

Protections For Employees Called Into Military Service And Employer-Provided Benefits

By Anne E. Moran, Shaun L. Terrill & Galina V. Kolomietz

As a result of the tragic events of September 11, many employees have had or will have to leave work to commence active military duty. The call-up of an employee to active military duty affects an employer because this triggers the application of various federal statutes and regulations in connection with employer's sponsorship and administration of its employee benefit and welfare plans. Applicable federal statutes include The Soldiers' and Sailors' Civil Relief Act of 1940 ("Soldiers' and Sailors' Relief Act"), which limits interest rates that may be charged individuals on active military duty, and the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA"), which governs employment, benefit and reemployment rights of uniformed service members. This article focuses on how those laws apply to the administration of employee benefit programs. This article also identifies some unanswered questions under those laws.

I. The Statutory Framework

Both the Soldiers' and Sailors' Relief Act and USERRA provide special protections with respect to certain employment rights of persons called into military service. A general summary of these Acts follows.

A. Soldiers' and Sailors' Civil Relief Act of 1940

The Soldiers' and Sailors' Relief Act, 50 U.S.C. app. §§501-548, 560-591, was enacted in 1940 to assist in the "national defense under the emergent conditions threatening the peace and security of the United States." The statute protects active and reserve component

personnel in the military and naval establishments, including the Coast Guard and Public Health Service. The Act was amended in 1991 to add personnel of the Air Force to the list of persons that it protected. In one of its most significant provisions, the statute imposes a 6 percent cap on the amount of interest that can be assessed on obligations incurred prior to military service during the borrower's period of military service unless the court, upon application of the lender, finds that the borrower's ability to pay such rate in excess of 6 percent is not materially affected by the borrower's service.¹ The statute does not address the treatment of any interest in excess of 6 percent, but the legislative history of the statute suggests that Congress intended for such excess interest to be forgiven.² Although the focus of this article will be the effect of veterans' rights laws on employee benefits, it should be noted that the statute also authorizes courts to stay enforcement of loans secured by real or personal property, and restricts the power of lenders to sell, foreclose, or seize the collateral for nonpayment and allows dependents of service personnel to apply to courts for similar protection. Although some commentators have argued to the contrary, this statute likely applies to loans made to participants in employee benefit plans since such loans are traditionally secured by remaining assets in the participant's plan account.

B. The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)

The Uniformed Services Employment and Reemployment Rights Act of 1994, P.L. 103-353, 38 U.S.C. §§4301 *et seq.* ("USERRA"), was enacted on October 13, 1994. USERRA applies to sponsors of qualified pension, profit-sharing, and stock bonus plans as well as governmental plans, church plans, Code section 403(b) annuities, and nonqualified plans. Given the broad applicability, plan sponsors and administrators should familiarize themselves with all of the requirements of USERRA.

USERRA was enacted “to encourage noncareer service ... by eliminating or minimizing disadvantages to civilian careers and employment which can result from such service.”³ Revising and restating preexisting federal law on veterans’ rights, USERRA provides employment, benefit, and reemployment rights to any “person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service.”⁴ Both voluntary or involuntary uniformed service is covered under USERRA. Such service includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing authorized funeral honors duty.

The rights and benefits protected under USERRA include “any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or agreement or employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location or employment.”⁵ Employer obligations under USERRA apply regardless of employer size.⁶ These obligations extend to successor employers as a result of mergers and acquisitions.

Veterans’ rights under USERRA fall into three broad categories. First, USERRA prohibits discrimination in employment, reemployment, retention in employment, promotion, or any benefit of employment on the basis of military service. Second, USERRA provides for employment reinstatement rights following military service. These rights are discussed briefly

below. Third, USERRA guarantees the right to vesting and accrual credit for purposes of certain employee benefit plans and entitles an eligible participant to make-up any missed-contributions under a 401(k) plan. These rights are discussed below in detail. The responsibility for enforcing USERRA rests primarily with the Secretary of Labor.

II. Rights To Reinstatement Of Employment

Under USERRA, an employee incurring a break in civilian employment by reason of service in the uniformed services has reemployment rights if (1) the employee gives written or verbal advance notice of the military service to the employer, (2) the length of military service is five years or less, (3) the employee separates from military service under honorable conditions, and (4) the employee reports back to work after the completion of military service within certain time limits. Reemployed service members must be given the same seniority and rights that they would have had if they had stayed in their civilian jobs during the time of their military service, plus the additional seniority rights that they would have attained had they remained continuously employed. This provision thus gives returning employees the benefit of advancing in their job despite their absence.

USERRA generally does not distinguish between employees entering into military service voluntarily or involuntarily. There is, however, an important exception. While volunteers are not entitled to reemployment rights beyond five years of service, service members ordered to or retained on active duty involuntarily are exempted from the five-year limitation on the length of service.

Employees are generally required to give notice of pending service, but there are no specific rules regarding the timing or form of notice. It is clear that notice can be written or

verbal, and that it can be given by an officer of the employee. The law also allows the notice requirement to be waived if giving notice is impossible or unreasonable under the circumstances.

An employee who performed military service for fewer than 31 days must report to the employer by the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the service and the expiration of eight hours after returning home. An employee who served more than 30 but less than 181 days must submit an application for reemployment within 14 days of his or her return. An employee who served more than 180 days must submit an application for reemployment no later than 90 days after completion of the employee's service. An employee who is prevented from making a timely return to work due to an injury suffered during a military service is given up to two years to apply for reemployment. If the injury causes or aggravates a disability, the employee may be protected by both USERRA and the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*

If the service member's military service was longer than 180 days, an employer cannot terminate the employee without cause for one year after reemployment. If the service member's military service was between 30 and 180 days, the employer cannot terminate the employee without cause for 180 days after reemployment.

III. Pension Rights

Plan provisions. Under USERRA, an employee returning to civilian employment after military service is entitled to receive certain pension, profit-sharing, and similar benefits (under defined benefit or defined contribution plans) that the employee would have received but for the employee's absence during such military service. The Internal Revenue Service requires that retirement plans specifically guarantee such rights. Most

employers and plan administrators amending their plans for recent legislation have included a provision that states the following:

“Special Rules Relating to Veterans’ Reemployment Rights. Notwithstanding any provision of this Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with [Internal Revenue] Code section 414(u).”

This provision, which comes from a model amendment proposed by the Internal Revenue Service (the “IRS”),⁷ provides no real indication of how plans are to be operated. Employers must interpret these provisions in accordance with the special rules in the Internal Revenue Code (the “Code”) Section 414(u) and in accordance with relevant IRS guidance. These rules are described in detail below.

Defined benefit plans. Under USERRA, a reemployed service member may be treated as not having incurred a break in service with the employer for purposes of determining plan benefits. Military service must be considered service with the employer for vesting and benefit accrual purposes under such plan.⁸ Pension accruals for the period of military leave are based on the pay and service that, to a degree of reasonable certainty and in light of the individual’s work history before and after going on active duty, the employee would have had if the civilian job had not been interrupted. This provision is consistent with the holding in *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946), where the U.S. Supreme Court held that, under pre-USERRA veterans’ rights law, an employee returning from military service must be allowed to “step back on the seniority escalator ... at the precise point he would have occupied had he kept his position continuously during the [service].”

Profit-sharing plans. Prior to the enactment of USERRA, a federal appeals court held that the veterans’ rights law does not require that employees who left their jobs for military

service receive profit-sharing plan allocations for the time they were on leave. *Raypole v. Chemi-Trol Chemical Co.*, 754 F.2d 169 (6th Cir. 1985). In the court's view, profit-sharing contributions were more like pay for current service than attributes of seniority and, since the employer had discretion over whether and how much to contribute, the employees' right to contributions was not reasonably certain when they went on active duty.

In light of USERRA, however, profit-sharing contributions appear to be required. USERRA provides that, for purposes of determining employer and employee contributions, an employee's compensation during a period of military service is based on the rate of pay the employee *would have received* from the employer but for the absence during the period of service, or if that rate is not reasonably certain, the employee's average rate of compensation during the 12-month period immediately before the military service. Therefore, an argument by the employer that the employee's lack of actual compensation precludes the right to a profit-sharing contribution would not be valid. The legislative history of USERRA further implies that contributions would be required.⁹

401(k) plans. Individuals protected under USERRA have the right to make missed salary reduction contributions to a 401(k) plan. The participant has a period of three times the period of military service, but no longer than five years, to make the missed contributions. If the plan provides for an employer matching contribution, and the participant makes missed salary contributions, a match must be allowed.

Make-up contributions. There are a number of different instances in which the employer must make up contributions upon an employee's return. Most obvious, of course, are circumstances where an employee misses a matching contribution or an employer contribution to

a profit-sharing plan. In addition, certain pension plans are “contributory” in nature and require employee contributions to ensure service credit.

The required method and timing of make-up contributions is not always clear. One question is raised under USERRA if an employee front-loads his make-up contributions: Is the employer obligated to make the match on all the make-up amounts immediately or does it have the same period the employee has? There is no specific answer in USERRA but many practitioners believe it is best to make the contributions when the employee does. Then, for example, if the employee were to leave work after a few months of making the contributions, the employer would have satisfied its obligation to make up any matches. Other issues include the scope of USERRA rights when there is a successor employer or the employer has changed plan provisions.

Employers should thus be aware the “make-up rule” may result in a very high contribution in a year. For example, assume an employee makes \$100,000 and is away on military leave for four years. He comes back in 2002 and defers an amount equal to 6 percent of his compensation. The plan provides that the employer is obligated to make a matching contribution of 50% of that deferral. The 6 percent deferral and match in 2002 would happen normally under the plan and is not something that triggers USERRA. However, the employee then decides to make up all of his missed contributions. Therefore, he tells his employer that he wants to defer an additional \$24,000 (assume that similarly situated individuals’ salary remained constant during the four-year period). The employer must permit this and then provide an additional 50 percent match for this entire \$24,000 amount in 2002.

Make-up contributions are not taken into account in the year in which they are made. Rather, they relate back to the year to which the contributions would have been made but

for the military service.¹⁰ Thus, in the prior example, the \$24,000 make-up contribution actually made in 2002 will be treated as a contributions spread over the prior four years for purposes of the Code section 415 and 402(g) limits. All contributions made for a prior year can be reported by the employer on a Form W-2 or on a separate statement that shows the type of plan, the years to which the contributions relate and the contribution amounts.¹¹ Luckily, make-up contributions do not count for purposes of nondiscrimination tests that are mathematical comparisons of amounts paid or benefits provided to the high-paid (the ADP and ACP tests, and coverage and minimum participation tests), since these would be extremely difficult to apply retroactively.¹²

It should also be noted that employers are not obligated to adjust make-up contributions for earnings (or losses). It is not entirely clear if this concept applies to internal adjustments in defined benefit plans, although logically it should. In addition, the employer need not reallocate forfeitures already made to participants if the employee later returns to work; the forfeited amounts would presumably be repaid by the employer.

Plan loans. There are a number of practical questions that arise if employees entering military service also have loans from their 401(k) or other plans. For example, arrangements may be needed for repayment of plan loans that employees have been paying through payroll deductions if employees' pay will stop. One solution would be to arrange for payment by check rather than by salary reduction, although that raises practical issues regarding ease of collection.

USERRA permits a plan to suspend the obligation to repay any loan made to an employee from such plan for the period of such employee's service in the uniformed services. If a plan provides for the suspension of an employee's obligation to repay, the suspension is not taken into account for purposes of §72(p), 401(a) or 4975(d)(1).¹³ This means that plans can

suspend loan payments without violating provisions of ERISA or the Code that otherwise severely limit suspensions in order to protect plan assets and ensure that loans are bona fide. Suspension of loan payment obligations is not required. However, the IRS has implied that if suspension is permitted, the plan document should reflect that; the Service has provided a model amendment for this purpose.¹⁴ It is not clear to the authors why a suspension of loan amounts could not be placed in plan procedures as opposed to the plan document, but this issue does not appear to have been formally addressed.

The Soldiers' and Sailors' Relief Act requires that interest charged on loans to active duty service members be reduced to 6 percent if the borrower requests a reduction and demonstrates that it would be a hardship to pay at a higher rate. The mechanics of proving (or "disproving") hardship are less than clear. Another problem is that the interplay between USERRA and The Soldiers' and Sailors' Relief Act is murky. For example, could an employee who has his loan payment obligations suspended under Code section 414(u) *also* argue that interest accrued on his loans in the interim be reduced to 6 percent? Since the Soldiers' and Sailors' Relief Act applies only if the employee has been *financially harmed* by entering service, the employer has a good argument that suspending the loan payments actually puts the employee in a beneficial position and that no financial harm has occurred *as a result* of the employee's entering service. The ability to succeed with this argument is not clear.

IV. Health Benefits

Under USERRA, a reservist called to active duty must be treated like an employee on leave. Whether this terminates the employee's eligibility for benefit plan coverage as an active employee depends on the terms of the plan. USERRA does not require such

coverage, except for the continuation coverage described below. Standard benefit plan exclusions for injuries or death resulting from acts of war are permissible, but it is not clear if that would be true for a more general denial of coverage for problems incurred while on military duty.¹⁵

A. COBRA and USERRA

Section 4980B of the Code requires employer-provided group health plans to offer continuation coverage (“COBRA”) to employees whose coverage would otherwise be terminated by certain events. Under USERRA, employees serving in the uniformed services are entitled to COBRA-like continuation health coverage.¹⁶ It is important to note that this coverage applies even if the employer is exempt from the continuation coverage requirements of COBRA. Therefore, employers with fewer than 20 employees would be obligated under USERRA to provide continuation benefits even though they are not obligated under COBRA (although, of course, State law may apply in those cases to provide COBRA-equivalent coverage).

If the employee elects to continue coverage, USERRA requires that the employee must be covered for the entire duration of the employee’s service in the uniformed services, or, if the duration of such service exceeds 18 months, for 18 months from the date the employee’s absence begins. If the employee’s coverage under a health plan is terminated by reason of service in the uniformed services, no exclusion or waiting period may be imposed in connection with the reinstatement of such coverage upon the employee’s reemployment, unless such exclusion or waiting period would have been imposed under the plan regardless of such termination. If it wishes to do so, the plan may arguably impose exclusions and waiting periods on account of service-related illnesses and injuries,¹⁷ but it is not likely that many plans would do this.

Generally, the maximum premium a service member may be required to pay for continuation coverage under USERRA is 102% of the full premium under the plan. If the employee's absence from employment by reason of military service is less than 31 days, the employee may not be charged more than the normal employee share of the premium for the month.¹⁸ Federal veterans' rights law contains similar COBRA-related provisions for spouses and dependents called to active duty.

Even before USERRA was enacted in 1994, the Service took the position that employer-funded health plans must offer the option to continue health coverage under COBRA to employees in the reserves who are called to active duty, and to their dependents who are covered under the plan, if the call-up would otherwise cause their health coverage to stop. The Service also took the position that, since the military health plans to which such employees may become entitled while on active duty are not "health plans" within the meaning of COBRA, coverage under such military health plans does not trigger the COBRA cut-off provision, without regard to the question of preexisting conditions.¹⁹ Under this analysis, COBRA rights cannot be cut off on account of the beneficiary's coverage under any health plan sponsored by a federal, state, or local government employer.

An interesting issue arises when a state law imposes more beneficial continuation coverage for military service than USERRA. Generally, section 4302(a) of USERRA provides that nothing in USERRA shall supersede, nullify or diminish any federal or *state law* that establishes a right or benefit that is more beneficial or in addition to a right or benefit provided under USERRA. Thus, for example, if a state veterans' rights law requires employee benefit plans to provide COBRA coverage for the entire length of an individual's military service (rather than the limited time period required by COBRA, for example) it could be argued that such state

law should govern the allowable benefits. However, it is not clear that this is the correct result in all cases. It is true that ERISA section 514(d) provides that ERISA does not supercede other federal laws, so ERISA would not override USERRA. However, it can be argued that ERISA can preempt state laws that relate to employee benefits (as it would absent USERRA) as long as the state law requires more than the Federal law would require. This assumes, of course, that ERISA preemption would apply (for example, ERISA does not preempt state insurance laws, but it would preempt laws that applied to unfunded employer-provided benefits).

For example, in *Shaw v. Delta Airlines*, 463 U.S. 85 (1983), the Supreme Court held that section 514(d) of ERISA would preserve (i.e., could not preempt) a state human rights law that prohibited discrimination if preemption would impair the enforcement scheme contemplated by the nondiscrimination rules of Title VII. But the court held in *Shaw* that the state human rights law would be preempted to the extent it prohibited practices that were lawful under federal law (at that time, prior to the passage of the Pregnancy Discrimination Act, 42 U.S.C. §2000e(k), discrimination on the basis of pregnancy was not unlawful under Federal law). Note too that, as in USERRA, Title VII (the applicable federal law in *Shaw*) had a clause specifically preserving nonconflicting state law, but this clause did not save the applicable state law from preemption under ERISA. Applying *Shaw* to a case in which state law requires benefit plans to provide certain benefits, it could be argued that the ERISA preemption of any state-mandated benefits laws would not impair USERRA, as long as that state law is not needed to enforce USERRA.

Covered health benefits/coordination of benefits. Federal law provides that military health coverage for the families of active duty service members (“CHAMPUS”) is secondary to any other health coverage the individual has. Therefore, COBRA or other coverage

the individual might have under an employer-funded plan is always primary for CHAMPUS enrollees. The preamble to the COBRA regulations states that the USERRA and COBRA periods of continuation coverage run concurrently.²⁰ Thus, an employee cannot elect continuation of benefits first under USERRA and then under COBRA. However, if the employee does not return to work, but is within the 18-month period of continuation coverage, he or she is still entitled to regular COBRA coverage for the balance of the 18-month period.

Instead of electing continuation coverage under USERRA, an employee may be able to enroll in other group health plan coverage if such coverage is available. The right to make a special election to enroll in another group health plan regardless of that plan's otherwise applicable enrollment periods is provided under the Health Insurance Portability and Accountability Act, P.L. 104-191 ("HIPAA"), codified in section 9801(f) of the Code. The request to enroll in another health plan under HIPAA must be made within 30 days of losing coverage under the employee's original health plan.

V. Cafeteria Plans

USERRA does not require continued coverage under cafeteria plans. Employees absent from employment by reason of military service will be treated as any other employees on leave. A service member's ability to discontinue or change coverage under his or her employer's cafeteria plan will depend on whether the plan allows mid-year election changes.²¹ If under the terms of the plan, an unpaid leave by either the employee or the employee's spouse triggers the right to make mid-year election changes, an employee on military leave will be allowed to make such changes. If participation in a cafeteria plan is discontinued by reason of military leave, eligibility for cafeteria plan benefits following the leave must be restored.

If the employer elects to continue paying employees who are called to active duty, it appears that employees could be allowed to continue to make salary reduction cafeteria plan contributions from those payments. It is also unclear what happens when the employer does not elect to pay employees on leave. Some have suggested that employees should be allowed to make employee contributions during the leave period with post-tax payments, to avoid forfeiture of benefits under the required “use it or lose it” cafeteria plan regulations that do not permit a carryover of unused accounts. Other alternatives are to deduct the payment from the employee’s final pay check or from any accrued vacation pay. It may also be possible to use “make-up contributions” for this purpose.

At present, there is no indication that IRS is planning to relax its “use-it-or-lose-it” rule and allow cafeteria plans to refund salary reduction amounts that called-up employees have already contributed to flexible spending accounts, so one of these alternatives needs to be considered.

VI. Other Employee Benefits

Vacation. Persons protected by USERRA must be permitted to use any vacation or other paid leave during a military leave instead of unpaid leave.²² Employers may not require employees on military leave to use vacation time prior to going on unpaid leave. Unused vacation, if any, must be restored upon the employee’s reemployment.

Dependent care plans. USERRA does not require continued coverage under dependent care plans. For purposes of dependent care plans, employees absent from employment by reason of military service will be treated as any other employees on leave. An employee’s ability to change his or her coverage elections under a dependent care plan will

depend on whether the plan allows mid-year election changes.²³ If under the terms of the plan, participating employees are allowed to make mid-year election changes in the event of a change in “family status,” employees on military leave will be allowed to make such changes. If participation in a dependent care plan is discontinued by reason of military leave, eligibility for dependent care plan benefits following such leave must be restored.

Other welfare benefits. Generally non-seniority based benefits, like life insurance, need not be continued under USERRA unless an employer generally allows employees on leave to continue such welfare benefits.²⁴

Incentive stock options. Stock option rights are safeguarded under the general protections of USERRA (i.e., it constitutes an “other right or benefit.”) One interesting issue is whether an individual out on military leave can be granted an incentive stock option (“ISO”). Code section 422(a)(2) provides that the favorable tax consequences associated with the grant and exercise of incentive stock options apply only if “at all times during the *period beginning on the date of the granting of the option* and ending on the day 3 months before the date of such exercise, such individual was *an employee . . .*” Under applicable Treasury Regulations, generally, an employee who is currently on unpaid leave of absence is not considered an employee under Code section 422 and can not receive an ISO. If the employee is granted an ISO when he is not on a leave of absence and is still employed by the employer, then he can be granted an ISO. His employment status will generally be considered to continue intact (up to 90 days) even if he takes an unpaid leave of absence after the grant. After 90 days, however, the employment relationship will be deemed to have terminated on the 91st day of such leave. Any

ISO grants after this date, therefore, could be considered to be made a non-employee and thus would not qualify for favorable tax consequences.

Notwithstanding the general rules above, Treasury Regulation section 1.421-7(h)(2) does provide for an exception where an individual's right to reemployment is guaranteed by statute or contract. In that case, the employment relationship is not deemed to have terminated after 90 days of leave. Since USERRA is a federal statute that guarantees qualified individuals the right to reemployment, it appears that such individuals could receive grants of ISOs even after leaving their employer to enter into military service.

VII. Conclusion

The federal law provides important protections for veterans and for reservists called to active duty. Although sometimes the application of these general protections to a particular plan of an employer is unclear, employers should make an effort to familiarize themselves with various veterans' rights laws that might apply if their employees are called to active duty and make a good-faith effort to comply with such laws. This article was intended to provide a blueprint for such compliance.

¹ 50 U.S.C. app. § 526.

² See Congressional Research Service Memorandum, *The Interest Rate Cap of the Soldiers' and Sailors' Civil Relief Act of 1940, as Amended* (Aug. 27, 1990).

³ 38 U.S.C. § 4301(a)(1).

⁴ 38 U.S.C. § 4311(a).

⁵ 38 U.S.C. § 4303(2).

⁶ See e.g., *Cole v. Swint*, 961 F.2d 58 (5th Cir. 1992).

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- ⁷ Rev. Proc. 96-49, I.R.B. 1996-43, 74.
- ⁸ 38 U.S.C. § 4318(a)(2).
- ⁹ See H.Rep. 103-65, at 35, *reprinted in*, 1994 USCCAN 2469.
- ¹⁰ 38 U.S.C. § 4318(b)(2); 26 U.S.C. §§ 414(u)(1); 414(u)(2).
- ¹¹ IRS Announcement 98-45, 1998-23 IRB.
- ¹² 26 U.S.C. § 414(u)(1)(C).
- ¹³ 26 U.S.C. §414(u)(4); Rev. Proc. 96-49, *supra* n. 11, §2.05.
- ¹⁴ See Rev. Proc. 96-49, I.R.B. 1996-43, 77.
- ¹⁵ See 38 U.S.C. §§ 4316(b); 4317(b)(2).
- ¹⁶ 38 U.S.C. § 4317(a).
- ¹⁷ 38 U.S.C. § 4317(b).
- ¹⁸ 38 U.S.C. § 4317(a)(2).
- ¹⁹ See IRS Notice 90-58, 1990-2 C.B. 345
- ²⁰ T.D. 8812, I.R.B. 1999-8, 19 (Feb. 22, 1999).
- ²¹ See Treas. Reg. § 1.125-4(c).
- ²² 38 U.S.C. § 4316(d).
- ²³ See Treas. Reg. § 1.125-4(c).
- ²⁴ 38 U.S.C. § 4316(b)(1)(B).