To amend the Internal Revenue Code of 1986 to expand pension coverage and savings opportunities and to provide other pension reforms.

IN THE HOUSE OF REPRESENTATIVES

Mr. PORTMAN introduced the following bill; which was referred to the Committee on __________________________

A BILL

To amend the Internal Revenue Code of 1986 to expand pension coverage and savings opportunities and to provide other pension reforms.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the “Pension Preservation and Savings Expansion Act of 2005”.
(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—MAKING TODAY’S RETIREMENT SAVINGS OPPORTUNITIES PERMANENT**


Sec. 102. Saver’s credit made permanent.

**TITLE II—BUILDING AND PRESERVING RETIREMENT ASSETS AND ENHANCING PORTABILITY**

Sec. 201. Retirement savings account.

Sec. 202. Expansion of Saver’s credit.

Sec. 203. Faster vesting of employer nonelective contributions.

Sec. 204. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.

Sec. 205. Enhancing portability of after-tax amounts.

Sec. 206. IRA eligibility for the disabled.

Sec. 207. Exclusion of certain qualified annuity payments and facilitation of such payments and rollovers.

Sec. 208. Exclusion of certain nonqualified annuity payments.

Sec. 209. Increasing participation through automatic contribution arrangements.


Sec. 211. Direct payment of tax refunds to individual retirement plans.

Sec. 212. Treatment of qualified retirement planning services.

Sec. 213. Repeal of combined plan deduction limit.

**TITLE III—EXPANDING SMALL BUSINESS RETIREMENT PLAN COVERAGE AND MAKING THE ELECTIVE DEFERRAL RULES SIMPLER AND MORE UNIFORM**

Sec. 301. Allow additional nonelective contributions to SIMPLE Plans.

Sec. 302. Conform matching contribution rules for SIMPLE IRAs and SIMPLE 401(k)s.

Sec. 303. Uniform catch-up contribution rule.

Sec. 304. Uniform definition of compensation.

Sec. 305. Uniform withdrawal rules.

Sec. 306. Allow level dollar contributions to SEPs.

Sec. 307. Tax treatment of certain nontrade or business SEP contributions.

Sec. 308. Uniform availability of designated RSA contributions.

Sec. 309. Allow certain plan transfers and mergers.

**TITLE IV—EXPANDING RETIREMENT SAVINGS FOR TAX-EXEMPT ORGANIZATION AND GOVERNMENT EMPLOYEES**

Sec. 401. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.

Sec. 402. Clarifications regarding purchase of permissive service credit.

Sec. 403. Eligibility for participation in retirement plans.

Sec. 404. Clarification of minimum distribution rules.
Sec. 405. Church plan rule.
Sec. 406. Clarification of treatment of Indian tribal governments.
Sec. 407. Deferral agreements.
Sec. 408. Plans maintained by State or local governments.
Sec. 409. Clarification of treatment of section 403(b) programs.

TITLE V—SIMPLIFICATION AND EQUITY

Sec. 501. Updating and simplifying the minimum distribution rules.
Sec. 502. Clarification of catch-up contributions.
Sec. 503. Treatment of unclaimed benefits.
Sec. 504. Allow direct rollovers from retirement plans to RSA.
Sec. 505. Reform excise tax on excess contributions.
Sec. 506. Intermediate sanctions for inadvertent failures.
Sec. 507. Clarification of substantially equal periodic payment rule.
Sec. 508. Clarification of treatment of distributions of annuity contracts.
Sec. 509. Golden parachute excise tax to apply to excessive employee remuneration paid by corporation after declaration of bankruptcy.
Sec. 510. Differential pay.
Sec. 511. Excess benefit plans.
Sec. 512. Tax treatment of employee contributions to contributory defined benefit plans.
Sec. 513. Protecting older, longer service participants.
Sec. 514. Clarification regarding elective deferrals.
Sec. 515. Reform of the minimum participation rule.

TITLE VI—IMPROVEMENTS IN PENSION SECURITY

Sec. 601. Periodic pension benefits statements.
Sec. 602. Inapplicability of relief from fiduciary liability during blackout periods.
Sec. 603. Diversification requirements for defined contribution plans that hold employer securities.
Sec. 604. Effective dates and related rules.

TITLE VII—OTHER TAX PROVISIONS RELATING TO PENSIONS

Sec. 701. Reporting simplification.
Sec. 702. Improvement of Employee Plans Compliance Resolution System.
Sec. 703. Extension of moratorium on application of certain nondiscrimination rules to all governmental plans.
Sec. 704. Notice and consent period regarding distributions.
Sec. 705. Qualified group legal services plans.
Sec. 706. Tax-free distributions from individual retirement plans for charitable purposes.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Provisions relating to plan amendments.
TITLE I—MAKING TODAY’S RETIREMENT SAVINGS OPPORTUNITIES PERMANENT

SEC. 101. PENSIONS AND INDIVIDUAL RETIREMENT ARRANGEMENT PROVISIONS OF ECONOMIC GROWTH AND TAX RELIEF RECONCILIATION ACT OF 2001 MADE PERMANENT.

(a) In General.—Section 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001 is amended by adding at the end the following new subsection:

“(e) Exception.—Subsections (a) and (b) shall not apply to the provisions of, and amendments made by, subtitles (A) through (F) of title VI (relating to pension and individual retirement arrangement provisions).”.

(b) Conforming Amendments.—Section 901(b) of such Act is amended—

(1) by striking “and the Employee Retirement Income Security Act of 1974” in the text, and

(2) by striking “OF CERTAIN LAWS” in the heading.

SEC. 102. SAVER’S CREDIT MADE PERMANENT.

(a) In General.—Section 25B of the Internal Revenue Code of 1986 (relating to elective deferrals and IRA
(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

TITLE II—BUILDING AND PRESERVING RETIREMENT ASSETS AND ENHANCING PORTABILITY

SEC. 201. RETIREMENT SAVINGS ACCOUNT.

(a) RETIREMENT SAVINGS ACCOUNT.—

(1) NAME CHANGED FROM ROTH IRA, ETC.—

(A) IN GENERAL.—The Internal Revenue Code of 1986 is amended—

(i) by striking “a” each place it immediately precedes “Roth” and inserting “an”,

(ii) by striking “Roth IRA” and “Roth IRAs” each place such terms appear and inserting “RSA” and “RSAs”, respectively, and

(iii) by striking “Roth contribution”, “Roth contributions”, “Roth account” and “Roth accounts” each place such terms appear and inserting “RSA contribution”,

contributions by certain individuals) is amended by striking subsection (h).
“RSA contributions”, “RSA account”, and
“RSA accounts”, respectively.

(B) RSA DEFINED.—Subsection (a) of sec-
tion 7701 of such Code is amended by adding
at the end the following paragraph:
“(48) RSA.—The term ‘RSA’ means a retire-
ment savings account described in section 408A.”.

(2) UNIVERSAL AVAILABILITY.—Subsection (e)
of section 408A is amended—

(A) by striking paragraph (3), and

(B) by redesignating paragraphs (4), (5),
(6), and (7) as paragraphs (3), (4), (5), and
(6), respectively.

(3) REPEAL OF 5-YEAR RULE.—Paragraph (2)
of section 408A(d) of such Code is amended by
striking subparagraph (B) and redesignating sub-
paragraph (C) as subparagraph (B).

(4) INCOME OVER 4 YEARS.—Clause (iii) of sec-
tion 408A(d)(3)(A) of such Code is amended by
striking “January 1, 1999” and inserting “after De-
cember 31, 2005, and before January 1, 2007”.

(5) ORDERING RULE.—Subparagraph (B) of
section 408A(d)(4) of such Code is amended to read
as follows:
“(B) ORDERING RULES.—For purposes of applying this section and section 72 to any distribution from an RSA, such distribution shall be treated as made—

“(i) from income attributable to contributions to the RSA to the extent that the amount of such distribution, when added to all previous distributions from the RSA, does not exceed the aggregate income attributable to contributions to the RSA, and

“(ii) to the extent that such distribution exceeds such income, from contributions in the following order:

“(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

“(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

For purposes of this subparagraph, income attributable to contributions to the RSA shall include income that is attributable to contributions to another RSA or to a designated RSA account and that is rolled over into the RSA.”.
(b) CONFORMING AMENDMENTS.—

(1) Paragraph (2) of section 402A(d) of such Code is amended by striking subparagraph (B) and by redesignating subparagraph (C) as subparagraph (B).

(2) Subsection (d) of section 402A of such Code is amended by adding at the end the following:

“(5) ORDERING RULES.—For purposes of applying section 72 to any distribution from a participant’s designated RSA account, such distribution shall be treated as made from income attributable to contributions to the designated RSA account to the extent that the amount of such distribution, when added to all previous distributions from the designated RSA account, does not exceed the aggregate income attributable to contributions to the designated RSA account. For purposes of this paragraph, income attributable to contributions to a designated RSA account shall include income that is attributable to contributions to another such account or to an RSA and that is rolled over into the designated RSA account.”.

(3) Subparagraph (B) of section 4973(f)(1) and subparagraph (B) of section 4973(f)(2) of such Code
are each amended by striking “sections 408A(c)(2)
and (e)(3)” and inserting “section 408A(e)(2)”.

(c) **Effective Dates.**—

(1) In general.—The amendments made by
this section shall apply to years beginning after De-
cember 31, 2005.

(2) Special rule.—The amendment made by
subsection (a)(5) shall only apply to the extent that
distributions from RSAs exceed the amount of con-
tributions to such RSAs that have been made but
not distributed as of December 31, 2005.

**Sec. 202. Expansion of Saver’s Credit.**

(a) Expansion.—The table contained in subsection
(b) of section 25B of the Internal Revenue Code of 1986
(relating to applicable percentage) is amended to read as
follows:

```
Adjusted Gross Income

<table>
<thead>
<tr>
<th></th>
<th>Joint return</th>
<th>Head of Household</th>
<th>All other cases</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Over Not over</td>
<td>Over Not over</td>
<td>Over Not over</td>
</tr>
<tr>
<td>$30,000</td>
<td>$30,000</td>
<td>$22,500 $22,500</td>
<td>$15,000 $15,000</td>
</tr>
<tr>
<td>30,000</td>
<td>40,000</td>
<td>22,500 $30,000</td>
<td>15,000 $20,000</td>
</tr>
<tr>
<td>40,000</td>
<td>50,000</td>
<td>30,000 $37,500</td>
<td>20,000 $25,000</td>
</tr>
<tr>
<td>50,000</td>
<td>50,000</td>
<td>37,500 $25,000</td>
<td>0'</td>
</tr>
</tbody>
</table>
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(b) Adjustment for Inflation.—Section 25B of
such Code (as amended by subsection (a)) is further
amended by redesignating subsection (h) as subsection (i)
and by inserting after subsection (g) the following new
subsection:
“(h) ADJUSTMENT FOR INFLATION.—

“(1) IN GENERAL.—In the case of any taxable year beginning after December 31, 2008, each dollar amount in the table contained in subsection (b) in the columns under the heading ‘All other cases’ shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting ‘calendar year 2007’ for ‘calendar year 1992’ in subparagraph (B) thereof.

If any increase under the preceding sentence is not a multiple of $1,000, such increase shall be rounded to the nearest multiple of $1,000.

“(2) ADJUSTMENT OF AMOUNTS RELATING TO JOINT RETURN AND HEAD OF HOUSEHOLD.—In the case of any taxable year beginning after December 31, 2008—

“(A) there shall be substituted for each dollar amount in the table contained in subsection (b) in the columns under the heading ‘Joint return’ a dollar amount equal to twice the corresponding dollar amount in such table
in the columns under the heading ‘All other cases’ (as increased under paragraph (1)), and

“(B) there shall be substituted for each dollar amount in the table contained in sub-
section (b) in the columns under the heading ‘Head of household’ a dollar amount equal to 1½ times the corresponding dollar amount in such table in the columns under the heading ‘All other cases’ (as increased under paragraph (1)).”.

(c) Testing Period.—Subparagraph (B) of section 25B(d)(2) of such Code is amended to read as follows:

“(B) Testing period.—For purposes of subparagraph (A), the testing period, with re-
spect to a taxable year, is the period which includes—

“(i) such taxable year, and

“(ii) the 3 preceding taxable years.”.

(d) Treatment as Refundable.—

(1) Credit moved to subpart relating to refundable credit.—

(A) In general.—Section 25B of such Code, as amended by this Act, 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) TECHNICAL AMENDMENTS.—

(i) Section 36 of such Code is redesignated as section 37.

(ii) Section 25B of such Code (as moved by subparagraph (A)) is redesignated as section 36.

(iii) The table of sections for subpart A of such part is amended by striking the item relating to section 25B.

(iv) The table of sections for subpart C of such part is amended by redesignating the item relating to section 36 as an item relating to section 37 and by inserting after section 35 the following new item:

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

(2) MANDATORY DEPOSIT INTO QUALIFIED ACCOUNT.—

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

"Sec. 36. Elective deferrals and IRA contributions by certain individuals.".
(B) DEPOSIT INTO QUALIFIED ACCOUNT.—Subsection (g) of section 36 of such Code, 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) an RSA contribution in the case of a payments to an individual retirement plan, or

“(B) a designated RSA contribution in the case of a payment to an applicable retirement plan described in section 402A(e).”.

(e) Regulation and Promotion.—Section 36 of such Code, as amended and redesignated by this section, is amended by adding at the end the following new subsection:

“(i) Regulation and Promotion.—The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section. The Secretary shall also take such steps as he determines nec-
necessary and appropriate to increase public awareness of the
credit provided under this section.”.

(f) **Effective Date.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

**SEC. 203. FASTER VESTING OF EMPLOYER NONELECTIVE CONTRIBUTIONS.**

(a) **Amendments to the Internal Revenue Code of 1986.**—

(1) **In general.**—Paragraph (2) of section 411(a) of the Internal Revenue Code of 1986 (relating to employer contributions) is amended to read as follows:

“(2) **Employer Contributions.**—

“(A) **Defined benefit plans.**—

“(i) **In general.**—In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

“(ii) **5-year vesting.**—A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee’s accrued
benefit derived from employer contributions.

“(iii) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this clause 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>3</td>
<td>20</td>
</tr>
<tr>
<td>4</td>
<td>40</td>
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<tr>
<td>5</td>
<td>60</td>
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<tr>
<td>6</td>
<td>80</td>
</tr>
<tr>
<td>7 or more</td>
<td>100</td>
</tr>
</tbody>
</table>

“(B) DEFINED CONTRIBUTION PLANS.—

“(i) IN GENERAL.—In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

“(ii) 3-YEAR VESTING.—A plan satisfies the requirements of this clause 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.
“(iii) 2 TO 6 YEAR VESTING.—A plan satisfies the requirements of this clause 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>2</td>
<td>20</td>
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<tr>
<td>3</td>
<td>40</td>
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<tr>
<td>4</td>
<td>60</td>
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<tr>
<td>5</td>
<td>80</td>
</tr>
<tr>
<td>6</td>
<td>100</td>
</tr>
</tbody>
</table>

(2) CONFORMING AMENDMENT.—Section 411(a) of such Code (relating to general rule for minimum vesting standards) is amended by striking paragraph (12).

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to read as follows:

“(2)(A)(i) In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

“(ii) A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100
percent of the employee’s accrued benefit derived from employer contributions.

“(iii) A plan satisfies the requirements of this clause 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>3 or more</td>
<td>20</td>
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<tr>
<td>4 or more</td>
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<td>5 or more</td>
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<td>6 or more</td>
<td>80</td>
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<tr>
<td>7 or more</td>
<td>100</td>
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</tbody>
</table>

“(B)(i) In the case of an individual account plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

“(ii) A plan satisfies the requirements of this clause 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.

“(iii) A plan satisfies the requirements of this clause 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:
The nonforfeitable percentage is:

<table>
<thead>
<tr>
<th>Years of service</th>
<th>The nonforfeitable percentage is:</th>
</tr>
</thead>
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<tr>
<td>2</td>
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<td>3</td>
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<td>6</td>
<td>100</td>
</tr>
</tbody>
</table>

(2) CONFORMING AMENDMENT.—Section 203(a) of such Act is amended by striking paragraph (4).

(c) EFFECTIVE DATES.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2005.

(2) Collective bargaining agreements.—

In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any
extension thereof on or after such date of
the enactment); or

(ii) January 1, 2006; or

(B) January 1, 2008.

(3) Service required.—With respect to any
plan, the amendments made by this section shall not
apply to any employee before the date that such em-
ployee has 1 hour of service under such plan in any
plan year to which the amendments made by this
section apply.

SEC. 204. ALLOW ROLLOVERS BY NONSPOUSE BENE-
FICIARIES OF CERTAIN RETIREMENT PLAN
DISTRIBUTIONS.

(a) In general.—

(1) Qualified plans.—Section 402(c) of the
Internal Revenue Code of 1986 (relating to rollovers
from exempt trusts) is amended by adding at the
end the following new paragraph:

“(11) Distributions to inherited indi-
vidual retirement plan of nonspouse bene-
ficiary.—

“(A) In general.—If, with respect to any
portion of a distribution from an eligible retire-
ment plan of a deceased employee, a direct
trustee-to-trustee transfer is made to an indi-
individual retirement plan described in clause (i) or (ii) of paragraph (8)(B) established for the purposes of receiving the distribution on behalf of an individual who is a designated beneficiary (as defined by section 401(a)(9)(E)) of the employee and who is not the surviving spouse of the employee—

“(i) the transfer shall be treated as an eligible rollover distribution for purposes of this subsection,

“(ii) the individual retirement plan shall be treated as an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)) for purposes of this title, and

“(iii) section 401(a)(9)(B) (other than clause (iv) thereof) shall apply to such plan.

“(B) CERTAIN TRUSTS TREATED AS BENEFICIARIES.—For purposes of this paragraph, to the extent provided in rules prescribed by the Secretary, a trust maintained for the benefit of one or more designated beneficiaries shall be
treated in the same manner as a trust designated beneficiary.’’.

(2) SECTION 403(a) PLANS.—Subparagraph (B) of section 403(a)(4) of such Code (relating to rollover amounts) is amended by inserting “and (11)” after “(7)”.

(3) SECTION 403(b) PLANS.—Subparagraph (B) of section 403(b)(8) of such Code (relating to rollover amounts) is amended by striking “and (9)” and inserting “, (9), and (11)”.

(4) SECTION 457 PLANS.—Subparagraph (B) of section 457(e)(16) of such Code (relating to rollover amounts) is amended by striking “and (9)” and inserting “, (9), and (11)”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

SEC. 205. ENHANCING PORTABILITY OF AFTER-TAX AMOUNTS.

(a) ROLLOVERS BETWEEN QUALIFIED PLANS AND SECTION 403(b) PLANS.—Subparagraph (A) of section 402(c)(2) of such Code (relating to maximum amount which may be rolled over) is amended by striking “and which” and inserting “or to an annuity contract described in section 403(b) and such plan or contract”.

(b) Rollovers to Defined Benefit Plans.—Subparagraph (A) of section 402(c)(2) of such Code (relating to maximum amount which may be rolled over) is amended by striking “which is a part of a plan which is a defined contribution plan and”.

c) Effective Date.—The amendment made by subsection (a) shall apply to taxable years beginning after December 31, 2005.

SEC. 206. IRA Eligibility for the Disabled.

(a) In General.—Subsection (f) of section 219 of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following:

“(8) Special rule for certain disabled individuals.—In the case of an individual—

“(A) who is disabled (within the meaning of section 72(m)(7)), and

“(B) who has not attained the applicable age (as defined in section 401(a)(9)(H)) before the close of the taxable year,

subparagraph (B) of subsection (b)(1) shall not apply.”.

(b) Effective Date.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.
SEC. 207. EXCLUSION OF CERTAIN QUALIFIED ANNUITY 
PAYMENTS AND FACILITATION OF SUCH PAY-
MENTS AND ROLLOVERS.

(a) IN GENERAL.—

(1) QUALIFIED PLANS.—Subsection (e) of sec-
tion 402 of the Internal Revenue Code of 1986 (re-
lating 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 life-
time annuity payment to a qualified distributee 
from a qualified trust (within the meaning of 
subsection (e)(8)(A)) maintained in connection 
with a defined contribution plan, gross income 
shall not include 10 percent of the amount oth-
erwise includible in gross income (determined 
without regard to this paragraph).

“(B) 5-YEAR LIMITATION.—Subparagraph 
(A) shall apply to a qualified distributee only in 
the first 5 taxable years in which the qualified 
distributee receives lifetime annuity payments 
for the entire taxable year. For purposes of this 
subparagraph, all lifetime annuity payments re-
ceived by a qualified distributee shall be taken 
into account to the extent that such payments
are subject to this paragraph or to rules similar

to the rules of this paragraph (other than sec-
tions 72(b)(5) and 101(d)(4)).

“(C) LIMITATION.—

“(i) IN GENERAL.—With respect to
any qualified distributee, subparagraph (A)
shall not apply to any lifetime annuity pay-
ment to the extent that the portion of such
payment includible in gross income, when
added to the portion of all previous and si-
multaneous lifetime annuity payments that
was included in gross income and that was
paid to such qualified distributee during
the taxable year, exceeds 50 percent of the
applicable amount for such year under sec-
tion 415(c)(1)(A). For purposes of the pre-
ceding sentence, the portion of lifetime an-
uity payments includible in gross income
shall be determined without regard to sub-
paragraph (A).

“(ii) AGGREGATION RULE.—For pur-
poses of this subparagraph, all lifetime an-
uity payments received by a qualified dis-
tributee shall be taken into account to the
extent that such payments are subject to
this paragraph or to rules similar to the
rules of this paragraph (other than sec-
tions 72(b)(5) and 101(d)(4)).

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

“(i) LIFETIME ANNUITY PAYMENT.—

“(I) IN GENERAL.—The term ‘lifetime annuity payment’ means a
distribution which is a part of a series
of substantially equal periodic pay-
ments (made 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 ben-
eficiary.

“(II) CERTAIN FLUCTUATING
PAYMENTS.—Annuity payments shall
not fail to be treated as part of a se-
ries of substantially equal periodic
payments merely because the amount
of the periodic payments may vary in
accordance with investment experi-
ence, 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 pay-
ments 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 one year.

“(IV) Permitted reductions.—Annuity payments shall not fail to be treated as part of a series of substantially equal periodic pay-
ments merely because, in the case of an annuity payable over the lives of
the qualified distributee and the qualified distributee’s designated beneficiar,
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 certain, 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, payments by the qualified trust to a qualified distributee of the entire amount received by the qualified trust with respect to the qualified distributee shall constitute lifetime annuity payments.

“(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.

(E) RECAPTURE TAX.—

(i) IN GENERAL.—If—

(I) an amount is not includible in gross income by reason of subpara-
graph (A), and

(II) the series of payments of which such payment is a part is sub-
sequently 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 modi-
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...
72(b)(5) and 101(d)(4)) shall not exceed

the income-adjusted limit.

“(ii) INCOME-ADJUSTED LIMIT.—For

purposes of this subparagraph, the income-

adjusted limit shall be—

“(I) 10 percent of the limitation
described in subparagraph (C), re-
duced (but not below zero) by

“(II) the amount determined
under clause (iii).

“(iii) AMOUNT DETERMINED.—The
amount determined under this clause shall
be the amount which bears the same ratio
to the amount described in clause (ii)(I)
as—

“(I) the excess of the taxpayer’s
adjusted gross income for such tax-
able year over the applicable dollar
amount, bears to

“(II) $15,000 ($30,000 for a
joint return).

“(iv) LIMITATION ON REDUCTION.—
The income-adjusted limit shall not be re-
duced below $200 by clause (ii)(II) unless
(without regard to this clause) such limit is reduced to zero.

“(v) **ROUNDING RULE.**—Any income-adjusted limit determined under this subparagraph which is not a multiple of $10 shall be rounded to the next lowest multiple of $10.

“(vi) **ADJUSTED GROSS INCOME.**—For purposes of this subparagraph, adjusted gross income of any taxpayer shall be determined in the same manner as under section 219(g)(3) except that any amount included in income under section 408A(d)(3) shall not be taken into account.

“(vii) **APPLICABLE DOLLAR LIMIT.**—For purposes of this subparagraph, the applicable dollar amount is—

“(I) in the case of a taxpayer filing a joint return, an amount equal to twice the amount in effect under subclause (II),

“(II) in the case of any other taxpayer (other than a married individual filing a separate return), $60,000, and
“(III) in the case of a married individual filing a separate return, zero.

“(viii) Special rule for married individuals filing separately and living apart.—Section 219(g)(4) shall apply for purposes of this subparagraph.

“(ix) Cost-of-living adjustment.—In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $60,000 amount in clause (vii)(II) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2005, and any increase under this clause which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

“(G) Investment in the contract.—For purposes of section 72, the investment in the contract shall be determined without regard to this paragraph.”.

(2) Section 403(a) plans.—Paragraph (4) of section 403(a) of such Code (relating to qualified
annuity plans) is amended by adding at the end the following new subparagraph:

“(C) 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 applies.”.

(3) SECTION 403(b) PLANS.—Section 403(b) of such Code (relating to purchased annuities) is amended by adding at the end the following new paragraph:

“(14) 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 or custodial account to which this subsection applies.”.

(4) IRAS.—Section 408(d) of such Code (relating to tax treatment of distributions) is amended by adding at the end the following new paragraph:

“(8) 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) of such Code (relating to special rules for deferred
compensation plans) is amended by adding at the end the following new paragraph:

“(18) 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) Facilitation of Certain Rollovers and Annuity Distributions.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

“(7)(A) In the case of a pension plan which makes a transfer under section 401(a)(31)(A) of the Internal Revenue Code of 1986 to an individual retirement plan (as defined in section 7701(a)(37) of such Code) in connection with a participant or beneficiary or makes a distribution to a participant or beneficiary of an annuity contract described in subparagraph (B), the participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the transfer or distribution if—

“(i) the participant or beneficiary elected such transfer or distribution, and

“(ii) in connection with such election, the participant or beneficiary was given an opportunity to
elect any other individual retirement plan (in the case of a transfer) or any other annuity contract described in subparagraph (B) (in the case of a distribution).

“(B) An annuity contract is described in this subparagraph if it provides, either on an immediate or deferred basis, a series of substantially equal periodic payments (not less frequently than annually) for the life of the participant or beneficiary or the joint lives of the participant or beneficiary and such individual’s designated beneficiary. 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. 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 one year. 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 certain, or a minimum
amount to be paid in any event shall not affect the treat-
ment of an annuity contract as an annuity contract de-
scribed in this subparagraph.

“(C) Under regulations prescribed by the Secretary,
this paragraph shall apply without regard to whether the
particular individual retirement plan receiving the transfer
or the particular annuity contract being distributed is spe-
cifically identified by the pension plan as available to the
participant or beneficiary.

“(D) Notwithstanding the preceding provisions of
this paragraph, paragraph (1)(B) shall not apply with re-
spect to liability under section 406 in connection with the
specific identification of any individual retirement plan or
annuity contract as being available to the participant or
beneficiary.”.

(e) Effective Date.—

(1) Exclusion.—The amendments made by
subsection (a) shall apply to distributions after De-
cember 31, 2005.

(2) Facilitation.—The amendments made by
subsection (b) shall take effect on the date of enact-
ment of this Act.

(3) Issuance of Final Regulations.—Final
regulations under section 404(c)(7) of the Employee
Retirement Income Security Act of 1974 (added by this section) shall be issued no later than 1 year after the date of the enactment of this Act.

SEC. 208. EXCLUSION OF CERTAIN NONQUALIFIED ANNUITY PAYMENTS.

(a) IN GENERAL.—

(1) NONQUALIFIED ANNUITIES.—

(A) IN GENERAL.—Section 72(b) of the Internal Revenue Code of 1986 (relating to annuities) is amended by adding at the end the following new paragraph:

“(5) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS.—

“(A) IN GENERAL.—In the case of a lifetime annuity payment to a qualified distributee, gross income shall not include 10 percent of the amount otherwise includible in gross income (determined without regard to this paragraph).

“(B) 5-YEAR LIMITATION.—Subparagraph (A) shall apply to a qualified distributee only in the first 5 taxable years in which the qualified distributee receives lifetime annuity payments for the entire taxable year. For purposes of this subparagraph, all lifetime annuity payments received by a qualified distributee shall be taken
into account to the extent that such payments
are subject to this paragraph or to the rules of
section 101(d)(4).

“(C) **INVESTMENT IN THE CONTRACT.**—
For purposes of this section, the investment in
the contract shall be determined without regard
to this paragraph (5).

“(D) **LIMITATION.**—

“(i) **IN GENERAL.**—With respect to
any qualified distributee, subparagraph (A)
shall not apply to any lifetime annuity pay-
ment to the extent that the portion of such
payment that is includible in income, when
added to the portion of all previous and si-
multaneous lifetime annuity payments that
was included in gross income and that was
paid to such qualified distributee during
the taxable year, exceeds 50 percent of the
applicable amount for such year under sec-
section 415(c)(1)(A). For purposes of the pre-
ceding sentence, the portion of lifetime an-
nuity payments includible in gross income
shall be determined without regard to sub-
paragraph (A).
“(ii) AGGREGATION RULE. — For purposes of this subparagraph, all lifetime annuity payments received by a qualified distributee shall be taken into account to the extent that such payments are subject to this paragraph or to the rules of section 101(d)(4).

“(E) PHASEOUT OF EXCLUSION.—

“(i) IN GENERAL. — In any taxable year, the exclusion from gross income for any qualified distributee under this paragraph and under the rules of section 101(d)(4) shall not exceed the income-adjusted limit.

“(ii) INCOME-ADJUSTED LIMIT. — For purposes of this subparagraph, the income-adjusted limit shall be—

“(I) 10 percent of the limitation described in subparagraph (D), reduced (but not below zero) by

“(II) the amount determined under clause (iii).

“(iii) AMOUNT DETERMINED. — The amount determined under this clause shall be the amount which bears the same ratio
to the amount described in clause (ii)(I) as—

“(I) the excess of the taxpayer’s adjusted gross income for such taxable year over the applicable dollar amount, bears to

“(II) $15,000 ($30,000 for a joint return).

“(iv) LIMITATION ON REDUCTION.—The income-adjusted limit shall not be reduced below $200 by clause (ii)(II) unless (without regard to this clause) such limit is reduced to zero.

“(v) ROUNDING RULE.—Any income adjusted limit determined under this subparagraph which is not a multiple of $10 shall be rounded to the next lowest multiple of $10.

“(vi) ADJUSTED GROSS INCOME.—For purposes of this subparagraph, adjusted gross income of any taxpayer shall be determined in the same manner as under section 219(g)(3) except that any amount included in income under section 408A(d)(3) shall not be taken into account.
“(vii) APPLICABLE DOLLAR LIMIT.—

For purposes of this subparagraph, the applicable dollar amount is—

“(I) in the case of a taxpayer filing a joint return, an amount equal to twice the amount in effect under subclause (II),

“(II) in the case of any other taxpayer (other than a married individual filing a separate return), $60,000, and

“(III) in the case of a married individual filing a separate return, zero.

“(viii) SPECIAL RULE FOR MARRIED INDIVIDUALS FILING SEPARATELY AND LIVING APART.—Section 219(g)(4) shall apply for purposes of this subparagraph.

“(ix) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2006, the Secretary shall adjust the $60,000 amount in clause (vii)(II) at the same time and in the same manner as under section 415(d), except that the base period shall be the cal-
endar quarter beginning July 1, 2005, and any increase under this clause which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.”.

(B) DEFINITIONS.—Section 72(c) of such Code is amended by adding at the end the following new paragraphs:

“(5) LIFETIME ANNUITY PAYMENT.—

“(A) IN GENERAL.—For purposes of subsection (b)(5), the term ‘lifetime annuity payment’ means a distribution from an annuity contract (as defined in paragraph (7)) that is a part of a series of substantially equal periodic payments—

“(i) made not less frequently than annually over the life of the qualified distributee or the joint lives of the qualified distributee and the qualified distributee’s designated beneficiary, and

“(ii) that would satisfy the requirements of section 408(b)(3) if the annuity contract were treated as an individual retirement annuity.

“(B) EXCEPTIONS.—
“(i) 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.

“(ii) Certain changes in the mode of payments.—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 no longer than one year.

“(iii) 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 qual-
ified distributee or the qualified
distributee’s designated beneficiary are less
than the amounts payable during their
joint lives.

“(iv) Certain contract benefits.—The availability of a commutation
benefit or other feature permitting accel-
eration of annuity payments (or modifica-
tion of the period during which such a ben-
efit is available), a minimum period of pay-
ments certain, or a minimum amount to be
paid in any event shall not affect the treat-
ment of a distribution as a lifetime annuity
payment.

“(v) Eligible retirement plans.—
Payments from an eligible retirement plan
(within the meaning of section 402(c)(8))
shall not be treated as lifetime annuity
payments.

“(6) Qualified distributee.—
“(A) In general.—For purposes of sub-
section (b)(5), the term ‘qualified distributee’
means an annuitant, the surviving spouse of an
annuitant, or an alternate payee of an annu-
itant under the contract.

“(B) ALTERNATE PAYEE DEFINED.—For
purposes of this paragraph, the term ‘alternate
payee’ means any spouse or former spouse of
an annuitant under the contract who is recog-
nized by a domestic relations order as having a
right to receive all, or a portion of, the benefits
payable under the contract with respect to such
annuitant. For purposes of the preceding sen-
tence, the term ‘domestic relations order’ means
any judgment, decree, or order (including ap-
proval of a property settlement agreement) that
relates to the provision of child support, ali-
mony payments, or marital property rights to a
spouse or former spouse of an annuitant under
the contract and is made pursuant to a State
domestic relations law (including community
property law).

“(7) ANNUITY CONTRACT.—For purposes of
subsections (b)(5), (c)(5), and (x), the term ‘annuity
contract’—
“(A) means a commercial annuity within the meaning of section 3405(e)(6), other than an endowment or life insurance contract, and “(B) does not include 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.”.

(C) Recapture Tax.—Section 72 of such Code is amended by redesignating subsection (x) as subsection (y) and inserting after subsection (w) the following new subsection:

“(x) Recapture Tax.—“(1) In General.—If—

“(A) an amount is not includible in gross income by reason of subsection (b)(5) (relating to lifetime annuity payments), and

“(B) the series of payments of which such payment is a part is subsequently modified (other than by reason 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 subsection (b)(5)) 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.

“(2) DEFERRAL PERIOD.—For purposes of this subparagraph, the term ‘deferral period’ means the period beginning with the taxable year in which (without regard to subsection (b)(5)) the payment would have been includible in gross income and ending with the taxable year in which the modification described in paragraph (1) occurs.”.

(2) LIFE INSURANCE DEATH BENEFITS.—

(A) IN GENERAL.—Section 101(d) of such Code (relating to life insurance proceeds) 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 shall not include 10 percent of the amount otherwise includible in gross income (determined without regard to this paragraph).
“(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 section 72(x) shall apply, substituting the term ‘beneficiary of the life insurance contract’ for the term ‘annuitant’ wherever it appears, and substituting the term ‘life insurance contract’ for the term ‘annuity contract’ wherever it appears.”.

(B) CONFORMING AMENDMENT.—Section 101(d)(1) of such Code is amended by adding “or paragraph (4) of this subsection” following “to the extent not excluded by the preceding sentence”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2005.

SEC. 209. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.

(a) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

“(13) Nondiscrimination requirements for automatic contribution trusts.—
“(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement constitutes an automatic contribution trust.

“(B) AUTOMATIC CONTRIBUTION TRUST.—

“(i) For purposes of this paragraph, the term ‘automatic contribution trust’ means an arrangement—

“(I) under which each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to the applicable percentage of compensation until the employee affirmatively elects not to have such contributions made or affirmatively elects to make elective contributions at a specified level, and

“(II) which meets the other requirements of this paragraph.

Subclause (I) of this clause shall not apply to any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before
the first date on which the arrangement is an automatic contribution trust. The election treated as having been made under subclause (I) shall cease to apply to compensation paid after the effective date of the affirmative election by the employee.

“(ii) For purposes of this subparagraph, with respect to an employee, the term ‘applicable percentage’ means the percentage determined under the arrangement that is—

“(I) at least 3 percent as of the first date that the election described in clause (i)(I) is in effect with respect to the employee,

“(II) at least 4 percent by a date that is not later than the first day of the second plan year beginning after the date described in subclause (I),

“(III) at least 5 percent by a date that is not later than the first day of the third plan year beginning after the date described in subclause (I),
“(IV) at least 6 percent by a date that is no later than the first day of the fourth plan year beginning after the date described in subclause (I),

“(V) at least 7 percent by a date that is not later than the first day of the fifth plan year beginning after the date described in subclause (I),

“(VI) at least 8 percent by a date that is no later than the first day of the sixth plan year beginning after the date described in subclause (I), and

“(VII) applied uniformly with respect to similarly situated employees.

“(C) PARTICIPATION.—

“(i) Except as provided in clause (ii), an arrangement meets the requirements of this subparagraph for any year if, during the plan year or the preceding plan year, elective contributions are made on behalf of at least 70 percent of the employees eligible to participate in the arrangement other than—
“(I) highly compensated employees, and

“(II) employees who were eligible to participate in the arrangement (or a predecessor arrangement) immediately before the first date on which the arrangement is an automatic contribution trust.

“(ii) An arrangement (other than a successor arrangement) shall be treated as meeting the requirements of this subparagraph with respect to the first plan year in which the arrangement is effective.

“(D) MATCHING OR NONELECTIVE CONTRIBUTIONS.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement, the employer—

“(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective con-
tributions do not exceed 6 percent of compensation, or

“(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee’s compensation.

The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of subclause (I). The rules of clause (ii) of paragraph (12)(E) shall apply for purposes of subclauses (I) and (II).

“(ii) OTHER PLANS.—An arrangement shall be treated as meeting the requirements under clause (i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.
“(E) VESTING.—The requirements of this subparagraph are met if an employee who has completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions taken into account in determining whether the requirements of subparagraph (D) are met.

“(F) NOTICE REQUIREMENTS.—

“(i) IN GENERAL.—The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

“(ii) REASONABLE PERIOD TO MAKE ELECTION.—The requirements of this clause are met if each employee to whom subparagraph (B)(i) applies—

“(I) receives a notice explaining the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf and how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and
“(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make either such election.

“(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee’s rights and obligations under the arrangement. The requirements of clauses (i) and (ii) of paragraph (12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.”.

(b) MATCHING CONTRIBUTIONS.—Section 401(m) of such Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

“(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION TRUSTS.—

“(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the require-
ments of paragraph (2) with respect to matching contributions if the plan—

“(i) meets the contribution requirements of subparagraphs (B)(i) and (D) of subsection (k)(13),

“(ii) meets the participation requirements of subsection (k)(13)(C),

“(iii) meets the vesting and notice requirements of subparagraphs (E) and (F) of subsection (k)(13), and

“(iv) meets the requirements of paragraph (11)(B).

“(B) MATCHING CONTRIBUTIONS.—An annuity contract under section 403(b) shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if such contract meets requirements similar to the requirements under subparagraph (A).”.

(e) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—

(1) ELECTIVE CONTRIBUTION RULE.—Clause (i) of section 416(g)(4)(H) of such Code is amended by inserting “or 401(k)(13)” after “section 401(k)(12)”.
(2) MATCHING CONTRIBUTION RULE.—Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting “or 401(m)(12)” after “section 401(m)(11)”.

(d) DEFINITION OF COMPENSATION.—

(1) BASE PAY OR RATE OF PAY.—The Secretary of the Treasury shall, by no later than December 31, 2006, modify Treasury Regulation section 1.414(s)–1(d)(3) to facilitate the use of the safe harbors in sections 401(k)(12), 401(k)(13), 401(m)(11), and 401(m)(12) of the Internal Revenue Code of 1986, and in Treasury Regulation section 1.401(a)(4)–3(b) by plans that use base pay or rate of pay in determining contributions or benefits. Such facilitation shall include increased flexibility in satisfying section 414(s) of such Code in situations where the amount of overtime compensation payable in a year can vary significantly.

(2) APPLICATION OF REQUIREMENTS TO SEPARATE PAYROLL PERIODS.—Not later than December 31, 2005, the Secretary of the Treasury shall issue rules under subparagraphs (B)(i) and (D)(i) of section 401(k)(13) of such Code and under clause (i) of section 401(m)(12)(A) of such Code that, effective for plan years beginning after December 31,
2005, permit such requirements to be applied separately to separate payroll periods based on rules similar to the rules described in Treasury Regulation sections 1.401(k)–3(e)(5)(ii) and 1.401(m)–3(d)(4).

(e) SECTION 403(b) CONTRACTS.—Paragraph (11) of section 401(m) of such Code is amended by adding at the end the following:

“(C) SECTION 403(b) CONTRACTS.—An annuity contract under section 403(b) shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if such contract meets requirements similar to the requirements under subparagraph (A).”.

(f) INVESTMENTS AND PREEMPTION.—

(1) CONTROL DEEMED TO HAVE BEEN EXERCISED WITH RESPECT TO AMOUNT OF AUTOMATIC CONTRIBUTIONS.—Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) (as amended by this Act) is amended by adding at the end the following new paragraphs:

“(5)(A) A participant in an individual account plan shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account with respect
to the amount of contributions made under an automatic
contribution arrangement.

“(B) For purposes this paragraph, the term ‘automatic contribution arrangement’ means an arrangement—

“(i) which meets the requirements of subparagraph (C),

“(ii) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

“(iii) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a specified percentage of compensation provided under the plan until the participant affirmatively elects not to have such contributions made (or affirmatively elects to have such contributions made at a different percentage), and

“(iv) under which contributions described in clause (iii) are invested in accordance with regulations prescribed by the Secretary, which regulations shall provide for the investment of the contributions in one or more diversified funds that include investments that provide long-term capital appreciation and investments that provide preservation of capital.
“(C)(i) The administrator of an individual account plan shall, within a reasonable period before each plan year, give to each employee to whom an automatic contribution arrangement applies for such plan year notice of the employee’s rights and obligations under the arrangement which—

“(I) is sufficiently accurate and comprehensive to apprise the employee of such rights and obligations, and

“(II) is written in a manner calculated to be understood by the average employee to whom the arrangement applies.

“(ii) A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless—

“(I) the notice includes a notice explaining the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf (or to elect to have such contributions made at a different percentage),

“(II) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and
“(III) the employee has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

“(6)(A) A participant in an individual account plan shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account with respect to contributions described in subparagraph (B).

“(B) Contributions are described in this subparagraph (B) if—

“(i) such contributions are not described in paragraph (5),

“(ii) the administrator of the plan satisfies rules similar to the rules of paragraph (5)(C) (except that the notice shall relate to the employee’s right to make a different investment election), and

“(iii) such contributions are invested pursuant to the regulations under paragraph (5)(B)(iv).”.

(2) PREEMPTION OF CONFLICTING STATE REGULATION.—Section 514(b) of such Act (29 U.S.C. 1144(b)) is amended—

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:
“(9) Notwithstanding any other provision of this section, any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement (as defined in section 404(c)(5)(B)) shall be superseded. The Secretary may prescribe regulations which would establish minimum standards that such arrangements would be required to satisfy in order for this paragraph to apply.”.

(g) CORRECTIVE DISTRIBUTIONS.—

(1) IN GENERAL.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

“(bb) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

“(1) IN GENERAL.—For purposes of this title, the amount of any corrective distribution from a plan shall be treated as if such amount had never been held in such plan and shall be treated as a payment of compensation from the employer maintaining the plan to the employee receiving such distribution.

“(2) CORRECTIVE DISTRIBUTION.—For purposes of this subsection, the term ‘corrective distribution’ means a distribution from an applicable
employer plan of all amounts attributable to an erroneous automatic contribution.

“(3) ERRONEOUS AUTOMATIC CONTRIBUTION.—For purposes of this subsection, the term ‘erroneous automatic contribution’ means an elective contribution made on behalf of an employee under any applicable employer plan pursuant to a plan provision treating the employee as having elected to have the employer make such elective contribution until the employee affirmatively elects not to have such contribution made or affirmatively elects to make contributions at a specified level, if the following requirements are satisfied—

“(A) within the applicable period, the employee notifies the plan administrator that the employee elects to have the elective contribution treated as an erroneous automatic contribution, and

“(B) the sum of the elective contributions that are treated as erroneous automatic contributions with respect to an employee does not exceed $500.

“(4) APPLICABLE EMPLOYER PLAN.—For purposes of this subsection, the term ‘applicable employer plan’ has the meaning described in subsection
(v)(6)(A) except that the term shall not include an eligible deferred compensation plan maintained by an eligible employer described in section 457(e)(1)(B).

“(5) APPLICABLE PERIOD.—For purposes of this subsection, with respect to an employee, the term ‘applicable period’ means the three month period that begins on the first date that an amount is withheld from compensation payable to the employee in order to make a plan contribution pursuant to a plan provision described in paragraph (3).”.

(2) VESTING CONFORMING AMENDMENTS.—

(A) Internal Revenue Code of 1986.—

(i) Section 411(a)(3)(G) of such Code is amended by inserting “an erroneous automatic contribution under section 414(bb),” after “402(g)(2)(A),”.

(ii) The heading of section 411(a)(3)(G) of such Code is amended by inserting “OR ERRONEOUS AUTOMATIC CONTRIBUTION” before the period.

(iii) Section 401(k)(8)(E) of such Code is amended by inserting “an erroneous automatic contribution under section 414(bb),” after “402(g)(2)(A),”.
The heading of section 401(k)(8)(E) of such Code is amended by inserting “OR ERRONEOUS AUTOMATIC CONTRIBUTION” before the period.


(h) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) SECTION 403(b) CONTRACTS.—The amendments made by subsection (e) shall apply to years beginning after December 31, 1998.

(3) REGULATIONS.—Final regulations under section 404(c)(5)(B)(iv) of the Employee Retirement Income Security Act of 1974 (added by this section) shall be issued no later than 6 months after the date of enactment of this Act.
SEC. 210. FACILITATING LONGEVITY INSURANCE.

(a) In General.—Paragraph (9) of section 401(a) of the Internal Revenue Code of 1986, as amended by this Act, is amended by inserting after subparagraph (H) the following new subparagraph:

“(I) 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)(II) of section 402(c)(7)(D), except
as otherwise provided in subclause
(III),

“(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 com-
pounded annually at 3 percent.

“(iii) ADJUSTING AGE.—For purposes
of clause (ii)(I), the Secretary shall annu-
ally increase age 85 to reflect increases in
life expectancy (as determined by the Sec-
retary) that occur on or after January 1,
2006, 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 par-
ticipant’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)(I) of such Code.

(c) EFFECTIVE DATE.—The amendments made by
this section shall apply to years beginning after December
31, 2006.

SEC. 211. DIRECT PAYMENT OF TAX REFUNDS TO INDI-
VIDUAL RETIREMENT PLANS.

(a) IN GENERAL.—Paragraph (3) of section 219(f)
of the Internal Revenue Code of 1986 is amended to read
as follows:

“(3) TIME WHEN CONTRIBUTIONS MADE.—

“(A) IN GENERAL.—Except as provided in
subparagraph (B), for purposes of this sub-
section, a taxpayer shall be deemed to have
made a contribution to an individual retirement
plan on the last day of the preceding taxable
year if the contribution is made on account of
such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

“(B) DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.—

“(i) IN GENERAL.—To the extent provided in rules prescribed by the Secretary, a tax refund owed to a taxpayer and paid directly to an individual retirement plan shall be deemed a contribution made by the taxpayer—

“(I) on the last day of the taxable year to which such refund relates, and

“(II) on account of the taxable year to which such refund relates.

“(ii) LIMITATION.—This subparagraph (B) shall not apply to a tax refund unless such refund is shown on a return filed not later than the time prescribed by law for filing the return for the taxable year to which such refund relates (not including extensions thereof).
“(iii) **DIRECT PAYMENT.**—For purposes of this subparagraph, a tax refund is paid directly to an individual retirement plan if it is paid in the form of a direct transfer from the Secretary to the trustee or issuer of the individual retirement plan.

“(iv) **TAX REFUND.**—For purposes of this subparagraph, the term ‘tax refund’ means a refund of an internal revenue tax or credit.”.

(b) **REGULATIONS.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall issue rules which permit a taxpayer—

(A) to elect to have all or any portion of a tax refund owed to the taxpayer paid directly to an RSA, or, if the Secretary determines that such direct payments are reasonably administrable, to individual retirement plans which are not RSAs,

(B) to specify the individual retirement plan to which such tax refund is to be paid (and the investment option in which such tax refund is to be invested), and
(C) to the extent provided in rules prescribed by the Secretary, to specify the taxable year on account of which such payment is made, except that the Secretary may require that the amount subject to such an election exceed a dollar threshold determined by the Secretary as necessary or appropriate to ensure the administrability of such elections.

(2) INFORMATION.—The Secretary may require that the taxpayer provide, and agree to the disclosure of, any information necessary to pay the tax refund to the individual retirement plan specified by the taxpayer.

(3) SPECIAL RULE.—The Secretary may provide that if, for any reason, the trustee or issuer does not accept payment of a tax refund, the tax refund shall instead be paid as if the taxpayer had not elected a direct payment to an individual retirement plan.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (3) of section 408(o) of the Internal Revenue Code of 1986 is amended by striking “rule” and inserting “rules”.

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(2) Paragraph (7) of section 408A(c) of such Code is amended by striking “rule” and inserting “rules”.

(d) Effective Date.—The amendments made by this section shall be effective for tax returns filed after final rules implementing the amendments made by this section are prescribed.

SEC. 212. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) In General.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

“(4) No Constructive Receipt.—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 a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated 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 information regarding the employer’s qualified employer plan.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting “132(m)(4),” after “132(f)(4),”.

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

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

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 213. REPEAL OF COMBINED PLAN DEDUCTION LIMIT.

(a) IN GENERAL.—Paragraph (7) of section 404(a) of the Internal Revenue Code of 1986 (relating to limitations on deductions where combination of defined contribution plan and defined benefit plan) is amended by adding at the end the following:

“(D) EXEMPTION.—This paragraph shall not apply to contributions by any employer if such employer or any member of such employer’s controlled group (within the meaning of section 412(l)(8)(C)) maintains a defined ben-
efit plan that is covered by title IV of the Employee Retirement Income Security Act of 1974.”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions for taxable years beginning after December 31, 2005.

TITLE III—EXPANDING SMALL BUSINESS RETIREMENT PLAN COVERAGE AND MAKING THE ELECTIVE DEFERRAL RULES SIMPLER AND MORE UNIFORM

SEC. 301. ALLOW ADDITIONAL NONELECTIVE CONTRIBUTIONS TO SIMPLE PLANS.

(a) IN GENERAL.—

(1) MODIFICATION TO DEFINITION.—Subparagraph (A) of section 408(p)(2) of the Internal Revenue Code of 1986 (defining qualified salary reduction arrangement) is amended by striking “and” at the end of clause (iii), by redesignating clause (iv) as clause (v), and by inserting after clause (iii) the following new clause:

“(iv) the employer may make nonelective contributions of a uniform percentage (up to 10 percent) of compensation for
each employee who is eligible to participate
in the arrangement and who has at least
$5,000 of compensation from the employer
for the year, and”.

(2) LIMITATION.—Subparagraph (A) of section
408(p)(2) of such Code (defining qualified salary re-
duction arrangement) is amended by adding at the
end the following: “The compensation taken into ac-
count under clause (iv) for any year shall not exceed
the limitation in effect for such year under section
401(a)(17).”.

(b) CONFORMING AMENDMENTS.—

(1) Section 408(p)(2)(A)(v) of such Code, as re-
designated by subsection (a), is amended by striking
“or (iii)” and inserting “, (iii), or (iv)”.

(2) Paragraph (8) of section 408(p) of such
Code is amended by inserting “, the employer con-
tribution actually made under paragraph (2)(A)(iv)
of this subsection,” after “paragraph (2)(A)(ii) of
this subsection”.

(3) Section 401(k)(11)(B)(i) of such Code is
amended by striking “and” at the end of subclause
(II), by redesignating subclause (III) as subclause
(IV), and by inserting after subclause (II) the fol-
lowing new subclause:
“(III) the employer may make nonelective contributions of a uniform percentage (up to 10 percent) of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year, and”

(4) Section 401(k)(11)(B)(i)(IV) of such Code, as redesignated by paragraph (2), is amended by striking “or (II)” and inserting “, (II), or (III)”.

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

SEC. 302. CONFORM MATCHING CONTRIBUTION RULES FOR SIMPLE IRAS AND SIMPLE 401(k)S.

(a) IN GENERAL.—Subclause (II) of section 401(k)(11)(B)(i) of the Internal Revenue Code of 1986 (relating to general rule for contribution requirements) is amended by striking “3 percent” and inserting “the applicable percentage (as defined in section 408(p)(2)(C)(ii))”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2005.
SEC. 303. UNIFORM CATCH-UP CONTRIBUTION RULE.

(a) In General.—Clause (iii) of section 414(v)(6)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

“(iii) an eligible deferred compensation plan (as defined in section 457(b)), and”.

(b) Conforming Amendment.—Paragraph (18) of section 457(e) of such Code is amended by striking “and who is a participant in an eligible deferred compensation plan of an employer described in paragraph (1)(A)”.

(c) Effective Date.—The amendments made by this section shall apply to years beginning after December 31, 2005.

SEC. 304. UNIFORM DEFINITION OF COMPENSATION.

(a) Compensation.—

(1) In General.—Subparagraph (A) of section 415(c)(3) of the Internal Revenue Code of 1986 is amended to read as follows:

“(A) In General.—The term ‘participant’s compensation’ means wages (as defined by section 3401(a)) and all other payments of compensation to an employee by his employer (in the course of the employer’s trade or business) for the year for which the employer is required to furnish the employee a written state-
ment under section 6041(d), 6051(a)(3), or 6052. In accordance with rules prescribed by the Secretary, compensation shall be determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.”.

(2) Certain picked up contributions.—Subparagraph (D) of section 415(c)(3) of such Code is amended by striking “and” at the end of clause (i), redesignating clause (ii) as clause (iii), and inserting after clause (i) the following:

“(ii) any employee contributions that are picked up under section 414(h)(2), and”.

(3) Five-year rule.—Subparagraph (E) of section 415(c)(3) of such Code is amended to read as follows:

“(E) Five-year rule.—In the case of an annuity contract described in section 403(b), at the election of the employer maintaining the arrangement, the term ‘participant’s compensation’ shall not be determined for the year but shall be determined for the most recent period (ending not later than the close of the year)
which constitutes a year of service and which
precedes the year by no more than five years.
For purposes of the preceding sentence, under
rules prescribed by the Secretary, a year of
service shall be a full year of full-time service
as an employee (or a combination of more than
one year of part-year or part-time service).”.

(4) APPLICABILITY.—Paragraph (3) of section
415(e) of such Code is amended by striking “For
purposes of paragraph (1)—” and inserting “For
purposes of this section—”.

(b) 403(b) PLANS.—

(1) IN GENERAL.—Subsection (b) of section
403 of such Code is amended by striking paragraphs
(3) and (4).

(2) CONFORMING AMENDMENTS.—

(A) Clauses (i) and (ii) of section
414(e)(5)(B) of such Code are amended to read
as follows:

“(i) the minister’s compensation
under section 415(c)(3) shall be deter-
mined by reference to the minister’s earned
income (within the meaning of section
401(c)(2)) from such ministry rather than
the amount of compensation which is received from an employer, and

“(ii) the years (and portions of years) in which such minister was a self-employed individual (within the meaning of section 401(c)(1)(B)) with respect to such ministry shall be included for purposes of section 415(c)(3)(E).”.

(B) Paragraph (7) of section 414(u) of such Code is amended by striking “403(b)(3), 415(c)(3),” and inserting “415(c)(3)”.

(C) Subparagraph (C) of section 415(c)(7) of such Code is amended by striking “includible compensation determined under section 403(b)(3)” and inserting “compensation determined under section 415(c)(3)”.

(c) SIMPLIFIED EMPLOYEE PENSIONS.—Subparagraph (A) of section 402(h)(2) of such Code is amended to read as follows:

“(A) 25 percent of the compensation (within the meaning of section 415(c)(3), except that for purposes of this subsection, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3)) from such employer for the year, or”.

"
(d) SIMPLE PLANS.—Subparagraph (A) of section 408(p)(6) of such Code is amended to read as follows:

“(A) COMPENSATION.—The term ‘compensation’ has the same meaning as the term ‘participant’s compensation’ (as defined in section 415(c)(3)), except that for purposes of this subsection, amounts described in section 6051(a)(3) shall be determined without regard to section 3401(a)(3).”.

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

SEC. 305. UNIFORM WITHDRAWAL RULES.

(a) IN GENERAL.—Section 414 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(w) DISTRIBUTABLE EVENT.—For purposes of this part—

“(1) IN GENERAL.—The term ‘distributable event’ means with respect to a participant—

“(A) attainment of age 59½,

“(B) death,

“(C) disability (within the meaning of section 72(m)(7)),

“(D) severance from employment,
“(E) hardship, or
“(F) termination of the plan without the establishment or maintenance of a successor plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

“(2) SPECIAL RULES.—
“(A) Subparagraphs (A) and (E) of paragraph (1) shall not apply to a defined contribution plan to which section 412 applies.
“(B) Paragraph (1)(E) shall only apply to amounts described in clauses (i) or (ii) of section 415(c)(3)(D) (without regard to earnings attributable to such amounts).
“(C) Paragraph (1)(F) shall not apply to a plan described in subsection (v)(6)(A)(ii) unless the employer maintaining such plan elects to maintain the plan pursuant to a plan document. Under rules prescribed by the Secretary, a plan described in subsection (v)(6)(A)(ii) may be treated as terminated without regard to whether all assets of the plan are distributed.
“(D)(i) Paragraph (1)(F) shall not apply to an employee unless the employee receives a lump sum distribution by reason of the termination.
“(ii) For purposes of this subparagraph, the determination of whether a distribution is a lump sum distribution shall be made under section 402(e)(4)(D) (without regard to subclauses (I), (II), (III), and (IV) of clause (i) thereof) or, in the case of plans not described in such section, under similar rules. Such term includes a distribution that consists in whole or in part of an annuity contract.”.

(b) 401(k) Plans.—

(1) Clause (i) of section 401(k)(2)(B) of such Code is amended to read as follows:

“(i) may not be distributable to participants or other beneficiaries earlier than the occurrence of a distributable event, and”.

(2) Section 401(k) of such Code is amended by striking paragraph (10).

(3) The last sentence of subparagraph (C) of section 401(k)(7) of such Code is amended to read as follows: “For purposes of this section, the term ‘hardship distribution’ means a distribution described in section 414(w)(1)(E) (taking section 414(w)(2)(B) into account but without regard to section 414(w)(2)(A)).
(c) 403(b) Plans.—

(1) Clause (ii) of section 403(b)(7)(A) of such Code is amended to read as follows:

“(ii) under the custodial account, no such amounts may be paid or made available to any distributee before the occurrence of a distributable event.”.

(2) Paragraph (11) of section 403(b) of such Code is amended by striking “may be paid only” and all that follows and inserting “may be paid only upon the occurrence of a distributable event.”.

(d) Eligible Deferred Compensation Plans.—

(1) Subparagraph (A) of section 457(d)(1) of such Code is amended to read as follows:

“(A) under the plan amounts will not be made available to participants or beneficiaries earlier than the occurrence of a distributable event,”.

(2) Paragraph (1) of section 457(a) of such Code is amended to read as follows:

“(1) In General.—Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such com-
pensation or other income is paid to the participant or other beneficiary.”.

(3) Subsection (d) of section 457 of such Code is amended by striking paragraph (3).

(4) Paragraph (9) of section 457(e) of such Code is amended to read as follows:

“(9) SMALL BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS.—
For purposes of subsection (d)(1)(A), the total amount payable to a participant under an eligible deferred compensation plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant’s consent) if—

“(A) the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D)) does not exceed the dollar limit under section 411(a)(11)(A), and

“(B) such amount may be distributed only if—

“(i) no amount has been deferred under the plan with respect to such partici-
pant during the 2-year period ending on
the date of the distribution, and
“(ii) there has been no prior distribu-
tion under the plan to such participant to
which this subparagraph applied.”.

(e) HARDSHIP DEFINITION.—

(1) IN GENERAL.—Within 180 days after the
date of enactment of this Act, the Secretary of the
Treasury shall issue rules under which, except as
provided in paragraph (2), the determination of
whether a participant has had a hardship for pur-
poses of section 414(w)(1)(E) of the Internal Rev-
ene Code of 1986 shall be made pursuant to Treas-
ury Regulation section 1.401(k)–1(d)(3), as such
section is amended from time to time by the Sec-
retary.

(2) BENEFICIARIES.—Within 180 days after
the date of enactment of this Act, the Secretary of
the Treasury shall modify the rules for determining
whether a participant has had a hardship for pur-
poses of section 414(w)(1)(E) of such Code. Pursu-
ant to such modification, any event, such as a med-
ic expense, that would constitute a hardship if it
occurred with respect to a participant’s spouse or
dependent (as defined in section 152 of such Code)
shall, to the extent permitted under a plan, constitute a hardship if it occurs with respect to a person who is a beneficiary with respect to the participant under the plan.

(f) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 2005.

(2) SPECIAL RULE.—In the case of amounts attributable to contributions to an eligible deferred compensation plan (as defined in section 457(b) of the Internal Revenue Code of 1986) made before the first day of the first year beginning after December 31, 2005, withdrawals of such amounts from such a plan may be permitted upon unforeseeable emergency (as defined under section 457(d)(1)(A)(iii) of such Code, as in effect on the day before the enactment of this Act).

SEC. 306. ALLOW LEVEL DOLLAR CONTRIBUTIONS TO SEPS.

(a) IN GENERAL.—Subparagraph (C) of section 408(k)(3) of the Internal Revenue Code of 1986 (relating to contributions must bear uniform relationship to total compensation) is amended by inserting before the period at the end the following: “or unless such contributions are
a uniform dollar amount on behalf of each such em-
ployee.”.

(b) EFFECTIVE DATE.—The amendment made by
this section shall apply to years beginning after December
31, 2005.

SEC. 307. TAX TREATMENT OF CERTAIN NONTRADE OR
BUSINESS SEP CONTRIBUTIONS.

(a) IN GENERAL.—Subparagraph (B) of section
4972(e)(6) of the Internal Revenue Code of 1986 (relating
to exceptions) is amended—

(1) by striking “408(p) or” and inserting
“408(p),”, and

(2) by inserting after “401(k)(11))” the fol-
lowing: “, or a simplified employee pension (within
the meaning of section 408(k))”.

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

SEC. 308. UNIFORM AVAILABILITY OF DESIGNATED RSA
CONTRIBUTIONS.

(a) IN GENERAL.—Paragraph (1) of section 402A(e)
of the Internal Revenue Code of 1986 is amended by strik-
ing “and” at the end of subparagraph (A), by striking
the period at the end of subparagraph (B) and inserting
“(C) an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A), and
“(D) an annuity plan described in section 403(a).”.

(b) **Effective Date.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2005.

**SEC. 309. ALLOW CERTAIN PLAN TRANSFERS AND Mergers.**

(a) **Amendment to the Internal Revenue Code of 1986.**—

(1) **In general.**—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

“(x) **Certain Plan Transfers and Mergers.**—
“(1) **In general.**—Under rules prescribed by the Secretary, no amount shall be includible in gross income by reason of—
“(A) a transfer of all or a portion of the account balance of a participant or beneficiary, whether or not vested, from a defined contribu-
tion plan described in section 401(a) or section
403(a) of an employer to an annuity contract
described in section 403(b) of the same em-
ployer,

“(B) a transfer of all or a portion of the
account balance of a participant or beneficiary,
whether or not vested, from an annuity contract
described in section 403(b) of an employer to a
defined contribution plan described in section
401(a) or section 403(a) of the same employer,
or

“(C) a merger of a defined contribution
plan described in section 401(a) or section
403(a) of an employer with an annuity contract
described in section 403(b) of the same em-
ployer,
so long as the transfer or merger does not cause a
reduction in the vested benefit or total benefit (in-
cluding non-vested benefit) of any participant or
beneficiary. A plan or contract shall not fail to be
considered to be described in sections 401(a),
403(a), or 403(b) (as applicable) merely because
such plan or contract engages in a transfer or merg-
er described in this paragraph.
“(2) DISTRIBUTIONS.—Amounts transferred or merged pursuant to paragraph (1) shall be subject to the requirements of paragraphs (3) and (4) and to the distribution requirements under sections 401(a), 403(a), or 403(b) applicable to the transferee or merged plan.

“(3) SPOUSAL CONSENT AND ANTI-CUTBACK PROTECTION.—In the case of a transfer or merger described in paragraph (1), amounts in the transferee or merged plan that are attributable to the transferor or predecessor plan shall—

“(A)(i) be subject to section 401(a)(11) or section 205 of the Employee Retirement Income Security Act of 1974 to the extent that such sections applied to such amounts in the transferor or predecessor plan, or

“(ii) be required to satisfy the requirements of section 401(a)(11)(B)(iii)(I) or section 205(b)(1)(C)(i) of the Employee Retirement Income Security Act of 1974 to the extent that such sections applied to such amounts in the transferor or predecessor plan, and

“(B) be treated as subject to section 411(d)(6) and section 204(g) of the Employee Retirement Income Security Act of 1974 to the
extent that such amounts were subject to such sections in the transferor or predecessor plan.

“(4) SPECIAL RULES.—Under rules prescribed by the Secretary, to the extent amounts transferred or merged pursuant to paragraph (1) were otherwise entitled to grandfather treatment under the transferor or predecessor plan, such amounts (and income or loss attributable thereto) shall remain entitled to such treatment under the transferee or merged plan. The rules prescribed by the Secretary shall require that such amounts be separately accounted for by the transferee or merged plan. For purposes of this paragraph, ‘grandfather treatment’ shall mean special treatment under the Internal Revenue Code of 1986 that is provided for prior benefits, prior periods of time, or certain individuals in connection with a change in the applicable law.

“(5) CONSENT.—In the case of a qualified trust described in section 401(a) or 403(a) and an annuity contract described in section 403(b) with respect to which transfers may be made only with the consent of a participant or beneficiary pursuant to the terms of such trust or contract or pursuant to applicable law, such consent requirement shall apply without regard to this subsection. Nothing in this
subsection shall affect the application of contract or
plan terms otherwise applicable in the case of a
withdrawal from the contract or plan.”.

(2) Aggregation.—Paragraph (2) of section
414(t) of such Code is amended by inserting
“414(x),” after “274(j),”.

(b) Amendment to the Employee Retirement
Income Security Act of 1974.—Section 4 of the Em-
ployee Retirement Income Security Act of 1974 (29
U.S.C. 1003) is amended by adding at the end the fol-
lowing new subsection:

“(d) This title shall apply to any plan or contract de-
scribed in section 414(x) of the Internal Revenue Code
of 1986 to the extent necessary to comply with the re-
quirements of such section.”.

(e) Effective Date.—

(1) In general.—The amendments made by
this section shall apply to transfers or mergers in
years beginning after the Secretary of the Treasury
prescribes rules under section 414(x) of the Internal

(2) Rules.—The Secretary of the Treasury
shall issue rules under section 414(x) of the Internal
Code of 1986 within 1 year after the date of enact-
ment of this Act.
TITLE IV—EXPANDING RETIEMENT SAVINGS FOR TAX-EXEMPT ORGANIZATION AND GOVERNMENT EMPLOYEES

SEC. 401. WAIVER OF 10 PERCENT EARLY WITHDRAWAL PENALTY TAX ON CERTAIN DISTRIBUTIONS OF PENSION PLANS FOR PUBLIC SAFETY EMPLOYEES.

(a) IN GENERAL.—Subsection (t) of section 72 of the Internal Revenue Code of 1986 (relating to subsection not to apply to certain distributions) is amended by adding at the end the following new paragraph:

“(10) DISTRIBUTIONS TO QUALIFIED PUBLIC SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

“(A) IN GENERAL.—In the case of a distribution to a qualified public safety employee from a governmental plan (within the meaning of section 414(d)) which is a defined benefit plan, paragraph (2)(A)(v) shall be applied by substituting ‘age 50’ for ‘age 55’.

“(B) QUALIFIED PUBLIC SAFETY EMPLOYEE.—For purposes of this paragraph, the term ‘qualified public safety employee’ means any employee of a State or political subdivision of a State who provides police protection, fire-
fighting services, or emergency medical services for any area within the jurisdiction of such State or political subdivision.”.

(b) Effective Date.—The amendment made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 402. CLARIFICATIONS REGARDING PURCHASE OF PERMISSIVE SERVICE CREDIT.

(a) In General.—Subparagraph (A) of section 457(e)(17) of the Internal Revenue Code of 1986 (relating to trustee-to-trustee transfers to purchase permissive service credit), and subparagraph (A) of section 403(b)(13) of such Code (relating to trustee-to-trustee transfers to purchase permissive service credit), are both amended by striking “section 415(n)(3)(A)” and inserting “section 415(n)(3) (without regard to subparagraphs (B) and (C) thereof)”.

(b) Distribution Requirements.—Section 457(e)(17) and section 403(b)(13) of such Code are both amended by adding at the end the following sentence: “Amounts transferred under this paragraph shall be distributed solely in accordance with section 401(a) as applicable to such defined benefit plan.”.

(c) Service Credit.—Clause (ii) of section 415(n)(3)(A) of such Code is amended to read as follows:
“(ii) which relates to benefits with respect to which such participant is not otherwise entitled, and”.

(d) **Effective Date.**—The amendments made by this section shall take effect as if included in the amendments made by section 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SEC. 403. **ELIGIBILITY FOR PARTICIPATION IN RETIREMENT PLANS.**

An individual shall not be precluded from participating in an eligible deferred compensation plan by reason of having received a distribution under section 457(e)(9) of the Internal Revenue Code of 1986, as in effect prior to the enactment of the Small Business Job Protection Act of 1996.

SEC. 404. **CLARIFICATION OF MINIMUM DISTRIBUTION RULES.**

The Secretary of the Treasury shall issue regulations under which a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) shall, for all years to which section 401(a)(9) of such Code applies to such plan, be treated as having complied with such section 401(a)(9) if such plan complies with a reasonable good faith interpretation of such section 401(a)(9).
SEC. 405. CHURCH PLAN RULE.

(a) In General.—Paragraph (11) of section 415(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following: “Subparagraph (B) of paragraph (1) shall not apply to a plan maintained by an organization described in section 3121(w)(3) except with respect to highly compensated benefits. For purposes of this paragraph, the term ‘highly compensated benefits’ means any benefits accrued for an employee in any year on or after the first year in which such employee is a highly compensated employee (as defined in section 414(q)) of the organization described in section 3121(w)(3). For purposes of applying paragraph (1)(B) to highly compensated benefits, all benefits of the employee otherwise taken into account (without regard to this paragraph) shall be taken into account.”.

(b) Effective Date.—The amendments made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 406. CLARIFICATION OF TREATMENT OF INDIAN TRIBAL GOVERNMENTS.

(a) Definition of Governmental Plan.—

(1) Amendment to Internal Revenue Code of 1986.—Section 414(d) of the Internal Revenue Code of 1986 (definition of governmental plan) is amended by adding at the end thereof the following
new sentence: “The term ‘governmental plan’ also
includes a plan established or maintained for its em-
ployees by an Indian tribal government (as defined
in section 7701(a)(40)), a subdivision of an Indian
tribal government (determined in accordance with
section 7871(d)), an agency or instrumentality of an
Indian tribal government or a subdivision thereof, or
an entity established under tribal, Federal, or State
law which is wholly owned or controlled by any of
the foregoing.”.

(2) AMENDMENT TO EMPLOYEE RETIREMENT
INCOME SECURITY ACT OF 1974.—Section 3(32) of
the Employee Retirement Income Security Act of
1974 (29 U.S.C. 1002(32)) is amended by adding at
the end the following new sentence: “The term ‘gov-
ernmental plan’ also includes a plan established or
maintained for its employees by an Indian tribal
government (as defined in section 7701(a)(40) of the
Internal Revenue Code of 1986), a subdivision of an
Indian tribal government (determined in accordance
with section 7871(d) of such Code), an agency or in-
strumentality of an Indian tribal government or sub-
division thereof, or an entity established under trib-
al, Federal, or State law which is wholly owned or
controlled by any of the foregoing.”.
(b) Clarification of Treatment of Indian Tribal Governments.—

(1) Amendments to Internal Revenue Code of 1986.—

(A) Police and Firefighters.—Subparagraph (H) of section 415(b)(2) of the Internal Revenue Code of 1986 (defining participant) is amended—

(i) in clause (i) by striking “State or political subdivision” and inserting “State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision”, and

(ii) in clause (ii)(I) by striking “State or political subdivision” both places it appears and inserting “State, Indian tribal government (as so defined), or any political subdivision”.

(B) State and Local Government Plans.—

(i) In General.—Subparagraph (A) of section 415(b)(10) of such Code (relating to limitation to equal accrued benefit) is amended—
(I) by inserting ‘‘, Indian tribal government (as defined in section 7701(a)(40)),’’ after ‘‘State’’, (II) by inserting ‘‘any’’ before ‘‘political subdivision’’, and (III) by inserting ‘‘any of’’ before ‘‘the foregoing’’. (ii) CONFORMING AMENDMENT.—The heading for paragraph (10) of section 415(b) of such Code is amended to read as follows: ‘‘(10) SPECIAL RULE FOR STATE, INDIAN TRIBAL, AND LOCAL GOVERNMENT PLANS.—’’. (C) GOVERNMENT PICK UP CONTRIBUTIONS.—Paragraph (2) of section 414(h) of such Code (relating to designation by units of government) is amended by striking ‘‘State or political subdivision’’ and inserting ‘‘State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision’’. 

(D) DISTRIBUTIONS TO PUBLIC SAFETY EMPLOYEES.—Subparagraph (B) of section 72(t)(10) of such Code, as added by this Act, is amended—
(i) by striking “State or political sub-
division of a State” and inserting “State,
Indian tribal government (as defined in
section 7701(a)(4)), or political subdivision
thereof”, and

(ii) by striking “such State or political
subdivision” and inserting “such State, In-
dian tribal government (as defined in sec-
tion 7701(a)(4)), or political subdivision
thereof”.

(2) Amendments to Employee Retirement
Income Security Act of 1974.—Section 4021(b) of
the Employee Retirement Income Security Act of
1974 (29 U.S.C. 1321(b)) is amended—

(A) in paragraph (12), by striking “or” at
the end;

(B) in paragraph (13), by striking “plan.”
and inserting “plan; or”; and

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

“(14) established and maintained for its em-
ployees by an Indian tribal government (as defined
in section 7701(a)(40) of the Internal Revenue Code
of 1986), a subdivision of an Indian tribal govern-
ment (determined in accordance with section
7871(d) of such Code), an agency or instrumentality of an Indian tribal government or subdivision thereof, or an entity established under tribal, Federal, or State law which is wholly owned or controlled by any of the foregoing.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning before, on, or after the date of the enactment of this Act.

SEC. 407. DEFERRAL AGREEMENTS.

(a) IN GENERAL.—Paragraph (4) of section 457(b) of the Internal Revenue Code of 1986 is amended by adding the following after “month”: “or, in the case of a plan of an eligible employer described in subsection (e)(1)(A), before the date on which the compensation is currently available”.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2005.

SEC. 408. PLANS MAINTAINED BY STATE OR LOCAL GOVERNMENTS.

(a) IN GENERAL.—Subparagraph (F) of section 415(b)(2) of the Internal Revenue Code of 1986 is amended to read as follows:

“(F) PLANS MAINTAINED BY STATE OR LOCAL GOVERNMENTS.—
“(i) IN GENERAL.—In the case of a governmental plan (within the meaning of section 414(d)) maintained by a State of local government or political subdivision thereof (or agency or instrumentality thereof), subparagraph (C) shall be applied as if the following sentence were added at the end: ‘The reduction under this subparagraph shall not reduce the limitation of paragraph (l)(A) below (i) $130,000 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the equivalent of the $130,000 limitation at age 55.’

(b) COST-OF-LIVING ADJUSTMENTS.—

(1) PLANS MAINTAINED BY STATE OR LOCAL GOVERNMENTS.—Paragraph (1) of section 415(d) of such Code is amended by striking “and” at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

“(C) the $130,000 amount in subsection (b)(2)(F), and’’.

(2) BASE PERIOD.—Paragraph (3) of section 415(d) of such Code is amended by redesignating
subsection (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

“(D) $130,000 AMOUNT.—The base period taken into account for purposes of paragraph (l)(C) is the calendar quarter beginning July 1, 2005.”.

(3) Rounding rule relating to defined benefit plans.—Subparagraph (B) of section 415(d)(4) of such Code is amended to read as follows:

“(B) $130,000 AND $40,000 AMOUNTS.—Any increase under subparagraph (C) or (D) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.”.

(4) Conforming amendment.—Subparagraph (E) of section 415(d)(3) of such Code (as amended by paragraph (2)) is amended by striking “paragraph (l)(C)” and inserting “paragraph (l)(D)”.

(c) Effective date.—The amendments made by this section shall apply to years beginning after December 31, 2005.
SEC. 409. CLARIFICATION OF TREATMENT OF SECTION 403(b) PROGRAMS.

(a) ADMINISTRATION.—The Secretary of the Treasury shall not issue any rules which would impose materially greater burdens and responsibilities on employers with respect to the administration of a program described in section 403(b) of the Internal Revenue Code of 1986 than are imposed as of the date of enactment of this Act.

(b) TRANSFERS.—Under rules prescribed by the Secretary of the Treasury, participants shall be permitted to directly transfer all or part of their interest in a section 403(b) annuity contract or custodial account to another section 403(b) annuity contract or custodial account without violating the prohibitions against in-service withdrawals in sections 403(b)(7) and 403(b)(11) of such Code. These rules shall be consistent with the principles of Revenue Ruling 90–24.

(c) PROPOSED REGULATIONS.—The Secretary of the Treasury shall not finalize proposed regulations published on November 15, 2004, unless such regulations reflect the requirements of this section.

(d) EFFECTIVE DATE.—The provisions of this section shall take effect on the date of enactment of this Act.
TITLE V—SIMPLIFICATION AND EQUITY

SEC. 501. UPDATING AND SIMPLIFYING THE MINIMUM DISTRIBUTION RULES.

(a) Required Distributions.—

(1) Increase in age for required beginning date.—Clauses (i) and (ii) of section 401(a)(9)(C) of the Internal Revenue Code of 1986 (relating to required beginning date) are amended by striking “age 70½” each place it appears and inserting “the applicable age”.

(2) Mandatory distribution age.—Paragraph (9) of section 401(a) of such Code (relating to required distributions) is amended by inserting at the end the following new subparagraph:

“(H) Applicable age.—

“(i) In general.—For purposes of this paragraph, the applicable age shall be 70½, adjusted pursuant to clause (ii).

“(ii) Adjustment.—The Secretary shall increase the applicable age annually in a manner proportional to increases in life expectancy (as determined by the Secretary) that occur on or after January 1, 2005, except that no adjustment shall be made until the applicable age
as adjusted would equal or exceed age 72. Any applicable age which is not a whole number shall be rounded to the next lower whole number.”.

(3) Spouse beneficiaries.—Subclause (I) of section 401(a)(9)(B)(iv) of such Code (relating to special rule for surviving spouse of employee) is amended by striking “age 70½” and inserting “the applicable age”.

(4) Actuarial adjustment of benefit under defined benefit plan.—Clause (iii) of section 401(a)(9)(C) of such Code (relating to actuarial adjustment) is amended to read as follows:

“(iii) Actuarial adjustment.—

“(I) In general.—In the case of a defined benefit plan, an employee’s accrued benefit shall be actuarially increased to take into account the period after the applicable date during which the employee was not receiving any benefits under the plan.

“(II) Applicable date.—For purposes of clause (I), the term ‘applicable date’ means April 1 of the calendar year following the calendar year
in which the employee attains age 70½.”.

(b) Reduction in Excise Tax.—Subsection (a) of section 4974 of such Code (relating to excise tax on certain accumulations in qualified retirement plans) is amended by striking “50 percent” and inserting “25 percent”.

(c) Simplification for Individuals.—

(1) In General.—Section 408(a) of such Code is amended by redesignating subsection (r) as subsection (s) and by inserting after subsection (q) the following subsection—

“(r) Minimum Distribution Exemption for Small Accounts.—

“(1) In General.—Subsections (a)(6) and (b)(3) shall not apply to the individual retirement accounts and individual retirement annuities of an individual described in paragraph (2).

“(2) Individuals Affected.—

“(A) In General.—An individual is described in this paragraph for a taxable year if, as of the last day of the preceding taxable year, the individual’s vested interest in all affected retirement plans has a combined value that does not exceed $100,000.
“(B) LIFE ANNUITY RULE.—For purposes of subparagraph (A), an individual’s vested interest in an affected retirement plan shall not be taken into account to the extent that such interest has been used to purchase an annuity contract under which payments described in section 402(e)(7)(D)(i) are made.

“(3) AFFECTED RETIREMENT PLANS.—

“(A) IN GENERAL.—With respect to an individual, the term ‘affected retirement plan’ means any plan described in paragraph (3), (4), or (5) of section 4974(e), other than an RSA.

“(B) SPECIAL RULE.—A plan described in section 4974(e)(3) shall not be treated as an affected retirement plan with respect to an individual for any year prior to the first year for which a distribution would be required under section 403(b)(10) (without regard to this subsection).

“(4) LIMITATION ON TOTAL REQUIRED DISTRIBUTIONS.—Under rules prescribed by the Secretary, in the case of an individual not described in paragraph (2), the total amount required to be distributed under subsections (a)(6) and (b)(3), in combination with the total amount required to be dis-
tributed under section 403(b)(10), shall not exceed the excess of the combined value of the individual’s vested interest in all affected retirement plans over $100,000.

“(5) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $100,000 amount in paragraphs (2) and (4) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 2005.”.

(2) PARALLEL RULE FOR SECTION 403(b) PLANS.—Paragraph (10) of section 403(b) of such Code is amended by adding at the end the following: “For purposes of applying the requirements of this paragraph, rules similar to the rules of section 408(r) shall apply.”.

(3) CONFORMING AMENDMENTS.—

(A) Paragraph (6) of section 408(a) of such Code is amended by striking “Under regulations” and inserting “Except as provided in subsection (r), under regulations”.

(B) Paragraph (3) of section 408(b) of such Code is amended by striking “Under regulations” and inserting “Except as provided in subsection (r), under regulations”.
(d) Effective Date.—

(1) In general.—Except as provided in paragraph (2), the amendments made by this section shall apply to years beginning after December 31, 2005.

(2) Transition.—A plan shall not be treated as failing to meet the requirements of section 401(a)(9) of the Internal Revenue Code of 1986 merely because, in years beginning after December 31, 2005, no distribution is made to an employee before the employee’s required beginning date, as determined in accordance with the amendments made by this section.


(a) Exception to Nondiscrimination Rules.—

(1) In general.—Paragraph (4) of section 414(v) of the Internal Revenue Code of 1986 (relating to application of nondiscrimination rules) is amended by redesignating subparagraph (B) as subparagraph (C) and by inserting after subparagraph (A) the following new subparagraph:

“(B) Exception.—An applicable employer plan shall not fail to satisfy the requirements of this subparagraph solely because another applicable employer plan maintained by the employer
that is qualified under Puerto Rico law does not provide for additional elective deferrals under this subsection.”.

(2) EXCEPTION TO AGGREGATION RULES.—Subparagraph (C) of section 414(v)(4) of such Code, as redesignated by paragraph (1), is amended by adding at the end the following new sentence: “In addition, employees described in section 410(b)(3) shall be excluded from consideration. For any year in which an employer complies with section 410(b) on the basis of separate lines of business pursuant to section 410(b)(5), the employer may apply subparagraph (A) for such year separately with respect to employees in each separate line of business.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in section 631(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001.

SEC. 503. TREATMENT OF UNCLAIMED BENEFITS.

(a) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) AMENDMENT TO SECTION 401(a)(34).—Section 401(a)(34) of the Internal Revenue Code of 1986 (relating to benefits of missing participants) is amended to read as follows:
“(34) UNCLAIMED BENEFITS.—A trust forming part of a plan shall not be treated as failing to constitute a qualified trust under this section merely because the plan of which such trust is a part treats unclaimed benefits in a manner that satisfies the requirements of section 414(y).”.

(2) AMENDMENT TO SECTION 414.—Section 414 of such Code (relating to definitions and special rules) (as amended by this Act) is amended by adding at the end the following new subsection:

“(y) UNCLAIMED BENEFITS.—

“(1) IN GENERAL.—A plan meets the requirements of this subsection only if—

“(A) ONGOING PLANS.—In the case of an ongoing plan, the plan provides for one or more of the following with respect to unclaimed benefits:

“(i) In the case of an unclaimed benefit to which section 401(a)(31)(B) applies, a transfer under section 401(a)(31)(B).

“(ii) A transfer to the Pension Benefit Guaranty Corporation, in accordance with section 4050(e) of the Employee Retirement Income Security Act of 1974.
“(iii) Any other treatment permitted under rules prescribed by the Secretary.

“(B) TERMINATED PLANS.—In the case of a terminated plan, the plan provides for the following with respect to unclaimed benefits:

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

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

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

“(III) The purchase of an annuity contract to provide for an individual’s unclaimed benefit.

“(IV) A transfer to the Pension Benefit Guaranty Corporation in accordance with section 4050(a) or 4050(e) (as applicable) of the Employee Retirement Income Security Act of 1974.
“(V) Any other treatment permitted under rules prescribed by the Secretary.

“(ii) DEFINED CONTRIBUTION PLANS.—In the case of a defined contribution plan, one or more of the following:

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

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

“(III) The purchase of an annuity contract to provide for an individual’s unclaimed benefit.

“(IV) A transfer to the Pension Benefit Guaranty Corporation in accordance with section 4050(d) or 4050(e) (as applicable) of the Employee Retirement Income Security Act of 1974.

“(V) Any other treatment permitted under rules prescribed by the Secretary.
“(2) TREATMENT OF TRANSFERS TO PENSION BENEFIT GUARANTY CORPORATION.—

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

“(B) DISTRIBUTIONS FROM PBGC.—Except as provided in rules prescried by the Secretary, amounts distributed by the Pension Benefit Guaranty Corporation shall be treated as distributed by an individual retirement plan under section 408(d) (without regard to paragraphs (4), (5) and (7) thereof). Rules similar to the rules of section 402(c)(4) shall apply.

“(3) DEFINITIONS.—For purposes of this subsection—

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

“(i) any benefit of a participant or beneficiary which is distributable under the terms of the plan to the participant or beneficiary, if the distribution of the benefit has not commenced within 1 year after the later of the date on which the benefit first
became so distributable or the participant’s
severance from employment;

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

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

A benefit otherwise described in clause (i) shall not be treated as an unclaimed benefit under clause (i) if the participant or beneficiary elects not to have such treatment apply. Any such participant or beneficiary shall be given reason-
able notice of the opportunity to make such an election. If the participant or beneficiary fails to make such an election within a reasonable pe-
riod specified in the notice, any subsequent elec-
tion shall not be given effect and the benefit shall be treated as an unclaimed benefit. A no-
tice mailed to the last known address of the participant or beneficiary shall be treated as a
notice to the participant or beneficiary for purposes of this paragraph.

“(B) ONGOING PLAN.—The term ‘ongoing plan’ means any plan which has neither terminated nor is in the process of terminating.

“(C) TERMINATED PLAN.—The term ‘terminated plan’ means any plan which has terminated or is in the process of terminating.

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

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

“(iii) OTHER PERMITTED TRANSFERS.—A plan administrator shall be treated as having complied with the requirements of this subparagraph if such plan administrator complies with the requirements of section 414(y).”.

(b) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—
(1) IN GENERAL.—Subsection (b) of section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by adding at the end the following paragraph:

“(3) UNCLAIMED BENEFIT.—The term ‘unclaimed benefit’ means—

“(A) any benefit of a participant or beneficiary which is distributable under the terms of the plan to the participant or beneficiary, if the distribution of the benefit has not commenced within 1 year after the later of the date on which the benefit first became so distributable or the participant’s severance from employment;

“(B) any benefit or other amount of a participant or beneficiary which is distributable under the terms of the plan with respect to a missing participant; or

“(C) any benefit to which section 401(a)(31)(B) of the Internal Revenue Code of 1986 applies or would apply if subclause (I) of section 401(a)(31)(B)(i) of such Code did not require the distribution to exceed $1,000.

A benefit otherwise described in subparagraph (A) shall not be treated as an unclaimed benefit under subparagraph (A) if the participant or beneficiary
elects not to have such treatment apply. Any such
participant or beneficiary shall be given reasonable
notice of the opportunity to make such an election.
If the participant or beneficiary fails to make such
an election within a reasonable period specified in
the notice, any subsequent election shall not be given
effect and the benefit shall be treated as an un-
claimed benefit. A notice mailed to the last known
address of the participant or beneficiary shall be
treated as a notice to the participant or beneficiary
for purposes of this paragraph.”

(2) OTHER AMENDMENTS.—Section 4050 of
such Act is amended by redesignating subsection (c)
as subsection (f) and by inserting after subsection
(b) the following new subsections:

“(c) MULTIEMPLOYER PLANS.—The corporation
shall prescribe rules similar to the rules in subsection (a)
for multiemployer plans covered by this title that termi-
nate under section 4041A.

“(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

“(1) TRANSFER TO CORPORATION.—The plan
administrator of a plan described in paragraph (4)
may elect to transfer a missing participant’s benefits
to the corporation upon termination of the plan.
“(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to the benefits of a missing participant if the plan transfers such benefits—

“(A) to the corporation, or

“(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

“(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

“(A) in a single sum (plus interest), or

“(B) in such other form as is specified in regulations of the corporation.

“(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

“(A) the plan is a pension plan (within the meaning of section 3(2))—
“(i) to which the provisions of this section do not apply (without regard to this subsection), and

“(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and

“(B) at the time the assets are to be distributed upon termination, the plan—

“(i) has missing participants, and

“(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

“(5) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (4).

“(e) UNCLAIMED BENEFITS.—

“(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (6) may elect to transfer unclaimed benefits to the corporation.

“(2) INFORMATION TO THE CORPORATION.—The corporation may impose such conditions on transfers of unclaimed benefits to the corporation as the corporation determines are necessary to facilitate
administration of this subsection and are not incon-
sistent with the purposes of this subsection. Such
conditions may include requirements that the trans-
ferring plan provide to the corporation specified in-
formation and documentation.

“(3) PAYMENT TO THE CORPORATION.—With
respect to any participant, any transfer of an un-
claimed benefit to the corporation shall—

“(A) in the case of a defined benefit plan,
be a transfer of the participant’s designated
benefit, or

“(B) in the case of an individual account
plan, be a transfer of the participant’s vested
account balance under the plan.

“(4) PAYMENT BY THE CORPORATION.—Subject
to such reasonable restrictions as may be prescribed
in regulations of the corporation (relating to invest-
ment limitations and otherwise)—

“(A) unclaimed benefits of a participant or
beneficiary which are transferred to the cor-
poration pursuant to this subsection shall be
distributed by the corporation to the participant
or beneficiary not later than upon application
filed by the participant or beneficiary with the
corporation in such form and manner as may
be prescribed in regulations of the corporation,

and

“(B) such benefits shall—

“(i) in the case of an individual account plan, be paid in a single sum (plus interest) or in such other form as is specified in regulations of the corporation, or

“(ii) in the case of a defined benefit plan, be paid—

“(I) in an amount based on the designated benefit and the assumptions prescribed by the corporation at the time that the corporation received the benefit, and

“(II) in a form determined under regulations of the corporation.

“(5) NOTICE.—Any transfer of unclaimed benefits of a participant or beneficiary to the corporation pursuant to this subsection may occur only after reasonable advance notice of such transfer is provided by the plan administrator to the participant or beneficiary. The plan administrator shall also provide to the participant or beneficiary notice of any such transfer not later than 30 days after the date of the transfer. Notice mailed to the last known ad-
dress of the participant or beneficiary shall be treated as a notice to the participant or beneficiary for purposes of this paragraph. Any such notice shall include information regarding procedures for obtaining the distribution of benefits from the corporation in accordance with paragraph (4).

“(6) PLANS DESCRIBED.—A plan is described in this paragraph if the plan is a pension plan (within the meaning of section 3(2)—

“(A)(i) which has neither terminated nor is in the process of terminating, or

“(ii) in the case of an unclaimed benefit to which section 401(a)(31)(B) of the Internal Revenue Code of 1986 applies (other than an unclaimed benefit of a missing participant), which has terminated or is in the process of terminating, and

“(B) which is not a plan described in paragraphs (2) through (11) of section 4021(b).

“(7) CERTAIN PROVISIONS NOT TO APPLY.—Subsections (a)(1) and (a)(3) shall not apply to a plan described in paragraph (6).”.

(3) CONFORMING AMENDMENT.—Section 4021(b) of such Act (29 U.S.C. 1321(b)(1)) is amended by striking “This” and inserting “Except
to the extent provided in subsections (d) and (e) of section 4050, this’’.

(c) Escheat Laws Superseded.—Section 514(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144 (b) (as amended by this Act) is further amended—

(1) by redesignating paragraph (10) as paragraph (11), and

(2) by inserting after paragraph (9) the following new paragraph:

“(10) Any escheat or similar law of any State shall be superseded to the extent inconsistent with any transfer or other treatment of unclaimed benefits (as defined in section 4050(b)(3)) permitted under the Internal Revenue Code of 1986.”.

(d) Effective Dates and Related Rules.—

(1) In General.—The amendments made by subsections (a) and (b) shall apply to years beginning after December 31, 2006.

(2) Regulations.—The Pension Benefit Guaranty Corporation shall issue regulations necessary to carry out the amendments made by subsection (b) not later than December 31, 2006.
(3) Escheat laws superseeded.—The amendment made by subsection (e) shall apply as of the date of enactment of this Act.

SEC. 504. ALLOW DIRECT ROLLOVERS FROM RETIREMENT PLANS TO RSA.

(a) In General.—Subsection (e) of section 408A of the Internal Revenue Code of 1986 (defining qualified rollover contribution) is amended to read as follows:

“(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term ‘qualified rollover contribution’ means a rollover contribution—

“(1) to an RSA from another such account,

“(2) from an eligible retirement plan, but only if—

“(A) in the case of an individual retirement plan, such rollover contribution meets the requirements of section 408(d)(3), and

“(B) in the case of any eligible retirement plan (as defined in section 402(c)(8)(B) other than clauses (i) and (ii) thereof), such rollover contribution meets the requirements of section 402(c), 403(b)(8), or 457(e)(16), as applicable.

For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than an RSA) to an RSA.”.
(b) CONFORMING AMENDMENTS.—Section 408A(d)(3) of such Code is amended—

(1) in subparagraph (A) by striking “section 408(d)(3)” inserting “sections 402(c), 403(b)(8), 408(d)(3), and 457(e)(16)”,

(2) in subparagraph (B) by striking “individual retirement plan” and inserting “eligible retirement plan (as defined by section 402(c)(8)(B))”,

(3) in subparagraph (D) by striking “or 6047” after “408(i)”,

(4) in subparagraph (D) by striking “or both” and inserting “persons subject to section 6047(d)(1), or all of the foregoing persons”, and

(5) in the heading by striking “IRA” and inserting “ELIGIBLE RETIREMENT PLAN”.

c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2005.

SEC. 505. REFORM EXCISE TAX ON EXCESS CONTRIBUTIONS.

(a) EXPANSION OF CORRECTIVE DISTRIBUTION PERIOD.—Subsection (f) of section 4979 of the Internal Revenue Code of 1986 is amended—

(1) in paragraph (1) by striking “2 1⁄2 months” and inserting “6 months”, and
(2) in the heading by striking “2½ MONTHS” and inserting “6 MONTHS”.

(b) YEAR OF INCLUSION.—Paragraph (2) of section 4979(f) of such Code is amended to read as follows:

“(2) YEAR OF INCLUSION.—Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made.”.

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

SEC. 506. INTERMEDIATE SANCTIONS FOR INADVERTENT FAILURES.

(a) IN GENERAL.—Section 401(a) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by inserting after paragraph (35) the following:

“(36) PROTECTION FROM DISQUALIFICATION UPON TIMELY CORRECTION OR PAYMENT OF FINE.—A trust shall not fail to constitute a qualified trust under this section if the plan of which such trust is a part has made good faith efforts to meet the requirements of this section, has inadvertently failed to satisfy 1 or more of such requirements, and either—
“(A) substantially corrects (to the extent possible) such failure before the date the plan becomes subject to a plan examination for the applicable year (as determined under rules prescribed by the Secretary), or

“(B) substantially corrects (to the extent possible) such failure on or after such date.

If the plan satisfies the requirement under subparagraph (B), the Secretary may require the sponsoring employer to make a payment to the Secretary in an amount that does not exceed an amount that bears a reasonable relationship to the severity of the plan’s failure to satisfy the requirements of this section.”.

(b) Application to Cash or Deferred Arrangements.—Section 401(k) of such Code is amended by inserting after paragraph (13) the following new paragraph:

“(14) Protection from Disqualification.—

Rules similar to the rules set forth in section 401(a)(36) shall apply for purposes of determining whether a cash or deferred arrangement is a qualified cash or deferred arrangement.”.

(c) Application to Section 403(b) Annuity Contracts.—Section 403(b) of such Code is amended by inserting after paragraph (12) the following:
“(13) CORRECTION OF ERRORS.—For purposes of determining whether the exclusion from gross income under paragraph (1) is applicable to an employee for any taxable year, rules similar to the rules set forth in section 401(a)(36) shall apply to any annuity contract purchased under this subsection or any plan established to meet the requirements of this subsection.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 507. CLARIFICATION OF SUBSTANTIALLY EQUAL PERIODIC PAYMENT RULE.

(a) IN GENERAL.—Paragraph (4) of section 72(t) of the Internal Revenue Code of 1986 (relating to change in substantially equal payments) is amended by inserting at the end the following new subparagraphs:

“(C) ROLLOVERS TO SUBSEQUENT PLAN.—If—

“(i) payments satisfying paragraph (2)(A)(iv) are being made from a qualified retirement plan,

“(ii) a transfer or a rollover from the qualified retirement plan is made to another qualified retirement plan of all or a
portion of the taxpayer’s benefit under the
transferor plan, and
“(iii) distributions from the transferor
and transferee plans would in combination
continue to satisfy paragraph (2)(A)(iv) if
made only from the transferor plan,
such transfer or rollover shall not be treated as
a modification under subparagraph (A)(ii) and
compliance with paragraph (2)(A)(iv) shall be
determined on the basis of the combined dis-
tributions described in clause (iii).
“(D) INTEREST RATE.—Any reasonable in-
terest rate may be used in determining whether
payments are substantially equal under para-
graph (2)(A)(iv).”.
(b) EFFECTIVE DATES.—
(1) ROLLOVERS.—Section 72(t)(4)(C) of the
Internal Revenue Code of 1986, as added by sub-
section (a), shall apply to transfers and rollovers
after the date of enactment of this Act.
(2) INTEREST RATE.—Section 72(t)(4)(D) of
such Code, as so added, shall apply to series of pay-
ments commencing on or after the date of enactment
of this Act.
SEC. 508. CLARIFICATION OF TREATMENT OF DISTRIBUTIONS OF ANNUITY CONTRACTS.

(a) In General.—Clause (i) of section 402(e)(4)(D) of the Internal Revenue Code of 1986 is amended by adding after “section 401(c)(1).” the following: “A distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this clause may be treated as a part of a lump sum distribution.”.

(b) Effective Date.—The amendment made by this section shall take effect as if included in section 1401(b)(1) of the Small Business Job Protection Act of 1996.

SEC. 509. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO EXCESSIVE EMPLOYEE REMUNERATION PAID BY CORPORATION AFTER DECLARATION OF BANKRUPTCY.

(a) In General.—Section 4999 of the Internal Revenue Code of 1986 (relating to golden parachute payments) is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

“(c) Tax on Excessive Employee Remuneration in the Case of Bankruptcy.—

“(1) In General.—There is hereby imposed a tax on any person who is a covered employee equal to 50 percent of any payment of excessive employee
remuneration from a corporation which becomes a
debtor in a title 11 or similar case (as defined in
section 368(a)(3)(A) of this title, but not including
a case under chapter 12 of title 11, United States
Code). The tax imposed under subsection (a) shall
not apply to the extent that a tax is imposed under
this subsection.

“(2) SPECIAL RULES RELATING TO EXCESSIVE
EMPLOYEE REMUNERATION.—For purposes of this
subsection—

“(A) EXCESS EMPLOYEE REMUNERATION
DEFINED.—The term ‘excess employee remu-
neration’ means remuneration paid directly or
indirectly to a covered employee during the
bankruptcy period—

“(i) for which a deduction is not al-

owed under chapter 1 by reason of the ap-

lication of section 162(m) or would not be

allowed if section 162(m) applied to the

covered employee at the time of payment,
or

“(ii) in the case of remuneration to a
covered employee of a corporation that is
not a publicly held corporation described in
section 162(m)(2), that exceeds
$1,000,000, other than remuneration that meets requirements similar to the standards for performance-based compensation under section 162(m)(4)(C).

“(B) Such term shall not include—

“(i) remuneration that, on the date immediately prior to the beginning of the bankruptcy period, was payable to the covered employee under a binding obligation and not subject to a substantial risk of forfeiture,

“(ii) remuneration attributable to contributions to or benefits from an excess retirement plan to the extent that such plan is maintained solely for the purpose of providing benefits to employees in excess of the limitations imposed by 1 or more of sections 401(a)(17), 401(k), 401(m), and 415,

“(iii) contributions to or benefits from a qualified employer plan (as defined in section 132(m)), or

“(iv) any payment that is avoided or approved by a bankruptcy trustee.
“(C) Bankruptcy period.—The term ‘bankruptcy period’ means any time during the period beginning 2 years before the date on which the corporation becomes a debtor described in paragraph (1) and ending on the date such corporation ceases to be such a debtor.

“(D) Covered employee.—The term ‘covered employee’—

“(i) has the meaning given such term by section 162(m)(3), except that such term shall include an individual who is not a covered employee under section 162(m)(3) for the taxable year in which such remuneration is paid but who previously was a covered employee within the meaning of section 162(m)(3) during the bankruptcy period, and

“(ii) with respect to an employee of a corporation that is not subject to section 162(m), includes any employee of such corporation who would be subject to the requirement described in section 162(m)(3)(B) (as modified by this paragraph) if such corporation were a publicly
held corporation (as defined in section 162(m)(2)).

“(E) 100 PERCENT TAX FOR GROSS UP PAYMENTS.—Subsection (b) shall be applied by substituting ‘100 percent’ for ‘50 percent’ to the extent that any payment is made during the bankruptcy period that is contingent upon a tax being imposed under this section.

“(E) CHANGE IN OWNERSHIP CONTINGENCY NOT TO APPLY.—Subsection (b) shall be applied without regard to clause (i) of section 280G(b)(2)(A).”.

(b) EFFECTIVE DATE.—The amendment made this section shall apply to payments received after the date of the enactment of this Act with respect to any title 11 or similar case (as defined in section 4999(e) of the Internal Revenue Code of 1986) commenced after such date.

SEC. 510. DIFFERENTIAL PAY.

(a) INCOME TAX WITHHOLDING.—Section 3401 of the Internal Revenue Code of 1986 (relating to definitions) is amended by adding at the end the following new subsection:

“(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE DUTY MEMBERS OF THE UNIFORMED SERVICES.—
“(1) IN GENERAL.—For purposes of subsection (a), any differential wage payment shall be treated as a payment of wages by an employer to an employee.

“(2) DIFFERENTIAL WAGE PAYMENTS.—For purposes of paragraph (1), the term ‘differential wage payment’ means any payment which—

“(A) is made by an employer to an individual with respect to any period during which the individual is performing service in the uniformed services while on active duty for a period of more than 30 days, and

“(B) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.”.

(b) RETIREMENT PLANS.—

(1) IN GENERAL.—Section 414(u) of the Internal Revenue Code of 1986 (relating to special rules relating to veterans’ reemployment rights under USERRA) is amended by adding at the end the following new paragraph:

“(11) TREATMENT OF DIFFERENTIAL WAGE PAYMENTS.—
“(A) IN GENERAL.—Except as provided in this paragraph, for purposes of applying this title to a plan to which this subsection applies—

“(i) an individual receiving a differential wage payment shall be treated as an employee of the employer making the payment,

“(ii) the differential wage payment shall be treated as compensation, and

“(iii) the plan shall not be treated as failing to meet the requirements of any provision described in paragraph (1)(C) by reason of the treatment described in clauses (i) and (ii).

“(B) SPECIAL RULE FOR DISTRIBUTIONS.—

“(i) IN GENERAL.—Notwithstanding subparagraph (A)(i), for purposes of subsection (w)(1)(D), an individual shall be treated as having been severed from employment during any period the individual is performing service in the uniformed services described in section 3401(i)(2)(A).
“(ii) LIMITATION.—If an individual elects to receive a distribution by reason of clause (i), the plan shall provide that the individual may not make an elective deferral or employee contribution during the 6-month period beginning on the date of the distribution.

“(C) NONDISCRIMINATION REQUIREMENT.—Subparagraph (A)(iii) shall apply only if all employees of an employer (as determined under subsections (b), (c), (m), and (o)) performing service in the uniformed services described in section 3401(i)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a plan maintained by the employer, to have contributions made to such plan based on the payments on reasonably equivalent terms. For purposes of applying this subparagraph, the provisions of paragraphs (3), (4), and (5) of section 410(b) shall apply.

“(D) DIFFERENTIAL WAGE PAYMENT.—For purposes of this paragraph, the term ‘differential wage payment’ has the meaning given such term by section 3401(i)(2).”
(2) CONFORMING AMENDMENT.—The heading for section 414(u) of such Code is amended by inserting “and to Differential Wage Payments to Members on Active Duty” after “USERRA”.

(c) DIFFERENTIAL WAGE PAYMENTS TREATED AS COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—Section 219(f)(1) of the Internal Revenue Code of 1986 (defining compensation) is amended by adding at the end the following new sentence: “The term ‘compensation’ includes any differential wage payments (as defined in section 3401(i)(2)).”.

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

SEC. 511. EXCESS BENEFIT PLANS.

(a) IN GENERAL.—Section 3(36) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(36)) is amended to read as follows:

“(36) The term ‘excess benefit plan’ means a plan, without regard to whether such plan is funded, maintained by an employer solely for the purpose of providing benefits to employees in excess of any limitation imposed by section 401(a)(17), 401(k)(3)(A)(ii), 401(m)(2), or 415 of the Internal Revenue Code of 1986. To the extent that a sepa-
rable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.”.

(b) Effective Date.—The amendment made by this section shall apply to plan years beginning after December 31, 2005.

SEC. 512. TAX TREATMENT OF EMPLOYEE CONTRIBUTIONS TO CONTRIBUTORY DEFINED BENEFIT PLANS.

(a) Amendment to the Internal Revenue Code of 1986.—Subsection (e) of section 402 of the Internal Revenue Code of 1986 (relating to other rules applicable to exempt trusts) is amended by adding at the end the following new paragraph:

“(8) Mandatory employee contributions to defined benefit plans.—

“(A) In general.—Qualified mandatory employee contributions shall not be includible in gross income for the taxable year of such contribution.

“(B) Qualified mandatory employee contributions.—For purposes of subparagraph (A), the term ‘qualified mandatory employee contributions’ means employee contribu-
tions made pursuant to the terms of a defined
benefit plan described in subparagraph (C) in
effect on January 1, 2003 (determined without
regard to any plan amendment made after such
date), which—

“(i) are mandatory contributions (as
defined in section 411(e)(2)(C)), and

“(ii) do not exceed 2 percent of com-
pensation (within the meaning of section
415(c)(3)).

“(C) Defined benefit plan de-
scribed.—For purposes of subparagraph (B),
a defined benefit plan is described in this sub-
paragraph if such plan—

“(i) requires employee contributions
as a condition of participation in such
plan,

“(ii) allows an employee to make a
one-time irrevocable election to participate
in the plan,

“(iii) does not provide for employee
contributions with respect to which a sepa-
rate account is maintained and treated as
a defined contribution plan under section
414(k), and
“(iv) is not a governmental plan (within the meaning of section 414(d)).”.

(b) WITHHOLDING.—Subsection (a) of section 3401 of such Code (defining wages) is amended by striking “or” at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting “; or”, and by inserting after paragraph (21) the following new paragraph:

“(22) for any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income as a qualified mandatory employee contribution under section 402(e)(8).”.

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions made in years beginning after December 31, 2005.

SEC. 513. PROTECTING OLDER, LONGER SERVICE PARTICIPANTS.

(a) PROTECTION OF OLDER, LONGER SERVICE PARTICIPANTS IN DEFINED BENEFIT PLANS.—

(1) Not later than one year after the date of the enactment of this Act, the Secretary of the Treasury shall amend section 1.401(a)(4)–4 of the Treasury Regulations (as in effect on the date of the
enactment of this Act) to permit a plan to provide
benefits, rights, and features to a closed class of
grandfathered participants, provided that such class
of participants satisfies the requirements of such
section as of the date that the class of participants
was closed. Such section as amended shall ensure
that participants who have been grandfathered
under a former defined benefit plan formula may
continue to receive all benefits, rights, and features
under that formula, including early retirement bene-
fits.

(2) Not later than one year after the date of
the enactment of this Act, the Secretary of the
Treasury shall amend section 1.401(a)(4)–
8(b)(1)(iii)(D) of the Treasury Regulations (as in ef-
fect on the date of the enactment of this Act) to per-
mit a defined contribution plan to provide make
whole contributions to a closed class of participants
whose defined benefit plan accruals have been re-
duced or eliminated, provided that such class of par-
ticipants satisfies section 410(b)(2)(A)(i) of the In-
ternal Revenue Code of 1986 as of the date that the
class of participants was closed.
(b) **EFFECTIVE DATE.**—This provisions of this section shall take effect on the date of the enactment of this Act.

**SEC. 514. CLARIFICATION REGARDING ELECTIVE DEFERRALS.**

(a) **IN GENERAL.**—Not later than 6 months after the date of enactment of this Act, the Secretary of the Treasury shall issue rules clarifying that employees who have had a severance from employment may make—

1. elective deferrals described in section 402(g)(3)(A), (B), or (C) of the Internal Revenue Code of 1986 (other than elective deferrals under section 401(k)(11) of such Code),
2. elective contributions under an eligible deferred compensation plan described in section 457(b) of such Code, and
3. to the extent provided by the Secretary, elective deferrals described in section 402(g)(3)(D) or 401(k)(11) of such Code.

Such rules shall only permit such contributions or deferrals with respect to payments of bona fide accumulated sick leave, accumulated vacation pay, severance, or back pay. The Secretary may apply such other conditions on such contributions or deferrals as are necessary or appropriate to carry out the purposes of this section.
(b) Treatment of Deferrals.—Except as otherwise determined by the Secretary to be necessary to carry out the purposes of this section, the rules described in subsection (a) shall provide that the contributions or deferrals shall, for purposes of section 457 of such Code and chapter D of chapter 1 of subtitle A of such Code, be treated as contributions or deferrals made on behalf of active employees, not on behalf of former employees.

(e) Effective Date.—The provisions of this section shall take effect on the date of enactment of this Act.

SEC. 515. Reform of the Minimum Participation Rule.

(a) In General.—Subparagraph (I) of section 401(a)(26) of the Internal Revenue Code of 1986 (relating to additional participation requirements) is amended by adding at the end the following: “Not later than December 31, 2006, the Secretary shall issue final regulations under which this paragraph may be applied separately to bona fide separate subsidiaries or divisions.”.

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of enactment of this Act.
TITLE VI—IMPROVEMENTS IN PENSION SECURITY

SEC. 601. PERIODIC PENSION BENEFITS STATEMENTS.

(a) Amendments to the Employee Retirement Income Security Act of 1974.—

(1) Requirements.—

(A) In general.—Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025(a)) is amended to read as follows:

“(a)(1)(A) The administrator of an individual account plan shall furnish a pension benefit statement—

“(i) to each plan participant at least annually,

“(ii) to each plan beneficiary upon written request, and

“(iii) in the case of an applicable individual account plan, to each individual who is a plan participant or beneficiary and who has a right to direct investments, at least quarterly.

“(B) The administrator of a defined benefit plan shall furnish a pension benefit statement—

“(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at
the time the statement is furnished to participants, and

“(ii) to a plan participant or plan beneficiary of the plan upon written request.

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary, in consultation with the Pension Benefit Guaranty Corporation.

“(2) A pension benefit statement under paragraph (1)—

“(A) shall indicate, on the basis of the latest available information—

“(i) the total benefits accrued, and

“(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

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

“(C) may be provided in written form or in electronic or other appropriate form to the extent that such form is reasonably accessible to the recipient.

“(3)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator, at least
once each year, provides the participant with notice, at the participant’s last known address, of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

“(B) The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).”

(B) CONFORMING AMENDMENTS.—


(ii) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

“(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in clause (i) or (ii) of subsection (a)(1)(A) or clause (i)
or (ii) of subsection (a)(1)(B), whichever is applicable, in
any 12-month period. If such report is required under sub-
section (a) to be furnished at least quarterly, the require-
ments of the preceding sentence shall be applied with re-
spect to each quarter in lieu of the 12-month period.”.

(2) INFORMATION REQUIRED FROM APPLICABLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of
such Act (as amended by paragraph (1)) is amended
further by adding at the end the following new sub-
section:

“(d)(1) The statements required to be provided at
least quarterly under subsection (a)(1)(A)(iii) in the case
of applicable individual account plans shall include (to-
gether with the information required in subsection (a)) the
following:

“(A) the value of each investment to which as-
sets in the individual account have been allocated,
determined as of the most recent valuation date
under the plan, including the value of any assets
held in the form of employer securities, without re-
gard to whether such securities were contributed by
the plan sponsor or acquired at the direction of the
plan or of the participant or beneficiary,

“(B) an explanation, written in a manner cal-
culated to be understood by the average plan partici-
pant, of any limitations or restrictions on the right of the participant or beneficiary to direct an investment, and

“(C) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a discussion of the risk of holding more than 25 percent of a portfolio in the security of any one entity, such as employer securities.

“(2) The Secretary shall issue guidance and model notices which meet the requirements of this subsection.”.

(3) DEFINITION OF APPLICABLE INDIVIDUAL ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

“(42)(A) The term ‘applicable individual account plan’ means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereunder) held within such plan that are subject to subsection (k)(3) or (m)(2) of sec-
tion 401 of the Internal Revenue Code of 1986. Such term shall not include a one-participant retirement plan.

“(B) The term ‘one-participant retirement plan’ means a pension plan with respect to which the following requirements are met:

“(i) on the first day of the plan year—

“(I) the plan covered only one individual (or the individual and the individual’s spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

“(II) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

“(ii) the plan meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business;

“(iii) the plan does not provide benefits to anyone except the individual (and the individual’s spouse) or the partners (and their spouses);

“(iv) the plan does not cover a business that is a member of an affiliated service group, a controlled
group of corporations, or a group of businesses under common control; and

“(v) the plan does not cover a business that leases employees.”.

(4) Civil penalties for failure to provide quarterly benefit statements.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking “(6), or (7)” and inserting “(6), (7), or (8)”;

(B) by redesignating paragraph (8) of subsection (c) as paragraph (9); and

(C) by inserting after paragraph (7) of subsection (c) the following new paragraph:

“(8) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day for each day on which the plan administrator has failed to comply with the requirements of clause (iii) of section 105(a)(1)(A) and has not corrected such failure by providing the required pension benefit statements to the affected participants and beneficiaries.”.

(5) Model statements.—The Secretary of Labor shall, not later than 180 days after the date of the enactment of this Act, issue initial guidance and a model benefit statement, written in a manner calculated to be understood by the average plan par-
participant, that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(b) Amendments to the Internal Revenue Code of 1986.—

(1) Provision of Investment Education Notices to Participants in Certain Plans.—

Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

“(aa) Provision of Investment Education Notices to Participants in Certain Plans.—

“(1) In general.—The plan administrator of an applicable pension plan shall provide to each applicable individual an investment education notice described in paragraph (2) at the time of the enrollment of the applicable individual in the plan and not less often than annually thereafter.

“(2) Investment Education Notice.—An investment education notice is described in this paragraph if such notice contains—
“(A) an explanation, for the long-term retirement security of participants and beneficiaries, of generally accepted investment principles, including principles of risk management and diversification, and

“(B) a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities.

“(3) UNDERSTANDABILITY.—Each notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with guidance provided by the Secretary) to allow recipients to understand such notice.

“(4) FORM AND MANNER OF NOTICES.—The notices required by this subsection shall be in writing, except that such notices may be in electronic or other form (or electronically posted on the plan’s website) to the extent that such form is reasonably accessible to the applicable individual.

“(5) DEFINITIONS.—For purposes of this subsection—
“(A) APPLICABLE INDIVIDUAL.—The term ‘applicable individual’ means—

“(i) any participant in the applicable pension plan,

“(ii) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under a qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

“(iii) any beneficiary of a deceased participant or alternate payee.

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

“(i) a plan described in clause (i), (ii), or (iv) of section 219(g)(5)(A), and

“(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A),

which permits any participant to direct the investment of some or all of his account in the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant. Such term shall not include a one-partici-
pant retirement plan or a plan to which section 105 of the Employee Retirement Income Security Act of 1974 applies.

“(C) One-participant retirement plan defined.—The term ‘one-participant retirement plan’ means a retirement plan with respect to which the following requirements are met:

“(i) on the first day of the plan year—

“(I) the plan covered only one individual (or the individual and the individual’s spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

“(II) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

“(ii) the plan meets the minimum coverage requirements of 410(b) without being combined with any other plan of the business that covers the employees of the business;

“(iii) the plan does not provide benefits to anyone except the individual (and
the individual’s spouse) or the partners (and their spouses);

“(iv) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

“(v) the plan does not cover a business that leases employees.

“(6) CROSS REFERENCE.—For provisions relating to penalty for failure to provide the notice required by this section, see section 6652(m).”.

(2) PENALTY FOR FAILURE TO PROVIDE NOTICE.—Section 6652 of such Code (relating to failure to file certain information returns, registration statements, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) FAILURE TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—In the case of each failure to provide a written explanation as required by section 414(aa) with respect to an applicable individual (as defined in such section), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful
neglect, there shall be paid, on notice and demand of the
Secretary and in the same manner as tax, by the person
failing to provide such notice, an amount equal to $100
for each such failure, but the total amount imposed on
such person for all such failures during any calendar year
shall not exceed $50,000.”

SEC. 602. INAPPLICABILITY OF RELIEF FROM FIDUCIARY
LIABILITY DURING BLACKOUT PERIODS.

(a) In General.—Section 404(c) of the Employee
1104(c)) is amended by adding at the end the following
new paragraph:

“(4)(A) Paragraph (1)(B) shall not apply in connec-
tion with the direction or diversification of assets credited
to the account of any participant or beneficiary during a
blackout period if, by reason of the imposition of such
blackout period, the ability of such participant or bene-
ficiary to direct or diversify such assets is suspended, lim-
ited, or restricted.

“(B) If the fiduciary authorizing a blackout period
meets the requirements of this title in connection with au-
thorizing such blackout period, no person who is a fidu-
ciary shall be liable under this title for any loss occurring
during the blackout period as a result of any exercise by
the participant or beneficiary of control over assets in his
or her account prior to the blackout period. Matters to be considered in determining whether a fiduciary has met the requirements of this title include whether such fiduciary—

“(i) has considered the reasonableness of the expected length of the blackout period,

“(ii) has provided the notice required under section 101(i)(2), and

“(iii) has acted in accordance with the requirements of subsection (a) in determining whether to enter into the blackout period.

“(C) If a blackout period arises in connection with a change in the investment options offered under the plan, a participant or beneficiary shall be deemed to have exercised control over the assets in his or her account prior to the blackout period, if, after reasonable notice of the change in investment options is given to such participant or beneficiary before such blackout period, assets in the account of the participant or beneficiary are transferred—

“(i) to plan investment options in accordance with the affirmative election of the participant or beneficiary, or

“(ii) in any case in which there is no such election, in the manner set forth in such notice.
“(D) Any imposition of any limitation or restriction that may govern the frequency of transfers between investment vehicles shall not be treated as the imposition of a blackout period to the extent such limitation or restriction is disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.

“(E) For purposes of this paragraph, the term ‘blackout period’ has the meaning given such term by section 101(i)(7).”.

(b) GUIDANCE.—The Secretary of Labor shall, on or before December 31, 2006, issue interim final regulations providing guidance on how plan sponsors or any other affected fiduciaries can satisfy their fiduciary responsibilities during any blackout period during which the ability of a participant or beneficiary to direct the investment of assets in his or her individual account is suspended.

SEC. 603. DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.

(a) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054) is amended—
(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection:

“(j) DIVERSIFICATION REQUIREMENTS FOR INDIVIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURITIES.—

“(1) IN GENERAL.—An applicable individual account plan shall meet the requirements of paragraphs (2) and (3).

“(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual may elect to direct the plan to divest any such securities in the individual’s account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

“(3) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—

“(A) IN GENERAL.—In the case of the portion of the account attributable to employer
contributions (other than elective deferrals to which paragraph (2) applies) which is invested in employer securities, a plan meets the requirements of this paragraph if, under the plan—

“(i) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual’s account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4), or

“(ii) with respect to any employer security allocated to an applicable individual’s account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

“(B) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of subparagraph (A), an applicable individual has a benefit based on 3 years of serv-
ice if such individual would be an applicable indi-

vidual if only participants in the plan who

have completed at least 3 years of service (as
determined under section 203(b)) were referred
to in paragraph (5)(B)(i).

“(4) INVESTMENT OPTIONS.—The requirements

of this paragraph are met if—

“(A) the plan offers not less than 3 invest-

ment options, other than employer securities, to

which an applicable individual may direct the

proceeds from the divestment of employer secu-
rities pursuant to this subsection, each of which

is diversified and has materially different risk

and return characteristics, and

“(B) the plan permits the applicable indi-

vidual to choose from any of the investment op-
tions made available under the plan to which

such proceeds may be so directed, subject to

such restrictions as may be provided by the

plan limiting such choice to periodic, reasonable

opportunities occurring no less frequently than

on a quarterly basis.

“(5) DEFINITIONS AND RULES.—For purposes

of this subsection—
“(A) Applicable Individual Account Plan.—The term ‘applicable individual account plan’ means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(c)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986.

“(B) Applicable Individual.—The term ‘applicable individual’ means—

“(i) any participant in the plan, and

“(ii) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.

“(C) Elective Deferral.—The term ‘elective deferral’ means an employer contribution described in section 402(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).
“(D) Employer security.—The term ‘employer security’ shall have the meaning given such term by section 407(d)(1) of this Act (as in effect on the date of the enactment of this subsection).

“(E) Employee stock ownership plan.—The term ‘employee stock ownership plan’ shall have the same meaning given to such term by section 4975(e)(7) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).

“(F) Elections.—Elections under this subsection may be made not less frequently than quarterly.

“(6) Exception where there is no readily tradable stock.—This subsection shall not apply if there is no class of stock issued by the employer (or by a corporation which is an affiliate of the employer (as defined in section 407(d)(7))) that is readily tradable on an established securities market (or in such other circumstances as may be determined jointly by the Secretary of Labor and the Secretary of the Treasury in regulations).

“(7) Transition rule.—
“(A) In general.—In the case of any individual account plan which, on the first day of the first plan year to which this subsection applies, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this subsection, this subsection shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

“(B) Applicable percentage.—For purposes of subparagraph (A), the applicable percentage shall be as follows:

<table>
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<tr>
<th>Plan years for which provisions are effective:</th>
<th>Applicable percentage:</th>
</tr>
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<tbody>
<tr>
<td>1st plan year</td>
<td>20 percent.</td>
</tr>
<tr>
<td>2nd plan year</td>
<td>40 percent.</td>
</tr>
<tr>
<td>3rd plan year</td>
<td>60 percent.</td>
</tr>
<tr>
<td>4th plan year</td>
<td>80 percent.</td>
</tr>
<tr>
<td>5th plan year or thereafter</td>
<td>100 percent.</td>
</tr>
</tbody>
</table>

“(C) Elective deferrals treated as separate plan not individual account plan.—For purposes of subparagraph (A), the applicable percentage shall be 100 percent with respect to—

“(i) employee contributions to a plan under which any portion attributable to
elective deferrals is treated as a separate plan under section 407(b)(2) as of the date of the enactment of this paragraph, and

“(ii) such elective deferrals.

“(D) CoORDINATION WITH PRIOR ELECTIons.—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this subsection was undertaken pursuant to other applicable Federal law prior to such date, the applicable percentage (as determined without regard to this subparagraph) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

“(8) REGULATIONS.—The Secretary of the Treasury shall prescribe regulations under this subsection in consultation with the Secretary of Labor.”.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) In general.—Section 401(a) of the Internal Revenue Code of 1986 (relating to requirements
for qualification) is amended by inserting after para-
gram (34) the following new paragraph:

“(35) **DIVERSIFICATION REQUIREMENTS FOR**
**DEFINED CONTRIBUTION PLANS THAT HOLD EM-
PLOYER SECURITIES.**—

“(A) **IN GENERAL.**—An applicable defined
contribution plan shall meet the requirements
of subparagraphs (B) and (C).

“(B) **EMPLOYEE CONTRIBUTIONS AND**
**ELECTIVE DEFERRALS INVESTED IN EMPLOYER**
**SECURITIES.**—In the case of the portion of the
account attributable to employee contributions
and elective deferrals which is invested in em-
ployer securities, a plan meets the requirements
of this subparagraph if each applicable indi-
vidual in such plan may elect to direct the plan
to divest any such securities in the individual’s
account and to reinvest an equivalent amount
in other investment options which meet the re-
quirements of subparagraph (D).

“(C) **EMPLOYER CONTRIBUTIONS IN-
VESTED IN EMPLOYER SECURITIES.**—

“(i) **IN GENERAL.**—In the case of the
portion of the account attributable to em-
ployer contributions (other than elective
deferrals to which subparagraph (B) applies which is invested in employer securities, a plan meets the requirements of this subparagraph if, under the plan—

“(I) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual’s account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D), or

“(II) with respect to any employer security allocated to an applicable individual’s account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

“(ii) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERV-
ICE.—For purposes of clause (i), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 411(a)) were referred to in subparagraph (E)(ii)(I).

“(D) INVESTMENT OPTIONS.—The requirements of this subparagraph are met if—

“(i) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics, and

“(ii) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities
occurring no less frequently than on a quarterly basis.

“(E) DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) APPLICABLE DEFINED CONTRIBUTION PLAN.—The term ‘applicable defined contribution plan’ means any defined contribution plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7)) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2).

“(ii) APPLICABLE INDIVIDUAL.—The term ‘applicable individual’ means—

“(I) any participant in the plan, and

“(II) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.
“(iii) ELECTIVE DEFERRAL.—The term ‘elective deferral’ means an employer contribution described in section 402(g)(3)(A) (as in effect on the date of the enactment of this paragraph).

“(iv) EMPLOYER SECURITY.—The term ‘employer security’ shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of this paragraph).

“(v) EMPLOYEE STOCK OWNERSHIP PLAN.—The term ‘employee stock ownership plan’ shall have the same meaning given to such term by section 4975(e)(7) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph).

“(vi) ELECTIONS.—Elections under this paragraph may be made not less frequently than quarterly.

“(F) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This paragraph shall not apply if there is no class of stock
issued by the employer that is readily tradable
on an established securities market (or in such
other circumstances as may be determined
jointly by the Secretary of the Treasury and the
Secretary of Labor in regulations).

“(G) TRANSITION RULE.—

“(i) IN GENERAL.—In the case of any
defined contribution plan which, on the ef-
fective date of this subsection, holds em-
ployer securities of any class that were ac-
quired before such date and on which there
is a restriction on diversification otherwise
precluded by this paragraph, this para-
graph shall apply to such securities of such
class held in any plan year only with re-
spect to the number of such securities
equal to the applicable percentage of the
total number of such securities of such
class held on such date.

“(ii) APPLICABLE PERCENTAGE.—For
purposes of clause (i), the applicable per-
centage shall be as follows:

<p>| Plan years for which provi- | Applicable percentage: |</p>
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<th>isions are effective:</th>
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<tr>
<td>5th plan year or thereafter</td>
<td>100 percent.</td>
</tr>
</tbody>
</table>
“(iii) Elective deferrals treated as separate plan not individual account plan.—For purposes of clause (i), the applicable percentage shall be 100 per-cent with respect to—

“(I) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) of the Employee Retirement Income Security Act of 1974 as of the date of the enactment of this paragraph, and

“(II) such elective deferrals.

“(iv) Contributions held within an ESOP.—In the case of contributions (other than elective deferrals and employee contributions) held within an employee stock ownership plan, in the case of the 1st and 2nd plan years referred to in the table in clause (ii), the applicable percentage shall be the greater of the amount determined under clause (ii) or the percentage determined under paragraph (28) (deter-
mined as if paragraph (28) applied to a plan described in this paragraph).

“(v) COORDINATION WITH PRIOR ELECTIONS UNDER PARAGRAPH (28).—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this paragraph was undertaken pursuant to an election under paragraph (28) prior to such date, the applicable percentage (as determined without regard to this clause) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

“(H) REGULATIONS.—The Secretary shall prescribe regulations under this paragraph in consultation with the Secretary of Labor.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 401(a)(28) of such Code is amended by adding at the end the following new subparagraph:
“(D) APPLICATION.—This paragraph shall not apply to a plan to which paragraph (35) applies.”.

(B) Section 409(h)(7) of such Code is amended by inserting before the period at the end “or subparagraph (B) or (C) of section 401(a)(35)”.

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

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and section 604, the amendments made by this section shall apply to plan years beginning after December 31, 2005, and with respect to employer securities allocated to accounts before, on, or after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to employer securities held by an employee stock ownership plan which are acquired before January 1, 1987.

SEC. 604. EFFECTIVE DATES AND RELATED RULES.

(a) IN GENERAL.—Except as otherwise provided in the preceding provisions of this title or in subsection (c),
the amendments made by this title shall apply with respect to plan years beginning on or after the general effective date.

(b) General Effective Date.—For purposes of this section, the term “general effective date” means the date which is 1 year after the date of the enactment of this Act.

(c) Special Rule for Collectively Bargained Plans.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for “the general effective date” the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) the date which is 1 year after the general effective date, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or
(2) the date which is 2 years after the general effective date.

**TITLE VII—OTHER TAX PROVISIONS RELATING TO PENSIONS**

**SEC. 701. REPORTING SIMPLIFICATION.**

(a) **SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.**—

(1) **IN GENERAL.**—The Secretary of the Treasury and the Secretary of Labor shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

(2) **ONE-PARTICIPANT RETIREMENT PLAN DEFINED.**—For purposes of this subsection, the term “one-participant retirement plan” means a retirement plan with respect to which the following requirements are met:

(A) on the first day of the plan year—

(i) the plan covered only one individual (or the individual and the individual’s spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or
(ii) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

(B) the plan meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

(C) the plan does not provide benefits to anyone except the individual (and the individual’s spouse) or the partners (and their spouses);

(D) the plan does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

(E) the plan does not cover a business that leases employees.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(4) EFFECTIVE DATE.—The provisions of this subsection shall apply to plan years beginning on or after January 1, 2005.
(b) Simplified Annual Filing Requirement for Plans With Fewer Than 25 Employees.—In the case of plan years beginning after December 31, 2006, the Secretary of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 employees on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

SEC. 702. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program) giving special attention to—

(1) increasing the awareness and knowledge of small employers concerning the availability and use of the program;

(2) taking into account special concerns and circumstances that small employers face with respect to compliance and correction of compliance failures;

(3) extending the duration of the self-correction period under the Self-Correction Program for significant compliance failures;
(4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

The Secretary of the Treasury shall have full authority to effectuate the foregoing and to implement the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, excise, or other taxes to ensure that any tax, penalty, or sanction is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

SEC. 703. EXTENSION OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES TO ALL GOVERNMENTAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) and subparagraph (G) of section 401(a)(26) of the Internal Revenue Code of 1986 are each amended by striking “section 414(d))” and all that follows and inserting “section 414(d)).”.
(2) Subparagraph (G) of section 401(k)(3) of such Code and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 (26 U.S.C. 401 note) are each amended by striking “maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)”.

(b) Conforming Amendments.—

(1) The heading for subparagraph (G) of section 401(a)(5) of such Code is amended to read as follows: “GOVERNMENTAL PLANS.—”.

(2) The heading for subparagraph (G) of section 401(a)(26) of such Code is amended to read as follows: “EXCEPTION FOR GOVERNMENTAL PLANS.—”.

(3) Subparagraph (G) of section 401(k)(3) of such Code is amended by inserting “GOVERNMENTAL PLANS.—” after “(G)”.

(c) Effective Date.—The amendments made by this section shall apply to years beginning after December 31, 2005.

SEC. 704. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) Expansion of Period.—

(1) Amendment of internal revenue code.—
(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) of the Internal Revenue Code of 1986 is amended by striking “90-day” and inserting “180-day”.

(B) MODIFICATION OF REGULATIONS.—
The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute “180 days” for “90 days” each place it appears in Treasury Regulations sections 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-1(b).

(2) AMENDMENT OF ERISA.—

(A) IN GENERAL.—Section 205(c)(7)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended by striking “90-day” and inserting “180-day”.

(B) MODIFICATION OF REGULATIONS.—
The Secretary of the Treasury shall modify the regulations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to the extent that they relate to sections 203(e) and 205 of such Act to substitute “180 days” for “90 days” each place it appears.
(3) Effective date.—The amendments made by paragraphs (1)(A) and (2)(A) and the modifications required by paragraphs (1)(B) and (2)(B) shall apply to years beginning after December 31, 2005.

(b) Consent regulation inapplicable to certain distributions.—

(1) In general.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant’s right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) Effective date.—

(A) In general.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2005.

(B) Reasonable notice.—In the case of any description of such consequences made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor description under paragraph (1), a plan shall not be treated as failing to satisfy the
requirements of section 411(a)(11) of such Code or section 205 of such Act by reason of the failure to provide the information required by the modifications made under paragraph (1) if the Administrator of such plan makes a reasonable attempt to comply with such requirements.

SEC. 705. QUALIFIED GROUP LEGAL SERVICES PLANS.

(a) In General.—Subsection (e) of section 120 of the Internal Revenue Code of 1986 is amended to read as follows:

“(e) Application of Section.—This section and section 501(c)(20) shall apply to taxable years beginning—

“(1) after December 31, 1976, and before July 1, 1992, and

“(2) after December 31, 2005, and before January 1, 2009.”.

(b) Increase in Maximum Exclusion.—The last sentence of section 120(a) of such Code is amended by striking “$70” and inserting “$150”.

(e) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.
SEC. 706. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RETIREMENT PLANS FOR CHARITABLE PURPOSES.

(a) In General.—Subsection (d) of section 408 of the Internal Revenue Code of 1986 (relating to individual retirement accounts) is amended by adding at the end the following new paragraph:

"(8) DISTRIBUTIONS FOR CHARITABLE PURPOSES.—

"(A) In General.—No amount shall be includible in gross income by reason of a qualified charitable distribution.

"(B) Qualified charitable distribution.—For purposes of this paragraph, the term ‘qualified charitable distribution’ means any distribution from an individual retirement plan other than a plan described in subsection (k) or (p) of section 408—

"(i) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70½, and

"(ii) which is made directly by the trustee—

"(I) to an organization described in section 170(c), or
“(II) to a split-interest entity.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A) and, in the case of a distribution to a split-interest entity, only if no person holds an income interest in the amounts in the split-interest entity attributable to such distribution other than one or more of the following: the individual for whose benefit such plan is maintained, the spouse of such individual, or any organization described in section 170(c).

“(C) CONTRIBUTIONS MUST BE OTHERWISE DEDUCTIBLE.—For purposes of this paragraph—

“(i) DIRECT CONTRIBUTIONS.—A distribution to an organization described in section 170(c) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).
“(ii) Split-interest gifts.—A distribution to a split-interest entity shall be treated as a qualified charitable distribution only if a deduction for the entire value of the interest in the distribution for the use of an organization described in section 170(c) would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

“(D) Application of section 72.—Notwithstanding section 72, in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts distributed from all individual retirement plans were treated as 1 contract under paragraph (2)(A) for purposes of determining the inclusion of such distribution under section 72. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.
“(E) Special rules for split-interest entities.—

“(i) Charitable remainder trusts.—Notwithstanding section 664(b), distributions made from a trust described in subparagraph (G)(i) shall be treated as ordinary income in the hands of the beneficiary to whom is paid the annuity described in section 664(d)(1)(A) or the payment described in section 664(d)(2)(A).

“(ii) Pooled income funds.—No amount shall be includible in the gross income of a pooled income fund (as defined in subparagraph (G)(ii)) by reason of a qualified charitable distribution to such fund, and all distributions from the fund which are attributable to qualified charitable distributions shall be treated as ordinary income to the beneficiary.

“(iii) Charitable gift annuities.—Qualified charitable distributions made for a charitable gift annuity shall not be treated as an investment in the contract.
“(F) Denial of deduction.—Qualified charitable distributions shall not be taken into account in determining the deduction under section 170.

“(G) Split-interest entity defined.—For purposes of this paragraph, the term ‘split-interest entity’ means—

“(i) a charitable remainder annuity trust or a charitable remainder unitrust (as such terms are defined in section 664(d)) which must be funded exclusively by qualified charitable distributions,

“(ii) a pooled income fund (as defined in section 642(c)(5)), but only if the fund accounts separately for amounts attributable to qualified charitable distributions, and

“(iii) a charitable gift annuity (as defined in section 501(m)(5)).”.

(b) Modifications relating to information returns by certain trusts.—

(1) Returns.—Section 6034 of such Code (relating to returns by trusts described in section 4947(a)(2) or claiming charitable deductions under section 642(c)) is amended to read as follows:
SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION 4947(a)(2) OR CLAIMING CHARITABLE DEDUCTIONS UNDER SECTION 642(c).

"(a) Trusts described in section 4947(a)(2).—Every trust described in section 4947(a)(2) shall furnish such information with respect to the taxable year as the Secretary may by forms or regulations require.

"(b) Trusts claiming a charitable deduction under section 642(c).—

"(1) In general.—Every trust not required to file a return under subsection (a) but claiming a deduction under section 642(c) for the taxable year shall furnish such information with respect to such taxable year as the Secretary may by forms or regulations prescribe, including—

"(A) the amount of the deduction taken under section 642(c) within such year,

"(B) the amount paid out within such year which represents amounts for which deductions under section 642(c) have been taken in prior years,

"(C) the amount for which such deductions have been taken in prior years but which has not been paid out at the beginning of such year,
“(D) the amount paid out of principal in the current and prior years for the purposes described in section 642(c),

“(E) the total income of the trust within such year and the expenses attributable thereto, and

“(F) a balance sheet showing the assets, liabilities, and net worth of the trust as of the beginning of such year.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to a trust for any taxable year if—

“(A) all the net income for such year, determined under the applicable principles of the law of trusts, is required to be distributed currently to the beneficiaries, or

“(B) the trust is described in section 4947(a)(1).”.

(2) INCREASE IN PENALTY RELATING TO FILING OF INFORMATION RETURN BY SPLIT-INTEREST TRUSTS.—Paragraph (2) of section 6652(c) of such Code (relating to returns by exempt organizations and by certain trusts) is amended by adding at the end the following new subparagraph:

“(C) SPLIT-INTEREST TRUSTS.—In the case of a trust which is required to file a return
under section 6034(a), subparagraphs (A) and (B) of this paragraph shall not apply and paragraph (1) shall apply in the same manner as if such return were required under section 6033, except that—

“(i) the 5 percent limitation in the second sentence of paragraph (1)(A) shall not apply,

“(ii) in the case of any trust with gross income in excess of $250,000, the first sentence of paragraph (1)(A) shall be applied by substituting ‘$100’ for ‘$20’, and the second sentence thereof shall be applied by substituting ‘$50,000’ for ‘$10,000’, and

“(iii) the third sentence of paragraph (1)(A) shall be disregarded.

In addition to any penalty imposed on the trust pursuant to this subparagraph, if the person required to file such return knowingly fails to file the return, such penalty shall also be imposed on such person who shall be personally liable for such penalty.”.

(3) CONFIDENTIALITY OF NONCHARITABLE BENEFICIARIES.—Subsection (b) of section 6104 of
such Code (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: “In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).”.

(c) Effective Dates.—

(1) Subsection (a).—The amendment made by subsection (a) shall apply to distributions made after December 31, 2005.

(2) Subsection (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2005.

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) In General.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the re-
requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) Amendments to Which Section Applies.—

(1) In general.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this Act or such title VI, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2008.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting “2010” for “2008”.

(2) Conditions.—This section shall not apply to any amendment unless—

(A) during the period—
(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.