

108TH CONGRESS  
2D SESSION

# H. R. 5398

To amend the Internal Revenue Code of 1986 to improve the retirement security of American families.

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IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2004

Mr. ANDREWS introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to improve the retirement security of American families.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Retirement Enhancement Revenue Act of 2004”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is  
7 as follows:

Sec. 1. Short title and table of contents.

**TITLE I—PUBLIC EMPLOYEE PENSION PLANS**

Sec. 101. New qualification requirements for public employee pension plans.

**TITLE II—PENSION IMPROVEMENTS**

- Sec. 201. Automatic enrollment of all employees in 401(k) plans.
- Sec. 202. Diversification requirements for defined contribution plans that hold employer securities.
- Sec. 203. Improvements in simplified employee pensions.
- Sec. 204. Pension integration rules.
- Sec. 205. Increase to age 75 for beginning mandatory distributions.
- Sec. 206. Restrictions on exclusion of unionized employees from participation in 401(k) plans.
- Sec. 207. Removal of \$5,000 limit on plans subject to automatic rollover upon mandatory distribution.

#### TITLE III—TAX CREDITS TO PROMOTE PENSION COVERAGE

- Sec. 301. Savers credit made refundable and permanent.
- Sec. 302. Credit for qualified pension plan contributions of small employers.
- Sec. 303. Notice.

#### TITLE IV—IMPROVED PENSION PROTECTIONS FOR WOMEN

- Sec. 401. Modifications of joint and survivor annuity requirements.
- Sec. 402. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
- Sec. 403. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.

#### TITLE V—DEFINED BENEFIT PLANS WHICH INCLUDE QUALIFIED CASH OR DEFERRED ARRANGEMENTS

- Sec. 501. Defined benefit plan with deferred compensation arrangement in a single plan.
- Sec. 502. Defined benefit accruals satisfy 401(k) safe harbor.
- Sec. 503. Additional accruals under defined benefit plan provided as matching contributions.
- Sec. 504. Limitation on deductions where combination of defined contribution plan and defined benefit plan.
- Sec. 505. Conforming amendments to the Employee Retirement Income Security Act of 1974.

#### TITLE VI—ADDITIONAL AMENDMENTS

- Sec. 601. Exemption from prohibited transaction rules for certain aborted emergent transactions.
- Sec. 602. Loans from retirement plans for health insurance and job training expenses.
- Sec. 603. Treatment of unclaimed benefits.
- Sec. 604. Income averaging of corrected civil service annuity benefit payments.
- Sec. 605. Prohibited transaction exemption for the provision of investment advice.
- Sec. 606. Increase in deductible contributions to single-employer defined benefit plan upon payment of increased premium to the Pension Benefit Guaranty Corporation.
- Sec. 607. Exemption from prohibited transaction rules for certain aborted emergent transactions.
- Sec. 608. Pension benefit information.
- Sec. 609. Permanency of transition rule in Retirement Protection Act of 1994.

#### TITLE VII—GENERAL PROVISIONS

Sec. 701. General effective date.

Sec. 702. Plan amendments.

1       **TITLE I—PUBLIC EMPLOYEE**  
 2                   **PENSION PLANS**

3   **SEC. 101. NEW QUALIFICATION REQUIREMENTS FOR PUB-**  
 4                   **LIC EMPLOYEE PENSION PLANS.**

5       (a) IN GENERAL.—Subsection (a) of section 401 of  
 6 the Internal Revenue Code of 1986 (relating to require-  
 7 ments for qualification) is amended by inserting after  
 8 paragraph (34) the following new paragraph:

9               “(35) PUBLIC EMPLOYEE PENSION PLANS.—A  
 10 trust forming a part of a public employee pension  
 11 plan (as defined in section 420C(a)(9)) shall not  
 12 constitute a qualified trust under this section unless  
 13 the requirements of subpart F of this part are met  
 14 in connection with such plan.

15       (b) REQUIREMENTS.—Part I of subchapter D of  
 16 chapter 1 of such Code (relating to pension, profit-shar-  
 17 ing, stock bonus plans, etc.) is amended by inserting after  
 18 subpart E the following new subpart:

19               **“Subpart F—Public Employee Pension Plans**

“Sec. 420A. Reporting and disclosure requirements.

“Sec. 420B. Review by qualified review boards of changes in employer contribu-  
 tions.

“Sec. 420C. Definitions and coverage.

20   **“SEC. 420A. REPORTING AND DISCLOSURE REQUIREMENTS.**

21       “(a) IN GENERAL.—A public employee pension plan  
 22 does not meet the requirements of section 401(a)(35) un-

1 less the terms of the plan include the requirements of this  
2 section.

3 “(b) REQUIRED DISCLOSURES.—The plan shall pro-  
4 vide that, within 210 days after the close of each plan  
5 year, the administrator of the plan shall furnish to each  
6 participant, and to each beneficiary receiving benefits  
7 under the plan—

8 “(1) a statement of the assets and liabilities of  
9 the plan aggregated by categories and valued at  
10 their current value, and the same data displayed in  
11 comparative form for the end of the previous plan  
12 year,

13 “(2) a statement of receipts and disbursements  
14 during the preceding 12-month period aggregated by  
15 general sources and applications,

16 “(3) a report containing—

17 “(A) a description of all investments and  
18 assets of the plan, including their value,

19 “(B) the names and positions of all of the  
20 trustees of the plan, and the time remaining be-  
21 fore the expiration of their term,

22 “(C) a description of the method of trustee  
23 selection,

1           “(D) a description of any changes in in-  
2           vestment policy of the plan during the fiscal  
3           year,

4           “(E) an evaluation of the long-term sol-  
5           vency of the plan, including the number of par-  
6           ticipants and beneficiaries and a summary of  
7           their benefits, and a projection of the amount  
8           of benefits expected to be paid for the fifth,  
9           tenth, and fifteenth plan year following the date  
10          of the publication of the report, and

11          “(F) the percentage which the current  
12          value of the assets of the plan is of the current  
13          liability under the plan, and

14          “(4) any other material as is necessary to fairly  
15          summarize the latest annual report.

16          Such information shall be written and calculated to be un-  
17          derstood by the average plan participant, and shall be suf-  
18          ficiently accurate and comprehensive to reasonably apprise  
19          such participants and beneficiaries of their rights and obli-  
20          gations under the plan.

21          “(c) AVAILABILITY OF PLAN DOCUMENTS FOR EX-  
22          AMINATION.—The plan shall provide that the adminis-  
23          trator shall make copies of the plan description and the  
24          latest annual report and the bargaining agreement, trust  
25          agreement, contract, or other instruments under which the

1 plan was established or is operated available for examina-  
2 tion by any plan participant or beneficiary in the principal  
3 office of the administrator and in such other places as may  
4 be necessary to make available all pertinent information  
5 to all participants (including such places as the Secretary  
6 may prescribe by regulations).

7       “(d) AVAILABILITY OF INFORMATION UPON RE-  
8 QUEST.—The plan shall provide that the administrator  
9 shall, upon written request of any participant or bene-  
10 ficiary, furnish a copy of the latest annual report, any ter-  
11 minal report, the bargaining agreement, trust agreement,  
12 contract, or other instruments under which the plan is es-  
13 tablished or operated. The administrator may make a rea-  
14 sonable charge to cover the cost of furnishing such com-  
15 plete copies. The Secretary may by regulation prescribe  
16 the maximum amount which will constitute a reasonable  
17 charge under the preceding sentence.

18 **“SEC. 420B. REVIEW BY QUALIFIED REVIEW BOARDS OF**  
19 **CHANGES IN EMPLOYER CONTRIBUTIONS.**

20       “(a) IN GENERAL.—A public employee pension plan  
21 does not meet the requirements of section 401(a)(35) un-  
22 less, under the plan, changes in employer contributions are  
23 subject to review by a qualified review board established  
24 for the plan as provided in this section. For purposes of

1 this section, the term ‘qualified review board’ means a  
2 board—

3 “(1) whose membership is determined under the  
4 law of the principal State in accordance with sub-  
5 section (b), and

6 “(2) whose powers are determined under the  
7 law of the principal State in accordance with sub-  
8 section (c).

9 “(b) MEMBERSHIP.—

10 “(1) IN GENERAL.—The membership of a quali-  
11 fied review board established for a plan shall consist  
12 of 3 members selected from among individuals who,  
13 by means of their education and experience, have  
14 demonstrated expertise in the area of pension fund  
15 management, as follows:

16 “(A) one member is appointed by the Gov-  
17 ernor of the State,

18 “(B) one member is selected by the partici-  
19 pants in the plan, by means of an election held  
20 in such form and manner as shall be prescribed  
21 in regulations of the Secretary, and

22 “(C) one member is selected jointly by the  
23 Governor and by a representative of partici-  
24 pants in the plan (from a certified list of pen-

1           sion experts established in accordance with  
2           paragraph (2)).

3           Each member of the board shall have 1 vote. Mem-  
4           bers of the board shall serve for such equivalent  
5           terms as shall be prescribed under the law of the  
6           principal State.

7           “(2) CERTIFIED LIST OF EXPERTS.—The Gov-  
8           ernor of the State shall, for purposes of paragraph  
9           (1)(C), establish and maintain with respect to each  
10          public employee pension plan (for which such State  
11          is the principal State) a certified list of pension ex-  
12          perts meeting the requirements for membership on  
13          the qualified review board. Individuals may be in-  
14          cluded on such list only by agreement between the  
15          Governor of the State and a representative elected  
16          by participants in the plan, entered into by means  
17          of collective bargaining in such form and manner as  
18          shall be prescribed in regulations of the Secretary.

19          “(c) POWERS.—The board shall be treated as a quali-  
20          fied review board for purposes of this section with respect  
21          to any public employee pension plan (for which such State  
22          is the principal State) only if the powers of such board  
23          under the law of the principal State include review by the  
24          board, for approval or disapproval by the board, of any

1 change in the terms of such plan, as a necessary pre-  
2 requisite for such change to take effect, if—

3 “(1) such change would have the effect of  
4 changing levels of employer contributions to the  
5 plan, and

6 “(2) such review is requested, in such form and  
7 manner as shall be prescribed in regulations of the  
8 Secretary, by—

9 “(A) at least one-third of the total number  
10 of trustees of any trust fund forming a part of  
11 the plan, or

12 “(B) the head of any employee organiza-  
13 tion representing at least 20 percent of the  
14 total number of active participants in the plan.

15 The board may be treated as a qualified review board for  
16 purposes of this section only if, under the law of the prin-  
17 cipal State, any such change submitted to such review by  
18 the board may take effect only upon approval of the  
19 change by the board.

20 **“SEC. 420C. DEFINITIONS AND COVERAGE.**

21 “(a) DEFINITIONS.—For purposes of this subpart—

22 “(1) ADMINISTRATOR.—The term ‘adminis-  
23 trator’ means—

24 “(A) the board of trustees, retirement  
25 board, or similar person with administrative re-

1           sponsibilities in connection with a plan, or any  
2           other person specifically so designated in con-  
3           nection with any requirement of this subpart by  
4           the terms of the instrument or instruments  
5           under which the plan is operated, including but  
6           not limited to the law of any State or of any  
7           political subdivision of any State, or

8           “(B) in any case in which there is no per-  
9           son described in subparagraph (A) in connec-  
10          tion with the plan, the plan sponsor.

11          “(2) BENEFICIARY.—The term ‘beneficiary’  
12          means a person designated by a participant, or by  
13          the terms of a public employee pension plan, who is  
14          or may become entitled to a benefit thereunder.

15          “(3) CURRENT LIABILITY.—The term ‘current  
16          liability’ has the meaning provided in section  
17          302(d)(7) of the Employee Retirement Income Secu-  
18          rity Act of 1974.

19          “(4) EMPLOYEE.—The term ‘employee’ means  
20          any individual employed by an employer, employer  
21          representative, or other person required to make em-  
22          ployer contributions under the plan.

23          “(5) EMPLOYEE ORGANIZATION.—The term  
24          ‘employee organization’ means any labor union or  
25          any organization of any kind, or any agency or em-

1 ployee representation committee, association, group,  
2 or plan, in which employees participate and which  
3 exists for the purpose, in whole or in part, of dealing  
4 with employers or employer representatives con-  
5 cerning a public employee pension plan or other  
6 matters incidental to employment relationships; or  
7 any employees' beneficiary association organized for  
8 the purpose, in whole or in part, of establishing such  
9 a plan.

10 “(6) EMPLOYER.—The term ‘employer’  
11 means—

12 “(A) the government of any State or of  
13 any political subdivision of a State,

14 “(B) any agency or instrumentality of a  
15 government referred to in subparagraph (A), or

16 “(C) any agency or instrumentality of two  
17 or more governments referred to in subpara-  
18 graph (A).

19 “(7) EMPLOYER CONTRIBUTION.—The term  
20 ‘employer contribution’ means any contribution to a  
21 public employee pension plan other than a contribu-  
22 tion made by a participant in the plan.

23 “(8) EMPLOYER REPRESENTATIVE.—The term  
24 ‘employer representative’ means—

1           “(A) any group or association consisting,  
2           in whole or in part, of employers acting, in con-  
3           nection with a public employee pension plan, for  
4           an employer, or

5           “(B) any person acting, in connection with  
6           a public employee pension plan, indirectly in the  
7           interest of an employer or of a group or asso-  
8           ciation described in subparagraph (A).

9           “(9) PUBLIC EMPLOYEE PENSION PLAN.—The  
10          terms ‘public employee pension plan’ and ‘plan’  
11          mean any plan, fund, or program which was here-  
12          tofore or is hereafter established or maintained, in  
13          whole or in part, by an employer, an employer rep-  
14          resentative, or an employee organization, or by a  
15          combination thereof, to the extent that by its express  
16          terms or as a result of surrounding circumstances  
17          such plan, fund, or program—

18                 “(A) provides retirement income to em-  
19                 ployees, or

20                 “(B) results in a deferral of income by em-  
21                 ployees for periods extending to the termination  
22                 of covered employment or beyond,  
23          regardless of the method of calculating the contribu-  
24          tions made to the plan, the method of calculating

1 the benefits under the plan, or the method of distrib-  
2 uting benefits from the plan.

3 “(10) PRINCIPAL STATE.—The term ‘principal  
4 State’ means, for any plan year with respect to a  
5 public employee pension plan, the State in which, as  
6 of the beginning of such plan year, the largest per-  
7 centage of the participants of the plan employed in  
8 any single State is employed.

9 “(11) GOVERNOR.—The term ‘Governor’  
10 means, in connection with a public employee pension  
11 plan, the Governor (or equivalent official) of the  
12 principal State.

13 “(12) PARTICIPANT.—The term ‘participant’  
14 means any individual who is or may become eligible  
15 to receive a benefit of any type from a public em-  
16 ployee pension plan or whose beneficiaries may be el-  
17 igible to receive any such benefit.

18 “(13) PERSON.—The term ‘person’ means a  
19 State, a political subdivision of a State, any agency  
20 or instrumentality of a State or a political subdivi-  
21 sion of a State, an individual, a partnership, a joint  
22 venture, a corporation, a mutual company, a joint-  
23 stock company, a trust, an estate, an unincorporated  
24 organization, an association, or an employee organi-  
25 zation.

1           “(14) PLAN SPONSOR.—The term ‘plan spon-  
2           sor’ means—

3                   “(A) in the case of a plan established or  
4                   maintained solely for employees of a single em-  
5                   ployer, such employer,

6                   “(B) in the case of a plan established or  
7                   maintained by an employee organization, the  
8                   employee organization, or

9                   “(C) in the case of a plan established or  
10                  maintained by two or more employers or jointly  
11                  by one or more employers and one or more em-  
12                  ployee organizations, the association, com-  
13                  mittee, board of trustees, or other similar group  
14                  of representatives of the parties who establish  
15                  or maintain the plan.

16               “(15) PLAN YEAR.—The term ‘plan year’  
17               means, with respect to a plan, the calendar, policy,  
18               or fiscal year on which the records of the plan are  
19               kept.

20               “(16) STATE.—The term ‘State’ means any  
21               State of the United States, the District of Columbia,  
22               the Commonwealth of Puerto Rico, the Virgin Is-  
23               lands, American Samoa, and Guam.

24               “(b) COVERAGE.—

1           “(1) IN GENERAL.—Except as provided in para-  
2 graph (2), this subpart shall apply to any public em-  
3 ployee pension plan.

4           “(2) EXCEPTIONS FROM COVERAGE.—The pro-  
5 visions of this subpart shall not apply to—

6           “(A) any employee benefit plan described  
7 in section 4(a) of the Employee Retirement In-  
8 come Security Act of 1974 (29 U.S.C.  
9 1003(a)), which is not exempt under section  
10 4(b)(1) of such Act (29 U.S.C. 1003(b)(1)),

11           “(B) any plan which is unfunded and is  
12 maintained by an employer or employer rep-  
13 resentative primarily for the purpose of pro-  
14 viding deferred compensation for a select group  
15 of management or highly compensated employ-  
16 ees,

17           “(C) any arrangement which would be a  
18 severance pay arrangement, as defined in regu-  
19 lations of the Secretary of Labor under section  
20 3(2)(B)(i) of the Employee Retirement Income  
21 Security Act of 1974 (29 U.S.C.  
22 1002(2)(B)(i)), if the employer were an em-  
23 ployer within the meaning of section 3(5) of  
24 such Act (29 U.S.C. 1002(5)),

1           “(D) any agreement to the extent it is a  
2 coverage agreement entered into pursuant to  
3 section 218 of the Social Security Act (42  
4 U.S.C. 418),

5           “(E) any individual retirement account or  
6 any individual retirement annuity within the  
7 meaning of section 408, or a retirement bond  
8 within the meaning of section 409,

9           “(F) any plan described in section 401(d),

10           “(G) any individual account plan con-  
11 sisting of an annuity contract described in sec-  
12 tion 403(b),

13           “(H) any eligible State deferred compensa-  
14 tion plan, as defined in section 457(b), or

15           “(I) any plan maintained solely for the  
16 purpose of complying with applicable workers’  
17 compensation laws or disability insurance  
18 laws.”.

## 19           **TITLE II—PENSION** 20           **IMPROVEMENTS**

### 21   **SEC. 201. AUTOMATIC ENROLLMENT OF ALL EMPLOYEES IN** 22           **401(K) PLANS.**

23           (a) IN GENERAL.—Subparagraph (A) of section  
24 401(m)(11) of the Internal Revenue Code of 1986 (relat-  
25 ing to additional alternative method of satisfying non-

1 discrimination tests) is amended by striking “and” at the  
2 end of clause (ii), by striking the period at the end of  
3 clause (iii) and inserting “, and”, and by inserting after  
4 clause (iii) the following new clause:

5 “(iv) meets the requirements of sub-  
6 paragraph (C).”.

7 (b) MINIMUM COVERAGE REQUIREMENTS.—Para-  
8 graph (11) of section 401(m) of such Code is amended  
9 by adding at the end the following new subparagraph:

10 “(C) MINIMUM COVERAGE REQUIRE-  
11 MENTS.—The requirements of this subpara-  
12 graph are met if—

13 “(i) the plan meets the requirements  
14 of section 410(b), or

15 “(ii) the plan is offered to all eligible  
16 employees.

17 For purposes of clause (ii) a plan shall be treat-  
18 ed as offered to an eligible employee if, under  
19 the plan, employer contributions are made on  
20 the employee’s behalf under the plan, unless,  
21 pursuant to an election by the employee, pay-  
22 ments are made to the employee directly in cash  
23 in lieu of such employer contributions.”.

24 (c) PREEMPTION OF STATE LAW.—The amendments  
25 made by this section supersede any provision of a statute,

1 regulation, or rule of a State or political subdivision of  
2 a State that would otherwise require an employer to obtain  
3 an employee's consent before making a deduction from the  
4 wages of such employee.

5 (d) GUIDELINES FOR MEETING FIDUCIARY RE-  
6 QUIREMENTS.—Section 404(a) of the Employee Retire-  
7 ment Income Security Act of 1974 (29 U.S.C. 1104(a))  
8 is amended by adding at the end the following new para-  
9 graph:

10 “(3)(A) The Secretary shall prescribe by regulation  
11 guidelines for compliance with the requirements of the di-  
12 versification requirement of paragraph (1)(C) and the pru-  
13 dence requirement (to the extent that it requires diver-  
14 sification) of paragraph (1)(B) in the case of plans which  
15 are treated as in compliance with the requirements of sec-  
16 tion 401(m)(2) of the Internal Revenue Code of 1986 sole-  
17 ly by reason of compliance with the requirements of sec-  
18 tion 401(m)(11) of such Code. Such guidelines shall con-  
19 sist of criteria for meeting a standard of well-balanced and  
20 highly diversified investment of plan assets. Compliance  
21 with such guidelines shall be deemed compliance with such  
22 requirements.

23 “(B) The criteria prescribed by the Secretary pursu-  
24 ant to subparagraph (A) shall include at least the fol-  
25 lowing:

1           “(i) sufficiently limited investment of plan as-  
2           sets in securities issued by any single issuer (other  
3           than in obligations issued by, or guaranteed as to  
4           both principal and interest by, the Government of  
5           the United States);

6           “(ii) sufficient diversification of investment  
7           among and within asset classes, which shall include  
8           at least sufficient diversification measured as be-  
9           tween stocks and bonds, sufficient diversification  
10          measured as among varieties of stock categorized by  
11          large capitalization, medium capitalization, and  
12          small capitalization, and sufficient diversification  
13          measured as between investment funds focused on  
14          growth and investment funds focused on income;  
15          and

16          “(iii) adequate prospects for a reasonable rate  
17          of return on the investment, together with adequate  
18          assurance against loss of principal and minimization  
19          of fees and other associated costs chargeable to par-  
20          ticipants.”.

21 **SEC. 202. DIVERSIFICATION REQUIREMENTS FOR DEFINED**  
22 **CONTRIBUTION PLANS THAT HOLD EM-**  
23 **PLOYER SECURITIES.**

24          (a) IN GENERAL.—Subsection (a) of section 401 of  
25 the Internal Revenue Code of 1986 (relating to require-

1 ments for qualification), as amended by this Act, is fur-  
2 ther amended by inserting after paragraph (35) the fol-  
3 lowing new paragraph:

4           “(36) DIVERSIFICATION REQUIREMENTS FOR  
5           DEFINED CONTRIBUTION PLANS THAT HOLD EM-  
6           PLOYER SECURITIES.—

7                   “(A) IN GENERAL.—In the case of a de-  
8           fined contribution plan described in this sub-  
9           section that includes a trust which is exempt  
10          from tax under section 501(a) and which holds  
11          employer securities that are readily tradable on  
12          an established securities market, such trust  
13          shall not constitute a qualified trust under this  
14          section unless such plan meets the requirements  
15          of subparagraphs (B) and (C).

16                  “(B) ELECTIVE DEFERRALS INVESTED IN  
17          EMPLOYER SECURITIES.—

18                   “(i) IN GENERAL.—In the case of the  
19          portion of the account attributable to elec-  
20          tive deferrals which is invested in employer  
21          securities, a plan meets the requirements  
22          of this subparagraph if each applicable in-  
23          dividual in such plan may elect to direct  
24          the plan to divest any portion of such secu-  
25          rities in the individual’s account and to re-

1 invest an equivalent amount in other in-  
2 vestment options which meet the require-  
3 ments of subparagraph (D). The preceding  
4 sentence shall apply to the extent that the  
5 amount attributable to reinvested portion  
6 exceeds the amount to which a prior elec-  
7 tion under this subparagraph or paragraph  
8 (28) applies.

9 “(ii) APPLICABLE INDIVIDUAL.—For  
10 purposes of this subparagraph, the term  
11 ‘applicable individual’ means—

12 “(I) any participant in the plan,

13 “(II) any beneficiary who is an  
14 alternate payee (within the meaning  
15 of section 414(p)(8)) under an appli-  
16 cable qualified domestic relations  
17 order (within the meaning of section  
18 414(p)(1)(A)), and

19 “(III) any beneficiary of a de-  
20 ceased participant or alternate payee.

21 “(C) OTHER EMPLOYER CONTRIBU-  
22 TIONS.—

23 “(i) IN GENERAL.—In the case of the  
24 portion of the account attributable to em-  
25 ployer contributions (other than elective

1           deferrals) which is invested in employer se-  
2           curities, a plan meets the requirements of  
3           this subparagraph if each qualified partici-  
4           pant in the plan may elect to direct the  
5           plan to divest any portion of such securi-  
6           ties in the participant’s account and to re-  
7           invest an equivalent amount in other in-  
8           vestment options which meet the require-  
9           ments of subparagraph (E). The preceding  
10          sentence shall apply to the extent that the  
11          amount attributable to such reinvested  
12          portion exceeds the amount to which a  
13          prior election under this subparagraph or  
14          paragraph (28) applies.

15                 “(ii) QUALIFIED PARTICIPANT.—For  
16                 purposes of this subparagraph, the term  
17                 ‘qualified participant’ means—

18                         “(I) any participant in the plan  
19                         who has completed at least 3 years of  
20                         service (as determined under section  
21                         411(a)) under the plan,

22                         “(II) any beneficiary who, with  
23                         respect to a participant who met the  
24                         service requirement in subclause (I),  
25                         is an alternate payee (within the

1 meaning of section 414(p)(8)) under  
2 an applicable qualified domestic rela-  
3 tions order (within the meaning of  
4 section 414(p)(1)(A)), and

5 “(III) any beneficiary of a de-  
6 ceased participant who met the service  
7 requirement in subclause (I) or alter-  
8 nate payee described in subclause (II).

9 “(D) INVESTMENT OPTIONS.—The require-  
10 ments of this subparagraph are met if the plan  
11 offers not less than 3 investment options (not  
12 inconsistent with regulations prescribed by the  
13 Secretary) other than employer securities.

14 “(E) PRESERVATION OF AUTHORITY OF  
15 PLAN TO LIMIT INVESTMENT.—Nothing in this  
16 paragraph shall be construed to limit the au-  
17 thority of a plan to impose limitations on the  
18 portion of plan assets in any account which  
19 may be invested in employer securities.

20 “(F) OTHER DEFINITIONS AND RULES.—  
21 For purposes of this paragraph—

22 “(i) EMPLOYER SECURITIES.—The  
23 term ‘employer securities’ shall have the  
24 meaning given such term by section

1 407(d)(1) of the Employee Retirement In-  
2 come Security Act of 1974.

3 “(ii) ELECTIVE DEFERRALS.—For  
4 purposes of this subparagraph, the term  
5 ‘elective deferrals’ means an employer con-  
6 tribution described in section 402(g)(3)(A)  
7 and any employee contribution.

8 “(iii) ELECTION.—Elections under  
9 this paragraph shall be not less frequently  
10 than quarterly.

11 “(iv) EMPLOYEE STOCK OWNERSHIP  
12 PLAN.—The term ‘employee stock owner-  
13 ship plan’ shall have the same meaning  
14 given to such term by section 4975(e)(7).”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 401(a)(28) of such Code is amended  
17 by adding at the end the following new subpara-  
18 graph:

19 “(D) APPLICATION.—This paragraph shall  
20 not apply with respect to employer securities  
21 which are readily tradable on an established se-  
22 curities market.”.

23 (2) Section 409(h)(7) of such Code is amended  
24 by inserting at the end “or subparagraph (B) or (C)  
25 of section 401(a)(36)”.

1           (3) Section 4975(e)(7) of such Code is amended  
2           by adding at the end the following new sentence: “A  
3           plan shall not fail to be treated as an employee stock  
4           ownership plan merely because the plan meets the  
5           requirements of section 401(a)(36) (or provides  
6           greater diversification rights) or because participants  
7           in such plan exercise diversification rights under  
8           such section (or greater diversification rights avail-  
9           able under the plan).”.

10           (4) Section 4980(c)(3)(A) of such Code is  
11           amended by striking “if—” and all that follows and  
12           inserting “if the requirements of subparagraphs (B)  
13           and (C) are met.”.

14           (5) Section 407 of the Employee Retirement In-  
15           come Security Act of 1974 (29 U.S.C. 1107) is  
16           amended by adding at the end the following new  
17           subsection:

18           “(g) Notwithstanding section 408(e) or any other  
19           provision of this title, an individual account plan may not  
20           include provisions that do not meet the requirements of  
21           section 401(a)(36)(B) of the Internal Revenue Code of  
22           1986.”.

1 **SEC. 203. IMPROVEMENTS IN SIMPLIFIED EMPLOYEE PEN-**  
2 **SIONS.**

3 (a) PARTICIPATION REQUIREMENTS.—Paragraph (2)  
4 of section 408(k) of the Internal Revenue Code of 1986  
5 (relating to participation requirements) is amended—

6 (1) in subparagraph (A), by adding “and” at  
7 the end, and

8 (2) by striking subparagraphs (B) and (C) and  
9 inserting the following:

10 “(B) has completed at least 3 years of  
11 service (as defined in section 411(a)(5)) for the  
12 employer.”.

13 (b) NONDISCRIMINATION RULES.—Subparagraph  
14 (C) of section 408(k)(3) of such Code (requiring contribu-  
15 tion to bear uniform relationship to total compensation)  
16 is amended—

17 (1) in the heading, by striking “MUST BEAR  
18 UNIFORM RELATIONSHIP TO TOTAL COMPENSATION”  
19 and inserting “MUST BE UNIFORM”, and

20 (2) by inserting after “unless contributions  
21 thereto” the following: “are uniform for all employ-  
22 ees maintaining a simplified employee pension or”.

23 (c) CONSENT TO PARTICIPATION NOT REQUIRED.—  
24 Paragraph (2) of section 408(k) of such Code (relating  
25 to participation requirements) is amended by adding at  
26 the end the following new flush sentence: “An employer

1 may establish and maintain a simplified employee pension  
2 for an employee without the employee's consent.”.

3 (d) SEPARATE TREATMENT OF CONTRIBUTIONS TO  
4 SIMPLIFIED EMPLOYEE PENSIONS.—Subsection (h) of  
5 section 404 of such Code is amended by striking para-  
6 graphs (2) and (3) and inserting the following new para-  
7 graph:

8 “(2) LIMITATION BASED ON COMBINATION OF  
9 PLANS INAPPLICABLE.—Contributions to a sim-  
10 plified employee pension shall not be taken into ac-  
11 count for purposes of subsection (a)(7).”.

12 (e) JOINT AND SURVIVOR ANNUITY REQUIRE-  
13 MENTS.—Section 408(k) of such Code is amended—

14 (1) by redesignating paragraph (9) as para-  
15 graph (10), and

16 (2) by inserting after paragraph (8) the fol-  
17 lowing new paragraph:

18 “(9) JOINT AND SURVIVOR ANNUITY REQUIRE-  
19 MENTS.—Requirements similar to the requirements  
20 of section 401(a)(11) shall apply with respect to an-  
21 nnuities purchased with amounts distributed from  
22 simplified employee pensions.”.

23 (f) ANNUAL REPORTING REQUIREMENTS FOR SIM-  
24 PLIFIED EMPLOYEE PENSIONS.—Paragraph (1) of section

1 408(l) of such Code (relating to simplified employer re-  
2 ports) is amended to read as follows:

3           “(1) IN GENERAL.—The Secretary shall require  
4           by regulations that an employer who makes a con-  
5           tribution on behalf of an employee to a simplified  
6           employee pension shall provide simplified annual re-  
7           ports. The reports required by this subsection shall  
8           be filed in such manner, and information with re-  
9           spect to such contributions shall be furnished to the  
10          employee in such manner, as may be required by  
11          regulations, except that such reports shall include  
12          information sufficient to allow the employee to deter-  
13          mine that the simplified employee pension is in com-  
14          pliance with the requirements of this section.”.

15          (g) DEDUCTIBILITY OF CONTRIBUTIONS TO SIM-  
16          PLIFIED EMPLOYEE PENSIONS IN CONNECTION WITH  
17          DOMESTIC SERVICE.—

18               (1) IN GENERAL.—Section 404 of such Code  
19               (relating to deductions for contributions of an em-  
20               ployer to an employee’s trust or annuity plan and  
21               compensation under a deferred-payment plan) is  
22               amended by adding at the end the following new  
23               subsection:

1       “(o) DEDUCTIBILITY OF CONTRIBUTIONS TO SIM-  
2 PLIFIED EMPLOYEE PENSIONS IN CONNECTION WITH  
3 DOMESTIC SERVICE.—

4           “(1) IN GENERAL.—Solely for purposes of sub-  
5 section (a), contributions by an employer to a sim-  
6 plified employee pension of an employee in connec-  
7 tion with service constituting domestic service em-  
8 ployment shall be treated as if such contributions  
9 would otherwise be deductible under section 162 but  
10 for subsection (a).

11           “(2) DOMESTIC SERVICE EMPLOYMENT.—For  
12 purposes of paragraph (1), the term ‘domestic serv-  
13 ice employment’ means domestic service in a private  
14 home of the employer (within the meaning of the  
15 last sentence of section 3510(c)) in any case in  
16 which taxes are imposed by chapter 21 or 23 on re-  
17 munerated paid for such service.”.

18           “(2) EFFECTIVE DATE.—The amendment made  
19 by this subsection shall apply to taxable years begin-  
20 ning after December 31, 2004.

21 **SEC. 204. PENSION INTEGRATION RULES.**

22       “(a) APPLICABILITY OF NEW INTEGRATION RULES  
23 EXTENDED TO ALL EXISTING ACCRUED BENEFITS.—  
24 Notwithstanding subsection (c)(1) of section 1111 of the  
25 Tax Reform Act of 1986 (relating to effective date of ap-

1 plication of nondiscrimination rules to integrated plans)  
2 (100 Stat. 2440), effective for plan years beginning after  
3 the date of the enactment of this Act, the amendments  
4 made by subsection (a) of such section 1111 shall also  
5 apply to benefits attributable to plan years beginning on  
6 or before December 31, 1988.

7 (b) INTEGRATION DISALLOWED FOR SIMPLIFIED  
8 EMPLOYEE PENSIONS.—

9 (1) IN GENERAL.—Subparagraph (D) of section  
10 408(k)(3) of the Internal Revenue Code of 1986 (re-  
11 lating to permitted disparity under rules limiting  
12 discrimination under simplified employee pensions)  
13 is repealed.

14 (2) CONFORMING AMENDMENT.—Subparagraph  
15 (C) of such section 408(k)(3) is amended by striking  
16 “and except as provided in subparagraph (D),”.

17 (3) EFFECTIVE DATE.—The amendments made  
18 by this subsection shall apply with respect to taxable  
19 years beginning on or after January 1, 2005.

20 (c) EVENTUAL REPEAL OF INTEGRATION RULES.—  
21 Effective for plan years beginning on or after January 1,  
22 2006—

23 (1) subparagraphs (C) and (D) of section  
24 401(a)(5) of the Internal Revenue Code of 1986 (re-  
25 lating to pension integration exceptions under non-

1 discrimination requirements for qualification) are re-  
 2 pealed, and subparagraphs (E), (F), and (G) of such  
 3 section 401(a)(5) are redesignated as subparagraphs  
 4 (C), (D), and (E), respectively, and

5 (2) subsection (l) of section 401 of such Code  
 6 (relating to permitted disparity in plan contributions  
 7 or benefits) is repealed.

8 **SEC. 205. INCREASE TO AGE 75 FOR BEGINNING MANDA-**  
 9 **TORY DISTRIBUTIONS.**

10 (a) **QUALIFIED PENSION PLANS.**—Subparagraph (C)  
 11 of section 401(a)(9) of the Internal Revenue Code of 1986  
 12 (relating to required distributions) is amended by striking  
 13 “age 70½” each place it appears and inserting “the appli-  
 14 cable age”.

15 (b) **APPLICABLE AGE.**—Subparagraph (C) of section  
 16 401(a)(9) of such Code is amended by adding at the end  
 17 the following new clause:

18 “(v) **APPLICABLE AGE.**—

19 “(I) **IN GENERAL.**—For purposes  
 20 of this clause, the term applicable age  
 21 shall be determined in accordance  
 22 with the following table:

<b>“Calendar year:</b>	<b>Applicable age:</b>
2005 .....	71
2006 .....	72
2007 .....	73
2008 .....	74
2009 and each calendar year thereafter .....	75.

1                   “(II) ELECTION TO USE AGE OF  
2                   SPOUSE.—For purposes of this sub-  
3                   paragraph, an employee who files a  
4                   joint return for a taxable year may  
5                   elect to substitute the age of the em-  
6                   ployee’s spouse for his age.”.

7           (c) INDIVIDUAL RETIREMENT ACCOUNTS.—Para-  
8 graph (1) of section 219(d) of such Code is amended—

9                   (1) by striking “age 70½” in the text and in-  
10                  serting “the applicable age (as defined in section  
11                  401(a)(9)(C)(v))”, and

12                  (2) by striking “AGE 70½” in the heading and  
13                  inserting “THE APPLICABLE AGE”.

14           (d) ROTH IRA’S.—Paragraph (4) of section 408A(c)  
15 of such Code is amended—

16                  (1) by striking “age 70½” in the text and in-  
17                  serting “the applicable age (as defined in section  
18                  401(a)(9)(C)(v))”, and

19                  (2) by striking “AGE 70½” in the heading and  
20                  inserting “THE APPLICABLE AGE”.

21 **SEC. 206. RESTRICTIONS ON EXCLUSION OF UNIONIZED**  
22 **EMPLOYEES FROM PARTICIPATION IN 401(K)**  
23 **PLANS.**

24           Paragraph (4) of section 401(k) of the Internal Rev-  
25 enue Code of 1986 (relating to other requirements) is

1 amended by adding at the end the following new subpara-  
2 graph:

3           “(D) BENEFITS SUBJECT OF BAR-  
4 GAINING.—A cash or deferred arrangement of  
5 any employer shall not be treated as a qualified  
6 cash or deferred arrangement if any employee  
7 of such employer—

8                   “(i) who is described in section  
9                   410(b)(3)(A), and

10                   “(ii) who is not eligible to benefit  
11                   under the arrangement,

12 is not otherwise covered under an employee  
13 pension benefit plan (as defined in section  
14 3(2)(A) of the Employee Retirement Income  
15 Security Act of 1974) which is maintained for  
16 employees of such employer pursuant to an  
17 agreement which the Secretary of Labor finds  
18 to be a collective bargaining agreement between  
19 employee representatives and one or more em-  
20 ployers and which is qualified under section  
21 401(a).”.

1 **SEC. 207. REMOVAL OF \$5,000 LIMIT ON PLANS SUBJECT TO**  
 2 **AUTOMATIC ROLLOVER UPON MANDATORY**  
 3 **DISTRIBUTION.**

4 Section 401(a)(31)(B) of the Internal Revenue Code  
 5 of 1986 (relating to certain mandatory distributions) is  
 6 amended—

7 (1) in clause (i), by striking “In case of a trust  
 8 which is part of an eligible plan, such trust” and in-  
 9 serting “A trust”,

10 (2) in clause (i)(I), by striking “in excess of  
 11 \$1,000”, and

12 (3) by striking clause (ii) and inserting the fol-  
 13 lowing new clause:

14 “(ii) DISTRIBUTION DESCRIBED.—A  
 15 distribution from a plan is described in  
 16 this clause if such distribution is an imme-  
 17 diate distribution of the entire nonforfeit-  
 18 able accrued benefit of the participant and  
 19 is in excess of \$1,000.”.

20 **TITLE III—TAX CREDITS TO**  
 21 **PROMOTE PENSION COVERAGE**

22 **SEC. 301. SAVERS CREDIT MADE REFUNDABLE AND PERMA-**  
 23 **NENT.**

24 (a) SAVERS CREDIT MADE REFUNDABLE.—

25 (1) IN GENERAL.—The Internal Revenue Code  
 26 of 1986 is amended by redesignating section 25B as

1 section 35A and by moving such section after section  
2 35 in subpart C of part IV of subchapter A of chap-  
3 ter 1 of such Code (relating to refundable credits).

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 35A of such Code, as so redesi-  
6 gnated, is amended by striking subsection (g)  
7 and redesignating subsection (h) as subsection  
8 (g).

9 (B) Subparagraph (B) of section 24(b)(3)  
10 of such Code is amended by striking “sections  
11 23 and 25B” and inserting “section 23”.

12 (C) Subparagraph (C) of section 25(e)(1)  
13 of such Code is amended by striking “25B,”.

14 (D) Each of the following provisions of  
15 such Code are amended by striking “24, and  
16 25B” and inserting “and 24”:

17 (i) Section 26(a)(1).

18 (ii) Section 904(h).

19 (iii) Section 1400C(d).

20 (E) Paragraph (2) of section 1324(b) of  
21 title 31, United States Code, is amended by in-  
22 serting “or 35A” after “section 35”.

23 (F) The table of sections for subpart A of  
24 part IV of subchapter A of chapter 1 of the In-

1           ternal Revenue Code of 1986 is amended by  
2           striking the item relating to section 25B.

3           (G) The table of sections for subpart C of  
4           part IV of subchapter A of chapter 1 of such  
5           Code is amended by inserting after the item re-  
6           lating to section 35 the following new item:

“Sec. 35A. Elective deferrals and IRA contributions by certain individuals.”.

7           (b) SAVERS CREDIT MADE PERMANENT.—

8           (1) IN GENERAL.—Section 35A of the Internal  
9           Revenue Code of 1986, as amended by this section,  
10          is amended by striking subsection (g).

11          (2) REPEAL OF EGTRRA SUNSET.—Title IX of  
12          the Economic Growth and Tax Relief Reconciliation  
13          Act of 2001 shall not apply to section 618 of such  
14          Act.

15 **SEC. 302. CREDIT FOR QUALIFIED PENSION PLAN CON-**  
16 **TRIBUTIONS OF SMALL EMPLOYERS.**

17          (a) IN GENERAL.—Subpart D of part IV of sub-  
18          chapter A of chapter 1 of the Internal Revenue Code of  
19          1986 (relating to business related credits) is amended by  
20          adding at the end the following new section:

21 **“SEC. 45G. SMALL EMPLOYER PENSION PLAN CONTRIBU-**  
22 **TIONS.**

23          “(a) GENERAL RULE.—For purposes of section 38,  
24          in the case of an eligible employer, the small employer pen-  
25          sion plan contribution credit determined under this section

1 for any taxable year is an amount equal to 50 percent  
2 of the amount which would (but for subsection (f)(1)) be  
3 allowed as a deduction under section 404 for such taxable  
4 year for qualified employer contributions made to any  
5 qualified retirement plan on behalf of any nonhighly com-  
6 pensated employee.

7 “(b) CREDIT LIMITED TO 3 YEARS.—The credit al-  
8 lowable by this section shall be allowed only with respect  
9 to the period of 3 taxable years beginning with the taxable  
10 year in which the qualified retirement plan becomes effec-  
11 tive.

12 “(c) QUALIFIED EMPLOYER CONTRIBUTION.—For  
13 purposes of this section—

14 “(1) DEFINED CONTRIBUTION PLANS.—In the  
15 case of a defined contribution plan, the term ‘quali-  
16 fied employer contribution’ means the amount of  
17 nonelective and matching contributions to the plan  
18 made by the employer on behalf of any nonhighly  
19 compensated employee to the extent such amount  
20 does not exceed 3 percent of such employee’s com-  
21 pensation from the employer for the year.

22 “(2) DEFINED BENEFIT PLANS.—In the case of  
23 a defined benefit plan, the term ‘qualified employer  
24 contribution’ means the amount of employer con-  
25 tributions to the plan made on behalf of any non-

1 highly compensated employee to the extent that the  
2 accrued benefit of such employee derived from such  
3 contributions for the year do not exceed the equiva-  
4 lent (as determined under regulations prescribed by  
5 the Secretary and without regard to contributions  
6 and benefits under the Social Security Act) of 3 per-  
7 cent of such employee's compensation from the em-  
8 ployer for the year.

9 “(d) QUALIFIED RETIREMENT PLAN.—

10 “(1) IN GENERAL.—The term ‘qualified retire-  
11 ment plan’ means any plan described in section  
12 401(a) which includes a trust exempt from tax  
13 under section 501(a) if the plan meets—

14 “(A) the contribution requirements of  
15 paragraph (2),

16 “(B) the vesting requirements of para-  
17 graph (3), and

18 “(C) the distributions requirements of  
19 paragraph (4).

20 “(2) CONTRIBUTION REQUIREMENTS.—

21 “(A) IN GENERAL.—The requirements of  
22 this paragraph are met if, under the plan—

23 “(i) the employer is required to make  
24 nonelective contributions of at least 1 per-  
25 cent of compensation (or the equivalent

1           thereof in the case of a defined benefit  
2           plan) for each nonhighly compensated em-  
3           ployee who is eligible to participate in the  
4           plan, and

5           “(ii) except in the case of a defined  
6           benefit plan, allocations of nonelective em-  
7           ployer contributions are either in equal dol-  
8           lar amounts for all employees covered by  
9           the plan or bear a uniform relationship to  
10          the total compensation, or the basic or reg-  
11          ular rate of compensation, of the employ-  
12          ees covered by the plan.

13          “(B) COMPENSATION LIMITATION.—The  
14          compensation taken into account under sub-  
15          paragraph (A) for any year shall not exceed the  
16          limitation in effect for such year under section  
17          401(a)(17).

18          “(3) VESTING REQUIREMENTS.—The require-  
19          ments of this paragraph are met if the plan satisfies  
20          the requirements of subparagraph (A) or (B).

21          “(A) 3-YEAR VESTING.—A plan satisfies  
22          the requirements of this subparagraph if an em-  
23          ployee who has completed at least 3 years of  
24          service has a nonforfeitable right to 100 percent

1 of the employee’s accrued benefit derived from  
 2 employer contributions.

3 “(B) 5-YEAR GRADED VESTING.—A plan  
 4 satisfies the requirements of this subparagraph  
 5 if an employee has a nonforfeitable right to a  
 6 percentage of the employee’s accrued benefit de-  
 7 rived from employer contributions determined  
 8 under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
1 .....	20
2 .....	40
3 .....	60
4 .....	80
5 or more .....	100.

9 “(4) DISTRIBUTION REQUIREMENTS.—

10 “(A) IN GENERAL.—Except as provided in  
 11 subparagraph (B), the requirements of this  
 12 paragraph are met if, under the plan—

13 “(i) in the case of a profit-sharing or  
 14 stock bonus plan, amounts are distribut-  
 15 able only as provided in section  
 16 401(k)(2)(B), and

17 “(ii) in the case of a pension plan,  
 18 amounts are distributable subject to the  
 19 limitations applicable to other distributions  
 20 from the plan.

21 “(B) DISTRIBUTIONS WITHIN 5 YEARS  
 22 AFTER SEPARATION, ETC.—In no event shall a

1 plan meet the requirements of this paragraph  
2 unless, under the plan, amounts distributed—

3 “(i) after separation from service or  
4 severance from employment, and

5 “(ii) within 5 years after the date of  
6 the earliest employer contribution to the  
7 plan,

8 may be distributed only in a direct trustee-to-  
9 trustee transfer to a plan having the same dis-  
10 tribution restrictions as the distributing plan.

11 “(e) OTHER DEFINITIONS.—For purposes of this  
12 section—

13 “(1) ELIGIBLE EMPLOYER.—The term ‘eligible  
14 employer’ has the meaning given such term by sec-  
15 tion 408(p)(2)(C)(i).

16 “(2) NONHIGHLY COMPENSATED EMPLOY-  
17 EES.—The term ‘highly compensated employee’ has  
18 the meaning given such term by section 414(q) (de-  
19 termined without regard to section 414(q)(1)(B)(ii)).

20 “(f) SPECIAL RULES.—

21 “(1) DISALLOWANCE OF DEDUCTION.—No de-  
22 duction shall be allowed for that portion of the quali-  
23 fied employer contributions paid or incurred for the  
24 taxable year which is equal to the credit determined  
25 under subsection (a).

1           “(2) ELECTION NOT TO CLAIM CREDIT.—This  
2           section shall not apply to a taxpayer for any taxable  
3           year if such taxpayer elects to have this section not  
4           apply for such taxable year.

5           “(g) RECAPTURE OF CREDIT ON FORFEITED CON-  
6           TRIBUTIONS.—If any accrued benefit which is forfeitable  
7           by reason of subsection (d)(3) is forfeited, the employer’s  
8           tax imposed by this chapter for the taxable year in which  
9           the forfeiture occurs shall be increased by 35 percent of  
10          the employer contributions from which such benefit is de-  
11          rived to the extent such contributions were taken into ac-  
12          count in determining the credit under this section.

13          “(h) REGULATIONS.—The Secretary shall prescribe  
14          such regulations as may be appropriate to carry out the  
15          purposes of this section, including regulations to prevent  
16          the abuse of the purposes of this section through the use  
17          of multiple plans.

18          “(i) TERMINATION.—This section shall not apply to  
19          any plan established after December 31, 2012.”.

20          (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-  
21          NESS CREDIT.—Section 38(b) of such Code (defining cur-  
22          rent year business credit) is amended by striking “plus”  
23          at the end of paragraph (13), by striking the period at  
24          the end of paragraph (14) and inserting “, plus”, and by  
25          adding at the end the following new paragraph:

1           “(16) in the case of an eligible employer (as de-  
2           fined in section 45G(e)), the small employer pension  
3           plan contribution credit determined under section  
4           45G(a).”.

5           (c) CONFORMING AMENDMENTS.—

6           (1) Section 39(d) of such Code is amended by  
7           adding at the end the following new paragraph:

8           “(11) NO CARRYBACK OF SMALL EMPLOYER  
9           PENSION PLAN CONTRIBUTION CREDIT BEFORE JAN-  
10          UARY 1, 2002.—No portion of the unused business  
11          credit for any taxable year which is attributable to  
12          the small employer pension plan contribution credit  
13          determined under section 45G may be carried back  
14          to a taxable year beginning before January 1,  
15          2005.”.

16          (2) Subsection (c) of section 196 of such Code  
17          is amended by striking “and” at the end of para-  
18          graph (9), by striking the period at the end of para-  
19          graph (10) and inserting “, and”, and by adding at  
20          the end the following new paragraph:

21          “(11) the small employer pension plan contribu-  
22          tion credit determined under section 45G(a).”.

23          (3) The table of sections for subpart D of part  
24          IV of subchapter A of chapter 1 of such Code is

1 amended by adding at the end the following new  
2 item:

“Sec 45G. Small employer pension plan contributions.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to contributions paid or incurred  
5 in taxable years beginning after December 31, 2004.

6 **SEC. 303. NOTICE.**

7 The Secretary of the Treasury shall establish an on-  
8 going program, in coordination with employers, under  
9 which the Secretary shall ensure that employees and other  
10 affected individuals remain fully and effectively notified of  
11 the availability of tax credits under sections 35, 35A, and  
12 45G of the Internal Revenue Code of 1986.

13 **TITLE IV—IMPROVED PENSION**  
14 **PROTECTIONS FOR WOMEN**

15 **SEC. 401. MODIFICATIONS OF JOINT AND SURVIVOR ANNU-**  
16 **ITY REQUIREMENTS.**

17 (a) **AMOUNT OF ANNUITY.**—

18 (1) **OPTION TO ELECT QUALIFIED ALTER-**  
19 **NATIVE JOINT AND SURVIVOR ANNUITY FORM OF**  
20 **BENEFIT UPON WAIVER OF QUALIFIED JOINT AND**  
21 **SURVIVOR ANNUITY FORM OF BENEFIT.**—Section  
22 417(a)(1)(A) of the Internal Revenue Code of 1986  
23 is amended to read as follows:

24 “(A) under the plan, each participant—

1           “(i) may elect at any time during the  
2           applicable election period to waive the  
3           qualified joint and survivor annuity form  
4           of benefit,

5           “(ii) may elect at any time during the  
6           applicable election period to waive the  
7           qualified preretirement survivor annuity  
8           form of benefit,

9           “(iii) may elect at any time during the  
10          applicable election period, in any case in  
11          which the qualified joint and survivor an-  
12          nuity form of benefit is not provided by  
13          reason of a waiver under clause (i), to be  
14          provided a qualified alternative joint and  
15          survivor annuity form of benefit, and

16          “(iv) may revoke any such election at  
17          any time during the applicable election pe-  
18          riod, and”.

19               (2) QUALIFIED ALTERNATIVE JOINT AND SUR-  
20          VIVOR ANNUITY DEFINED.—Section 417 of such  
21          Code is amended by adding at the end the following  
22          new subsection:

23          “(i) DEFINITION OF QUALIFIED OPTIONAL SUR-  
24          VIVOR ANNUITY.—

1           “(1) IN GENERAL.—For purposes of this sec-  
2           tion, the term ‘qualified alternative joint and sur-  
3           vivor annuity’ means an annuity—

4                   “(A) for the life of the participant with a  
5                   survivor annuity for the life of the spouse which  
6                   is equal to the applicable percentage (deter-  
7                   mined under paragraph (2)) of (and not greater  
8                   than 100 percent of) the amount of the annuity  
9                   which is payable during the joint lives of the  
10                  participant and the spouse, and

11                  “(B) which is the actuarial equivalent of a  
12                  single annuity for the life of the participant.

13           Such term also includes any annuity form having the  
14           effect of an annuity described in the preceding sen-  
15           tence.

16           “(2) APPLICABLE PERCENTAGE.—

17                   “(A) IN GENERAL.—For purposes of para-  
18                   graph (1)—

19                           “(i) if the base survivor annuity per-  
20                           centage is less than 75 percent, the appli-  
21                           cable percentage is 75 percent, and

22                           “(ii) if the base survivor annuity per-  
23                           centage is equal to at least 75 percent, the  
24                           applicable percentage is 50 percent.

1           “(B) SURVIVOR ANNUITY PERCENTAGE.—  
2           For purposes of subparagraph (A), the term  
3           ‘survivor annuity percentage’ means the per-  
4           centage which the survivor annuity under the  
5           plan’s qualified joint and survivor annuity form  
6           of benefit bears to the annuity payable during  
7           the joint lives of the participant and the spouse  
8           under such form of benefit.”.

9           (b) EXEMPTION IN THE CASE OF PLANS OFFERING  
10 FULLY SUBSIDIZED QUALIFIED JOINT AND SURVIVOR  
11 ANNUITIES.—Section 417(a)(5) of the Internal Revenue  
12 Code of 1986 is amended—

13           (1) by redesignating subparagraph (B) as sub-  
14           paragraph (C), and

15           (2) by inserting after subparagraph (A) the fol-  
16           lowing new subparagraph:

17           “(B) QUALIFIED ALTERNATIVE JOINT AND SUR-  
18 VIVOR ANNUITIES.—The requirements of this subsection  
19 shall not apply with respect to the qualified alternative  
20 joint and survivor annuity form of benefit if the plan fully  
21 subsidizes the costs of the qualified joint and survivor an-  
22 nuity form of benefit.”.

23           (c) ILLUSTRATION REQUIREMENT.—Section  
24 417(a)(3)(A)(i) of the Internal Revenue Code of 1986 is  
25 amended to read as follows:

1           “(i) the terms and conditions of the qualified  
2 joint and survivor annuity form of benefit offered by  
3 the plan, the terms and conditions of the qualified  
4 preretirement survivor annuity form of benefit of-  
5 fered by the plan, and the terms and conditions of  
6 the qualified alternative joint and survivor annuity  
7 form of benefit offered by the plan, accompanied by  
8 an illustration of the benefits under each such form  
9 of benefit for the particular participant and spouse  
10 and an acknowledgement form to be signed by the  
11 participant and the spouse that they have read and  
12 considered the illustration before any election is  
13 made pursuant to clause (i) or (ii) of subsection  
14 (c)(1)(A).”.

15       (d) RULE OF CONSTRUCTION.—For purposes of sec-  
16 tion 411(d)(6) of the Internal Revenue Code of 1986, a  
17 plan shall not be treated as having decreased the accrued  
18 benefit of a participant solely by reason of the adoption  
19 of a plan amendment under which a qualified alternative  
20 joint and survivor annuity form of benefit is added to the  
21 plan in accordance with section 417(a)(1)(A)(ii) of such  
22 Code (as amended by this section).

1 **SEC. 402. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**  
2 **ROAD RETIREMENT ANNUITIES INDE-**  
3 **PENDENT OF ACTUAL ENTITLEMENT OF EM-**  
4 **PLOYEE.**

5 (a) IN GENERAL.—Section 2 of the Railroad Retire-  
6 ment Act of 1974 (45 U.S.C. 231a) is amended—

7 (1) in subsection (c)(4)(i), by striking “(A) is  
8 entitled to an annuity under subsection (a)(1) and  
9 (B)”;

10 (2) in subsection (e)(5), by striking “or di-  
11 vorced wife” the second place it appears.

12 (b) EFFECTIVE DATE.—The amendments made by  
13 this section shall take effect 1 year after the date of the  
14 enactment of this Act.

15 **SEC. 403. EXTENSION OF TIER II RAILROAD RETIREMENT**  
16 **BENEFITS TO SURVIVING FORMER SPOUSES**  
17 **PURSUANT TO DIVORCE AGREEMENTS.**

18 (a) IN GENERAL.—Section 5 of the Railroad Retire-  
19 ment Act of 1974 (45 U.S.C. 231d) is amended by adding  
20 at the end the following:

21 “(d) Notwithstanding any other provision of law, the  
22 payment of any portion of an annuity computed under sec-  
23 tion 3(b) to a surviving former spouse in accordance with  
24 a court decree of divorce, annulment, or legal separation  
25 or the terms of any court-approved property settlement  
26 incident to any such court decree shall not be terminated

1 upon the death of the individual who performed the service  
 2 with respect to which such annuity is so computed unless  
 3 such termination is otherwise required by the terms of  
 4 such court decree.”

5 (b) EFFECTIVE DATE.—The amendment made by  
 6 this section shall take effect 1 year after the date of the  
 7 enactment of this Act.

8 **TITLE V—DEFINED BENEFIT**  
 9 **PLANS WHICH INCLUDE**  
 10 **QUALIFIED CASH OR DE-**  
 11 **FERRED ARRANGEMENTS**

12 **SEC. 501. DEFINED BENEFIT PLAN WITH DEFERRED COM-**  
 13 **PENSATION ARRANGEMENT IN A SINGLE**  
 14 **PLAN.**

15 (a) DEFINED BENEFIT PLAN PERMITTED TO HAVE  
 16 401(K) ARRANGEMENT.—

17 (1) IN GENERAL.—Paragraphs (1) and (2) of  
 18 section 401(k) of the Internal Revenue Code of 1986  
 19 are both amended by striking “or a rural cooperative  
 20 plan” and inserting “, a rural cooperative plan, or  
 21 a defined benefit plan”.

22 (2) ADJUSTMENT OF 401(K) RULES.—Section  
 23 401(k) of such Code is amended—

1 (A) in paragraph (2)(B)(i)(III), by striking  
2 “in the case of a profit-sharing or stock bonus  
3 plan,”,

4 (B) in paragraph (2)(B)(i)(IV), by striking  
5 “to a profit-sharing or stock bonus plan”, and

6 (C) in paragraph (10)(A), by inserting be-  
7 fore the period at the end the following: “or a  
8 defined benefit plan that includes a qualified  
9 cash or deferred arrangement”.

10 (b) QUALIFIED CASH OR DEFERRED ARRANGEMENT  
11 UNDER DEFINED BENEFIT PLAN SATISFIES DEFINITELY  
12 DETERMINABLE BENEFIT REQUIREMENT.—Subsection  
13 (a) of section 401 of such Code is amended by inserting  
14 after paragraph (34) the following new paragraph:

15 “(35) QUALIFIED CASH OR DEFERRED AR-  
16 RANGEMENT UNDER DEFINED BENEFIT PLAN SATIS-  
17 FIES DEFINITELY DETERMINABLE BENEFIT RE-  
18 QUIREMENT.—A trust forming part of a defined  
19 benefit plan shall not be treated as failing to con-  
20 stitute a qualified trust merely because such plan in-  
21 cludes a qualified cash or deferred arrangement.”.

22 (c) CLARIFICATION OF EXTENT TO WHICH DEFINED  
23 CONTRIBUTION AND DEFINED BENEFIT RULES APPLY.—

1           (1) TREATMENT AS DEFINED BENEFIT PLAN.—  
2           Subsection (j) of section 414 of such Code is amend-  
3           ed to read as follows:

4           “(j) DEFINED BENEFIT PLAN.—For purposes of this  
5 part—

6           “(1) IN GENERAL.—The term ‘defined benefit  
7           plan’ means any plan which is not a defined con-  
8           tribution plan.

9           “(2) PLANS INCLUDING QUALIFIED CASH AND  
10          DEFERRED ARRANGEMENTS.—Except as otherwise  
11          provided in this title—

12                 “(A) a pension plan which provides bene-  
13                 fits other than benefits described in subsection  
14                 (i) shall not be treated as a ‘defined contribu-  
15                 tion plan’ on the basis of the inclusion in the  
16                 plan of a qualified cash or deferred arrange-  
17                 ment, and

18                 “(B) any such pension plan which includes  
19                 such an arrangement shall be treated as a sin-  
20                 gle plan.”.

21          (2) SPECIAL RULES.—Subsection (k) of section  
22          414 of such Code is amended—

23                 (A) by redesignating paragraphs (1), (2),  
24                 and (3), as subparagraphs (A), (B), and (C),

1           respectively, and by moving such subparagraphs  
2           2 ems to the right,

3                   (B) by striking “A defined benefit plan”  
4           and inserting the following:

5           “(1) PLANS WITH SEPARATE ACCOUNTS.—A  
6           defined benefit plan”, and

7                   (C) by adding at the end the following new  
8           paragraph:

9           “(2) PLANS WITH CASH OR DEFERRED AR-  
10          RANGEMENTS.—In the case of a defined benefit plan  
11          which includes a qualified cash or deferred arrange-  
12          ment—

13                   “(A) rules similar to the rules of subpara-  
14                  graphs (A), (B), and (C) of paragraph (1) shall  
15                  apply,

16                   “(B) for purposes of section 401(a)(4) (re-  
17                  lating to nondiscrimination testing), section  
18                  401(a)(9) (relating to required distributions),  
19                  section 401(a)(26) (relating to additional par-  
20                  ticipation requirements), section 401(a)(31) (re-  
21                  lating to direct transfer of eligible rollover dis-  
22                  tributions), section 404 (relating to deduction  
23                  for contributions of an employer to an employ-  
24                  ees’ trust or annuity plan and compensation  
25                  under a deferred-payment plan), section 412

1 (relating to minimum funding standards), sec-  
2 tion 414(l) (relating to merger and consolida-  
3 tions of plans or transfers of plan assets), and  
4 section 416 (relating to special rules for top-  
5 heavy plans), such plan shall be treated as con-  
6 sisting of a defined contribution plan to the ex-  
7 tent benefits are attributable to such arrange-  
8 ment and as a defined benefit plan with respect  
9 to the remaining portion of benefits under the  
10 plan, and

11 “(C) for purposes of sections 411(a)(11)  
12 and 417(e), the present value of the portion of  
13 the benefit attributable to such arrangement  
14 shall be treated as being the fair market value  
15 of such arrangement.”.

16 (d) APPLICATION OF PRE-TERMINATION RESTRIC-  
17 TIONS.—The Secretary of the Treasury shall amend  
18 Treasury Regulation section 1.401(a)(4)–5(b) to provide  
19 that, in the case of a defined benefit plan which includes  
20 a qualified cash or deferred arrangement—

21 (1) the provisions of such section shall not  
22 apply to such arrangement, and

23 (2) the assets attributable to such arrangement  
24 shall be disregarded in applying the requirements of  
25 such section to such plan.

1           (e) TREATMENT AS SINGLE PLAN FOR INFORMATION  
2 REPORTING.—Subsection (a) of section 6058 of such Code  
3 is amended by adding at the end the following: “For pur-  
4 poses of the preceding sentence, a defined benefit plan  
5 which includes a qualified cash or deferred arrangement  
6 shall be treated as a single plan.”.

7           (f) RULES FOR INCOME TAX DEDUCTION.—

8                   (1) TREATMENT OF CASH OR DEFERRED AR-  
9 RANGEMENT AS SEPARATE PROFIT SHARING  
10 PLAN.—Subparagraph (A) of section 404(a)(3) of  
11 such Code is amended by adding at the end the fol-  
12 lowing new clause:

13                                 “(vi) For purposes of this subpara-  
14 graph, employer contributions made with  
15 respect to a qualified cash or deferred ar-  
16 rangement which is part of a defined ben-  
17 efit plan shall be treated in the same man-  
18 ner as contributions to a stock bonus or  
19 profit-sharing plan.”.

20                   (2) SPECIAL DEDUCTION LIMIT FOR DEFINED  
21 BENEFIT PLAN.—Paragraph (1) of section 404(a) is  
22 amended by redesignating subparagraphs (E) and  
23 (F) as subparagraphs (F) and (G), respectively, and  
24 by inserting after subparagraph (D) the following  
25 new subparagraph:

1           “(E) SPECIAL RULE FOR DEFINED BEN-  
2           EFIT PLANS WITH QUALIFIED CASH OR DE-  
3           FERRED ARRANGEMENTS.—In the case of a de-  
4           fined benefit plan which includes a qualified  
5           cash or deferred arrangement, the maximum  
6           amount deductible under this section (notwith-  
7           standing any other limitation under this para-  
8           graph) with respect to such plan shall not be  
9           less than the full funding limitation that would  
10          be determined under section 412(c)(7)(A) if  
11          130 percent of the amount determined clause  
12          (i) of such section were substituted for the  
13          amount otherwise determined under clause  
14          (i).”.

15          (g) ALLOWABLE REDUCTIONS IN RATE OF BENEFIT  
16          ACCRUAL.—Subsection (e) of section 4980F of such Code  
17          is amended by adding at the end the following new para-  
18          graph:

19               “(6) EXCEPTION FOR QUALIFIED CASH OR DE-  
20               FERRED ARRANGEMENTS.—A plan shall not be  
21               treated as failing to meet the requirements of para-  
22               graph (1) merely because of a reduction in, or elimi-  
23               nation of, any contributions to a qualified cash or  
24               deferred arrangement which is part of such plan.”.

1 (h) DEFINED BENEFIT FUNDING STANDARDS NOT  
2 TO APPLY TO QUALIFIED CASH OR DEFERRED ARRANGE-  
3 MENTS.—Subsection (h) of section 412 of such Code is  
4 amended by striking “or” at the end of paragraph (5),  
5 by striking the period at the end of paragraph (6) and  
6 inserting “, or”, and by inserting after paragraph (6) the  
7 following new paragraph:

8 “(7) any qualified cash or deferred arrangement  
9 which is part of a defined benefit plan.”.

10 (i) INCLUSION IN CAFETERIA PLAN.—Subparagraph  
11 (B) of section 125(d)(2) of such Code is amended by strik-  
12 ing “or rural cooperative plan (within the meaning of sec-  
13 tion 401(k)(7))” and inserting “rural cooperative plan  
14 (within the meaning of section 401(k)(7)), or a defined  
15 benefit plan”.

16 (j) VESTING REQUIREMENTS.—Section 411(a) is  
17 amended by adding the following new paragraph:

18 “(13) FASTER VESTING FOR ACCRUALS UNDER  
19 DEFINED BENEFIT PLANS WITH CASH OR DEFERRED  
20 ARRANGEMENTS.—In the case of a defined benefit  
21 plan which includes a qualified cash or deferred ar-  
22 rangement, benefit accruals and employer contribu-  
23 tions (other than elective deferrals, as defined in sec-  
24 tion 401(m)(4)) shall be treated as matching con-  
25 tributions for purposes of paragraph (12).”.

1 (k) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to plan years beginning after De-  
3 cember 31, 2005.

4 **SEC. 502. DEFINED BENEFIT ACCRUALS SATISFY 401(K)**  
5 **SAFE HARBOR.**

6 (a) IN GENERAL.—Paragraph (12) of section 401(k)  
7 of the Internal Revenue Code of 1986 is amended—

8 (1) in subparagraph (A)(i) by inserting “or the  
9 benefit accrual requirements of subparagraph (D)”  
10 after “or (C)”, and

11 (2) by redesignating subparagraphs (D), (E),  
12 and (F) as subparagraphs (E), (F), and (G), respec-  
13 tively, and by inserting after subparagraph (C) the  
14 following new subparagraph:

15 “(D) BENEFIT ACCRUALS.—

16 “(i) IN GENERAL.—The requirements  
17 of this subparagraph are met if the re-  
18 quirements of clause (ii) or (iii) are met.

19 “(ii) TRADITIONAL FORMULA.—

20 “(I) IN GENERAL.—The require-  
21 ments of this clause are met if, under  
22 the arrangement, the employer is re-  
23 quired, without regard to whether the  
24 employee makes an elective contribu-  
25 tion or employee contribution, to pro-

1           vide an accrual under a defined ben-  
2           efit plan on behalf of each employee  
3           who is not a highly compensated em-  
4           ployee and who is eligible to partici-  
5           pate in the arrangement. Such accrual  
6           shall be for each year in which the  
7           participant is eligible for the arrange-  
8           ment, and the plan is satisfying the  
9           requirements of this subparagraph, in  
10          an amount equal to at least 1 percent  
11          of average compensation multiplied by  
12          years of service, payable as a life an-  
13          nuity commencing at age 65. The plan  
14          may cap the cumulative benefit ac-  
15          crued under such formula to an  
16          amount that is not less than 20 per-  
17          cent of average compensation.

18                   “(II)    AVERAGE    COMPENSA-  
19                   TION.—For purposes of subclause (I),  
20                   the term ‘average compensation’  
21                   means the average compensation (as  
22                   defined by section 414(s)) received by  
23                   the participant during the testing pe-  
24                   riod. The plan may define the testing  
25                   period as all years of service of the

1 participant, as a period of consecutive  
2 years of service of the participant  
3 which produces the highest average  
4 compensation, or as a period of con-  
5 secutive years of service which in-  
6 cludes the last year of service of the  
7 participant. The testing period shall  
8 not include fewer than 3 years of serv-  
9 ice except in the case of participants  
10 with fewer than 3 years of service.

11 “(III) YEARS OF SERVICE.—For  
12 purposes of this clause, a year of serv-  
13 ice shall be determined under para-  
14 graphs (4), (5), and (6) of section  
15 411(a), except the plan need not in-  
16 clude as a year of service any year of  
17 service ending in a plan year that  
18 began before the employee became a  
19 participant in the plan, or any year of  
20 service that begins in a plan year in  
21 which the participant dies, has a sev-  
22 erance from employment, or becomes  
23 disabled (within the meaning of sec-  
24 tion 72(m)(7)).

1                   “(IV) ADJUSTMENTS FOR EARLY  
2                   AND     LATE     RETIREMENT.—The  
3                   amount determined under subclause  
4                   (I) shall be adjusted actuarially if  
5                   benefits under the plan commence  
6                   later than age 65. Such amount may  
7                   (but is not required to) be adjusted  
8                   for early retirement if benefits com-  
9                   mence (or normal retirement age is)  
10                  earlier than age 65.

11                  “(iii) CASH BALANCE FORMULA.—

12                   “(I) IN GENERAL.—The require-  
13                   ments of this clause are met if, under  
14                   the arrangement, the employer is re-  
15                   quired, without regard to whether the  
16                   employee makes an elective contribu-  
17                   tion or employee contribution, to pro-  
18                   vide a hypothetical allocation under a  
19                   cash balance plan on behalf of each  
20                   employee who is not a highly com-  
21                   pensated employee and who is eligible  
22                   to participate in the arrangement in  
23                   any year in an amount which is not  
24                   less than the product of the average  
25                   compensation of the employee (within

1 the meaning of clause (ii)(II), multi-  
2 plied by the cash balance contribution  
3 percentage with respect to such em-  
4 ployee.

5 “(II) CASH BALANCE CONTRIBU-  
6 TION PERCENTAGE.—For purposes of  
7 subclause (I), the term ‘cash balance  
8 contribution percentage’ means, with  
9 respect to any employee, 2 percent if  
10 such employee has not attained age  
11 31, 4 percent if such employee has at-  
12 tained age 31 but has not attained  
13 age 40, 6 percent if such employee  
14 has attained age 40 but has not at-  
15 tained age 50, and 8 percent if such  
16 employee has attained age 50.

17 “(III) CASH BALANCE PLAN DE-  
18 FINED.—For purposes of subclause  
19 (I), a cash balance plan is a defined  
20 benefit plan that defines an employ-  
21 ee’s benefits by reference to the em-  
22 ployee’s hypothetical account. Such  
23 hypothetical account is determined by  
24 reference, first, to hypothetical con-  
25 tribution allocations, and, second, to

1 hypothetical interest credits (on an  
2 annual or more frequent basis). The  
3 right to future interest credits are de-  
4 termined without regard to future  
5 service.

6 “(IV) NO PREDECESSOR DE-  
7 FINED BENEFIT PLAN.—The require-  
8 ments of this clause shall not be treat-  
9 ed as met if, during the 3-year period  
10 immediately preceding the effective  
11 date of a cash balance plan meeting  
12 the requirements of subclause (I), the  
13 employer (or any related employer,  
14 within the meaning of subsection (b),  
15 (c), (m), or (o) of section 414), main-  
16 tained a defined benefit plan that was  
17 not a cash balance plan and which  
18 benefited any participant who is a  
19 participant in the plan which meets  
20 the requirements of subclause (I).”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 401(k)(12)(A)(ii) of such Code is  
23 amended by striking “subparagraph (D)” and in-  
24 serting “subparagraph (E)”.

1           (2) Section 401(k)(12)(F)(i) of such Code (as  
2           redesignated by subsection (a)) is amended by add-  
3           ing at the end the following: “An arrangement shall  
4           not be treated as meeting the requirements of sub-  
5           paragraph (D) of this paragraph unless the require-  
6           ments of paragraph (2)(B) are met with respect to  
7           the benefit accruals provided pursuant to subpara-  
8           graph (D) of this paragraph.”.

9           (3) Section 401(k)(12)(F)(ii) of such Code (as  
10          redesignated by subsection (a)) is amended—

11                   (A) by striking “subparagraph (B) or (C)”  
12                   the first place it appears and inserting “sub-  
13                   paragraph (B), (C), or (D)”, and

14                   (B) by inserting “and benefit accruals  
15                   under subparagraph (D)” after “subparagraph  
16                   (B) or (C)” the second place it appears.

17          (4) Section 416(g)(4)(H) of such Code is  
18          amended to read as follows:

19                   “(H) CASH OR DEFERRED ARRANGEMENTS  
20                   USING ALTERNATIVE METHODS OF MEETING  
21                   NONDISCRIMINATION REQUIREMENTS.—

22                           “(i) IN GENERAL.—The term ‘top-  
23                           heavy plan’ shall not include a plan de-  
24                           scribed in clause (ii) or (iii).

1                   “(ii)     DEFINED     CONTRIBUTION  
2                   PLAN.—The plan described in this clause  
3                   is a defined contribution plan which con-  
4                   sists solely of—

5                   “(I) a cash or deferred arrange-  
6                   ment which meets the requirements of  
7                   section 401(k)(12), and

8                   “(II) matching contributions with  
9                   respect to which the requirements of  
10                  section 401(m)(11) are met.

11                  “(iii) DEFINED BENEFIT PLAN.— The  
12                  plan described in this clause is a defined  
13                  benefit plan which consists exclusively of  
14                  one or more—

15                  “(I) cash or deferred arrange-  
16                  ments which meet the requirements of  
17                  section 401(k)(12), and

18                  “(II) qualified matching accruals,  
19                  as described in section 401(m)(12).

20                  If, but for this subparagraph, a plan would be  
21                  treated as a top-heavy plan because it is a  
22                  member of an aggregation group which is a top-  
23                  heavy group, contributions or benefits under the  
24                  plan may be taken into account in determining  
25                  whether any other plan in the group meets the

1 requirements of subsection (c) and, a plan  
2 meeting the requirements of section  
3 401(k)(12)(D) shall be deemed to satisfy the  
4 requirements of subsection (c).”.

5 (5) SPECIAL RULE FOR PLAN WITH MULTIPLE  
6 ACCRUAL FORMULAS.—Paragraph (1) of section  
7 411(b) of such Code is amended by adding at the  
8 end the following new subparagraph:

9 “(I) MULTIPLE FORMULAS.—

10 “(i) IN GENERAL.—If a defined ben-  
11 efit plan contains multiple accrual for-  
12 mulas, the requirements of this paragraph  
13 may be satisfied separately for each for-  
14 mula.

15 “(ii) CERTAIN BENEFIT ACCRUALS  
16 TREATED AS MULTIPLE ACCRUALS TREAT-  
17 ED AS MULTIPLE ACCRUAL FORMULAS.—  
18 For purposes of this subparagraph, a plan  
19 has multiple accrual formulas if a partici-  
20 pant’s accrued benefit is determined either  
21 as the greater of the benefit determined  
22 under two or more separate formulas or as  
23 the sum of the benefit determined under  
24 two or more separate formulas.

1                   “(iii) CERTAIN FORMULAS TREATED  
2                   AS SEPARATE ACCRUAL FORMULAS.—For  
3                   purposes of clause (i), the benefit formulas  
4                   described in section 401(k)(12)(D) and  
5                   section 401(m)(12) shall be treated as sep-  
6                   arate from the minimum benefit formula  
7                   described in section 416(c)(1).”.

8                   (c) EFFECTIVE DATE.—

9                   (1) IN GENERAL.—Except as provided in para-  
10                  graph (2), the amendments made by this section  
11                  shall apply to years beginning after December 31,  
12                  2005.

13                  (2) CASH BALANCE FORMULA.—Section  
14                  401(k)(12)(D)(iii) of the Internal Revenue Code of  
15                  1986, as added by subsection (a)(2), shall not apply  
16                  to plan years beginning before the effective date of  
17                  an Act which provides for the application of section  
18                  411(b)(1)(H) of such Code to cash balance plans.

19 **SEC. 503. ADDITIONAL ACCRUALS UNDER DEFINED BEN-**  
20 **EFIT PLAN PROVIDED AS MATCHING CON-**  
21 **TRIBUTIONS.**

22                  (a) CERTAIN ARRANGEMENTS UNDER DEFINED  
23 BENEFIT PLAN SATISFY DEFINITELY DETERMINABLE  
24 BENEFIT REQUIREMENT.—Paragraph (35) of section  
25 401(a) of the Internal Revenue Code of 1986 (as added

1 by section 2(b)) is amended by inserting “or qualified  
2 matching accruals (as defined in subsection (m)(12))” be-  
3 fore the period at the end.

4 (b) MATCHING ACCRUALS.—Subsection (m) of sec-  
5 tion 401 of such Code is amended by redesignating para-  
6 graph (12) as paragraph (13) and by inserting after para-  
7 graph (11) the following new paragraph:

8 “(12) SPECIAL RULES RELATING TO QUALIFIED  
9 MATCHING ACCRUALS UNDER A DEFINED BENEFIT  
10 PLAN.—For purposes of this section—

11 “(A) QUALIFIED MATCHING ACCRUAL.—  
12 The term ‘qualified matching accrual’ means an  
13 amount funded by an employer in the form of  
14 a benefit accrual under a defined benefit plan  
15 to match elective deferrals under a qualified  
16 cash or deferred arrangement which is part of  
17 such plan and which meets the formula require-  
18 ments of subparagraph (B). The benefit accrual  
19 shall be determined under a nondiscretionary  
20 formula set forth in the defined benefit plan.  
21 For purposes of determining such benefit ac-  
22 crual, the amount of elective deferrals taken  
23 into account under such formula may be limited  
24 under the plan.

1           “(B) FORMULA REQUIREMENTS.—A ben-  
2           efit accrual meets the requirements of this sub-  
3           paragraph if such accrual is a hypothetical con-  
4           tribution that is added to a participant’s hypo-  
5           thetical account balance, the amount of which is  
6           determined, in accordance with the matching  
7           accrual formula set forth in the plan, with ref-  
8           erence to the amount of the elective deferrals  
9           made by the participant for the plan year to a  
10          qualified cash or deferred arrangement which is  
11          part of the defined benefit plan. Matching ac-  
12          cruals under the formula may vary with age or  
13          other employment-related factors.

14          “(C) COORDINATE WITH EMPLOYER CON-  
15          TRIBUTIONS.—For purposes of paragraph (4),  
16          the term ‘employer contributions’ shall not in-  
17          clude any amount contributed by an employer  
18          to a defined benefit plan for the purpose of  
19          funding any qualified matching accruals.

20          “(D) SAFE HARBOR FORMULA.—A quali-  
21          fied matching accrual formula shall be deemed  
22          to satisfy subsection (a)(4) if it satisfies the re-  
23          quirements of clauses (i) and (ii).

24                  “(i) ELECTIVE DEFERRALS AT OR  
25                  ABOVE MAXIMUM MATCHABLE RATE.—For

1 an employee who makes elective deferrals  
2 at or above the maximum matchable rate,  
3 the qualified matching benefit accrual for  
4 the plan year is a hypothetical allocation  
5 under a cash balance plan (as defined in  
6 section 401(k)(12)(D)(iii)(III)) that equals  
7 a percentage (not greater than 4 percent)  
8 of compensation (as defined in section  
9 414(s)).

10 “(ii) ELECTIVE DEFERRALS BELOW  
11 MAXIMUM MATCHABLE RATE.—For em-  
12 ployees who make elective deferrals at a  
13 rate that is below the maximum matchable  
14 rate, the qualified matching benefit accrual  
15 for such plan year shall be prorated. The  
16 plan may prorate the qualified benefit ac-  
17 crual on the basis of whole percentages,  
18 and the plan may require that an employ-  
19 ee’s elective deferrals be stated as whole  
20 percentages.

21 “(iii) MAXIMUM MATCHABLE RATE.—  
22 For purposes of this subparagraph, the  
23 maximum matchable rate must be a speci-  
24 fied percentage of compensation which  
25 does not exceed 4 percent.”.

1           (c) EXCEPTION TO BENEFIT CONTINGENCY RULE.—  
2 Subparagraph (A) of section 401(k)(4) of such Code is  
3 amended by inserting “or qualified matching accruals (as  
4 defined in subsection (m)(12))” after “section 401(m))”.

5           (d) FORFEITURES BY REASON OF EXCESS DEFER-  
6 RAL.—Subparagraph (G) of section 411(a)(3) of the Code  
7 is amended by adding at the end the following: “A rule  
8 similar to the rule of the preceding sentence shall apply  
9 with respect to qualified matching accruals (as defined in  
10 section 401(m)(12)).”

11          (e) ACCRUED BENEFIT REQUIREMENT WITH RE-  
12 SPECT TO MATCHING ACCRUALS.—Paragraph (1) of sec-  
13 tion 411(b) of such Code is amended by adding at the  
14 end the following new subparagraph:

15                   “(J) In the case of qualified matching ac-  
16                   cruals (as defined in section 401(m)(12)), the  
17                   requirements for accrued benefits set forth in  
18                   subparagraphs (A) through (H) of this sub-  
19                   section shall be applied on the basis of the rate  
20                   of matching accruals available to participants,  
21                   without regard to the actual elective deferrals  
22                   made by participants.”.

23          (f) PARTICIPATION REQUIREMENTS WITH RESPECT  
24 TO QUALIFIED MATCHING ACCRUALS.—Paragraph (26)  
25 of section 401(a) of such Code is amended by redesign-

1 nating subparagraph (I) as subparagraph (J), and by in-  
2 serting after subparagraph (H) the following new subpara-  
3 graph:

4                   “(I) SPECIAL TESTING RULES FOR QUALI-  
5 FIED MATCHING ACCRUALS.—

6                   “(i) If a defined benefit plan includes  
7 qualified matching accruals (as defined in  
8 section 401(m)(12)), the rules in clauses  
9 (ii) and (iii) shall apply.

10                   “(ii) QUALIFIED MATCHING ACCRUALS  
11 ONLY BENEFIT FORMULA.—If the only  
12 benefit formula in the defined benefit plan  
13 is a qualified matching accrual formula,  
14 the requirements of this paragraph shall be  
15 applied by treating a participant’s annual  
16 benefit accrual as the maximum accrual  
17 that was available to the participant for  
18 the plan year, regardless of whether the  
19 maximum matchable elective deferrals were  
20 actually made by the participant. If the  
21 qualified matching accrual formula applies  
22 to elective deferrals in excess of 6 percent  
23 of compensation, then the requirements of  
24 this paragraph must be applied by taking

1 into account the actual matching accruals  
2 earned by participants for the plan year.

3 “(iii) MULTIPLE FORMULAS.—If the  
4 defined benefit plan includes one or more  
5 benefit formulas in addition to a qualified  
6 matching accrual formula, the employer  
7 may elect to apply clause (ii) to the quali-  
8 fied matching accrual formulas only if the  
9 requirements of this paragraph are satis-  
10 fied separately with respect to the benefit  
11 accruals that are determined without re-  
12 gard to the qualified matching accrual for-  
13 mula.”.

14 (g) REGULATIONS FOR MEETING NONDISCRIMINA-  
15 TION REQUIREMENTS.—

16 (1) IN GENERAL.—The Secretary of the Treas-  
17 ury shall prescribe regulations on ways in which  
18 qualified matching accruals (as defined by section  
19 401(m)(12) of the the Internal Revenue Code of  
20 1986, as added by this section) that do not satisfy  
21 the formula requirements of section 401(m)(12)(D)  
22 of such Code (as enacted by subsection (b) of this  
23 section) can satisfy the nondiscrimination require-  
24 ments of section 401(a)(4) of such Code. The regu-

1 lations may prescribe safe harbor formulas in addi-  
2 tion to those prescribed by section 401(m)(12)(D).

3 (2) TEMPORARY AND FINAL FORM.—The Sec-  
4 retary shall prescribe the regulations required by  
5 paragraph (1) in temporary form not later than 6  
6 months after the effective date of this section and in  
7 final form not later than 18 months after the effec-  
8 tive date of this section.

9 (h) PLAN YEARS BEGINNING BEFORE ISSUANCE OF  
10 REGULATIONS.—For plan years beginning prior to the  
11 date the regulations described in subsection (g) are issued  
12 in final form, a plan’s qualified matching accrual formula  
13 must satisfy a reasonable, good faith, interpretation of  
14 section 401(a)(4) of such Code.

15 (i) EFFECTIVE DATE.—The amendments made by  
16 this section shall be effective for plan years beginning after  
17 the effective date of the Act described in section 3(c)(2).

18 **SEC. 504. LIMITATION ON DEDUCTIONS WHERE COMBINA-**  
19 **TION OF DEFINED CONTRIBUTION PLAN AND**  
20 **DEFINED BENEFIT PLAN.**

21 (a) ELECTIVE DEFERRALS.—Clause (ii) of section  
22 404(a)(7)(C) of the Internal Revenue Code of 1986 (relat-  
23 ing to elective deferrals) is amended to read as follows:

24 “(ii) ELECTIVE DEFERRALS.—For  
25 purposes of this paragraph, an employee

1 shall not be treated as a beneficiary of a  
2 defined contribution plan for a taxable  
3 year if the only employer contributions  
4 made on behalf of such employee for the  
5 taxable year are elective deferrals (as de-  
6 fined in section 402(g)(3)).”.

7 (b) LIMITATION NOT APPLICABLE TO DEFINED BEN-  
8 EFIT PLANS WITH CASH OR DEFERRED ARRANGE-  
9 MENT.—Subparagraph (C) of section 404(a)(7) is amend-  
10 ed by adding at the end the following:

11 “(iii) DEFINED BENEFIT PLAN WITH  
12 CASH OR DEFERRED ARRANGEMENT.—For  
13 purposes of this paragraph, an employee  
14 shall not be treated as a beneficiary of a  
15 defined contribution plan for a taxable  
16 year merely because the employee is a ben-  
17 efiary of a cash or deferred arrangement  
18 which is part of a defined benefit plan for  
19 such year.”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to years beginning after December  
22 31, 2005.

1 **SEC. 505. CONFORMING AMENDMENTS TO THE EMPLOYEE**  
2 **RETIREMENT INCOME SECURITY ACT OF**  
3 **1974.**

4 (a) DEFINITION.—Section 3 of the Employee Retirement  
5 Income Security Act of 1974 (29 U.S.C. 1002) is  
6 amended by adding at the end the following new para-  
7 graph:

8 “(42) The term ‘qualified cash or deferred arrange-  
9 ment’ has the meaning provided such term in section  
10 401(k)(2) of the Internal Revenue Code of 1986. ”.

11 (b) GENERAL RULES REGARDING TREATMENT OF  
12 PENSION PLANS INCLUDING QUALIFIED CASH OR DE-  
13 FERRED ARRANGEMENTS.—Section 3(35) of such Act (29  
14 U.S.C. 1002(35)) is amended—

15 (1) by redesignating subparagraphs (A) and  
16 (B) as clauses (i) and (ii), respectively;

17 (2) by inserting “(A)” after “(35)”; and

18 (3) by adding at the end the following new sub-  
19 paragraph:

20 “(B)(i) Except as provided in this title—

21 “(I) a pension plan which provides benefits  
22 other than benefits described in paragraph (34)  
23 shall not be treated as an ‘individual account  
24 plan’ or a ‘defined contribution plan’ on the  
25 basis of the inclusion in the plan of a qualified  
26 cash or deferred arrangement, and

1           “(II) any such pension plan which includes  
2           such an arrangement shall be treated as a sin-  
3           gle plan.

4           “(ii) Any pension plan which provides benefits other  
5 than benefits described in paragraph (34) and which in-  
6 cludes a qualified cash or deferred arrangement—

7           “(I) for purposes of section 202, shall be treat-  
8           ed as an individual account plan or a defined con-  
9           tribution plan;

10           “(II) for purposes of section 203, shall be treat-  
11           ed as an individual account plan or defined contribu-  
12           tion plan to the extent benefits are attributable to  
13           such arrangement and as a defined benefit plan with  
14           respect to the remaining portion of benefits under  
15           the plan, and

16           “(III) for purposes of sections 406, 407, and  
17           408, shall, in any case in which the arrangement (if  
18           treated as a separate plan) would be an eligible indi-  
19           vidual account plan (as defined in section  
20           407(d)(3)), be treated as an individual account plan  
21           or defined contribution plan with respect to assets  
22           attributable to such arrangement and as a defined  
23           benefit plan with respect to the remaining assets of  
24           the plan, and shall, in any other case, be treated as  
25           a single defined benefit plan.”.

1 (c) VALUATION OF BENEFITS ATTRIBUTABLE TO  
2 SEPARATE ACCOUNTS.—

3 (1) RESTRICTIONS ON IMMEDIATE DISTRIBUTION.—Section 203(e) of such Act (29 U.S.C.  
4 TION.—Section 203(e) of such Act (29 U.S.C.  
5 1053(e)) is amended by adding at the end the fol-  
6 lowing new paragraph:

7 “(5) In the case of a defined benefit plan which pro-  
8 vides a benefit derived from employer contributions (in-  
9 cluding elective deferrals (as defined in section 402(g)(3)  
10 of the Internal Revenue Code of 1986)) under a qualified  
11 cash or deferred arrangement which is maintained under  
12 such plan, for purposes of this subsection, the present  
13 value of the portion of the benefit attributable to such ar-  
14 rangement shall be deemed to be an amount equal to the  
15 fair market value of such arrangement.”.

16 (2) SURVIVOR BENEFITS.—Section 205 of such  
17 Act (29 U.S.C. 1055) is amended—

18 (A) by redesignating subsection (l) as sub-  
19 section (m); and

20 (B) by inserting after subsection (k) the  
21 following new subsection:

22 “(l) In the case of a defined benefit plan which pro-  
23 vides a benefit derived from employer contributions (in-  
24 cluding elective deferrals (as defined in section 402(g)(3)  
25 of the Internal Revenue Code of 1986)) under a qualified

1 cash or deferred arrangement which is maintained under  
2 such plan, for purposes of this section, the present value  
3 of the portion of the benefit attributable to such arrange-  
4 ment shall be deemed to be an amount equal to the fair  
5 market value of such arrangement.”.

6 (d) ALLOWABLE REDUCTIONS IN RATE OF BENEFIT  
7 ACCRUAL.—Section 204(h) of such Act (29 U.S.C.  
8 1054(h)) is amended by adding at the end the following  
9 new paragraph:

10 “(10) A plan shall not be treated as failing to meet  
11 the requirements of this subsection merely because of a  
12 reduction in, or elimination of, any contributions to a  
13 qualified cash or deferred arrangement which is part of  
14 such plan.”.

15 (e) APPLICATION OF MINIMUM FUNDING STAND-  
16 ARD.—

17 (1) EXCEPTION FROM STANDARD.—Section  
18 301(a) of such Act (29 U.S.C. 1081(a)) is amended  
19 by adding at the end the following new paragraph:

20 “(11) any qualified cash or deferred arrange-  
21 ment which is part of a defined benefit plan.”.

22 (2) CONTINUED APPLICATION OF STANDARD TO  
23 OTHER PORTION OF DEFINED BENEFIT PLAN.—Sec-  
24 tion 302(c) of such Act (29 U.S.C. 1082(c)) is

1 amended by adding at the end the following new  
2 paragraph:

3 “(13) CONTINUED APPLICATION OF STANDARD  
4 TO OTHER PORTION OF DEFINED BENEFIT PLAN.—  
5 This section shall be applied to a defined benefit  
6 plan by disregarding the value of the trust attrib-  
7 utable to any qualified cash or deferred arrange-  
8 ment.”.

9 (f) VESTING REQUIREMENTS.—Section 203(a)(3) of  
10 such Act (29 U.S.C. 1053(a)(3)(F)) is amended by adding  
11 at the end the following new subparagraph:

12 “(G) FASTER VESTING FOR ACCRUALS UNDER  
13 DEFINED BENEFIT PLANS WITH CASH OR DEFERRED  
14 ARRANGEMENTS.—In the case of a defined benefit  
15 plan which includes a qualified cash or deferred ar-  
16 rangement, the rules described in subparagraph (F)  
17 shall be applied to benefit accruals under such plan  
18 and to matching contributions and nonelective con-  
19 tributions made under such arrangement.”

20 (g) APPLICATION OF ACCRUAL RULES WITH RE-  
21 GARD TO QUALIFIED MATCHING ACCRUALS.—Section  
22 204(b)(1) of such Act (29 U.S.C. 1054(b)(1)) is amended  
23 by adding at the end the following new subparagraph:

24 “(I) In the case of qualified matching accruals (as  
25 defined in section 401(m)(12) of the Internal Revenue

1 Code of 1986), the requirements for accrued benefits set  
2 forth in subparagraphs (A) through (H) of this paragraph  
3 shall be applied on the basis of the rate of such qualified  
4 matching accruals available to participants, without re-  
5 gard to the actual elective deferrals made by partici-  
6 pants.”.

7 (h) MULTIPLE ACCRUAL FORMULAS.—Section  
8 204(b)(1) of such Act (as amended by subsection (g)) is  
9 further amended by adding at the end the following new  
10 subparagraph:

11 “(J)(i) If a defined benefit plan contains multiple ac-  
12 crual formulas, the requirements of this paragraph may  
13 be satisfied separately for each formula.

14 “(ii) For purposes of this subparagraph, a plan has  
15 multiple accrual formulas if a participant’s accrued benefit  
16 is determined either as the greater of the benefit deter-  
17 mined under two or more separate formulas or as the sum  
18 of the benefit determined under two or more separate for-  
19 mulas.

20 “(iii) For purposes of clause (i), the benefit formulas  
21 described in section 401(k)(12)(D) and section  
22 401(m)(12) of the Internal Revenue Code of 1986 shall  
23 be treated as separate from the minimum benefit formula  
24 described in section 416(c)(1) of such Code.”.

1 (i) FORFEITURES BY REASON OF EXCESS DEFER-  
2 RAL.—Subparagraph (F) of section 203(a)(3) of such Act  
3 (29 U.S.C. 1053(a)(3)(F)) is amended by adding at the  
4 end the following: “A rule similar to the rule of the pre-  
5 ceding sentence shall apply with respect to qualified  
6 matching accruals (as defined in section 401(m)(12) of the  
7 Internal Revenue Code of 1986).”

8 (j) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to plan years beginning after De-  
10 cember 31, 2005.

## 11 **TITLE VI—ADDITIONAL** 12 **AMENDMENTS**

### 13 **SEC. 601. EXEMPTION FROM PROHIBITED TRANSACTION** 14 **RULES FOR CERTAIN ABORTED EMERGENT** 15 **TRANSACTIONS.**

16 (a) IN GENERAL.—Section 4975(c) of the Internal  
17 Revenue Code of 1986 is amended by adding at the end  
18 the following new paragraph:

19 “(7) SPECIAL RULE FOR CERTAIN ABORTED  
20 EMERGENT TRANSACTIONS.—

21 “(A) IN GENERAL.—Pursuant to regula-  
22 tions issued by the Secretary, if—

23 “(i) in the case of a qualifying trans-  
24 action between an employee benefit plan  
25 and an eligible person which would, but for

1           this paragraph, be in violation of a restric-  
2           tion imposed by paragraph (1), the eligible  
3           person submits to the Secretary, not later  
4           than 60 days after the date of the trans-  
5           action, an application for an exemption  
6           under paragraph (2) from such restriction  
7           in the case of such transaction,

8                   “(ii) the Secretary determines not to  
9                   grant the exemption, and

10                   “(iii) the transaction is reversed with-  
11                   in 60 days after the date of the Secretary’s  
12                   determination,

13           then the transaction shall be exempted under  
14           paragraph (2) from treatment as a violation of  
15           such restriction.

16                   “(B) QUALIFYING TRANSACTION.—The  
17                   term ‘qualifying transaction’ means, in connec-  
18                   tion with an eligible person, a transaction be-  
19                   tween an employee benefit plan and such eligi-  
20                   ble person constituting the purchase or sale of  
21                   a financial product, if—

22                   “(i) prior to engaging in the trans-  
23                   action, the plan acquires from the eligible  
24                   person a sufficient guarantee, consisting of  
25                   a letter of credit or other form of written

1           guarantee, issued by a bank or similar fi-  
2           nancial institution (other than the eligible  
3           person requesting the exemption or an af-  
4           filiate) regulated and supervised by, and  
5           subject to periodic examination by, an  
6           agency of a State or of the Federal Gov-  
7           ernment, in a stated amount equal, as of  
8           the close of business on the day preceding  
9           the transaction, to not less than 100 per-  
10          cent of the amount of plan assets involved  
11          in the transaction, plus interest on that  
12          amount at a rate determined by the parties  
13          to the transaction, or in the absence of  
14          such determination, an interest rate equal  
15          to the underpayment rate defined in sec-  
16          tion 6621(a)(2),

17                 “(ii) the eligible person receives in  
18                 such transaction not more than reasonable  
19                 compensation,

20                 “(iii) such transaction is expressly ap-  
21                 proved by an independent fiduciary who  
22                 has investment authority with respect to  
23                 the plan assets involved in the transaction,  
24                 and

1                   “(iv) immediately after the acquisition  
2                   of the financial product—

3                   “(I) the fair market value of such  
4                   financial product does not exceed 1  
5                   percent of the fair market value of the  
6                   assets of the plan, and

7                   “(II) the aggregate fair market  
8                   value of all outstanding financial  
9                   products acquired by the plan from  
10                  the eligible person pursuant to this  
11                  subsection does not exceed 5 percent  
12                  of the fair market value of the assets  
13                  of the plan.

14                  “(C) SUFFICIENT GUARANTEE.—A guar-  
15                  antee referred to in subparagraph (B) is ‘suffi-  
16                  cient’ if such guarantee is irrevocable and,  
17                  under the terms of the guarantee, if the Sec-  
18                  retary determines not to grant the exemption,  
19                  the plan has the unconditional right to apply  
20                  the amounts under the guarantee to any losses  
21                  suffered and to the payment of interest deter-  
22                  mined under the terms of the transaction. A  
23                  guarantee shall not be treated as failing to be  
24                  ‘sufficient’ solely because, under the terms of  
25                  the guarantee, if the Secretary grants the ex-

1           emption, the guarantee may expire without any  
2           payments made to the plan.

3           “(D) ELIGIBLE PERSON.—The term ‘eligi-  
4           ble person’ means a person that—

5                   “(i) consists of—

6                           “(I) a bank as defined in section  
7                           202(a)(2) of the Investment Advisers  
8                           Act of 1940,

9                           “(II) an investment adviser reg-  
10                           istered under the Investment Advisers  
11                           Act of 1940,

12                           “(III) an insurance company  
13                           which is qualified to do business in  
14                           more than one State, or

15                           “(IV) a broker-dealer registered  
16                           under the Securities Exchange Act of  
17                           1934,

18                           “(ii) has shareholders’ or partners’ eq-  
19                           uity in excess of \$1,000,000, and

20                           “(iii) is not described in section 411  
21                           of the Employee Retirement Income Secu-  
22                           rity Act of 1974 (29 U.S.C. 1111).”.

23           (b) EFFECTIVE DATE.—The amendment made by  
24           this section shall apply with respect to transactions occur-  
25           ring after December 31, 2005.

1 **SEC. 602. LOANS FROM RETIREMENT PLANS FOR HEALTH**  
2 **INSURANCE AND JOB TRAINING EXPENSES.**

3 (a) **QUALIFICATION REQUIREMENT FOR PENSION**  
4 **PLANS.**—Paragraph (13) of section 401(a) of the Internal  
5 Revenue Code of 1986 (relating to assignment and alien-  
6 ation) is amended by adding at the end the following new  
7 subparagraph:

8 “(E) **LOANS FROM RETIREMENT PLANS**  
9 **FOR HEALTH INSURANCE AND JOB TRAINING**  
10 **EXPENSES.**—Notwithstanding subparagraph  
11 (A), a trust shall not constitute a qualified  
12 trust under this section unless the plan of  
13 which such trust is a part provides that a par-  
14 ticipant or beneficiary who is involuntarily sepa-  
15 rated from employment may, on the date of  
16 such separation, obtain a loan from the plan  
17 the proceeds of which are to be used within 6  
18 months after the date of such loan—

19 “(i) for payments for insurance which  
20 constitutes medical care for the taxpayer  
21 and the taxpayer’s spouse and dependents,  
22 or

23 “(ii) for job training expenses.”.

24 (b) **PROHIBITED TRANSACTION EXEMPTION.**—Sec-  
25 tion 4975(d) of such Code (relating to exemptions from  
26 tax on prohibited transactions) is amended by striking

1 “or” at the end of paragraph (14), by striking the period  
2 at the end of paragraph (15) and inserting “; or”, and  
3 by inserting after paragraph (15) the following new para-  
4 graph:

5 “(16) any loan—

6 “(A) from an individual retirement plan  
7 for the payment of health insurance premiums  
8 or job training expenses that is a qualified loan  
9 (as defined in section 408 of the Employee Re-  
10 tirement Income Security Act of 1974), or

11 “(B) made by the plan to a disqualified  
12 person who is a participant or beneficiary of the  
13 plan if such loan—

14 “(i) is for the payment of health in-  
15 surance premiums or job training ex-  
16 penses, and

17 “(ii) meets the requirements of sec-  
18 tion 401(a)(13)(E).”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to loans made after the effective  
21 date specified in section 501.

22 **SEC. 603. TREATMENT OF UNCLAIMED BENEFITS.**

23 (a) IN GENERAL.—Section 401(a)(34) of the Internal  
24 Revenue Code of 1986 (relating to benefits of missing par-  
25 ticipants) is amended to read as follows:

1           “(34) UNCLAIMED BENEFITS.—A trust forming  
2           part of a plan shall not be treated as failing to con-  
3           stitute a qualified trust under this section merely be-  
4           cause the plan of which such trust is a part treats  
5           unclaimed benefits in a manner that satisfies the re-  
6           quirements of section 414(w).”.

7           (b) REQUIREMENTS.—Section 414 of such Code (re-  
8           lating to definitions and special rules) is amended by add-  
9           ing at the end the following new subsection:

10          “(w) UNCLAIMED BENEFITS.—

11               “(1) IN GENERAL.—A plan meets the require-  
12               ments of this subsection only if—

13                       “(A) ONGOING PLANS.—In the case of an  
14                       ongoing plan, the plan provides for one or more  
15                       of the following with respect to unclaimed bene-  
16                       fits:

17                               “(i) In the case of an unclaimed ben-  
18                               efit to which section 401(a)(31)(B) applies,  
19                               a transfer under section 401(a)(31)(B).

20                               “(ii) A transfer to the Pension Benefit  
21                               Guaranty Corporation, in accordance with  
22                               section 4050(e) of the Employee Retirement  
23                               Income Security Act of 1974.

24                               “(iii) Any other treatment permitted  
25                               under rules prescribed by the Secretary.

1           “(B) TERMINATED PLANS.—In the case of  
2 a terminated plan, the plan provides for the fol-  
3 lowing with respect to unclaimed benefits:

4           “(i) DEFINED BENEFIT PLANS.—In  
5 the case of a defined benefit plan, one or  
6 more of the following:

7           “(I) In the case of an unclaimed  
8 benefit to which section 401(a)(31)(B)  
9 applies, a transfer under section  
10 401(a)(31)(B).

11           “(II) A transfer of the unclaimed  
12 benefit to another defined benefit plan  
13 maintained by the employer.

14           “(III) The purchase of an annu-  
15 ity contract to provide for an individ-  
16 ual’s unclaimed benefit.

17           “(IV) A transfer to the Pension  
18 Benefit Guaranty Corporation in ac-  
19 cordance with section 4050(a) or  
20 4050(e) (as applicable) of the Em-  
21 ployee Retirement Income Security  
22 Act of 1974.

23           “(V) Any other treatment per-  
24 mitted under rules prescribed by the  
25 Secretary.

1                   “(ii)       DEFINED       CONTRIBUTION  
2                   PLANS.—In the case of a defined contribu-  
3                   tion plan, one or more of the following:

4                   “(I) In the case of an unclaimed  
5                   benefit to which section 401(a)(31)(B)  
6                   applies, a transfer under section  
7                   401(a)(31)(B).

8                   “(II) A transfer of the unclaimed  
9                   benefit to another defined contribution  
10                  plan maintained by the employer.

11                  “(III) The purchase of an annu-  
12                  ity contract to provide for an individ-  
13                  ual’s unclaimed benefit.

14                  “(IV) A transfer to the Pension  
15                  Benefit Guaranty Corporation in ac-  
16                  cordance with section 4050(d) or  
17                  4050(e) (as applicable) of the Em-  
18                  ployee Retirement Income Security  
19                  Act of 1974.

20                  “(V) Any other treatment per-  
21                  mitted under rules prescribed by the  
22                  Secretary.

23                  “(2) TREATMENT OF TRANSFERS TO PENSION  
24                  BENEFIT GUARANTY CORPORATION.—

1           “(A) TRANSFERS TO PBGC.—Amounts  
2 transferred from a plan to the Pension Benefit  
3 Guaranty Corporation pursuant to paragraph  
4 (1) shall be treated as a transfer under section  
5 401(a)(31)(A).

6           “(B) DISTRIBUTIONS FROM PBGC.—Ex-  
7 cept as provided in rules prescribed by the Sec-  
8 retary, amounts distributed by the Pension  
9 Benefit Guaranty Corporation shall be treated  
10 as distributed by an individual retirement plan  
11 under section 408(d) (without regard to para-  
12 graphs (4), (5) and (7) thereof). Rules similar  
13 to the rules of section 402(c)(4) shall apply.

14           “(3) DEFINITIONS.—For purposes of this sub-  
15 section—

16           “(A) UNCLAIMED BENEFIT.—The term  
17 ‘unclaimed benefit’ means—

18           “(i) any benefit of a participant or  
19 beneficiary which is distributable under the  
20 terms of the plan to the participant or ben-  
21 efiary, if the distribution of the benefit  
22 has not commenced within 1 year after the  
23 later of the date on which the benefit first  
24 became so distributable or the participant’s  
25 severance from employment;

1           “(ii) any benefit or other amount of a  
2           participant or beneficiary which is distrib-  
3           utable under the terms of the plan with re-  
4           spect to a missing participant, or

5           “(iii) any benefit to which section  
6           401(a)(31)(B) applies or would apply if  
7           subclause (I) of section 401(a)(31)(B)(i)  
8           did not require the distribution to exceed  
9           \$1,000.

10           A benefit otherwise described in clause (i) shall  
11           not be treated as an unclaimed benefit under  
12           clause (i) if the participant or beneficiary elects  
13           not to have such treatment apply. Any such  
14           participant or beneficiary shall be given reason-  
15           able notice of the opportunity to make such an  
16           election. If the participant or beneficiary fails to  
17           make such an election within a reasonable pe-  
18           riod specified in the notice, any subsequent elec-  
19           tion shall not be given effect and the benefit  
20           shall be treated as an unclaimed benefit. A no-  
21           tice mailed to the last known address of the  
22           participant or beneficiary shall be treated as a  
23           notice to the participant or beneficiary for pur-  
24           poses of this paragraph.

1           “(B) ONGOING PLAN.—The term ‘ongoing  
2 plan’ means any plan which has neither termi-  
3 nated nor is in the process of terminating.

4           “(C) TERMINATED PLAN.—The term ‘ter-  
5 minated plan’ means any plan which has termi-  
6 nated or is in the process of terminating.

7           “(D) MISSING PARTICIPANT.—The term  
8 ‘missing participant’ shall have the meaning  
9 given to such term by section 4050(b)(1) of the  
10 Employee Retirement Income Security Act of  
11 1974.”.

12       (c) CONFORMING AMENDMENT.—Subparagraph (B)  
13 of section 401(a)(31) of such Code is amended by adding  
14 at the end the following:

15           “(iii) OTHER PERMITTED TRANS-  
16 FERS.—A plan administrator shall be  
17 treated as having complied with the re-  
18 quirements of this subparagraph if such  
19 plan administrator complies with the re-  
20 quirements of section 414(w).”.

21 **SEC. 604. INCOME AVERAGING OF CORRECTED CIVIL SERV-**  
22 **ICE ANNUITY BENEFIT PAYMENTS.**

23       (a) IN GENERAL.—Part I of subchapter Q of chapter  
24 1 of the Internal Revenue Code of 1986 (relating to in-

1 come averaging) is amended by inserting after section  
2 1301 the following new section:

3 **“SEC. 1302. AVERAGING OF CORRECTED CIVIL SERVICE AN-**  
4 **NUITY BENEFIT PAYMENTS.**

5 “(a) IN GENERAL.—Unless the taxpayer elects not  
6 to have this section apply for a taxable year, any corrected  
7 civil service annuity benefit payment includable in gross  
8 income for such taxable year (without regard to this sec-  
9 tion) shall be so included ratably over the 5-taxable year  
10 period beginning with such taxable year.

11 “(b) CORRECTED CIVIL SERVICE ANNUITY BENEFIT  
12 PAYMENT.—For purposes of subsection (a), the term ‘cor-  
13 rected civil service annuity benefit payment’ means with  
14 respect to an individual the sum of—

15 “(1) the lump sum payment awarded by reason  
16 of a court order, or decision of the Merit Systems  
17 Protection Board, under which the individual is enti-  
18 tled to receive an amount equal to all or any part  
19 of an annuity not paid to the individual as a result  
20 of an erroneous application or interpretation of sub-  
21 chapter III of chapter 83 or chapter 84 of title 5,  
22 United States Code, or any other provision of law  
23 (or any rule or regulation relating thereto), plus



1           (1) in paragraph (15), by striking “or” at the  
2 end,

3           (2) in paragraph (16), by striking the period at  
4 the end and inserting “; or”, and

5           (3) by adding at the end the following new  
6 paragraph:

7           “(17) any transaction described in subsection  
8 (f)(7)(A) in connection with the provision of invest-  
9 ment advice described in subsection (e)(3)(B), in  
10 any case in which—

11                   “(A) the plan provides for individual ac-  
12 counts and permits a participant or beneficiary  
13 to exercise control over assets in his or her ac-  
14 count,

15                   “(B) the advice is qualified investment ad-  
16 vice provided to a participant or beneficiary of  
17 the plan by a fiduciary adviser in connection  
18 with any sale, acquisition, or holding of a secu-  
19 rity or other property for purposes of invest-  
20 ment of plan assets, and

21                   “(C) the requirements of subsection  
22 (f)(7)(B) are met in connection with each in-  
23 stance of the provision of the advice.”.

24           (b) TRANSACTIONS ALLOWED AND RELATED RE-  
25 QUIREMENTS.—Subsection (f) of such section 4975 (relat-

1 ing to other definitions and special rules) is amended by  
2 adding at the end the following new paragraph:

3 “(7) INVESTMENT ADVICE PROVIDED BY FIDU-  
4 CIARY ADVISERS.—

5 “(A) ALLOWABLE TRANSACTIONS.—The  
6 transactions referred to in subsection (d)(16),  
7 in connection with the provision of investment  
8 advice by a fiduciary adviser, are the following:

9 “(i) the provision of the advice to the  
10 participant or beneficiary,

11 “(ii) the sale, acquisition, or holding  
12 of a security or other property (including  
13 any lending of money or other extension of  
14 credit associated with the sale, acquisition,  
15 or holding of a security or other property)  
16 pursuant to the advice, and

17 “(iii) the direct or indirect receipt of  
18 fees or other compensation by the fiduciary  
19 adviser or an affiliate thereof (or any em-  
20 ployee, agent, or registered representative  
21 of the fiduciary adviser or affiliate) in con-  
22 nection with the provision of the advice.

23 “(B) REQUIREMENTS FOR EXEMPTION  
24 FROM PROHIBITED TRANSACTIONS WITH RE-  
25 SPECT TO PROVISION OF INVESTMENT AD-

1 VICE.—The requirements of this subparagraph  
2 (referred to in subsection (d)(16)(C)) are met  
3 in connection with the provision of qualified in-  
4 vestment advice provided to a participant or  
5 beneficiary of an employee benefit plan by a fi-  
6 duciary adviser with respect to the plan in con-  
7 nection with any sale, acquisition, or holding of  
8 a security or other property for purposes of in-  
9 vestment of amounts held by the plan, if the re-  
10 quirements of the following clauses are met:

11 “(i) WRITTEN DISCLOSURES.—At a  
12 time contemporaneous with the provision  
13 of the advice in connection with the sale,  
14 acquisition, or holding of the security or  
15 other property, the fiduciary adviser shall  
16 provide to the recipient of the advice a  
17 clear and conspicuous notification, written  
18 in a manner to be reasonably understood  
19 by the average plan participant pursuant  
20 to regulations which shall be prescribed by  
21 the Secretary (including mathematical ex-  
22 amples), of the following:

23 “(I) INTERESTS HELD BY THE  
24 FIDUCIARY ADVISER.—Any interest of  
25 the fiduciary adviser in, or any affli-

1           ation or contractual relationship of  
2           the fiduciary adviser (or affiliates  
3           thereof) with any third party having  
4           an interest in, the security or other  
5           property.

6                   “(II) RELATED FEES OR COM-  
7                   PENSATION IN CONNECTION WITH  
8                   THE PROVISION OF THE ADVICE.—All  
9                   fees or other compensation relating to  
10                  the advice (including fees or other  
11                  compensation itemized with respect to  
12                  each security or other property with  
13                  respect to which the advice is pro-  
14                  vided) that the fiduciary adviser (or  
15                  any affiliate thereof) is to receive (in-  
16                  cluding compensation provided by any  
17                  third party) in connection with the  
18                  provision of the advice or in connec-  
19                  tion with the sale, acquisition, or hold-  
20                  ing of the security or other property.

21                   “(III) ONGOING FEES OR COM-  
22                   PENSATION IN CONNECTION WITH  
23                   THE SECURITY OR PROPERTY IN-  
24                   VOLVED.—All fees or other compensa-  
25                  tion that the fiduciary adviser (or any

1 affiliate thereof) is to receive, on an  
2 ongoing basis, in connection with any  
3 security or other property with respect  
4 to which the fiduciary adviser gives  
5 the advice.

6 “(IV) APPLICABLE LIMITATIONS  
7 ON SCOPE OF ADVICE.—Any limita-  
8 tion placed (in accordance with the re-  
9 quirements of this subsection) on the  
10 scope of the advice to be provided by  
11 the fiduciary adviser with respect to  
12 the sale, acquisition, or holding of the  
13 security or other property.

14 “(V) TYPES OF SERVICES GEN-  
15 ERALLY OFFERED.—The types of  
16 services offered by the fiduciary ad-  
17 viser in connection with the provision  
18 of qualified investment advice by the  
19 fiduciary adviser.

20 “(VI) FIDUCIARY STATUS OF  
21 THE FIDUCIARY ADVISER.—That the  
22 fiduciary advisor is a fiduciary of the  
23 plan.

24 “(ii) DISCLOSURE BY FIDUCIARY AD-  
25 VISER IN ACCORDANCE WITH APPLICABLE

1           SECURITIES LAWS.—The fiduciary adviser  
2           shall provide appropriate disclosure, in  
3           connection with the sale, acquisition, or  
4           holding of the security or other property,  
5           in accordance with all applicable securities  
6           laws.

7           “(iii) TRANSACTION OCCURRING SOLE-  
8           LY AT DIRECTION OF RECIPIENT OF AD-  
9           VICE.—The sale, acquisition, or holding of  
10          the security or other property shall occur  
11          solely at the direction of the recipient of  
12          the advice.

13          “(iv) REASONABLE COMPENSATION.—  
14          The compensation received by the fiduciary  
15          adviser and affiliates thereof in connection  
16          with the sale, acquisition, or holding of the  
17          security or other property shall be reason-  
18          able.

19          “(v) ARM’S LENGTH TRANSACTION.—  
20          The terms of the sale, acquisition, or hold-  
21          ing of the security or other property shall  
22          be at least as favorable to the plan as an  
23          arm’s length transaction would be.

24          “(C) CONTINUED AVAILABILITY OF INFOR-  
25          MATION FOR AT LEAST 1 YEAR.—The require-

1           ments of subparagraph (B)(i) shall be deemed  
2           not to have been met in connection with the ini-  
3           tial or any subsequent provision of advice de-  
4           scribed in subparagraph (B) if, at any time  
5           during the 1-year period following the provision  
6           of the advice, the fiduciary adviser fails to  
7           maintain the information described in sub-  
8           clauses (I) through (IV) of subparagraph (B)(i)  
9           in currently accurate form or to make the infor-  
10          mation available, upon request and without  
11          charge, to the recipient of the advice.

12           “(D) EVIDENCE OF COMPLIANCE MAIN-  
13          TAINED FOR AT LEAST 6 YEARS.—A fiduciary  
14          adviser referred to in subparagraph (B) who  
15          has provided advice referred to in such subpara-  
16          graph shall, for a period of not less than 6  
17          years after the provision of the advice, maintain  
18          any records necessary for determining whether  
19          the requirements of the preceding provisions of  
20          this paragraph and of subsection (d)(16) have  
21          been met. A transaction prohibited under sub-  
22          section (c)(1) shall not be considered to have  
23          occurred solely because the records are lost or  
24          destroyed prior to the end of the 6-year period

1 due to circumstances beyond the control of the  
2 fiduciary adviser.

3 “(E) MODEL DISCLOSURE FORMS.—The  
4 Secretary shall prescribe regulations setting  
5 forth model disclosure forms to assist fiduciary  
6 advisers in complying with the disclosure re-  
7 quirements of under this paragraph.

8 “(F) ANNUAL REVIEWS BY THE SEC-  
9 RETARY.—The Secretary shall conduct annual  
10 reviews of randomly selected fiduciary advisers  
11 providing qualified investment advice to partici-  
12 pants and beneficiaries. In the case of each re-  
13 view, the Secretary shall review the following:

14 “(i) COMPLIANCE BY ADVICE COM-  
15 PUTER MODELS WITH GENERALLY ACCEPT-  
16 ED INVESTMENT MANAGEMENT PRIN-  
17 CIPLES.—The extent to which advice com-  
18 puter models employed by the fiduciary ad-  
19 viser comply with generally accepted in-  
20 vestment management principles.

21 “(ii) COMPLIANCE WITH DISCLOSURE  
22 REQUIREMENTS.—The extent to which dis-  
23 closures provided by the fiduciary adviser  
24 have complied with the requirements of  
25 this subsection.

1           “(iii) EXTENT OF VIOLATIONS.—The  
2           extent to which any violations of fiduciary  
3           duties have occurred in connection with the  
4           provision of the advice.

5           “(iv) EXTENT OF REPORTED COM-  
6           PLAINTS.—The extent to which complaints  
7           to relevant agencies have been made in  
8           connection with the provision of the advice.

9           Any proprietary information obtained by the  
10          Secretary shall be treated as confidential.

11          “(G) DUTY OF CONFLICTED FIDUCIARY  
12          ADVISER TO PROVIDE FOR ALTERNATIVE INDE-  
13          PENDENT ADVICE.—

14                 “(i) IN GENERAL.—In connection with  
15                 any qualified investment advice provided  
16                 by a fiduciary adviser to a participant or  
17                 beneficiary regarding any security or other  
18                 property, if the fiduciary adviser—

19                         “(I) has an interest in the secu-  
20                         rity or other property, or

21                         “(II) has an affiliation or con-  
22                         tractual relationship with any third  
23                         party that has an interest in the secu-  
24                         rity or other property,

1 the requirements of subparagraph (B)  
2 shall be treated as not met in connection  
3 with the advice unless the fiduciary adviser  
4 has arranged, as an alternative to the ad-  
5 vice that would otherwise be provided by  
6 the fiduciary advisor, for qualified invest-  
7 ment advice with respect to the security or  
8 other property provided by at least one al-  
9 ternative investment adviser meeting the  
10 requirements of clause (ii).

11 “(ii) INDEPENDENCE AND QUALIFICA-  
12 TIONS OF ALTERNATIVE INVESTMENT AD-  
13 VISER.—Any alternative investment adviser  
14 whose qualified investment advice is ar-  
15 ranged for by a fiduciary adviser pursuant  
16 to clause (i)—

17 “(I) shall have no material inter-  
18 est in, and no material affiliation or  
19 contractual relationship with any third  
20 party having a material interest in,  
21 the security or other property with re-  
22 spect to which the investment adviser  
23 is providing the advice, and

24 “(II) shall meet the requirements  
25 of a fiduciary adviser under subpara-

1 graph (H)(i), except that an alter-  
2 native investment adviser may not be  
3 a fiduciary of the plan other than in  
4 connection with the provision of the  
5 advice.

6 “(iii) SCOPE AND FEES OF ALTER-  
7 NATIVE INVESTMENT ADVICE.—Any quali-  
8 fied investment advice provided pursuant  
9 to this subparagraph by an alternative in-  
10 vestment adviser shall be of the same type  
11 and scope, and provided under the same  
12 terms and conditions (including no addi-  
13 tional charge to the participant or bene-  
14 ficiary), as apply with respect to the quali-  
15 fied investment advice to be provided by  
16 the fiduciary adviser.

17 “(H) FIDUCIARY ADVISER DEFINED.—For  
18 purposes of this paragraph and subsection  
19 (d)(16)—

20 “(i) IN GENERAL.—The term ‘fidu-  
21 ciary adviser’ means, with respect to a  
22 plan, a person who—

23 “(I) is a fiduciary of the plan by  
24 reason of the provision of qualified in-

1 vestment advice by such person to a  
2 participant or beneficiary,

3 “(II) meets the qualifications of  
4 clause (ii), and

5 “(III) meets the additional re-  
6 quirements of clause (iii).

7 “(ii) QUALIFICATIONS.—A person  
8 meets the qualifications of this clause if  
9 such person—

10 “(I) is registered as an invest-  
11 ment adviser under the Investment  
12 Advisers Act of 1940 (15 U.S.C. 80b-  
13 1 et seq.),

14 “(II) if not registered as an in-  
15 vestment adviser under such Act by  
16 reason of section 203A(a)(1) of such  
17 Act (15 U.S.C. 80b-3a(a)(1)), is reg-  
18 istered under the laws of the State in  
19 which the fiduciary maintains its prin-  
20 cipal office and place of business, and,  
21 at the time the fiduciary last filed the  
22 registration form most recently filed  
23 by the fiduciary with such State in  
24 order to maintain the fiduciary’s reg-  
25 istration under the laws of such State,

1 also filed a copy of such form with the  
2 Secretary,

3 “(III) is registered as a broker or  
4 dealer under the Securities Exchange  
5 Act of 1934 (15 U.S.C. 78a et seq.),

6 “(IV) is a bank or similar finan-  
7 cial institution referred to in sub-  
8 section (d)(4),

9 “(V) is an insurance company  
10 qualified to do business under the  
11 laws of a State, or

12 “(VI) is any other comparable  
13 entity which satisfies such criteria as  
14 the Secretary determines appropriate.

15 “(iii) ADDITIONAL REQUIREMENTS  
16 WITH RESPECT TO CERTAIN EMPLOYEES  
17 OR OTHER AGENTS OF CERTAIN ADVIS-  
18 ERS.—A person meets the additional re-  
19 quirements of this clause if every indi-  
20 vidual who is employed (or otherwise com-  
21 pensated) by such person and whose scope  
22 of duties includes the provision of qualified  
23 investment advice on behalf of such person  
24 to any participant or beneficiary is—

1                   “(I) a registered representative of  
2                   such person,

3                   “(II) an individual described in  
4                   subclause (I), (II), or (III) of clause  
5                   (ii), or

6                   “(III) such other comparable  
7                   qualified individual as may be des-  
8                   ignated in regulations of the Sec-  
9                   retary.

10                   “(I) ADDITIONAL DEFINITIONS.—For pur-  
11                   poses of this paragraph and subsection  
12                   (d)(16)—

13                   “(i) QUALIFIED INVESTMENT AD-  
14                   VICE.—The term ‘qualified investment ad-  
15                   vice’ means, in connection with a partici-  
16                   pant or beneficiary, investment advice re-  
17                   ferred to in subsection (e)(3)(B) which—

18                   “(I) consists of an individualized  
19                   recommendation to the participant or  
20                   beneficiary with respect to the pur-  
21                   chase, sale, or retention of securities  
22                   or other property for the individual  
23                   account of the participant or bene-  
24                   ficiary, in accordance with generally

1           accepted investment management  
2           principles, and

3                   “(II) takes into account all in-  
4           vestment options under the plan.

5                   “(ii) AFFILIATE.—The term ‘affiliate’  
6           of another entity means an affiliated per-  
7           son of such entity (as defined in section  
8           2(a)(3) of the Investment Company Act of  
9           1940 (15 U.S.C. 80a-2(a)(3))).

10                   “(iii) REGISTERED REPRESENTA-  
11           TIVE.—The term ‘registered representa-  
12           tive’ of another entity means a person de-  
13           scribed in section 3(a)(18) of the Securi-  
14           ties Exchange Act of 1934 (15 U.S.C.  
15           78c(a)(18)) (substituting such entity for  
16           the broker or dealer referred to in such  
17           section) or a person described in section  
18           202(a)(17) of the Investment Advisers Act  
19           of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-  
20           stituting such entity for the investment ad-  
21           viser referred to in such section).”.

22           (c) EFFECTIVE DATE.—The amendments made by  
23           this section shall apply with respect to advice referred to  
24           in section 4975(e)(3)(B) of the Internal Revenue Code of  
25           1986 provided on or after January 1, 2005.

1 **SEC. 606. INCREASE IN DEDUCTIBLE CONTRIBUTIONS TO**  
2 **SINGLE-EMPLOYER DEFINED BENEFIT PLAN**  
3 **UPON PAYMENT OF INCREASED PREMIUM TO**  
4 **THE PENSION BENEFIT GUARANTY COR-**  
5 **PORATION.**

6 (a) INCREASE IN DEDUCTIBLE CONTRIBUTIONS.—  
7 Paragraph (1) of section 404(a) of the Internal Revenue  
8 Code of 1986 (relating to deduction for contributions to  
9 pension trusts) is amended—

10 (1) by redesignating subparagraph (E) as sub-  
11 paragraph (F); and

12 (2) by inserting after subparagraph (D) the fol-  
13 lowing new subparagraph:

14 “(E) SPECIAL RULE IN THE EVENT OF  
15 PAYMENT OF INCREASED PBGC PREMIUM WITH  
16 RESPECT TO SINGLE-EMPLOYER DEFINED BEN-  
17 EFIT PLAN.—In any case in which the Sec-  
18 retary—

19 “(i) receives certification by the plan  
20 administrator of a single-employer defined  
21 benefit plan that the increased premium  
22 authorized under section 4006(a)(3)(F) of  
23 the Employee Retirement Income Security  
24 Act of 1974 has been paid for any plan  
25 year, and

1                   “(ii) receives certification of such pay-  
2                   ment from the Pension Benefit Guaranty  
3                   Corporation,  
4                   the maximum amount deductible under the lim-  
5                   itations of this paragraph for such plan year  
6                   shall not be less than 150 percent of current li-  
7                   ability determined under section 412(l).”.

8           (b) ELECTION OF PAYMENT OF INCREASED PRE-  
9 MIUM.—Section 4006(a)(3) of the Employee Retirement  
10 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is  
11 amended by adding at the end the following new subpara-  
12 graph:

13           “(F) The corporation shall provide for payment of the  
14 premium for any plan year for basic benefits guaranteed  
15 under this title with respect to a single-employer plan for  
16 any plan year at an increased annual rate equal to \$24.70  
17 in any case in which such payment is accompanied by cer-  
18 tification by the contributing sponsor or plan adminis-  
19 trator that such payment is made for purposes of in-  
20 creased deductibility of contributions for such plan year  
21 under section 404(a)(1)(E) of the Internal Revenue Code  
22 of 1986. The Corporation shall promptly certify receipt  
23 of any premium at the increased annual rate provided for  
24 under this subparagraph to the Secretary of the Treas-  
25 ury.”.

1 **SEC. 607. EXEMPTION FROM PROHIBITED TRANSACTION**  
2 **RULES FOR CERTAIN ABORTED EMERGENCY**  
3 **TRANSACTIONS.**

4 (a) IN GENERAL.—Section 4975(c) of the Internal  
5 Revenue Code of 1986 is amended by adding at the end  
6 the following new paragraph:

7 “(7) SPECIAL RULE FOR CERTAIN ABORTED  
8 EMERGENCY TRANSACTIONS.—

9 “(A) IN GENERAL.—Pursuant to regula-  
10 tions issued by the Secretary, if—

11 “(i) in the case of a qualifying trans-  
12 action between an employee benefit plan  
13 and an eligible person which would, but for  
14 this paragraph, be in violation of a restric-  
15 tion imposed by paragraph (1), the eligible  
16 person submits to the Secretary, not later  
17 than 60 days after the date of the trans-  
18 action, an application for an exemption  
19 under paragraph (2) from such restriction  
20 in the case of such transaction,

21 “(ii) the Secretary determines not to  
22 grant the exemption, and

23 “(iii) the transaction is reversed with-  
24 in 60 days after the date of the Secretary’s  
25 determination,

1           then the transaction shall be exempted under  
2           paragraph (2) from treatment as a violation of  
3           such restriction.

4           “(B) QUALIFYING TRANSACTION.—The  
5           term ‘qualifying transaction’ means, in connec-  
6           tion with an eligible person, a transaction be-  
7           tween an employee benefit plan and such eligi-  
8           ble person constituting the purchase or sale of  
9           a financial product, if—

10                   “(i) prior to engaging in the trans-  
11                   action, the plan acquires from the eligible  
12                   person a sufficient guarantee, consisting of  
13                   a letter of credit or other form of written  
14                   guarantee, issued by a bank or similar fi-  
15                   nancial institution (other than the eligible  
16                   person requesting the exemption or an af-  
17                   filiate) regulated and supervised by, and  
18                   subject to periodic examination by, an  
19                   agency of a State or of the Federal Gov-  
20                   ernment, in a stated amount equal, as of  
21                   the close of business on the day preceding  
22                   the transaction, to not less than 100 per-  
23                   cent of the amount of plan assets involved  
24                   in the transaction, plus interest on that  
25                   amount at a rate determined by the parties

1 to the transaction, or in the absence of  
2 such determination, an interest rate equal  
3 to the underpayment rate defined in sec-  
4 tion 6621(a)(2),

5 “(ii) the eligible person receives in  
6 such transaction not more than reasonable  
7 compensation,

8 “(iii) such transaction is expressly ap-  
9 proved by an independent fiduciary who  
10 has investment authority with respect to  
11 the plan assets involved in the transaction,  
12 and

13 “(iv) immediately after the acquisition  
14 of the financial product—

15 “(I) the fair market value of such  
16 financial product does not exceed 1  
17 percent of the fair market value of the  
18 assets of the plan, and

19 “(II) the aggregate fair market  
20 value of all outstanding financial  
21 products acquired by the plan from  
22 the eligible person pursuant to this  
23 subsection does not exceed 5 percent  
24 of the fair market value of the assets  
25 of the plan.

1           “(C) SUFFICIENT GUARANTEE.—A guar-  
2           antee referred to in subparagraph (B) is ‘suffi-  
3           cient’ if such guarantee is irrevocable and,  
4           under the terms of the guarantee, if the Sec-  
5           retary determines not to grant the exemption,  
6           the plan has the unconditional right to apply  
7           the amounts under the guarantee to any losses  
8           suffered and to the payment of interest deter-  
9           mined under the terms of the transaction. A  
10          guarantee shall not be treated as failing to be  
11          ‘sufficient’ solely because, under the terms of  
12          the guarantee, if the Secretary grants the ex-  
13          emption, the guarantee may expire without any  
14          payments made to the plan.

15          “(D) ELIGIBLE PERSON.—The term ‘eligi-  
16          ble person’ means a person that—

17                   “(i) consists of—

18                           “(I) a bank as defined in section  
19                           202(a)(2) of the Investment Advisers  
20                           Act of 1940,

21                           “(II) an investment adviser reg-  
22                           istered under the Investment Advisers  
23                           Act of 1940,

1           “(III) an insurance company  
2           which is qualified to do business in  
3           more than one State, or

4           “(IV) a broker-dealer registered  
5           under the Securities Exchange Act of  
6           1934,

7           “(ii) has shareholders’ or partners’ eq-  
8           uity in excess of \$1,000,000, and

9           “(iii) is not described in section 411  
10          of the Employee Retirement Income Secu-  
11          rity Act of 1974 (29 U.S.C. 1111).”.

12          (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply with respect to transactions occur-  
14 ring after December 31, 2005.

15 **SEC. 608. PENSION BENEFIT INFORMATION.**

16          (a) IN GENERAL.—Chapter 43 of the Internal Rev-  
17 enue Code of 1986 (relating to qualified pension, etc.,  
18 plans) is amended by adding at the end the following new  
19 section:

20 **“SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE**  
21 **NOTICE OF GENERALLY ACCEPTED INVEST-**  
22 **MENT PRINCIPLES.**

23          “(a) IMPOSITION OF TAX.—There is hereby imposed  
24 a tax on the failure of any applicable pension plan to meet

1 the requirements of subsection (e) with respect to any ap-  
2 plicable individual.

3 “(b) AMOUNT OF TAX.—The amount of the tax im-  
4 posed by subsection (a) on any failure with respect to any  
5 applicable individual shall be \$100 for each day in the  
6 noncompliance period with respect to such failure.

7 “(c) LIMITATIONS ON AMOUNT OF TAX.—

8 “(1) TAX NOT TO APPLY TO FAILURES COR-  
9 RECTED WITHIN 30 DAYS.—No tax shall be imposed  
10 by subsection (a) on any failure if—

11 “(A) any person subject to liability for the  
12 tax under subsection (d) exercised reasonable  
13 diligence to meet the requirements of subsection  
14 (e), and

15 “(B) such person provides the notice de-  
16 scribed in subsection (e) during the 30-day pe-  
17 riod beginning on the first date such person  
18 knew, or exercising reasonable diligence should  
19 have known, that such failure existed.

20 “(2) OVERALL LIMITATION FOR UNINTEN-  
21 TIONAL FAILURES.—

22 “(A) IN GENERAL.—If the person subject  
23 to liability for tax under subsection (d) exer-  
24 cised reasonable diligence to meet the require-  
25 ments of subsection (e) and paragraph (1) is

1 not otherwise applicable, the tax imposed by  
2 subsection (a) for failures during the taxable  
3 year of the employer (or, in the case of a multi-  
4 employer plan, the taxable year of the trust  
5 forming part of the plan) shall not exceed  
6 \$500,000. For purposes of the preceding sen-  
7 tence, all multiemployer plans of which the  
8 same trust forms a part shall be treated as 1  
9 plan.

10 “(B) TAXABLE YEARS IN THE CASE OF  
11 CERTAIN CONTROLLED GROUPS.—For purposes  
12 of this paragraph, if all persons who are treated  
13 as a single employer for purposes of this section  
14 do not have the same taxable year, the taxable  
15 years taken into account shall be determined  
16 under principles similar to the principles of sec-  
17 tion 1561.

18 “(3) WAIVER BY SECRETARY.—In the case of a  
19 failure which is due to reasonable cause and not to  
20 willful neglect, the Secretary may waive part or all  
21 of the tax imposed by subsection (a) to the extent  
22 that the payment of such tax would be excessive or  
23 otherwise inequitable relative to the failure involved.

24 “(d) LIABILITY FOR TAX.—The following shall be lia-  
25 ble for the tax imposed by subsection (a):

1           “(1) In the case of a plan other than a multi-  
2 employer plan, the employer.

3           “(2) In the case of a multiemployer plan, the  
4 plan.

5           “(e) NOTICE OF GENERALLY ACCEPTED INVEST-  
6 MENT PRINCIPLES.—

7           “(1) IN GENERAL.—The plan administrator of  
8 an applicable pension plan shall provide notice of  
9 generally accepted investment principles, including  
10 principles of risk management and diversification, to  
11 each applicable individual.

12           “(2) NOTICE.—The notice required by para-  
13 graph (1) shall be written in a manner calculated to  
14 be understood by the average plan participant and  
15 shall provide sufficient information (as determined  
16 in accordance with rules or other guidance adopted  
17 by the Secretary) to allow applicable individuals to  
18 understand generally accepted investment principles,  
19 including principles of risk management and diver-  
20 sification.

21           “(3) TIMING OF NOTICE.—The notice required  
22 by paragraph (1) shall be provided upon enrollment  
23 of the applicable individual in such plan and at least  
24 once per plan year thereafter.

1           “(4) FORM AND MANNER OF NOTICE.—The no-  
2           tice required by paragraph (1) shall be in writing,  
3           except that such notice may be in electronic or other  
4           form to the extent that such form is reasonably ac-  
5           cessible to the applicable individual.

6           “(f) DEFINITIONS AND SPECIAL RULES.—For pur-  
7           poses of this section—

8           “(1) APPLICABLE INDIVIDUAL.—The term ‘ap-  
9           plicable individual’ means with respect to an applica-  
10          ble pension plan—

11                   “(A) any participant in the applicable pen-  
12                   sion plan,

13                   “(B) any beneficiary who is an alternate  
14                   payee (within the meaning of section 414(p)(8))  
15                   under an applicable qualified domestic relations  
16                   order (within the meaning of section  
17                   414(p)(1)(A)), and

18                   “(C) any beneficiary of a deceased partici-  
19                   pant or alternate payee described in subpara-  
20                   graph (A) or (B), as the case may be,

21                   who has an accrued benefit under the plan and who  
22                   is entitled to direct the investment (or hypothetical  
23                   investment) of some or all of such accrued benefit.

24                   “(2) APPLICABLE PENSION PLAN.—The term  
25                   ‘applicable pension plan’ means—

1           “(A) a plan described in section  
2           219(g)(5)(A) (other than in clause (iii) thereof),  
3           and

4           “(B) an eligible deferred compensation  
5           plan (as defined in section 457(b)) of an eligible  
6           employer described in section 457(e)(1)(A),  
7           which permits any participant to direct the invest-  
8           ment of some or all of his account in the plan or  
9           under which the accrued benefit of any participant  
10          depends in whole or in part on hypothetical invest-  
11          ments directed by the participant.”.

12          (b) CLERICAL AMENDMENT.—The table of sections  
13          for chapter 43 of such Code is amended by adding at the  
14          end the following new item:

          “Sec. 4980G. Failure of applicable plans to provide notice of generally accepted  
          investment principles.”.

15          (c) EFFECTIVE DATE.—

16           (1) IN GENERAL.—The amendments made by  
17           this section shall take effect 60 days after the adop-  
18           tion of rules or other guidance to carry out the  
19           amendments made by this section, which shall in-  
20           clude a model notice of generally accepted invest-  
21           ment principles, including principles of risk manage-  
22           ment and diversification.

23           (2) MODEL INVESTMENT PRINCIPLES.—For  
24           purposes of paragraph (1), not later than 120 days

1 after the date of the enactment of this Act, the Sec-  
2 retary of the Treasury, in consultation with the Sec-  
3 retary of Labor, shall issue rules or other guidance  
4 and a model notice which meets the requirements of  
5 section 4980G of the Internal Revenue Code of 1986  
6 (as added by this section).

7 **SEC. 609. PERMANENCY OF TRANSITION RULE IN RETIRE-**  
8 **MENT PROTECTION ACT OF 1994.**

9 (a) **TRANSITION RULE MADE PERMANENT.**—Section  
10 769(c) of the Retirement Protection Act of 1994 (26  
11 U.S.C. 412 note) is amended—

12 (1) in the heading, by striking “TRANSITION”;

13 and

14 (2) in paragraph (1), by striking “transition”  
15 and by striking “for any plan year beginning after  
16 1996 and before 2010”.

17 (b) **SPECIAL RULES.**—Paragraph (2) of section  
18 769(c) of the Retirement Protection Act of 1994 is amend-  
19 ed to read as follows:

20 “(2) **SPECIAL RULES.**—The rules described in  
21 this paragraph are as follows:

22 “(A) For purposes of section 412(l)(9)(A)  
23 of the Internal Revenue Code of 1986 and sec-  
24 tion 302(d)(9)(A) of the Employee Retirement  
25 Income Security Act of 1974, the funded cur-

1           rent liability percentage for any plan year shall  
2           be treated as not less than 90 percent.

3           “(B) For purposes of section 412(m) of  
4           the Internal Revenue Code of 1986 and section  
5           302(e) of the Employee Retirement Income Se-  
6           curity Act of 1974, the funded current liability  
7           percentage for any plan year shall be treated as  
8           not less than 100 percent.

9           “(C) For purposes of determining un-  
10          funded vested benefits under section  
11          4006(a)(3)(E)(iii) of the Employee Retirement  
12          Income Security Act of 1974, the mortality  
13          table shall be the mortality table used by the  
14          plan.”.

15          (c) EFFECTIVE DATE.—The amendments made by  
16          this section shall apply to plan years beginning after De-  
17          cember 31, 2004.

## 18                           **TITLE VII—GENERAL** 19                           **PROVISIONS**

### 20   **SEC. 701. GENERAL EFFECTIVE DATE.**

21          (a) IN GENERAL.—Except as otherwise provided in  
22          this Act, and subject to subsection (b), the amendments  
23          made by this Act shall apply with respect to plan years  
24          beginning on or after January 1, 2005.

1 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED  
2 PLANS.—In the case of a plan maintained pursuant to 1  
3 or more collective bargaining agreements between em-  
4 ployee representatives and 1 or more employers ratified  
5 on or before the date of the enactment of this Act, sub-  
6 section (a) shall be applied to benefits pursuant to, and  
7 individuals covered by, any such agreement by substituting  
8 for “January 1, 2005” the date of the commencement of  
9 the first plan year beginning on or after the earlier of—

10 (1) the later of—

11 (A) January 1, 2006, or

12 (B) the date on which the last of such col-  
13 lective bargaining agreements terminates (de-  
14 termined without regard to any extension there-  
15 of after the date of the enactment of this Act),

16 or

17 (2) January 1, 2007.

18 **SEC. 702. PLAN AMENDMENTS.**

19 If any amendment made by this Act requires an  
20 amendment to any plan, such plan amendment shall not  
21 be required to be made before the first plan year beginning  
22 on or after January 1, 2007, if—

23 (1) during the period after such amendment  
24 made by this Act takes effect and before such first  
25 plan year, the plan is operated in accordance with

1 the requirements of such amendment made by this  
2 Act, and

3 (2) such plan amendment applies retroactively  
4 to the period after such amendment made by this  
5 Act takes effect and such first plan year.

○