

SEC. 1. Prohibition on Abusive or Manipulative Practices and Designs.

The Secretary of the Treasury is directed to review the current regulations under section 401(a)(4) of the Internal Revenue Code of 1986, and modify such regulations, as necessary or appropriate, to address abusive practices and plan designs that may comply with such current regulations but that have the effect of significantly discriminating in favor of highly compensated employees. Such review may include, but need not be limited to, consideration of the following:

(a) Application of the current regulations to targeted benefit formulas and to formulas providing for benefits that produce higher rates of accrual or allocation for certain groups nonhighly compensated employees.

And

(b) The interest rate permitted to be used to determine equivalent benefits under a defined contribution plan for purposes of section 401(a)(4).

For purposes of this subsection, highly compensated employee means highly compensated employee within the meaning of section 414(q) and nonhighly compensated employee means an employee who is not a highly compensated employee.

SEC. 2. PART TIME AND SHORT SERVICE EMPLOYEES.

(a) IN GENERAL.—Paragraph (6) of section 410(b)(6) of the Internal Revenue Code of 1986 is amended by adding the following new subparagraph:

“(G) PART TIME AND LESS THAN FULL YEAR EMPLOYEES.—

“(i) IN GENERAL.—Except as otherwise prescribed by the Secretary under clause (ii), for purposes of determining a number of employees, or any other calculation (including the average benefits percentage test under paragraph (2)), under this subsection, in the case of an employee who has not completed 1,000 hours of service for the plan year and is not a highly compensated employee, such employee shall be counted as a fraction—

“(I) the numerator of which is the number of hours of service of the employee during such year, over

“(II) 2,080.

“(ii) ALTERNATIVE METHODS AND ADDITIONAL RULES. – Within one year of the date of enactment of this Act, the Secretary shall prescribe regulations that, for purposes of clause (i), permit plans to determine hours of service based on

estimates, scheduled hours, or other methodologies that avoid the need to track actual hours worked, and for purposes of applying clause (i) to employees of an employer, permit plans to replace the 2,080 number with a number that reflects the full-time status for such employer's employees. The Secretary may also prescribe additional alternative methods to, and additional rules for, the calculation described in clause (i) for determining the appropriate treatment for any part time or less than full year employee who is not a highly compensated employee in order to prevent the benefits or contributions provided to such an employee from being given inappropriate weight in satisfying the requirements of this subsection or subsection (a)(4).

(iii) The Secretary shall also prescribe regulations to limit the application of clause (i) in the case of plans for which these rules are not required to prevent discrimination. Regulations issued by the Secretary under this subclause may provide that, as a condition of having clause (i) not apply to a plan, such plan must be submitted to the Secretary for a determination as to whether the plan in form satisfies the requirements of section 401(a), including a determination as to whether the plan satisfies the conditions for clause (i) not applying.

“(iv) Nothing in this subsection shall be construed as limiting the Secretary's authority to address other practices determined by the Secretary to be abusive.”.

(b) EFFECTIVE DATE.— The amendment made by section (a) shall apply to plan years beginning after December 31, 2011. If the Secretary has not prescribed final regulations described in section 410(b)(6)(G)(ii) of the Internal Revenue Code of 1986 by such date, for plan years beginning on or before the date such regulations are prescribed, a plan may satisfy the requirements of section 410(b)(6)(G)(i) using a reasonable method to determine hours of service based on estimates or scheduled hours, and the plan may use replace the 2,080 number with a number that reflects the full-time status for such employer's employees.