Internal Revenue Code Section 404(a)(8)

Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule.

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section , subject, however, to the following limitations as to the amounts deductible in any year:

(1) Pension trusts.

(A) In general. In the taxable year when paid, if the contributions are paid into a pension trust (other than a trust to which paragraph (3) applies), and if such taxable year ends within or with a taxable year of the trust for which the trust is exempt under section 501(a) , in the case of a defined benefit plan other than a multiemployer plan, in an amount determined under subsection (o) , and in the case of any other plan in an amount determined as follows:

(i) the amount necessary to satisfy the minimum funding standard provided by section 412(a) for plan years ending within or with such taxable year (or for any prior plan year), if such amount is greater than the amount determined under clause (ii) or (iii) (whichever is applicable with respect to the plan),

(ii) the amount necessary to provide with respect to all of the employees under the trust the remaining unfunded cost of their past and current service credits distributed as a level amount, or a level percentage of compensation, over the remaining future service of each such employee, as determined under regulations prescribed by the Secretary, but if such remaining unfunded cost with respect to any 3 individuals is more than 50 percent of such remaining unfunded cost, the amount of such unfunded cost attributable to such individuals shall be distributed over a period of at least 5 taxable years.

(iii) an amount equal to the normal cost of the plan, as determined under regulations prescribed by the Secretary, plus, if past service or other supplementary pension or annuity credits are provided by the plan, an amount necessary to amortize the unfunded costs attributable to such credits in equal annual payments (until fully amortized) over 10 years, as determined under regulations prescribed by the Secretary.

In determining the amount deductible in such year under the foregoing limitations the funding method and the actuarial assumptions used shall be those used for such year under section 431 , and the maximum amount deductible for such year shall be an amount equal to the full funding limitation for such year determined under section 431 .

(B) Special rule in case of certain amendments. In the case of a multiemployer plan which the Secretary of Labor finds to be collectively bargained which makes an election under this subparagraph (in such manner and at such time as may be provided under regulations prescribed by the Secretary), if the full funding limitation determined under section 431(c)(6) for such year is zero, if as a result of any plan amendment applying to such plan year, the amount determined under section 431(c)(6)(A)(ii) exceeds the amount determined under section 431(c)(6)(A)(i) , and if the funding method and the actuarial assumptions used are those used for such year under section 431 , the maximum amount deductible in such year under the limitations of this paragraph shall be an amount equal to the lesser of-

(i) the full funding limitation for such year determined by applying section 431(c)(6) but increasing the amount referred to in subparagraph (A) thereof by the decrease in the present value of all unamortized liabilities resulting from such amendment, or

(ii) the normal cost under the plan reduced by the amount necessary to amortize in equal annual installments over 10 years (until fully amortized) the decrease described in clause (i) .

In the case of any election under this subparagraph , the amount deductible under the limitations of this paragraph with respect to any of the plan years following the plan year for which such election was made shall be determined as provided under such regulations as may be prescribed by the Secretary to carry out the purposes of this subparagraph .

(C) Certain collectively-bargained plans. In the case of a plan which the Secretary of Labor finds to be collectively bargained, established or maintained by an employer doing business in not less than 40 States and engaged in the trade or business of furnishing or selling services described in section 168(i)(10)(C) , with respect to which the rates have been established or approved by a State or political subdivision thereof, by any agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof, and in the case of any employer which is a member of a controlled group with such employer, subparagraph (B) shall be applied by substituting for the words "plan amendment" the words "plan amendment or increase in benefits payable under title II of the Social Security Act". For purposes of this subparagraph , the term "controlled group" has the meaning provided by section 1563(a) , determined without regard to section 1563(a)(4) and (e)(3)(C) .

(D) Amount determined on basis of unfunded current liability. In the case of a defined benefit plan which is a multiemployer plan, except as provided in

regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the excess (if any) of-

(i) 140 percent of the current liability of the plan determined under section 431(c)(6)(D) , over

(ii) the value of the plan's assets determined under section 431(c)(2) .

(E) Carryover. Any amount paid in a taxable year in excess of the amount deductible in such year under the foregoing limitations shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the foregoing limitations.

(F) Repealed.

(2) Employees' annuities.

In the taxable year when paid, in an amount determined in accordance with paragraph (1) , if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h) , and such purchase is part of a plan which meets the requirements of section 401(a)(3) , (4) , (5) , (6) , (7) , (8) , (9) , (11) , (12) , (13) , (14) , (15) , (16) , (17) , (19) , (20) , (22) , (26) , (27) , (31) , and (37) and, if applicable, the requirements of section 401(a)(10) and of section 401(d) , and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year towards the purchase of such retirement annuities, or such retirement annuities and medical benefits.

(3) Stock bonus and profit-sharing trusts.

(A) Limits on deductible contributions.

(i) In general. In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a) , in an amount not in excess of the greater of-

(I) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

(II) the amount such employer is required to contribute to such trust under section 401(k)(11) for such year.

(ii) Carryover of excess contributions. Any amount paid into the trust in any taxable year in excess of the limitation of clause (i) (or the corresponding provision of prior law) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this clause in any 1 such succeeding taxable year together with the amount allowable under clause (i) shall not exceed the amount described in subclause (I) or (II) of clause (i) , whichever is greater, with respect to such taxable year.

(iii) Certain retirement plans excluded. For purposes of this subparagraph , the term "stock bonus or profit-sharing trust" shall not include any trust designed to provide benefits upon retirement and covering a period of years, if under the plan the amounts to be contributed by the employer can be determined actuarially as provided in paragraph (1) .

(iv) 2 or more trusts treated as 1 trust. If the contributions are made to 2 or more stock bonus or profit-sharing trusts, such trusts shall be considered a single trust for purposes of applying the limitations in this subparagraph .

(v) Defined contribution plans subject to the funding standards. Except as provided by the Secretary, a defined contribution plan which is subject to the funding standards of section 412 shall be treated in the same manner as a stock bonus or profit-sharing plan for purposes of this subparagraph .

(B) Profit-sharing plan of affiliated group. In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504 , if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph . Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made.

(4) Trusts created or organized outside the United States.
If a stock bonus, pension, or profit-sharing trust would qualify for exemption under section 501(a) except for the fact that it is a trust created or organized outside the United States, contributions to such a trust by an employer which is a resident, or corporation, or other entity of the United States, shall be deductible under the preceding paragraphs.

(5) Other plans.
If the plan is not one included in paragraph (1) , (2) , or (3) , in the taxable year in which an amount attributable to the contribution is includible in the gross income of employees participating in the plan, but, in the case of a plan in which more than one employee

participates only if separate accounts are maintained for each employee. For purposes of this section , any vacation pay which is treated as deferred compensation shall be deductible for the taxable year of the employer in which paid to the employee.

(6) Time when contributions deemed made.
For purposes of paragraphs (1) , (2) , and (3) , a taxpayer shall be deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(7) Limitation on deductions where combination of defined contribution plan and defined benefit plan.

(A) In general. If amounts are deductible under the foregoing paragraphs of this subsection (other than paragraph (5)) in connection with 1 or more defined contribution plans and 1 or more defined benefit plans or in connection with trusts or plans described in 2 or more of such paragraphs, the total amount deductible in a taxable year under such plans shall not exceed the greater of-

(i) 25 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, or

(ii) the amount of contributions made to or under the defined benefit plans to the extent such contributions do not exceed the amount of employer contributions necessary to satisfy the minimum funding standard provided by section 412 with respect to any such defined benefit plans for the plan year which ends with or within such taxable year (or for any prior plan year).

A defined contribution plan which is a pension plan shall not be treated as failing to provide definitely determinable benefits merely by limiting employer contributions to amounts deductible under this section . In the case of a defined benefit plan which is a single employer plan, the amount necessary to satisfy the minimum funding standard provided by section 412 shall not be less than the excess (if any) of the plan's funding target (as defined in section 430(d)(1)) over the the value of the plan's assets (as determined under section 430(g)(3)).

(B) Carryover of contribution in excess of the deductible limit. Any amount paid under the plans in any taxable year in excess of the limitation of subparagraph (A) shall be deductible in the succeeding taxable years in order of time, but the amount so deductible under this subparagraph in any 1 such succeeding taxable year together with the amount allowable under subparagraph (A) shall not exceed 25 percent of the compensation otherwise paid or accrued during such taxable year to the beneficiaries under the plans.

(C) Paragraph not to apply in certain cases.

(i) Beneficiary test. This paragraph shall not have the effect of reducing the amount otherwise deductible under paragraphs (1) , (2) , and (3) , if no employee is a beneficiary under more than 1 trust or under a trust and an annuity plan.

(ii) Elective deferrals. If, in connection with 1 or more defined contribution plans and 1 or more defined benefit plans, no amounts (other than elective deferrals (as defined in section 402(g)(3))) are contributed to any of the defined contribution plans for the taxable year, then subparagraph (A) shall not apply with respect to any of such defined contribution plans and defined benefit plans.

(iii) Limitation. In the case of employer contributions to 1 or more defined contribution plans-

(I) if such contributions do not exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans, this paragraph shall not apply to such contributions or to employer contributions to the defined benefit plans to which this paragraph would otherwise apply by reason of contributions to the defined contribution plans, and

(II) if such contributions exceed 6 percent of such compensation, this paragraph shall be applied by only taking into account such contributions to the extent of such excess.

For purposes of this clause , amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions plans to the extent attributable to employer contributions to such plans in such preceding taxable years.

(iv) Guaranteed plans. In applying this paragraph , any single-employer plan covered under section 4021 of the Employee Retirement Income Security Act of 1974 shall not be taken into account.

(v) Multiemployer plans. In applying this paragraph , any multiemployer plan shall not be taken into account.

(D) Insurance contract plans. For purposes of this paragraph , a plan described in section 412(e)(3) shall be treated as a defined benefit plan.

(8) Self-employed individuals.

In the case of a plan included in paragraph (1) , (2) , or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1) , for purposes of this section -

(A) the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1) , and the employer of such individual is the person treated as his employer under section 401(c)(4) ;

(B) the term "earned income" has the meaning assigned to it by section 401(c)(2) ;

(C) the contributions to such plan on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall be considered to satisfy the conditions of section 162 or 212 to the extent that such contributions do not

exceed the earned income of such individual (determined without regard to the deductions allowed by this section) derived from the trade or business with respect to which such plan is established, and to the extent that such contributions are not allocable (determined in accordance with regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance; and

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1) , be considered to be a reference to the earned income of such individual derived from the trade or business with respect to which the plan is established.

(9) Certain contributions to employee stock ownership plans.

(A) Principal payments. Notwithstanding the provisions of paragraphs (3) and (7) , if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4975(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6) , applied by the plan to the repayment of the principal of a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6) . The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan. Any amount paid into such trust in any taxable year in excess of the amount deductible under this paragraph shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the preceding sentence.

(B) Interest payment. Notwithstanding the provisions of paragraphs (3) and (7) , if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied by the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6) .

(C) S corporations. This paragraph shall not apply to an S corporation.

(D) Qualified gratuitous transfers. A qualified gratuitous transfer (as defined in section 664(g)(1)) shall have no effect on the amount or amounts otherwise deductible under paragraph (3) or (7) or under this paragraph .

(10) Contributions by certain ministers to retirement income accounts.

In the case of contributions made by a minister described in section 414(e)(5) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions-

(A) shall be treated as made to a trust which is exempt from tax under section 501(a) and which is part of a plan which is described in section 401(a) , and

(B) shall be deductible under this subsection to the extent such contributions do not exceed the limit on elective deferrals under section 402(g) or the limit on annual additions under section 415 .

For purposes of this paragraph , all plans in which the minister is a participant shall be treated as one plan.

(11) Determinations relating to deferred compensation.
For purposes of determining under this section -

(A) whether compensation of an employee is deferred compensation; and

(B) when deferred compensation is paid,

no amount shall be treated as received by the employee, or paid, until it is actually received by the employee.

(12) Definition of compensation.
For purposes of paragraphs (3) , (7) , (8) , and (9) and subsection (h)(1)(C) , the term "compensation" shall include amounts treated as "participant's compensation" under subparagraph (C) or (D) of section 415(c)(3) .

(b) Method of contributions, etc., having the effect of a plan; certain deferred benefits.

(1) Method of contributions, etc., having the effect of a plan.
If-

(A) there is no plan, but

(B) there is a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation (including a plan described in paragraph (2)),

subsection (a) shall apply as if there were such a plan.

(2) Plans providing certain deferred benefits.

(A) In general. For purposes of this section , any plan providing for deferred benefits (other than compensation) for employees, their spouses, or their dependents shall be treated as a plan deferring the receipt of compensation. In the case of such a plan, for purposes of this section , the determination of when an amount is includible in gross income shall be made without regard to any provisions of this chapter excluding such benefits from gross income.

(B) Exception. Subparagraph (A) shall not apply to any benefit provided through a welfare benefit fund (as defined in section 419(e)).

(c) Certain negotiated plans.
If contributions are paid by an employer-

(1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their

families and dependents at least medical or hospital care, or pensions on retirement or death of employees; and

(2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by section 162 (relating to trade or business expenses). For purposes of this chapter and subtitle B, in the case of any individual who before July 1, 1974, was a participant in a plan described in the preceding sentence-

(A) such individual, if he is or was an employee within the meaning of section 401(c)(1) , shall be treated (with respect to service covered by the plan) as being an employee other than an employee within the meaning of section 401(c)(1) and as being an employee of a participating employer under the plan,

(B) earnings derived from service covered by the plan shall be treated as not being earned income within the meaning of section 401(c)(2) , and

(C) such individual shall be treated as an employee of a participating employer under the plan with respect to service before July 1, 1975, covered by the plan.

Section 277 (relating to deductions incurred by certain membership organizations in transactions with members) does not apply to any trust described in this subsection . The first and third sentences of this subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such trust is qualified for exemption from tax under section 501(a) .

(d) Deductibility of payments of deferred compensation, etc., to independent contractors.
If a plan would be described in so much of subsection (a) as precedes paragraph (1) thereof (as modified by subsection (b)) but for the fact that there is no employer-employee relationship, the contributions or compensation-

(1) shall not be deductible by the payor thereof under this chapter, but

(2) shall (if they would be deductible under this chapter but for paragraph (1)) be deductible under this subsection for the taxable year in which an amount attributable to the contribution or compensation is includible in the gross income of the persons participating in the plan.

(e) Contributions allocable to life insurance protection for self-employed individuals.
In the case of a self-employed individual described in section 401(c)(1) , contributions which are allocable (determined under regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance shall not be taken into account under paragraph (1) , (2) , or (3) of subsection (a) .

(f) Repealed.

(g) Certain employer liability payments considered as contributions.

(1) In general.

For purposes of this section , any amount paid by an employer under section 4041(b) , 4062 , 4063, or 4064 , or part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 shall be treated as a contribution to which this section applies by such employer to or under a stock bonus, pension, profit-sharing, or annuity plan.

(2) Controlled group deductions.
In the case of a payment described in paragraph (1) made by an entity which is liable because it is a member of a commonly controlled group of corporations, trades, or businesses, within the meaning of subsection (b) or (c) of section 414 , the fact that the entity did not directly employ participants of the plan with respect to which the liability payment was made shall not affect the deductibility of a payment which otherwise satisfies the conditions of section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income).

(3) Timing of deduction of contributions.

(A) In general. Except as otherwise provided in this paragraph , any payment described in paragraph (1) shall (subject to the last sentence of subsection (a)(1)(A)) be deductible under this section when paid.

(B) Contributions under standard terminations. Subparagraph (A) shall not apply (and subsection (a)(1)(A) shall apply) to any payments described in paragraph (1) which are paid to terminate a plan under section 4041(b) of the Employee Retirement Income Security Act of 1974 to the extent such payments result in the assets of the plan being in excess of the total amount of benefits under such plan which are guaranteed by the Pension Benefit Guaranty Corporation under section 4022 of such Act.

(C) Contributions to certain trusts. Subparagraph (A) shall not apply to any payment described in paragraph (1) which is made under section 4062(c) of such Act and such payment shall be deductible at such time as may be prescribed in regulations which are based on principles similar to the principles of subsection (a)(1)(A) .

(4) References to Employee Retirement Income Security Act of 1974.
For purposes of this subsection , any reference to a section of the Employee Retirement Income Security Act of 1974 shall be treated as a reference to such section as in effect on the date of the enactment of the Retirement Protection Act of 1994.

(h) Special rules for simplified employee pensions.

(1) In general.
Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section . Employer contributions to a simplified employee pension are subject to the following limitations:

(A) Contributions made for a year are deductible-

(i) in the case of a simplified employee pension maintained on a calendar year basis, for the taxable year with or within which the calendar year ends, or

(ii) in the case of a simplified employee pension which is maintained on the basis of the taxable year of the employer, for such taxable year.

(B) Contributions shall be treated for purposes of this subsection as if they were made for a taxable year if such contributions are made on account of such taxable year and are made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed 25 percent of the compensation paid to the employees during the calendar year ending with or within the taxable year (or during the taxable year in the case of a taxable year described in subparagraph (A)(ii)). The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the 25 percent limit of the preceding sentence.

(2) Effect on certain trusts.
For any taxable year for which the employer has a deduction under subparagraph (1) , the otherwise applicable limitations in subsection (a)(3)(A) shall be reduced by the amount of the allowable deductions under paragraph (1) with respect to participants in the trust subject to subsection (a)(3)(A) .

(3) Coordination with subsection (a)(7) .
For purposes of subsection (a)(7) , a simplified employee pension shall be treated as if it were a separate stock bonus or profit-sharing trust.

(i) Repealed.

(j) Special rules relating to application with section 415 .
(1) No deduction in excess of section 415 limitation.
In computing the amount of any deduction allowable under paragraph (1) , (2) , (3) , (4) , (7) , or (9) of subsection (a) for any year-
(A) in the case of a defined benefit plan, there shall not be taken into account any benefits for any year in excess of any limitation on such benefits under section 415 for such year, or

(B) in the case of a defined contribution plan, the amount of any contributions otherwise taken into account shall be reduced by any annual additions in excess of the limitation under section 415 for such year.

(2) No advance funding of cost-of-living adjustments.
For purposes of clause (i) , (ii) or (iii) of subsection (a)(1)(A) , and in computing the full funding limitation, there shall not be taken into account any adjustments under section 415(d)(1) for any year before the year for which such adjustment first takes effect.

(k) Deduction for dividends paid on certain employer securities.
(1) General rule.
In the case of a C corporation, there shall be allowed as a deduction for a taxable year the amount of any applicable dividend paid in cash by such corporation with respect to

applicable employer securities. Such deduction shall be in addition to the deductions allowed under subsection (a) .

(2) Applicable dividend.
For purposes of this subsection -

(A) In general. The term "applicable dividend" means any dividend which, in accordance with the plan provisions-

(i) is paid in cash to the participants in the plan or their beneficiaries,

(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid,

(iii) is, at the election of such participants or their beneficiaries-

(I) payable as provided in clause (i) or (ii) , or

(II) paid to the plan and reinvested in qualifying employer securities, or

(iv) is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

(B) Limitation on certain dividends. A dividend described in subparagraph (A)(iv) which is paid with respect to any employer security which is allocated to a participant shall not be treated as an applicable dividend unless the plan provides that employer securities with a fair market value of not less than the amount of such dividend are allocated to such participant for the year which (but for subparagraph (A)) such dividend would have been allocated to such participant.

(3) Applicable employer securities.
For purposes of this subsection , the term "applicable employer securities" means, with respect to any dividend, employer securities which are held on the record date for such dividend by an employee stock ownership plan which is maintained by-

(A) the corporation paying such dividend, or

(B) any other corporation which is a member of a controlled group of corporations (within the meaning of section 4091(4)) which includes such corporation.

(4) Time for deduction.

(A) In general. The deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which the dividend is paid or distributed to a participant or his beneficiary.

(B) Reinvestment dividends. For purposes of subparagraph (A) , an applicable dividend reinvested pursuant to clause (iii)(II) of paragraph (2)(A) shall be treated as paid in the taxable year of the corporation in which such dividend is reinvested

in qualifying employer securities or in which the election under clause (iii) of paragraph (2)(A) is made, whichever is later.

(C) Repayment of loans. In the case of an applicable dividend described in clause (iv) of paragraph (2)(A) , the deduction under paragraph (1) shall be allowable in the taxable year of the corporation in which such dividend is used to repay the loan described in such clause.

(5) Other rules.

For purposes of this subsection -

(A) Disallowance of deduction. The Secretary may disallow the deduction under paragraph (1) for any dividend if the Secretary determines that such dividend constitutes, in substance, an avoidance or evasion of taxation.

(B) Plan qualification. A plan shall not be treated as violating the requirements of section 401 , 409 , or 4975(e)(7) , or as engaging in a prohibited transaction for purposes of section 4975(d)(3) , merely by reason of any payment or distribution described in paragraph (2)(A) .

(6) Definitions.

For purposes of this subsection -

(A) Employer securities. The term "employer securities" has the meaning given such term by section 409(1).

(B) Employee stock ownership plan. The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7) . Such term includes a tax credit employee stock ownership plan (as defined in section 409).

(7) Full vesting.

In accordance with section 411 , an applicable dividend described in clause (iii)(II) of paragraph (2)(A) shall be subject to the requirements of section 411(a)(1) .

(l) Limitation on amount of annual compensation taken into account.

For purposes of applying the limitations of this section , the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed $200,000. The Secretary shall adjust the $200,000 amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B) . For purposes of clause (i) , (ii) , or (iii) of subsection (a)(1)(A) , and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.

(m) Special rules for simple retirement accounts.

(1) In general.

Employer contributions to a simple retirement account shall be treated as if they are made to a plan subject to the requirements of this section .

(2) Timing.

(A) Deduction. Contributions described in paragraph (1) shall be deductible in the taxable year of the employer with or within which the calendar year for which the contributions were made ends.

(B) Contributions after end of year. For purposes of this subsection , contributions shall be treated as made for a taxable year if they are made on account of the taxable year and are made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof).

(n) Elective deferrals not taken into account for purposes of deduction limits.
Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3) , (7) , or (9) of subsection (a) or paragraph (1)(C) of subsection (h) and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.

(o) Deduction limit for single-employer plans.
For purposes of subsection (a)(1)(A) -

(1) In general.
In the case of a defined benefit plan to which subsection (a)(1)(A) applies (other than a multiemployer plan), the amount determined under this subsection for any taxable year shall be equal to the greater of-

(A) the sum of the amounts determined under paragraph (2) with respect to each plan year ending with or within the taxable year, or

(B) the sum of the minimum required contributions under section 430 for such plan years.

(2) Determination of amount.

(A) In general. The amount determined under this paragraph for any plan year shall be equal to the excess (if any) of-

(i) the sum of-

(I) the funding target for the plan year,

(II) the target normal cost for the plan year, and

(III) the cushion amount for the plan year, over

(ii) the value (determined under section 430(g)(3)) of the assets of the plan which are held by the plan as of the valuation date for the plan year.

(B) Special rule for certain employers. If section 430(i) does not apply to a plan for a plan year, the amount determined under subparagraph (A)(i) for the plan year shall in no event be less than the sum of-

(i) the funding target for the plan year (determined as if section 430(i) applied to the plan), plus

(ii) the target normal cost for the plan year (as so determined).

(3) Cushion amount.

For purposes of paragraph (2)(A)(i)(III) -

(A) In general. The cushion amount for any plan year is the sum of-

(i) 50 percent of the funding target for the plan year, and

(ii) the amount by which the funding target for the plan year would increase if the plan were to take into account-

(I) increases in compensation which are expected to occur in succeeding plan years, or

(II) if the plan does not base benefits for service to date on compensation, increases in benefits which are expected to occur in succeeding plan years (determined on the basis of the average annual increase in benefits over the 6 immediately preceding plan years).

(B) Limitations.

(i) In general. In making the computation under subparagraph (A)(ii) , the plan's actuary shall assume that the limitations under subsection 1 and section 415(b) shall apply.

(ii) Expected increases. In the case of a plan year during which a plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974 , the plan's actuary may, notwithstanding subsection 1 , take into account increases in the limitations which are expected to occur in succeeding plan years.

(4) Special rules for plans with 100 or fewer participants.

(A) In general. For purposes of determining the amount under paragraph (3) for any plan year, in the case of a plan which has 100 or fewer participants for the plan year, the liability of the plan attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years shall not be taken into account in determining the target liability.

(B) Rule for determining number of participants. For purposes of determining the number of plan participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(d)(3))) shall be treated as one plan, but only participants of such member or employer shall be taken into account.

(5) Special rule for terminating plans.

In the case of a plan which, subject to section 4041 of the Employee Retirement Income Security Act of 1974 , terminates during the plan year, the amount determined under paragraph (2) shall in no event be less than the amount required to make the plan sufficient for benefit liabilities (within the meaning of section 4041(d) of such Act).

(6) Actuarial assumptions.

Any computation under this subsection for any plan year shall use the same actuarial assumptions which are used for the plan year under section 430 (determined by not taking into account any adjustment under clause (iv) of subsection (h)(2)(C) thereof).

(7) Definitions.
Any term used in this subsection which is also used in section 430 shall have the same meaning given such term by section 430 .

(8) CSEC plans.
Solely for purposes of this subsection, a CSEC plan shall be treated as though section 430 applied to such plan and the minimum required contribution for any plan year shall be the amount described in section 412(a)(2)(D)