

110TH CONGRESS
2^D SESSION

H. R. 5543

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 2008

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) **SHORT TITLE.**—This Act may be cited as the
6 “Women’s Retirement Security Act of 2008”.

1 (b) AMENDMENT OF 1986 CODE.—Except as other-
 2 wise expressly provided, whenever in this Act an amend-
 3 ment or repeal is expressed in terms of an amendment
 4 to, or repeal of, a section or other provision, the reference
 5 shall be considered to be made to a section or other provi-
 6 sion of the Internal Revenue Code of 1986.

7 (c) TABLE OF CONTENTS.—The table of contents for
 8 this Act is as follows:

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

TITLE I—PROVISIONS TO INCREASE RETIREMENT SAVINGS

Subtitle A—Employee Access to Retirement Savings at Work

- Sec. 101. Employees not covered by qualified retirement plans or arrangements entitled to participate in payroll deposit IRA arrangements.
 Sec. 102. Credit for small employers maintaining payroll deposit IRA arrangements.
 Sec. 103. Establishment of automatic IRAs.
 Sec. 104. Establishment of TSP II Board.

Subtitle B—Other Provisions

- Sec. 111. Modifications to computation of saver's credit; saver's credit made refundable.
 Sec. 112. Qualified cash or deferred arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate.
 Sec. 113. Transfers of unused benefits of health flexible spending arrangement to certain retirement plans.
 Sec. 114. Computation of limits on IRA and Roth IRA contributions.

TITLE II—PROVISIONS PROVIDING FOR PRESERVATION OF INCOME

- Sec. 201. Exclusion of certain qualified annuity payments.
 Sec. 202. Exclusion for lifetime annuity payments.
 Sec. 203. Joint study of application of spousal consent rules to defined contribution plans.
 Sec. 204. Facilitating longevity insurance.

TITLE III—PROVISIONS ENSURING EQUITY IN DIVORCE

- Sec. 301. Special rules relating to treatment of qualified domestic relations orders.
 Sec. 302. Elimination of current connection requirement under Railroad Retirement Act for certain survivors.

Sec. 303. Permitting divorced spouses and widows and widowers to remarry after turning 60 without a penalty under Railroad Retirement Act.

TITLE IV—PROVISIONS TO IMPROVE FINANCIAL LITERACY

Sec. 401. Grants to community-based taxpayer clinics to provide retirement savings advice.

Sec. 402. Treatment of qualified retirement planning services.

Sec. 403. Retirement handbook and retirement readiness checklist.

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

Sec. 501. Credit for qualified pension plan contributions of small employers.

Sec. 502. Deduction for pension contributions allowed in computing net earnings from self-employment.

Sec. 503. Exemption of deferral-only qualified cash or deferred arrangements from top-heavy plan rules.

Sec. 504. Extension of time for small pension plans to adopt required plan qualification amendments.

TITLE VI—PROVISIONS RELATING TO LONG-TERM CARE INSURANCE

Sec. 601. Treatment of premiums on qualified long-term care insurance contracts.

Sec. 602. Credit for taxpayers with long-term care needs.

Sec. 603. Additional consumer protections for long-term care insurance.

Sec. 604. Treatment of exchanges of long-term care insurance contracts.

1 **TITLE I—PROVISIONS TO IN-** 2 **CREASE RETIREMENT SAV-** 3 **INGS**

4 **Subtitle A—Employee Access to** 5 **Retirement Savings at Work**

6 **SEC. 101. EMPLOYEES NOT COVERED BY QUALIFIED RE-** 7 **TIREMENT PLANS OR ARRANGEMENTS ENTI-** 8 **TLED TO PARTICIPATE IN PAYROLL DEPOSIT** 9 **IRA ARRANGEMENTS.**

10 (a) IN GENERAL.—Subpart A of part I of subchapter
11 A of chapter 1 (relating to pension, profit-sharing, stock

1 bonus plans, etc.) is amended by inserting after section
2 408A the following new section:

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

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

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

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

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

24 “(B) which meets the requirements of
25 paragraph (2).

1 “(2) ADMINISTRATIVE REQUIREMENTS.—The
2 requirements of this paragraph are met with respect
3 to any payroll deposit IRA arrangement if—

4 “(A) the employer must make the pay-
5 ments elected under paragraph (1)(A) on or be-
6 fore the later of—

7 “(i) the due date for the deposit of
8 tax required to be deducted and withheld
9 under chapter 24 (relating to collection of
10 income tax at source on wages) for the
11 payroll period to which such payments re-
12 late, or

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

16 “(B) subject to a requirement for reason-
17 able notice, an employee may elect to terminate
18 participation in the arrangement at any time
19 during a calendar year, except that if an em-
20 ployee so terminates, the arrangement may pro-
21 vide that the employee may not elect to resume
22 participation until the beginning of the next cal-
23 endar year,

24 “(C) each employee eligible to participate
25 may elect, during the 60-day period or other pe-

1 riod specified by the Secretary before the begin-
2 ning of any calendar year (and during the 60-
3 day period or other period specified by the Sec-
4 retary before the first day the employee is eligi-
5 ble to participate), to participate in the ar-
6 rangement, or to modify the employee’s election
7 under the arrangement (including the amounts
8 subject to the arrangement and the manner in
9 which such amounts are invested), for such
10 year,

11 “(D) the employer provides—

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

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

24 “(E) subject to subsection (f), the arrange-
25 ment provides that an employee may elect to

1 have contributions made to any individual re-
2 tirement plan specified by the employee, and

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

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

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

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

25 “(1) APPLICABLE EMPLOYEE.—

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

4 “(i) who was not eligible under a
5 qualified plan or arrangement maintained
6 by the employer for service for the pre-
7 ceding calendar year, and

8 “(ii) with respect to whom it is rea-
9 sonable to expect that the employee will
10 not be eligible during the calendar year
11 under such a qualified plan or arrange-
12 ment.

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

15 “(i) ELIGIBILITY.—An employee shall
16 be treated as eligible under a plan for a
17 preceding calendar year if, as of the last
18 day of the last plan year ending in the pre-
19 ceding calendar year, the employee has sat-
20 isfied the plan’s eligibility requirements.

21 “(ii) EXCLUDED PLANS.—A qualified
22 plan or arrangement shall not be taken
23 into account under this paragraph if—

1 “(I) the plan or arrangement is
2 frozen as of the first day of the pre-
3 ceding calendar year, or

4 “(II) in the case of a plan or ar-
5 rangement under which the only con-
6 tributions are discretionary on the
7 part of the sponsor, there has not
8 been an employer contribution made
9 to the plan or arrangement for the 2-
10 plan-year period ending with the last
11 plan year ending in the second pre-
12 ceding calendar year and it is not rea-
13 sonable to assume that an employer
14 contribution will be made for the plan
15 year ending in the preceding calendar
16 year.

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

20 “(A) employees described in section
21 410(b)(3),

22 “(B) employees who have not attained the
23 age of 18 before the beginning of the calendar
24 year,

1 “(C) employees who have not completed at
2 least 3 months of service with the employer,

3 “(D) in the case of an employer that main-
4 tains a qualified plan or arrangement which
5 generally excludes employees who have not sat-
6 isfied the eligibility requirements described in
7 section 410(a)(1)(A) (without regard to section
8 410(a)(1)(B)), employees who have not yet sat-
9 isfied such requirements,

10 “(E) employees who are eligible to make
11 salary reduction contributions under an ar-
12 rangement which meets the requirements of
13 section 403(b), and

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

17 “(3) QUALIFIED PLAN OR ARRANGEMENT.—
18 The term ‘qualified plan or arrangement’ means a
19 plan, contract, pension, or trust described in section
20 219(g)(5).

21 “(4) EXCEPTION FOR EMPLOYEES OF GOVERN-
22 MENTS AND CHURCHES.—The term ‘applicable em-
23 ployee’ shall not include an employee of—

24 “(A) a government or entity described in
25 section 414(d), or

1 “(B) a church or a convention or associa-
2 tion of churches which is exempt from tax
3 under section 501, including any employee de-
4 scribed in section 414(e)(3)(B).

5 “(5) DESIGNATION OF APPLICABLE EMPLOY-
6 EES.—The Secretary shall issue guidelines for deter-
7 mining the class or classes of employees to be cov-
8 ered by a payroll deposit IRA arrangement. Such
9 guidelines shall provide that if an employer elects
10 under paragraph (2) to exclude employees from the
11 arrangement, the employer shall specify the classi-
12 fication or categories of employees who are not so
13 covered.

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

17 “(1) TAX TREATMENT UNAFFECTED.—The fact
18 that a contribution to an individual retirement plan
19 is made on behalf of an employee under a payroll de-
20 posit IRA arrangement instead of being made di-
21 rectly by the employee shall not affect the deduct-
22 ibility or other tax treatment of the contribution or
23 of other amounts under this title.

24 “(2) PAYROLL SAVINGS CONTRIBUTIONS TAKEN
25 INTO ACCOUNT.—Any contribution made on behalf

1 of an employee under a payroll deposit IRA arrange-
2 ment shall be taken into account in applying the lim-
3 itations on contributions to individual retirement
4 plans and the other provisions of this title applicable
5 to individual retirement plans as if the contribution
6 had been made directly by the employee.

7 “(e) EXCEPTION FOR CERTAIN SMALL AND NEW
8 EMPLOYERS.—

9 “(1) IN GENERAL.—The requirements of this
10 section shall not apply for any calendar year to an
11 employer if—

12 “(A) the employer did not have more than
13 10 employees who received at least \$5,000 of
14 compensation from the employer for the pre-
15 ceding calendar year, or

16 “(B) was not in existence at all times dur-
17 ing the 2 preceding calendar years and did not
18 have more than 100 employees who received at
19 least \$5,000 of compensation from the employer
20 on any day during either of the 2 preceding cal-
21 endar years.

22 “(2) OPERATING RULES.—In determining the
23 number of employees for purposes of this sub-
24 section—

1 “(A) any rule applicable in determining the
2 number of employees for purposes of section
3 408(p)(2)(C) shall be applicable under this sub-
4 section,

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

8 “(C) any reference to an employer shall in-
9 clude a reference to any predecessor employer.

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

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

20 “(2) PLANS OF A DESIGNATED TRUSTEE OR
21 ISSUER.—An employer may elect to have contribu-
22 tions for all applicable employees participating in a
23 payroll deposit IRA arrangement made to individual
24 retirement plans of a designated trustee or issuer
25 under the arrangement. The preceding sentence

1 shall not apply unless each participant is notified in
2 writing that the participant's balance may be trans-
3 ferred without cost or penalty to another individual
4 retirement plan established by or on behalf of the
5 participant.

6 “(3) PAYROLL TAX DEPOSIT PROCEDURE.—The
7 Secretary, in consultation with the TSP II Board,
8 shall establish a procedure under which an em-
9 ployer—

10 “(A) may include with each deposit of tax
11 required to be deducted and withheld under
12 chapter 24 the aggregate amounts, for the pe-
13 riod covered by the deposit, which applicable
14 employees have designated under subsection
15 (b)(1)(A) (or are deemed to have designated
16 under subsection (b)(2)(F)(ii) or under an auto-
17 matic enrollment arrangement described in sub-
18 section (g)) for contribution to individual retire-
19 ment plans, established on behalf of the employ-
20 ees under paragraph (4), and

21 “(B) specifies, in such manner as the Sec-
22 retary may prescribe, the following information
23 for each applicable employee for whom a con-
24 tribution is to be made:

25 “(i) The employee's name and TIN.

1 “(ii) The amount of the contribution.

2 “(iii) The investment options selected
3 by the employee (or deemed to have been
4 selected by the employee under such auto-
5 matic enrollment arrangement) and the
6 amount of the contribution allocated to
7 each option.

8 “(4) ESTABLISHMENT AND MAINTENANCE OF
9 ACCOUNTS UNDER PAYROLL TAX DEPOSIT PROCE-
10 DURE.—

11 “(A) IN GENERAL.—Subject to the provi-
12 sions of this section and section 408C, the TSP
13 II Board shall provide for the establishment
14 and maintenance of individual retirement plans
15 (including automatic IRAs) into which contribu-
16 tions may be deposited under paragraph (3). To
17 the maximum extent practicable, the TSP II
18 Board shall—

19 “(i) enter into contracts with persons
20 eligible to be trustees of individual retire-
21 ment plans under section 408 to establish
22 such plans, to provide the investment
23 funds and investment management, and to
24 provide notice, record keeping, and other
25 administrative services, and

1 “(ii) ensure that the costs of invest-
2 ment management and administration are
3 kept to a minimum, including through con-
4 sideration of the use of investments which
5 involve passive management and which
6 seek to replicate the performance of a por-
7 tion of the market.

8 “(B) PAYROLL DEPOSIT FEATURES.—The
9 TSP II Board shall establish procedures so that
10 contributions may be made to individual retire-
11 ment plans (including automatic IRAs) under
12 paragraph (3) without undue administrative or
13 paperwork requirements on participating em-
14 ployers. Such procedures shall ensure that only
15 1 such plan may be established for each TIN.

16 “(C) LIMITATION ON ROLLOVERS.—If—

17 “(i) any amount is paid or distributed
18 out of an individual retirement plan estab-
19 lished under this paragraph, and

20 “(ii) such amount is paid into an indi-
21 vidual retirement plan which was not es-
22 tablished under this paragraph,

23 the payment described in clause (ii) shall be
24 treated as a rollover contribution for purposes
25 of section 408(d)(3) if and only if the balance

1 to the credit of the individual in such individual
2 retirement plan or arrangement immediately be-
3 fore the payment described in clause (i) was at
4 least \$15,000.

5 “(g) COORDINATION WITH AUTOMATIC ENROLL-
6 MENT AND OTHER DEFAULT ELECTION PROVISIONS.—

7 “(1) IN GENERAL.—Contributions under a pay-
8 roll deposit IRA arrangement may be made pursuant
9 to an automatic enrollment arrangement.

10 “(2) AUTOMATIC ENROLLMENT ARRANGE-
11 MENT.—The term ‘automatic enrollment arrange-
12 ment’ means an arrangement under a payroll deposit
13 IRA arrangement and subject to rules prescribed by
14 the Secretary—

15 “(A) under which an individual may elect
16 to have the employer make payments as con-
17 tributions to an individual account plan on be-
18 half of the individual, or to the individual di-
19 rectly in cash,

20 “(B) under which the individual is treated
21 as having elected to have the employer make
22 such contributions in an amount equal to a
23 specified percentage of compensation or dollar
24 amount until the individual specifically elects
25 not to have such contributions made (or specifi-

1 cally elects to have such contributions made at
2 a different percentage or in a different
3 amount), and

4 “(C) which meets notice requirements sub-
5 stantially similar to those described in section
6 414(w)(4).

7 “(3) DEFAULT INVESTMENTS.—If an employee
8 is deemed under an automatic enrollment arrange-
9 ment to have made an election to participate in a
10 payroll deposit IRA arrangement—

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

14 “(B) such contributions shall be trans-
15 ferred to—

16 “(i) an automatic IRA, or

17 “(ii) if the employer has made an elec-
18 tion under subsection (f)(2), to an indi-
19 vidual retirement plan of the designated
20 trustee or issuer but only if the require-
21 ments of subparagraph (C) are met with
22 respect to such individual retirement plan,
23 and

24 “(C) such contributions shall be invested
25 as provided in paragraph (5).

1 “(4) AMOUNT OF CONTRIBUTIONS.—

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

4 “(B) AUTHORITY OF BOARD TO PROVIDE
5 FOR ANNUAL INCREASES.—The TSP II Board
6 may by regulation provide for annual increases
7 in the percentage of compensation an employee
8 is deemed to have elected under paragraph (2)
9 but in no event shall the percentage of com-
10 pensation an employee is deemed to have elect-
11 ed exceed 8 percent.

12 “(C) CONTRIBUTION LIMIT.—The con-
13 tributions under paragraph (2) on behalf of an
14 employee for any calendar year shall not exceed
15 the dollar limits applicable to the employee for
16 the calendar year under section 219 or 408A.

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

21 “(A) a life cycle fund similar to the life
22 cycle funds offered under the Thrift Savings
23 Fund established under subchapter III of chap-
24 ter 84 of title 5, United States Code, or

1 “(B) such other investment or investments
2 as the TSP II Board specifies in regulations
3 (which shall be promulgated after taking into
4 account, but not necessarily conforming to, reg-
5 ulations prescribed by the Secretary of Labor
6 under section 404(c)(5) of the Employee Retire-
7 ment Income Security Act of 1974) and which
8 entails asset allocation and extensive diversifica-
9 tion.

10 “(6) COORDINATION WITH WITHHOLDING.—

11 The Secretary shall modify the withholding exemp-
12 tion certificate under section 3402(f) so that any no-
13 tice and election requirements with respect to an
14 automatic enrollment arrangement which is part of
15 a payroll deposit IRA arrangement may be met
16 through the use of such certificate.

17 “(h) MODEL NOTICE.—The Secretary, in consulta-
18 tion with the TSP II Board, shall—

19 “(1) provide a model notice, written in a man-
20 ner calculated to be understandable to the average
21 worker, that is simple for employers to use—

22 “(A) to notify employees of the require-
23 ment under this section for the employer to pro-
24 vide certain employees with the opportunity to

1 participate in a payroll deposit IRA arrange-
2 ment, and

3 “(B) to satisfy the requirements of sub-
4 section (b)(2)(D),

5 “(2) provide uniform forms for enrollment, in-
6 cluding automatic enrollment, in a payroll deposit
7 IRA arrangement, and

8 “(3) establish a web site or other electronic
9 means for small employers to access and use to ob-
10 tain information on payroll deposit IRA arrange-
11 ments and to obtain required notices and forms.

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

15 (b) NOTICE OF AVAILABILITY OF INVESTMENT
16 GUIDELINES.—Section 408(i) (relating to reports) is
17 amended by adding at the end the following new sentence:
18 “Any report furnished under paragraph (2) to an indi-
19 vidual shall include notice of the availability of, and meth-
20 ods of acquiring, the basic investment guidelines prepared
21 by the Secretary of Labor.”.

22 (c) DEVELOPMENT OF BASIC INVESTMENT GUIDE-
23 LINES.—

24 (1) IN GENERAL.—The Secretary of Labor
25 shall, in consultation with the Secretary of Treasury,

1 develop and publish basic guidelines for investing for
2 retirement. Except as otherwise provided by the Sec-
3 retary of Labor, such guidelines shall include—

4 (A) information on the benefits of diver-
5 sification,

6 (B) information on the essential dif-
7 ferences, in terms of risk and return, between
8 various pension plan investments, including
9 stocks, bonds, mutual funds, and money market
10 investments,

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

16 (D) sources of information where individ-
17 uals may learn more about pension rights, indi-
18 vidual investing, and investment advice, and

19 (E) such other information related to indi-
20 vidual investing as the Secretary of Labor de-
21 termines appropriate.

22 (2) CALCULATION INFORMATION.—The guide-
23 lines under paragraph (1) shall include addresses for
24 Internet sites and worksheets which a participant or
25 beneficiary in a pension plan may use to calculate—

1 (A) the retirement age value of the partici-
2 pant's or beneficiary's nonforfeitable pension
3 benefits under the plan (expressed as an annu-
4 ity amount and determined by reference to var-
5 ied historical annual rates of return and annu-
6 ity interest rates), and

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

14 (3) PUBLIC COMMENT.—The Secretary of
15 Labor shall provide at least 90 days for public com-
16 ment on proposed guidelines before publishing the
17 final guidelines.

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

20 (A) shall be written in a manner calculated
21 to be understood by the average plan partici-
22 pant, and

23 (B) may be delivered in written, electronic,
24 or other appropriate manner to the extent such
25 manner would ensure that the guidelines are

1 reasonably accessible to participants and bene-
2 ficiaries.

3 (d) PENALTY FOR FAILURE TO PROVIDE ACCESS TO
4 PAYROLL SAVINGS ARRANGEMENTS.—Chapter 43 (relat-
5 ing to qualified pension, etc., plans) is amended by adding
6 at the end the following new section:

7 **“SEC. 4980H. REQUIREMENTS FOR EMPLOYERS TO PRO-**
8 **VIDE EMPLOYEES ACCESS TO PAYROLL DE-**
9 **POSIT IRA ARRANGEMENTS.**

10 “(a) GENERAL RULE.—There is hereby imposed a
11 tax on any failure by an employer to meet the require-
12 ments of subsection (d) for a calendar year.

13 “(b) AMOUNT.—

14 “(1) IN GENERAL.—The amount of the tax im-
15 posed by subsection (a) on any failure for any cal-
16 endar year shall be \$100 with respect to each em-
17 ployee to whom such failure relates.

18 “(2) TAX NOT TO APPLY WHERE FAILURE NOT
19 DISCOVERED AND REASONABLE DILIGENCE EXER-
20 CISED.—No tax shall be imposed by subsection (a)
21 on any failure during any period for which it is es-
22 tablished to the satisfaction of the Secretary that the
23 employer subject to liability for the tax did not know
24 that the failure existed and exercised reasonable dili-
25 gence to meet the requirements of subsection (d). In

1 no event shall the tax be imposed with respect to
2 any failure that ends before the expiration of 90
3 days after the employer has responded or has had a
4 reasonable opportunity to respond to a request for
5 confirmation of compliance under subsection (c).

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

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

13 “(B) the employer provides the payroll de-
14 posit IRA arrangement described in section
15 408B to each employee eligible to participate in
16 the arrangement by the end of the 30-day pe-
17 riod beginning on the first date the employer
18 knew, or exercising reasonable diligence would
19 have known, that such failure existed.

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

1 “(c) PROCEDURES FOR NOTICE.—Not later than 6
2 months after the date of the enactment of this section,
3 the Secretary shall prescribe and implement procedures
4 for obtaining from employers confirmation that such em-
5 ployers are in compliance with the requirements of sub-
6 section (d). The Secretary, in the Secretary’s discretion,
7 may prescribe that the confirmation shall be obtained on
8 an annual or less frequent basis, and may use for this
9 purpose the annual report or quarterly report for employ-
10 ment taxes, or such other means as the Secretary may
11 deem advisable.

12 “(d) REQUIREMENT TO PROVIDE EMPLOYEE ACCESS
13 TO PAYROLL DEPOSIT IRA ARRANGEMENTS.—The re-
14 quirements of this subsection are met if the employer
15 meets the requirements of section 408B.”.

16 (e) COORDINATION WITH ERISA FIDUCIARY DU-
17 TIES.—Section 404(c)(2) of Employee Retirement Income
18 Security Act of 1974 (29 U.S.C. 1104(c)(2)) is amend-
19 ed—

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

23 (2) by inserting “(7 days after notice has been
24 given to an employee that an individual retirement
25 plan has been established on behalf of the employee

1 under section 408B of such Code)” after “estab-
2 lished” in subparagraph (C), and

3 (3) by inserting “or with respect to an indi-
4 vidual retirement plan designated by an employer
5 under section 408B of such Code” after “arrange-
6 ment” in the last sentence.

7 (f) CONFORMING AMENDMENTS.—

8 (1) The table of sections for subpart A of part
9 I of subchapter A of chapter 1 is amended by insert-
10 ing after the item relating to section 408A the fol-
11 lowing new item:

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

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

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

15 (g) PREEMPTION OF CONFLICTING STATE LAWS.—

16 The amendments made by this section shall supersede any
17 law of a State that would directly or indirectly prohibit
18 or restrict the establishment or operation of a payroll de-
19 posit IRA arrangement meeting the requirements of sec-
20 tion 408B of the Internal Revenue Code of 1986 (includ-
21 ing the inclusion in any such arrangement of an automatic
22 enrollment arrangement as defined in section 408B(g) of
23 such Code).

1 (h) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to calendar years beginning after
3 December 31, 2008.

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

6 (a) IN GENERAL.—Subpart D of part IV of sub-
7 chapter A of chapter 1 (relating to business related cred-
8 its) is amended by adding at the end the following new
9 section:

10 **“SEC. 450. SMALL EMPLOYER PAYROLL DEPOSIT IRA AR-**
11 **RANGEMENT COSTS.**

12 “(a) GENERAL RULE.—For purposes of section 38,
13 in the case of an eligible employer maintaining a payroll
14 deposit IRA arrangement meeting the requirements of sec-
15 tion 408B (without regard to whether or not the employer
16 is required to maintain the arrangement), the small em-
17 ployer payroll deposit IRA arrangement cost credit deter-
18 mined under this section for any taxable year is the
19 amount determined under subsection (b).

20 “(b) AMOUNT OF CREDIT.—

21 “(1) IN GENERAL.—The amount of the credit
22 determined under this section for any taxable year
23 with respect to an eligible employer shall be equal to
24 the lesser of—

1 “(A) \$25 multiplied by the number of ap-
2 plicable employees (within the meaning of sec-
3 tion 408B(c)) for whom contributions are made
4 under the payroll deposit IRA arrangement re-
5 ferred to in subsection (a) for the calendar year
6 in which the taxable year begins, or

7 “(B) \$250.

8 “(2) DURATION OF CREDIT.—No credit shall be
9 determined under this section for any taxable year
10 other than a taxable year which begins in the first
11 2 calendar years in which the eligible employer
12 maintains a payroll deposit IRA arrangement meet-
13 ing the requirements of section 408B.

14 “(3) COORDINATION WITH SMALL EMPLOYER
15 STARTUP CREDIT.—No credit shall be allowed under
16 this section for any taxable year if a credit is deter-
17 mined under section 45E for the taxable year.

18 “(c) ELIGIBLE EMPLOYER.—For purposes of this
19 section, the term ‘eligible employer’ means, with respect
20 to any calendar year in which the taxable year begins, an
21 employer which maintains a payroll deposit IRA arrange-
22 ment meeting the requirements of section 408B and
23 which, on each day during the preceding calendar year,
24 had no more than 100 employees.”.

1 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
2 NESS CREDIT.—Section 38(b) (defining current year busi-
3 ness credit) is amended by striking “plus” at the end of
4 paragraph (30), by striking the period at the end of para-
5 graph (31) and inserting “, plus”, and by adding at the
6 end the following new paragraph:

7 “(32) in the case of an eligible employer (as de-
8 fined in section 45O(e)) maintaining a payroll de-
9 posit IRA arrangement meeting the requirements of
10 section 408B, the small employer payroll deposit
11 IRA arrangement cost credit determined under sec-
12 tion 45O(a).”

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

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

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

19 **SEC. 103. ESTABLISHMENT OF AUTOMATIC IRAS.**

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

1 **“SEC. 408C. AUTOMATIC IRAS.**

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

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

12 “(c) INVESTMENT AND FEE REQUIREMENTS.—

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

20 “(2) INVESTMENT OPTIONS.—The regulations
21 under paragraph (1) shall provide that an automatic
22 IRA shall allow the individual on whose behalf the
23 individual retirement plan is established to invest
24 contributions to, and earnings of, the plan in all of
25 the following investment options:

1 “(A) Options which are similar to all in-
2 vestment options which are available (at the
3 time the plan is established) to a participant in
4 the Thrift Savings Fund established under sub-
5 chapter III of chapter 84 of title 5, United
6 States Code.

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

9 Such regulations shall specify which of the invest-
10 ment options shall be treated as default investment
11 options for purposes of section 408B(g)(5).

12 “(3) INVESTMENT FEES.—

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

18 “(B) INVESTMENT FEES.—For purposes of
19 this paragraph, the term ‘investment fees’ in-
20 cludes any fee, commission, asset management
21 fee, compensation for services, or any other
22 charge or fee specified in the regulations under
23 paragraph (1) which is imposed with respect to
24 the automatic IRA.”.

1 (b) STUDIES OF SPOUSAL CONSENT REQUIREMENTS
2 AND PROMOTION OF CERTAIN LIFETIME INCOME AR-
3 RANGEMENTS.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury and the Secretary of Labor shall jointly conduct
6 a separate study of the feasibility and desirability of
7 each of the following:

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

14 (B) Promoting the use of low-cost annu-
15 ities, longevity insurance, or other guaranteed
16 lifetime income arrangements in automatic
17 IRAs, including consideration of—

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

23 (ii) issues presented by possible addi-
24 tional differences in, or uniformity of, pro-
25 visions governing different IRAs.

1 (2) REPORT.—Not later than 18 months after
2 the date of the enactment of this Act, the Secre-
3 taries shall report the results of each study con-
4 ducted under subsection (a), together with any rec-
5 ommendations for legislative changes, to the Com-
6 mittees on Finance and Health, Education, Labor,
7 and Pensions of the Senate and the Committees on
8 Ways and Means and Education and Labor of the
9 House of Representatives.

10 (c) MANDATORY TRANSFERS.—Section
11 401(a)(31)(B) is amended—

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

15 (2) by adding at the end the following new sen-
16 tence: “Any amount so transferred (and any earn-
17 ings thereon) shall be invested in a default invest-
18 ment described in section 408B(g)(5).”

19 (d) CLERICAL AMENDMENT.—The table of sections
20 for subpart A of part I of subchapter A of chapter 1 is
21 amended by inserting after the item relating to section
22 408B the following new item:

“Sec. 408C. Automatic IRAs.”.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to calendar years beginning on or
25 after the date on which proposed and temporary or final

1 regulations described in section 408C(e) of the Internal
2 Revenue Code of 1986 (as added by this Act) are issued.

3 **SEC. 104. ESTABLISHMENT OF TSP II BOARD.**

4 (a) ESTABLISHMENT.—There is established in the ex-
5 ecutive branch of the Government a TSP II Board. The
6 board shall be established and maintained in the same
7 manner as the Federal Retirement Thrift Investment
8 Board under subchapter VII of chapter 84 of title 5,
9 United States Code.

10 (b) EXECUTIVE DIRECTOR.—The TSP II Board shall
11 appoint an Executive Director in a similar manner and
12 with similar functions as the Executive Director of the
13 Federal Retirement Thrift Investment Board under sec-
14 tion 8474 of title 5, United States Code.

15 (c) DUTIES OF BOARD.—The TSP II Board shall es-
16 tablish policies and procedures for—

17 (1) establishment and maintenance of individual
18 retirement plans under section 408B(f)(3) of the In-
19 ternal Revenue Code of 1986,

20 (2) the investment and management of con-
21 tributions to such individual retirement plans,

22 (3) the amount of contributions, and the invest-
23 ment of such contributions, under automatic con-
24 tribution arrangements under section 408B(g) of
25 such Code, including the designation of investment

1 funds in which such contributions may be invested,
2 and

3 (4) the establishment of automatic IRAs under
4 section 408C of such Code, including the issuance of
5 regulations under subsection (c) of such section.

6 (d) BEST PRACTICES.—The TSP II Board shall, on
7 a continual basis, prescribe and encourage best practices
8 (including cost efficiencies and innovations) in enrollment,
9 investment, distribution, and other procedures or arrange-
10 ments relating to retirement savings and investment. In
11 carrying out its responsibilities under this section, the
12 TSP II Board may implement (by contract or otherwise)
13 pilot projects to help assess the efficacy and workability
14 of specific practices and arrangements.

15 (e) EXPANSION OF USE OF IRAS BY SELF-EM-
16 PLOYED AND OTHER INDIVIDUALS.—The TSP II Board
17 shall establish procedures to disseminate information
18 (through use of the Internet and other appropriate means)
19 to facilitate and encourage—

20 (1) the use by self-employed and other individ-
21 uals of automatic debit and similar arrangements for
22 investment in individual retirement plans, including
23 automatic IRAs,

1 (2) efforts by voluntary associations to promote
2 savings in individual retirement plans, including
3 automatic IRAs, by their members and others, and

4 (3) the direct deposit of Federal and State in-
5 come tax refunds in individual retirement plans, in-
6 cluding automatic IRAs.

7 (f) EXCLUSIVE INTEREST.—The members of the
8 TSP II Board shall discharge their responsibilities solely
9 in the interest of participants and beneficiaries under indi-
10 vidual retirement plans described in section 408B of the
11 Internal Revenue Code of 1986.

12 (g) OTHER PROVISIONS MADE APPLICABLE.—The
13 provisions of subsections (f)(3), (g), (i), and (j) of section
14 8472 of title 5, United States Code, shall apply to the
15 TSP II Board.

16 **Subtitle B—Other Provisions**

17 **SEC. 111. MODIFICATIONS TO COMPUTATION OF SAVER'S**

18 **CREDIT; SAVER'S CREDIT MADE REFUND-** 19 **ABLE.**

20 (a) IN GENERAL.—Section 25B(b) (defining applica-
21 ble percentage), as amended by section 833 of the Pension
22 Protection Act of 2006, is amended to read as follows:

23 “(b) APPLICABLE PERCENTAGE.—For purposes of
24 this section—

1 “(1) IN GENERAL.—The applicable percentage
 2 is 50 percent reduced (but not below zero) by 1 per-
 3 centage point for each phaseout amount by which
 4 the taxpayer’s adjusted gross income for the taxable
 5 year exceeds the threshold amount.

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

“In the case of:	The phaseout amount is:	The threshold amount is:
A joint return	\$200	\$50,000
A head of household return	\$150	\$37,500
Any other return	\$100	\$25,000.

9 “(3) INFLATION ADJUSTMENT.—

10 “(A) JOINT RETURNS.—In the case of any
 11 taxable year beginning in a calendar year after
 12 2009, the \$50,000 amount under paragraph (2)
 13 shall be increased by an amount equal to—

- 14 “(i) such dollar amount, multiplied by
- 15 “(ii) the cost-of-living adjustment de-
- 16 termined under section 1(f)(3) for the cal-
- 17 endar year in which the taxable year be-
- 18 gins, determined by substituting ‘calendar
- 19 year 2008’ for ‘calendar year 1992’ in sub-
- 20 paragraph (B) thereof.

1 Any increase determined under the preceding
2 sentence shall be rounded to the nearest mul-
3 tiple of \$500.

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

7 “(i) the \$37,500 under paragraph (2)
8 shall be increased to an amount equal to
9 75 percent of the amount determined
10 under subparagraph (A), and

11 “(ii) the \$25,000 amount under para-
12 graph (2) shall be increased to an amount
13 equal to 50 percent of the amount deter-
14 mined under subparagraph (A).”.

15 (b) CREDIT MADE REFUNDABLE.—

16 (1) TRANSFER OF CREDIT TO REFUNDABLE
17 CREDITS.—

18 (A) IN GENERAL.—Section 25B, as
19 amended by subsection (a), is hereby moved to
20 subpart C of part IV of subchapter A of chap-
21 ter 1 (relating to refundable credits) and in-
22 serted after section 35.

23 (B) CONFORMING AMENDMENTS.—

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

1 (ii) Section 25(e)(1)(C)(ii) is amended
2 by striking “, 25B”.

3 (iii) Section 25D(c)(2) is amended by
4 striking “24, and 25B” and inserting “and
5 24”.

6 (iv) Section 26(a)(1) is amended by
7 striking “24, and 25B” and inserting “and
8 24”.

9 (v) Section 25B, as moved by sub-
10 paragraph (A), is redesignated as section
11 36.

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

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

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

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

“Sec. 37. Overpayments of tax.”.

21 (ix) The table of sections for subpart
22 A of part IV of subchapter A of chapter 1
23 is amended by striking the item relating to
24 section 25B.

1 (x) Section 1324 of title 31, United
2 States Code, is amended by inserting “, or
3 enacted by the Women’s Retirement Secu-
4 rity Act of 2008” before the period at the
5 end.

6 (2) MANDATORY DEPOSIT INTO QUALIFIED AC-
7 COUNT.—

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

13 (B) DEPOSIT INTO QUALIFIED AC-
14 COUNT.—Subsection (g) of section 36, as moved
15 and redesignated by paragraph (1), is amended
16 to read as follows:

17 “(g) DEPOSIT INTO QUALIFIED ACCOUNT.—

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

23 “(A) shall be paid on behalf of the indi-
24 vidual taxpayer to an applicable retirement plan
25 designated by the individual to be invested in a

1 manner designated by the individual, except
2 that in the case of a joint return, each spouse
3 shall be entitled to designate an applicable re-
4 tirement plan and investments with respect to
5 payments attributable to such spouse, or

6 “(B) in the case of taxpayer who does not
7 properly designate an applicable retirement plan
8 in a timely manner or who designates an appli-
9 cable retirement plan that does not accept such
10 amount in a timely manner, shall be paid or
11 credited on behalf of the individual taxpayer in
12 a manner determined under rules prescribed by
13 the Secretary that provides treatment com-
14 parable to the treatment under subparagraph
15 (A).

16 “(2) APPLICABLE RETIREMENT PLAN.—For
17 purposes of this subsection, the term ‘applicable re-
18 tirement plan’ means a plan that elects to accept de-
19 posits under this subsection and that is described in
20 clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B)
21 or in section 408A(b).

22 “(3) TREATMENT OF DIRECT PAYMENTS.—All
23 amounts paid under this subsection shall be treated
24 for purposes of this title as income attributable to—

1 “(A) a Roth IRA contribution in the case
2 of a payments to an individual retirement plan,
3 or

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

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

10 **SEC. 112. QUALIFIED CASH OR DEFERRED ARRANGEMENTS**

11 **MUST ALLOW LONG-TERM EMPLOYEES**
12 **WORKING MORE THAN 500 BUT LESS THAN**
13 **1,000 HOURS PER YEAR TO PARTICIPATE.**

14 (a) PARTICIPATION REQUIREMENT.—

15 (1) IN GENERAL.—Subparagraph (D) of section
16 401(k)(2) (defining qualified cash or deferred ar-
17 rangement) is amended to read as follows:

18 “(D) which does not require, as a condi-
19 tion of participation in the arrangement, that
20 an employee complete a period of service with
21 the employer (or employers) maintaining the
22 plan extending beyond the close of the earlier
23 of—

1 “(i) the period permitted under sec-
2 tion 410(a)(1) (determined without regard
3 to subparagraph (B)(i) thereof), or

4 “(ii) subject to the provisions of para-
5 graph (14), the first period of 3 consecu-
6 tive 12-month periods during each of which
7 the employee has at least 500 hours of
8 service.”.

9 (2) SPECIAL RULES.—Subsection (k) of section
10 401 (relating to cash or deferred arrangements) is
11 amended by adding at the end the following new
12 paragraph:

13 “(14) SPECIAL RULES FOR PARTICIPATION RE-
14 QUIREMENT FOR LONG-TERM, PART-TIME WORK-
15 ERS.—For purposes of paragraph (2)(D)(ii)—

16 “(A) AGE REQUIREMENT MUST BE MET.—
17 Paragraph (2)(D)(ii) shall not apply to an em-
18 ployee unless the employee has met the require-
19 ment of section 410(a)(1)(A)(i) by the close of
20 the last of the 12-month periods described in
21 such paragraph.

22 “(B) NONDISCRIMINATION AND TOP-
23 HEAVY RULES NOT TO APPLY.—

24 “(i) NONDISCRIMINATION RULES.—In
25 the case of employees who are eligible to

1 participate in the arrangement solely by
2 reason of paragraph (2)(D)(ii)—

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

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

15 “(ii) TOP-HEAVY RULES.—An em-
16 ployer may elect to exclude all employees
17 who are eligible to participate in a plan
18 maintained by the employer solely by rea-
19 son of paragraph (2)(D)(ii) from—

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

23 “(II) if the plan is a top-heavy
24 plan under such section, the applica-
25 tion of the vesting and benefit re-

1 requirements under subsections (b) and
2 (c) of such section.

3 “(iii) VESTING.—For purposes of de-
4 termining whether an employee described
5 in clause (i) has a nonforfeitable right to
6 employer contributions (other than con-
7 tributions described in paragraph
8 (3)(D)(i)) under the arrangement, each
9 12-month period for which the employee
10 has at least 500 hours of service shall be
11 treated as a year of service.

12 “(iv) EMPLOYEES WHO BECOME
13 FULL-TIME EMPLOYEES.—This subpara-
14 graph shall cease to apply to any employee
15 after the date on which the employee meets
16 the requirements of section
17 410(a)(1)(A)(ii) without regard to para-
18 graph (2)(D)(ii).

19 “(C) EXCEPTION FOR EMPLOYEES UNDER
20 COLLECTIVELY BARGAINED PLANS, ETC.—Para-
21 graph (2)(D)(ii) shall not apply to employees
22 described in section 410(b)(3).

23 “(D) SPECIAL RULES.—

24 “(i) TIME OF PARTICIPATION.—The
25 rules of section 410(a)(4) shall apply to an

1 employee eligible to participate in an ar-
2 rangement solely by reason of paragraph
3 (2)(D)(ii).

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

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to plan years beginning after De-
10 cember 31, 2008, except that, for purposes of section
11 401(k)(2)(D)(ii) of the Internal Revenue Code of 1986 (as
12 added by such amendments), 12-month periods beginning
13 before January 1, 2009, shall not be taken into account.

14 **SEC. 113. TRANSFERS OF UNUSED BENEFITS OF HEALTH**
15 **FLEXIBLE SPENDING ARRANGEMENT TO**
16 **CERTAIN RETIREMENT PLANS.**

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

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

23 “(1) IN GENERAL.—For purposes of this title,
24 a plan or other arrangement shall not fail to be
25 treated as a cafeteria plan solely because qualified

1 benefits of a participant under such plan include a
2 health flexible spending arrangement under which
3 not more than \$500 of unused health benefits may
4 be contributed on behalf of the participant to—

5 “(A) a qualified retirement plan (as de-
6 fined in section 4974(c)), or

7 “(B) an eligible deferred compensation
8 plan (as defined in section 457(b)) maintained
9 by an eligible employer described in section
10 457(e)(1)(A).

11 “(2) TREATMENT OF CONTRIBUTION OF UN-
12 USED HEALTH BENEFITS.—

13 “(A) IN GENERAL.—For purposes of this
14 title, contributions described in paragraph (1)
15 shall be treated as elective contributions made
16 pursuant to an election by the participant be-
17 tween such contributions and compensation
18 which would otherwise be includible in the gross
19 income of the employee.

20 “(B) EXCLUSION OR DEDUCTION.—Con-
21 tributions described in paragraph (1) shall be
22 excluded from gross income, or included in
23 gross income and allowed as a deduction, to the
24 same extent that elective contributions would be
25 so treated under this title.

1 “(3) HEALTH FLEXIBLE SPENDING ARRANGE-
2 MENT.—For purposes of this subsection, the term
3 ‘health flexible spending arrangement’ means a flexi-
4 ble spending arrangement (as defined in section
5 106(c)) which is a qualified benefit and only permits
6 reimbursement for expenses for medical care (as de-
7 fined in section 213(d)(1) without regard to sub-
8 paragraphs (C) and (D) thereof).

9 “(4) UNUSED HEALTH BENEFITS.—For pur-
10 poses of this subsection, the term ‘unused health
11 benefits’ means, with respect to a participant, the
12 excess of—

13 “(A) the maximum amount of reimburse-
14 ment allowable to the participant with respect
15 to a plan year under a health flexible spending
16 arrangement, taking into account any election
17 by the participant, over

18 “(B) the actual amount of reimbursement
19 with respect to such year under such arrange-
20 ment.”.

21 (b) SPECIAL RULES.—The Secretary of the Treasury
22 shall prescribe such rules as are appropriate to carry out
23 the purposes of the amendments made by this section.
24 Such rules may permit elections by plan sponsors with re-
25 spect to the year to which the contributions relate and may

1 provide for special treatment for purposes of applying the
2 requirements applicable to such contributions.

3 (c) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall apply to years beginning after Decem-
5 ber 31, 2008.

6 **SEC. 114. COMPUTATION OF LIMITS ON IRA AND ROTH IRA**
7 **CONTRIBUTIONS.**

8 (a) CERTAIN WAGE REPLACEMENT INCOME TREAT-
9 ED AS COMPENSATION.—

10 (1) WAGE REPLACEMENT INCOME.—Section
11 219(f) (relating to other definitions and special
12 rules) is amended by redesignating paragraph (8) as
13 paragraph (9) and by inserting after paragraph (7)
14 the following new paragraph:

15 “(8) TREATMENT OF CERTAIN WAGE REPLACE-
16 MENT INCOME AS COMPENSATION.—

17 “(A) IN GENERAL.—Notwithstanding para-
18 graph (1), applicable wage replacement income
19 not otherwise treated as compensation shall be
20 treated as compensation for purposes of this
21 section.

22 “(B) APPLICABLE WAGE REPLACEMENT
23 INCOME.—For purposes of this paragraph, the
24 term ‘applicable wage replacement income’
25 means any amount received by an individual—

1 “(i) as the result of the individual
2 having become disabled,

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

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

7 “(iv) which constitutes wage replace-
8 ment income under regulations prescribed
9 by the Secretary.”.

10 (2) CERTAIN EXCLUDABLE AMOUNTS MAY BE
11 TAKEN INTO ACCOUNT FOR PURPOSES OF ROTH
12 IRAS.—Section 408A(c)(2) (relating to contribution
13 limit) is amended by adding at the end the following
14 new flush sentence:

15 “‘In determining the maximum amount under sub-
16 paragraph (A), subsections (b)(1)(B) and (c) of sec-
17 tion 219 shall be applied by taking into account
18 compensation described in section 219(f)(8) without
19 regard to whether it is includible in gross income.’”.

20 (3) EFFECTIVE DATE.—The amendments made
21 by this subsection shall apply to taxable years begin-
22 ning after December 31, 2008.

23 (b) COMPUTATION OF MAXIMUM IRA DEDUCTION
24 FOR ROTH IRAS USING COMPENSATION FROM 2 PRE-
25 CEDING TAXABLE YEARS.—

1 (1) IN GENERAL.—Section 408A(c) (relating to
2 treatment of contributions) is amended by adding at
3 the end the following new paragraph:

4 “(8) COMPENSATION FROM PRECEDING 2
5 YEARS MAY BE TAKEN INTO ACCOUNT.—

6 “(A) IN GENERAL.—A taxpayer may elect
7 for purposes of paragraph (2) to take into ac-
8 count any unused compensation from the 2 tax-
9 able years immediately preceding the taxable
10 year.

11 “(B) UNUSED COMPENSATION.—For pur-
12 poses of this paragraph, the term ‘unused com-
13 pensation’ means with respect to an individual
14 for any taxable year the compensation includ-
15 ible in the individual’s gross income for the tax-
16 able year reduced by the sum of—

17 “(i) the amount allowed as a deduc-
18 tion under 219(a) to such individual for
19 such taxable year,

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

24 “(iii) the amount of any contribution
25 on behalf of such individual to a Roth IRA

1 under this section for such taxable year,
2 and

3 “(iv) the amount of compensation in-
4 cludible in such individual’s gross income
5 for such taxable year taken into account
6 under section 219(c) in determining the
7 limitation under section 219 or paragraph
8 (2) for the individual’s spouse.

9 “(C) APPLICATION TO SPECIAL RULE FOR
10 MARRIED INDIVIDUALS.—Under rules pre-
11 scribed by the Secretary, in applying section
12 219(c) for any taxable year for purposes of ap-
13 plying paragraph (2)(A), unused compensation
14 of an individual or an individual’s spouse for
15 the 2 taxable years immediately preceding the
16 taxable year may be taken into account.”.

17 (2) EFFECTIVE DATE.—The amendment made
18 by this subsection shall apply to taxable years begin-
19 ning after December 31, 2008, but unused com-
20 pensation for taxable years beginning before Janu-
21 ary 1, 2009, may be taken into account for taxable
22 years beginning after December 31, 2008.

1 **TITLE II—PROVISIONS PRO-**
2 **VIDING FOR PRESERVATION**
3 **OF INCOME**

4 **SEC. 201. EXCLUSION OF CERTAIN QUALIFIED ANNUITY**
5 **PAYMENTS.**

6 (a) EXCLUSION.—

7 (1) QUALIFIED PLANS.—Section 402(e) (relat-
8 ing to exempt trusts) is amended by adding at the
9 end the following new paragraph:

10 “(7) EXCLUSION OF PERCENTAGE OF LIFETIME
11 ANNUITY PAYMENTS.—

12 “(A) IN GENERAL.—In the case of a life-
13 time annuity payment to a qualified distributee
14 from a qualified trust (within the meaning of
15 subsection (c)(8)(A)) maintained in connection
16 with a defined contribution plan, gross income
17 shall not include 10 percent of the amount oth-
18 erwise includible in gross income (determined
19 without regard to this paragraph). For pur-
20 poses of this paragraph, payments from an an-
21 nuity contract distributed by the qualified trust
22 shall be treated as payments from the qualified
23 trust.

24 “(B) LIMITATION.—

25 “(i) IN GENERAL.—If—

1 “(I) the aggregate amount of
2 lifetime annuity payments to the dis-
3 tributee during the taxable year which
4 are includible in gross income (deter-
5 mined without regard to this para-
6 graph) and which are subject to this
7 paragraph or to rules similar to the
8 rules of this paragraph (other than
9 section 72(b)(5) or 101(d)(4)), ex-
10 ceeds

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

14 then the aggregate amount otherwise ex-
15 cludable under subparagraph (A) for the
16 taxable year shall be reduced by 10 percent
17 of the portion of such excess which is allo-
18 cable under clause (ii) to payments which
19 are subject to this paragraph.

20 “(ii) ALLOCATION RULE.—Any excess
21 described in clause (i) for any taxable year
22 shall be allocated ratably among all life-
23 time annuity payments to the qualified dis-
24 tributee described in clause (i)(I).

1 “(C) DEFINITIONS.—For purposes of this
2 paragraph—

3 “(i) LIFETIME ANNUITY PAYMENT.—

4 “(I) IN GENERAL.—Except as
5 provided in this clause, the term ‘life-
6 time annuity payment’ means a dis-
7 tribution from an annuity contract
8 which is a part of a series of substan-
9 tially equal periodic payments (not
10 less frequently than annually) made
11 over the life of the qualified dis-
12 tributee or the joint lives of the quali-
13 fied distributee and the qualified
14 distributee’s designated beneficiary.
15 For purposes of this paragraph, the
16 term ‘annuity contract’ means a com-
17 mercial annuity (as defined in section
18 3405(e)(6)), other than an endowment
19 or life insurance contract.

20 “(II) CERTAIN FLUCTUATING
21 PAYMENTS.—Annuity payments shall
22 not fail to be treated as part of a se-
23 ries of substantially equal periodic
24 payments merely because the amount
25 of the periodic payments may vary in

1 accordance with investment experi-
2 ence, reallocations among investment
3 options, actuarial gains or losses, cost
4 of living indices, a constant percent-
5 age (not less than zero) applied not
6 less frequently than annually, or simi-
7 lar fluctuating criteria.

8 “(III) CERTAIN CHANGES IN THE
9 MODE OF PAYMENT.—Annuity pay-
10 ments shall not fail to be treated as
11 part of a series of substantially equal
12 periodic payments merely because the
13 period between each such payment is
14 lengthened or shortened, but only if at
15 all times such period is not longer
16 than 1 year.

17 “(IV) PERMITTED REDUC-
18 TIONS.—Annuity payments shall not
19 fail to be treated as part of a series
20 of substantially equal periodic pay-
21 ments merely because, in the case of
22 an annuity payable over the lives of
23 the qualified distributee and the quali-
24 fied distributee’s designated bene-
25 ficiary, the amounts paid after the

1 death of the qualified distributee or
2 the qualified distributee's designated
3 beneficiary are less than the amounts
4 payable during their joint lives.

5 “(V) CERTAIN CONTRACT BENE-
6 FITS.—The availability of a commuta-
7 tion benefit or other feature permit-
8 ting acceleration of annuity payments
9 (or a modification of the period dur-
10 ing which such a benefit is available),
11 a minimum period of payments or a
12 minimum amount to be paid in any
13 event shall not affect the treatment of
14 a distribution as a lifetime annuity
15 payment.

16 “(VI) TRUST PAYMENTS.—In the
17 case of lifetime annuity payments
18 being made to a qualified trust, pay-
19 ments by the qualified trust to a
20 qualified distributee of the entire
21 amount received by the qualified trust
22 with respect to the qualified dis-
23 tributee shall constitute lifetime annu-
24 ity payments if such payments are

1 made within a reasonable period after
2 receipt by the qualified trust.

3 “(VII) QUALIFIED DOMESTIC RE-
4 LATIONS ORDERS.—Annuity payments
5 shall not fail to be treated as a series
6 of substantially equal periodic pay-
7 ments merely because the payments
8 are reduced on account of a qualified
9 domestic relations order (within the
10 meaning of section 414(p)) that be-
11 comes effective after the commence-
12 ment of the annuity payments.

13 “(ii) QUALIFIED DISTRIBUTEES.—The
14 term ‘qualified distributee’ means the em-
15 ployee, the surviving spouse of the em-
16 ployee, and an alternate payee who is the
17 spouse or former spouse of the employee.

18 “(D) RECAPTURE TAX.—

19 “(i) IN GENERAL.—If—

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

23 “(II) the series of payments of
24 which such payment is a part is sub-
25 sequently modified (other than by rea-

1 son of death or disability) so that
2 some or all future payments are not
3 lifetime annuity payments,
4 the qualified distributee's gross income for
5 the first taxable year in which such modi-
6 fication occurs shall be increased by an
7 amount, determined under rules prescribed
8 by the Secretary, equal to the amount
9 which (but for subparagraph (A)) would
10 have been includible in the qualified
11 distributee's gross income if the modifica-
12 tion had been in effect at all times, plus in-
13 terest for the deferral period at the under-
14 payment rate established under section
15 6621.

16 “(ii) DEFERRAL PERIOD.—For pur-
17 poses of this subparagraph, the term ‘de-
18 ferral period’ means, with respect to any
19 amount, the period beginning with the tax-
20 able year in which (without regard to sub-
21 paragraph (A)) the amount would have
22 been includible in gross income and ending
23 with the taxable year in which the modi-
24 fication described in clause (i)(II) occurs.

1 “(E) INVESTMENT IN THE CONTRACT.—
2 For purposes of section 72, the investment in
3 the contract shall be determined without regard
4 to this paragraph.”.

5 (2) QUALIFIED ANNUITY PLANS.—Section
6 403(a) (relating to qualified annuity plans) is
7 amended by adding at the end the following new
8 paragraph:

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

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

17 “(14) EXCLUSION OF PERCENTAGE OF LIFE-
18 TIME ANNUITY PAYMENTS.—Rules similar to the
19 rules of section 402(e)(7) shall apply to distributions
20 under any annuity contract or custodial account to
21 which this subsection applies.”.

22 (4) IRAS.—Section 408(d) (relating to tax
23 treatment of distributions), as amended by section
24 1201 of the Pension Protection Act of 2006, is

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

3 “(10) EXCLUSION OF PERCENTAGE OF LIFE-
4 TIME ANNUITY PAYMENTS.—Rules similar to the
5 rules of section 402(e)(7) shall apply to distributions
6 out of an individual retirement plan.”.

7 (5) SECTION 457 PLANS.—Section 457(e) (relat-
8 ing to special rules for deferred compensation plans)
9 is amended by adding at the end the following new
10 paragraph:

11 “(19) EXCLUSION OF PERCENTAGE OF LIFE-
12 TIME ANNUITY PAYMENTS.—Rules similar to the
13 rules of section 402(e)(7) shall apply to distributions
14 from an eligible deferred compensation plan of an el-
15 igible employer described in subsection (e)(1)(A).”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to distributions made after Decem-
18 ber 31, 2008.

19 **SEC. 202. EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.**

20 (a) LIFETIME ANNUITY PAYMENTS UNDER ANNUITY
21 CONTRACTS.—Section 72(b) (relating to exclusion ratio)
22 is amended by adding at the end the following new para-
23 graph:

24 “(5) EXCLUSION FOR LIFETIME ANNUITY PAY-
25 MENTS.—

1 “(A) IN GENERAL.—In the case of lifetime
2 annuity payments received as an annuity under
3 1 or more annuity contracts in any taxable
4 year, gross income shall not include the lesser
5 of—

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

11 “(ii) \$20,000.

12 “(B) COST-OF-LIVING ADJUSTMENT.—In
13 the case of taxable years beginning after De-
14 cember 31, 2009, the \$20,000 amount in sub-
15 paragraph (A)(ii) shall be increased by an
16 amount equal to—

17 “(i) such dollar amount, multiplied by

18 “(ii) the cost-of-living adjustment de-
19 termined under section 1(f)(3) for the cal-
20 endar year in which the taxable year be-
21 gins, determined by substituting ‘calendar
22 year [2008]’ for ‘calendar year 1992’ in
23 subparagraph (B) thereof.

24 If any amount as increased under the preceding
25 sentence is not a multiple of \$500, such amount

1 shall be rounded to the next lower multiple of
2 \$500.

3 “(C) APPLICATION OF PARAGRAPH.—Sub-
4 paragraph (A) shall not apply to—

5 “(i) any amount received under an eli-
6 gible deferred compensation plan (as de-
7 fined in section 457(b)) or under a quali-
8 fied retirement plan (as defined in section
9 4974(c)),

10 “(ii) any amount paid under an annu-
11 ity contract which is received by the bene-
12 ficiary under the contract—

13 “(I) after the death of the annu-
14 itant in the case of payments de-
15 scribed in subsection (c)(5)(A)(ii)(III),
16 unless the beneficiary is the surviving
17 spouse of the annuitant, or

18 “(II) after the death of the annu-
19 itant and joint annuitant in the case
20 of payments described in subsection
21 (c)(5)(A)(ii)(IV), unless the bene-
22 ficiary is the surviving spouse of the
23 last to die of the annuitant and the
24 joint annuitant, or

1 “(iii) any annuity contract that is a
2 qualified funding asset (as defined in sec-
3 tion 130(d)), but without regard to wheth-
4 er there is a qualified assignment.

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

9 (b) DEFINITIONS.—Section 72(c) is amended by add-
10 ing at the end the following new paragraph:

11 “(5) LIFETIME ANNUITY PAYMENT.—

12 “(A) IN GENERAL.—For purposes of sub-
13 section (b)(5), the term ‘lifetime annuity pay-
14 ment’ means any amount received as an annu-
15 ity under any portion of an annuity contract,
16 but only if—

17 “(i) the only person (or persons in the
18 case of payments described in subclause
19 (II) or (IV) of clause (ii)) legally entitled
20 (by operation of the contract, a trust, or
21 other legally enforceable means) to receive
22 such amount during the life of the annu-
23 itant or joint annuitant is such annuitant
24 or joint annuitant, and

1 “(ii) such amount is part of a series
2 of substantially equal periodic payments
3 made not less frequently than annually
4 over—

5 “(I) the life of the annuitant,

6 “(II) the lives of the annuitant
7 and a joint annuitant, but only if the
8 annuitant is the spouse of the joint
9 annuitant as of the annuity starting
10 date or the difference in age between
11 the annuitant and joint annuitant is
12 15 years or less,

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

17 “(IV) the lives of the annuitant
18 and a joint annuitant with a minimum
19 period of payments or with a min-
20 imum amount that must be paid in
21 any event, but only if the annuitant is
22 the spouse of the joint annuitant as of
23 the annuity starting date or the dif-
24 ference in age between the annuitant

1 and joint annuitant is 15 years or
2 less.

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

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

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

21 “(III) because the period between
22 each such payment is lengthened or
23 shortened, but only if at all times
24 such period is no longer than 1 cal-
25 endar year.

1 “(B) ANNUITY CONTRACT.—For purposes
2 of subparagraph (A) and subsections (b)(5) and
3 (x), the term ‘annuity contract’ means a com-
4 mercial annuity (as defined by section
5 3405(e)(6)), other than an endowment or life
6 insurance contract.

7 “(C) MINIMUM PERIOD OF PAYMENTS.—
8 For purposes of subparagraph (A), the min-
9 imum period of payments is a guaranteed term
10 of payments which does not exceed the greater
11 of—

12 “(i) 10 years, or

13 “(ii) the life expectancy of—

14 “(I) the annuitant as of the an-
15 nuity starting date, in the case of life-
16 time annuity payments described in
17 subparagraph (A)(ii)(III), or

18 “(II) the annuitant and joint an-
19 nuitant as of the annuity starting
20 date, in the case of lifetime annuity
21 payments described in subparagraph
22 (A)(ii)(IV).

23 For purposes of this subparagraph, life expect-
24 ancy shall be computed with reference to the ta-
25 bles prescribed by the Secretary under para-

1 graph (3). For purposes of subsection
2 (x)(1)(C)(ii), the permissible minimum period of
3 payments shall be determined as of the annuity
4 starting date and reduced by one for each sub-
5 sequent year.

6 “(D) MINIMUM AMOUNT THAT MUST BE
7 PAID IN ANY EVENT.—For purposes of subpara-
8 graph (A), the minimum amount that must be
9 paid in any event is an amount payable to the
10 designated beneficiary under an annuity con-
11 tract which is in the nature of a refund and
12 does not exceed the greater of the amount ap-
13 plied to produce the lifetime annuity payments
14 under the contract or the amount, if any, avail-
15 able for withdrawal under the contract on the
16 date of death.”.

17 (c) RECAPTURE TAX FOR LIFETIME ANNUITY PAY-
18 MENTS.—Section 72 is amended by redesignating sub-
19 section (x) as subsection (y) and by inserting after sub-
20 section (x) the following new subsection:

21 “(x) RECAPTURE TAX FOR MODIFICATIONS TO OR
22 REDUCTIONS IN LIFETIME ANNUITY PAYMENTS.—

23 “(1) IN GENERAL.—If—

24 “(A) any amount received under an annu-
25 ity contract is excluded from income by reason

1 of subsection (b)(5) (relating to lifetime annuity
2 payments) for any taxable year, and

3 “(B) a recapture event described in para-
4 graph (2) occurs in any subsequent taxable
5 year,

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

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

11 “(A) the series of payments under an an-
12 nuity contract is subsequently modified so any
13 future payments are not lifetime annuity pay-
14 ments,

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

20 “(C) after the date of receipt of the first
21 lifetime annuity payment under the contract the
22 dollar amount of any subsequent annuity pay-
23 ment is reduced and a lump sum is not paid in
24 connection with the reduction, unless such re-
25 duction is—

1 “(i) due to an event described in sub-
2 section (c)(5)(A)(iii), or

3 “(ii) due to the addition of, or in-
4 crease in, a minimum period of payments
5 (within the meaning of subsection
6 (c)(5)(C)) or a minimum amount that
7 must be paid in any event (within the
8 meaning of subsection (c)(5)(D)).

9 “(3) RECAPTURE AMOUNT.—

10 “(A) IN GENERAL.—For purposes of this
11 subsection, the recapture amount shall be the
12 amount, determined under rules prescribed by
13 the Secretary, equal to the amount which (but
14 for subsection (b)(5)) would have been includ-
15 ible in the taxpayer’s gross income if the modi-
16 fication or reduction described in subparagraph
17 (A), (B), or (C) of paragraph (2) had been in
18 effect at all times, plus interest for the deferral
19 period at the underpayment rate established by
20 section 6621.

21 “(B) DEFERRAL PERIOD.—For purposes
22 of this subsection, the term ‘deferral period’
23 means, with respect to any amount, the period
24 beginning with the taxable year in which (with-
25 out regard to subsection (b)(5)) the amount

1 would have been includible in gross income and
2 ending with the taxable year in which the modi-
3 fication or reduction described in subparagraph
4 (A), (B), or (C) of paragraph (2) occurs.

5 “(4) EXCEPTIONS TO RECAPTURE TAX.—Para-
6 graph (1) shall not apply in the case of any recap-
7 ture event which occurs because an annuitant—

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

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

12 “(C) encounters hardship.”.

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

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

19 “(4) EXCLUSION FOR LIFETIME ANNUITY PAY-
20 MENTS.—

21 “(A) IN GENERAL.—In the case of
22 amounts to which this subsection applies, gross
23 income for any taxable year shall not include
24 the lesser of—

1 “(i) 50 percent of the portion of life-
2 time annuity payments which (without re-
3 gard to this paragraph) is includible in
4 gross income under this section, or

5 “(ii) the amount in effect under sec-
6 tion 72(b)(5)(A)(ii) for the taxable year.

7 “(B) RULES OF SECTION 72(b)(5) TO
8 APPLY.—For purposes of this paragraph, rules
9 similar to the rules of section 72(b)(5) and sec-
10 tion 72(x) shall apply, except that the term
11 ‘beneficiary of the life insurance contract’ shall
12 be substituted for the term ‘annuitant’ each
13 place it appears, and the term ‘life insurance
14 contract’ shall be substituted for the term ‘an-
15 nuity contract’ each place it appears.”.

16 (2) CONFORMING AMENDMENT.—Section
17 101(d)(1) is amended by inserting “or paragraph
18 (4)” after “to the extent not excluded by the pre-
19 ceding sentence”.

20 (e) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to amounts received in cal-
23 endar years beginning after the date of the enact-
24 ment of this Act.

1 (2) SPECIAL RULE FOR EXISTING CON-
2 TRACTS.—In the case of a contract in force on the
3 date of the enactment of this Act that does not sat-
4 isfy the requirements of section 72(c)(5)(A) of the
5 Internal Revenue Code of 1986 (as added by this
6 section), or requirements similar to such section
7 72(c)(5)(A) in the case of a life insurance contract,
8 any modification to such contract (including a
9 change in ownership) or to the payments under such
10 contract that is made to satisfy the requirements of
11 such section (or similar requirements) shall not re-
12 sult in the recognition of any gain or loss, any
13 amount being included in gross income, or any addi-
14 tion to tax that otherwise might result from such
15 modification, but only if the modification is com-
16 pleted before the date which is 2 years after the date
17 of the enactment of this Act.

18 **SEC. 203. JOINT STUDY OF APPLICATION OF SPOUSAL CON-**
19 **SENT RULES TO DEFINED CONTRIBUTION**
20 **PLANS.**

21 (a) STUDY.—The Secretary of Labor and the Sec-
22 retary of the Treasury shall jointly conduct a study of the
23 feasibility and desirability of extending the application of
24 the requirements of section 205 of the Employee Retire-
25 ment Income Security Act of 1974 and sections

1 401(a)(11) and 417 of the Internal Revenue Code of 1986
2 (relating to spousal consent requirements) to defined con-
3 tribution plans to which such requirements do not apply.
4 Such study shall include consideration of any modifica-
5 tions of such requirements that are necessary to apply
6 such requirements to such plans.

7 (b) REPORT.—Not later than 2 years after the date
8 of the enactment of this Act, the Secretaries shall report
9 the results of the study, together with any recommenda-
10 tions for legislative changes, to the Committees on Fi-
11 nance and Health, Education, Labor, and Pensions of the
12 Senate and the Committees on Ways and Means and Edu-
13 cation and Labor of the House of Representatives.

14 **SEC. 204. FACILITATING LONGEVITY INSURANCE.**

15 (a) IN GENERAL.—Paragraph (9) of section 401(a)
16 is amended by inserting after subparagraph (G) the fol-
17 lowing new subparagraph:

18 “(H) LONGEVITY INSURANCE.—

19 “(i) IN GENERAL.—For purposes of
20 this paragraph, any value attributable to
21 longevity insurance shall be disregarded in
22 determining the value of an employee’s in-
23 terest under a plan prior to the first date
24 that payments are made under the lon-
25 gevity insurance.

1 “(ii) LONGEVITY INSURANCE DE-
2 FINED.—For purposes of this subpara-
3 graph, the term ‘longevity insurance’
4 means an annuity payable on behalf of the
5 employee under which—

6 “(I) payments commence not
7 later than 12 months following the
8 calendar month in which the employee
9 attains age 85 (or would have at-
10 tained age 85),

11 “(II) payments are made in sub-
12 stantially equal periodic payments
13 (not less frequently than annually)
14 over the life of the employee or the
15 joint lives of the employee and the
16 employee’s designated beneficiary,
17 taking into account the rules of clause
18 (i) of section 402(e)(7)(D), except as
19 otherwise provided in subclause (III)
20 of such section,

21 “(III) prior to the death of the
22 employee, the annuity does not make
23 available any commutation benefit,
24 cash surrender value, or other similar
25 feature, and

1 “(IV) except as provided in rules
2 prescribed by the Secretary, in the
3 case of an employee’s death prior to
4 the date that payments commence, the
5 value of any death benefits paid may
6 not exceed the premiums paid for
7 such annuity, plus interest com-
8 pounded annually at 3 percent.

9 “(iii) ADJUSTING AGE.—For purposes
10 of clause (ii)(I), the Secretary shall annu-
11 ally increase age 85 to reflect increases in
12 life expectancy (as determined by the Sec-
13 retary) that occur on or after January 1,
14 2008, except that any such increased age
15 which is not a whole number shall be
16 rounded to the next lower whole number.”.

17 (b) RULES.—Not later than one year after the date
18 of enactment of this Act, the Secretary of the Treasury
19 shall prescribe rules under which all or a portion of a par-
20 ticipant’s benefits under any plan described in section
21 402(c)(8)(B) of the Internal Revenue Code of 1986 may
22 be treated as longevity insurance under the rules of section
23 401(a)(9)(H) of such Code.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to years beginning after December
3 31, 2008.

4 **TITLE III—PROVISIONS**
5 **ENSURING EQUITY IN DIVORCE**

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

8 (a) PRESERVATION OF ASSETS.—

9 (1) AMENDMENT OF 1986 CODE.—Section
10 414(p) is amended by redesignating paragraph (13)
11 as paragraph (14) and by inserting after paragraph
12 (12) the following new paragraph:

13 “(13) PRESERVATION OF ASSETS.—

14 “(A) IN GENERAL.—If a spouse or former
15 spouse of a participant notifies a plan in writ-
16 ing that—

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

20 “(ii) all or a portion of the benefits
21 payable with respect to the participant
22 under the plan are a subject of such ac-
23 tion,

24 and includes with the notice evidence of the
25 pendency of the action, the plan administrator

1 shall, during the segregation period, separately
2 account for 50 percent of such benefits. Any
3 amounts so separately accounted for may not
4 be distributed by the plan during the segrega-
5 tion period.

6 “(B) SEGREGATION PERIOD.—For pur-
7 poses of subparagraph (A), the term ‘segrega-
8 tion period’ means the period—

9 “(i) beginning on the date of the re-
10 ceipt of the notice, and

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

17 The segregation period shall be extended for 1
18 or more additional periods described in the pre-
19 ceeding sentence upon notice by the spouse or
20 former spouse that the action described in sub-
21 paragraph (A) is still pending as of the close of
22 any prior segregation period.”

23 (2) AMENDMENT OF ERISA.—Section 206(d)(3)
24 of the Employee Retirement Income Security Act of
25 1974 (29 U.S.C. 1056(d)(3)) is amended by redesignig-

1 nating subparagraph (N) as subparagraph (O) and
2 by inserting after subparagraph (M) the following
3 new subparagraph:

4 “(N) PRESERVATION OF ASSETS.—

5 “(i) IN GENERAL.—If a spouse or
6 former spouse of a participant notifies a
7 plan in writing that—

8 “(I) an action is pending pursu-
9 ant to a State domestic relations law
10 (including a community property law),
11 and

12 “(II) all or a portion of the bene-
13 fits payable with respect to the partic-
14 ipant under the plan are a subject of
15 such action,

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

23 “(ii) SEGREGATION PERIOD.—For
24 purposes of clause (i), the term ‘segrega-
25 tion period’ means the period—

1 “(I) beginning on the date of the
2 receipt of the notice, and

3 “(II) ending as of the close of the
4 90-day period beginning on such date
5 (or, if earlier, the date of receipt of a
6 domestic relations order with respect
7 to the participant and the spouse or
8 former spouse or the date the action
9 is no longer pending).

10 The segregation period shall be extended
11 for 1 or more additional periods described
12 in the preceding sentence upon notice by
13 the spouse or former spouse that the ac-
14 tion described in clause (i) is still pending
15 as of the close of any prior segregation pe-
16 riod.”

17 (b) PENALTY FOR FAILURE TO PROVIDE INFORMA-
18 TION REGARDING ALTERNATE PAYEES.—Section 502(c)
19 of the Employee Retirement Income Security Act of 1974
20 (29 U.S.C. 1132(c)) is amended by redesignating para-
21 graph (8) as paragraph (9) and by inserting after para-
22 graph (7) the following new paragraph:

23 “(8) FAILURE TO PROVIDE INFORMATION RE-
24 GARDING ALTERNATE PAYEES.—The Secretary may
25 assess a civil penalty against any plan administrator

1 of up to \$100 a day from the date of the plan ad-
2 ministrator's failure or refusal to provide the infor-
3 mation the plan administrator is required to provide
4 under regulations under this Act to prospective al-
5 ternative payees under a domestic relations order
6 under section 206(d)(3) or to the Secretary or any
7 representative of a prospective alternative payee in
8 connection with such an order.”

9 (c) ALLOCATION OF PLAN EXPENSES IN COMPLYING
10 WITH DOMESTIC RELATIONS ORDERS.—

11 (1) AMENDMENT OF 1986 CODE.—Section
12 414(p), as amended by subsection (a), is amended
13 by redesignating paragraph (14) as paragraph (15)
14 and by inserting after paragraph (13) the following
15 new paragraph:

16 “(14) ALLOCATION OF EXPENSES.—Any ex-
17 penses incurred by a plan with respect to compliance
18 with the requirements of this subsection shall not be
19 allocated to an individual participant but rather
20 shall be allocated among all participants on the basis
21 of the relative value of each participant's share of
22 the assets of the plan, on the basis of a flat amount
23 per participant, or on any other reasonable basis
24 provided for under the plan.”.

1 (2) AMENDMENT OF ERISA.—Section 206(d)(3)
2 of the Employee Retirement Income Security Act of
3 1974 (29 U.S.C. 1056(d)(3)), as amended by sub-
4 section (a), is amended by redesignating subpara-
5 graph (O) as subparagraph (P) and by inserting
6 after subparagraph (N) the following new subpara-
7 graph:

8 “(O) ALLOCATION OF EXPENSES.—Any
9 expenses incurred by a plan with respect to
10 compliance with the requirements of this para-
11 graph shall not be allocated to an individual
12 participant but rather shall be allocated among
13 all participants on the basis of the relative value
14 of each participant’s share of the assets of the
15 plan, on the basis of a flat amount per partici-
16 pant, or on any other reasonable basis provided
17 for under the plan.”.

18 **SEC. 302. ELIMINATION OF CURRENT CONNECTION RE-**
19 **QUIREMENT UNDER RAILROAD RETIREMENT**
20 **ACT FOR CERTAIN SURVIVORS.**

21 (a) IN GENERAL.—Section 2(d)(1) of the Railroad
22 Retirement Act of 1974 (45 U.S.C. 231a(d)(1)), in the
23 matter preceding paragraph (i), is amended by inserting
24 “, except with respect to survivors described in paragraph
25 (i), (ii), or (v),” after “December 31, 1995) and”.

1 (b) EFFECTIVE DATES.—

2 (1) IN GENERAL.—The amendment made by
3 subsection (a) shall take effect on the date of enact-
4 ment of this Act.

5 (2) RETROACTIVE APPLICATION TO CERTAIN
6 SURVIVORS.—If a survivor of a deceased employee
7 would be entitled to an annuity by reason of the
8 amendment made by subsection (a) but for the fact
9 that the employee died before the date of the enact-
10 ment of this Act, the survivor shall be entitled to
11 such an annuity but only with respect to annuity
12 payments for months beginning on or after such
13 date. Appropriate adjustments shall be made in an-
14 nuity payments of other individuals to reflect any
15 annuity payable by reason of this paragraph.

16 **SEC. 303. PERMITTING DIVORCED SPOUSES AND WIDOWS**
17 **AND WIDOWERS TO REMARRY AFTER TURN-**
18 **ING 60 WITHOUT A PENALTY UNDER RAIL-**
19 **ROAD RETIREMENT ACT.**

20 (a) IN GENERAL.—

21 (1) DIVORCED SPOUSE.—Section 2(c)(4) of the
22 Railroad Retirement Act of 1974 (45 U.S.C.
23 231a(c)(4) is amended by adding at the end the fol-
24 lowing new sentence: “For purposes of paragraph
25 (ii)(B), if a divorced wife marries after attaining age

1 60, such marriage shall be deemed not to have oc-
2 curred.”

3 (2) WIDOWS AND WIDOWERS.—Section
4 2(d)(1)(v) of the Railroad Retirement Act of 1974
5 (45 U.S.C. 231a(d)(1)(v)) is amended by adding at
6 the end the following new sentence: “For purposes
7 of this paragraph, if a widow marries after attaining
8 age 60, such marriage shall be deemed not to have
9 occurred.”

10 (b) EFFECTIVE DATES.—

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

14 (2) RETROACTIVE APPLICATION.—If a divorced
15 wife, widow, or widower would be entitled to an an-
16 nuity by reason of the amendments made by this
17 section but for the fact the individual was married
18 before the date of the enactment of this Act, the in-
19 dividual shall be entitled to such an annuity but only
20 with respect to annuity payments for months begin-
21 ning on or after such date. Appropriate adjustments
22 shall be made in annuity payments of other individ-
23 uals to reflect any annuity payable by reason of this
24 paragraph.

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

3 **SEC. 401. GRANTS TO COMMUNITY-BASED TAXPAYER CLIN-**
4 **ICS TO PROVIDE RETIREMENT SAVINGS AD-**
5 **VICE.**

6 (a) IN GENERAL.—Section 7526 (relating to low-in-
7 come taxpayer clinics) is amended by adding at the end
8 the following:

9 “(d) ADDITIONAL GRANTS FOR RETIREMENT SAV-
10 INGS ADVICE.—

11 “(1) MAKING OF GRANTS.—The Secretary may,
12 subject to the availability of appropriated funds,
13 make grants to qualified low-income taxpayer clinics
14 to provide retirement savings counseling to low-in-
15 come taxpayers.

16 “(2) USE OF GRANT FUNDS.—Grants under
17 paragraph (1) shall be used to—

18 “(A) develop the infrastructure necessary
19 to carry out retirement savings counseling for
20 low-income taxpayers, including the develop-
21 ment of software to assist low-income taxpayers
22 in beginning a retirement savings program,
23 monitoring their savings behavior, and taking
24 advantage of tax benefits provided under this
25 title to assist in retirement savings,

1 “(B) develop partnerships with certified fi-
2 nancial planners and other financial experts to
3 assist in carrying out the retirement savings
4 program, and

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

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

10 “(4) LIMITATIONS AND SPECIAL RULES.—

11 “(A) AGGREGATE LIMITATION.—Unless
12 otherwise provided by specific appropriations,
13 the Secretary shall not allocate more than
14 \$25,000,000 per year (exclusive of costs of ad-
15 ministering the program) to grants under para-
16 graph (1).

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

21 “(C) MULTI-YEAR GRANTS.—The provi-
22 sions of subsection (c)(3) shall apply to grants
23 under paragraph (1).

1 “(D) ADDITIONAL AMOUNTS.—Grants
2 under paragraph (1) shall be in addition to any
3 grants under subsection (a).”

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 7526(c) (relating to special rules
6 and limitations) is amended by striking “this sec-
7 tion” each place it appears and inserting “subsection
8 (a)”.

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

11 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
12 authorized to be appropriated for each fiscal year begin-
13 ning after September 30, 2008, \$25,000,000 to carry out
14 the provisions of this section.

15 **SEC. 402. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
16 **NING SERVICES.**

17 (a) IN GENERAL.—Subsection (m) of section 132
18 (defining qualified retirement services) is amended by add-
19 ing at the end the following new paragraph:

20 “(4) NO CONSTRUCTIVE RECEIPT.—

21 “(A) IN GENERAL.—No amount shall be
22 included in the gross income of any employee
23 solely because the employee may choose between
24 any qualified retirement planning services pro-
25 vided by an eligible investment advisor and

1 compensation which would otherwise be includ-
2 ble in the gross income of such employee. The
3 preceding sentence shall apply to highly com-
4 pensated employees only if the choice described
5 in such sentence is available on substantially
6 the same terms to each member of the group of
7 employees normally provided education and in-
8 formation regarding the employer's qualified
9 employer plan.

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

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

18 “(i) who—

19 “(I) is registered as an invest-
20 ment adviser under the Investment
21 Advisers Act of 1940 (15 U.S.C. 80b-
22 1 et seq.),

23 “(II) is registered as an invest-
24 ment adviser under the laws of the
25 State in which such adviser maintains

1 the principal office and place of busi-
2 ness of such adviser, but only if such
3 State laws are consistent with section
4 203A of the Investment Advisers Act
5 of 1940 (15 U.S.C. 80b-3a),

6 “(III) is a bank or similar finan-
7 cial institution referred to in section
8 408(b)(4),

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

12 “(V) is any other comparably
13 qualified entity which satisfies such
14 criteria as the Secretary determines
15 appropriate, consistent with the pur-
16 poses of this subsection, and

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

19 “(D) ADVISER REQUIREMENTS.—The re-
20 quirements of this subparagraph are met if
21 every individual employed (or otherwise com-
22 pensated) by a person described in subpara-
23 graph (C)(i) who provides investment advice on
24 behalf of such person to any plan participant or
25 beneficiary is—

1 “(i) an individual described in sub-
2 clause (I) of subparagraph (C)(i),

3 “(ii) an individual described in sub-
4 clause (II) of subparagraph (C)(i), but
5 only if such State has an examination re-
6 quirement to qualify for registration,

7 “(iii) registered as a broker or dealer
8 under the Securities Exchange Act of 1934
9 (15 U.S.C. 78a et seq.),

10 “(iv) a registered representative as de-
11 scribed in section 3(a)(18) of the Securi-
12 ties Exchange Act of 1934 (15 U.S.C.
13 78c(a)(18)) or section 202(a)(17) of the
14 Investment Advisers Act of 1940 (15
15 U.S.C. 80b-2(a)(17)), or

16 “(v) any other comparably qualified
17 individual who satisfies such criteria as the
18 Secretary determines appropriate, con-
19 sistent with the purposes of this para-
20 graph.

21 “(E) TERMINATION.—This paragraph
22 shall not apply to taxable years beginning after
23 December 31, 2012.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 403(b)(3)(B) is amended by insert-
2 ing “132(m)(4),” after “132(f)(4),”.

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

5 (3) Section 415(c)(3)(D)(ii) is amended by in-
6 serting “132(m)(4),” after “132(f)(4),”.

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

10 **SEC. 403. RETIREMENT HANDBOOK AND RETIREMENT**
11 **READINESS CHECKLIST.**

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

15 “(f) RETIREMENT INFORMATION.—

16 “(1) IN GENERAL.—The Commissioner, in con-
17 sultation with the Social Security Advisory Board,
18 shall prepare—

19 “(A) the financial reference handbook de-
20 scribed in paragraph (2), and

21 “(B) the retirement readiness checklist de-
22 scribed in paragraph (3).

23 “(2) FINANCIAL REFERENCE HANDBOOK.—The
24 handbook described in this paragraph is a pamphlet
25 which—

1 “(A) includes definitions of basic financial
2 terms,

3 “(B) contains a listing of financial issues
4 and problems facing individuals who are retir-
5 ing and explanations of methods of dealing with
6 the issues and problems, and

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

9 “(3) READINESS CHECKLIST.—The checklist
10 described in this paragraph is a list of questions that
11 individuals need to consider in preparation for re-
12 tirement, including the following:

13 “(A) What annual income will the indi-
14 vidual need in retirement?

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

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

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

21 “(E) How will savings be invested in re-
22 tirement?

23 “(F) How will taxes affect your retirement
24 income?

1 The checklist will include answers to the questions
2 or directions as to where information is available to
3 answer the questions. All information shall be in a
4 form readily understandable to the average recipient
5 of the checklist.

6 “(4) REVISIONS.—The Commissioner shall peri-
7 odically revise and update the handbook and check-
8 list prepared under this subsection.

9 “(5) DISTRIBUTION OF MATERIALS.—

10 “(A) HANDBOOK.—The financial reference
11 handbook described in paragraph (2) shall be
12 included with materials provided to an indi-
13 vidual when the individual first applies for ben-
14 efits under title II and such other times as the
15 Commissioner determines appropriate.

16 “(B) CHECKLIST.—The retirement readi-
17 ness checklist described in paragraph (3) shall
18 be included with an individual’s annual social
19 security account statement provided under sec-
20 tion 1143.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall take effect on the date of the enactment
23 of this Act, but the handbooks and checklists required to
24 be provided by such amendment shall be provided on or

1 after January 1, 2010 (or such earlier date as the Com-
2 missioner of Social Security may provide).

3 **TITLE V—INCENTIVES FOR**
4 **SMALL BUSINESSES TO ES-**
5 **TABLISH AND MAINTAIN RE-**
6 **TIREMENT PLANS FOR EM-**
7 **PLOYEES**

8 **SEC. 501. CREDIT FOR QUALIFIED PENSION PLAN CON-**
9 **TRIBUTIONS OF SMALL EMPLOYERS.**

10 (a) IN GENERAL.—Subpart D of part IV of sub-
11 chapter A of chapter 1 (relating to business related cred-
12 its), as amended by section 102, is amended by adding
13 at the end the following new section:

14 **“SEC. 45P. SMALL EMPLOYER PENSION PLAN CONTRIBU-**
15 **TIONS.**

16 “(a) GENERAL RULE.—For purposes of section 38,
17 in the case of an eligible employer, the small employer pen-
18 sion plan contribution credit determined under this section
19 for any taxable year is an amount equal to 50 percent
20 of the amount which would (but for subsection (f)(1)) be
21 allowed as a deduction under section 404 for such taxable
22 year for qualified employer contributions made to any
23 qualified retirement plan on behalf of any employee who
24 is not a highly compensated employee.

1 “(b) CREDIT LIMITED TO 3 YEARS.—The credit al-
2 lowable by this section shall be allowed only with respect
3 to the period of 3 taxable years beginning with the first
4 taxable year for which a credit is allowable with respect
5 to a plan under this section.

6 “(c) QUALIFIED EMPLOYER CONTRIBUTION.—For
7 purposes of this section—

8 “(1) DEFINED CONTRIBUTION PLANS.—In the
9 case of a defined contribution plan, the term ‘quali-
10 fied employer contribution’ means the amount of
11 nonelective and matching contributions to the plan
12 made by the employer on behalf of any employee
13 who is not a highly compensated employee to the ex-
14 tent such amount does not exceed 3 percent of such
15 employee’s compensation from the employer for the
16 year.

17 “(2) DEFINED BENEFIT PLANS.—In the case of
18 a defined benefit plan, the term ‘qualified employer
19 contribution’ means the amount of employer con-
20 tributions to the plan made on behalf of any em-
21 ployee who is not a highly compensated employee to
22 the extent that the accrued benefit of such employee
23 derived from employer contributions for the year
24 does not exceed the equivalent (as determined under
25 regulations prescribed by the Secretary and without

1 regard to contributions and benefits under the Social
2 Security Act) of 3 percent of such employee's com-
3 pensation from the employer for the year.

4 “(d) QUALIFIED RETIREMENT PLAN.—

5 “(1) IN GENERAL.—The term ‘qualified retire-
6 ment plan’ means any plan described in section
7 401(a) which includes a trust exempt from tax
8 under section 501(a), any simplified pension (as de-
9 fined in section 408(k)), or any simple retirement
10 account (as defined in section 408(p) if the following
11 requirements are met with respect to such plan, pen-
12 sion, or account:

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

15 “(B) The vesting requirements of para-
16 graph (3).

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

19 The contribution and vesting requirements of para-
20 graphs (2) and (3) shall be treated as met in the
21 case of a simple retirement account under a quali-
22 fied salary reduction arrangement (as defined in sec-
23 tion 408(p)(2)) or a cash or deferred arrangement
24 meeting the requirements of section 401(k)(11).

25 “(2) CONTRIBUTION REQUIREMENTS.—

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

3 “(i) the employer is required to make
4 nonelective contributions of at least 1 per-
5 cent of compensation (or the equivalent
6 thereof in the case of a defined benefit
7 plan) for each employee who is not a high-
8 ly compensated employee who is eligible to
9 participate in the plan, and

10 “(ii) allocations of nonelective em-
11 ployer contributions, in the case of a de-
12 fined contribution plan, are either in equal
13 dollar amounts for all employees covered
14 by the plan or bear a uniform relationship
15 to the total compensation, or the basic or
16 regular rate of compensation, of the em-
17 ployees covered by the plan (and an equiv-
18 alent requirement is met with respect to a
19 defined benefit plan).

20 “(B) COMPENSATION LIMITATION.—The
21 compensation taken into account under sub-
22 paragraph (A) for any year shall not exceed the
23 limitation in effect for such year under section
24 401(a)(17).

1 “(3) VESTING REQUIREMENTS.—The require-
 2 ments of this paragraph are met if the plan satisfies
 3 the requirements of either of the following subpara-
 4 graphs:

5 “(A) 3-YEAR VESTING.—A plan satisfies
 6 the requirements of this subparagraph if an em-
 7 ployee who has completed at least 3 years of
 8 service has a nonforfeitable right to 100 percent
 9 of the employee’s accrued benefit derived from
 10 employer contributions.

11 “(B) 5-YEAR GRADED VESTING.—A plan
 12 satisfies the requirements of this subparagraph
 13 if an employee has a nonforfeitable right to a
 14 percentage of the employee’s accrued benefit de-
 15 rived from employer contributions determined
 16 under the following table:

“Years of service:	The nonforfeitable percentage is:
1	20
2	40
3	60
4	80
5	100.

17 “(4) DISTRIBUTION REQUIREMENTS.—In the
 18 case of a profit-sharing or stock bonus plan, the re-
 19 quirements of this paragraph are met if, under the
 20 plan, qualified employer contributions are distribut-
 21 able only as provided in section 401(k)(2)(B).

1 “(e) OTHER DEFINITIONS.—For purposes of this
2 section—

3 “(1) ELIGIBLE EMPLOYER.—

4 “(A) IN GENERAL.—The term ‘eligible em-
5 ployer’ means, with respect to any year, an em-
6 ployer which has no more than 25 employees
7 who received at least \$5,000 of compensation
8 from the employer for the preceding year.

9 “(B) REQUIREMENT FOR NEW QUALIFIED
10 EMPLOYER PLANS.—Such term shall not in-
11 clude an employer if, during the 3-taxable year
12 period immediately preceding the first taxable
13 year for which the credit under this section is
14 otherwise allowable for a qualified employer
15 plan of the employer, the employer or any mem-
16 ber of any controlled group including the em-
17 ployer (or any predecessor of either) established
18 or maintained a qualified employer plan with
19 respect to which contributions were made, or
20 benefits were accrued, for substantially the
21 same employees as are in the qualified employer
22 plan.

23 “(2) HIGHLY COMPENSATED EMPLOYEE.—The
24 term ‘highly compensated employee’ has the mean-

1 ing given such term by section 414(q) (determined
2 without regard to section 414(q)(1)(B)(ii)).

3 “(f) SPECIAL RULES.—

4 “(1) DISALLOWANCE OF DEDUCTION.—No de-
5 duction shall be allowed for that portion of the quali-
6 fied employer contributions paid or incurred for the
7 taxable year which is equal to the credit determined
8 under subsection (a).

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

13 “(3) AGGREGATION RULES.—All persons treat-
14 ed as a single employer under subsection (a) or (b)
15 of section 52, or subsection (n) or (o) of section 414,
16 shall be treated as one person. All eligible employer
17 plans shall be treated as 1 eligible employer plan.

18 “(g) RECAPTURE OF CREDIT ON FORFEITED CON-
19 TRIBUTIONS.—

20 “(1) IN GENERAL.—Except as provided in para-
21 graph (2), if any accrued benefit which is forfeitable
22 by reason of subsection (d)(3) is forfeited, the em-
23 ployer’s tax imposed by this chapter for the taxable
24 year in which the forfeiture occurs shall be increased
25 by 35 percent of the employer contributions from

1 which such benefit is derived to the extent such con-
2 tributions were taken into account in determining
3 the credit under this section.

4 “(2) REALLOCATED CONTRIBUTIONS.—Para-
5 graph (1) shall not apply to any contribution which
6 is reallocated by the employer under the plan to em-
7 ployees who are not highly compensated employees.”.

8 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
9 NESS CREDIT.—Section 38(b) (defining current year busi-
10 ness credit), as amended by section 102, is amended by
11 striking “and” at the end of paragraph (31), by striking
12 the period at the end of paragraph (32) and inserting “,
13 and”, and by adding at the end the following new para-
14 graph:

15 “(33) in the case of an eligible employer (as de-
16 fined in section 45P(e)), the small employer pension
17 plan contribution credit determined under section
18 45P(a).”.

19 (c) CONFORMING AMENDMENTS.—

20 (1) Subsection (c) of section 196 is amended by
21 striking “and” at the end of paragraph (12), by
22 striking the period at the end of paragraph (13) and
23 inserting “, and”, and by adding at the end the fol-
24 lowing new paragraph:

1 “(14) the small employer pension plan contribu-
2 tion credit determined under section 45P(a).”.

3 (2) The table of sections for subpart D of part
4 IV of subchapter A of chapter 1, as amended by sec-
5 tion 102, is amended by adding at the end the fol-
6 lowing new item:

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

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

10 **SEC. 502. DEDUCTION FOR PENSION CONTRIBUTIONS AL-**
11 **LOWED IN COMPUTING NET EARNINGS FROM**
12 **SELF-EMPLOYMENT.**

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

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

23 (b) **EFFECTIVE DATE.**—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2008.

1 **SEC. 503. EXEMPTION OF DEFERRAL-ONLY QUALIFIED**
2 **CASH OR DEFERRED ARRANGEMENTS FROM**
3 **TOP-HEAVY PLAN RULES.**

4 (a) IN GENERAL.—Section 416(g) (defining top-
5 heavy plan) is amended by adding at the end the following
6 new paragraph:

7 “(5) EXCEPTION FOR DEFERRAL-ONLY CASH
8 OR DEFERRED ARRANGEMENTS.—In the case of a
9 plan which consists solely of a qualified cash or de-
10 ferred arrangement (as defined in section 401(k)(2))
11 under which no amounts may be contributed other
12 than elective deferrals (as defined in section
13 402(g)(3)), such plan shall not be treated as a top-
14 heavy plan.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to years beginning after December
17 31, 2008.

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

21 (a) IN GENERAL.—In the case of an eligible small
22 plan for which a remedial amendment period is established
23 under Internal Revenue Procedure 2005–66 (or any regu-
24 lation, revenue ruling, revenue procedure, or guidance pro-
25 viding for a similar period), no amendment to the plan
26 necessary for the plan to meet the qualification require-

1 ments under the Internal Revenue Code of 1986 shall be
2 required before the close of such period.

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

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

9 (2) the plan is operated during the period de-
10 scribed in paragraph (1) as if the amendment were
11 in effect, and

12 (3) the plan meets such requirements as the
13 Secretary of the Treasury may prescribe to ensure
14 that the Secretary, the Secretary of Labor, employ-
15 ers maintaining the plan, and participants and bene-
16 ficiaries of the plan are adequately notified of the
17 terms of the plan actually in effect during a plan
18 year.

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

21 (1) IN GENERAL.—The term “eligible small
22 plan” means a plan which, as of the beginning of a
23 remedial amendment or similar period described in
24 subsection (a), had 100 or fewer participants. For
25 purposes of this paragraph, all defined benefit plans

1 which are single-employer plans and are maintained
2 by the same employer (or any member of such em-
3 ployer's controlled group) shall be treated as 1 plan,
4 but only participants with respect to such employer
5 or member shall be taken into account.

6 (2) APPLICATION OF CERTAIN RULES IN DE-
7 TERMINATION OF PLAN SIZE.—For purposes of this
8 subsection—

9 (A) PLANS NOT IN EXISTENCE IN PRE-
10 CEDING YEAR.—In the case of the first plan
11 year of any plan, subparagraph (B) shall apply
12 to such plan by taking into account the number
13 of participants that the plan is reasonably ex-
14 pected to have on days during such first plan
15 year.

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

19 (d) EFFECTIVE DATE.—This section shall apply to
20 amendments required to be adopted for plan years begin-
21 ning after December 31, 2007.

1 **TITLE VI—PROVISIONS RELAT-**
2 **ING TO LONG-TERM CARE IN-**
3 **SURANCE**

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

6 (a) IN GENERAL.—Part VII of subchapter B of chap-
7 ter 1 of the Internal Revenue Code of 1986 (relating to
8 additional itemized deductions) is amended by redesi-
9 gnating section 224 as section 225 and by inserting after
10 section 223 the following new section:

11 **“SEC. 224. PREMIUMS ON QUALIFIED LONG-TERM CARE IN-**
12 **SURANCE CONTRACTS.**

13 “(a) IN GENERAL.—In the case of an individual,
14 there shall be allowed as a deduction an amount equal to
15 the applicable percentage of the amount of eligible long-
16 term care premiums (as defined in section 213(d)(10))
17 paid during the taxable year for coverage for the taxpayer
18 and the taxpayer’s spouse and dependents under a quali-
19 fied long-term care insurance contract (as defined in sec-
20 tion 7702B(b)).

21 “(b) APPLICABLE PERCENTAGE.—For purposes of
22 subsection (a), the applicable percentage shall be deter-
23 mined in accordance with the following table:

“For taxable years beginning in calendar year—	The applicable percentage is—
2008	25
2009	35
2010	65
2011 or thereafter	100.

1 “(c) COORDINATION WITH OTHER DEDUCTIONS.—

2 Any amount paid by a taxpayer for any qualified long-
3 term care insurance contract to which subsection (a) ap-
4 plies shall not be taken into account in computing the
5 amount allowable to the taxpayer as a deduction under
6 section 162(l) or 213(a).”.

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

10 (1) CAFETERIA PLANS.—The last sentence of
11 section 125(f) of such Code (defining qualified bene-
12 fits) is amended by inserting before the period at the
13 end “; except that such term shall include the pay-
14 ment of premiums for any qualified long-term care
15 insurance contract (as defined in section 7702B) to
16 the extent the amount of such payment does not ex-
17 ceed the eligible long-term care premiums (as de-
18 fined in section 213(d)(10)) for such contract”.

19 (2) FLEXIBLE SPENDING ARRANGEMENTS.—
20 Section 106 of such Code (relating to contributions
21 by an employer to accident and health plans) is

1 amended by striking subsection (c) and redesignig-
2 nating subsection (d) as subsection (c).

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 62(a) of such Code is amended by
5 inserting before the last sentence at the end the fol-
6 lowing new paragraph:

7 “(22) PREMIUMS ON QUALIFIED LONG-TERM
8 CARE INSURANCE CONTRACTS.—The deduction al-
9 lowed by section 224.”.

10 (2) Sections 223(b)(4)(B), 223(d)(4)(C),
11 223(f)(3)(B), 3231(e)(11), 3306(b)(18),
12 3401(a)(22), 4973(g)(1), and 4973(g)(2)(B)(i) of
13 such Code are each amended by striking “section
14 106(d)” and inserting “section 106(c)”.

15 (3) Section 6041 of such Code is amended—

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

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

20 “(h) FLEXIBLE SPENDING ARRANGEMENT DE-
21 FINED.—For purposes of this section, a flexible spending
22 arrangement is a benefit program which provides employ-
23 ees with coverage under which—

1 “(1) specified incurred expenses may be reim-
2 bursed (subject to reimbursement maximums and
3 other reasonable conditions), and

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

8 In the case of an insured plan, the maximum amount rea-
9 sonably available shall be determined on the basis of the
10 underlying coverage.”.

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

“Sec. 224. Premiums on qualified long-term care insurance contracts.

“Sec. 225. Cross reference”.

15 (d) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graph (2), the amendments made by this section
18 shall apply to taxable years beginning after Decem-
19 ber 31, 2007.

20 (2) CAFETERIA PLANS AND FLEXIBLE SPEND-
21 ING ARRANGEMENTS.—The amendments made by
22 subsection (b) shall apply to taxable years beginning
23 after December 31, 2009.

1 **SEC. 602. CREDIT FOR TAXPAYERS WITH LONG-TERM CARE**
 2 **NEEDS.**

3 (a) IN GENERAL.—Subpart A of part IV of sub-
 4 chapter A of chapter 1 of the Internal Revenue Code of
 5 1986 (relating to nonrefundable personal credits) is
 6 amended by inserting after section 25D the following new
 7 section:

8 **“SEC. 25E. CREDIT FOR TAXPAYERS WITH LONG-TERM**
 9 **CARE NEEDS.**

10 “(a) ALLOWANCE OF CREDIT.—

11 “(1) IN GENERAL.—There shall be allowed as a
 12 credit against the tax imposed by this chapter for
 13 the taxable year an amount equal to the applicable
 14 credit amount multiplied by the number of applica-
 15 ble individuals with respect to whom the taxpayer is
 16 an eligible caregiver for the taxable year.

17 “(2) APPLICABLE CREDIT AMOUNT.—For pur-
 18 poses of paragraph (1), the applicable credit amount
 19 shall be determined in accordance with the following
 20 table:

“For taxable years beginning in calendar year—	The applicable credit amount is—
2008	\$1,000
2009	1,500
2010	2,000
2011	2,500
2012 or thereafter	3,000.

21 “(b) LIMITATION BASED ON ADJUSTED GROSS IN-
 22 COME.—

1 “(1) IN GENERAL.—The amount of the credit
2 allowable under subsection (a) shall be reduced (but
3 not below zero) by \$100 for each \$1,000 (or fraction
4 thereof) by which the taxpayer’s modified adjusted
5 gross income exceeds the threshold amount. For
6 purposes of the preceding sentence, the term ‘modi-
7 fied adjusted gross income’ means adjusted gross in-
8 come increased by any amount excluded from gross
9 income under section 911, 931, or 933.

10 “(2) THRESHOLD AMOUNT.—For purposes of
11 paragraph (1), the term ‘threshold amount’ means—

12 “(A) \$150,000 in the case of a joint re-
13 turn, and

14 “(B) \$75,000 in any other case.

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

19 “(A) such dollar amount, and

20 “(B) the medical care cost adjustment de-
21 termined under section 213(d)(10)(B)(ii) for
22 the calendar year in which the taxable year be-
23 gins, determined by substituting ‘August 2007’
24 for ‘August 1996’ in subclause (II) thereof.

1 If any increase determined under the preceding sen-
2 tence is not a multiple of \$50, such increase shall
3 be rounded to the next lowest multiple of \$50.

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

5 “(1) APPLICABLE INDIVIDUAL.—

6 “(A) IN GENERAL.—The term ‘applicable
7 individual’ means, with respect to any taxable
8 year, any individual who has been certified, be-
9 fore the due date for filing the return of tax for
10 the taxable year (without extensions), by a phy-
11 sician (as defined in section 1861(r)(1) of the
12 Social Security Act) as being an individual with
13 long-term care needs described in subparagraph
14 (B) for a period—

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

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

19 Notwithstanding the preceding sentence, a cer-
20 tification shall not be treated as valid unless it
21 is made within the 39½ month period ending
22 on such due date (or such other period as the
23 Secretary prescribes).

24 “(B) INDIVIDUALS WITH LONG-TERM CARE
25 NEEDS.—An individual is described in this sub-

1 paragraph if the individual meets any of the fol-
2 lowing requirements:

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

5 “(I) is unable to perform (with-
6 out substantial assistance from an-
7 other individual) at least 3 activities
8 of daily living (as defined in section
9 7702B(c)(2)(B)) due to a loss of
10 functional capacity, or

11 “(II) requires substantial super-
12 vision to protect such individual from
13 threats to health and safety due to se-
14 vere cognitive impairment and is un-
15 able to perform, without reminding or
16 cuing assistance, at least 1 activity of
17 daily living (as so defined) or to the
18 extent provided in regulations pre-
19 scribed by the Secretary (in consulta-
20 tion with the Secretary of Health and
21 Human Services), is unable to engage
22 in age appropriate activities.

23 “(ii) The individual is at least 2 but
24 not 6 years of age and is unable due to a
25 loss of functional capacity to perform

1 (without substantial assistance from an-
2 other individual) at least 2 of the following
3 activities: eating, transferring, or mobility.

4 “(iii) The individual is under 2 years
5 of age and requires specific durable med-
6 ical equipment by reason of a severe health
7 condition or requires a skilled practitioner
8 trained to address the individual’s condi-
9 tion to be available if the individual’s par-
10 ents or guardians are absent.

11 “(2) ELIGIBLE CAREGIVER.—

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

15 “(i) The taxpayer.

16 “(ii) The taxpayer’s spouse.

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

20 “(iv) An individual who would be de-
21 scribed in clause (iii) for the taxable year
22 if section 152(d)(1)(B) were applied by
23 substituting for the exemption amount an
24 amount equal to the sum of the exemption
25 amount, the standard deduction under sec-

1 tion 63(c)(2)(C), and any additional stand-
2 ard deduction under section 63(c)(3) which
3 would be applicable to the individual if
4 clause (iii) applied.

5 “(v) An individual who would be de-
6 scribed in clause (iii) for the taxable year
7 if—

8 “(I) the requirements of subpara-
9 graph (B) are met with respect to the
10 individual in lieu of the support test
11 of section 152(c)(1)(D) or
12 152(d)(1)(C), as the case may be, and

13 “(II) in the case of an individual
14 who is not a qualifying child (as de-
15 fined in section 152(d)) for the tax-
16 able year, the requirements of clause
17 (iv) are met with respect to the indi-
18 vidual.

19 “(B) RESIDENCY TEST.—The require-
20 ments of this subparagraph are met if an indi-
21 vidual has as his principal place of abode the
22 home of the taxpayer and—

23 “(i) in the case of an individual who
24 is an ancestor or descendant of the tax-
25 payer or the taxpayer’s spouse, is a mem-

1 ber of the taxpayer’s household for over
2 half the taxable year, or

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

6 “(C) SPECIAL RULES WHERE MORE THAN
7 1 ELIGIBLE CAREGIVER.—

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

20 “(ii) NO AGREEMENT.—If each indi-
21 vidual required under clause (i) to file a
22 written declaration under clause (i) does
23 not do so, the individual with the highest
24 adjusted gross income shall be treated as
25 the eligible caregiver.

1 “(iii) MARRIED INDIVIDUALS FILING
2 SEPARATELY.—In the case of married indi-
3 viduals filing separately, the determination
4 under this subparagraph as to whether the
5 husband or wife is the eligible caregiver
6 shall be made under the rules of clause (ii)
7 (whether or not one of them has filed a
8 written declaration under clause (i)).

9 “(d) IDENTIFICATION REQUIREMENT.—No credit
10 shall be allowed under this section to a taxpayer with re-
11 spect to any applicable individual unless the taxpayer in-
12 cludes the name and taxpayer identification number of
13 such individual, and the identification number of the phy-
14 sician certifying such individual, on the return of tax for
15 the taxable year.

16 “(e) TAXABLE YEAR MUST BE FULL TAXABLE
17 YEAR.—Except in the case of a taxable year closed by rea-
18 son of the death of the taxpayer, no credit shall be allow-
19 able under this section in the case of a taxable year cov-
20 ering a period of less than 12 months.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Section 6213(g)(2) of such Code is amend-
23 ed by striking “and” at the end of subparagraph
24 (L), by striking the period at the end of subpara-
25 graph (M) and inserting “, and”, and by inserting

1 after subparagraph (M) the following new subpara-
2 graph:

3 “(N) an omission of a correct TIN or phy-
4 sician identification required under section
5 25E(d) (relating to credit for taxpayers with
6 long-term care needs) to be included on a re-
7 turn.”.

8 (2) The table of sections for subpart A of part
9 IV of subchapter A of chapter 1 of such Code is
10 amended by inserting after the item relating to sec-
11 tion 25D the following new item:

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

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years beginning after
14 December 31, 2007.

15 **SEC. 603. ADDITIONAL CONSUMER PROTECTIONS FOR**
16 **LONG-TERM CARE INSURANCE.**

17 (a) ADDITIONAL PROTECTIONS APPLICABLE TO
18 LONG-TERM CARE INSURANCE.—Subparagraphs (A) and
19 (B) of section 7702B(g)(2) of the Internal Revenue Code
20 of 1986 (relating to requirements of model regulation and
21 Act) are amended to read as follows:

22 “(A) IN GENERAL.—The requirements of
23 this paragraph are met with respect to any con-
24 tract if such contract meets—

1 “(i) MODEL REGULATION.—The fol-
2 lowing requirements of the model regula-
3 tion:

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

9 “(II) Section 6B (relating to pro-
10 hibitions on limitations and exclu-
11 sions) other than paragraph (7) there-
12 of.

13 “(III) Section 6C (relating to ex-
14 tension of benefits).

15 “(IV) Section 6D (relating to
16 continuation or conversion of cov-
17 erage).

18 “(V) Section 6E (relating to dis-
19 continuance and replacement of poli-
20 cies).

21 “(VI) Section 7 (relating to unin-
22 tentional lapse).

23 “(VII) Section 8 (relating to dis-
24 closure), other than sections 8F, 8G,
25 8H, and 8I thereof.

1 “(VIII) Section 11 (relating to
2 prohibitions against post-claims un-
3 derwriting).

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

6 “(X) Section 13 (relating to re-
7 quirement to offer inflation protec-
8 tion).

9 “(XI) Section 25 (relating to pro-
10 hibition against preexisting conditions
11 and probationary periods in replace-
12 ment policies or certificates).

13 “(XII) The provisions of section
14 26 relating to contingent nonforfeiture
15 benefits, if the policyholder declines
16 the offer of a nonforfeiture provision
17 described in paragraph (4).

18 “(ii) MODEL ACT.—The following re-
19 quirements of the model Act:

20 “(I) Section 6C (relating to pre-
21 existing conditions).

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

24 “(III) The provisions of section 8
25 relating to contingent nonforfeiture

1 benefits, if the policyholder declines
2 the offer of a nonforfeiture provision
3 described in paragraph (4).

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

6 “(i) MODEL PROVISIONS.—The terms
7 ‘model regulation’ and ‘model Act’ mean
8 the long-term care insurance model regula-
9 tion, and the long-term care insurance
10 model Act, respectively, promulgated by
11 the National Association of Insurance
12 Commissioners (as adopted as of October
13 2000).

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

20 “(iii) DETERMINATION.—For pur-
21 poses of this section and section 4980C,
22 the determination of whether any require-
23 ment of a model regulation or the model
24 Act has been met shall be made by the
25 Secretary.”.

1 (b) EXCISE TAX.—Paragraph (1) of section
2 4980C(e) of the Internal Revenue Code of 1986 (relating
3 to requirements of model provisions) is amended to read
4 as follows:

5 “(1) REQUIREMENTS OF MODEL PROVISIONS.—

6 “(A) MODEL REGULATION.—The following
7 requirements of the model regulation must be
8 met:

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

11 “(ii) Section 14 (relating to applica-
12 tion forms and replacement coverage).

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

15 “(iv) Section 22 (relating to filing re-
16 quirements for marketing).

17 “(v) Section 23 (relating to standards
18 for marketing), including inaccurate com-
19 pletion of medical histories, other than
20 paragraphs (1), (6), and (9) of section
21 23C.

22 “(vi) Section 24 (relating to suit-
23 ability).

24 “(vii) Section 29 (relating to standard
25 format outline of coverage).

1 “(viii) Section 30 (relating to require-
2 ment to deliver shopper’s guide).

3 The requirements referred to in clause (vi) shall
4 not include those portions of the personal work-
5 sheet described in Appendix B relating to con-
6 sumer protection requirements not imposed by
7 section 4980C or 7702B.

8 “(B) MODEL ACT.—The following require-
9 ments of the model Act must be met:

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

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

14 “(iii) Section 6H (relating to require-
15 ments for certificates under group plans).

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

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

20 “(vi) Section 7 (relating to incontest-
21 ability period).

22 “(C) DEFINITIONS.—For purposes of this
23 paragraph, the terms ‘model regulation’ and
24 ‘model Act’ have the meanings given such terms
25 by section 7702B(g)(2)(B).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to policies issued more than 1 year
3 after the date of the enactment of this Act.

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

6 (a) IN GENERAL.—Subsection (a) of section 1035 of
7 the Internal Revenue Code of 1986 (relating to exchanges
8 of insurance policies) is amended by striking the period
9 at the end of paragraph (3) and inserting “; or” and by
10 adding at the end the following new paragraph:

11 “(4) a qualified long-term care insurance con-
12 tract for another qualified long-term care insurance
13 contract.”.

14 (b) QUALIFIED LONG-TERM CARE INSURANCE CON-
15 TRACT.—Subsection (b) of section 1035 of such Code (re-
16 lating to definitions) is amended by adding at the end the
17 following new paragraph:

18 “(4) QUALIFIED LONG-TERM CARE INSURANCE
19 CONTRACT.—The term ‘qualified long-term care in-
20 surance contract’ means—

21 “(A) any qualified long-term care insur-
22 ance contract (as defined in section 7702B),
23 and

1 “(B) any contract which is treated as such
2 by section 321(f)(2) of the Health Insurance
3 Portability and Accountability Act of 1996.”.

4 (c) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by
6 this section shall apply to exchanges after December
7 31, 1997.

8 (2) WAIVER OF LIMITATIONS.—If the credit or
9 refund of any overpayment of tax with respect to a
10 taxable year ending before the date of the enactment
11 of this Act resulting from the application of section
12 1035(a)(4) of the Internal Revenue Code of 1986, as
13 added by this section, is prevented at any time by
14 the operation of any law or rule of law (including res
15 judicata), such credit or refund may nevertheless be
16 allowed or made if the claim therefor is filed before
17 the close of the 1-year period beginning on the date
18 of the enactment of this Act.

○