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Internal Revenue Code Section 415(c)(3)(B)

Limitations on benefits and contributions under qualified plans

(a) General rule.

(1) Trusts.

A trust which is a part of a pension, profit-sharing, or stock bonus plan shall not constitute a qualified trust under section 401(a) if-

(A) in the case of a defined benefit plan, the plan provides for the payment of benefits with respect to a participant which exceed the limitation of subsection (b) , or

(B) in the case of a defined contribution plan, contributions and other additions under the plan with respect to any participant for any taxable year exceed the limitation of subsection (c) ,

(2) Section applies to certain annuities and accounts.

In the case of-

(A) an employee annuity plan described in section 403(a) ,

(B) an annuity contract described in section 403(b) , or

(C) a simplified employee pension described in section 408(k) ,

such a contract, plan, or pension shall not be considered to be described in section 403(a) , 403(b) , or 408(k) , as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g) . In the case of an annuity contract described in section 403(b) , the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c) , whichever is appropriate.

(b) Limitation for defined benefit plans.

(1) In general.

Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of-

(A) \$160,000, or

(B) 100 percent of the participant's average compensation for his high 3 years.

(2) Annual benefit.

(A) In general. For purposes of paragraph (1) , the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c) , 403(a)(4) , 403(b)(8) , 408(d)(3) , and 457(e)(16)) are made.

(B) Adjustment for certain other forms of benefit. If the benefit under the plan is payable in any form other than the form described in subparagraph (A) , or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c) , 403(a)(4) , 403(b)(8) , 408(d)(3) , and 457(e)(16)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A) . For purposes of this subparagraph , any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 417) shall not be taken into account.

(C) Adjustment to \$160,000 limit where benefit begins before age 62. If the retirement income benefit under the plan begins before age 62, the determination as to whether the \$160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$160,000 annual benefit beginning at age 62.

(D) Adjustment to \$160,000 limit where benefit begins after age 65. If the retirement income benefit under the plan begins after age 65, the determination as to whether the \$160,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a \$160,000 annual benefit beginning at age 65.

(E) Limitation on certain assumptions.

(i) For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii) , for purposes of adjusting any benefit under subparagraph (B) , the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.

(ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3) , the interest rate assumption shall not be less than the greatest of-

(I) 5.5 percent,

(II) the rate that provides a benefit of not more than 105 percent of the benefit that would be provided if the applicable interest rate (as defined in section 417(e)(3)) were the interest rate assumption, or

(III) the rate specified under the plan.

(iii) For purposes of adjusting any limitation under subparagraph (D) , the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.

(iv) For purposes of this subsection , no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.

(v) For purposes of adjusting any benefit or limitation under subparagraph (B) , (C) , or (D) , the mortality table used shall be the applicable mortality table (within the meaning of section 417(e)(3)(B)).

(vi) In the case of a plan maintained by an eligible employer (as defined in section 408(p)(2)(C)(i)), clause (ii) shall be applied without regard to subclause (II) thereof.

(F) Repealed.

(G) Special limitation for qualified police or firefighters. In the case of a qualified participant, subparagraph (C) of this paragraph shall not apply.

(H) Qualified participant defined. For purposes of subparagraph (G) , the term "qualified participant" means a participant-

(i) in a defined benefit plan which is maintained by a State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision thereof,

(ii) with respect to whom the period of service taken into account in determining the amount of the benefit under such defined benefit plan includes at least 15 years of service of the participant-

(I) as a full-time employee of any police department or fire department which is organized and operated by the State, Indian tribal government (as so defined), or any political subdivision maintaining such defined benefit plan to provide police protection, firefighting services, or emergency medical services for any area within the jurisdiction of such State, Indian tribal government (as so defined), or any political subdivision, or

(II) as a member of the Armed Forces of the United States.

(I) Exemption for survivor and disability benefits provided under governmental plans. Subparagraph (C) of this paragraph and paragraph (5) shall not apply to-

- (i) income received from a governmental plan (as defined in section 414(d)) as a pension, annuity, or similar allowance as the result of the recipient becoming disabled by reason of personal injuries or sickness, or
- (ii) amounts received from a governmental plan by the beneficiaries, survivors, or the estate of an employee as the result of the death of the employee.

(3) Average compensation for high 3 years.

For purposes of paragraph (1) , a participant's high 3 years shall be the period of consecutive calendar years (not more than 3) during which the participant had the greatest aggregate compensation from the employer. In the case of an employee within the meaning of section 401(c)(1) , the preceding sentence shall be applied by substituting for "compensation from the employer" the following: "the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)".

(4) Total annual benefits not in excess of \$10,000.

Notwithstanding the preceding provisions of this subsection , the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitation of this subsection if-

(A) the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed \$10,000 for the plan year, or for any prior plan year, and

(B) the employer has not at any time maintained a defined contribution plan in which the participant participated.

(5) Reduction for participation or service of less than 10 years.

(A) Dollar limitation. In the case of an employee who has less than 10 years of participation in a defined benefit plan, the limitation referred to in paragraph (1)(A) shall be the limitation determined under such paragraph (without regard to this paragraph) multiplied by a fraction-

(i) the numerator of which is the number of years (or part thereof) of participation in the defined benefit plan of the employer, and

(ii) the denominator of which is 10.

(B) Compensation and benefits limitations. The provisions of subparagraph (A) shall apply to the limitations under paragraphs (1)(B) and (4) , except that such subparagraph shall be applied with respect to years of service with an employer rather than years of participation in a plan.

(C) Limitation on reduction. In no event shall subparagraph (A) or (B) reduce the limitations referred to in paragraphs (1) and (4) to an amount less than $\frac{1}{10}$ of such limitation (determined without regard to this paragraph).

(D) Application to changes in benefit structure. To the extent provided in regulations, subparagraph (A) shall be applied separately with respect to each change in the benefit structure of a plan.

(6) Computation of benefits and contributions.

The computation of-

(A) benefits under a defined contribution plan, for purposes of section 401(a)(4) ,

(B) contributions made on behalf of a participant in a defined benefit plan, for purposes of section 401(a)(4) , and

(C) contributions and benefits provided for a participant in a plan described in section 414(k) , for purposes of this section

shall not be made on a basis inconsistent with regulations prescribed by the Secretary.

(7) Benefits under certain collectively bargained plans.

For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan (other than a multiemployer plan)-

(A) which is maintained for such year pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(B) which, at all times during such year, has at least 100 participants,

(C) under which benefits are determined solely by reference to length of service, the particular years during which service was rendered, age at retirement, and date of retirement,

(D) which provides that an employee who has at least 4 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions, and

(E) which requires, as a condition of participation in the plan, that an employee complete a period of not more than 60 consecutive days of service with the employer or employers maintaining the plan.

This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. This paragraph shall not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting one-half the amount otherwise applicable for such year under paragraph (1)(A) for "\$160,000".

(8) Social security retirement age defined.

For purposes of this subsection , the term "social security retirement age" means the age used as the retirement age under section 216(l) of the Social Security Act, except that such section shall be applied-

(A) without regard to the age increase factor, and

(B) as if the early retirement age under section 216(l)(2) of such Act were 62.

(9) Special rule for commercial airline pilots.

(A) In general. Except as provided in subparagraph (B) , in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

(B) Individuals who separate from service before age 60. If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.

(10) Special rule for State, Indian tribal, and local government plans.

(A) Limitation to equal accrued benefit. In the case of a plan maintained for its employees by any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or a governmental plan described in the last sentence of section 414(d) (relating to plans of Indian tribal governments), the limitation with respect to a qualified participant under this subsection shall not be less than the accrued benefit of the participant under the plan (determined without regard to any amendment of the plan made after October 14, 1987).

(B) Qualified participant. For purposes of this paragraph , the term "qualified participant" means a participant who first became a participant in the plan maintained by the employer before January 1, 1990.

(C) Election.

(i) In general. This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)).

(ii) Revocation of election. An election under clause (i) may be revoked not later than the last day of the third plan year beginning after the date of the enactment of this clause. The revocation shall apply to all plan years to which the election applied and to all subsequent plan years. Any amount paid by a plan in a taxable year ending after the revocation shall be includible in income in such taxable year under the rules of this chapter in effect for such taxable year, except that, for purposes of applying the limitations imposed by this section , any portion of such amount which is attributable to any taxable year during which the election was in effect shall be treated as received in such taxable year.

(11) Special limitation rule for governmental and multiemployer plans.

In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply.

Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3)(A) except with respect to highly compensated benefits. For purposes of this paragraph , the term "highly compensated benefits" means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3)(A) . For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.

(c) Limitation for defined contribution plans.

(1) In general.

Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of-

(A) \$40,000, or

(B) 100 percent of the participant's compensation.

(2) Annual addition.

For purposes of paragraph (1) , the term "annual addition" means the sum for any year of-

(A) employer contributions,

(B) the employee contributions, and


(C) forfeitures.

For the purposes of this paragraph , employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c) , 403(a)(4) , 403(b)(8) , 408(d)(3) , and 457(e)(16)) without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6) . Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.

(3) Participant's compensation.

For purposes of paragraph (1) -

(A) In general. The term "participant's compensation" means the compensation of the participant from the employer for the year.

 (B) Special rule for self-employed individuals. In the case of an employee within the meaning of section 401(c)(1) , subparagraph (A) shall be applied by substituting "the participant's earned income (within the meaning of section 401(c)(2) but determined without regard to any exclusion under section 911)" for "compensation of the participant from the employer".

(C) Special rules for permanent and total disability. In the case of a participant in any defined contribution plan-

(i) who is permanently and totally disabled (as defined in section 22(e)(3)),

(ii) who is not a highly compensated employee (within the meaning of section 414(q)), and

(iii) with respect to whom the employer elects, at such time and in such manner as the Secretary may prescribe, to have this subparagraph apply,

the term "participant's compensation" means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made. If a defined contribution plan provides for the continuation of contributions on behalf of all participants described in clause (i) for a fixed or determinable period, this subparagraph shall be applied without regard to clauses (ii) and (iii) .

(D) Certain deferrals included. The term "participant's compensation" shall include-

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

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

(E) Annuity contracts. In the case of an annuity contract described in section 403(b) , the term "participant's compensation" means the participant's includible compensation determined under section 403(b)(3) .

(4) Repealed.

(5) Repealed.

(6) Special rule for employee stock ownership plans.

If no more than one-third of the employer contributions to an employee stock ownership plan (as described in section 4975(e)(7)) for a year which are deductible under paragraph (9) of section 404(a) are allocated to highly compensated employees (within the meaning of section 414(q)), the limitations imposed by this section shall not apply to-

(A) forfeitures of employer securities (within the meaning of section 409) under such an employee stock ownership plan if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)), or

(B) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

The amount of any qualified gratuitous transfer (as defined in section 664(g)(1)) allocated to a participant for any limitation year shall not exceed the limitations imposed by this section , but such amount shall not be taken into account in determining whether any other amount exceeds the limitations imposed by this section .

(7) Special rules relating to church plans.

(A) Alternative contribution limitation.

(i) In general. Notwithstanding any other provision of this subsection , at the election of a participant who is an employee of a church or a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii) , contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of \$10,000.

(ii) \$40,000 aggregate limitation. The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed \$40,000.

(B) Number of years of service for duly ordained, commissioned, or licensed ministers or lay employees. For purposes of this paragraph -

(i) all years of service by-

(I) a duly ordained, commissioned, or licensed minister of a church, or

(II) a lay person,

as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii) , shall be considered as years of service for 1 employer, and

(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

(C) Foreign missionaries. In the case of any individual described in subparagraph (B) performing services outside the United States, contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such employee, when expressed as an annual addition to such employee's account, shall not be treated as exceeding the limitation of paragraph (1) if such annual addition is not in excess of \$3,000. This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to community property laws) exceeds \$17,000.

(D) Annual addition. For purposes of this paragraph , the term "annual addition" has the meaning given such term by paragraph (2) .

(E) Church, convention or association of churches. For purposes of this paragraph , the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e) .

(8) Special rule for difficulty of care payments excluded from gross income.

(A) In general. For purposes of paragraph (1)(B), in the case of an individual who for a taxable year excludes from gross income under section 131 a qualified foster care payment which is a difficulty of care payment, the participant's compensation, or earned income, as the case may be, shall be increased by the amount so excluded.

(B) Contributions allocable to difficulty of care payments treated as after-tax. Any contribution by the participant which is allowable due to such increase-

(i) shall be treated for purposes of this title as investment in the contract, and

(ii) shall not cause a plan (and any arrangement which is part of such plan) to be treated as failing to meet any requirements of this chapter solely by reason of allowing any such contributions.

(d) Cost-of-living adjustments.

(1) In general.

The Secretary shall adjust annually-

(A) the \$160,000 amount in subsection (b)(1)(A) ,

(B) in the case of a participant who separated from service, the amount taken into account under subsection (b)(1)(B) , and

(C) the \$40,000 amount in subsection (c)(1)(A) ,

for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

(2) Method.

The regulations prescribed under paragraph (1) shall provide for-

(A) an adjustment with respect to any calendar year based on the increase in the applicable index for the calendar quarter ending September 30 of the preceding calendar year over such index for the base period, and

(B) adjustment procedures which are similar to the procedures used to adjust benefit amounts under section 215(i)(2)(A) of the Social Security Act.

(3) Base period.

For purposes of paragraph (2) -

(A) \$160,000 amount. The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning July 1, 2001.

(B) Separations after December 31, 1994. The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer after December 31, 1994, is the calendar quarter beginning July 1 of the calendar year preceding the calendar year in which such separation occurs.

(C) Separations before January 1, 1995. The base period taken into account for purposes of paragraph (1)(B) with respect to individuals separating from service with the employer before January 1, 1995, is the calendar quarter beginning October 1 of the calendar year preceding the calendar year in which such separation occurs.

(D) \$40,000 amount. The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning July 1, 2001.

(4) Rounding.

(A) \$160,000 amount. Any increase under subparagraph (A) of paragraph (1) which is not a multiple of \$5,000 shall be rounded to the next lowest multiple of \$5,000. This subparagraph shall also apply for purposes of any provision of this title that provides for adjustments in accordance with the method contained in this subsection , except to the extent provided in such provision.

(B) \$40,000 amount. Any increase under subparagraph (C) of paragraph (1) which is not a multiple of \$1,000 shall be rounded to the next lowest multiple of \$1,000.

(e) Repealed.

(f) Combining of plans.

(1) In general.

For purposes of applying the limitations of subsections (b) and (c) -

(A) all defined benefit plans (whether or not terminated) of an employer are to be treated as one defined benefit plan, and

(B) all defined contribution plans (whether or not terminated) of an employer are to be treated as one defined contribution plan.

(2) Exception for multiemployer plans.

Notwithstanding paragraph (1) and subsection (g) , a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated-

(A) with any other plan which is not a multiemployer plan for purposes of applying subsection (b)(1)(B) to such other plan, or

(B) with any other multiemployer plan for purposes of applying the limitations established in this section .

(g) Aggregation of plans.

Except as provided in subsection (f)(2) , the Secretary, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to

any trusts, contracts, accounts, or bonds referred to in subsection (a)(2) , with respect to which the participant has the control required under section 414(b) or (c) , as modified by subsection (h) , shall, under regulations prescribed by the Secretary, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section . In addition to taking into account such other factors as may be necessary to carry out the purposes of subsection (f) , the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

(h) 50 percent control.

For purposes of applying subsections (b) and (c) of section 414 to this section , the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in section 1563(a)(1) .

(i) Records not available for past periods.

Where for the period before January 1, 1976, or (if later) the first day of the first plan year of the plan, the records necessary for the application of this section are not available, the Secretary may by regulations prescribe alternative methods for determining the amounts to be taken into account for such period.

(j) Regulations; definition of year.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section , including, but not limited to, regulations defining the term "year" for purposes of any provision of this section .

(k) Special rules.

(1) Defined benefit plan and defined contribution plan.

For purposes of this title, the term "defined contribution plan" or "defined benefit plan" means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is-

(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a) ,

(B) an annuity plan described in section 403(a) ,

(C) an annuity contract described in section 403(b) , or

(D) a simplified employee pension.

(2) Contributions to provide cost-of-living protection under defined benefit plans.

(A) In general. In the case of a defined benefit plan which maintains a qualified cost-of-living arrangement-

(i) any contribution made directly by an employee under such an arrangement shall not be treated as an annual addition for purposes of subsection (c) , and

(ii) any benefit under such arrangement which is allocable to an employer contribution which was transferred from a defined contribution plan and to which the requirements of subsection (c) were applied shall, for purposes

of subsection (b) , be treated as a benefit derived from an employee contribution (and subsection (c) shall not again apply to such contribution by reason of such transfer).

(B) Qualified cost-of-living arrangement defined. For purposes of this paragraph , the term "qualified cost-of-living arrangement" means an arrangement under a defined benefit plan which-

(i) provides a cost-of-living adjustment to a benefit provided under such plan or a separate plan subject to the requirements of section 412 , and

(ii) meets the requirements of subparagraphs (C) , (D) , (E) , and (F) and such other requirements as the Secretary may prescribe.

(C) Determination of amount of benefit. An arrangement meets the requirement of this subparagraph only if the cost-of-living adjustment of participants is based-

(i) on increases in the cost-of-living after the annuity starting date, and

(ii) on average cost-of-living increases determined by reference to 1 or more indexes prescribed by the Secretary, except that the arrangement may provide that the increase for any year will not be less than 3 percent of the retirement benefit (determined without regard to such increase).

(D) Arrangement elective; time for election. An arrangement meets the requirements of this subparagraph only if it is elective, it is available under the same terms to all participants, and it provides that such election may at least be made in the year in which the participant-

(i) attains the earliest retirement age under the defined benefit plan (determined without regard to any requirement of separation from service), or

(ii) separates from service.

(E) Nondiscrimination requirements. An arrangement shall not meet the requirements of this subparagraph if the Secretary finds that a pattern of discrimination exists with respect to participation.

(F) Special rules for key employees.

(i) In general. An arrangement shall not meet the requirements of this paragraph if any key employee is eligible to participate.

(ii) Key employee. For purposes of this subparagraph , the term "key employee" has the meaning given such term by section 416(i)(1) , except that in the case of a plan other than a top-heavy plan (within the meaning of section 416(g)), such term shall not include an individual who is a key employee solely by reason of section 416(i)(1)(A)(i) .

(3) Repayments of cashouts under governmental plans.

In the case of any repayment of contributions (including interest thereon) to the governmental plan with respect to an amount previously refunded upon a forfeiture of

service credit under the plan or under another governmental plan maintained by a State or local government employer within the same State, any such repayment shall not be taken into account for purposes of this section .

(4) Special rules for sections 403(b) and 408 .

For purposes of this section , any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section , any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.

(l) Treatment of certain medical benefits.

(1) In general.

For purposes of this section , contributions allocated to any individual medical benefit account which is part of a pension or annuity plan shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c) . Subparagraph (B) of subsection (c)(1) shall not apply to any amount treated as an annual addition under the preceding sentence.

(2) Individual medical benefit account.

For purposes of paragraph (1) , the term "individual medical benefit account" means any separate account-

(A) which is established for a participant under a pension or annuity plan, and

(B) from which benefits described in section 401(h) are payable solely to such participant, his spouse, or his dependents.

(m) Treatment of qualified governmental excess benefit arrangements.

(1) Governmental plan not affected.

In determining whether a governmental plan (as defined in section 414(d)) meets the requirements of this section , benefits provided under a qualified governmental excess benefit arrangement shall not be taken into account. Income accruing to a governmental plan (or to a trust that is maintained solely for the purpose of providing benefits under a qualified governmental excess benefit arrangement) in respect of a qualified governmental excess benefit arrangement shall constitute income derived from the exercise of an essential governmental function upon which such governmental plan (or trust) shall be exempt from tax under section 115 .

(2) Taxation of participant.

For purposes of this chapter-

(A) the taxable year or years for which amounts in respect of a qualified governmental excess benefit arrangement are includible in gross income by a participant, and

(B) the treatment of such amounts when so includible by the participant,

shall be determined as if such qualified governmental excess benefit arrangement were treated as a plan for the deferral of compensation which is maintained by a corporation not exempt from tax under this chapter and which does not meet the requirements for qualification under section 401 .

(3) Qualified governmental excess benefit arrangement.

For purposes of this subsection , the term "qualified governmental excess benefit arrangement" means a portion of a governmental plan if-

(A) such portion is maintained solely for the purpose of providing to participants in the plan that part of the participant's annual benefit otherwise payable under the terms of the plan that exceeds the limitations on benefits imposed by this section ,

(B) under such portion no election is provided at any time to the participant (directly or indirectly) to defer compensation, and

(C) benefits described in subparagraph (A) are not paid from a trust forming a part of such governmental plan unless such trust is maintained solely for the purpose of providing such benefits.

(n) Special rules relating to purchase of permissive service credit.

(1) In general.

If a participant makes 1 or more contributions to a defined benefit governmental plan (within the meaning of section 414(d)) to purchase permissive service credit under such plan, then the requirements of this section shall be treated as met only if-

(A) the requirements of subsection (b) are met, determined by treating the accrued benefit derived from all such contributions as an annual benefit for purposes of subsection (b) , or

(B) the requirements of subsection (c) are met, determined by treating all such contributions as annual additions for purposes of subsection (c) .

(2) Application of limit.

For purposes of-

(A) applying paragraph (1)(A) , the plan shall not fail to meet the reduced limit under subsection (b)(2)(C) solely by reason of this subsection , and

(B) applying paragraph (1)(B) , the plan shall not fail to meet the percentage limitation under subsection (c)(1)(B) solely by reason of this subsection .

(3) Permissive service credit.

For purposes of this subsection -

(A) In general. The term "permissive service credit" means service credit-

(i) recognized by the governmental plan for purposes of calculating a participant's benefit under the plan,

(ii) which such participant has not received under such governmental plan, and

(iii) which such participant may receive only by making a voluntary additional contribution, in an amount determined under such governmental plan, which does not exceed the amount necessary to fund the benefit attributable to such service credit.

Such term may include service credit for periods for which there is no performance of service, and, notwithstanding clause (ii) , may include service credited in order to provide an increased benefit for service credit which a participant is receiving under the plan.

(B) Limitation on nonqualified service credit. A plan shall fail to meet the requirements of this section if-

(i) more than 5 years of nonqualified service credit are taken into account for purposes of this subsection , or

(ii) any nonqualified service credit is taken into account under this subsection before the employee has at least 5 years of participation under the plan.

(C) Nonqualified service credit. For purposes of subparagraph (B) , the term "nonqualified service credit" means permissive service credit other than that allowed with respect to-

(i) service (including parental, medical, sabbatical, and similar leave) as an employee of the Government of the United States, any State or political subdivision thereof, or any agency or instrumentality of any of the foregoing (other than military service or service for credit which was obtained as a result of a repayment described in subsection (k)(3)),

(ii) service (including parental, medical, sabbatical, and similar leave) as an employee (other than as an employee described in clause (i)) of an educational organization described in section 170(b)(1)(A)(ii) which is a public, private, or sectarian school which provides elementary or secondary education (through grade 12), or a comparable level of education, as determined under the applicable law of the jurisdiction in which the service was performed,

(iii) service as an employee of an association of employees who are described in clause (i) , or

(iv) military service (other than qualified military service under section 414(u)) recognized by such governmental plan.

In the case of service described in clause (i) , (ii) , or (iii) , such service will be nonqualified service if recognition of such service would cause a participant to receive a retirement benefit for the same service under more than one plan.

(D) Special rules for trustee-to-trustee transfers. In the case of a trustee-to-trustee transfer to which section 403(b)(13)(A) or 457(e)(17)(A) applies (without regard to whether the transfer is made between plans maintained by the same employer)-

(i) the limitations of subparagraph (B) shall not apply in determining whether the transfer is for the purchase of permissive service credit, and

(ii) the distribution rules applicable under this title to the defined benefit governmental plan to which any amounts are so transferred shall apply to such amounts and any benefits attributable to such amounts.