110TH CONGRESS
2D SESSION

H. R. 5543

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase the retirement security of women and small business owners, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2008

Mr. ALLEN (for himself, Mr. ENGLISH of Pennsylvania, and Ms. BERKLEY) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase the retirement security of women and small business owners, and for other purposes.

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; AMENDMENT OF 1986 CODE;
4 TABLE OF CONTENTS.
5 (a) SHORT TITLE.—This Act may be cited as the
6 “Women’s Retirement Security Act of 2008”.

VerDate Aug 31 2005 23:22 Mar 07, 2008 Jkt 069200 PO 00000 Frm 00001 Fmt 6652 Sfmt 6201 E:\BILLS\H5543.IH H5543mstockstill on PROD1PC66 with BILLS
(b) Amendment of 1986 Code.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

c) Table of Contents.—The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—Provisions to Increase Retirement Savings

Subtitle A—Employee Access to Retirement Savings at Work

Sec. 101. Employees not covered by qualified retirement plans or arrangements entitled to participate in payroll deposit IRA arrangements.

Sec. 102. Credit for small employers maintaining payroll deposit IRA arrangements.

Sec. 103. Establishment of automatic IRAs.

Sec. 104. Establishment of TSP II Board.

Subtitle B—Other Provisions

Sec. 111. Modifications to computation of saver’s credit; saver’s credit made refundable.

Sec. 112. Qualified cash or deferred arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate.

Sec. 113. Transfers of unused benefits of health flexible spending arrangement to certain retirement plans.

Sec. 114. Computation of limits on IRA and Roth IRA contributions.

TITLE II—Provisions Providing for Preservation of Income

Sec. 201. Exclusion of certain qualified annuity payments.


Sec. 203. Joint study of application of spousal consent rules to defined contribution plans.

Sec. 204. Facilitating longevity insurance.

TITLE III—Provisions Ensuring Equity in Divorce

Sec. 301. Special rules relating to treatment of qualified domestic relations orders.

Sec. 302. Elimination of current connection requirement under Railroad Retirement Act for certain survivors.
Sec. 303. Permitting divorced spouses and widows and widowers to remarry after turning 60 without a penalty under Railroad Retirement Act.

**TITLE IV—PROVISIONS TO IMPROVE FINANCIAL LITERACY**

Sec. 401. Grants to community-based taxpayer clinics to provide retirement savings advice.
Sec. 402. Treatment of qualified retirement planning services.
Sec. 403. Retirement handbook and retirement readiness checklist.

**TITLE V—INCENTIVES FOR SMALL BUSINESSES TO ESTABLISH AND MAINTAIN RETIREMENT PLANS FOR EMPLOYEES**

Sec. 501. Credit for qualified pension plan contributions of small employers.
Sec. 502. Deduction for pension contributions allowed in computing net earnings from self-employment.
Sec. 503. Exemption of deferral-only qualified cash or deferred arrangements from top-heavy plan rules.
Sec. 504. Extension of time for small pension plans to adopt required plan qualification amendments.

**TITLE VI—PROVISIONS RELATING TO LONG-TERM CARE INSURANCE**

Sec. 601. Treatment of premiums on qualified long-term care insurance contracts.
Sec. 602. Credit for taxpayers with long-term care needs.
Sec. 603. Additional consumer protections for long-term care insurance.
Sec. 604. Treatment of exchanges of long-term care insurance contracts.

**TITLE I—PROVISIONS TO INCREASE RETIREMENT SAVINGS**

Subtitle A—Employee Access to Retirement Savings at Work

Sec. 101. Employees not covered by qualified retirement plans or arrangements entitled to participate in payroll deposit IRA arrangements.
(a) In General.—Subpart A of part I of subchapter A of chapter 1 (relating to pension, profit-sharing, stock...
bonus plans, etc.) is amended by inserting after section
408A the following new section:

“SEC. 408B. RIGHT TO PAYROLL DEPOSIT IRA ARRANGE-
MENTS AT WORK.

“(a) REQUIREMENT TO PROVIDE PAYROLL DEPOSIT
IRA ARRANGEMENT.—Each employer (other than an em-
ployer described in subsection (e)) shall provide to each
applicable employee of the employer for any calendar year
the opportunity to participate in a payroll deposit IRA ar-
angement which meets the requirements of this section.

“(b) PAYROLL DEPOSIT IRA ARRANGEMENT.—For
purposes of this section—

“(1) IN GENERAL.—The term ‘payroll deposit
IRA arrangement’ means a written arrangement of
an employer—

“(A) under which an applicable employee
eligible to participate in the arrangement may
elect to contribute to an individual retirement
plan established by or on behalf of the employee
by having the employer make periodic direct de-
posit or other payroll deposit payments (includ-
ing electronic payments) to the plan by payroll
deduction, and

“(B) which meets the requirements of
paragraph (2).
“(2) Administrative requirements.—The requirements of this paragraph are met with respect to any payroll deposit IRA arrangement if—

“(A) the employer must make the payments elected under paragraph (1)(A) on or before the later of—

“(i) the due date for the deposit of tax required to be deducted and withheld under chapter 24 (relating to collection of income tax at source on wages) for the payroll period to which such payments relate, or

“(ii) the 30th day following the last day of the month with respect to which the payments are to be made,

“(B) subject to a requirement for reasonable notice, an employee may elect to terminate participation in the arrangement at any time during a calendar year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next calendar year,

“(C) each employee eligible to participate may elect, during the 60-day period or other pe-
period specified by the Secretary before the begin-
ning of any calendar year (and during the 60-
day period or other period specified by the Sec-
retary before the first day the employee is eligi-
ble to participate), to participate in the ar-
rangement, or to modify the employee’s election
under the arrangement (including the amounts
subject to the arrangement and the manner in
which such amounts are invested), for such
year,

“(D) the employer provides—

“(i) immediately before the beginning
of each period described in subparagraph
(C), a notice to each employee of the em-
ployee’s opportunity to make the election
and the maximum amount which may be
contributed to an individual retirement
plan on an annual basis, and

“(ii) if the arrangement includes an
automatic enrollment arrangement, the no-
tices required under subsection (h) with re-
spect to the automatic enrollment arrange-
ment,

“(E) subject to subsection (f), the arrange-
ment provides that an employee may elect to
have contributions made to any individual re-
tirement plan specified by the employee, and

“(F) if the arrangement does not include
an automatic enrollment arrangement—

“(i) the arrangement requires the em-
ployer to take all reasonable actions to so-
llicit from all employees eligible to partici-
pate in the arrangement an explicit elec-
tion to either participate or not to partici-
pate in the arrangement, and

“(ii) the arrangement provides that if
an employee fails to make an explicit elec-
tion under clause (i) within the time pre-
scribed under the arrangement, the em-
ployee will be treated as having made an
election to participate in the arrangement
(and amounts shall be invested on behalf
of the participant) in the same manner as
if the arrangement had included an auto-
matic enrollment arrangement under sub-
section (g).

“(c) APPLICABLE EMPLOYEE DEFINED; RELATED
DEFINITIONS AND RULES.—For purposes of this sec-
tion—

“(1) APPLICABLE EMPLOYEE.—
“(A) IN GENERAL.—The term ‘applicable employee’ means, with respect to any calendar year, any employee—

“(i) who was not eligible under a qualified plan or arrangement maintained by the employer for service for the preceding calendar year, and

“(ii) with respect to whom it is reasonable to expect that the employee will not be eligible during the calendar year under such a qualified plan or arrangement.

“(B) SPECIAL RULES.—For purposes of subparagraph (A)(i)—

“(i) ELIGIBILITY.—An employee shall be treated as eligible under a plan for a preceding calendar year if, as of the last day of the last plan year ending in the preceding calendar year, the employee has satisfied the plan’s eligibility requirements.

“(ii) EXCLUDED PLANS.—A qualified plan or arrangement shall not be taken into account under this paragraph if—
“(I) the plan or arrangement is frozen as of the first day of the pre-
ceeding calendar year, or

“(II) in the case of a plan or ar-
angement under which the only con-
tributions are discretionary on the part of the sponsor, there has not
been an employer contribution made to the plan or arrangement for the 2-
plan-year period ending with the last plan year ending in the second pre-
ceding calendar year and it is not rea-
sonable to assume that an employer contribution will be made for the plan
year ending in the preceding calendar year.

“(2) EXCLUDABLE EMPLOYEES.—An employer may elect to exclude from treatment as applicable employees under paragraph (1)—

“(A) employees described in section 410(b)(3),

“(B) employees who have not attained the age of 18 before the beginning of the calendar year,
“(C) employees who have not completed at least 3 months of service with the employer,

“(D) in the case of an employer that maintains a qualified plan or arrangement which generally excludes employees who have not satisfied the eligibility requirements described in section 410(a)(1)(A) (without regard to section 410(a)(1)(B)), employees who have not yet satisfied such requirements,

“(E) employees who are eligible to make salary reduction contributions under an arrangement which meets the requirements of section 403(b), and

“(F) all employees of the employer if the employer maintains an arrangement described in section 408(p).

“(3) QUALIFIED PLAN OR ARRANGEMENT.—The term ‘qualified plan or arrangement’ means a plan, contract, pension, or trust described in section 219(g)(5).

“(4) EXCEPTION FOR EMPLOYEES OF GOVERNMENTS AND CHURCHES.—The term ‘applicable employee’ shall not include an employee of—

“(A) a government or entity described in section 414(d), or
“(B) a church or a convention or association of churches which is exempt from tax under section 501, including any employee described in section 414(e)(3)(B).

“(5) DESIGNATION OF APPLICABLE EMPLOYEES.—The Secretary shall issue guidelines for determining the class or classes of employees to be covered by a payroll deposit IRA arrangement. Such guidelines shall provide that if an employer elects under paragraph (2) to exclude employees from the arrangement, the employer shall specify the classification or categories of employees who are not so covered.

“(d) PAYROLL DEPOSIT IRA CONTRIBUTIONS TREATED LIKE OTHER CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.—

“(1) TAX TREATMENT UNAFFECTED.—The fact that a contribution to an individual retirement plan is made on behalf of an employee under a payroll deposit IRA arrangement instead of being made directly by the employee shall not affect the deductibility or other tax treatment of the contribution or of other amounts under this title.

“(2) PAYROLL SAVINGS CONTRIBUTIONS TAKEN INTO ACCOUNT.—Any contribution made on behalf
of an employee under a payroll deposit IRA arrangement shall be taken into account in applying the limitations on contributions to individual retirement plans and the other provisions of this title applicable to individual retirement plans as if the contribution had been made directly by the employee.

“(e) Exception for Certain Small and New Employers.—

“(1) In general.—The requirements of this section shall not apply for any calendar year to an employer if—

“(A) the employer did not have more than 10 employees who received at least $5,000 of compensation from the employer for the preceding calendar year, or

“(B) was not in existence at all times during the 2 preceding calendar years and did not have more than 100 employees who received at least $5,000 of compensation from the employer on any day during either of the 2 preceding calendar years.

“(2) Operating rules.—In determining the number of employees for purposes of this subsection—
“(A) any rule applicable in determining the number of employees for purposes of section 408(p)(2)(C) shall be applicable under this subsection,

“(B) all members of the same family (within the meaning of section 318(a)(1)) shall be treated as 1 individual, and

“(C) any reference to an employer shall include a reference to any predecessor employer.

“(f) DEPOSITS TO INDIVIDUAL RETIREMENT PLANS OTHER THAN THOSE SELECTED BY EMPLOYEE.—

“(1) IN GENERAL.—An employer shall not be treated as failing to satisfy the requirements of this section or any other provision of this title merely because the employer makes all contributions (or all contributions on behalf of employees who do not specify an individual retirement plan, trustee, or issuer to receive the contributions) to individual retirement plans specified in paragraph (2) or (4).

“(2) PLANS OF A DESIGNATED TRUSTEE OR ISSUER.—An employer may elect to have contributions for all applicable employees participating in a payroll deposit IRA arrangement made to individual retirement plans of a designated trustee or issuer under the arrangement. The preceding sentence
shall not apply unless each participant is notified in writing that the participant’s balance may be transferred without cost or penalty to another individual retirement plan established by or on behalf of the participant.

“(3) PAYROLL TAX DEPOSIT PROCEDURE.—The Secretary, in consultation with the TSP II Board, shall establish a procedure under which an employer—

“(A) may include with each deposit of tax required to be deducted and withheld under chapter 24 the aggregate amounts, for the period covered by the deposit, which applicable employees have designated under subsection (b)(1)(A) (or are deemed to have designated under subsection (b)(2)(F)(ii) or under an automatic enrollment arrangement described in subsection (g)) for contribution to individual retirement plans, established on behalf of the employees under paragraph (4), and

“(B) specifies, in such manner as the Secretary may prescribe, the following information for each applicable employee for whom a contribution is to be made:

“(i) The employee’s name and TIN.
“(ii) The amount of the contribution.

“(iii) The investment options selected by the employee (or deemed to have been selected by the employee under such automatic enrollment arrangement) and the amount of the contribution allocated to each option.

“(4) Establishment and maintenance of accounts under payroll tax deposit procedure.—

“(A) In general.—Subject to the provisions of this section and section 408C, the TSP II Board shall provide for the establishment and maintenance of individual retirement plans (including automatic IRAs) into which contributions may be deposited under paragraph (3). To the maximum extent practicable, the TSP II Board shall—

“(i) enter into contracts with persons eligible to be trustees of individual retirement plans under section 408 to establish such plans, to provide the investment funds and investment management, and to provide notice, record keeping, and other administrative services, and
“(ii) ensure that the costs of investment management and administration are kept to a minimum, including through consideration of the use of investments which involve passive management and which seek to replicate the performance of a portion of the market.

“(B) Payroll deposit features.—The TSP II Board shall establish procedures so that contributions may be made to individual retirement plans (including automatic IRAs) under paragraph (3) without undue administrative or paperwork requirements on participating employers. Such procedures shall ensure that only 1 such plan may be established for each TIN.

“(C) Limitation on rollovers.—If—

“(i) any amount is paid or distributed out of an individual retirement plan established under this paragraph, and

“(ii) such amount is paid into an individual retirement plan which was not established under this paragraph,

the payment described in clause (ii) shall be treated as a rollover contribution for purposes of section 408(d)(3) if and only if the balance
to the credit of the individual in such individual retirement plan or arrangement immediately before the payment described in clause (i) was at least $15,000.

“(g) COORDINATION WITH AUTOMATIC ENROLLMENT AND OTHER DEFAULT ELECTION PROVISIONS.—

“(1) IN GENERAL.—Contributions under a payroll deposit IRA arrangement may be made pursuant to an automatic enrollment arrangement.

“(2) AUTOMATIC ENROLLMENT ARRANGEMENT.—The term ‘automatic enrollment arrangement’ means an arrangement under a payroll deposit IRA arrangement and subject to rules prescribed by the Secretary—

“(A) under which an individual may elect to have the employer make payments as contributions to an individual account plan on behalf of the individual, or to the individual directly in cash,

“(B) under which the individual is treated as having elected to have the employer make such contributions in an amount equal to a specified percentage of compensation or dollar amount until the individual specifically elects not to have such contributions made (or specifi-
cally elects to have such contributions made at a different percentage or in a different amount), and

“(C) which meets notice requirements substantially similar to those described in section 414(w)(4).

“(3) DEFAULT INVESTMENTS.—If an employee is deemed under an automatic enrollment arrangement to have made an election to participate in a payroll deposit IRA arrangement—

“(A) the employee shall be deemed to have made an election to make contributions in the amount specified in paragraph (4),

“(B) such contributions shall be transferred to—

“(i) an automatic IRA, or

“(ii) if the employer has made an election under subsection (f)(2), to an individual retirement plan of the designated trustee or issuer but only if the requirements of subparagraph (C) are met with respect to such individual retirement plan, and

“(C) such contributions shall be invested as provided in paragraph (5).
“(4) AMOUNT OF CONTRIBUTIONS.—

“(A) IN GENERAL.—The amount specified in this paragraph is 3 percent of compensation.

“(B) AUTHORITY OF BOARD TO PROVIDE FOR ANNUAL INCREASES.—The TSP II Board may by regulation provide for annual increases in the percentage of compensation an employee is deemed to have elected under paragraph (2) but in no event shall the percentage of compensation an employee is deemed to have elected exceed 8 percent.

“(C) CONTRIBUTION LIMIT.—The contributions under paragraph (2) on behalf of an employee for any calendar year shall not exceed the dollar limits applicable to the employee for the calendar year under section 219 or 408A.

“(5) INVESTMENT IN LIFE CYCLE FUND OR OTHER INVESTMENTS SPECIFIED BY THE BOARD.—Amounts contributed under paragraph (3) shall be invested in—

“(A) a life cycle fund similar to the life cycle funds offered under the Thrift Savings Fund established under subchapter III of chapter 84 of title 5, United States Code, or
“(B) such other investment or investments as the TSP II Board specifies in regulations (which shall be promulgated after taking into account, but not necessarily conforming to, regulations prescribed by the Secretary of Labor under section 404(c)(5) of the Employee Retirement Income Security Act of 1974) and which entails asset allocation and extensive diversification.

“(6) COORDINATION WITH WITHHOLDING.—

The Secretary shall modify the withholding exemption certificate under section 3402(f) so that any notice and election requirements with respect to an automatic enrollment arrangement which is part of a payroll deposit IRA arrangement may be met through the use of such certificate.

“(h) MODEL NOTICE.—The Secretary, in consultation with the TSP II Board, shall—

“(1) provide a model notice, written in a manner calculated to be understandable to the average worker, that is simple for employers to use—

“(A) to notify employees of the requirement under this section for the employer to provide certain employees with the opportunity to
participate in a payroll deposit IRA arrangement, and

“(B) to satisfy the requirements of subsection (b)(2)(D),

“(2) provide uniform forms for enrollment, including automatic enrollment, in a payroll deposit IRA arrangement, and

“(3) establish a web site or other electronic means for small employers to access and use to obtain information on payroll deposit IRA arrangements and to obtain required notices and forms.

“(i) CROSS REFERENCE.—For provision preempting conflicting State laws, see section 2(g) of the Women’s Retirement Security Act of 2008.”.

(b) NOTICE OF AVAILABILITY OF INVESTMENT GUIDELINES.—Section 408(i) (relating to reports) is amended by adding at the end the following new sentence: “Any report furnished under paragraph (2) to an individual shall include notice of the availability of, and methods of acquiring, the basic investment guidelines prepared by the Secretary of Labor.”.

(c) DEVELOPMENT OF BASIC INVESTMENT GUIDELINES.—

(1) IN GENERAL.—The Secretary of Labor shall, in consultation with the Secretary of Treasury,
develop and publish basic guidelines for investing for retirement. Except as otherwise provided by the Secretary of Labor, such guidelines shall include—

(A) information on the benefits of diversification,

(B) information on the essential differences, in terms of risk and return, between various pension plan investments, including stocks, bonds, mutual funds, and money market investments,

(C) information on how an individual’s pension plan investment allocations may differ depending on the individual’s age and years to retirement and on other factors determined by the Secretary of Labor,

(D) sources of information where individuals may learn more about pension rights, individual investing, and investment advice, and

(E) such other information related to individual investing as the Secretary of Labor determines appropriate.

(2) Calculation Information.—The guidelines under paragraph (1) shall include addresses for Internet sites and worksheets which a participant or beneficiary in a pension plan may use to calculate—
(A) the retirement age value of the participant’s or beneficiary’s nonforfeitable pension benefits under the plan (expressed as an annuity amount and determined by reference to varied historical annual rates of return and annuity interest rates), and

(B) other important amounts relating to retirement savings, including the amount which a participant or beneficiary would be required to save annually to provide a retirement income equal to various percentages of their current salary (adjusted for expected growth prior to retirement).

(3) PUBLIC COMMENT.—The Secretary of Labor shall provide at least 90 days for public comment on proposed guidelines before publishing the final guidelines.

(4) RULES RELATING TO GUIDELINES.—The guidelines under paragraph (1)—

(A) shall be written in a manner calculated to be understood by the average plan participant, and

(B) may be delivered in written, electronic, or other appropriate manner to the extent such manner would ensure that the guidelines are
reasonably accessible to participants and beneficiaries.

(d) **Penalty for Failure To Provide Access to Payroll Savings Arrangements.**—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

“**SEC. 4980H. Requirements for Employers to Provide Employees Access to Payroll Deposit IRA Arrangements.**

“(a) **General Rule.**—There is hereby imposed a tax on any failure by an employer to meet the requirements of subsection (d) for a calendar year.

“(b) **Amount.**—

“(1) **In General.**—The amount of the tax imposed by subsection (a) on any failure for any calendar year shall be $100 with respect to each employee to whom such failure relates.

“(2) **Tax Not to Apply Where Failure Not Discovered and Reasonable Diligence Exercised.**—No tax shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary that the employer subject to liability for the tax did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (d). In
no event shall the tax be imposed with respect to
any failure that ends before the expiration of 90
days after the employer has responded or has had a
reasonable opportunity to respond to a request for
confirmation of compliance under subsection (c).

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

“(A) the employer subject to liability for
the tax under subsection (a) exercised reason-
able diligence to meet the requirements of sub-
section (d), and

“(B) the employer provides the payroll de-
posit IRA arrangement described in section
408B to each employee eligible to participate in
the arrangement by the end of the 30-day pe-
riod beginning on the first date the employer
knew, or exercising reasonable diligence would
have known, that such failure existed.

“(4) WAIVER BY SECRETARY.—In the case of a
failure which is due to reasonable cause and not to
willful neglect, the Secretary may waive part or all
of the tax imposed by subsection (a) to the extent
that the payment of such tax would be excessive or
otherwise inequitable relative to the failure involved.
“(c) Procedures for Notice.—Not later than 6 months after the date of the enactment of this section, the Secretary shall prescribe and implement procedures for obtaining from employers confirmation that such employers are in compliance with the requirements of subsection (d). The Secretary, in the Secretary’s discretion, may prescribe that the confirmation shall be obtained on an annual or less frequent basis, and may use for this purpose the annual report or quarterly report for employment taxes, or such other means as the Secretary may deem advisable.

“(d) Requirement to Provide Employee Access to Payroll Deposit IRA Arrangements.—The requirements of this subsection are met if the employer meets the requirements of section 408B.”.

(e) Coordination with ERISA Fiduciary Duties.—Section 404(c)(2) of Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(2)) is amended—

(1) by inserting “or an individual retirement plan designated by the employer under section 408B of such Code” after “1986”,

(2) by inserting “(7 days after notice has been given to an employee that an individual retirement plan has been established on behalf of the employee
under section 408B of such Code)” after “established” in subparagraph (C), and

(3) by inserting “or with respect to an individual retirement plan designated by an employer under section 408B of such Code” after “arrangement” in the last sentence.

(f) CONFORMING AMENDMENTS.—

(1) The table of sections for subpart A of part I of subchapter A of chapter 1 is amended by inserting after the item relating to section 408A the following new item:

“Sec. 408B. Right to payroll deposit IRA arrangements at work.”.

(2) The table of sections for chapter 43 is amended by adding at the end the following new item:

“Sec. 4980H. Requirements for employers to provide employees access to payroll deposit IRA arrangements.”.

(g) PREEMPTION OF CONFLICTING STATE LAWS.—

The amendments made by this section shall supersede any law of a State that would directly or indirectly prohibit or restrict the establishment or operation of a payroll deposit IRA arrangement meeting the requirements of section 408B of the Internal Revenue Code of 1986 (including the inclusion in any such arrangement of an automatic enrollment arrangement as defined in section 408B(g) of such Code).
(h) Effective Date.—The amendments made by this section shall apply to calendar years beginning after December 31, 2008.

SEC. 102. CREDIT FOR SMALL EMPLOYERS MAINTAINING PAYROLL DEPOSIT IRA ARRANGEMENTS.

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

“SEC. 45O. SMALL EMPLOYER PAYROLL DEPOSIT IRA ARRANGEMENT COSTS.

“(a) General Rule.—For purposes of section 38, in the case of an eligible employer maintaining a payroll deposit IRA arrangement meeting the requirements of section 408B (without regard to whether or not the employer is required to maintain the arrangement), the small employer payroll deposit IRA arrangement cost credit determined under this section for any taxable year is the amount determined under subsection (b).

“(b) Amount of Credit.—

“(1) In General.—The amount of the credit determined under this section for any taxable year with respect to an eligible employer shall be equal to the lesser of—
“(A) $25 multiplied by the number of applicable employees (within the meaning of section 408B(c)) for whom contributions are made under the payroll deposit IRA arrangement referred to in subsection (a) for the calendar year in which the taxable year begins, or

“(B) $250.

“(2) DURATION OF CREDIT.—No credit shall be determined under this section for any taxable year other than a taxable year which begins in the first 2 calendar years in which the eligible employer maintains a payroll deposit IRA arrangement meeting the requirements of section 408B.

“(3) COORDINATION WITH SMALL EMPLOYER STARTUP CREDIT.—No credit shall be allowed under this section for any taxable year if a credit is determined under section 45E for the taxable year.

“(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term ‘eligible employer’ means, with respect to any calendar year in which the taxable year begins, an employer which maintains a payroll deposit IRA arrangement meeting the requirements of section 408B and which, on each day during the preceding calendar year, had no more than 100 employees.”.
(b) CREDIT ALLOWED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (defining current year business credit) is amended by striking “plus” at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting “, plus”, and by adding at the end the following new paragraph:

“(32) in the case of an eligible employer (as defined in section 45O(c)) maintaining a payroll deposit IRA arrangement meeting the requirements of section 408B, the small employer payroll deposit IRA arrangement cost credit determined under section 45O(a).”

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

“Sec. 45O. Small employer payroll deposit IRA arrangement costs.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 103. ESTABLISHMENT OF AUTOMATIC IRAS.

(a) IN GENERAL.—Subpart A of part I of subchapter A of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.), as amended by section 101, is amended by inserting after section 408B the following new section:
SEC. 408C. AUTOMATIC IRAS.

“(a) GENERAL RULE.—An automatic IRA shall be treated for purposes of this title in the same manner as an individual retirement plan. An automatic IRA may also be treated as a Roth IRA for purposes of this title if it meets the requirements of section 408A.

“(b) AUTOMATIC IRA.—For purposes of this section, the term ‘automatic IRA’ means an individual retirement plan (as defined in section 7701(a)(37)) which meets the investment and fee requirements under the regulations under subsection (c).

“(c) INVESTMENT AND FEE REQUIREMENTS.—

“(1) IN GENERAL.—The TSP II Board, in consultation with the Secretary and the Secretary of Labor, shall, not later than 1 year after the date of the enactment of this section, prescribe regulations which set forth the requirements of this subsection which an individual retirement plan must meet in order to be treated as an automatic IRA.

“(2) INVESTMENT OPTIONS.—The regulations under paragraph (1) shall provide that an automatic IRA shall allow the individual on whose behalf the individual retirement plan is established to invest contributions to, and earnings of, the plan in all of the following investment options:
“(A) Options which are similar to all investment options which are available (at the time the plan is established) to a participant in the Thrift Savings Fund established under subchapter III of chapter 84 of title 5, United States Code.

“(B) Any other investment option specified in the regulations.

Such regulations shall specify which of the investment options shall be treated as default investment options for purposes of section 408B(g)(5).

“(3) INVESTMENT FEES.—

“(A) IN GENERAL.—The regulations under paragraph (1) shall provide that an automatic IRA shall not charge any investment fees which, in the aggregate, are not reasonable (as determined under such regulations).

“(B) INVESTMENT FEES.—For purposes of this paragraph, the term ‘investment fees’ includes any fee, commission, asset management fee, compensation for services, or any other charge or fee specified in the regulations under paragraph (1) which is imposed with respect to the automatic IRA.”. 
(b) Studies of Spousal Consent Requirements and Promotion of Certain Lifetime Income Arrangements.—

(1) In general.—The Secretary of the Treasury and the Secretary of Labor shall jointly conduct a separate study of the feasibility and desirability of each of the following:

(A) Extending to automatic IRAs spousal consent requirements similar to, or based on, those that apply under the Federal employees’ Thrift Savings Plan, including consideration of whether modifications of such requirements are necessary to apply them to automatic IRAs.

(B) Promoting the use of low-cost annuities, longevity insurance, or other guaranteed lifetime income arrangements in automatic IRAs, including consideration of—

(i) appropriate means of arranging for, or encouraging, individuals to receive at least a portion of their distributions in some form of low-cost guaranteed lifetime income, and

(ii) issues presented by possible additional differences in, or uniformity of, provisions governing different IRAs.
(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretaries shall report the results of each study conducted under subsection (a), together with any recommendations for legislative changes, to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Education and Labor of the House of Representatives.

(c) MANDATORY TRANSFERS.—Section 401(a)(31)(B) is amended—

(1) by inserting “(including an automatic IRA)” after “individual retirement plan” each place it appears, and

(2) by adding at the end the following new sentence: “Any amount so transferred (and any earnings thereon) shall be invested in a default investment described in section 408B(g)(5).”

(d) CLERICAL AMENDMENT.—The table of sections for subpart A of part I of subchapter A of chapter 1 is amended by inserting after the item relating to section 408B the following new item:

“Sec. 408C. Automatic IRAs.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to calendar years beginning on or after the date on which proposed and temporary or final
regulations described in section 408C(c) of the Internal Revenue Code of 1986 (as added by this Act) are issued.

SEC. 104. ESTABLISHMENT OF TSP II BOARD.

(a) Establishment.—There is established in the executive branch of the Government a TSP II Board. The board shall be established and maintained in the same manner as the Federal Retirement Thrift Investment Board under subchapter VII of chapter 84 of title 5, United States Code.

(b) Executive Director.—The TSP II Board shall appoint an Executive Director in a similar manner and with similar functions as the Executive Director of the Federal Retirement Thrift Investment Board under section 8474 of title 5, United States Code.

(c) Duties of Board.—The TSP II Board shall establish policies and procedures for—

(1) establishment and maintenance of individual retirement plans under section 408B(f)(3) of the Internal Revenue Code of 1986,

(2) the investment and management of contributions to such individual retirement plans,

(3) the amount of contributions, and the investment of such contributions, under automatic contribution arrangements under section 408B(g) of such Code, including the designation of investment
funds in which such contributions may be invested,
and
(4) the establishment of automatic IRAs under
section 408C of such Code, including the issuance of
regulations under subsection (c) of such section.
(d) BEST PRACTICES.—The TSP II Board shall, on
a continual basis, prescribe and encourage best practices
(including cost efficiencies and innovations) in enrollment,
investment, distribution, and other procedures or arrange-
ments relating to retirement savings and investment. In
carrying out its responsibilities under this section, the
TSP II Board may implement (by contract or otherwise)
pilot projects to help assess the efficacy and workability
of specific practices and arrangements.
(e) EXPANSION OF USE OF IRAS BY SELF-EM-
PLOYED AND OTHER INDIVIDUALS.—The TSP II Board
shall establish procedures to disseminate information
(through use of the Internet and other appropriate means)
to facilitate and encourage—
(1) the use by self-employed and other individ-
uals of automatic debit and similar arrangements for
investment in individual retirement plans, including
automatic IRAs,
(2) efforts by voluntary associations to promote savings in individual retirement plans, including automatic IRAs, by their members and others, and

(3) the direct deposit of Federal and State income tax refunds in individual retirement plans, including automatic IRAs.

(f) **Exclusive Interest.**—The members of the TSP II Board shall discharge their responsibilities solely in the interest of participants and beneficiaries under individual retirement plans described in section 408B of the Internal Revenue Code of 1986.

(g) **Other Provisions Made Applicable.**—The provisions of subsections (f)(3), (g), (i), and (j) of section 8472 of title 5, United States Code, shall apply to the TSP II Board.

**Subtitle B—Other Provisions**

**SEC. 111. MODIFICATIONS TO COMPUTATION OF SAVER'S CREDIT; SAVER'S CREDIT MADE REFUNDABLE.**

(a) **In General.**—Section 25B(b) (defining applicable percentage), as amended by section 833 of the Pension Protection Act of 2006, is amended to read as follows:

“(b) **Applicable Percentage.**—For purposes of this section—
“(1) IN GENERAL.—The applicable percentage is 50 percent reduced (but not below zero) by 1 percentage point for each phaseout amount by which the taxpayer’s adjusted gross income for the taxable year exceeds the threshold amount.

“(2) PHASEOUT AMOUNT; THRESHOLD AMOUNT.—The phaseout amount and the threshold amount shall be determined as follows:

<table>
<thead>
<tr>
<th>In the case of:</th>
<th>The phaseout amount is:</th>
<th>The threshold amount is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>A joint return</td>
<td>$200</td>
<td>$50,000</td>
</tr>
<tr>
<td>A head of household return</td>
<td>$150</td>
<td>$37,500</td>
</tr>
<tr>
<td>Any other return</td>
<td>$100</td>
<td>$25,000</td>
</tr>
</tbody>
</table>

“(3) INFLATION ADJUSTMENT.—

“(A) JOINT RETURNS.—In the case of any taxable year beginning in a calendar year after 2009, the $50,000 amount under paragraph (2) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year 2008’ for ‘calendar year 1992’ in sub-paragraph (B) thereof.
Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $500.

“(B) OTHER RETURNS.—In the case of any taxable year for which there is an increase under subparagraph (A)—

“(i) the $37,500 under paragraph (2) shall be increased to an amount equal to 75 percent of the amount determined under subparagraph (A), and

“(ii) the $25,000 amount under paragraph (2) shall be increased to an amount equal to 50 percent of the amount determined under subparagraph (A).”.

(b) CREDIT MADE REFUNDABLE.—

(1) TRANSFER OF CREDIT TO REFUNDABLE CREDITS.—

(A) IN GENERAL.—Section 25B, as amended by subsection (a), is hereby moved to subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) and inserted after section 35.

(B) CONFORMING AMENDMENTS.—

(i) Section 24(b)(3)(B) is amended by striking “and 25B”.

VerDate Aug 31 2005 23:22 Mar 07, 2008 Jkt 069200 PO 00000 Frm 00039 Fmt 6652 Sfmt 6201 E:\BILLS\H5543.IH H5543mstockstill on PROD1PC66 with BILLS
(ii) Section 25(e)(1)(C)(ii) is amended by striking “, 25B”.

(iii) Section 25D(e)(2) is amended by striking “24, and 25B” and inserting “and 24”.

(iv) Section 26(a)(1) is amended by striking “24, and 25B” and inserting “and 24”.

(v) Section 25B, as moved by subparagraph (A), is redesignated as section 36.

(vi) Section 904(i) is amended by striking “24, and 25B” and inserting “and 24”.

(vii) Section 1400C(d)(2) is amended by striking “, 25B”.

(viii) The table of sections for subpart C of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 36 and inserting the following:

```
“Sec. 36. Elective deferrals and IRA contributions by certain individuals.

Sec. 37. Overpayments of tax.”.
```

(ix) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by striking the item relating to section 25B.
(x) Section 1324 of title 31, United States Code, is amended by inserting ‘‘, or enacted by the Women’s Retirement Security Act of 2008’’ before the period at the end.

(2) MANDATORY DEPOSIT INTO QUALIFIED ACCOUNT.—

(A) NO REDUCTION OF TAX.—Subsection (a) of section 36, as moved and redesignated by paragraph (1), is amended by striking ‘‘credit against the tax imposed by this subtitle’’ and inserting ‘‘tax credit’’.

(B) DEPOSIT INTO QUALIFIED ACCOUNT.—Subsection (g) of section 36, as moved and redesignated by paragraph (1), is amended to read as follows:

“(g) DEPOSIT INTO QUALIFIED ACCOUNT.—

“(1) IN GENERAL.—Any amount allowed as a tax credit under subsection (a) shall not be allowed as a credit against any tax imposed by this subtitle but instead shall be treated as an overpayment under section 6401(b) and—

“(A) shall be paid on behalf of the individual taxpayer to an applicable retirement plan designated by the individual to be invested in a
manner designated by the individual, except that in the case of a joint return, each spouse shall be entitled to designate an applicable retirement plan and investments with respect to payments attributable to such spouse, or

“(B) in the case of taxpayer who does not properly designate an applicable retirement plan in a timely manner or who designates an applicable retirement plan that does not accept such amount in a timely manner, shall be paid or credited on behalf of the individual taxpayer in a manner determined under rules prescribed by the Secretary that provides treatment comparable to the treatment under subparagraph (A).

“(2) APPLICABLE RETIREMENT PLAN.—For purposes of this subsection, the term ‘applicable retirement plan’ means a plan that elects to accept deposits under this subsection and that is described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B) or in section 408A(b).

“(3) TREATMENT OF DIRECT PAYMENTS.—All amounts paid under this subsection shall be treated for purposes of this title as income attributable to—
“(A) a Roth IRA contribution in the case of a payments to an individual retirement plan, or
“(B) a designated Roth contribution in the case of a payment to an applicable retirement plan described in section 402A(e).”.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 112. QUALIFIED CASH OR DEFERRED ARRANGEMENTS MUST ALLOW LONG-TERM EMPLOYEES WORKING MORE THAN 500 BUT LESS THAN 1,000 HOURS PER YEAR TO PARTICIPATE.

(a) Participation Requirement.—

(1) In general.—Subparagraph (D) of section 401(k)(2) (defining qualified cash or deferred arrangement) is amended to read as follows:

“(D) which does not require, as a condition of participation in the arrangement, that an employee complete a period of service with the employer (or employers) maintaining the plan extending beyond the close of the earlier of—
“(i) the period permitted under section 410(a)(1) (determined without regard to subparagraph (B)(i) thereof), or

“(ii) subject to the provisions of paragraph (14), the first period of 3 consecutive 12-month periods during each of which the employee has at least 500 hours of service.”.

(2) SPECIAL RULES.—Subsection (k) of section 401 (relating to cash or deferred arrangements) is amended by adding at the end the following new paragraph:

“(14) SPECIAL RULES FOR PARTICIPATION REQUIREMENT FOR LONG-TERM, PART-TIME WORKERS.—For purposes of paragraph (2)(D)(ii)—

“(A) AGE REQUIREMENT MUST BE MET.—Paragraph (2)(D)(ii) shall not apply to an employee unless the employee has met the requirement of section 410(a)(1)(A)(i) by the close of the last of the 12-month periods described in such paragraph.

“(B) NONDISCRIMINATION AND TOP-HIGH RULES NOT TO APPLY.—

“(i) NONDISCRIMINATION RULES.—In the case of employees who are eligible to
participate in the arrangement solely by reason of paragraph (2)(D)(ii)—

“(I) notwithstanding subsection (a)(4), an employer shall not be re-
quired to make nonelective or match-
ing contributions on behalf of such employees even if such contributions are made on behalf of other employees eligible to participate in the arrange-
ment, and

“(II) an employer may elect to exclude such employees from the ap-
plication of paragraph (3) and sub-
section (m)(2).

“(ii) Top-heavy rules.—An em-
ployer may elect to exclude all employees who are eligible to participate in a plan maintained by the employer solely by rea-
son of paragraph (2)(D)(ii) from—

“(I) the determination of whether the plan is a top-heavy plan under section 416, and

“(II) if the plan is a top-heavy plan under such section, the applica-
tion of the vesting and benefit re-
requirements under subsections (b) and (e) of such section.

“(iii) Vesting.—For purposes of determining whether an employee described in clause (i) has a nonforfeitable right to employer contributions (other than contributions described in paragraph (3)(D)(i)) under the arrangement, each 12-month period for which the employee has at least 500 hours of service shall be treated as a year of service.

“(iv) Employees who become full-time employees.—This subparagraph shall cease to apply to any employee after the date on which the employee meets the requirements of section 410(a)(1)(A)(ii) without regard to paragraph (2)(D)(ii).

“(C) Exception for employees under collectively bargained plans, etc.—Paragraph (2)(D)(ii) shall not apply to employees described in section 410(b)(3).

“(D) Special rules.—

“(i) Time of participation.—The rules of section 410(a)(4) shall apply to an
employee eligible to participate in an arrangement solely by reason of paragraph (2)(D)(ii).

“(ii) 12-MONTH PERIODS.—12-month periods shall be determined in the same manner as under the last sentence of section 410(a)(3)(A).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2008, except that, for purposes of section 401(k)(2)(D)(ii) of the Internal Revenue Code of 1986 (as added by such amendments), 12-month periods beginning before January 1, 2009, shall not be taken into account.

SEC. 113. TRANSFERS OF UNUSED BENEFITS OF HEALTH FLEXIBLE SPENDING ARRANGEMENT TO CERTAIN RETIREMENT PLANS.

(a) IN GENERAL.—Section 125 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

“(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS.—

“(1) IN GENERAL.—For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified
benefits of a participant under such plan include a health flexible spending arrangement under which not more than $500 of unused health benefits may be contributed on behalf of the participant to—

“(A) a qualified retirement plan (as defined in section 4974(c)), or

“(B) an eligible deferred compensation plan (as defined in section 457(b)) maintained by an eligible employer described in section 457(e)(1)(A).

“(2) Treatment of contribution of unused health benefits.—

“(A) In general.—For purposes of this title, contributions described in paragraph (1) shall be treated as elective contributions made pursuant to an election by the participant between such contributions and compensation which would otherwise be includible in the gross income of the employee.

“(B) Exclusion or deduction.—Contributions described in paragraph (1) shall be excluded from gross income, or included in gross income and allowed as a deduction, to the same extent that elective contributions would be so treated under this title.
“(3) Health flexible spending arrangement.—For purposes of this subsection, the term ‘health flexible spending arrangement’ means a flexible spending arrangement (as defined in section 106(c)) which is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1) without regard to subparagraphs (C) and (D) thereof).

“(4) Unused health benefits.—For purposes of this subsection, the term ‘unused health benefits’ means, with respect to a participant, the excess of—

“(A) the maximum amount of reimbursement allowable to the participant with respect to a plan year under a health flexible spending arrangement, taking into account any election by the participant, over

“(B) the actual amount of reimbursement with respect to such year under such arrangement.”.

(b) Special Rules.—The Secretary of the Treasury shall prescribe such rules as are appropriate to carry out the purposes of the amendments made by this section. Such rules may permit elections by plan sponsors with respect to the year to which the contributions relate and may
provide for special treatment for purposes of applying the
requirements applicable to such contributions.

(c) Effective Date.—The amendment made by
subsection (a) shall apply to years beginning after December
31, 2008.

SEC. 114. COMPUTATION OF LIMITS ON IRA AND ROTH IRA
CONTRIBUTIONS.

(a) Certain Wage Replacement Income Treated as Compensation.—

(1) Wage replacement income.—Section
219(f) (relating to other definitions and special
rules) is amended by redesignating paragraph (8) as
paragraph (9) and by inserting after paragraph (7)
the following new paragraph:

“(8) Treatment of certain wage replacement
income as compensation.—

“(A) In general.—Notwithstanding para-
graph (1), applicable wage replacement income
not otherwise treated as compensation shall be
treated as compensation for purposes of this
section.

“(B) Applicable wage replacement
income.—For purposes of this paragraph, the
term ‘applicable wage replacement income’
means any amount received by an individual—
“(i) as the result of the individual having become disabled,

“(ii) as unemployment compensation (as defined in section 85(b)),

“(iii) under workmen’s compensation acts, or

“(iv) which constitutes wage replacement income under regulations prescribed by the Secretary.”.

(2) Certain excludable amounts may be taken into account for purposes of Roth IRAs.—Section 408A(c)(2) (relating to contribution limit) is amended by adding at the end the following new flush sentence:

“In determining the maximum amount under subparagraph (A), subsections (b)(1)(B) and (c) of section 219 shall be applied by taking into account compensation described in section 219(f)(8) without regard to whether it is includible in gross income.”.

(3) Effective date.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2008.

(b) Computation of maximum IRA deduction for Roth IRAs using compensation from 2 preceding taxable years.—
(1) In General.—Section 408A(c) (relating to treatment of contributions) is amended by adding at the end the following new paragraph:

“(8) Compensation from preceding 2 years may be taken into account.—

“(A) In General.—A taxpayer may elect for purposes of paragraph (2) to take into account any unused compensation from the 2 taxable years immediately preceding the taxable year.

“(B) Unused Compensation.—For purposes of this paragraph, the term ‘unused compensation’ means with respect to an individual for any taxable year the compensation includible in the individual’s gross income for the taxable year reduced by the sum of—

“(i) the amount allowed as a deduction under 219(a) to such individual for such taxable year,

“(ii) the amount of any designated nondeductible contribution (as defined in section 408(o)) on behalf of such individual for such taxable year,

“(iii) the amount of any contribution on behalf of such individual to a Roth IRA
under this section for such taxable year,
and
“(iv) the amount of compensation in-
cludible in such individual’s gross income
for such taxable year taken into account
under section 219(c) in determining the
limitation under section 219 or paragraph
(2) for the individual’s spouse.
“(C) APPLICATION TO SPECIAL RULE FOR
MARRIED INDIVIDUALS.—Under rules pre-
scribed by the Secretary, in applying section
219(c) for any taxable year for purposes of ap-
plying paragraph (2)(A), unused compensation
of an individual or an individual’s spouse for
the 2 taxable years immediately preceding the
taxable year may be taken into account.”.

(2) EFFECTIVE DATE.—The amendment made
by this subsection shall apply to taxable years begin-
ning after December 31, 2008, but unused com-
pensation for taxable years beginning before Janu-
ary 1, 2009, may be taken into account for taxable
years beginning after December 31, 2008.
TITLE II—PROVISIONS PROVIDING FOR PRESERVATION OF INCOME

SEC. 201. EXCLUSION OF CERTAIN QUALIFIED ANNUITY PAYMENTS.

(a) Exclusion.—

(1) Qualified plans.—Section 402(e) (relating to exempt trusts) is amended by adding at the end the following new paragraph:

“(7) Exclusion of percentage of lifetime annuity payments.—

“(A) In general.—In the case of a lifetime annuity payment to a qualified distributee from a qualified trust (within the meaning of subsection (c)(8)(A)) maintained in connection with a defined contribution plan, gross income shall not include 10 percent of the amount otherwise includible in gross income (determined without regard to this paragraph). For purposes of this paragraph, payments from an annuity contract distributed by the qualified trust shall be treated as payments from the qualified trust.

“(B) Limitation.—

“(i) In general.—If—
“(I) the aggregate amount of lifetime annuity payments to the distributee during the taxable year which are includible in gross income (determined without regard to this paragraph) and which are subject to this paragraph or to rules similar to the rules of this paragraph (other than section 72(b)(5) or 101(d)(4)), exceeds

“(II) 50 percent of the applicable amount for the taxable year under section 415(a),

then the aggregate amount otherwise excludable under subparagraph (A) for the taxable year shall be reduced by 10 percent of the portion of such excess which is allocable under clause (ii) to payments which are subject to this paragraph.

“(ii) Allocation rule.—Any excess described in clause (i) for any taxable year shall be allocated ratably among all lifetime annuity payments to the qualified distributee described in clause (i)(I).
“(C) DEFINITIONS.—For purposes of this paragraph—

“(i) LIFETIME ANNUITY PAYMENT.—

“(I) IN GENERAL.—Except as provided in this clause, the term ‘lifetime annuity payment’ means a distribution from an annuity contract which is a part of a series of substantially equal periodic payments (not less frequently than annually) made over the life of the qualified distributee or the joint lives of the qualified distributee and the qualified distributee’s designated beneficiary. For purposes of this paragraph, the term ‘annuity contract’ means a commercial annuity (as defined in section 3405(e)(6)), other than an endowment or life insurance contract.

“(II) CERTAIN FLUCTUATING PAYMENTS.—Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments merely because the amount of the periodic payments may vary in
accordance with investment experience, reallocations among investment options, actuarial gains or losses, cost of living indices, a constant percentage (not less than zero) applied not less frequently than annually, or similar fluctuating criteria.

“(III) Certain changes in the mode of payment.—Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments merely because the period between each such payment is lengthened or shortened, but only if at all times such period is not longer than 1 year.

“(IV) Permitted reductions.—Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments merely because, in the case of an annuity payable over the lives of the qualified distributee and the qualified distributee’s designated beneficiary, the amounts paid after the
death of the qualified distributee or
the qualified distributee's designated
beneficiary are less than the amounts
payable during their joint lives.

“(V) CERTAIN CONTRACT BENEFITS.—The availability of a commutation benefit or other feature permitting acceleration of annuity payments
(or a modification of the period during which such a benefit is available),

a minimum period of payments or a
minimum amount to be paid in any
event shall not affect the treatment of

a distribution as a lifetime annuity
payment.

“(VI) TRUST PAYMENTS.—In the
case of lifetime annuity payments
being made to a qualified trust, pay-
ments by the qualified trust to a
qualified distributee of the entire
amount received by the qualified trust
with respect to the qualified dis-
tributee shall constitute lifetime annu-
ity payments if such payments are
made within a reasonable period after receipt by the qualified trust.

“(VII) QUALIFIED DOMESTIC RELATIONS ORDERS.—Annuity payments shall not fail to be treated as a series of substantially equal periodic payments merely because the payments are reduced on account of a qualified domestic relations order (within the meaning of section 414(p)) that becomes effective after the commencement of the annuity payments.

“(ii) QUALIFIED DISTRIBUTEE.—The term ‘qualified distributee’ means the employee, the surviving spouse of the employee, and an alternate payee who is the spouse or former spouse of the employee.

“(D) RECAPTURE TAX.—

“(i) IN GENERAL.—If—

“(I) an amount is not includible in gross income by reason of subparagraph (A), and

“(II) the series of payments of which such payment is a part is subsequently modified (other than by rea-
son of death or disability) so that some or all future payments are not lifetime annuity payments, the qualified distributee’s gross income for the first taxable year in which such modification occurs shall be increased by an amount, determined under rules prescribed by the Secretary, equal to the amount which (but for subparagraph (A)) would have been includible in the qualified distributee’s gross income if the modification had been in effect at all times, plus interest for the deferral period at the underpayment rate established under section 6621.

“(ii) Deferral period.—For purposes of this subparagraph, the term ‘deferral period’ means, with respect to any amount, the period beginning with the taxable year in which (without regard to subparagraph (A)) the amount would have been includible in gross income and ending with the taxable year in which the modification described in clause (i)(II) occurs.
“(E) INVESTMENT IN THE CONTRACT.—

For purposes of section 72, the investment in
the contract shall be determined without regard
to this paragraph.”.

(2) QUALIFIED ANNUITY PLANS.—Section
403(a) (relating to qualified annuity plans) is
amended by adding at the end the following new
paragraph:

“(6) EXCLUSION OF PERCENTAGE OF LIFETIME
ANNUITY PAYMENTS.—Rules similar to the rules of
section 402(e)(7) shall apply to distributions under
any annuity contract to which this subsection ap-
plies.”.

(3) PURCHASED ANNUITIES.—Section 403(b)
(relating to purchased annuities) is amended by add-
ing at the end the following new paragraph:

“(14) EXCLUSION OF PERCENTAGE OF LIF-
time annuity payments.—Rules similar to the
rules of section 402(e)(7) shall apply to distributions
under any annuity contract or custodial account to
which this subsection applies.”.

(4) IRAS.—Section 408(d) (relating to tax
treatment of distributions), as amended by section
1201 of the Pension Protection Act of 2006, is
amended by adding at the end the following new paragraph:

“(10) Exclusion of percentage of lifetime annuity payments.—Rules similar to the rules of section 402(e)(7) shall apply to distributions out of an individual retirement plan.”.

(5) Section 457 Plans.—Section 457(e) (relating to special rules for deferred compensation plans) is amended by adding at the end the following new paragraph:

“(19) Exclusion of percentage of lifetime annuity payments.—Rules similar to the rules of section 402(e)(7) shall apply to distributions from an eligible deferred compensation plan of an eligible employer described in subsection (e)(1)(A).”.

(b) Effective Date.—The amendments made by this section shall apply to distributions made after December 31, 2008.

SEC. 202. Exclusion for lifetime annuity payments.

(a) Lifetime annuity payments under annuity contracts.—Section 72(b) (relating to exclusion ratio) is amended by adding at the end the following new paragraph:

“(5) Exclusion for lifetime annuity payments.—
“(A) In General.—In the case of lifetime annuity payments received as an annuity under 1 or more annuity contracts in any taxable year, gross income shall not include the lesser of—

“(i) 50 percent of the portion of the lifetime annuity payments which (without regard to this paragraph) is includible in gross income under this section for the taxable year, or

“(ii) $20,000.

“(B) Cost-of-Living Adjustment.—In the case of taxable years beginning after December 31, 2009, the $20,000 amount in subparagraph (A)(ii) shall be increased by an amount equal to—

“(i) such dollar amount, multiplied by

“(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ‘calendar year [2008]’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of $500, such amount
shall be rounded to the next lower multiple of $500.

“(C) APPLICATION OF PARAGRAPH.—Subparagraph (A) shall not apply to—

“(i) any amount received under an eligible deferred compensation plan (as defined in section 457(b)) or under a qualified retirement plan (as defined in section 4974(e)),

“(ii) any amount paid under an annuity contract which is received by the beneficiary under the contract—

“(I) after the death of the annuitant in the case of payments described in subsection (c)(5)(A)(ii)(III), unless the beneficiary is the surviving spouse of the annuitant, or

“(II) after the death of the annuitant and joint annuitant in the case of payments described in subsection (c)(5)(A)(ii)(IV), unless the beneficiary is the surviving spouse of the last to die of the annuitant and the joint annuitant, or
“(iii) any annuity contract that is a qualified funding asset (as defined in section 130(d)), but without regard to whether there is a qualified assignment.

“(D) INVESTMENT IN THE CONTRACT.—For purposes of this section, the investment in the contract shall be determined without regard to this paragraph.”.

(b) DEFINITIONS.—Section 72(c) is amended by adding at the end the following new paragraph:

“(5) LIFETIME ANNUITY PAYMENT.—

“(A) IN GENERAL.—For purposes of subsection (b)(5), the term ‘lifetime annuity payment’ means any amount received as an annuity under any portion of an annuity contract, but only if—

“(i) the only person (or persons in the case of payments described in subclause (II) or (IV) of clause (ii)) legally entitled (by operation of the contract, a trust, or other legally enforceable means) to receive such amount during the life of the annuitant or joint annuitant is such annuitant or joint annuitant, and
“(ii) such amount is part of a series of substantially equal periodic payments made not less frequently than annually over—

“(I) the life of the annuitant,

“(II) the lives of the annuitant and a joint annuitant, but only if the annuitant is the spouse of the joint annuitant as of the annuity starting date or the difference in age between the annuitant and joint annuitant is 15 years or less,

“(III) the life of the annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, or

“(IV) the lives of the annuitant and a joint annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, but only if the annuitant is the spouse of the joint annuitant as of the annuity starting date or the difference in age between the annuitant
and joint annuitant is 15 years or
less.

“(iii) EXCEPTIONS.—For purposes of
clause (ii), annuity payments shall not fail
to be treated as part of a series of substan-
tially equal periodic payments—

“(I) because the amount of the
periodic payments may vary in accord-
ance with investment experience, re-
allocations among investment options,
actuarial gains or losses, cost-of-living
indices, a constant percentage (not
less than zero) applied not less fre-
quently than annually, or similar fluc-
tuating criteria,

“(II) due to the existence of, or
modification of the duration of, a pro-
vision in the contract permitting a
lump-sum withdrawal after the annu-
ity starting date, or

“(III) because the period between
each such payment is lengthened or
shortened, but only if at all times
such period is no longer than 1 cal-
endar year.
“(B) Annuity Contract.—For purposes of subparagraph (A) and subsections (b)(5) and (x), the term ‘annuity contract’ means a commercial annuity (as defined by section 3405(e)(6)), other than an endowment or life insurance contract.

“(C) Minimum Period of Payments.—For purposes of subparagraph (A), the minimum period of payments is a guaranteed term of payments which does not exceed the greater of—

“(i) 10 years, or

“(ii) the life expectancy of—

“(I) the annuitant as of the annuity starting date, in the case of lifetime annuity payments described in subparagraph (A)(ii)(III), or

“(II) the annuitant and joint annuitant as of the annuity starting date, in the case of lifetime annuity payments described in subparagraph (A)(ii)(IV).

For purposes of this subparagraph, life expectancy shall be computed with reference to the tables prescribed by the Secretary under para-
graph (3). For purposes of subsection (x)(1)(C)(ii), the permissible minimum period of payments shall be determined as of the annuity starting date and reduced by one for each subsequent year.

“(D) Minimum amount that must be paid in any event.—For purposes of subparagraph (A), the minimum amount that must be paid in any event is an amount payable to the designated beneficiary under an annuity contract which is in the nature of a refund and does not exceed the greater of the amount applied to produce the lifetime annuity payments under the contract or the amount, if any, available for withdrawal under the contract on the date of death.”.

(c) Recapture Tax for Lifetime Annuity Payments.—Section 72 is amended by redesignating subsection (x) as subsection (y) and by inserting after subsection (x) the following new subsection:

“(x) Recapture Tax for Modifications To or Reductions In Lifetime Annuity Payments.—

“(1) In general.—If—

“(A) any amount received under an annuity contract is excluded from income by reason
of subsection (b)(5) (relating to lifetime annuity payments) for any taxable year, and

“(B) a recapture event described in paragraph (2) occurs in any subsequent taxable year,

then gross income for the first taxable year in which the recapture event occurs shall be increased by the recapture amount.

“(2) RECAPTURE EVENT.—For purposes of paragraph (1), a recapture event occurs if—

“(A) the series of payments under an annuity contract is subsequently modified so any future payments are not lifetime annuity payments,

“(B) after the date of receipt of the first lifetime annuity payment under the contract an annuitant receives a lump sum and thereafter is to receive annuity payments in a reduced amount under the contract, or

“(C) after the date of receipt of the first lifetime annuity payment under the contract the dollar amount of any subsequent annuity payment is reduced and a lump sum is not paid in connection with the reduction, unless such reduction is—
“(i) due to an event described in subsection (c)(5)(A)(iii), or

“(ii) due to the addition of, or increase in, a minimum period of payments (within the meaning of subsection (c)(5)(C)) or a minimum amount that must be paid in any event (within the meaning of subsection (c)(5)(D)).

“(3) Recapture amount.—

“(A) In general.—For purposes of this subsection, the recapture amount shall be the amount, determined under rules prescribed by the Secretary, equal to the amount which (but for subsection (b)(5)) would have been includible in the taxpayer’s gross income if the modification or reduction described in subparagraph (A), (B), or (C) of paragraph (2) had been in effect at all times, plus interest for the deferral period at the underpayment rate established by section 6621.

“(B) Deferral period.—For purposes of this subsection, the term ‘deferral period’ means, with respect to any amount, the period beginning with the taxable year in which (without regard to subsection (b)(5)) the amount
would have been includible in gross income and ending with the taxable year in which the modification or reduction described in subparagraph (A), (B), or (C) of paragraph (2) occurs.

“(4) EXCEPTIONS TO RECAPTURE TAX.—Paragraph (1) shall not apply in the case of any recapture event which occurs because an annuitant—

“(A) dies or becomes disabled (within the meaning of subsection (m)(7)),

“(B) becomes a chronically ill individual within the meaning of section 7702B(e)(2), or

“(C) encounters hardship.”.

(d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE DEATH BENEFITS.—

(1) IN GENERAL.—Section 101(d) (relating to payment of life insurance proceeds at a date later than death) is amended by adding at the end the following new paragraph:

“(4) EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.—

“(A) IN GENERAL.—In the case of amounts to which this subsection applies, gross income for any taxable year shall not include the lesser of—
“(i) 50 percent of the portion of life-
time annuity payments which (without re-
gard to this paragraph) is includible in
gross income under this section, or

“(ii) the amount in effect under sec-

[(B) RULES OF SECTION 72(b)(5) TO

APPLY.—For purposes of this paragraph, rules
similar to the rules of section 72(b)(5) and sec-
tion 72(x) shall apply, except that the term
‘beneficiary of the life insurance contract’ shall
be substituted for the term ‘annuitant’ each
place it appears, and the term ‘life insurance
contract’ shall be substituted for the term ‘an-
nuity contract’ each place it appears.”.

(2) CONFORMING AMENDMENT.—Section
101(d)(1) is amended by inserting “or paragraph
(4)” after “to the extent not excluded by the pre-
ceding sentence”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by
this section shall apply to amounts received in cal-
endar years beginning after the date of the enact-
ment of this Act.
(2) **Special rule for existing contracts.**—In the case of a contract in force on the date of the enactment of this Act that does not satisfy the requirements of section 72(c)(5)(A) of the Internal Revenue Code of 1986 (as added by this section), or requirements similar to such section 72(c)(5)(A) in the case of a life insurance contract, any modification to such contract (including a change in ownership) or to the payments under such contract that is made to satisfy the requirements of such section (or similar requirements) shall not result in the recognition of any gain or loss, any amount being included in gross income, or any addition to tax that otherwise might result from such modification, but only if the modification is completed before the date which is 2 years after the date of the enactment of this Act.

**SEC. 203. JOINT STUDY OF APPLICATION OF SPOUSAL CONSENT RULES TO DEFINED CONTRIBUTION PLANS.**

(a) **Study.**—The Secretary of Labor and the Secretary of the Treasury shall jointly conduct a study of the feasibility and desirability of extending the application of the requirements of section 205 of the Employee Retirement Income Security Act of 1974 and sections
401(a)(11) and 417 of the Internal Revenue Code of 1986 (relating to spousal consent requirements) to defined contribution plans to which such requirements do not apply.

Such study shall include consideration of any modifications of such requirements that are necessary to apply such requirements to such plans.

(b) Report.—Not later than 2 years after the date of the enactment of this Act, the Secretaries shall report the results of the study, together with any recommendations for legislative changes, to the Committees on Finance and Health, Education, Labor, and Pensions of the Senate and the Committees on Ways and Means and Education and Labor of the House of Representatives.

SEC. 204. FACILITATING LONGEVITY INSURANCE.

(a) In General.—Paragraph (9) of section 401(a) is amended by inserting after subparagraph (G) the following new subparagraph:

“(H) Longevity insurance.—

“(i) In general.—For purposes of this paragraph, any value attributable to longevity insurance shall be disregarded in determining the value of an employee’s interest under a plan prior to the first date that payments are made under the longevity insurance.
“(ii) Longevity insurance defined.—For purposes of this subparagraph, the term ‘longevity insurance’ means an annuity payable on behalf of the employee under which—

“(I) payments commence not later than 12 months following the calendar month in which the employee attains age 85 (or would have attained age 85),

“(II) payments are made in substantially equal periodic payments (not less frequently than annually) over the life of the employee or the joint lives of the employee and the employee’s designated beneficiary, taking into account the rules of clause (i) of section 402(e)(7)(D), except as otherwise provided in subclause (III) of such section,

“(III) prior to the death of the employee, the annuity does not make available any commutation benefit, cash surrender value, or other similar feature, and
“(IV) except as provided in rules prescribed by the Secretary, in the case of an employee’s death prior to the date that payments commence, the value of any death benefits paid may not exceed the premiums paid for such annuity, plus interest compounded annually at 3 percent.

“(iii) ADJUSTING AGE.—For purposes of clause (ii)(I), the Secretary shall annually increase age 85 to reflect increases in life expectancy (as determined by the Secretary) that occur on or after January 1, 2008, except that any such increased age which is not a whole number shall be rounded to the next lower whole number.”.

(b) RULES.—Not later than one year after the date of enactment of this Act, the Secretary of the Treasury shall prescribe rules under which all or a portion of a participant’s benefits under any plan described in section 402(c)(8)(B) of the Internal Revenue Code of 1986 may be treated as longevity insurance under the rules of section 401(a)(9)(H) of such Code.
(c) Effective Date.—The amendments made by this section shall apply to years beginning after December 31, 2008.

TITLE III—PROVISIONS ENSURING EQUITY IN DIVORCE

SEC. 301. SPECIAL RULES RELATING TO TREATMENT OF QUALIFIED DOMESTIC RELATIONS ORDERS.

(a) Preservation of assets.—

(1) Amendment of 1986 code.—Section 414(p) is amended by redesignating paragraph (13) as paragraph (14) and by inserting after paragraph (12) the following new paragraph:

“(13) Preservation of assets.—

“(A) In general.—If a spouse or former spouse of a participant notifies a plan in writing that—

“(i) an action is pending pursuant to a State domestic relations law (including a community property law), and

“(ii) all or a portion of the benefits payable with respect to the participant under the plan are a subject of such action,

and includes with the notice evidence of thependency of the action, the plan administrator
shall, during the segregation period, separately account for 50 percent of such benefits. Any amounts so separately accounted for may not be distributed by the plan during the segregation period.

“(B) SEGREGATION PERIOD.—For purposes of subparagraph (A), the term ‘segregation period’ means the period—

“(i) beginning on the date of the receipt of the notice, and

“(ii) ending as of the close of the 90-day period beginning on such date (or, if earlier, the date of receipt of a domestic relations order with respect to the participant and the spouse or former spouse or the date the action is no longer pending).

The segregation period shall be extended for 1 or more additional periods described in the preceding sentence upon notice by the spouse or former spouse that the action described in subparagraph (A) is still pending as of the close of any prior segregation period.”

(2) AMENDMENT OF ERISA.—Section 206(d)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(d)(3)) is amended by redesig-
nating subparagraph (N) as subparagraph (O) and
by inserting after subparagraph (M) the following
new subparagraph:

“(N) Preservation of assets.—

“(i) In general.—If a spouse or
former spouse of a participant notifies a
plan in writing that—

“(I) an action is pending pursuant to a State domestic relations law
(including a community property law),

and

“(II) all or a portion of the benefits payable with respect to the partic-

ipant under the plan are a subject of

such action,

and includes with the notice evidence of
the pendency of the action, the plan ad-
ministrator shall, during the segregation
period, separately account for 50 percent
of such benefits. Any amounts so sepa-
rately accounted for may not be distributed
by the plan during the segregation period.

“(ii) Segregation period.—For purposes of clause (i), the term ‘segrega-
tion period’ means the period—
“(I) beginning on the date of the receipt of the notice, and

“(II) ending as of the close of the 90-day period beginning on such date (or, if earlier, the date of receipt of a domestic relations order with respect to the participant and the spouse or former spouse or the date the action is no longer pending).

The segregation period shall be extended for 1 or more additional periods described in the preceding sentence upon notice by the spouse or former spouse that the action described in clause (i) is still pending as of the close of any prior segregation period.”

(b) PENALTY FOR FAILURE TO PROVIDE INFORMATION REGARDING ALTERNATE PAYEES.—Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended by redesignating paragraph (8) as paragraph (9) and by inserting after paragraph (7) the following new paragraph:

“(8) FAILURE TO PROVIDE INFORMATION REGARDING ALTERNATE PAYEES.—The Secretary may assess a civil penalty against any plan administrator
of up to $100 a day from the date of the plan ad-
ministrator’s failure or refusal to provide the infor-
mation the plan administrator is required to provide
under regulations under this Act to prospective al-
ternative payees under a domestic relations order
under section 206(d)(3) or to the Secretary or any
representative of a prospective alternative payee in
connection with such an order.’’

(e) Allocation of Plan Expenses in Complying

With Domestic Relations Orders.—

(1) Amendment of 1986 Code.—Section

414(p), as amended by subsection (a), is amended
by redesignating paragraph (14) as paragraph (15)
and by inserting after paragraph (13) the following
new paragraph:

“(14) Allocation of Expenses.—Any ex-
penses incurred by a plan with respect to compliance
with the requirements of this subsection shall not be
allocated to an individual participant but rather
shall be allocated among all participants on the basis
of the relative value of each participant’s share of
the assets of the plan, on the basis of a flat amount
per participant, or on any other reasonable basis
provided for under the plan.”.
(2) Amendment of ERISA.—Section 206(d)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(d)(3)), as amended by subsection (a), is amended by redesignating subparagraph (O) as subparagraph (P) and by inserting after subparagraph (N) the following new subparagraph:

“(O) Allocation of Expenses.—Any expenses incurred by a plan with respect to compliance with the requirements of this paragraph shall not be allocated to an individual participant but rather shall be allocated among all participants on the basis of the relative value of each participant’s share of the assets of the plan, on the basis of a flat amount per participant, or on any other reasonable basis provided for under the plan.”.

SEC. 302. ELIMINATION OF CURRENT CONNECTION REQUIREMENT UNDER RAILROAD RETIREMENT ACT FOR CERTAIN SURVIVORS.

(a) In General.—Section 2(d)(1) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(d)(1)), in the matter preceding paragraph (i), is amended by inserting “, except with respect to survivors described in paragraph (i), (ii), or (v),” after “December 31, 1995) and”.
(b) Effective Dates.—

(1) In General.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.

(2) Retroactive Application to Certain Survivors.—If a survivor of a deceased employee would be entitled to an annuity by reason of the amendment made by subsection (a) but for the fact that the employee died before the date of the enactment of this Act, the survivor shall be entitled to such an annuity but only with respect to annuity payments for months beginning on or after such date. Appropriate adjustments shall be made in annuity payments of other individuals to reflect any annuity payable by reason of this paragraph.

SEC. 303. PERMITTING DIVORCED SPOUSES AND WIDOWS AND WIDOWERS TO REMARRY AFTER TURNING 60 WITHOUT A PENALTY UNDER RAILROAD RETIREMENT ACT.

(a) In General.—

(1) Divorced Spouse.—Section 2(c)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231a(c)(4)) is amended by adding at the end the following new sentence: “For purposes of paragraph (ii)(B), if a divorced wife marries after attaining age
60, such marriage shall be deemed not to have oc-
curred.’’

(2) WIDOWS AND WIDOWERS.—Section
2(d)(1)(v) of the Railroad Retirement Act of 1974
(45 U.S.C. 231a(d)(1)(v)) is amended by adding at
the end the following new sentence: ‘‘For purposes
of this paragraph, if a widow marries after attaining
age 60, such marriage shall be deemed not to have
occurred.’’

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by
this section shall take effect on the date of enact-
ment of this Act.

(2) RETROACTIVE APPLICATION.—If a divorced
wife, widow, or widower would be entitled to an an-
nuity by reason of the amendments made by this
section but for the fact the individual was married
before the date of the enactment of this Act, the in-
dividual shall be entitled to such an annuity but only
with respect to annuity payments for months begin-
ing on or after such date. Appropriate adjustments
shall be made in annuity payments of other individ-
uals to reflect any annuity payable by reason of this
paragraph.
TITLE IV—PROVISIONS TO IMPROVE FINANCIAL LITERACY

SEC. 401. GRANTS TO COMMUNITY-BASED TAXPAYER CLINICS TO PROVIDE RETIREMENT SAVINGS ADVICE.

(a) In General.—Section 7526 (relating to low-income taxpayer clinics) is amended by adding at the end the following:

“(d) Additional Grants for Retirement Savings Advice.—

“(1) Making of Grants.—The Secretary may, subject to the availability of appropriated funds, make grants to qualified low-income taxpayer clinics to provide retirement savings counseling to low-income taxpayers.

“(2) Use of Grant Funds.—Grants under paragraph (1) shall be used to—

“(A) develop the infrastructure necessary to carry out retirement savings counseling for low-income taxpayers, including the development of software to assist low-income taxpayers in beginning a retirement savings program, monitoring their savings behavior, and taking advantage of tax benefits provided under this title to assist in retirement savings,
“(B) develop partnerships with certified financial planners and other financial experts to assist in carrying out the retirement savings program, and

“(C) train advisors to assist low-income taxpayers with retirement savings.

“(3) CRITERIA FOR AWARDS.—The provisions of subsection (c)(4) shall apply in determining whether to make a grant under paragraph (1).

“(4) LIMITATIONS AND SPECIAL RULES.—

“(A) AGGREGATE LIMITATION.—Unless otherwise provided by specific appropriations, the Secretary shall not allocate more than $25,000,000 per year (exclusive of costs of administering the program) to grants under paragraph (1).

“(B) LIMITATION ON ANNUAL GRANTS TO A CLINIC.—The aggregate amount of grants which may be made under paragraph (1) to a clinic for a year shall not exceed $100,000.

“(C) MULTI-YEAR GRANTS.—The provisions of subsection (c)(3) shall apply to grants under paragraph (1).
“(D) ADDITIONAL AMOUNTS.—Grants under paragraph (1) shall be in addition to any grants under subsection (a).”

(b) CONFORMING AMENDMENTS.—

(1) Section 7526(c) (relating to special rules and limitations) is amended by striking “this section” each place it appears and inserting “subsection (a)”.

(2) Section 7526(c)(3) is amended by inserting “under subsection (a)” after “award”.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each fiscal year beginning after September 30, 2008, $25,000,000 to carry out the provisions of this section.

SEC. 402. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

“(4) NO CONSTRUCTIVE RECEIPT.—

“(A) IN GENERAL.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by an eligible investment advisor and
compensation which would otherwise be includ-
ible in the gross income of such employee. The
preceding sentence shall apply to highly com-
pensated employees only if the choice described
in such sentence is available on substantially
the same terms to each member of the group of
employees normally provided education and in-
formation regarding the employer’s qualified
employer plan.

“(B) LIMITATION.—The maximum amount
which may be excluded under subparagraph (A)
with respect to any employee for any taxable
year shall not exceed $1,000.

“(C) ELIGIBLE INVESTMENT ADVISER.—
For purposes of this paragraph, the term ‘eligi-
ble investment adviser’ means, with respect to
a plan, a person—

“(i) who—

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

“(II) is registered as an invest-
ment adviser under the laws of the
State in which such adviser maintains
the principal office and place of business of such adviser, but only if such State laws are consistent with section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a),

“(III) is a bank or similar financial institution referred to in section 408(b)(4),

“(IV) is an insurance company qualified to do business under the laws of a State, or

“(V) is any other comparably qualified entity which satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this subsection, and

“(ii) who meets the requirements of subparagraph (D).

“(D) ADVISER REQUIREMENTS.—The requirements of this subparagraph are met if every individual employed (or otherwise compensated) by a person described in subparagraph (C)(i) who provides investment advice on behalf of such person to any plan participant or beneficiary is—
“(i) an individual described in sub-
clause (I) of subparagraph (C)(i),
“(ii) an individual described in sub-
clause (II) of subparagraph (C)(i), but
only if such State has an examination re-
quirement to qualify for registration,
“(iii) registered as a broker or dealer
under the Securities Exchange Act of 1934
(15 U.S.C. 78a et seq.),
“(iv) a registered representative as de-
scribed in section 3(a)(18) of the Securi-
78c(a)(18)) or section 202(a)(17) of the
Investment Advisers Act of 1940 (15
U.S.C. 80b–2(a)(17)), or
“(v) any other comparably qualified
individual who satisfies such criteria as the
Secretary determines appropriate, con-
sistent with the purposes of this para-
graph.
“(E) TERMINATION.—This paragraph
shall not apply to taxable years beginning after
December 31, 2012.”.
(b) CONFORMING AMENDMENTS.—
(1) Section 403(b)(3)(B) is amended by inserting “132(m)(4),” after “132(f)(4),”.

(2) Section 414(s)(2) is amended by inserting “132(m)(4),” after “132(f)(4),”.

(3) Section 415(c)(3)(D)(ii) is amended by inserting “132(m)(4),” after “132(f)(4),”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 403. RETIREMENT HANDBOOK AND RETIREMENT READINESS CHECKLIST.

(a) IN GENERAL.—Section 704 of the Social Security Act is amended by adding at the end the following new subsection:

“(f) RETIREMENT INFORMATION.—

“(1) IN GENERAL.—The Commissioner, in consultation with the Social Security Advisory Board, shall prepare—

“(A) the financial reference handbook described in paragraph (2), and

“(B) the retirement readiness checklist described in paragraph (3).

“(2) FINANCIAL REFERENCE HANDBOOK.—The handbook described in this paragraph is a pamphlet which—
“(A) includes definitions of basic financial terms,

“(B) contains a listing of financial issues and problems facing individuals who are retiring and explanations of methods of dealing with the issues and problems, and

“(C) is in a form readily understandable by the average retiree.

“(3) Readiness Checklist.—The checklist described in this paragraph is a list of questions that individuals need to consider in preparation for retirement, including the following:

“(A) What annual income will the individual need in retirement?

“(B) How many years will the individual live in retirement?

“(C) What will be the cost of Medicare premiums?

“(D) What will be the cost of insurance necessary to supplement Medicare?

“(E) How will savings be invested in retirement?

“(F) How will taxes affect your retirement income?
The checklist will include answers to the questions or directions as to where information is available to answer the questions. All information shall be in a form readily understandable to the average recipient of the checklist.

“(4) REVISIONS.—The Commissioner shall periodically revise and update the handbook and checklist prepared under this subsection.

“(5) DISTRIBUTION OF MATERIALS.—

“(A) HANDBOOK.—The financial reference handbook described in paragraph (2) shall be included with materials provided to an individual when the individual first applies for benefits under title II and such other times as the Commissioner determines appropriate.

“(B) CHECKLIST.—The retirement readiness checklist described in paragraph (3) shall be included with an individual’s annual social security account statement provided under section 1143.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of the enactment of this Act, but the handbooks and checklists required to be provided by such amendment shall be provided on or
after January 1, 2010 (or such earlier date as the Commissioner of Social Security may provide).

**TITLE V—INCENTIVES FOR SMALL BUSINESSES TO ESTABLISH AND MAINTAIN RETIREMENT PLANS FOR EMPLOYEES**

**SEC. 501. CREDIT FOR QUALIFIED PENSION PLAN CONTRIBUTIONS OF SMALL EMPLOYERS.**

(a) In General.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits), as amended by section 102, is amended by adding at the end the following new section:

“**SEC. 45P. SMALL EMPLOYER PENSION PLAN CONTRIBUTIONS.**

“(a) General Rule.—For purposes of section 38, in the case of an eligible employer, the small employer pension plan contribution credit determined under this section for any taxable year is an amount equal to 50 percent of the amount which would (but for subsection (f)(1)) be allowed as a deduction under section 404 for such taxable year for qualified employer contributions made to any qualified retirement plan on behalf of any employee who is not a highly compensated employee.
“(b) Credit Limited to 3 Years.—The credit allowable by this section shall be allowed only with respect to the period of 3 taxable years beginning with the first taxable year for which a credit is allowable with respect to a plan under this section.

“(c) Qualified Employer Contribution.—For purposes of this section—

“(1) Defined Contribution Plans.—In the case of a defined contribution plan, the term ‘qualified employer contribution’ means the amount of nonelective and matching contributions to the plan made by the employer on behalf of any employee who is not a highly compensated employee to the extent such amount does not exceed 3 percent of such employee’s compensation from the employer for the year.

“(2) Defined Benefit Plans.—In the case of a defined benefit plan, the term ‘qualified employer contribution’ means the amount of employer contributions to the plan made on behalf of any employee who is not a highly compensated employee to the extent that the accrued benefit of such employee derived from employer contributions for the year does not exceed the equivalent (as determined under regulations prescribed by the Secretary and without
regard to contributions and benefits under the Social Security Act) of 3 percent of such employee’s compensation from the employer for the year.

“(d) QUALIFIED RETIREMENT PLAN.—

“(1) IN GENERAL.—The term ‘qualified retirement plan’ means any plan described in section 401(a) which includes a trust exempt from tax under section 501(a), any simplified pension (as defined in section 408(k)), or any simple retirement account (as defined in section 408(p) if the following requirements are met with respect to such plan, pension, or account:

“(A) The contribution requirements of paragraph (2).

“(B) The vesting requirements of paragraph (3).

“(C) The distribution requirements of paragraph (4).

The contribution and vesting requirements of paragraphs (2) and (3) shall be treated as met in the case of a simple retirement account under a qualified salary reduction arrangement (as defined in section 408(p)(2)) or a cash or deferred arrangement meeting the requirements of section 401(k)(11).

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

“(i) the employer is required to make nonelective contributions of at least 1 percent of compensation (or the equivalent thereof in the case of a defined benefit plan) for each employee who is not a highly compensated employee who is eligible to participate in the plan, and

“(ii) allocations of nonelective employer contributions, in the case of a defined contribution plan, are either in equal dollar amounts for all employees covered by the plan or bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan (and an equivalent requirement is met with respect to a defined benefit plan).

“(B) COMPENSATION LIMITATION.—The compensation taken into account under subparagraph (A) for any year shall not exceed the limitation in effect for such year under section 401(a)(17).
“(3) Vesting requirements.—The requirements of this paragraph are met if the plan satisfies the requirements of either of the following subparagraphs:

“(A) 3-year vesting.—A plan satisfies the requirements of this subparagraph if an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions.

“(B) 5-year graded vesting.—A plan satisfies the requirements of this subparagraph if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:

<table>
<thead>
<tr>
<th>Years of service</th>
<th>The nonforfeitable percentage is:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>40</td>
</tr>
<tr>
<td>3</td>
<td>60</td>
</tr>
<tr>
<td>4</td>
<td>80</td>
</tr>
<tr>
<td>5</td>
<td>100.</td>
</tr>
</tbody>
</table>

“(4) Distribution requirements.—In the case of a profit-sharing or stock bonus plan, the requirements of this paragraph are met if, under the plan, qualified employer contributions are distributable only as provided in section 401(k)(2)(B).
“(e) Other Definitions.—For purposes of this section—

“(1) Eligible Employer.—

“(A) In General.—The term ‘eligible employer’ means, with respect to any year, an employer which has no more than 25 employees who received at least $5,000 of compensation from the employer for the preceding year.

“(B) Requirement for New Qualified Employer Plans.—Such term shall not include an employer if, during the 3-taxable year period immediately preceding the first taxable year for which the credit under this section is otherwise allowable for a qualified employer plan of the employer, the employer or any member of any controlled group including the employer (or any predecessor of either) established or maintained a qualified employer plan with respect to which contributions were made, or benefits were accrued, for substantially the same employees as are in the qualified employer plan.

“(2) Highly Compensated Employee.—The term ‘highly compensated employee’ has the mean-
ing given such term by section 414(q) (determined
without regard to section 414(q)(1)(B)(ii)).

“(f) Special Rules.—

“(1) Disallowance of deduction.—No de-
duction shall be allowed for that portion of the qual-
ified employer contributions paid or incurred for the
taxable year which is equal to the credit determined
under subsection (a).

“(2) Election not to claim credit.—This
section shall not apply to a taxpayer for any taxable
year if such taxpayer elects to have this section not
apply for such taxable year.

“(3) Aggregation rules.—All persons treat-
ed as a single employer under subsection (a) or (b)
of section 52, or subsection (n) or (o) of section 414,
shall be treated as one person. All eligible employer
plans shall be treated as 1 eligible employer plan.

“(g) Recapture of credit on forfeited con-
tributions.—

“(1) In general.—Except as provided in para-
graph (2), if any accrued benefit which is forfeitable
by reason of subsection (d)(3) is forfeited, the em-
ployer’s tax imposed by this chapter for the taxable
year in which the forfeiture occurs shall be increased
by 35 percent of the employer contributions from
which such benefit is derived to the extent such contributions were taken into account in determining the credit under this section.

“(2) REALLOCATED CONTRIBUTIONS.—Paragraph (1) shall not apply to any contribution which is reallocated by the employer under the plan to employees who are not highly compensated employees.”.

(b) CREDIT ALLOWED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (defining current year business credit), as amended by section 102, is amended by striking “and” at the end of paragraph (31), by striking the period at the end of paragraph (32) and inserting “, and”, and by adding at the end the following new paragraph:

“(33) in the case of an eligible employer (as defined in section 45P(e)), the small employer pension plan contribution credit determined under section 45P(a).”.

(c) CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 196 is amended by striking “and” at the end of paragraph (12), by striking the period at the end of paragraph (13) and inserting “, and”, and by adding at the end the following new paragraph:
“(14) the small employer pension plan contribution credit determined under section 45P(a).”.

(2) The table of sections for subpart D of part IV of subchapter A of chapter 1, as amended by section 102, is amended by adding at the end the following new item:

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to contributions paid or incurred in taxable years beginning after December 31, 2008.

SEC. 502. DEDUCTION FOR PENSION CONTRIBUTIONS ALLOWED IN COMPUTING NET EARNINGS FROM SELF-EMPLOYMENT.

(a) IN GENERAL.—Section 1402(a) (defining net earnings from self-employment) is amended by striking “and” at the end of paragraph (15), by striking the period at the end of paragraph (16) and inserting “, and”, and by inserting after paragraph (16) the following new paragraph:

“(17) any deduction allowed under section 404 by reason of section 404(a)(8)(C) shall be allowed, except that the amount of such deduction shall be determined without regard to this paragraph.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.
SEC. 503. EXEMPTION OF DEFERRAL-ONLY QUALIFIED CASH OR DEFERRED ARRANGEMENTS FROM TOP-HEAVY PLAN RULES.

(a) In General.—Section 416(g) (defining top-heavy plan) is amended by adding at the end the following new paragraph:

“(5) Exception for deferral-only cash or deferred arrangements.—In the case of a plan which consists solely of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) under which no amounts may be contributed other than elective deferrals (as defined in section 402(g)(3)), such plan shall not be treated as a top-heavy plan.”.

(b) Effective Date.—The amendments made by this section shall apply to years beginning after December 31, 2008.

SEC. 504. EXTENSION OF TIME FOR SMALL PENSION PLANS TO ADOPT REQUIRED PLAN QUALIFICATION AMENDMENTS.

(a) In General.—In the case of an eligible small plan for which a remedial amendment period is established under Internal Revenue Procedure 2005–66 (or any regulation, revenue ruling, revenue procedure, or guidance providing for a similar period), no amendment to the plan necessary for the plan to meet the qualification require-
ments under the Internal Revenue Code of 1986 shall be required before the close of such period.

(b) ADDITIONAL REQUIREMENTS.—Subsection (a) shall not apply to an eligible small plan unless—

(1) any amendment described in subsection (a) applies retroactively to the period during which such amendment would otherwise have been required to be in effect,

(2) the plan is operated during the period described in paragraph (1) as if the amendment were in effect, and

(3) the plan meets such requirements as the Secretary of the Treasury may prescribe to ensure that the Secretary, the Secretary of Labor, employers maintaining the plan, and participants and beneficiaries of the plan are adequately notified of the terms of the plan actually in effect during a plan year.

(c) ELIGIBLE SMALL PLAN.—For purposes of this section—

(1) IN GENERAL.—The term “eligible small plan” means a plan which, as of the beginning of a remedial amendment or similar period described in subsection (a), had 100 or fewer participants. For purposes of this paragraph, all defined benefit plans
which are single-employer plans and are maintained
by the same employer (or any member of such em-
ployer’s controlled group) shall be treated as 1 plan,
but only participants with respect to such employer
or member shall be taken into account.

(2) Application of certain rules in de-
termination of plan size.—For purposes of this
subsection—

(A) Plans not in existence in pre-
ceding year.—In the case of the first plan
year of any plan, subparagraph (B) shall apply
to such plan by taking into account the number
of participants that the plan is reasonably ex-
pected to have on days during such first plan
year.

(B) Predecessors.—Any reference in
paragraph (1) to an employer shall include a
reference to any predecessor of such employer.

(d) Effective date.—This section shall apply to
amendments required to be adopted for plan years begin-
TITLE VI—PROVISIONS RELATING TO LONG-TERM CARE INSURANCE

SEC. 601. TREATMENT OF PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

(a) In General.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

“SEC. 224. PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.

“(a) In General.—In the case of an individual, there shall be allowed as a deduction an amount equal to the applicable percentage of the amount of eligible long-term care premiums (as defined in section 213(d)(10)) paid during the taxable year for coverage for the taxpayer and the taxpayer’s spouse and dependents under a qualified long-term care insurance contract (as defined in section 7702B(b)).

“(b) Applicable Percentage.—For purposes of subsection (a), the applicable percentage shall be determined in accordance with the following table:
For taxable years beginning in calendar year—

<table>
<thead>
<tr>
<th>Year</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>25</td>
</tr>
<tr>
<td>2009</td>
<td>35</td>
</tr>
<tr>
<td>2010</td>
<td>65</td>
</tr>
<tr>
<td>2011 or thereafter</td>
<td>100</td>
</tr>
</tbody>
</table>

"(c) COORDINATION WITH OTHER DEDUCTIONS.—

Any amount paid by a taxpayer for any qualified long-term care insurance contract to which subsection (a) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 162(l) or 213(a)."

(b) LONG-TERM CARE INSURANCE PERMITTED TO BE OFFERED UNDER CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.—

(1) CAFETERIA PLANS.—The last sentence of section 125(f) of such Code (defining qualified benefits) is amended by inserting before the period at the end "; except that such term shall include the payment of premiums for any qualified long-term care insurance contract (as defined in section 7702B) to the extent the amount of such payment does not exceed the eligible long-term care premiums (as defined in section 213(d)(10)) for such contract".

(2) FLEXIBLE SPENDING ARRANGEMENTS.—

Section 106 of such Code (relating to contributions by an employer to accident and health plans) is
amended by striking subsection (c) and redesignating subsection (d) as subsection (e).

(c) CONFORMING AMENDMENTS.—

(1) Section 62(a) of such Code is amended by inserting before the last sentence at the end the following new paragraph:

“(22) PREMIUMS ON QUALIFIED LONG-TERM CARE INSURANCE CONTRACTS.—The deduction allowed by section 224.”.

(2) Sections 223(b)(4)(B), 223(d)(4)(C), 223(f)(3)(B), 3231(e)(11), 3306(b)(18), 3401(a)(22), 4973(g)(1), and 4973(g)(2)(B)(i) of such Code are each amended by striking “section 106(d)” and inserting “section 106(e)”.

(3) Section 6041 of such Code is amended—

(A) in subsection (f)(1) by striking “(as defined in section 106(c)(2))”, and

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

“(h) FLEXIBLE SPENDING ARRANGEMENT DEFINED.—For purposes of this section, a flexible spending arrangement is a benefit program which provides employees with coverage under which—
“(1) specified incurred expenses may be reimbursed (subject to reimbursement maximums and other reasonable conditions), and

“(2) the maximum amount of reimbursement which is reasonably available to a participant for such coverage is less than 500 percent of the value of such coverage.

In the case of an insured plan, the maximum amount reasonably available shall be determined on the basis of the underlying coverage.”.

(4) The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

“Sec. 224. Premiums on qualified long-term care insurance contracts.
Sec. 225. Cross reference”.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years beginning after December 31, 2007.

(2) CAFETERIA PLANS AND FLEXIBLE SPENDING ARRANGEMENTS.—The amendments made by subsection (b) shall apply to taxable years beginning after December 31, 2009.
SEC. 602. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE NEEDS.

(a) In general.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

"SEC. 25E. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE NEEDS.

"(a) Allowance of credit.—

"(1) In general.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable credit amount multiplied by the number of applicable individuals with respect to whom the taxpayer is an eligible caregiver for the taxable year.

"(2) Applicable credit amount.—For purposes of paragraph (1), the applicable credit amount shall be determined in accordance with the following table:

<table>
<thead>
<tr>
<th>For taxable years beginning in calendar year</th>
<th>The applicable credit amount is</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008 .................................................................</td>
<td>$1,000</td>
</tr>
<tr>
<td>2009 .................................................................</td>
<td>1,500</td>
</tr>
<tr>
<td>2010 .................................................................</td>
<td>2,000</td>
</tr>
<tr>
<td>2011 .................................................................</td>
<td>2,500</td>
</tr>
<tr>
<td>2012 or thereafter ............................................</td>
<td>3,000.</td>
</tr>
</tbody>
</table>

"(b) Limitation based on adjusted gross income.—
“(1) In general.—The amount of the credit allowable under subsection (a) shall be reduced (but not below zero) by $100 for each $1,000 (or fraction thereof) by which the taxpayer’s modified adjusted gross income exceeds the threshold amount. For purposes of the preceding sentence, the term ‘modified adjusted gross income’ means adjusted gross income increased by any amount excluded from gross income under section 911, 931, or 933.

“(2) Threshold amount.—For purposes of paragraph (1), the term ‘threshold amount’ means—

“(A) $150,000 in the case of a joint return, and

“(B) $75,000 in any other case.

“(3) Indexing.—In the case of any taxable year beginning in a calendar year after 2008, each dollar amount contained in paragraph (2) shall be increased by an amount equal to the product of—

“(A) such dollar amount, and

“(B) the medical care cost adjustment determined under section 213(d)(10)(B)(ii) for the calendar year in which the taxable year begins, determined by substituting ‘August 2007’ for ‘August 1996’ in subclause (II) thereof.
If any increase determined under the preceding sentence is not a multiple of $50, such increase shall be rounded to the next lowest multiple of $50.

“(c) DEFINITIONS.—For purposes of this section—

“(1) APPLICABLE INDIVIDUAL.—

“(A) IN GENERAL.—The term ‘applicable individual’ means, with respect to any taxable year, any individual who has been certified, before the due date for filing the return of tax for the taxable year (without extensions), by a physician (as defined in section 1861(r)(1) of the Social Security Act) as being an individual with long-term care needs described in subparagraph (B) for a period—

“(i) which is at least 180 consecutive days, and

“(ii) a portion of which occurs within the taxable year.

Notwithstanding the preceding sentence, a certification shall not be treated as valid unless it is made within the 39½ month period ending on such due date (or such other period as the Secretary prescribes).

“(B) INDIVIDUALS WITH LONG-TERM CARE NEEDS.—An individual is described in this sub-
paragraph if the individual meets any of the following requirements:

“(i) The individual is at least 6 years of age and—

“(I) is unable to perform (without substantial assistance from another individual) at least 3 activities of daily living (as defined in section 7702B(c)(2)(B)) due to a loss of functional capacity, or

“(II) requires substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment and is unable to preform, without reminding or cueing assistance, at least 1 activity of daily living (as so defined) or to the extent provided in regulations prescribed by the Secretary (in consultation with the Secretary of Health and Human Services), is unable to engage in age appropriate activities.

“(ii) The individual is at least 2 but not 6 years of age and is unable due to a loss of functional capacity to perform
(without substantial assistance from another individual) at least 2 of the following activities: eating, transferring, or mobility.

“(iii) The individual is under 2 years of age and requires specific durable medical equipment by reason of a severe health condition or requires a skilled practitioner trained to address the individual’s condition to be available if the individual’s parents or guardians are absent.

“(2) ELIGIBLE CAREGIVER.—

“(A) IN GENERAL.—A taxpayer shall be treated as an eligible caregiver for any taxable year with respect to the following individuals:

“(i) The taxpayer.

“(ii) The taxpayer’s spouse.

“(iii) An individual with respect to whom the taxpayer is allowed a deduction under section 151 for the taxable year.

“(iv) An individual who would be described in clause (iii) for the taxable year if section 152(d)(1)(B) were applied by substituting for the exemption amount an amount equal to the sum of the exemption amount, the standard deduction under sec-
tion 63(c)(2)(C), and any additional standard deduction under section 63(e)(3) which would be applicable to the individual if clause (iii) applied.

“(v) An individual who would be described in clause (iii) for the taxable year if—

“(I) the requirements of subparagraph (B) are met with respect to the individual in lieu of the support test of section 152(c)(1)(D) or 152(d)(1)(C), as the case may be, and

“(II) in the case of an individual who is not a qualifying child (as defined in section 152(d)) for the taxable year, the requirements of clause (iv) are met with respect to the individual.

“(B) Residency Test.—The requirements of this subparagraph are met if an individual has as his principal place of abode the home of the taxpayer and—

“(i) in the case of an individual who is an ancestor or descendant of the taxpayer or the taxpayer’s spouse, is a mem-
ber of the taxpayer’s household for over
half the taxable year, or

“(ii) in the case of any other indi-
vidual, is a member of the taxpayer’s
household for the entire taxable year.

“(C) SPECIAL RULES WHERE MORE THAN

1 ELIGIBLE CAREGIVER.—

“(i) IN GENERAL.—If more than 1 in-
dividual is an eligible caregiver with re-
spect to the same applicable individual for
taxable years ending with or within the
same calendar year, a taxpayer shall be
treated as the eligible caregiver if each
such individual (other than the taxpayer)
files a written declaration (in such form
and manner as the Secretary may pre-
scribe) that such individual will not claim
such applicable individual for the credit
under this section.

“(ii) NO AGREEMENT.—If each indi-
vidual required under clause (i) to file a
written declaration under clause (i) does
not do so, the individual with the highest
adjusted gross income shall be treated as
the eligible caregiver.
“(iii) MARRIED INDIVIDUALS FILING SEPARATELY.—In the case of married individuals filing separately, the determination under this subparagraph as to whether the husband or wife is the eligible caregiver shall be made under the rules of clause (ii) (whether or not one of them has filed a written declaration under clause (i)).

“(d) IDENTIFICATION REQUIREMENT.—No credit shall be allowed under this section to a taxpayer with respect to any applicable individual unless the taxpayer includes the name and taxpayer identification number of such individual, and the identification number of the physician certifying such individual, on the return of tax for the taxable year.

“(e) TAXABLE YEAR MUST BE FULL TAXABLE YEAR.—Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 6213(g)(2) of such Code is amended by striking “and” at the end of subparagraph (L), by striking the period at the end of subparagraph (M) and inserting “, and”, and by inserting
after subparagraph (M) the following new subpara-
graph:

“(N) an omission of a correct TIN or phy-

(2) The table of sections for subpart A of part

IV of subchapter A of chapter 1 of such Code is

amended by inserting after the item relating to sec-

tion 25D the following new item:

“Sec. 25E. Credit for taxpayers with long-term care needs”.

(c) EFFECTIVE DATE.—The amendments made by

this section shall apply to taxable years beginning after


SEC. 603. ADDITIONAL CONSUMER PROTECTIONS FOR

LONG-TERM CARE INSURANCE.

(a) ADDITIONAL PROTECTIONS APPLICABLE TO

LONG-TERM CARE INSURANCE.—Subparagraphs (A) and

(B) of section 7702B(g)(2) of the Internal Revenue Code

of 1986 (relating to requirements of model regulation and

Act) are amended to read as follows:

“(A) IN GENERAL.—The requirements of

this paragraph are met with respect to any con-

tract if such contract meets—
“(i) Model regulation.—The following requirements of the model regulation:

“(I) Section 6A (relating to guaranteed renewal or noncancellability), other than paragraph (5) thereof, and the requirements of section 6B of the model Act relating to such section 6A.

“(II) Section 6B (relating to prohibitions on limitations and exclusions) other than paragraph (7) thereof.

“(III) Section 6C (relating to extension of benefits).

“(IV) Section 6D (relating to continuation or conversion of coverage).

“(V) Section 6E (relating to discontinuance and replacement of policies).

“(VI) Section 7 (relating to unintentional lapse).

“(VII) Section 8 (relating to disclosure), other than sections 8F, 8G, 8H, and 8I thereof.
“(VIII) Section 11 (relating to prohibitions against post-claims underwriting).

“(IX) Section 12 (relating to minimum standards).

“(X) Section 13 (relating to requirement to offer inflation protection).

“(XI) Section 25 (relating to prohibition against preexisting conditions and probationary periods in replacement policies or certificates).

“(XII) The provisions of section 26 relating to contingent nonforfeiture benefits, if the policyholder declines the offer of a nonforfeiture provision described in paragraph (4).

“(ii) MODEL ACT.—The following requirements of the model Act:

“(I) Section 6C (relating to preexisting conditions).

“(II) Section 6D (relating to prior hospitalization).

“(III) The provisions of section 8 relating to contingent nonforfeiture
benefits, if the policyholder declines
the offer of a nonforfeiture provision
described in paragraph (4).

“(B) DEFINITIONS.—For purposes of this
paragraph—

“(i) MODEL PROVISIONS.—The terms
‘model regulation’ and ‘model Act’ mean
the long-term care insurance model regula-
tion, and the long-term care insurance
model Act, respectively, promulgated by
the National Association of Insurance
Commissioners (as adopted as of October
2000).

“(ii) COORDINATION.—Any provision
of the model regulation or model Act listed
under clause (i) or (ii) of subparagraph
(A) shall be treated as including any other
provision of such regulation or Act nec-
essary to implement the provision.

“(iii) DETERMINATION.—For pur-
poses of this section and section 4980C,
the determination of whether any require-
ment of a model regulation or the model
Act has been met shall be made by the
Secretary.”.
(b) **Excise Tax.**—Paragraph (1) of section 4980C(e) of the Internal Revenue Code of 1986 (relating to requirements of model provisions) is amended to read as follows:

```
“(1) Requirements of model provisions.—

“(A) Model regulation.—The following requirements of the model regulation must be met:

“(i) Section 9 (relating to required disclosure of rating practices to consumer).

“(ii) Section 14 (relating to application forms and replacement coverage).

“(iii) Section 15 (relating to reporting requirements).

“(iv) Section 22 (relating to filing requirements for marketing).

“(v) Section 23 (relating to standards for marketing), including inaccurate completion of medical histories, other than paragraphs (1), (6), and (9) of section 23C.

“(vi) Section 24 (relating to suitability).

“(vii) Section 29 (relating to standard format outline of coverage).
```
“(viii) Section 30 (relating to requirement to deliver shopper’s guide).

The requirements referred to in clause (vi) shall not include those portions of the personal worksheet described in Appendix B relating to consumer protection requirements not imposed by section 4980C or 7702B.

“(B) Model Act.—The following requirements of the model Act must be met:

“(i) Section 6F (relating to right to return).

“(ii) Section 6G (relating to outline of coverage).

“(iii) Section 6H (relating to requirements for certificates under group plans).

“(iv) Section 6J (relating to policy summary).

“(v) Section 6K (relating to monthly reports on accelerated death benefits).

“(vi) Section 7 (relating to incontestability period).

“(C) Definitions.—For purposes of this paragraph, the terms ‘model regulation’ and ‘model Act’ have the meanings given such terms by section 7702B(g)(2)(B).”.
(c) Effective Date.—The amendments made by this section shall apply to policies issued more than 1 year after the date of the enactment of this Act.

SEC. 604. TREATMENT OF EXCHANGES OF LONG-TERM CARE INSURANCE CONTRACTS.

(a) In General.—Subsection (a) of section 1035 of the Internal Revenue Code of 1986 (relating to exchanges of insurance policies) is amended by striking the period at the end of paragraph (3) and inserting ‘; or’ and by adding at the end the following new paragraph:

‘(4) a qualified long-term care insurance contract for another qualified long-term care insurance contract.’.

(b) Qualified Long-Term Care Insurance Contract.—Subsection (b) of section 1035 of such Code (relating to definitions) is amended by adding at the end the following new paragraph:

‘(4) Qualified long-term care insurance contract.—The term ‘qualified long-term care insurance contract’ means—

‘(A) any qualified long-term care insurance contract (as defined in section 7702B), and

VerDate Aug 31 2005 23:22 Mar 07, 2008 Jkt 069200 PO 00000 Frm 00125 Fmt 6652 Sfmt 6201 E:\BILLS\H5543.IH H5543mstockstill on PROD1PC66 with BILLS
“(B) any contract which is treated as such by section 321(f)(2) of the Health Insurance Portability and Accountability Act of 1996.”.

(c) Effective Date.—

(1) In general.—The amendments made by this section shall apply to exchanges after December 31, 1997.

(2) Waiver of limitations.—If the credit or refund of any overpayment of tax with respect to a taxable year ending before the date of the enactment of this Act resulting from the application of section 1035(a)(4) of the Internal Revenue Code of 1986, as added by this section, is prevented at any time by the operation of any law or rule of law (including res judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date of the enactment of this Act.