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Internal Revenue Code Section 401(a)(9)(C)

Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification.

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section -

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), or by a charitable remainder trust pursuant to a qualified gratuitous transfer (as defined in section 664(g)(1)), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within 6 months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a) , or the return of any withdrawal liability payment determined to be an overpayment within 6 months of such determination));

(3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). For purposes of this paragraph , there shall be excluded from consideration employees described in section 410(b)(3)(A) and (C) .

(5) Special rules relating to nondiscrimination requirements.

(A) Salaried or clerical employees. A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b)(2)(A)(i) merely because it is limited to salaried or clerical employees.

(B) Contributions and benefits may bear uniform relationship to compensation. A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan bear a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees.

(C) Certain disparity permitted. A plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of, or on behalf of, the employees under the plan favor highly compensated employees (as defined in section 414(q)) in the manner permitted under subsection (l) .

(D) Integrated defined benefit plan.

(i) In general. A defined benefit plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the plan provides that the employer-derived accrued retirement benefit for any participant under the plan may not exceed the excess (if any) of-

(I) the participant's final pay with the employer, over

(II) the employer-derived retirement benefit created under Federal law attributable to service by the participant with the employer.

For purposes of this clause , the employer-derived retirement benefit created under Federal law shall be treated as accruing ratably over 35 years.

(ii) Final pay. For purposes of this subparagraph , the participant's final pay is the compensation (as defined in section 414(q)(4)) paid to the participant by the employer for any year-

(I) which ends during the 5-year period ending with the year in which the participant separated from service for the employer, and

(II) for which the participant's total compensation from the employer was highest.

(E) 2 or more plans treated as single plan. For purposes of determining whether 2 or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan-

(i) Contributions. If the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the compensation (within the meaning of section 414(s)) of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate.

(ii) Benefits. If the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates.

(F) Social security retirement age. For purposes of testing for discrimination under paragraph (4) -

(i) the social security retirement age (as defined in section 415(b)(8)) shall be treated as a uniform retirement age, and

(ii) subsidized early retirement benefits and joint and survivor annuities shall not be treated as being unavailable to employees on the same terms merely because such benefits or annuities are based in whole or in part on an employee's social security retirement age (as so defined).

(G) Governmental plans. Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of section 414(d)).

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part satisfies the requirements of section 411 (relating to minimum vesting standards).

(8) A trust forming part of a defined benefit plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.

(9) Required distributions.

(A) In general. A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee-

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) Required distribution where employee dies before entire interest is distributed.

(i) Where distributions have begun under subparagraph (A)(ii) . A trust shall not constitute a qualified trust under this section unless the plan provides that if-

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii) , and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-year rule for other cases. A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii) , the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) Exception to 5-year rule for certain amounts payable over life of beneficiary. If-

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii) , the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) Special rule for surviving spouse of employee. If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee and the surviving spouse elects the treatment in this clause-

(I) the regulations referred to in clause (iii)(II) shall treat the surviving spouse as if the surviving spouse were the employee,

(II) the date on which the distributions are required to begin under clause (iii)(III) shall not be earlier than the date on which the employee would have attained the applicable age, and

(III) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse is the employee.

An election described in this clause shall be made at such time and in such manner as prescribed by the Secretary, shall include a timely notice to the plan administrator, and once made may not be revoked except with the consent of the Secretary.

(C) Required beginning date. For purposes of this paragraph -

(i) In general. The term "required beginning date" means April 1 of the calendar year following the later of-

(I) the calendar year in which the employee attains the applicable age, or

(II) the calendar year in which the employee retires.

(ii) Exception. Subclause (II) of clause (i) shall not apply-

(I) except as provided in section 409(d) , in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains the applicable age, or

(II) for purposes of section 408(a)(6) or (b)(3) .

(iii) Actuarial adjustment. In the case of an employee to whom clause (i)(II) applies who retires in a calendar year after the calendar year in which the employee attains age 70 ½, the employee's accrued benefit shall be actuarially increased to take into account the period after age 70 ½ in which the employee was not receiving any benefits under the plan.

(iv) Exception for governmental and church plans. Clauses (ii) and (iii) shall not apply in the case of a governmental plan or church plan. For purposes of this clause , the term "church plan" means a plan maintained by a church for church employees, and the term "church" means any church (as defined in section 3121(w)(3)(A)) or qualified church-controlled organization (as defined in section 3121(w)(3)(B)).

(v) Applicable age.

(I) In the case of an individual who attains age 72 after December 31, 2022, and age 73 before January 1, 2033, the applicable age is 73.

(II) In the case of an individual who attains age 74 after December 31, 2032, the applicable age is 75.

(D) Life expectancy. For purposes of this paragraph , the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) Definitions and rules relating to designated beneficiaries. For purposes of this paragraph -

(i) Designated beneficiary. The term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(ii) Eligible designated beneficiary. The term "eligible designated beneficiary" means, with respect to any employee, any designated beneficiary who is-

(I) the surviving spouse of the employee,

(II) subject to clause (iii), a child of the employee who has not reached majority (within the meaning of subparagraph (F)),

(III) disabled (within the meaning of section 72(m)(7)),

(IV) a chronically ill individual (within the meaning of section 7702B(c)(2) , except that the requirements of subparagraph (A)(i) thereof shall only be treated as met if there is a certification that, as of such date, the period of inability described in such subparagraph with respect to the individual is an indefinite one which is reasonably expected to be lengthy in nature), or

(V) an individual not described in any of the preceding subclauses who is not more than 10 years younger than the employee.

The determination of whether a designated beneficiary is an eligible designated beneficiary shall be made as of the date of death of the employee.

(iii) Special rule for children. Subject to subparagraph (F) , an individual described in clause (ii)(II) shall cease to be an eligible designated beneficiary as of the date the individual reaches majority and any remainder of the portion of the individual's interest to which subparagraph (H)(ii) applies shall be distributed within 10 years after such date.

(F) Treatment of payments to children. Under regulations prescribed by the Secretary, for purposes of this paragraph , any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(G) Treatment of incidental death benefit distributions. For purposes of this title, any distribution required under the incidental death benefit requirements of this subsection shall be treated as a distribution required under this paragraph .

(H) Special rules for certain defined contribution plans. In the case of a defined contribution plan, if an employee dies before the distribution of the employee's entire interest-

(i) In general. Except in the case of a beneficiary who is not a designated beneficiary, subparagraph (B)(ii)-

(I) shall be applied by substituting "10 years" for "5 years", and

(II) shall apply whether or not distributions of the employee's interests have begun in accordance with subparagraph (A).

(ii) Exception for eligible designated beneficiaries. Subparagraph (B)(iii) shall ap ply only in the case of an eligible designated beneficiary.

(iii) Rules upon death of eligible designated beneficiary. If an eligible designated beneficiary dies before the portion of the employee's interest to which this subparagraph applies is entirely distributed, the exception under clause (ii) shall not apply to any beneficiary of such eligible designated beneficiary and the remainder of such portion shall be distributed within 10 years after the death of such eligible designated beneficiary.

(iv) Special rule in case of certain trusts for disabled or chronically ill beneficiaries. In the case of an applicable multi-beneficiary trust, if under the terms of the trust-

(I) it is to be divided immediately upon the death of the employee into separate trusts for each beneficiary, or

(II) no beneficiary (other than a eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii)) has any right to the employee's interest in the plan until the death of all such eligible designated beneficiaries with respect to the trust,

for purposes of a trust described in subclause (I) , clause (ii) shall be applied separately with respect to the portion of the employee's interest that is payable to any eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii) ; and, for purposes of a trust described in subclause (II), subparagraph (B)(iii) shall apply to the distribution of the employee's interest and any beneficiary who is not such an eligible designated beneficiary shall be treated as a beneficiary of the eligible designated beneficiary upon the death of such eligible designated beneficiary.

(v) Applicable multi-beneficiary trust. For purposes of this subparagraph, the term "applicable multi-beneficiary trust" means a trust-

(I) which has more than one beneficiary,

(II) all of the beneficiaries of which are treated as designated beneficiaries for purposes of determining the distribution period pursuant to this paragraph, and

(III) at least one of the beneficiaries of which is an eligible designated beneficiary described in subclause (III) or (IV) of subparagraph (E)(ii) .

For purposes of the preceding sentence, in the case of a trust the terms of which are described in clause (iv)(II), any beneficiary which is an organization described in section 408(d)(8)(B)(i) shall be treated as a designated beneficiary described in subclause (II).

(vi) Application to certain eligible retirement plans. For purposes of applying the provisions of this subparagraph in determining amounts required to be distributed pursuant to this paragraph, all eligible retirement plans (as defined in section 402(c)(8)(B) , other than a defined benefit plan described in clause (iv) or (v) thereof or a qualified trust which is a part of a defined benefit plan) shall be treated as a defined contribution plan.

(I) Temporary waiver of minimum required distribution.

(i) In general. The requirements of this paragraph shall not apply for calendar year 2020 to-

(I) a defined contribution plan which is described in this subsection or in section 403(a) or 403(b) ,

(II) a defined contribution plan which is an eligible deferred compensation plan described in section 457(b) but only if such plan is maintained by an employer described in section 457(e)(1)(A) , or

(III) an individual retirement plan.

(ii) Special rule for required beginning dates in 2020. Clause (i) shall apply to any distribution which is required to be made in calendar year 2020 by reason of-

(I) a required beginning date occurring in such calendar year, and

(II) such distribution not having been made before January 1, 2020.

(iii) Special rules regarding waiver period. For purposes of this paragraph-

(I) the required beginning date with respect to any individual shall be determined without regard to this subparagraph for purposes of applying this paragraph for calendar years after 2020, and

(II) if clause (ii) of subparagraph (B) applies, the 5-year period described in such clause shall be determined without regard to calendar year 2020.

(J) Certain increases in payments under a commercial annuity. Nothing in this section shall prohibit a commercial annuity (within the meaning of section 3405(e)(6)) that is issued in connection with any eligible retirement plan (within the meaning of section 402(c)(8)(B), other than a defined benefit plan) from providing one or more of the following types of payments on or after the annuity starting date:

(i) annuity payments that increase by a constant percentage, applied not less frequently than annually, at a rate that is less than 5 percent per year,

(ii) a lump sum payment that-

(I) results in a shortening of the payment period with respect to an annuity or a full or partial commutation of the future annuity payments, provided that such lump sum is determined using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract, or

(II) accelerates the receipt of annuity payments that are scheduled to be received within the ensuing 12 months, regardless of whether such acceleration shortens the payment period with respect to the annuity, reduces the dollar amount of benefits to be paid under the contract, or results in a suspension of annuity payments during the period being accelerated,

(iii) an amount which is in the nature of a dividend or similar distribution, provided that the issuer of the contract determines such amount using reasonable actuarial methods and assumptions, as determined in good faith by the issuer of the contract, when calculating the initial annuity payments and the issuer's experience with respect to those factors, or

(iv) a final payment upon death that does not exceed the excess of the total amount of the consideration paid for the annuity payments, less the aggregate amount of prior distributions or payments from or under the contract.

(10) Other requirements.

(A) Plans benefiting owner-employees. In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) Top-heavy plans.

(i) In general. In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) Plans which may become top-heavy. Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions-

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416 .

(iii) Exemption for governmental plans. This subparagraph shall not apply to any governmental plan.

(11) Requirement of joint and survivor annuity and preretirement survivor annuity.

(A) In general. In the case of any plan to which this paragraph applies, except as provided in section 417 , a trust forming part of such plan shall not constitute a qualified trust under this section unless-

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

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

(B) Plans to which paragraph applies. This paragraph shall apply to-

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412 , and

(iii) any participant under any other defined contribution plan unless-

(I) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2) , to a designated beneficiary),

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

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

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

(C) Exception for certain ESOP benefits.

(i) In general. In the case of-

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) Nonforfeitable benefit must be paid in full, etc. In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I)

, (II) , and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) Special rule where participant and spouse married less than 1 year. A plan shall not be treated as failing to meet the requirements of subparagraphs (B)(iii) or (C) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(E) Exception for plans described in section 404(c) . This paragraph shall not apply to a plan which the Secretary has determined is a plan described in section 404(c) (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(F) Cross reference. For-

(i) provisions under which participants may elect to waive the requirements of this paragraph , and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417 .

(12) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that in the case of any merger or consolidation with, or transfer of assets or liabilities to, any other plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which title IV of the Employee Retirement Income Security Act of 1974 applies.

(13) Assignment and alienation.

(A) In general. A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) . This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) Special rules for domestic relations orders. Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

(C) Special rule for certain judgments and settlements. Subparagraph (A) shall not apply to any offset of a participant's benefits provided under a plan against an amount that the participant is ordered or required to pay to the plan if-

(i) the order or requirement to pay arises-

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

(II) under a civil judgment (including a consent order or decree) entered by a court in an action brought in connection with a violation (or alleged violation) of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974, or

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

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

(iii) in a case in which the survivor annuity requirements of section 401(a)(11) apply with respect to distributions from the plan to the participant, if the participant has a spouse at the time at which the offset is to be made-

(I) either such spouse has consented in writing to such offset and such consent is witnessed by a notary public or representative of the plan (or it is established to the satisfaction of a plan representative that such consent may not be obtained by reason of circumstances described in section 417(a)(2)(B)), or an election to waive the right of the spouse to either a qualified joint and survivor annuity or a qualified preretirement survivor annuity is in effect in accordance with the requirements of section 417(a) ,

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

(III) in such judgment, order, decree, or settlement, such spouse retains the right to receive the survivor annuity under a qualified joint and survivor annuity provided pursuant to section

401(a)(11)(A)(i) and under a qualified preretirement survivor annuity provided pursuant to section 401(a)(11)(A)(ii) , determined in accordance with subparagraph (D) .

A plan shall not be treated as failing to meet the requirements of this subsection , subsection (k) , section 403(b) , or section 409(d) solely by reason of an offset described in this subparagraph .

(D) Survivor annuity.

(i) In general. The survivor annuity described in subparagraph (C)(iii)(III) shall be determined as if-

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

(II) there was no offset,

(III) the plan permitted commencement of benefits only on or after normal retirement age,

(IV) the plan provided only the minimum-required qualified joint and survivor annuity, and

(V) the amount of the qualified preretirement survivor annuity under the plan is equal to the amount of the survivor annuity payable under the minimum-required qualified joint and survivor annuity.

(ii) Definition. For purposes of this subparagraph , the term "minimum-required qualified joint and survivor annuity" means the qualified joint and survivor annuity which is the actuarial equivalent of the participant's accrued benefit (within the meaning of section 411(a)(7)) and under which the survivor annuity is 50 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse.

(14) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, unless the participant otherwise elects, the payment of benefits under the plan to the participant will begin not later than the 60th day after the latest of the close of the plan year in which-

(A) the date on which the participant attains the earlier of age 65 or the normal retirement age specified under the plan,

(B) occurs the 10th anniversary of the year in which the participant commenced participation in the plan, or

(C) the participant terminates his service with the employer.

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

(15) A trust shall not constitute a qualified trust under this section unless under the plan of which such trust is a part-

(A) in the case of a participant or beneficiary who is receiving benefits under such plan, or

(B) in the case of a participant who is separated from the service and who has nonforfeitable rights to benefits,

such benefits are not decreased by reason of any increase in the benefit levels payable under title II of the Social Security Act or any increase in the wage base under such title II, if such increase takes place after September 2, 1974, or (if later) the earlier of the date of first receipt of such benefits or the date of such separation, as the case may be.

(16) A trust shall not constitute a qualified trust under this section if the plan of which such trust is a part provides for benefits or contributions which exceed the limitations of section 415 .

(17) Compensation limit.

(A) In general. A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed $200,000.

(B) Cost-of-living adjustment. The Secretary shall adjust annually the $200,000 amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d) ; except that the base period shall be the calendar quarter beginning July 1, 2001, and any increase which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(18) Repealed.

(19) A trust shall not constitute a qualified trust under this section if under the plan of which such trust is a part any part of a participant's accrued benefit derived from employer contributions (whether or not otherwise nonforfeitable), is forfeitable solely because of withdrawal by such participant of any amount attributable to the benefit derived from contributions made by such participant. The preceding sentence shall not apply to the accrued benefit of any participant unless, at the time of such withdrawal, such participant has a nonforfeitable right to at least 50 percent of such accrued benefit (as determined under section 411). The first sentence of this paragraph shall not apply to the extent that an accrued benefit is permitted to be forfeited in accordance with section 411(a)(3)(D)(iii) (relating to proportional forfeitures of benefits accrued before September 2, 1974, in the event of withdrawal of certain mandatory contributions).

(20) A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part makes 1 or more distributions within 1 taxable year to a distributee on account of a termination of the plan of which the trust is a part, or in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan. This paragraph shall not apply to a defined benefit plan unless the employer maintaining such plan files a notice with the Pension Benefit Guaranty Corporation (at the time and in the manner prescribed by the Pension Benefit Guaranty Corporation) notifying the Corporation of such payment or distribution and the Corporation has approved such payment or distribution or, within 90 days after the date on which such notice was filed, has failed to disapprove such payment or distribution. For purposes of this paragraph , rules similar to the rules of section 402(a)(6)(B) (as in effect before its repeal by section 521 of the Unemployment Compensation Amendments of 1992) shall apply.

(21) Repealed.

(22) If a defined contribution plan (other than a profit-sharing plan)-

(A) is established by an employer whose stock is not readily tradable on an established market, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan are securities of the employer,

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409 . The requirements of subsection (e) of section 409 shall not apply to any employees of an employer who are participants in any defined contribution plan established and maintained by such employer if the stock of such employer is not readily tradable on an established market and the trade or business of such employer consists of publishing on a regular basis a newspaper for general circulation. For purposes of the preceding sentence, subsections (b) , (c) , (m) , and (o) of section 414 shall not apply except for determining whether stock of the employer is not readily tradable on an established market.

(23) A stock bonus plan shall not be treated as meeting the requirements of this section unless such plan meets the requirements of subsections (h) and (o) of section 409 , except that in applying section 409(h) for purposes of this paragraph , the term "employer securities" shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6) .

(25) Requirement that actuarial assumptions be specified.
A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

(26) Additional participation requirements.

(A) In general. In the case of a trust which is a part of a defined benefit plan, such trust shall not constitute a qualified trust under this subsection unless on each day of the plan year such trust benefits at least the lesser of-

(i) 50 employees of the employer, or

(ii) the greater of-

(I) 40 percent of all employees of the employer, or

(II) 2 employees (or if there is only 1 employee, such employee).

(B) Treatment of excludable employees.

(i) In general. A plan may exclude from consideration under this paragraph employees described in paragraphs (3) and (4)(A) of section 410(b) .

(ii) Separate application for certain excludable employees. If employees described in section 410(b)(4)(B) are covered under a plan which meets the requirements of subparagraph (A) separately with respect to such employees, such employees may be excluded from consideration in determining whether any plan of the employer meets such requirements if-

(I) the benefits for such employees are provided under the same plan as benefits for other employees,

(II) the benefits provided to such employees are not greater than comparable benefits provided to other employees under the plan, and

(III) no highly compensated employee (within the meaning of section 414(q)) is included in the group of such employees for more than 1 year.

(C) Special rule for collective bargaining units. Except to the extent provided in regulations, a plan covering only employees described in section 410(b)(3)(A) may exclude from consideration any employees who are not included in the unit or units in which the covered employees are included.

(D) Paragraph not to apply to multiemployer plans. Except to the extent provided in regulations, this paragraph shall not apply to employees in a multiemployer plan (within the meaning of section 414(f)) who are covered by collective bargaining agreements.

(E) Special rule for certain dispositions or acquisitions. Rules similar to the rules of section 410(b)(6)(C) shall apply for purposes of this paragraph .

(F) Separate lines of business. At the election of the employer and with the consent of the Secretary, this paragraph may be applied separately with respect to each separate line of business of the employer. For purposes of this paragraph , the term "separate line of business" has the meaning given such term by section 414(r) (without regard to paragraph (2)(A) or (7) thereof).

(G) Exception for governmental plans. This paragraph shall not apply to a governmental plan (within the meaning of section 414(d)).

(H) Regulations. The Secretary may by regulation provide that any separate benefit structure, any separate trust, or any other separate arrangement is to be treated as a separate plan for purposes of applying this paragraph .

(I) Protected participants.

(i) In general. A plan shall be deemed to satisfy the requirements of subparagraph (A) if-

(I) the plan is amended-

(aa) to cease all benefit accruals, or

(bb) to provide future benefit accruals only to a closed class of participants,

(II) the plan satisfies subparagraph (A) (without regard to this subparagraph) as of the effective date of the amendment, and

(III) the amendment was adopted before April 5, 2017, or the plan is described in clause (ii).

(ii) Plans described. A plan is described in this clause if the plan would be described in subsection (o)(1)(C), as applied for purposes of subsection (o)(1)(B)(iii)(IV) and by treating the effective date of the amendment as the date the class was closed for purposes of subsection (o)(1)(C).

(iii) Special rules. For purposes of clause (i)(II), in applying section 410(b)(6)(C), the amendments described in clause (i) shall not be treated as a significant change in coverage under section 410(b)(6)(C)(i)(II).

(iv) Spun-off plans. For purposes of this subparagraph, if a portion of a plan described in clause (i) is spun off to another employer, the treatment under clause (i) of the spun-off plan shall continue with respect to the other employer.

(27) Determinations as to profit-sharing plans.

(A) Contributions need not be based on profits. The determination of whether the plan under which any contributions are made is a profit-sharing plan shall be made without regard to current or accumulated profits of the employer and without regard to whether the employer is a tax-exempt organization.

(B) Plan must designate type. In the case of a plan which is intended to be a money purchase pension plan or a profit-sharing plan, a trust forming part of such plan shall not constitute a qualified trust under this subsection unless the plan designates such intent at such time and in such manner as the Secretary may prescribe.

(28) Additional requirements relating to employee stock ownership plans.

(A) In general. In the case of a trust which is part of an employee stock ownership plan (within the meaning of section 4975(e)(7)) or a plan which meets the requirements of section 409(a) , such trust shall not constitute a qualified trust under this section unless such plan meets the requirements of subparagraphs (B) and (C) .

(B) Diversification of investments.

(i) In general. A plan meets the requirements of this subparagraph if each qualified participant in the plan may elect within 90 days after the close of each plan year in the qualified election period to direct the plan as to the investment of at least 25 percent of the participant's account in the plan (to the extent such portion exceeds the amount to which a prior election under this subparagraph applies). In the case of the election year in which the participant can make his last election, the preceding sentence shall be applied by substituting "50 percent" for "25 percent".

(ii) Method of meeting requirements. A plan shall be treated as meeting the requirements of clause (i) if-

(I) the portion of the participant's account covered by the election under clause (i) is distributed within 90 days after the period during which the election may be made, or

(II) the plan offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary) to each participant making an election under clause (i) and within 90 days after the period during which the election may be made, the plan invests the portion of the participant's account covered by the election in accordance with such election.

(iii) Qualified participant. For purposes of this subparagraph , the term "qualified participant" means any employee who has completed at least 10 years of participation under the plan and has attained age 55.

(iv) Qualified election period. For purposes of this subparagraph , the term "qualified election period" means the 6-plan-year period beginning with the later of-

(I) the 1st plan year in which the individual first became a qualified participant, or

(II) the 1st plan year beginning after December 31, 1986.

For purposes of the preceding sentence, an employer may elect to treat an individual first becoming a qualified participant in the 1st plan year beginning in 1987 as having become a participant in the 1st plan year beginning in 1988.

(v) Exception. This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E)).

(C) Use of independent appraiser. A plan meets the requirements of this subparagraph if all valuations of employer securities which are not readily tradable on an established securities market with respect to activities carried on by the plan are by an independent appraiser. For purposes of the preceding sentence, the term "independent appraiser" means any appraiser meeting requirements similar to the requirements of the regulations prescribed under section 170(a)(1) .

(29) Benefit limitations.
In the case of a defined benefit plan (other than a multiemployer plan or a CSEC plan) to which the requirements of section 412 apply, the trust of which the plan is a part shall not constitute a qualified trust under this subsection unless the plan meets the requirements of section 436 .

(30) Limitations on elective deferrals.
In the case of a trust which is part of a plan under which elective deferrals (within the meaning of section 402(g)(3)) may be made with respect to any individual during a calendar year, such trust shall not constitute a qualified trust under this subsection unless the plan provides that the amount of such deferrals under such plan and all other plans, contracts, or arrangements of an employer maintaining such plan may not exceed the amount of the limitation in effect under section 402(g)(1)(A) for taxable years beginning in such calendar year.

(31) Direct transfer of eligible rollover distributions.

(A) In general. A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if the distributee of any eligible rollover distribution-

(i) elects to have such distribution paid directly to an eligible retirement plan, and

(ii) specifies the eligible retirement plan to which such distribution is to be paid (in such form and at such time as the plan administrator may prescribe),

such distribution shall be made in the form of a direct trustee-to-trustee transfer to the eligible retirement plan so specified.

(B) Certain mandatory distributions.

(i) In general. In case of a trust which is part of an eligible plan, such trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that if-

(I) a distribution described in clause (ii) in excess of $1,000 is made, and

(II) the distributee does not make an election under subparagraph (A) and does not elect to receive the distribution directly,

the plan administrator shall make such transfer to an individual retirement plan of a designated trustee or issuer and shall notify the distributee in writing (either separately or as part of the notice under section 402(f)) that the distribution may be transferred to another individual retirement plan.

(ii) Eligible plan. For purposes of clause (i) , the term "eligible plan" means a plan which provides that any nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11)) does not exceed $7,000 shall be immediately distributed to the participant.

(C) Limitation. Subparagraphs (A) and (B) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c) , 403(a)(4) , 403(b)(8) , and 457(e)(16)). The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred-

(i) is a qualified trust which is part of a plan which is a defined contribution plan and agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B) .

(D) Eligible rollover distribution. For purposes of this paragraph , the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A) .

(E) Eligible retirement plan. For purposes of this paragraph , the term "eligible retirement plan" has the meaning given such term by section 402(c)(8)(B) , except that a qualified trust shall be considered an eligible retirement plan only if it is a defined contribution plan, the terms of which permit the acceptance of rollover distributions.

(32) Treatment of failure to make certain payments if plan has liquidity shortfall.

(A) In general. A trust forming part of a pension plan to which section 430(j)(4) or 433(f)(5) applies shall not be treated as failing to constitute a qualified trust under this section merely because such plan ceases to make any payment described in subparagraph (B) during any period that such plan has a liquidity shortfall (as defined in section 430(j)(4) or 433(f)(5)).

(B) Payments described. A payment is described in this subparagraph if such payment is-

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 411(a)(9)), to a participant or beneficiary whose annuity starting date (as defined in section 417(f)(2)) occurs during the period referred to in subparagraph (A) ,

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

(iii) any other payment specified by the Secretary by regulations.

(C) Period of shortfall. For purposes of this paragraph , a plan has a liquidity shortfall during the period that there is an underpayment of an installment under 430(j)(3) or 433(f) by reason of section 430(j)(4)(A) or 433(f)(5) , respectively.

(33) Prohibition on benefit increases while sponsor is in bankruptcy.

(A) In general. A trust which is part of a plan to which this paragraph applies shall not constitute a qualified trust under this section if an amendment to such plan is adopted while the employer is a debtor in a case under title 11, United States Code, or similar Federal or State law, if such amendment increases liabilities of the plan by reason of-

(i) any increase in benefits,

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

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

with respect to employees of the debtor, and such amendment is effective prior to the effective date of such employer's plan of reorganization.

(B) Exceptions. This paragraph shall not apply to any plan amendment if-

(i) the plan, were such amendment to take effect, would have a funding target attainment percentage (as defined in section 430(d)(2)) of 100 percent or more,

(ii) the Secretary determines that such amendment is reasonable and provides for only de minimis increases in the liabilities of the plan with respect to employees of the debtor,

(iii) such amendment only repeals an amendment described in section 412(d)(2) , or

(iv) such amendment is required as a condition of qualification under this part.

(C) Plans to which this paragraph applies. This paragraph shall apply only to plans (other than multiemployer plans or CSEC plans) covered under section 4021 of the Employee Retirement Income Security Act of 1974 .

(D) Employer. For purposes of this paragraph , the term "employer" means the employer referred to in section 412(b)(1), without regard to section 412(b)(2) .

(34) Benefits of missing participants on plan termination.

In the case of a plan covered by title IV of the Employee Retirement Income Security Act of 1974, a trust forming part of such plan shall not be treated as failing to constitute a qualified trust under this section merely because the pension plan of which such trust is a part, upon its termination, transfers benefits of missing participants to the Pension Benefit Guaranty Corporation in accordance with section 4050 of such Act.

(35) Diversification requirements for certain defined contribution plans.

(A) In general. A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B) , (C) , and (D) .

(B) Employee contributions and elective deferrals invested in employer securities. In the case of the portion of an applicable individual's account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D) .

(C) Employer contributions invested in employer securities. In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who-

(i) is a participant who has completed at least 3 years of service, or

(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D) .

(D) Investment options.

(i) In general. The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph , each of which is diversified and has materially different risk and return characteristics.

(ii) Treatment of certain restrictions and conditions.

(I) Time for making investment choices. A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

(II) Certain restrictions and conditions not allowed. Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the investment of other assets of the plan. This subclause shall not apply to any restrictions or conditions imposed by reason of the application of securities laws.

(E) Applicable defined contribution plan. For purposes of this paragraph -

(i) In general. The term "applicable defined contribution plan" means any defined contribution plan which holds any publicly traded employer securities.

(ii) Exception for certain ESOPs. Such term does not include an employee stock ownership plan if-

(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsection (k) or (m) , and

(II) such plan is a separate plan for purposes of section 414(l) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

(iii) Exception for one participant plans. Such term does not include a one-participant retirement plan.

(iv) One-participant retirement plan. For purposes of clause (iii) , the term "one-participant retirement plan" means a retirement plan that on the first day of the plan year-

(I) covered only one individual (or the individual and the individual's spouse) and the individual (or the individual and the individual's spouse) owned 100 percent of the plan sponsor (whether or not incorporated), or

(II) covered only one or more partners (or partners and their spouses) in the plan sponsor.

(F) Certain plans treated as holding publicly traded employer securities.

(i) In general. Except as provided in regulations or in clause (ii) , a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

(ii) Exception for certain controlled groups with publicly traded securities. Clause (i) shall not apply to a plan if-

(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and

(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

(iii) Definitions. For purposes of this subparagraph , the term-

(I) "controlled group of corporations" has the meaning given such term by section 1563(a) , except that "50 percent" shall be substituted for "80 percent" each place it appears,

(II) "employer corporation" means a corporation which is an employer maintaining the plan, and

(III) "parent corporation" has the meaning given such term by section 424(e) .

(G) Other definitions. For purposes of this paragraph -

(i) Applicable individual. The term "applicable individual" means-

(I) any participant in the plan, and

(II) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

(ii) Elective deferral. The term "elective deferral" means an employer contribution described in section 402(g)(3)(A) .

(iii) Employer security. The term "employer security" has the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974 .

(iv) Employee stock ownership plan. The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7) .

(v) Publicly traded employer securities. The term "publicly traded employer securities" means employer securities which are readily tradable on an established securities market.

(vi) Year of service. The term "year of service" has the meaning given such term by section 411(a)(5) .

(H) Transition rule for securities attributable to employer contributions.

(i) Rules phased in over 3 years.

(I) In general. In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, subparagraph (C) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

(II) Exception for certain participants aged 55 or over. Subclause (I) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

(ii) Applicable percentage. For purposes of clause (i) , the applicable percentage shall be determined as follows:

Plan year to which subparagraph (C) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.

Note: Section 401(a)(35)(I), below, is effective for plan years beginning after Dec. 31, 2027.

(I) ESOP rules relating to publicly traded securities. In the case of an applicable defined contribution plan which is an employee stock ownership plan, an employer security shall be treated as described in subparagraph (G)(v) if-

(i) the security is the subject of priced quotations by at least 4 dealers, published and made continuously available on an interdealer quotation system (as such term is used in section 13 of the Securities Exchange Act of 1934) which has made the request described in section 6(j) of such Act to be treated as an alternative trading system,

(ii) the security is not a penny stock (as defined by section 3(a)(51) of such Act),

(iii) the security is issued by a corporation which is not a shell company (as such term is used in section 4(d)(6) of the Securities Act of 1933), a blank check company (as defined in section 7(b)(3) of such Act), or subject to bankruptcy proceedings,

(iv) the security has a public float (as such term is used in section 240.12b-2 of title 17, Code of Federal Regulations) which has a fair market value of at least $1,000,000 and constitutes at least 10 percent of the total shares issued and outstanding.

(v) in the case of a security issued by a domestic corporation, the issuer publishes, not less frequently than annually, financial statements audited by an independent auditor registered with the Public Company Accounting Oversight Board established under the Sarbanes-Oxley Act of 2002, and

(vi) in the case of a security issued by a foreign corporation, the security is represented by a depositary share (as defined under section 240.12b-2 of title 17, Code of Federal Regulations), or is issued by a foreign corporation incorporated in Canada and readily tradeable on an established securities market in Canada, and the issuer-

(I) is subject to, and in compliance with, the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)),

(II) is subject to, and in compliance with, the reporting requirements of section 230.257 of title 17, Code of Federal Regulations, or

(III) is exempt from such requirements under section 240.12g3-2(b) of title 17, Code of Federal Regulations.

(36) Distributions during working retirement.

(A) In general. A trust forming part of a pension plan shall not be treated as failing to constitute a qualified trust under this section solely because the plan provides that a distribution may be made from such trust to an employee who has attained age 59½ and who is not separated from employment at the time of such distribution.

(B) Certain employees in the building and construction industry. Subparagraph (A) shall be applied by substituting "age 55" for "age 59½" in the case of a multiemployer plan described in section 4203(b)(1)(B)(i) of the Employee Retirement Income Security Act of 1974, with respect to individuals who were participants in such plan on or before April 30, 2013, if-

(i) the trust to which subparagraph (A) applies was in existence before January 1, 1970, and

(ii) before December 31, 2011, at a time when the plan provided that distributions may be made to an employee who has attained age 55 and who is not separated from employment at the time of such distribution, the plan received at least 1 written determination from the Internal Revenue Service that the trust to which subparagraph (A) applies constituted a qualified trust under this section.

(37) Death benefits under USERRA-qualified active military service.
A trust shall not constitute a qualified trust unless the plan provides that, in the case of a participant who dies while performing qualified military service (as defined in section 414(u)), the survivors of the participant are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the plan had the participant resumed and then terminated employment on account of death.

(38) Portability of lifetime income.

(A) In general. Except as may be otherwise provided by regulations, a trust forming part of a defined contribution plan shall not be treated as failing to constitute a qualified trust under this section solely by reason of allowing-

(i) qualified distributions of a lifetime income investment, or

(ii) distributions of a lifetime income investment in the form of a qualified plan distribution annuity contract, on or after the date that is 90 days prior to the date on which such lifetime income investment is no longer authorized to be held as an investment option under the plan.

(B) Definitions. For purposes of this subsection-

(i) the term "qualified distribution" means a direct trustee-to-trustee transfer described in paragraph (31)(A) to an eligible retirement plan (as defined in section 402(c)(8)(B)),

(ii) the term "lifetime income investment" means an investment option which is designed to provide an employee with election rights-

(I) which are not uniformly available with respect to other investment options under the plan, and

(II) which are to a lifetime income feature available through a contract or other arrangement offered under the plan (or under another eligible retirement plan (as so defined), if paid by means of a direct trustee-to-trustee transfer described in paragraph (31)(A) to such other eligible retirement plan),

(iii) the term "lifetime income feature" means-

(I) a feature which guarantees a minimum level of income annually (or more frequently) for at least the remainder of the life of the employee or the joint lives of the employee and the employee's designated beneficiary, or

(II) an annuity payable on behalf of the employee under which payments are made in substantially equal periodic payments (not less frequently than annually) over the life of the employee or the joint lives of the employee and the employee's designated beneficiary, and

(iv) the term "qualified plan distribution annuity contract" means an annuity contract purchased for a participant and distributed to the participant by a plan or contract described in subparagraph (B) of section 402(c)(8) (without regard to clauses (i) and (ii) thereof).

Note: Section 401(a)(39), below, is effective for distributions made after December 29, 2025.

(39) Qualified long-term care distributions.

(A) In general. A trust forming part of a defined contribution plan shall not be treated as failing to constitute a qualified trust under this section solely by reason of allowing qualified long-term care distributions.

(B) Qualified long-term care distributions. For purposes of this paragraph-

(i) In general. The term "qualified long-term care distribution" means so much of the distributions made during the taxable year as does not exceed, in the aggregate, the least of the following:

(I) The amount paid by or assessed to the employee during the taxable year for or with respect to certified long-term care insurance for the employee or the employee's spouse (or other family member of the employee as provided by the Secretary by regulation).

(II) An amount equal to 10 percent of the present value of the nonforfeitable accrued benefit of the employee under the plan.

(III) $2,500.

(ii) Adjustment for inflation. In the case of taxable years beginning after December 31, 2024, the $2,500 amount in clause (i)(II) shall be increased by an amount equal to-

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2023" for "calendar year 2016" in subparagraph (A)(ii) thereof.

If any increase under the preceding sentence is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(C) Certified long-term care insurance. The term "certified long-term care insurance" means-

(i) a qualified long-term care insurance contract (as defined in section 7702B(b)) covering qualified long-term care services (as defined in section 7702B(c)),

(ii) coverage of the risk that an insured individual would become a chronically ill individual (within the meaning of section 101(g)(4)(B)) under a rider or other provision of a life insurance contract which satisfies the requirements of section 101(g)(3) (determined without regard to subparagraph (D) thereof), or

(iii) coverage of qualified long-term care services (as so defined) under a rider or other provision of an insurance or annuity contract which is treated as a separate contract under section 7702B(e) and satisfies the requirements of section 7702B(g), if such coverage provides meaningful financial assistance in the event the insured needs home-based or nursing home care. For purposes of the preceding sentence, coverage shall not be deemed to provide meaningful financial assistance unless benefits are adjusted for inflation and consumer protections are provided, including protection in the event the coverage is terminated.

(D) Distributions must otherwise be includible. Rules similar to the rules of section 402(l)(3) shall apply for purposes of this paragraph.

(E) Long-term care premium statement.

(i) In general. No distribution shall be treated as a qualified long-term care distribution unless a long-term care premium statement with respect to the employee has been filed with the plan.

(ii) Long-term care premium statement. For purposes of this paragraph, a long-term care premium statement is a statement provided by the issuer of long-term care coverage, upon request by the owner of such coverage, which includes-

(I) the name and taxpayer identification number of such issuer,

(II) a statement that the coverage is certified long-term care insurance,

(III) identification of the employee as the owner of such coverage,

(IV) identification of the individual covered and such individual's relationship to the employee,

(V) the premiums owed for the coverage for the calendar year, and

(VI) such other information as the Secretary may require.

(iii) Filing with secretary. A long-term care premium statement will be accepted only if the issuer has completed a disclosure to the Secretary for the specific coverage product to which the statement relates. Such disclosure shall identify the issuer, type of coverage, and such other information as the Secretary may require which is included in the filing of the product with the applicable State authority.

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

. . .