corporation's defined benefit plan provided an annual retirement benefit commencing at age 65 of $100 for each year of participation, not to exceed 30. As a condition of participation, the plan requires that an employee have attained age 25. The normal retirement age specified under the plan is age 65. The appropriate computation period is the calendar year. On January 1, 1986, the plan is amended to provide an annual retirement benefit commencing at age 65 of $200 for each year of participation (before and after the amendment), not to exceed 30. B, age 40, is a participant in the R Corporation's plan. B has completed 15 years of participation in the plan of the R Corporation as of December 31, 1990. Under paragraph (b)(1)(i) of this section, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (25) under the plan and served continuously until normal retirement age (65) is an annual benefit of $6,000 [30×200]. Under subdivision (i) of this subparagraph, the plan does not satisfy the requirements of this subparagraph unless B has accrued an annual benefit of at least $2,700 [0.03×$6,000×15] as of December 31, 1990. Under the R Corporation plan, B is entitled to an accrued benefit of $3,000 [$200×15] as of December 31, 1990. Thus, with respect to B, the accrued benefit provided under the R Corporation plan satisfies the requirements of this subparagraph.

Example (6). On December 31, 1995, the J Corporation's defined benefit plan provided an annual retirement benefit commencing at age 65 of $4,800 after 30 years of participation. The normal retirement age specified under the plan is age 65. The appropriate computation period is the calendar year. On January 1, 1996, the plan is amended to provide an annual retirement benefit commencing at age 65 of $6,000. A, age 40, is a participant in the J Corporation's plan since its adoption on January 1, 1986. Under paragraph (b)(1)(i) of this section, on December 31, 1995, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (0) under the plan and served continuously until normal retirement age (65) is an annual benefit of $4,800. Under paragraph (b)(1)(i) of this section, on January 1, 1996, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (0) under the plan and served continuously until normal retirement age (65) is an annual benefit of $6,000. Under subdivision (i) of this subparagraph, the plan does not satisfy the requirements of this subparagraph unless A has an accrued benefit on December 31, 1995 of at least $1,440 [$4,800 × 0.03 × 10] and an accrued benefit on January 1, 1996 of at least $1,800 [$6,000 × 0.03 × 10].

Example (7). The X Company's defined benefit plan provides an annual retirement benefit commencing at age 65 of $4 per month for each year of participation (not to exceed 30). As a condition of participation, the plan requires that an employee have attained age 25. The normal retirement age specified under the plan is age 65. D, age 68, is a participant in the X Company's plan. D has completed 20 years of participation in the X Company plan as of the close of the plan year. Under paragraph (b)(1)(i) of this section, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (25) under the plan and served continuously until normal retirement age (65), is an annual benefit, commencing at age 65, of $1,440 [30 × $48]. Under paragraph (b)(1)(i) of this section, the plan does not satisfy the requirements of this subparagraph unless D has accrued an annual benefit, commencing at age 65, of $864 [0.03 × $1,440 × 20] as of the close of the plan year. Under the X Company plan, D has accured an annual benefit, commencing at age 65, of $960 [20 × $48]. Thus, with respect to D the accrued benefit provided under the X Company plan satisfies the requirements of this subparagraph.

Example (8). Assume the same facts as in example (7) except that for purposes of determining accrued benefits under the plan the X Company's plan disregards all years of participation after normal retirement age. Under paragraph (b)(1)(i) of this section, the normal retirement benefit commencing at age 65 to which a participant would be entitled if he commenced participation at the earliest possible entry age (25) under the plan and served continuously until normal retirement age (65) is an annual benefit of $1,440 [30 × $48]. Under paragrapn (b)(1)(i) of this section the plan does not satisfy the requirements of this subparagraph unless D has accrued an annual benefit, commencing at age 65, of $864 [0.03 × $1,440 20] as of the close of the plan year. Under the X Company's plan, D has accrued an annual benefit commencing at age 65, of $816 [17 × $48]. Thus, with respect to D, the accrued benefit provided under the X Company plan does not satisfy the requirements of this subparagraph.

(2) *133⅓ percent rule*—(i) *General rule.* A defined benefit plan satisfies the requirements of this subparagraph for a particular plan year if—

(A) Under the plan the accrued benefit payable at the normal retirement age (determined under the plan) is equal to the normal retirement benefit (determined under the plan), and

(B) 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 cannot be more than 133⅓ 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.

(ii) *Special rules.* For purposes of this subparagraph—

(A) *Plan amendments.* Any amendment to the plan which is in effect for the current plan year shall be treated as if it were in effect for all other plan years.

(B) *Change in accrual rate.* Any change in an accrual rate which change does not apply to any individual who is or could be a participant in the plan year is disregardcd. Thus, for example, if for its plan year beginning January 1, 1980, a defined benefit plan provides an accrued benefit in plan year 1980 of 2 percent of a participant's average compensation for his highest 3 years of compensation for each year of service and provides that in plan year 1981 the accrued benefit will be 3 percent of such average compensation, the plan will not be treated as failing to satisfy the requirements of this subparagraph for plan year 1980 because in plan year 1980 the change in the accrual rate does not apply to any individual who is or could be a

participant in plan year 1980. However, if, for example, a defined benefit plan provided for an accrued benefit of 1 percent of a participant's average compensation for his highest 3 years of compensation for each of the first 10 years of service and 1.5 percent of such average compensation for each year of service thereafter, the plan will be treated as failing to satisfy the requirements of this subparagraph for the plan year even though no participant is actually accruing at the 1.5 percent rate because an individual who could be a participant and who had over 10 years of service would accrue at the 1.5 percent rate, which rate exceeds 133⅓ percent of the 1 percent rate.

(C) *Early retirement benefits.* The fact that certain benefits under the plan may be payable to certain participants before normal retirement age is disregarded. Thus, the requirements of subdivision (i) of this subparagraph must be satisfied without regard to any benefit payable prior to the normal retirement benefit (such as an early retirement benefit which is not the normal retirement benefit (see § 1.411(a)-7(c)).

(D) *Social security, etc.* For purposes of this paragraph, for any plan year, social security benefits and all relevant factors used to compute benefits, *e.g.*, consumer price index, are treated as remaining constant as of the beginning of the current plan year for all subsequent plan years.

(E) *Postponed retirement.* A plan shall not be treated as failing to satisfy the requirements of this subparagraph for a plan year merely because no benefits under the plan accrue to a participant who continues service with the employer after such participant has attained normal retirement age.

(F) *Computation of benefit.* A plan shall not satisfy the requirements of this subparagraph if the base for the computation of retirement benefits changes solely by reason of an increase in the number of years of participation. Thus, for example, a plan will not satisfy the requirements of this subparagraph if it provides a benefit, commencing at normal retirement age, of the sum of (*1*) 1 percent of average compensation for a participant's first 3 years of participation multiplied by his first 10 years of participation (or, if less than 10 his total years of partcipation) and (2) 1 percent of average compensation for a participant's 3 highest years of participation multiplied by each year of participation subsequent to the 10th year.

(iii) *Examples.* The application of this subparagraph is illustrated by the following examples:

Example (1). On January 1, 1980, the R Corporation's defined benefit plan provides for an annual benefit (commencing at age 65) of a percentage of a participant's average compensation for the period of 5 consecutive years of participation for which his compensation is the highest. The percentage is 2 percent for each of the first 20 years of participation and 1 percent per year thereafter. The appropriate computation period is the calendar year. The R Corporation's plan satisfies the requirements of this subparagraph because the 133⅓ percent rule does not restrict subsequent accrual rate decreases.

Example (2). On January 1, 1980, the J Corporation's defined benefit plan provides for an annual benefit (commencing at age 65) of a percentage of a participant's average compensation for the period of his final 5 consecutive years of participation. The percentage is 1 percent for each of the first 5 years of participation; 1⅓ percent for each of the next 5 years of participation; and 1⅔ percent for each year thereafter. The appropriate computation period is the calendar year. Even though no single accrual rate under the J Corporation's plan exceeds 133⅓ percent of the immediately preceding accrual rate, the J Corporation's plan does not satisfy the requirements of this subparagraph because the rate of accrual for all years of participation in excess of 10 (1⅔ percent) exceeds 133⅓ percent of the rate of accrual for any of the first 5 years of participation (1 percent).

Example (3). On January 1, 1980, the C Corporation's defined benefit plan provides for an annual benefit (commencing at age 65) of a percentage of a participant's average compensation for the period of 3 consecutive years of participation for which his compensation is the highest. The percentage is 2 percent for each of the first 5 years of participation; 1 percent for each of the next 5 years of participation; and 1½ percent for each year thereafter. The appropriate computation period is the calendar year. Even though the average rate of accrual under the C Corporation's plan is not less rapidly than ratably, the C Corporation's plan does not satisfy the requirements of this subparagraph because the rate of accrual for all years of participation in excess of 10 (1½ percent) for any employee who is actually accruing benefits or who could accrue benefits exceeds 133⅓ percent of the rate of accrual for the sixth through tenth years of participation, respectively (1 percent).

(3) *Fractional rule*—(i) *In general.* A defined benefit plan satisfies the requirements of this paragraph if the accrued benefit to which any participant is entitled is not less than the fractional rule benefit multiplied by a fraction (not exceeding 1)—

(A) The numerator of which is his total number of years of participation in the plan, and

(B) 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 under the plan.

(ii) *Special rules.* For purposes of this subparagraph—

(A) *Fractional rule benefit.* The "fractional rule benefit" is the annual benefit commencing at the normal retirement age under the plan to which a participant would be entitled if he continued to earn annually until such normal retirement age the same rate of compensation upon which his normal retirement benefit would be computed. Such rate of compensation shall be computed on the basis of compensation taken into account under the plan (but taking into account average compensation for no more than the 10 years of service immediately preceding the determination). For purposes of this subdivision (A), the normal retirement benefit shall be determined as if the participant had attained normal retirement age on the date any such determination is made.

(B) *Social security, etc.* For purposes of this subparagraph, for any plan year, social security benefits and all relevant factors used to compute benefits, *e.g.*, consumer price index, are treated as remaining constant as of the beginning of the current plan year for all subsequent plan years.

(C) *Postponed retirement.* A plan shall not be treated as failing to satisfy the requirements of this subparagraph merely because no benefits under the plan accrue to a participant who continues service with the employer after such participant has attained normal retirement age under the plan.

(D) *Computation in certain cases.* In the case of any plan to which the provisions of section 411(b)(1)(D) and paragraph (c) of this section are applicable, for any plan year the accrued benefit of any participant shall not be less than the accrued benefit otherwise determined under this subparagraph, reduced by the excess of the accrued benefit determined under this subparagraph as of the first day of the first plan year to which section 411 applies over the accrued benefit determined under section 411(b)(1)(D) and paragraph (c) of this section and increased by the amount determined under paragrah (c)(2)(v) of this section.

(iii) *Examples.* The application of this subparagraph is illustrated by the following examples:

Example (1). The R Corporation's defined benefit plan provides an annual retirement benefit commencing at age 65 of 30 percent of a participant's average compensation for his highest 3 consecutive years of participation. If a participant separates from service prior to normal retirement age, the R Corporation's plan provides a benefit equal to an amount which bears the same ratio to 30 percent of such average compensation as the participant's actual number of years of participation in the plan bears to the number of years the participant would have participated in the plan had he separated from service at age 65. The plan further provides that normal retirement age is age 65. A, age 55, is a participant in the R Corporation's plan for the current year, and A has 15 years of participation in the R Corporation's plan. As of the current year, A's average compensation for his highest 3 years of compensation is $20,000. The R Corporation's plan satisfies the requirements of this subparagraph because if A separates from the service in the current year he will be entitled to an annual benefit of $3,600 commencing at age 65 [0.3×$20,000)×15/25].

Example (2). The J Corporation's defined benefit plan provides a normal retirement benefit of 1 percent per year of a participant's average compensation from the employer. In the case of a participant who separates from service prior to normal retirement age (65), the plan provides that the annual benefit is an amount which is equal to 1 percent of such compensation multiplied by the number of years of plan participation actually completed by the participant. The plan year of the J Corporation's plan is the calendar year. B, age 55, is a participant in the J Corporation's plan for the current year. B became a participant in the J Corporation's plan on January 1, 1980. As of December 31, 1990, B's compensation history is as follows:

Year	Compensation
1980	$17,000
1981	18,000
1982	20,000
1983	20,000
1984	21,000
1985	22,000
1986	23,000
1987	25,000
1988	26,000
1989	29,000
1990	32,000

If B separates from service on December 31, 1990, he would be entitled to an annual benefit of $2,530 commencing at age 65. Because the J Corporation's plan does not limit the number of years of compensation to be taken into account in determining the normal retirement benefit, B's rate of compensation for purposes of determining his normal retirement benefit is $23,600 [$18,000+$20,000+$20,000+$21,000+$22,000+$23,000+$25,000+$26,000+$29,000+$32,000]

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Under this subparagraph, B's accrued benefit under the J Corporation's plan as of December 31, 1990 must be not less than $2,561 per year commencing at age 65 [0.0' × ($17,000 + $18,000 + $20,000 + $20,000 + $21,000 + $22,000 + $23,000 + $25,000 + $26,000 + $29,000 + $32,000 + ($23,600 × 10)) × 11/21]. Thus, the J Corporation's plan would not satisfy the requirements of this subparagraph.

(c) *Accruals for service before effective date*—(1) *General rule.* For a plan year to which section 411 applies, a defined benefit plan does not satisfy the requirements of section 411(b)(1) and this section unless, under the plan, the accrued benefit of each participant for plan years beginning before section 411 applies is not less than the greater of—

(i) Such participant's accrued benefit (as of the day before section 411 applies) determined under the plan as in effect from time to time prior to September 2, 1974 (without regard to any amendment adopted after such date), or

(ii) One-half of the accrued benefit that would be determined with respect to the participant as of the day before section 411 applies if the participant's accrued benefit were computed for such prior plan years under a method which satisfies the requirements of section 411(b)(1)(A), (B), or (C) and paragraph (b)(1), (2), or (3) of this section. See 29 CFR Part 2530, Department of Labor regulations relating to minimum standards for employee pension benefit plans, for time participation deemed to begin.

(2) *Special rules*—(i) A plan shall not be deemed to fail to satisfy the requirements of section 411(b) and this section merely because the method for computing the accrued benefit of a participant for years of participation prior to the first plan year for which section 411 is effective with respect to the plan is not the same method for computing the accrued benefit of a participant for years of participation subsequent to such plan year.

(ii) For purposes of paragraph (c)(1)(ii) of this section, section 411(b)(1)(A) and paragraphs (b)(1) of this section shall be applied as if the participant separated from service with the employer on the day before the first day of the first plan year to which section 411 applies.

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 411(b)(1)(B) and paragraph (b)(2) of this section shall be applied in the following manner:

(A) Except as provided in (c)(2)(iii)(B) of this section, section 411(b)(1)(B) and paragraph (b)(2) of this section shall be applied as if the participant separated from service with the employer on the day before the first day of the first plan year to which section 411 applies.

(B) In the case that the plan does not satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section at any time prior to the day specified in (c)(2)(iii)(A) of this section, the plan shall be deemed revised to the extent necessary to satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section for all plan years beginning before the applicable effective date of section 411 and this section. For purposes of the preceding sentence, a plan shall not be deemed revised to the extent necessary to satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section for a plan year if the benefit a participant would receive if he were employed until normal retirement age is reduced by such revision or if the revised rate of accrual with respect to such accrued benefit does not otherwise satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section.

(iv) For purposes of paragraph (c)(1)(ii) of this section, section 411(b)(1)(C) and paragraph (b)(3) of this section shall be applied as if the participant separated from service on the day before the first day of the first plan year to which section 411 applies.

(v) The excess of the accrued benefit payable at normal retirement age of any participant determined under section 411(b)(1)(A), (B), or (C) (without regard to section 411(b)(1)(D)), and paragraph (b)(1), (2), or (3) of this section (without regard to this paragraph) as of the day before the first day of the first plan year to which section 411 and this section applies over the accrued benefit determined under paragraph (c)(1) of this section shall be accrued in accordance with the provisions of the plan as in effect after the applicable effective date of section 411, as if the plan had been initially adopted on such effective date.

(d) *Special rules*—(1) *First 2 years of service.* Notwithstanding paragraphs (1), (2), and (3) of paragraph (b) of this section, under section 411(b)(1)(E) and this subparagraph, a plan shall not be treated as failing to satisfy the requirements of paragraph (b) of this section solely because the accrual of benefits under the plan does not become effective until the employee has completed 2 continuous years of service. For purposes of this subparagraph, continuous years of service are years of service (within the meaning of section 410(a)(3)(A)) which are not separated by a break in service (within the meaning of section 410(a)(5)). For years of service beginning after such 2 years of service, the accrued benefit of an employee shall not be less than that to which the employee would be entitled if section 411(b)(1)(E) and this subparagraph did not apply. Thus, for example, a plan which otherwise satisfies the requirements of paragraph (b)(2) of this section provides for a rate of accrual of 1 percent of average compensation for the highest 3 years of compensation beginning with the third year of service of a participant shall not be treated as satisfying paragraph (b)(2) of this section because as of the time the employee completes 3 continuous years of service there is no accrual during the first 2 years of service. In addition, a plan which otherwise satisfies the requirements of paragraph (b)(1) of this section and which requires that an employee must attain age 25 and complete 1 year of service prior to becoming a participant will not satisfy the requirements of paragraph (b)(1) of this section if an employee who completes 2 years of service prior to attaining age 25 does not begin accruals immediately upon commencement of participation in the plan. For rules relating to years of service, see 29 CFR part 2530, Department of Labor regulations relating to minimum standards for employee pension benefit plans.

(2) *Certain insured defined benefit plans.* Notwithstanding paragraphs (b)(1), (2), and (3) of this section, a defined benefit plan satisfies the requirements of paragraph (b) of this section if such plan is funded exclusively by the purchase of contracts from a life insurance company and such contracts satisfy the requirements of sections 412(i) (2) and (3) and the regulations thereunder. The preceding sentence is applicable only if an employee's accrued benefit as of any applicable date is not less than the cash surrender value such employee's insurance contracts would have on such applicable date if the requirements of section 412(i) (4), (5), and (6) and the regulations thereunder were satisfied.

(3) *Accrued benefit may not decrease on account of increasing age or service.* Notwithstanding paragraphs (b) (1), (2), and (3) of this section and paragraphs (d) (1) and (2) of this section, a defined benefit plan shall be treated as not satisfying the requirements of paragraph (b) and (d) of this section if the participant's accrued benefit is reduced on account of any increase in his age or years of service. The preceding sentence shall not apply to social security supplements described in § 1.411(a)-7(c)(4).

(e) *Separate accounting.* A plan satisfies the requirements of this paragraph if the requirements of paragraph (e)(1) or (2) of this paragraph are met.

(1) *Defined benefit plan.* In the case of a defined benefit plan, the requirements of this paragraph are satisfied if the plan requires separate accounting for the portion of each employee's accrued benefit derived from any voluntary employee contributions permitted

under the plan. For purposes of this subparagraph the term "voluntary employee contributions" means all employee contributions which are not mandatory contributions within the meaning of section 411(c)(2)(C) and the regulations thereunder. See § 1.411(c)-1(b)(1) for rules requiring the determination of such an accrued benefit by the use of a separate account.

(2) *Defined contribution plan.* In the case of a defined contribution plan, the requirements of this paragraph are not satisfied unless the plan requires separate accounting for each employee's accrued benefit. If a plan utilizes the break in service rule of section 411(a)(6)(C), an employee could have different percentages of vesting between pre-break and post-break accrued benefits. In such a case, the requirements of this paragraph are not satisfied unless the plan computes accrued benefits in a manner which takes into account different percentages. A plan which provides separate accounts for pre-break and post-break accrued benefits will be deemed to compute benefits in a reasonable manner.

(f) *Year of participation*—(1) *In general.* This paragraph is inapplicable to a defind contribution plan. For purposes of determining an employee's accrued benefit, a "year of participation" is a period of service determined under regulations prescribed by the Secretary of Labor in 29 CFR Part 2530, relating to minimum standards for employee pension benefit plans.

(2) *Additional rule relating to year of participation.* A trust shall not constitute a qualified trust if the plan of which such trust is a part provides for the crediting of a year of participation, or part thereof, and such credit results in the discrimination prohibited by section 401(a)(4).

(g) *Additional illustrations.* The application of this section may be illustrated by the following example:

Example. (i) The S Corporation established a defined benefit plan on January 1, 1980. The plan provides a minimum age for participation of age 25. The normal retirement age under the plan is age 65. The appropriate computation periods are the calendar year. The plan provides an annual benefit, commencing at age 65, equal to $96 per year of service for the first 25 years of service, and $48 per year of service for each additional year of service.

(ii) The plan of the S Corporation does not satisfy the requirements of section 411(b)(1)(A) and paragraph (b)(1) of this section because the accrued benefit under the plan at some point will be less than the accrued benefit required under section 411(b)(1)(A) and paragraph (b)(1) of this section (i.e., 3 percent × normal retirement benefit × years of participation).

(iii) The plan of the S Corporation does satisfy the requirements of section 411(b)(1)(B) and paragraph (b)(2) of this section because the rate of benefit accrual is equal in each of the first 25 years of service and the rate decreases thereafter.

(iv) The plan of the S Corporation does satisfy the requirements of section 411(b)(1)(C) and paragraph (b)(3) of this section because the accrued benefit under the plan will equal or exceed the normal retirement benefit multiplied by the fraction described in paragraph (b)(3)(i) of this section.

10. Section 1.411(c)-1 is amended to read as follows:

§ 1.411(c)-1 Allocation of accrued benefits between employer and employee contributions.

(a) *Accrued benefit derived from employer contributions.* For purposes of section 411 and the regulations thereunder, under section 411(c)(1), an employee's accrued benefit derived from employer contributions under a plan as of any applicable date is the excess, if any, of—

(1) The total accrued benefit under the plan provided for the employee as of such date, over

(2) The accrued benefit provided for the employee, derived from contributions made by the employee under the plan as of such date.

For computation of accrued benefit derived from employee contributions to a defined contribution plan or from voluntary employee contributions to a defined benefit plan, see paragraph (b) of this section. For computation of accrued benefit derived from mandatory employee contributions to a defined benefit plan, see paragraph (c) of this section.

(b) *Accrued benefit derived from employee contribution to defined contribution plan, etc.* For purposes of section 411 and the regulations thereunder, under section 411(c)(2)(A) the accrued benefit derived from employee contributions to a defined contribution plan is determined under paragraph (b)(1) or (2) of this section, whichever applies. Under section 411(d)(5), the accrued benefit derived from voluntary employee contributions to a defined benefit plan is determined under paragraph (b)(1) of this section.

(1) *Separate accounts maintained.* If a separate account is maintained with respect to an employee's contributions and all income, expenses, gains, and losses attributable thereto, the accrued benefit determined under this subparagraph as of any applicable date is the balance of such account as of such date.

(2) *Separate accounts not maintained.* If a separate account is not maintained with respect to an employee's contributions and the income, expenses, gains, and losses attributable thereto, the accrued benefit determined under this subparagraph is the employee's total accrued benefit determined under the plan multiplied by a fraction—

(i) The numerator of which is the total amount of the employee's contributions under the plan less withdrawals, and

(ii) The denominator of which is the sum of (A) the amount described in paragraph (b)(2)(i) of this section, and (B) the total contributions made under the plan by the employer on behalf of the employee less withdrawals.

For purposes of this subparagraph, contributions include all amounts which are contributed to the plan even if such amounts are used to provide ancillary benefits, such as incidental life insurance, health insurance, or death benefits, and withdrawals include only amounts distributed to the employee and do not reflect the cost of any death benefits under the plan.

(c) *Accrued benefit derived from mandatory employee contributions to a defined benefit plan*—(1) *General rule.* In the case of a defined benefit plan (as defined in section 414(j)) the accrued benefit derived from contributions made by an employee under the plan as of any applicable date is an annual benefit, in the form of a single life annuity (without ancillary benefits) commencing at normal retirement age, equal to the amount of the employee's accumulated contributions (determined under paragraph (c)(3) of this section) multiplied by the appropriate conversion factor (determined under paragraph (c)(2) of this section). Paragraph (e) of this section provides rules for actuarial adjustments where the benefit is to be determined in a form other than the form described in this paragraph.

(2) *Appropriate conversion factor.* For purposes of this paragraph, the term "appropriate conversion factor" means the factor necessary to convert an amount equal to the accumulated contributions to a single life annuity (without ancillary benefits) commencing at normal retirement age and shall be 10 percent for a normal retirement age of 65 years. For other normal retirement ages the appropriate conversion factor shall be the factor as determined by the Commissioner.

(3) *Accumulated contributions.* For purposes of section 411(c) and this section, the term "accumulated contributions" means the total of—

(i) All mandatory contributions made by the employee (determined under paragraph (c)(4) of this section),

(ii) Interest (if any) on such contributions, computed at the rate provided by the plan to the end of the last plan year to which section 411(a)(2) does not apply (by reason of the applicable effective date), and

(iii) Interest on the sum of the amounts determined under paragraphs (c)(3)(i) and (ii) of this section compounded annually at the rate of 5 percent per annum from the beginning of the first plan year to which section 411(a)(2) applies (by reason of the applicable effective date) to the date on which the employee would attain normal retirement age.

For example, if under section 1017 of the Employee Retirement Income Security Act of 1974, section 411(a)(2) of the Code applies for plan years beginning after December 31, 1975, and for plan years beginning before 1975, the plan provided for 3 percent interest on employee contributions, an employee's accumulated contributions would be computed by crediting interest at the rate provided by the plan (3 percent) for plan years beginning before 1976 and by crediting interest at the rate of 5 percent (or another rate prescribed under section 411(c)(2)(D)) thereafter. Section 1017 of the Employee Retirement Income Security Act of 1974 and § 1.411(a)-2 provide the effective dates for the application of section 411(a)(2).

(4) *Mandatory contributions.* For purposes of section 411(c) and this section the term "mandatory contributions" means amounts contributed to the plan by the employee which are required as a condition of his employment, as a condition of his participation in the plan, or as a condition of obtaining benefits (or additional benefits) under the plan attributable to employer contributions. For example, if the benefit derived from employer contributions depends upon a specified level of employee contributions, employee contributions up to that level would be treated as mandatory contributions. Mandatory contributions, otherwise satisfying the requirements of this subparagraph, include amounts contributed to the plan which are used to provide ancillary benefits such as incidental life insurance, health insurance, or death benefits.

(d) *Limitation on accrued benefit.* The accrued benefit derived from mandatory employee contributions under a defined benefit plan (determined under paragraph (c) of this section) shall not exceed the greater of—

(1) The accrued benefit of the employee under the plan, or

(2) The accrued benefit derived from employee contributions determined without regard to any interest under section 411(c)(2)(C) (ii) and (iii) and under paragraphs (c)(3) (ii) and (iii) of this section.

(e) *Actuarial adjustments for defined benefit plans*—(1) *Accrued benefit.* In the case of a defined benefit plan (as defined in section 414(j)) if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age, such benefit (determined under section 411(c)(1) and paragraph (a) of this section) shall be the actuarial equivalent of such benefit, as determined by the Commissioner.

(2) *Accrued benefit derived from employee contributions.* In the case of a defined benefit plan (as defined in section 414(j)) if the accrued benefit derived from mandatory 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, such benefit shall be the actuarial equivalent of such benefit (determined under section 411(c)(2)(B) and paragraph (c) of this section) as determined by the Commissioner.

(f) *Suspension of benefits, etc.*—(1) *Suspensions.* No adjustment to an accrued benefit is required on account of any suspension of benefits if such suspension is permitted under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (88 Stat. 855) (Code section 411(a)(3)(B)).

(2) *Employment after retirement.* No actuarial adjustment to an accrued benefit is required on account of employment after normal retirement age. For example, if a plan with a normal retirement age of 65 provides a benefit of $400 a month payable at age 65, the same $400 benefit (with no upward adjustment) could be paid to an employee who retires at age 68.

11. Sections 1.411(d)-1 through 1.411(d)-3 are added to read as follows:

§ 1.411(d)-1 Coordination of vesting and discrimination requirements. [Reserved]

§ 1.411(d)-2 Termination or partial termination; discontinuance of contributions.

(a) *General rule*—(1) *Required nonforfeitability.* A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless the plan provides that—

(i) Upon the termination or partial termination of the plan, or

(ii) In addition, in the case of a plan to which section 412 (relating to minimum funding standards) does not apply, upon the complete discontinuance of contributions under the plan,

the rights of each affected employee to benefits accrued to the date of such termination or partial termination (or, in the case of a plan to which section 412 does not apply, discontinuance), to the extent funded, or the rights of each employee to the amounts credited to his account at such time, are nonforfeitable (within the meaning of § 1.411(a)-4.

(2) *Required allocation.* (i) A plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) unless the plan provides for the allocation of any previously unallocated funds to the employees covered by the plan upon the termination or partial termination of the plan (or, in the case of a plan to which section 412 does not apply, upon the complete discontinuance of contributions under the plan). Such provision may be incorporated in the plan at its inception or by an amendment made prior to the termination or partial termination of the plan or the discontinuance of contributions thereunder. In the case of a defined contribution plan under which unallocated forfeitures are held in a suspense account in order to satisfy the requirements of section 415, this subdivision shall not require such plan to provide for allocations from the suspense account to the extent that such allocations would result in annual additions to participants' accounts in excess of amounts permitted under section 415 for the year for which such allocations would be made.

(ii) Any provision for the allocation of unallocated funds which is found by the Secretary of Labor or the Pension Benefit Guaranty Corporation (whichever is appropriate) to satisfy the requirements of section 4044 or section 403(d)(1) of the Employee Retirement Income Security Act of 1974 is acceptable if it specifies the method to be used and does not conflict with the provisions of section 401(a)(4) of the Internal Revenue Code of 1954 and the regulations thereunder. Any allocation of funds required by paragraph (1), (2), (3), or (4)(A) of section 4044(a) of such Act shall be deemed not to result in discrimination prohibited by section 401(a)(4) of the Code (see, however, paragraph (e) of this section). Notwithstanding the preceding sentence, in the case of a plan which establishes subclasses or categories pursuant to section 4044(b)(6) of such Act, the allocation of funds by the use of such subclasses or categories shall not be deemed not to result in discrimination prohibited by the Code. The allocation of unallocated funds may be in cash or in the form of other benefits provided under the plan. However, the allocation of the funds contributed by the employer among the employees need not necessarily benefit all the employees covered by the plan.

(iii) Paragraph (a)(2) (i) and (ii) of this section do not require the allocation of amounts to the account of any employee if such amounts are not required to be used to satisfy the liabilities with respect to employees and their beneficiaries under the plan (see section 401(a)(2)).

(b) *Partial Termination*—(1) *General rule.* Whether or not a partial termination of a qualified plan occurs (and the time of such event) shall be determined by the Commissioner with regard to all the facts and circumstances in a particular case. Such facts and circumstances include: the exclusion, by reason of a plan amendment or severance by the employer, of a group of employees who have previously been covered by the plan; and plan amendments which adversely affect the rights of employees to vest in benefits under the plan.

(2) *Special rule.* If a defined benefit plan ceases or decreases future benefit accruals under the plan, a partial termination shall be deemed to occur if, as a result of such cessation or decrease, a potential reversion to the employer, or employers, maintaining the plan (determined as of the date such cessation or decrease is adopted) is created or increased. If no such reversion is created or increased, a partial termination shall be deemed not to occur by reason of such cessation or decrease. However, the Commissioner may determine that a partial termination of such a plan occurs pursuant to subparagraph (1) of this paragraph for reasons other than such cessation or decrease.

(3) *Effect of partial termination.* If a termination of a qualified plan occurs, the provisions of section 411(d)(3) apply only to the part of the plan that is terminated.

(c) *Termination*—(1) *Application.* This paragraph applies to a plan other than a plan described in section 411(e)(1) (relating to governmental, certain church plans, etc.).

(2) *Plans subject to termination insurance.* For purposes of this section, a plan to which title IV of the Employee Retirement Income Security Act of 1974 applies is considered terminated on a particular date if, as of that date—

(i) The plan is voluntarily terminated by the plan administrator under section 4041 of the Employee Retirement Income Security Act of 1974, or

(ii) The Pension Benefit Guaranty Corporation terminates the plan under

section 4042 of the Employee Retirement Income Security Act of 1974.

For purposes of this subparagraph, the particular date of termination shall be the date of termination determined under section 4048 of such Act.

(3) *Other plans.* In the case of a plan not described in paragraph (c)(2) of this section, a plan is considered terminated on a particular date if, as of that date, the plan is voluntarily terminated by the employer, or employers, maintaining the plan.

(d) *Complete discontinuance*—(1) *General rule.* For purposes of this section, a complete discontinuance of contributions under the plan is contrasted with a suspension of contributions under the plan which is merely a temporary cessation of contributions by the employer. A complete discontinuance of contributions may occur although some amounts are contributed by the employer under the plan if such amounts are not substantial enough to reflect the intent on the part of the employer to continue to maintain the plan. The determination of whether a complete discontinuance of contributions under the plan has occurred will be made with regard to all the facts and circumstances in the particular case, and without regard to the amount of any contributions made under the plan by employees. Among the factors to be considered in determining whether a suspension constitutes a discontinuance are:

(i) Whether the employer may merely be calling an actual discontinuance of contributions a suspension of such contributions in order to avoid the requirement of full vesting as in the case of a discontinuance, or for any other reason;

(ii) Whether contributions are recurring and substantial; and

(iii) Whether there is any reasonable probability that the lack of contributions will continue indefinitely.

(2) *Time of discontinuance.* In any case in which a suspension of a profit-sharing plan maintained by a single employer is considered a discontinuance, the discontinuance becomes effective not later than the last day of the taxable year of the employer following the last taxable year of such employer for which a substantial contribution was made under the profit-sharing plan. In the case of a profit-sharing plan maintained by more than one employer, the discontinuance becomes effective not later than the last day of the plan year following the plan year within which any employer made a substantial contribution under the plan.

(e) *Contributions or benefits which remains forfeitable.* Under section 411(d)(2) and (3), section 411(a) and this section do not apply to plan 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 or his delegate to preclude the discrimination prohibited by section 401(a)(4). Accordingly, in such a case, plan benefits may be required to be reallocated without regard to this section. See § 1.401–4(c).

§ 1.411(d)–3 Other special rules.

(a) *Class year plans*—(1) *General rule.* Under section 411(d)(4), the requirements of section 411(a)(2) for a class year plan shall be deemed to be satisfied if such plan provides that each employee's rights to or derived from employer contributions on his behalf for any plan year are nonforfeitable no later than the end of the 5th plan year following the plan year for which such contributions were made. However, the rights of an employee who separates from service prior to such time, and who is not reemployed in the plan year of separation, may be forfeited. For purposes of section 411 and the regulations thereunder, the term "class year plan" means a profit-sharing, stock bonus, or money purchase plan which provides that the nonforfeitable rights of employees to or derived from employer contributions are determined separately for each plan year.

(2) *Other rules*—(i) *Prohibited forfeiture on withdrawals.* In the case of a class year plan, section 401(a)(19) and the regulations thereunder shall be applied separately to each plan year.

(ii) *Distribution rules.* The rules of § 1.411(a)–7(d) apply to a class year plan. For example, under the rule in § 1.411(a)–7(d)(2)(ii)(D), a class year plan would be permitted to limit the time of repayment to a 5 year period beginning on the date of withdrawal, or under the rule in § 1.411(a)–7(d)(2)(iii), a class year plan would restore the amount of the forfeited account balance in the event of repayment. For purposes of applying subparagraphs (2) and (3) of § 1.411(a)–7(d), relating to withdrawal of mandatory contributions, 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. Any repayments shall be treated as being on account of plan years in succeeding order of time. For purposes of applying any rule of such paragraph (e.g., paragraph (d)(2)(ii)(C)) the term "one-year break in service" means any plan year in which under subparagraph (1) of this paragraph a class year plan may forfeit an employee's rights.

(iii) *Computation of years for withdrawals.* In applying the requirement of paragraph (a)(1) of this section that rights must be nonforfeitable no later than the end of the fifth plan year following the plan year for which contributions are made, any plan year for which there has been a withdrawal of contributions and no repayment of such contributions (determined as of the last day of the plan year) is not required to count toward the five years. For example, assume that contributions are made for A in 1981 to a calendar year plan. Under the general rule of paragraph (a)(1) of this section, the contributions must be nonforfeitable on December 31, 1986. If in 1982, A withdraws the contributions for 1981, and repays these contributions in 1984, 1982 and 1983 are not required to be counted toward the five years because at the end of each year there is a withdrawal and no repayment of such withdrawal. Accordingly, the plan must provide that A's interest in the contribution for 1981 will be vested on December 31, 1988.

(b) *Prohibition against accrued benefit decrease.* Under section 411(d)(6) a plan is not a qualified plan (and a trust forming a part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant, unless the plan amendment satisfies the requirements of section 412(c)(8) (relating to certain retroactive amendments) and the regulations thereunder. For purposes of determining whether or not any participant's accrued benefit is decreased, all the provisions of a plan affecting directly or indirectly the computation of accrued benefits which are amended with the same adoption and effective dates shall be treated as one plan amendment. Plan provisions indirectly affecting accrued benefits include, for example, provisions relating to years of service and breaks in service for determining benefit accrual, and to actuarial factors for determining optional or early retirement benefits.

(c) *Rules applicable to section 414(k) plan.* For special rules applicable to defined benefit plans which provide a benefit derived from employer contributions which is based partly on a participant's separate account, see section 414(k) and the regulations thereunder.

12. Sections 1.413–1 and 1.413–2 are added to read as follows:

§ 1.413–1 Special rules for collectively bargained plans.

(a) through (d) [Reserved]

(e) *Vesting.* Section 411 (other than section 411(d)(3) relating to termination or partial termination; discontinuance of contributions) and the regulations thereunder shall be applied as if all employers who have been parties to the collective-bargaining agreement constituted a single employer. The application of any rules with respect to breaks in service under section 411 shall be made under regulations prescribed by the Secretary of Labor. Thus, for example, all the hours which an employee worked for each employer in a collectively-bargained plan would be aggregated in computing the employee's hours of service under the plan. See also 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

§ 1.413–2 Special rules for plans maintained by more than one employer.

(a) through (c) [Reserved]

(d) *Vesting.* Section 411 and the regulations thereunder shall be applied as if all employers who maintain the plan constituted a single employer. The application of any rules with respect to breaks in service under section 411 shall be made under regulations prescribed by the Secretary of Labor. Thus, for ex-

ample, all the hours which an employee worked for each employer maintaining the plan would be aggregated in computing the employee's hours of service under the plan. See also 29 CFR Part 2530 (Department of Labor regulations relating to minimum standards for employee pension benefit plans).

§ 1.801–8 [Amended]

12. Paragraph (g) of § 1.801–8 is amended by deleting "or (D)" the two places it appears therein and inserting in lieu thereof "(D), or (E)".

13. Section 1.805–7 is amended by revising paragraphs (3) and (4) and adding a new paragraph (5) to paragraph (b) thereof to read as follows:

§ 1.805–7 Pension plan reserves.

* * * * *

(b) *Pension plan reserves defined.* * * *

(3) Provided for employees of the life insurance company under a plan which for the taxable year meet the requirements of section 401(a) (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), and (19) for the taxable year to which such paragraphs apply. For the purposes of this subparagraph, the term "employees" includes full-time life insurance salesmen treated as employees under section 7701(a)(20);

(4) Purchased to provide retirement annuities for the employees of an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws. The definition of pension plan reserves described in section 805(d)(1)(D) and this paragraph includes only life insurance reserves held under contracts purchased by those organizations described in section 501(c)(3) and exempt from tax under section 501(a), and does not include life insurance reserves held under contracts purchased by organizations described under any other provision of section 501(c). Accordingly, the reserves held under contracts purchased by such other exempt organizations, or by entities not subject to Federal income tax (such as a State, municipality, etc.), shall not be treated as pension plan reserves unless they qualify as such under section 805(d)(1)(A), (B), (C), or (E); or

(5) Purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b).

* * * * *

[FR Doc.77-24092 Filed 8-22-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Editorial Amendment of Part 0 to Reflect a Reorganization of the Common Carrier Bureau

AGENCY: Federal Communications Commission.

ACTION: Amendment of rules.

SUMMARY: This amendment changes the Rules to reflect changes in organization and functions of the Common Carrier Bureau. These changes were necessary to focus and strengthen the Bureau's surveillance activities, to facilitate policy development and coordination, and to improve program management and research activities.

EFFECTIVE DATE: August 22, 1977.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mr. H. Walker Feaster, III, Office of the Executive Director, 632–7513.

SUPPLEMENTARY INFORMATION: In the Matter of Editorial Amendment of Part 0 of the Commission's Rules to reflect a reorganization of the Common Carrier Bureau.

ORDER

Adopted: August 12, 1977.

Released: August 16, 1977.

1. Changes in the organization and functions of the Common Carrier Bureau were adopted by the Commission February 4, 1976. Two new divisions were established within the Bureau. Several divisions were renamed, and functional statements were updated. These changes were necessary to focus and strengthen the Bureau's surveillance activities, to facilitate policy development and coordination, and to improve program management and research activities. Part O of the Rules and Regulations, which describes the organization of the Commission, is being amended to reflect these changes.

2. The amendments adopted herein pertain to agency organization. The prior notice, procedure and effective date provisions of Section 4 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in Sections 4(i) and 5(b) of the Communications Act of 1934, as amended, and in Section 0.231(d) of the Commission's Rules.

3. In view of the foregoing, IT IS ORDERED, effective August 22, 1977, that Part O of the Rules and Regulations is amended as set forth below.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
R. D. LICHTWARDT,
Executive Director.

1. In Section 0.91, the introductory text, and paragraph (a), (b), (c), (d), (e) and (f) are revised to read as follows:

§ 0.91 Functions of the Bureau.

The Common Carrier Bureau develops, recommends and administers policies and programs for the regulation of the services, facilities, rates and practices of entities which furnish interstate or foreign communications services for hire—whether by wire, radio, cable or satellite facilities—and of ancillary operations related to the provision or use of such services. The Bureau also licenses all radio facilities used for such services, including those dedicated entirely to intrastate use. The Bureau performs the following specific functions:

(a) Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in matters pertaining to the regulation and licensing of communications common carriers and ancillary operations. This includes: policy development and coordination; adjudicatory and rule making proceedings, including rate and service investigations, determinations regarding lawfulness of carrier tariffs; action on applications for service, facility and radio authorizations; review of carrier performance; economic research and analysis; administration of Commission accounting and reporting requirements; compliance and enforcement activities.

(b) Participates in all phases of international conferences concerning common carrier and related matters and in the implementation of international agreements.

(c) Collaborates with representatives of state regulatory commissions and with the National Association of Regulatory Utility Commissioners in cooperative studies of common carrier and related matters.

(d) Advises the Commission on policy and technical matters regarding the use of satellites and related facilities for both common carrier and ancillary communications services.

(e) Advises and assists the public, other government agencies and industry groups on common carrier regulation and related matters.

(f) Exercises such authority as may be assigned or referred to it by the Commission pursuant to Section 5(d) of the Communications Act of 1934, as amended.

* * * * *

2. Sections 0.92 through 0.99 are revised to read as follows:

§ 0.92 Units in the Bureau.

(a) Office of the Bureau Chief.
(b) Policy and Rules Division.
(c) Tariff Division.
(d) Facilities and Services Division.
(e) Mobile Services Division.
(f) Economics Division.
(g) Accounting and Audits Division.
(h) Hearing Division.

§ 0.93 Office of the Bureau Chief.

The Office of the Bureau Chief is composed of the Bureau Chief, the Deputy Bureau Chief, an Assistant Bureau Chief-International, an Assistant Chief-Management, a Program Evaluation Staff, an International Programs Staff and an Administrative Office. They assist the Chief of the Bureau in planning, directing, coordinating, executing, and evaluating the functions and programs of the Bureau.

§ 0.94 Policy and rules division.

Develops uniform and integrated policies for the regulation of domestic and international communication common carriers.

(a) Develops new policies to provide a framework for the orderly growth of the common carrier industry to meet future communications needs of the nation;

(b) Reviews existing policies and regulations to determine the need for modifications;

(c) Acts on petitions for rule making involving major policy questions;

(d) Prepares precedent setting rule interpretations;

(e) Participates in rule making proceedings and inquiries involving major changes to existing policies and regulations or the development of new policies.

§ 0.95 Tariff division.

Administers the tariff provisions of the Communications Act requiring that the charges, classifications, regulations, and practices of communications common carriers providing interstate and foreign services are just, reasonable and not unduly discriminatory.

(a) Examines tariffs to determine their lawfulness,

(b) Conducts formal or informal investigations of tariff matters.

(c) Establishes and enforces criteria concerning speed, quality, reliability and accuracy of communications services.

(d) Analyzes and disposes of formal and informal complaints regarding charges, adequacy and quality of service and other carrier practices.

§ 0.96 Facilities and services division.

Authorizes and regulates the facilities and services of domestic and international communications common carriers including domestic wireline and microwave, overseas cable and radio, and international and domestic satellites.

(a) Reviews proposals for new services or the modifications of existing services insofar as they impact on facilities.

(b) Examines applications for radio, cable or wireline facilities, through construction or acquisition, and for the construction, launch and operation of space satellites and associated earth stations.

(c) Coordinates frequency assignments.

(d) Issues licenses and other authorizations.

(e) Acts on requests for temporary authority and rule waivers.

(f) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of interstate and foreign communication services.

(g) Participates in adjudicatory hearings on contested and mutually exclusive applications.

(h) Monitors compliance and initiates appropriate enforcement action.

(i) Keeps abreast of technological development and activities in the communications field, and maintains continuing surveillance over the evolution and performance of the domestic and international telecommunication networks.

§ 0.97 Mobile services division.

Authorizes and regulates the domestic common carrier mobile radio services including the domestic public land and aeronautical mobile radio service, the rural radio telephone service and the offshore radio transmission service.

(a) Examines applications from carriers or individuals for new or modified radio facilities;

(b) Coordinates frequency assignments;

(c) Issues licenses and other authorizations;

(d) Acts on requests for temporary or developmental authority, or rule waivers;

(e) Develops and recommends policy, rules, standards, procedures and forms for the authorization and regulation of these services;

(f) Participates in adjudicatory hearings on contested or mutually exclusive applications;

(g) Monitors compliance, acts on complaints and initiates appropriate enforcement action.

§ 0.98 Economics division.

Investigates the economic implications of common carrier regulatory policies and programs and the economic consequences of industry structure and practices. Collects, analyzes and publishes carrier financial operating and other statistical data. Studies and analyzes:

(a) Cost of capital, capital structure and financial policies of carriers;

(b) Customer demand;

(c) Methods for pricing public utility services;

(d) Carrier costs and expenses;

(e) Carrier rates, rate levels, rate bases and rate structures;

(f) Jurisdictional separations and division of revenues;

(g) Carrier depreciation practices.

§ 0.99 Accounting and audits division.

Develops and administers the FCC Uniform Systems of Accounts for communications common carriers, including related Commission requirements for reporting and preservation of records. Monitors carrier compliance with Commission requirements through the review and approval of carrier accounting reports. Conducts a program of comprehensive and selective field audits and investigations of carriers' financial and operating practices, procedures and records.

Sections 0.100 and 0.101 are added to read as follows:

§ 0.100 Hearing division.

Serves as separated trial staff for the Bureau in adjudicatory and rule making proceedings, including rate investigations.

§ 0.101 Field offices.

Common Carrier Bureau field offices are located in Room 1309X, 90 Church Street, New York, New York 10007; and Room 546, 210 Twelfth Street, St. Louis, Mo. 63101.

[FR Doc.77-24324 Filed 8-22-77;8:45 am]

SPECTRUM MANAGEMENT IN THE LAND MOBILE SERVICES

Editorial Amendments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes the requirement that permits the filing of applications in the Chicago Region without evidence of frequency coordination. The amendments will result in the Chicago Region operating under the same procedures as the rest of the continental United States.

EFFECTIVE DATE: September 1, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Richard Breen, Spectrum Management Division, Safety and Special Radio Services Bureau, 202-634-4970.

SUPPLEMENTARY INFORMATION:

ORDER

Adopted: August 11, 1977.

Released: August 12, 1977.

In the matter of inquiry into the practices and procedures for spectrum management in the land mobile services governed by Parts 89, 91, 93 of the Commission's Rules, Docket No. 21229.

1. In its Notice of Inquiry released May 17, 1977, in the above entitled matter, the Commission stated its intention to return to frequency coordination in the Chicago Region. We further stated that an Order would be issued deleting those portions of the rules that permit the filing of applications in the Chicago Region without evidence of frequency coordination.

2. In view of the above, and for the reasons set forth in the Notice of Inquiry in Docket No. 20909, effective September 1,