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U.S. Code (</uscode/text>) › Title 29 (</uscode/text/29>) › Chapter 14 (</uscode/text/29/chapter-14>) › § 623

# 29 U.S. Code § 623 - Prohibition of age discrimination

Current through Pub. L. 114-38 (<http://www.gpo.gov/fdsys/pkg/PLAW-114publ38/html/PLAW-114publ38.htm>). (See Public Laws for the current Congress (<http://thomas.loc.gov/home/LegislativeData.php?n=PublicLaws>.)

**US Code** ([/uscode/text/29/623?qt-us\\_code\\_temp\\_noupdates=0#qt-us\\_code\\_temp\\_noupdates](/uscode/text/29/623?qt-us_code_temp_noupdates=0#qt-us_code_temp_noupdates))

**Notes** ([/uscode/text/29/623?qt-us\\_code\\_temp\\_noupdates=1#qt-us\\_code\\_temp\\_noupdates](/uscode/text/29/623?qt-us_code_temp_noupdates=1#qt-us_code_temp_noupdates))

[prev \(/uscode/text/29/622\)](/uscode/text/29/622) | [next \(/uscode/text/29/624\)](/uscode/text/29/624)

**(a) EMPLOYER PRACTICES** It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

**(b) EMPLOYMENT AGENCY PRACTICES**

It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.

**(c) LABOR ORGANIZATION PRACTICES** It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

**(d) OPPOSITION TO UNLAWFUL PRACTICES; PARTICIPATION IN INVESTIGATIONS, PROCEEDINGS, OR LITIGATION**

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

**(e) PRINTING OR PUBLICATION OF NOTICE OR ADVERTISEMENT INDICATING PREFERENCE, LIMITATION, ETC.**

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

**(f) LAWFUL PRACTICES; AGE AN OCCUPATIONAL QUALIFICATION; OTHER REASONABLE FACTORS; LAWS OF FOREIGN WORKPLACE; SENIORITY SYSTEM; EMPLOYEE BENEFIT PLANS; DISCHARGE OR DISCIPLINE FOR GOOD CAUSE** It shall not be unlawful for an employer, employment agency, or labor organization—

**(1)** to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

**(2)** to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

**(A)** to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title (/uscode/text/29/lii:usc:t:29:s:631:a) because of the age of such individual; or

**(B)** to observe the terms of a bona fide employee benefit plan—

**(i)** where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

**(ii)** that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title (/uscode/text/29/lii:usc:t:29:s:631:a), because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

**(3)** to discharge or otherwise discipline an individual for good cause.

**(g) REPEALED. PUB. L. 101-239, TITLE VI, § 6202(B)(3)(C)(i)** ([HTTP://THOMAS.LOC.GOV/CGI-BIN/BDQUERY/L?d101:.:/list/bd/d101pl.lst:239\(PUBLIC\\_LAWS\)](http://thomas.loc.gov/cgi-bin/bdquery/l?d101:.:/list/bd/d101pl.lst:239(PUBLIC_LAWS))), DEC. 19, 1989, 103 STAT. 2233 ([HTTP://USCODE.HOUSE.GOV/STATVIEWER.HTM?VOLUME=103&PAGE=2233](http://uscode.house.gov/statviewer.htm?volume=103&page=2233))

**(h) PRACTICES OF FOREIGN CORPORATIONS CONTROLLED BY AMERICAN EMPLOYERS; FOREIGN EMPLOYERS NOT CONTROLLED BY AMERICAN EMPLOYERS; FACTORS DETERMINING CONTROL**

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the—

- (A) interrelation of operations,
  - (B) common management,
  - (C) centralized control of labor relations, and
  - (D) common ownership or financial control,
- of the employer and the corporation.

**(i) EMPLOYEE PENSION BENEFIT PLANS; CESSATION OR REDUCTION OF BENEFIT ACCRUAL OR OF ALLOCATION TO EMPLOYEE ACCOUNT; DISTRIBUTION OF BENEFITS AFTER ATTAINMENT OF NORMAL RETIREMENT AGE; COMPLIANCE; HIGHLY COMPENSATED EMPLOYEES**

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

- (A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or
- (B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

- (A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits

under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

**(B)** if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title (/uscode/text/29/liv:usc:t:29:s:1056:a:3) and section 401(a)(14)(C) of title 26 (/uscode/text/26/liv:usc:t:26:s:401:a:14:C), and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title (/uscode/text/29/liv:usc:t:29:s:1053:a:3:B) or section 411(a)(3)(B) of title 26 (/uscode/text/26/liv:usc:t:26:s:411:a:3:B), then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

**(4)** Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

**(5)** Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26 (/uscode/text/26/liv:usc:t:26:s:414:q)) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26. (/uscode/text/26/liv:usc:t:26:ch:1)

**(6)** A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals or it is a plan permitted by subsection (m).<sup>[1]</sup>

**(7)** Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 (/uscode/text/26/liv:usc:t:26:s:411:b:1:H) and subparagraphs (C) and (D)<sup>[2]</sup> of section 411(b)(2) of title 26 (/uscode/text/26/liv:usc:t:26:s:411:b:2) shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

**(8)** A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title (/uscode/text/29/liv:usc:t:29:s:1002:24:B) and section 411(a)(8)(B) of title 26 (/uscode/text/26/liv:usc:t:26:s:411:a:8:B).

**(9)** For purposes of this subsection—

**(A)** The terms “employee pension benefit plan”, “defined benefit plan”, “defined contribution plan”, and “normal retirement age” have the meanings provided such terms in section 1002 of this title (/uscode/text/29/1002).

**(B)** The term “compensation” has the meaning provided by section 414(s) of title 26 (/uscode/text/26/lii:usc:t:26:s:414:s:).

**(10) SPECIAL RULES RELATING TO AGE.—**

**(A) Comparison to similarly situated younger individual.—**

**(i) In general.—**

A plan shall not be treated as failing to meet the requirements of paragraph (1) if a participant’s accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

**(ii) Similarly situated.—**

For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

**(iii) Disregard of subsidized early retirement benefits.—**

In determining the accrued benefit as of any date for purposes of this clause, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

**(iv) Accrued benefit.—**

For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee’s final average compensation.

**(B) Applicable defined benefit plans.—**

**(i) Interest credits.—**

**(I) In general.—**

An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

**(II) Preservation of capital.—**

An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

**(III) Market rate of return.—**

The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I). In the case of a governmental plan (as defined in the first sentence of section 414(d) of title 26 (/uscode/text/26/lii:usc:t:26:s:414:d)), a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any

administrative rule or policy adopted in accordance with any such law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter.

**(ii) Special rule for plan conversions.—**

If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

**(iii) Rate of benefit accrual.—**Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

**(iv) Special rules for early retirement subsidies.—**

For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount<sup>[3]</sup> with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

**(v) Applicable plan amendment.—**For purposes of this subparagraph—

**(I) In general.—**

The term “applicable plan amendment” means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

**(II) Special rule for coordinated benefits.—**

If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

**(III) Multiple amendments.—**

The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

**(IV) Applicable defined benefit plan.—**

For purposes of this subparagraph, the term “applicable defined benefit plan” has the meaning given such term by section 1053(f)(3) of this title ([/uscode/text/29/lri:usc:t:29:s:1053:f:3](#)).

**(vi) Termination requirements.**—An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

**(I)** if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

**(II)** the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

**(C) Certain offsets permitted.**—

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides offsets against benefits under the plan to the extent such offsets are allowable in applying the requirements of section 401(a) of title 26 (/uscode/text/26/lii:usc:t:26:s:401:a).

**(D) Permitted disparities in plan contributions or benefits.**—

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(

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) of title 26 are met.

**(E) Indexing permitted.**—

**(i) In general.**—

A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides for indexing of accrued benefits under the plan.

**(ii) Protection against loss.**—

Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

**(iii) Indexing.**—

For purposes of this subparagraph, the term “indexing” means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

**(F) Early retirement benefit or retirement-type subsidy.**—

For purposes of this paragraph, the terms “early retirement benefit” and “retirement-type subsidy” have the meaning given such terms in section 1054(g)(2)(A) of this title (/uscode/text/29/lii:usc:t:29:s:1054:g:2:A).

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**(G) Benefit accrued to date.**—

For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

**(j) EMPLOYMENT AS FIREFIGHTER OR LAW ENFORCEMENT OFFICER** It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

**(1)** with respect to the employment of an individual as a firefighter or as a law enforcement officer, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996

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if the individual was discharged after the date described in such section, and the individual has attained —

**(A)** the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

**(B)**

**(i)** if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

**(ii)** if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of—

**(I)** the age of retirement in effect on the date of such discharge under such law; and

**(II)** age 55; and

**(2)** pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

**(k) SENIORITY SYSTEM OR EMPLOYEE BENEFIT PLAN; COMPLIANCE**

A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

**(l) LAWFUL PRACTICES; MINIMUM AGE AS CONDITION OF ELIGIBILITY FOR RETIREMENT BENEFITS; DEDUCTIONS FROM SEVERANCE PAY; REDUCTION OF LONG-TERM DISABILITY BENEFITS** Notwithstanding clause (i) or (ii) of subsection (f)(2)(B)—

**(1)**

**(A)** It shall not be a violation of subsection (a), (b), (c), or (e) solely because—

**(i)** an employee pension benefit plan (as defined in section 1002(2) of this title (/uscode/text/29/lri:usc:t:29:s:1002:2)) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

**(ii)** a defined benefit plan (as defined in section 1002(35) of this title (/uscode/text/29/lri:usc:t:29:s:1002:35)) provides for—

**(I)** payments that constitute the subsidized portion of an early retirement benefit; or

**(II)** social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act



(42 U.S.C. 401 (/uscode/text/42/401) et seq.), and that do not exceed such old-age insurance benefits.

**(B)** A voluntary early retirement incentive plan that—

**(i)** is maintained by—

**(I)** a local educational agency (as defined in section 7801 of title 20 (/uscode/text/20/7801),<sup>[4]</sup> or

**(II)** an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) of title 26 and exempt from taxation under section 501(a) of title 26 (/uscode/text/26/lit:usc:t:26:s:501:a), and

**(ii)** makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in section 457(e)(1)(A) of title 26 (/uscode/text/26/lit:usc:t:26:s:457:e:1:A) or by an education association described in clause (i)(II),

shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of paragraph (2).

**(2)**

**(A)** It shall not be a violation of subsection (a), (b), (c), or (e) solely because following a contingent event unrelated to age—

**(i)** the value of any retiree health benefits received by an individual eligible for an immediate pension;

**(ii)** the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

**(iii)** the values described in both clauses (i) and (ii);

are deducted from severance pay made available as a result of the contingent event unrelated to age.

**(B)** For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

**(C)** For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of title 26 (/uscode/text/26/lit:usc:t:26:s:501:c:17)) that—

**(i)** constitutes additional benefits of up to 52 weeks;

(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

**(D)** For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term “retiree health benefits” means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 (/uscode/text/42/1395) et seq.);

(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or

(iii) the package of benefits provided by the employer is as described in clauses (i) and (ii).

**(E)**

(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of \$3,000 per year for benefit years before age 65, and \$750 per year for benefit years beginning at age 65 and above.

(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of \$48,000 for individuals below age 65, and \$24,000 for individuals age 65 and above.

(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

**(F)** If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

**(3)** It shall not be a violation of subsection (a), (b), (c), or (e) solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)

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**(A)** paid to the individual that the individual voluntarily elects to receive; or

**(B)** for which an individual who has attained the later of age 62 or normal retirement age is eligible.

**(m) VOLUNTARY RETIREMENT INCENTIVE PLANS** Notwithstanding subsection (f)(2)(B), it shall not be a violation of subsection (a), (b), (c), or (e) solely because a plan of an institution of higher education (as defined in section 1001 of title 20 ([/uscode/text/20/1001](http://uscode.house.gov/text/20/1001))) offers employees who are serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) supplemental benefits upon voluntary retirement that are reduced or eliminated on the basis of age, if—

**(1)** such institution does not implement with respect to such employees any age-based reduction or cessation of benefits that are not such supplemental benefits, except as permitted by other provisions of this chapter;

**(2)** such supplemental benefits are in addition to any retirement or severance benefits which have been offered generally to employees serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure), independent of any early retirement or exit-incentive plan, within the preceding 365 days; and

**(3)** any employee who attains the minimum age and satisfies all non-age-based conditions for receiving a benefit under the plan has an opportunity lasting not less than 180 days to elect to retire and to receive the maximum benefit that could then be elected by a younger but otherwise similarly situated employee, and the plan does not require retirement to occur sooner than 180 days after such election.

(Pub. L. 90–202, § 4 (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=PLAW>), Dec. 15, 1967, 81 Stat. 603 (<http://uscode.house.gov/statviewer.htm?volume=81&page=603>); Pub. L. 95–256, § 2(a) ([http://thomas.loc.gov/cgi-bin/bdquery/L?d095:./list/bd/d095pl.lst:256\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d095:./list/bd/d095pl.lst:256(Public_Laws))), Apr. 6, 1978, 92 Stat. 189 (<http://uscode.house.gov/statviewer.htm?volume=92&page=189>); Pub. L. 97–248, title I, § 116(a) ([http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:248\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d097:./list/bd/d097pl.lst:248(Public_Laws))), Sept. 3, 1982, 96 Stat. 353 (<http://uscode.house.gov/statviewer.htm?volume=96&page=353>); Pub. L. 98–369, div. B, title III, § 2301(b) ([http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./list/bd/d098pl.lst:369\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./list/bd/d098pl.lst:369(Public_Laws))), July 18, 1984, 98 Stat. 1063 (<http://uscode.house.gov/statviewer.htm?volume=98&page=1063>); Pub. L. 98–459, title VIII, § 802(b) ([http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./list/bd/d098pl.lst:459\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d098:./list/bd/d098pl.lst:459(Public_Laws))), Oct. 9, 1984, 98 Stat. 1792 (<http://uscode.house.gov/statviewer.htm?volume=98&page=1792>); Pub. L. 99–272, title IX, § 9201(b)(1) ([http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:272\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:272(Public_Laws))), (3), Apr. 7, 1986, 100 Stat. 171 (<http://uscode.house.gov/statviewer.htm?volume=100&page=171>); Pub. L. 99–509, title IX, § 9201 ([http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:509\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:509(Public_Laws))), Oct. 21, 1986, 100 Stat. 1973 (<http://uscode.house.gov/statviewer.htm?volume=100&page=1973>); Pub. L. 99–514, § 2 ([http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:514\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:514(Public_Laws))), Oct. 22, 1986, 100 Stat. 2095 (<http://uscode.house.gov/statviewer.htm?volume=100&page=2095>); Pub. L. 99–592 ([http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:592\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d099:./list/bd/d099pl.lst:592(Public_Laws))), §§ 2(a), (b), 3(a), Oct. 31, 1986, 100 Stat. 3342 (<http://uscode.house.gov/statviewer.htm?volume=100&page=3342>); Pub. L. 101–239, title VI, § 6202(b)(3)(C)(i) ([http://thomas.loc.gov/cgi-bin/bdquery/L?d101:./list/bd/d101pl.lst:239\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d101:./list/bd/d101pl.lst:239(Public_Laws))), Dec. 19, 1989, 103 Stat. 2233 (<http://uscode.house.gov/statviewer.htm?volume=103&page=2233>); Pub. L. 101–433, title I, § 103 ([http://thomas.loc.gov/cgi-bin/bdquery/L?d101:./list/bd/d101pl.lst:433\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d101:./list/bd/d101pl.lst:433(Public_Laws))), Oct. 16, 1990, 104 Stat. 978 (<http://uscode.house.gov/statviewer.htm?volume=104&page=978>); Pub. L. 101–521 ([http://thomas.loc.gov/cgi-bin/bdquery/L?d101:./list/bd/d101pl.lst:521\(Public\\_Laws\)](http://thomas.loc.gov/cgi-bin/bdquery/L?d101:./list/bd/d101pl.lst:521(Public_Laws))), Nov. 5, 1990, 104 Stat. 2287 (<http://uscode.house.gov/statviewer.htm?volume=104&page=2287>); Pub. L. 104–208, div. A, title I, § 101(a) (<http://www.gpo.gov/fdsys/pkg/PLAW-104publ208/html/PLAW-104publ208.htm>) [title I, § 119[1(b)]], Sept. 30, 1996, 110 Stat. 3009 (<http://uscode.house.gov/statviewer.htm?volume=110&page=3009>), 3009–23; Pub. L. 105–244, title IX, § 941(a) (<http://www.gpo.gov/fdsys/pkg/PLAW-105publ244/html/PLAW-105publ244.htm>), (b), Oct. 7, 1998, 112 Stat. 1834 (<http://uscode.house.gov/statviewer.htm?volume=112&page=1834>), 1835; Pub. L. 109–280, title VII, § 701(c) (<http://www.gpo.gov/fdsys/pkg/PLAW-109publ280/html/PLAW-109publ280.htm>), title XI,

§ 1104(a)(2), Aug. 17, 2006, 120 Stat. 988 (<http://uscode.house.gov/statviewer.htm?volume=120&page=988>), 1058; Pub. L. 110–458, title I, § 123(a) (<http://www.gpo.gov/fdsys/pkg/PLAW-110publ458/html/PLAW-110publ458.htm>), Dec. 23, 2008, 122 Stat. 5114 (<http://uscode.house.gov/statviewer.htm?volume=122&page=5114>.)

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[1] So in original.

[2] See References in Text note below.

[3] So in original. Probably should be “similar account”.

[4] So in original. A closing parenthesis probably should follow “20”.

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