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H.R.3090

Job Creation and Worker Assistance Act of 2002 (Engrossed House Amendment)

SEC. 405. INTEREST RATE RANGE FOR ADDITIONAL FUNDING REQUIREMENTS.

(a) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986-

(1) SPECIAL RULE- Clause (i) of section 412(l)(7)(C) (relating to interest rate) is amended by adding at the end the following new subclause:

`(III) SPECIAL RULE FOR 2002 AND 2003- For a plan year beginning in 2002 or 2003, notwithstanding subclause (I), in the case that the rate of interest used under subsection (b)(5) exceeds the highest rate permitted under subclause (I), the rate of interest used to determine current liability under this subsection may exceed the rate of interest otherwise permitted under subclause (I); except that such rate of interest shall not exceed 120 percent of the weighted average referred to in subsection (b)(5)(B)(ii).'.

(2) QUARTERLY CONTRIBUTIONS- Subsection (m) of section 412 is amended by adding at the end the following new paragraph:

`(7) SPECIAL RULES FOR 2002 AND 2004- In any case in which the interest rate used to determine current liability is determined under subsection (l)(7)(C)(i)(III)--

`(A) 2002- For purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (l)(7)(C)(i)(II).

`(B) 2004- For purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2004, the current liability for the preceding plan year shall be redetermined using 105 percent as the specified percentage determined under subsection (l)(7)(C)(i)(II).'.

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974-

(1) SPECIAL RULE- Clause (i) of section 302(d)(7)(C) of such Act (29 U.S.C. 1082(d)(7)(C)) is amended by adding at the end the following new subclause:

`(III) SPECIAL RULE FOR 2002 AND 2003- For a plan year beginning in 2002 or 2003, notwithstanding subclause (I), in the case that the rate of interest used under subsection (b)(5) exceeds the highest rate permitted under subclause (I), the rate of interest used to determine current liability under this subsection may exceed the rate of interest otherwise permitted under subclause (I); except that such rate of interest shall not exceed 120 percent of the weighted average referred to in subsection (b)(5)(B)(ii).'.

(2) QUARTERLY CONTRIBUTIONS- Subsection (e) of section 302 of such Act (29 U.S.C. 1082) is amended by adding at the end the following new paragraph:

`(7) SPECIAL RULES FOR 2002 AND 2004- In any case in which the interest rate used to determine current liability is determined under subsection (d)(7)(C)(i)(III)--

`(A) 2002- For purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (d)(7)(C)(i)(II).

`(B) 2004- For purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2004, the current liability for the preceding plan year shall be redetermined using 105 percent as the specified percentage determined under subsection (d)(7)(C)(i)(II).'.

(c) PBGC- Clause (iii) of section 4006(a)(3)(E) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by adding at the end the following new subclause:

`(IV) In the case of plan years beginning after December 31, 2001, and before January 1, 2004, subclause (II) shall be applied by substituting `100 percent' for `85 percent'. Subclause (III) shall be applied for such years without regard to the preceding sentence. Any reference to this clause by any other sections or subsections shall be treated as a reference to this clause without regard to this subclause.'.

SEC. 406. ADJUSTED GROSS INCOME DETERMINED BY TAKING INTO ACCOUNT CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS.

(a) IN GENERAL- Section 62(a)(2) (relating to certain trade and business deductions of employees) is amended by adding at the end the following:

`(D) CERTAIN EXPENSES OF ELEMENTARY AND SECONDARY SCHOOL TEACHERS- In the case of taxable years beginning during 2002 or 2003, the deductions allowed by section 162 which consist of expenses, not in excess of $250, paid or incurred by an eligible educator in connection with books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom.'.

(b) ELIGIBLE EDUCATOR- Section 62 is amended by adding at the end the following:

`(d) DEFINITION; SPECIAL RULES-

`(1) ELIGIBLE EDUCATOR-

`(A) IN GENERAL- For purposes of subsection (a)(2)(D), the term `eligible educator' means, with respect to any taxable year, an individual who is a kindergarten through grade 12 teacher, instructor, counselor, principal, or aide in a school for at least 900 hours during a school year.

`(B) SCHOOL- The term `school' means any school which provides elementary education or secondary education (kindergarten through grade 12), as determined under State law.

`(2) COORDINATION WITH EXCLUSIONS- A deduction shall be allowed under subsection (a)(2)(D) for expenses only to the extent the amount of such expenses exceeds the amount excludable under section 135, 529(c)(1), or 530(d)(2) for the taxable year.'.

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

Subtitle B--Technical Corrections

SEC. 411. AMENDMENTS RELATED TO ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001.

(a) AMENDMENTS RELATED TO SECTION 101 OF THE ACT-

(1) IN GENERAL- Subsection (b) of section 6428 is amended to read as follows:

`(b) CREDIT TREATED AS NONREFUNDABLE PERSONAL CREDIT- For purposes of this title, the credit allowed under this section shall be treated as a credit allowable under subpart A of part IV of subchapter A of chapter 1.'.

(2) CONFORMING AMENDMENTS-

(A) Subsection (d) of section 6428 is amended to read as follows:

`(d) COORDINATION WITH ADVANCE REFUNDS OF CREDIT-

`(1) IN GENERAL- The amount of credit which would (but for this paragraph) be allowable under this section shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the taxpayer under subsection (e). Any failure to so reduce the credit shall be treated as arising out of a mathematical or clerical error and assessed according to section 6213(b)(1).

`(2) JOINT RETURNS- In the case of a refund or credit made or allowed under subsection (e) with respect to a joint return, half of such refund or credit shall be treated as having been made or allowed to each individual filing such return.'.

(B) Paragraph (2) of section 6428(e) is amended to read as follows:

`(2) ADVANCE REFUND AMOUNT- For purposes of paragraph (1), the advance refund amount is the amount that would have been allowed as a credit under this section for such

first taxable year if--

`(A) this section (other than subsections (b) and (d) and this subsection) had applied to such taxable year, and

`(B) the credit for such taxable year were not allowed to exceed the excess (if any) of--

`(i) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

`(ii) the sum of the credits allowable under part IV of subchapter A of chapter 1 (other than the credits allowable under subpart C thereof, relating to refundable credits).'.

(b) AMENDMENT RELATED TO SECTION 201 OF THE ACT- Subparagraph (B) of section 24 (d)(1) is amended by striking `amount of credit allowed by this section' and inserting `aggregate amount of credits allowed by this subpart'.

(c) AMENDMENTS RELATED TO SECTION 202 OF THE ACT-

(1) CORRECTIONS TO CREDIT FOR ADOPTION EXPENSES-

(A) Paragraph (1) of section 23(a) is amended to read as follows:

`(1) IN GENERAL- In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer.'.

(B) Subsection (a) of section 23 is amended by adding at the end the following new paragraph:

`(3) $10,000 CREDIT FOR ADOPTION OF CHILD WITH SPECIAL NEEDS REGARDLESS OF EXPENSES- In the case of an adoption of a child with special needs which becomes final during a taxable year, the taxpayer shall be treated as having paid during such year qualified adoption expenses with respect to such adoption in an amount equal to the excess (if any) of $10,000 over the aggregate qualified adoption expenses actually paid or incurred by the taxpayer with respect to such adoption during such taxable year and all prior taxable years.'.

(C) Paragraph (2) of section 23(a) is amended by striking the last sentence.

(D) Paragraph (1) of section 23(b) is amended by striking `subsection (a)(1)(A)' and inserting `subsection (a)'.

(E) Subsection (i) of section 23 is amended by striking `the dollar limitation in subsection (b)(1)' and inserting `the dollar amounts in subsections (a)(3) and (b)(1)'.

(F) Expenses paid or incurred during any taxable year beginning before January 1, 2002, may be taken into account in determining the credit under section 23 of the Internal Revenue Code of 1986 only to the extent the aggregate of such expenses does not exceed the applicable limitation under section 23(b)(1) of such Code as in effect

on the day before the date of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001.

(2) CORRECTIONS TO EXCLUSION FOR EMPLOYER-PROVIDED ADOPTION ASSISTANCE-

(A) Subsection (a) of section 137 is amended to read as follows:

`(a) EXCLUSION-

`(1) IN GENERAL- Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

`(2) $10,000 EXCLUSION FOR ADOPTION OF CHILD WITH SPECIAL NEEDS REGARDLESS OF EXPENSES- In the case of an adoption of a child with special needs which becomes final during a taxable year, the qualified adoption expenses with respect to such adoption for such year shall be increased by an amount equal to the excess (if any) of $10,000 over the actual aggregate qualified adoption expenses with respect to such adoption during such taxable year and all prior taxable years.'.

(B) Paragraph (2) of section 137(b) is amended by striking `subsection (a)(1)' and inserting `subsection (a)'.

(3) EFFECTIVE DATE- The amendments made by this subsection shall apply to taxable years beginning after December 31, 2002; except that the amendments made by paragraphs (1)(C), (1)(D), and (2)(B) shall apply to taxable years beginning after December 31, 2001.

(d) AMENDMENTS RELATED TO SECTION 205 OF THE ACT-

(1) Section 45F(d)(4)(B) is amended by striking `subpart A, B, or D of this part' and inserting `this chapter or for purposes of section 55'.

(2) Section 38(b)(15) is amended by striking `45F' and inserting `45F(a)'.

(e) AMENDMENTS RELATED TO SECTION 301 OF THE ACT-

(1) Section 63(c)(2) is amended--

(A) in subparagraph (A), by striking `subparagraph (C)' and inserting `subparagraph (D)',

(B) by striking `or' at the end of subparagraph (B),

(C) by redesignating subparagraph (C) as subparagraph (D),

(D) by inserting after subparagraph (B) the following new subparagraph:

`(C) one-half of the amount in effect under subparagraph (A) in the case of a married individual filing a separate return, or', and

(E) by inserting the following flush sentence at the end:

`If any amount determined under subparagraph (A) is not a multiple of $50, such amount shall be rounded to the next lowest multiple of $50.'.

(2)(A) Section 63(c)(4) is amended by striking `paragraph (2) or (5)' and inserting `paragraph (2)(B), (2)(D), or (5)'.

(B) Section 63(c)(4)(B)(i) is amended by striking `paragraph (2)' and inserting `paragraph (2)(B), (2)(D),'.

(C) Section 63(c)(4) is amended by striking the flush sentence at the end (as added by section 301(c)(2) of Public Law 107-17).

(f) AMENDMENT RELATED TO SECTION 401 OF THE ACT- Section 530(d)(4)(B)(iv) is amended by striking `because the taxpayer elected under paragraph (2)(C) to waive the application of paragraph (2)' and inserting `by application of paragraph (2)(C)(i)(II)'.

(g) AMENDMENTS RELATED TO SECTION 511 OF THE ACT-

(1) Section 2511(c) is amended by striking `taxable gift under section 2503,' and inserting `transfer of property by gift,'.

(2) Section 2101(b) is amended by striking the last sentence.

(h) AMENDMENT RELATED TO SECTION 532 OF THE ACT- Section 2016 is amended by striking `any State, any possession of the United States, or the District of Columbia,'.

(i) AMENDMENTS RELATING TO SECTION 602 OF THE ACT-

(1) Subparagraph (A) of section 408(q)(3) is amended to read as follows:

`(A) QUALIFIED EMPLOYER PLAN- The term `qualified employer plan' has the meaning given such term by section 72(p)(4)(A)(i); except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A).'.

(2) Section 4(c) of Employee Retirement Income Security Act of 1974 is amended--

(A) by inserting `and part 5 (relating to administration and enforcement)' before the period at the end, and

(B) by adding at the end the following new sentence: `Such provisions shall apply to such accounts and annuities in a manner similar to their application to a simplified employee pension under section 408(k) of the Internal Revenue Code of 1986.'.

(j) AMENDMENTS RELATING TO SECTION 611 OF THE ACT-

(1) Section 408(k) is amended--

(A) in paragraph (2)(C) by striking `$300' and inserting `$450', and

(B) in paragraph (8) by striking `$300' both places it appears and inserting `$450'.

(2) Section 409(o)(1)(C)(ii) is amended--

(A) by striking `$500,000' both places it appears and inserting `$800,000', and

(B) by striking `$100,000' and inserting `$160,000'.

(3) Section 611(i) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by adding at the end the following new paragraph:

`(3) SPECIAL RULE- In the case of plan that, on June 7, 2001, incorporated by reference the limitation of section 415(b)(1)(A) of the Internal Revenue Code of 1986, section 411(d)(6) of such Code and section 204(g)(1) of the Employee Retirement Income Security Act of 1974 do not apply to a plan amendment that--

`(A) is adopted on or before June 30, 2002,

`(B) reduces benefits to the level that would have applied without regard to the amendments made by subsection (a) of this section, and

`(C) is effective no earlier than the years described in paragraph (2).'.

(k) AMENDMENTS RELATING TO SECTION 613 OF THE ACT-

(1) Section 416(c)(1)(C)(iii) is amended by striking `EXCEPTION FOR FROZEN PLAN' and inserting `EXCEPTION FOR PLAN UNDER WHICH NO KEY EMPLOYEE (OR FORMER KEY EMPLOYEE) BENEFITS FOR PLAN YEAR'.

(2) Section 416(g)(3)(B) is amended by striking `separation from service' and inserting `severance from employment'.

(l) AMENDMENTS RELATING TO SECTIONS 614 and 616 OF THE ACT-

(1) Section 404(a)(12) is amended by striking `(9),' and inserting `(9) and subsection (h)(1)(C),'.

(2) Section 404(n) is amended by striking `subsection (a),' and inserting `subsection (a) or paragraph (1)(C) of subsection (h)'.

(3) Section 402(h)(2)(A) is amended by striking `15 percent' and inserting `25 percent'.

(4) Section 404(a)(7)(C) is amended to read as follows:

`(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.'.

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(m) AMENDMENT RELATING TO SECTION 618 OF THE ACT- Section 25B(d)(2)(A) is amended to read as follows:

> *`(A) IN GENERAL- The qualified retirement savings contributions determined under paragraph (1) shall be reduced (but not below zero) by the aggregate distributions received by the individual during the testing period from any entity of a type to which contributions under paragraph (1) may be made. The preceding sentence shall not apply to the portion of any distribution which is not includible in gross income by reason of a trustee-to-trustee transfer or a rollover distribution.'.*

(n) AMENDMENTS RELATING TO SECTION 619 OF THE ACT-

(1) Section 45E(e)(1) is amended by striking `(n)' and inserting `(m)'.

(2) Section 619(d) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking `established' and inserting `first effective'.

(o) AMENDMENTS RELATING TO SECTION 631 OF THE ACT-

(1) Section 402(g)(1) is amended by adding at the end the following:

> *`(C) CATCH-UP CONTRIBUTIONS- In addition to subparagraph (A), in the case of an eligible participant (as defined in section 414(v)), gross income shall not include elective deferrals in excess of the applicable dollar amount under subparagraph (B) to the extent that the amount of such elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).'.*

(2) Section 401(a)(30) is amended by striking `402(g)(1)' and inserting `402(g)(1)(A)'.

(3) Section 414(v)(2) is amended by adding at the end the following:

> *`(D) AGGREGATION OF PLANS- For purposes of this paragraph, plans described in clauses (i), (ii), and (iv) of paragraph (6)(A) that are maintained by the same employer (as determined under subsection (b), (c), (m) or (o)) shall be treated as a single plan, and plans described in clause (iii) of paragraph (6)(A) that are maintained by the same employer shall be treated as a single plan.'.*

(4) Section 414(v)(3)(A)(i) is amended by striking `section 402(g), 402(h), 403(b), 404(a), 404(h), 408(k), 408(p), 415, or 457' and inserting `section 401(a)(30), 402(h), 403(b), 408, 415(c), and 457(b)(2) (determined without regard to section 457(b)(3))'.

(5) Section 414(v)(3)(B) is amended by striking `section 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11), 401(k)(12), 403(b)(12), 408(k), 408(p), 408B, 410(b), or 416' and inserting `section 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416'.

(6) Section 414(v)(4)(B) is amended by inserting before the period at the end the following: `, except that a plan described in clause (i) of section 410(b)(6)(C) shall not be treated as a plan of the employer until the expiration of the transition period with respect to such plan (as determined under clause (ii) of such section)'.

(7) Section 414(v)(5) is amended--

(A) by striking `, with respect to any plan year,' in the matter preceding subparagraph (A),

(B) by amending subparagraph (A) to read as follows:

`(A) who would attain age 50 by the end of the taxable year,', and

(C) in subparagraph (B) by striking `plan year' and inserting `plan (or other applicable) year'.

(8) Section 414(v)(6)(C) is amended to read as follows:

`(C) EXCEPTION FOR SECTION 457 PLANS- This subsection shall not apply to a participant for any year for which a higher limitation applies to the participant under section 457(b)(3).'.

(9) Section 457(e) is amended by adding at the end the following new paragraph:

`(18) COORDINATION WITH CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OLDER- In the case of an individual who is an eligible participant (as defined by section 414(v)) and who is a participant in an eligible deferred compensation plan of an employer described in paragraph (1)(A), subsections (b)(3) and (c) shall be applied by substituting for the amount otherwise determined under the applicable subsection the greater of--

`(A) the sum of--

`(i) the plan ceiling established for purposes of subsection (b)(2) (without regard to subsection (b)(3)), plus

`(ii) the applicable dollar amount for the taxable year determined under section 414(v)(2)(B)(i), or

`(B) the amount determined under the applicable subsection (without regard to this paragraph).'.

(p) AMENDMENTS RELATING TO SECTION 632 OF THE ACT-

(1) Section 403(b)(1) is amended in the matter following subparagraph (E) by striking `then amounts contributed' and all that follows and inserting the following:

`then contributions and other additions by such employer for such annuity contract shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such contributions and additions (when expressed as an annual addition (within the meaning of section 415(c)(2))) does not exceed the applicable limit under section 415. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to contributions and other additions by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this

subsection or section 408(d)(3)(A)(ii) shall not be considered contributed by such employer.'.

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(2) Section 403(b) is amended by striking paragraph (6).

(3) Section 403(b)(3) is amended--

(A) in the first sentence by inserting the following before the period at the end: `, and which precedes the taxable year by no more than five years', and

(B) in the second sentence by striking `or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated'.

(4) Section 415(c)(7) is amended to read as follows:

`(7) SPECIAL RULES RELATING TO CHURCH PLANS-

`(A) ALTERNATIVE CONTRIBUTION LIMITATION-

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

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

`(B) NUMBER OF YEARS OF SERVICE FOR DULY ORDAINED, COMMISSIONED, OR LICENSED MINISTERS OR LAY EMPLOYEES- For purposes of this paragraph--

`(i) all years of service by--

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

`(II) a lay person,

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

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

`(C) FOREIGN MISSIONARIES- In the case of any individual described in subparagraph (D) performing services outside the United States, contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such employee, when expressed as an annual addition to such employee's account, shall not be treated as exceeding the limitation of paragraph (1) if such annual addition is not in excess of the greater of $3,000 or the employee's includible compensation determined under section 403(b)(3).

`(D) ANNUAL ADDITION- For purposes of this paragraph, the term `annual addition' has the meaning given such term by paragraph (2).

`(E) CHURCH, CONVENTION OR ASSOCIATION OF CHURCHES- For purposes of this paragraph, the terms `church' and `convention or association of churches' have the same meaning as when used in section 414(e).'.

(5) Section 457(e)(5) is amended to read as follows:

`(5) INCLUDIBLE COMPENSATION- The term `includible compensation' has the meaning given to the term `participant's compensation' by section 415(c)(3).'.

(6) Section 402(g)(7)(B) is amended by striking `2001.' and inserting `2001).'.

(q) AMENDMENTS RELATING TO SECTION 643 OF THE ACT-

(1) Section 401(a)(31)(C)(i) is amended by inserting `is a qualified trust which is part of a plan which is a defined contribution plan and' before `agrees'.

(2) Section 402(c)(2) is amended by adding at the end the following flush sentence:

`In the case of a transfer described in subparagraph (A) or (B), the amount transferred shall be treated as consisting first of the portion of such distribution that is includible in gross income (determined without regard to paragraph (1)).'.

(r) AMENDMENTS RELATING TO SECTION 648 OF THE ACT-

(1) Section 417(e) is amended--

(A) in paragraph (1) by striking `exceed the dollar limit under section 411(a)(11)(A)' and inserting `exceed the amount that can be distributed without the participant's consent under section 411(a)(11)', and

(B) in paragraph (2)(A) by striking `exceeds the dollar limit under section 411(a)(11)(A)' and inserting `exceeds the amount that can be distributed without the participant's consent under section 411(a)(11)'.

(2) Section 205(g) of the Employee Retirement Income Security Act of 1974 is amended--

(A) in paragraph (1) by striking `exceed the dollar limit under section 203(e)(1)' and inserting `exceed the amount that can be distributed without the participant's consent under section 203(e)', and

(B) in paragraph (2)(A) by striking `exceeds the dollar limit under section 203(e)(1)' and inserting `exceeds the amount that can be distributed without the participant's consent under section 203(e)'.

(s) AMENDMENT RELATING TO SECTION 652 OF THE ACT- Section 404(a)(1)(D)(iv) is amended by striking `PLANS MAINTAINED BY PROFESSIONAL SERVICE EMPLOYERS' and inserting `SPECIAL RULE FOR TERMINATING PLANS'.

(t) AMENDMENTS RELATING TO SECTION 657 OF THE ACT- Section 404(c)(3) of the Employee Retirement Income Security Act of 1974 is amended--

(1) by striking `the earlier of' in subparagraph (A) the second place it appears, and

(2) by striking `if the transfer' and inserting `a transfer that'.

(u) AMENDMENTS RELATING TO SECTION 659 OF THE ACT-

(1) Section 4980F is amended--

(A) in subsection (e)(1) by striking `written notice' and inserting `the notice described in paragraph (2)',

(B) by amending subsection (f)(2)(A) to read as follows:

`(A) any defined benefit plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or', and

(C) in subsection (f)(3) by striking `significantly' both places it appears.

(2) Section 204(h)(9) of the Employee Retirement Income Security Act of 1974 is amended by striking `significantly' both places it appears.

(3) Section 659(c)(3)(B) of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by striking `(or' and inserting `(and'.

(v) AMENDMENTS RELATING TO SECTION 661 OF THE ACT-

(1) Section 412(c)(9)(B) is amended--

(A) in clause (ii) by striking `125 percent' and inserting `100 percent', and

(B) by adding at the end the following new clause:

`(iv) LIMITATION- A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).'.

(2) Section 302(c)(9)(B) of the Employee Retirement Income Security Act of 1974 is amended--

(A) in clause (ii) by striking `125 percent' and inserting `100 percent', and

(B) by adding at the end the following new clause:

`(iv) A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).'.

(w) AMENDMENTS RELATING TO SECTION 662 OF THE ACT-

(1) Section 404(k) is amended--

(A) in paragraph (1) by striking `during the taxable year',

(B) in paragraph (2)(B) by striking `(A)(iii)' and inserting `(A)(iv)',

(C) in paragraph (4)(B) by striking `(iii)' and inserting `(iv)', and

(D) by redesignating subparagraph (B) of paragraph (4) (as amended by subparagraph (C)) as subparagraph (C) of paragraph (4) and by inserting after subparagraph (A) the following new subparagraph:

`(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.'.

(2) Section 404(k) is amended by adding at the end the following new paragraph:

`(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).'.

(x) EFFECTIVE DATE- Except as provided in subsection (c), the amendments made by this section shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 to which they relate.

SEC. 412. AMENDMENTS RELATED TO COMMUNITY RENEWAL TAX RELIEF ACT OF 2000.

TECHNICAL EXPLANATION OF THE "JOB CREATION AND WORKER ASSISTANCE ACT OF 2002"

Prepared by
the Staff of the
JOINT COMMITTEE ON TAXATION

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CONTENTS

E. Interest Rate Used in Determining Additional Required Contributions to Defined Benefit Plans and PBGC Variable Rate Premiums (sec. 405 of the bill, sec. 412 of the Code, and secs. 302 and 4006 of ERISA)

Present Law

In general

ERISA and the Code impose both minimum and maximum[49] funding requirements with respect to defined benefit pension plans. The minimum funding requirements are designed to provide at least a certain level of benefit security by requiring the employer to make certain minimum contributions to the plan. The amount of contributions required for a plan year is generally the amount needed to fund benefits earned during that year plus that year's portion of other liabilities that are amortized over a period of years, such as benefits resulting from a grant of past service credit.

Additional contributions for underfunded plans

Additional contributions are required under a special funding rule if a single-employer defined benefit pension plan is underfunded.[50] Under the special rule, a plan is considered underfunded for a plan year if the value of the plan assets is less than 90 percent of the plan's current liability.[51] The value of plan assets as a percentage of current liability is the plan's "funded current liability percentage."

If a plan is underfunded, the amount of additional required contributions is based on certain elements, including whether the plan has an unfunded liability related to benefits accrued before 1988 or 1995 or to changes in the mortality table used to determine contributions, and whether the plan provides for unpredictable contingent event benefits (that is, benefits that depend on contingencies that are not reliably and reasonably predictable, such as facility shutdowns or reductions in workforce). However, the amount of additional contributions cannot exceed the amount needed to increase the plan's funded current liability percentage to 100 percent.

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[49] The maximum funding requirement for a defined benefit plan is referred to as the full funding limitation. Additional contributions are not required if a plan has reached the full funding limitation.

[50] Plans with no more than 100 participants on any day in the preceding plan year are not subject to the special funding rule. Plans with more than 100 but not more than 150 participants are generally subject to lower contribution requirements under the special funding rule.

[51] Under an alternative test, a plan is not considered underfunded if (1) the value of the plan assets is at least 80 percent of current liability and (2) the value of the plan assets was at least 90 percent of current liability for each of the two immediately preceding years or each of the second and third immediately preceding years.

Required interest rate

In general, a plan's current liability means all liabilities to employees and their beneficiaries under the plan. The interest rate used to determine a plan's current liability must be within a permissible range of the weighted average of the interest rates on 30-year Treasury securities for the four-year period ending on the last day before the plan year begins.[52] The permissible range is from 90 percent to 105 percent. As a result of debt reduction, the Department of the Treasury does not currently issue 30-year Treasury securities.

Timing of plan contributions

In general, plan contributions required to satisfy the funding rules must be made within 8-1/2 months after the end of the plan year. If the contribution is made by such due date, the contribution is treated as if it were made on the last day of the plan year.

In the case of a plan with a funded current liability percentage of less than 100 percent for the preceding plan year, estimated contributions for the current plan year must be made in quarterly installments during the current plan year. The amount of each required installment is 25 percent of the lesser of (1) 90 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year.[53]

PBGC premiums

Because benefits under a defined benefit pension plan may be funded over a period of years, plan assets may not be sufficient to provide the benefits owed under the plan to employees and their beneficiaries if the plan terminates before all benefits are paid. In order to protect employees and their beneficiaries, the Pension Benefit Guaranty Corporation ("PBGC") generally insures the benefits owed under defined benefit pension plans. Employers pay premiums to the PBGC for this insurance coverage.

In the case of an underfunded plan, additional PBGC premiums are required based on the amount of unfunded vested benefits. These premiums are referred to as "variable rate premiums." In determining the amount of unfunded vested benefits, the interest rate used is 85 percent of the interest rate on 30-year Treasury securities for the month preceding the month in which the plan year begins.

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[52] The interest rate used under the plan must be consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan (section 412(b)(5)(B)(iii)(II)).

[53] No additional quarterly contributions are due once the plan's funded current liability percentage for the plan year reaches 100 percent.

Explanation of Provision

Additional contributions

The provision expands the permissible range of the statutory interest rate used in calculating a plan's current liability for purposes of applying the additional contribution requirements for plan years beginning after December 31, 2001, and before January 1, 2004. Under the provision, the permissible range is from 90 percent to 120 percent for these years. Use of a higher interest rate under the expanded range will affect the plan's current liability, which may in turn affect the need to make additional contributions and the amount of any additional contributions.

Because the quarterly contributions requirements are based on current liability for the preceding plan year, the provision also provides special rules for applying these requirements for plans years beginning in 2002 (when the expanded range first applies) and 2004 (when the expanded range no longer applies). In each of those years ("present year"), current liability for the preceding year is redetermined, using the permissible range applicable to the present year. This redetermined current liability will be used for purposes of the plan's funded current liability percentage for the preceding year, which may affect the need to make quarterly contributions and for purposes of determining the amount of any quarterly contributions in the present year, which is based in part on the preceding year.

PBGC variable rate premiums

Under the provision, the interest rate used in determining the amount of unfunded vested benefits for variable rate premium purposes is increased to 100 percent of the interest rate on 30-year Treasury securities for the month preceding the month in which the plan year begins.

Effective Date

The provision is effective with respect to plan contributions and PBGC variable rate premiums for plan years beginning after December 31, 2001, and before January 1, 2004.

Pension-Related Amendments to the Economic Growth and Tax Relief Reconciliation Act of 2001

Individual Retirement Arrangements ("IRAs").-- Under the Act, a qualified employer plan may provide for voluntary employee contributions to a separate account that is deemed to be an IRA. The provision clarifies that, for purposes of deemed IRAs, the term "qualified employer plan" includes the following types of plans maintained by a governmental employer: a qualified retirement plan under section 401(a), a qualified annuity plan under section 403(a), a tax-sheltered annuity plan under section 403(b), and an eligible deferred compensation plan under section 457(b). The provision also clarifies that the Employee Retirement Income Security Act ("ERISA") is intended to apply to a deemed IRA in a manner similar to a simplified employee pension ("SEP").

Increase in benefit and contribution limits.--Under the Act, the benefit and contribution limits that apply to qualified retirement plans are increased. These increases are generally effective for years beginning after December 31, 2001, but the increase in the limit on benefits under a defined benefit plan is effective for years ending after December 31, 2001. In the case of some plans that incorporate the benefit limits by reference and that use a plan year other than the calendar year, the increased benefit limits became effective under the plan automatically, causing unintended benefit increases. The provision permits an employer to amend such a plan by June 30, 2002, to reduce benefits to the level that applied before enactment of the Act without violating the anticutback rules that generally apply to plan amendments.

In connection with the increases in the benefit and contribution limits under the Act, a new base period applies in indexing the 2002 dollar amounts for future cost-of-living adjustments. The same indexing method applies to the dollar amounts used to determine eligibility to participate in a SEP and to determine the proper period for distributions from an employee stock ownership plan ("ESOP"). The provision changes these dollar amounts to the 2002 indexed amounts so that future indexing will operate properly.

Modification of top-heavy rules.--Under the Act, in determining whether a plan is top-heavy, distributions made because of separation from service, death, or disability are taken into account for one year after distribution. Other distributions are taken into account for five years. The Act also permits distributions from a section 401(k) plan, a tax-sheltered annuity plan, or an eligible deferred compensation plan to be made when the participant has a severance from employment (rather than separation from service). The provision clarifies that distributions made after severance from employment (rather than separation from service) are taken into account for only one year in determining top-heavy status.

Elective deferrals not taken into account for deduction limits.--The provision clarifies that elective deferrals to a SEP are not subject to the deduction limits and are not taken into account in applying the limits to other SEP contributions. The provision also clarifies that the combined deduction limit of 25 percent of compensation for qualified defined benefit and defined contribution plans does not apply if the only amounts contributed to the defined contribution plan are elective deferrals.

Deduction limits.--Under present law, contributions to a SEP are included in an employee's income to the extent they exceed the lesser of 15 percent of compensation or $40,000 (for 2002), subject to a reduction in some cases. Under prior law, the annual limitation on the amount of deductible contributions to a SEP was 15 percent of compensation. Under the Act, the annual limitation on the amount of deductible contributions that can be made to a SEP is increased from 15 percent of compensation to 25 percent of compensation. The provision makes a conforming change to the rule that limits the amount of SEP contributions that may be made for a particular employee. Under the provision, contributions are included in an employee's income to the extent they exceed the lesser of 25 percent of compensation or $40,000 (for 2002), subject to a reduction in some cases.

Under present law, the Secretary of the Treasury has the authority to require an employer who makes contributions to a SEP to provide simplified reports with respect to such contributions. Consistent with present law and the provision, such reports could appropriately include information as to compliance with the requirements that apply to SEPs, including the contribution limits.

Nonrefundable credit for certain individuals for elective deferrals and IRA contributions.--The provision clarifies that the amount of contributions taken into account in determining the credit for elective deferrals and IRA contributions is reduced by the amount of a distribution from a qualified retirement plan, an eligible deferred compensation plan, or a traditional IRA that is includible in income or that consists of after-tax contributions. The provision retains the rule that distributions that are rolled over to another retirement plan do not affect the credit.

Small business tax credit for new retirement plan expenses.--The provision clarifies that the small business tax credit for new retirement plan expenses applies in the case of a plan first effective after December 31, 2001, even if adopted on or before that date.

Additional salary reduction catch-up contributions.--Under the Act, an individual aged 50 or over may make additional elective deferrals ("catch-up contributions") to certain retirement plans, up to a specified limit. A plan may not permit catch-up deferrals in excess of this limit. The provision clarifies that, for this purpose, the limit applies to all qualified retirement plans, tax-sheltered annuity plans, SEPs and SIMPLE plans maintained by the same employer on an aggregated basis, as if all plans were a single plan. The limit applies also to all eligible deferred compensation plans of a government employer on an aggregated basis.

Under the Act, catch-up contributions up to the specified limit are excluded from an individual's income. The provision also clarifies that the total amount that an individual may exclude from income as catch-up contributions for a year cannot exceed the catch-up contribution limit for that year (and for that type of plan), without regard to whether the individual made catch-up contributions under plans maintained by the more than one employer.

The provision clarifies that an individual who will attain age 50 by the end of the taxable year is an eligible participant as of the beginning of the taxable year rather than only at the attainment of age 50. The provision also clarifies that a participant in an eligible deferred compensation plan of a government employer may make catch-up contributions in an amount

equal to the greater of the amount permitted under the new catch-up rule and the amount permitted under the special catch-up rule for eligible deferred compensation plans.

The provision revises the lists of requirements that do not apply to catch-up contributions to reflect other statutory amendments made by the Act and to reflect the fact that catch-up contributions can be made only to a qualified defined contribution plan, not to a qualified defined benefit plan. The provision also clarifies that the special nondiscrimination rule for mergers and acquisitions applies for purposes of the nondiscrimination requirement applicable to catch-up contributions.

Equitable treatment for contributions of employees to defined contribution plans.--Under prior law, the limits on contributions to a tax-sheltered annuity plan applied at the time contributions became vested. Under the Act, tax-sheltered annuity plans are generally subject to the same contribution limits as qualified defined contribution plans, but certain special rules were retained.

The provision clarifies that the limits apply to contributions to a tax-sheltered annuity plan in the year the contributions are made without regard to when the contributions become vested. The provision also clarifies that contributions may be made for an employee for up to five years after retirement, based on includible compensation for the last year of service before retirement. The provision also restores special rules for ministers and lay employees of churches and for foreign missionaries that were inadvertently eliminated.

Under the Act, amounts deferred under an eligible deferred compensation plan are generally subject to the same contribution limits as qualified defined contribution plans. The provision conforms the definition of compensation used in applying the limits to an eligible deferred compensation plan to the definition used for defined contribution plans.

Rollovers of retirement plan and IRA distributions.--Under prior law and under the Act, a qualified retirement plan must provide for the rollover of certain distributions directly to a qualified defined contribution plan, a qualified annuity plan, a tax-sheltered annuity plan, a governmental eligible deferred compensation plan, or a traditional IRA, if the participant elects a direct rollover. The provision clarifies that a qualified retirement plan must provide for the direct rollover of after-tax contributions only to a qualified defined contribution plan or a traditional IRA. The provision also clarifies that, if a distribution includes both pretax and after-tax amounts, the portion of the distribution that is rolled over is treated as consisting first of pretax amounts.

Employers may disregard rollovers for purposes of cash-out amounts.-- Under prior and present law, if a participant in a qualified retirement plan ceases to be employed with the employer maintaining the plan, the plan may distribute the participant's nonforfeitable accrued benefit without the consent of the participant and, if applicable, the participant's spouse, if the present value of the benefit does not exceed $5,000. Under the Act, a plan may provide that the present value of the benefit is determined without regard to the portion of the benefit that is attributable to rollover contributions (and any earnings allocable thereto) for purposes of determining whether the participant must consent to the cash-out of the benefit. The provision

clarifies that rollover amounts may be disregarded also in determining whether a spouse must consent to the cash-out of the benefit.

Notice of significant reduction in plan benefit accruals.-- Under the Act, notice must be provided to participants if a defined benefit plan is amended to provide for a significant reduction in the future rate of benefit accrual, including any elimination or reduction of an early retirement benefit or retirement-type subsidy. The provision clarifies that the notice requirement applies to a defined benefit plan only if the plan is qualified. The provision further clarifies that, in the case of an amendment that eliminates an early retirement benefit or retirement-type subsidy, notice is required only if the early retirement benefit or retirement-type subsidy is significant. The provision also eliminates inconsistencies in the statutory language.

Modification of timing of plan valuations.--Under the Act, a plan valuation may be made as of any date in the immediately preceding plan year if, as of such date, plan assets are not less than 100 percent of the plan's current liability. Under the Act, a change in funding method to use a valuation date in the prior year generally may not be made unless, as of such date, plan assets are not less than 125 percent of the plan's current liability. The provision conforms the statutory language to Congressional intent as reflected in the Statement of Managers.

ESOP dividends may be reinvested without loss of dividend deduction.--Under prior and present law, a deduction is permitted for a dividend paid with respect to employer stock held in an ESOP if the dividend is (1) paid in cash directly to participants or (2) paid to the plan and subsequently distributed to the participants in cash no later than 90 days after the close of the plan year in which the dividend is paid to the plan. The deduction is allowable for the taxable year of the corporation in which the dividend is paid or distributed to the participants.

Under the Act, in addition to the deductions permitted under present law, a deduction is permitted for a dividend paid with respect to employer stock that, at the election of the participants, is payable in cash directly to participants or paid to the plan and subsequently distributed to the participants in cash no later than 90 days after the close of the plan year in which the dividend is paid to the plan, or paid to the plan and reinvested in qualifying employer securities. Under the provision, the deduction for dividends that are reinvested in qualifying employer securities at the election of participants is allowable for the taxable year in which the later of the reinvestment or the election occurs. The provision also clarifies that a dividend that is reinvested in qualifying employer securities at the participant's election must be nonforfeitable.

Amendments to the Community Renewal Tax Relief Act of 2000

Phaseout of $25,000 amount for certain rental real estate under passive loss rules.-- Present law provides for a phaseout of the $25,000 amount allowed in the case of certain deductions and certain credits with respect to rental real estate activities, for taxpayers with adjusted gross income exceeding $100,000. The phaseout rule does not apply, or applies separately, in the case of the rehabilitation credit, the low-income housing credit, and the commercial revitalization deduction. The provision clarifies the operation of the ordering rules to reflect the exceptions and separate phaseout rules for these items.