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(Original Signature of Member)

109TH CONGRESS
1ST SESSION

H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

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

A BILL

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

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Pension Preservation and Savings Expansion Act of
6 2005”.

1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MAKING TODAY'S RETIREMENT SAVINGS
OPPORTUNITIES PERMANENT

Sec. 101. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.

Sec. 102. Saver's credit made permanent.

TITLE II—BUILDING AND PRESERVING RETIREMENT ASSETS
AND ENHANCING PORTABILITY

Sec. 201. Retirement savings account.

Sec. 202. Expansion of Saver's credit.

Sec. 203. Faster vesting of employer nonelective contributions.

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

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

Sec. 206. IRA eligibility for the disabled.

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

Sec. 208. Exclusion of certain nonqualified annuity payments.

Sec. 209. Increasing participation through automatic contribution arrangements.

Sec. 210. Facilitating longevity insurance.

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

Sec. 212. Treatment of qualified retirement planning services.

Sec. 213. Repeal of combined plan deduction limit.

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

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

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

Sec. 303. Uniform catch-up contribution rule.

Sec. 304. Uniform definition of compensation.

Sec. 305. Uniform withdrawal rules.

Sec. 306. Allow level dollar contributions to SEPs.

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

Sec. 308. Uniform availability of designated RSA contributions.

Sec. 309. Allow certain plan transfers and mergers.

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

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

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

Sec. 403. Eligibility for participation in retirement plans.

Sec. 404. Clarification of minimum distribution rules.

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

TITLE V—SIMPLIFICATION AND EQUITY

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

TITLE VI—IMPROVEMENTS IN PENSION SECURITY

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

TITLE VII—OTHER TAX PROVISIONS RELATING TO PENSIONS

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

TITLE VIII—MISCELLANEOUS PROVISIONS

- Sec. 801. Provisions relating to plan amendments.

1 **TITLE I—MAKING TODAY’S RE-**
2 **TIREMENT SAVINGS OPPOR-**
3 **TUNITIES PERMANENT**

4 **SEC. 101. PENSIONS AND INDIVIDUAL RETIREMENT AR-**
5 **RANGEMENT PROVISIONS OF ECONOMIC**
6 **GROWTH AND TAX RELIEF RECONCILIATION**
7 **ACT OF 2001 MADE PERMANENT.**

8 (a) IN GENERAL.—Section 901 of the Economic
9 Growth and Tax Relief Reconciliation Act of 2001 is
10 amended by adding at the end the following new sub-
11 section:

12 “(c) EXCEPTION.—Subsections (a) and (b) shall not
13 apply to the provisions of, and amendments made by, sub-
14 titles (A) through (F) of title VI (relating to pension and
15 individual retirement arrangement provisions).”.

16 (b) CONFORMING AMENDMENTS.—Section 901(b) of
17 such Act is amended—

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

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

22 **SEC. 102. SAVER’S CREDIT MADE PERMANENT.**

23 (a) IN GENERAL.—Section 25B of the Internal Rev-
24 enue Code of 1986 (relating to elective deferrals and IRA

1 contributions by certain individuals) is amended by strik-
2 ing subsection (h).

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

6 **TITLE II—BUILDING AND PRE-**
7 **SERVING RETIREMENT AS-**
8 **SETS AND ENHANCING PORT-**
9 **ABILITY**

10 **SEC. 201. RETIREMENT SAVINGS ACCOUNT.**

11 (a) RETIREMENT SAVINGS ACCOUNT.—

12 (1) NAME CHANGED FROM ROTH IRA, ETC.—

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

15 (i) by striking “a” each place it imme-
16 diately precedes “Roth” and inserting
17 “an”,

18 (ii) by striking “Roth IRA” and
19 “Roth IRAs” each place such terms appear
20 and inserting “RSA” and “RSAs”, respec-
21 tively, and

22 (iii) by striking “Roth contribution”,
23 “Roth contributions”, “Roth account” and
24 “Roth accounts” each place such terms ap-
25 pear and inserting “RSA contribution”,

1 “RSA contributions”, “RSA account”, and
2 “RSA accounts”, respectively.

3 (B) RSA DEFINED.—Subsection (a) of sec-
4 tion 7701 of such Code is amended by adding
5 at the end the following paragraph:

6 “(48) RSA.—The term ‘RSA’ means a retire-
7 ment savings account described in section 408A.”.

8 (2) UNIVERSAL AVAILABILITY.—Subsection (c)
9 of section 408A is amended—

10 (A) by striking paragraph (3), and

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

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

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

22 (5) ORDERING RULE.—Subparagraph (B) of
23 section 408A(d)(4) of such Code is amended to read
24 as follows:

1 “(B) ORDERING RULES.—For purposes of
2 applying this section and section 72 to any dis-
3 tribution from an RSA, such distribution shall
4 be treated as made—

5 “(i) from income attributable to con-
6 tributions to the RSA to the extent that
7 the amount of such distribution, when
8 added to all previous distributions from the
9 RSA, does not exceed the aggregate in-
10 come attributable to contributions to the
11 RSA, and

12 “(ii) to the extent that such distribu-
13 tion exceeds such income, from contribu-
14 tions in the following order:

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

18 “(II) Qualified rollover contribu-
19 tions to which paragraph (3) applies
20 on a first-in, first-out basis.

21 For purposes of this subparagraph, income at-
22 tributable to contributions to the RSA shall in-
23 clude income that is attributable to contribu-
24 tions to another RSA or to a designated RSA
25 account and that is rolled over into the RSA.”.

1 (b) CONFORMING AMENDMENTS.—

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

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

8 “(5) ORDERING RULES.—For purposes of ap-
9 plying section 72 to any distribution from a partici-
10 pant’s designated RSA account, such distribution
11 shall be treated as made from income attributable to
12 contributions to the designated RSA account to the
13 extent that the amount of such distribution, when
14 added to all previous distributions from the des-
15 ignated RSA account, does not exceed the aggregate
16 income attributable to contributions to the des-
17 ignated RSA account. For purposes of this para-
18 graph, income attributable to contributions to a des-
19 ignated RSA account shall include income that is at-
20 tributable to contributions to another such account
21 or to an RSA and that is rolled over into the des-
22 ignated RSA account.”.

23 (3) Subparagraph (B) of section 4973(f)(1) and
24 subparagraph (B) of section 4973(f)(2) of such Code

1 are each amended by striking “sections 408A(c)(2)
2 and (c)(3)” and inserting “section 408A(c)(2)”.

3 (c) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to years beginning after De-
6 cember 31, 2005.

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

12 **SEC. 202. EXPANSION OF SAVER’S CREDIT.**

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

“Adjusted Gross Income						
Joint return		Head of Household		All other cases		Applicable percentage
Over	Not over	Over	Not over	Over	Not over	
	\$30,000		\$22,500		\$15,000	50
30,000	40,000	22,500	30,000	15,000	20,000	20
40,000	50,000	30,000	37,500	20,000	25,000	10
50,000		37,500		25,000		0”.

17 (b) ADJUSTMENT FOR INFLATION.—Section 25B of
18 such Code (as amended by subsection (a)) is further
19 amended by redesignating subsection (h) as subsection (i)
20 and by inserting after subsection (g) the following new
21 subsection:

1 “(h) ADJUSTMENT FOR INFLATION.—

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

7 “(A) such dollar amount, multiplied by

8 “(B) the cost-of-living adjustment deter-
9 mined under section 1(f)(3) for such calendar
10 year by substituting ‘calendar year 2007’ for
11 ‘calendar year 1992’ in subparagraph (B)
12 thereof.

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

16 “(2) ADJUSTMENT OF AMOUNTS RELATING TO
17 JOINT RETURN AND HEAD OF HOUSEHOLD.—In the
18 case of any taxable year beginning after December
19 31, 2008—

20 “(A) there shall be substituted for each
21 dollar amount in the table contained in sub-
22 section (b) in the columns under the heading
23 ‘Joint return’ a dollar amount equal to twice
24 the corresponding dollar amount in such table

1 in the columns under the heading ‘All other
2 cases’ (as increased under paragraph (1)), and
3 “(B) there shall be substituted for each
4 dollar amount in the table contained in sub-
5 section (b) in the columns under the heading
6 ‘Head of household’ a dollar amount equal to
7 1½ times the corresponding dollar amount in
8 such table in the columns under the heading
9 ‘All other cases’ (as increased under paragraph
10 (1)).”.

11 (c) TESTING PERIOD.—Subparagraph (B) of section
12 25B(d)(2) of such Code is amended to read as follows:

13 “(B) TESTING PERIOD.—For purposes of
14 subparagraph (A), the testing period, with re-
15 spect to a taxable year, is the period which
16 includes—

17 “(i) such taxable year, and

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

19 (d) TREATMENT AS REFUNDABLE.—

20 (1) CREDIT MOVED TO SUBPART RELATING TO
21 REFUNDABLE CREDIT.—

22 (A) IN GENERAL.—Section 25B of such
23 Code, as amended by this Act, is hereby moved
24 to subpart C of part IV of subchapter A of

1 chapter 1 (relating to refundable credits) and
2 inserted after section 35.

3 (B) TECHNICAL AMENDMENTS.—

4 (i) Section 36 of such Code is redesign-
5 nated as section 37.

6 (ii) Section 25B of such Code (as
7 moved by subparagraph (A)) is redesign-
8 nated as section 36.

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

12 (iv) The table of sections for subpart
13 C of such part is amended by redesign-
14 nating the item relating to section 36 as
15 an item relating to section 37 and by in-
16 serting after section 35 the following new
17 item:

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

18 (2) MANDATORY DEPOSIT INTO QUALIFIED AC-
19 COUNT.—

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

1 (B) DEPOSIT INTO QUALIFIED AC-
2 COUNT.—Subsection (g) of section 36 of such
3 Code, as moved and redesignated by paragraph
4 (1), is amended to read as follows:

5 “(g) DEPOSIT INTO QUALIFIED ACCOUNT.—

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

11 “(A) shall be paid on behalf of the indi-
12 vidual taxpayer to an applicable retirement plan
13 designated by the individual to be invested in a
14 manner designated by the individual, except
15 that in the case of a joint return, each spouse
16 shall be entitled to designate an applicable re-
17 tirement plan and investments with respect to
18 payments attributable to such spouse, or

19 “(B) in the case of taxpayer who does not
20 properly designate an applicable retirement plan
21 in a timely manner or who designates an appli-
22 cable retirement plan that does not accept such
23 amount in a timely manner, shall be paid or
24 credited on behalf of the individual taxpayer in
25 a manner determined under rules prescribed by

1 the Secretary that provides treatment com-
2 parable to the treatment under subparagraph
3 (A).

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

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

13 “(A) an RSA contribution in the case of a
14 payments to an individual retirement plan, or

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

18 (e) REGULATION AND PROMOTION.—Section 36 of
19 such Code, as amended and redesignated by this section,
20 is amended by adding at the end the following new sub-
21 section:

22 “(i) REGULATION AND PROMOTION.—The Secretary
23 may prescribe such regulations and other guidance as may
24 be necessary or appropriate to carry out this section. The
25 Secretary shall also take such steps as he determines nec-

1 essary and appropriate to increase public awareness of the
2 credit provided under this section.”.

3 (f) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to taxable years beginning after
5 December 31, 2006.

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

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

10 (1) IN GENERAL.—Paragraph (2) of section
11 411(a) of the Internal Revenue Code of 1986 (relat-
12 ing to employer contributions) is amended to read as
13 follows:

14 “(2) EMPLOYER CONTRIBUTIONS.—

15 “(A) DEFINED BENEFIT PLANS.—

16 “(i) IN GENERAL.—In the case of a
17 defined benefit plan, a plan satisfies the
18 requirements of this paragraph if it satis-
19 fies the requirements of clause (ii) or (iii).

20 “(ii) 5-YEAR VESTING.—A plan satis-
21 fies the requirements of this clause if an
22 employee who has completed at least 5
23 years of service has a nonforfeitable right
24 to 100 percent of the employee’s accrued

1 benefit derived from employer contribu-
2 tions.

3 “(iii) 3 TO 7 YEAR VESTING.—A plan
4 satisfies the requirements of this clause if
5 an employee has a nonforfeitable right to
6 a percentage of the employee’s accrued
7 benefit derived from employer contribu-
8 tions determined under the following table:

“Years of service	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

9 “(B) DEFINED CONTRIBUTION PLANS.—

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

15 “(ii) 3-YEAR VESTING.—A plan satis-
16 fies the requirements of this clause if an
17 employee who has completed at least 3
18 years of service has a nonforfeitable right
19 to 100 percent of the employee’s accrued
20 benefit derived from employer contribu-
21 tions.

1 “(iii) 2 TO 6 YEAR VESTING.—A plan
 2 satisfies the requirements of this clause if
 3 an employee has a nonforfeitable right to
 4 a percentage of the employee’s accrued
 5 benefit derived from employer contribu-
 6 tions determined under the following table:

“Years of service	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6	100.”.

7 (2) CONFORMING AMENDMENT.—Section
 8 411(a) of such Code (relating to general rule for
 9 minimum vesting standards) is amended by striking
 10 paragraph (12).

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

13 (1) IN GENERAL.—Paragraph (2) of section
 14 203(a) of the Employee Retirement Income Security
 15 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to
 16 read as follows:

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

20 “(ii) A plan satisfies the requirements of this
 21 clause if an employee who has completed at least 5
 22 years of service has a nonforfeitable right to 100

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

3 “(iii) A plan satisfies the requirements of this
 4 clause if an employee has a nonforfeitable right to
 5 a percentage of the employee’s accrued benefit de-
 6 rived from employer contributions determined under
 7 the following table:

“Years of service	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

8 “(B)(i) In the case of an individual account
 9 plan, a plan satisfies the requirements of this para-
 10 graph if it satisfies the requirements of clause (ii) or
 11 (iii).

12 “(ii) A plan satisfies the requirements of this
 13 clause if an employee who has completed at least 3
 14 years of service has a nonforfeitable right to 100
 15 percent of the employee’s accrued benefit derived
 16 from employer contributions.

17 “(iii) A plan satisfies the requirements of this
 18 clause if an employee has a nonforfeitable right to
 19 a percentage of the employee’s accrued benefit de-
 20 rived from employer contributions determined under
 21 the following table:

“Years of service	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6	100.”.

1 (2) CONFORMING AMENDMENT.—Section
 2 203(a) of such Act is amended by striking para-
 3 graph (4).

4 (c) EFFECTIVE DATES.—

5 (1) IN GENERAL.—Except as provided in para-
 6 graph (2), the amendments made by this section
 7 shall apply to contributions for plan years beginning
 8 after December 31, 2005.

9 (2) COLLECTIVE BARGAINING AGREEMENTS.—

10 In the case of a plan maintained pursuant to one or
 11 more collective bargaining agreements between em-
 12 ployee representatives and one or more employers
 13 ratified before the date of the enactment of this Act,
 14 the amendments made by this section shall not apply
 15 to contributions on behalf of employees covered by
 16 any such agreement for plan years beginning before
 17 the earlier of—

18 (A) the later of—

19 (i) the date on which the last of such
 20 collective bargaining agreements termi-
 21 nates (determined without regard to any

1 extension thereof on or after such date of
2 the enactment); or

3 (ii) January 1, 2006; or

4 (B) January 1, 2008.

5 (3) SERVICE REQUIRED.—With respect to any
6 plan, the amendments made by this section shall not
7 apply to any employee before the date that such em-
8 ployee has 1 hour of service under such plan in any
9 plan year to which the amendments made by this
10 section apply.

11 **SEC. 204. ALLOW ROLLOVERS BY NONSPOUSE BENE-**
12 **FICIARIES OF CERTAIN RETIREMENT PLAN**
13 **DISTRIBUTIONS.**

14 (a) IN GENERAL.—

15 (1) QUALIFIED PLANS.—Section 402(c) of the
16 Internal Revenue Code of 1986 (relating to rollovers
17 from exempt trusts) is amended by adding at the
18 end the following new paragraph:

19 “(11) DISTRIBUTIONS TO INHERITED INDI-
20 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-
21 FICIARY.—

22 “(A) IN GENERAL.—If, with respect to any
23 portion of a distribution from an eligible retire-
24 ment plan of a deceased employee, a direct
25 trustee-to-trustee transfer is made to an indi-

1 vidual retirement plan described in clause (i) or
2 (ii) of paragraph (8)(B) established for the pur-
3 poses of receiving the distribution on behalf of
4 an individual who is a designated beneficiary
5 (as defined by section 401(a)(9)(E)) of the em-
6 ployee and who is not the surviving spouse of
7 the employee—

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

11 “(ii) the individual retirement plan
12 shall be treated as an inherited individual
13 retirement account or individual retirement
14 annuity (within the meaning of section
15 408(d)(3)(C)) for purposes of this title,
16 and

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

20 “(B) CERTAIN TRUSTS TREATED AS BENE-
21 FICIARIES.—For purposes of this paragraph, to
22 the extent provided in rules prescribed by the
23 Secretary, a trust maintained for the benefit of
24 one or more designated beneficiaries shall be

1 treated in the same manner as a trust des-
2 ignated beneficiary.”.

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

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

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

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to distributions after December 31,
17 2005.

18 **SEC. 205. ENHANCING PORTABILITY OF AFTER-TAX**
19 **AMOUNTS.**

20 (a) ROLLOVERS BETWEEN QUALIFIED PLANS AND
21 SECTION 403(b) PLANS.—Subparagraph (A) of section
22 402(c)(2) of such Code (relating to maximum amount
23 which may be rolled over) is amended by striking “and
24 which” and inserting “or to an annuity contract described
25 in section 403(b) and such plan or contract”.

1 (b) ROLLOVERS TO DEFINED BENEFIT PLANS.—
2 Subparagraph (A) of section 402(c)(2) of such Code (re-
3 lating to maximum amount which may be rolled over) is
4 amended by striking “which is a part of a plan which is
5 a defined contribution plan and”.

6 (c) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall apply to taxable years beginning after
8 December 31, 2005.

9 **SEC. 206. IRA ELIGIBILITY FOR THE DISABLED.**

10 (a) IN GENERAL.—Subsection (f) of section 219 of
11 the Internal Revenue Code of 1986 (relating to other defi-
12 nitions and special rules) is amended by adding at the end
13 the following:

14 “(8) SPECIAL RULE FOR CERTAIN DISABLED
15 INDIVIDUALS.—In the case of an individual—

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

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

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

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

1 **SEC. 207. EXCLUSION OF CERTAIN QUALIFIED ANNUITY**
2 **PAYMENTS AND FACILITATION OF SUCH PAY-**
3 **MENTS AND ROLLOVERS.**

4 (a) IN GENERAL.—

5 (1) QUALIFIED PLANS.—Subsection (e) of sec-
6 tion 402 of the Internal Revenue Code of 1986 (re-
7 lating to exempt trusts) is amended by adding at the
8 end the following new paragraph:

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

11 “(A) IN GENERAL.—In the case of a life-
12 time annuity payment to a qualified distributee
13 from a qualified trust (within the meaning of
14 subsection (c)(8)(A)) maintained in connection
15 with a defined contribution plan, gross income
16 shall not include 10 percent of the amount oth-
17 erwise includible in gross income (determined
18 without regard to this paragraph).

19 “(B) 5-YEAR LIMITATION.—Subparagraph
20 (A) shall apply to a qualified distributee only in
21 the first 5 taxable years in which the qualified
22 distributee receives lifetime annuity payments
23 for the entire taxable year. For purposes of this
24 subparagraph, all lifetime annuity payments re-
25 ceived by a qualified distributee shall be taken
26 into account to the extent that such payments

1 are subject to this paragraph or to rules similar
2 to the rules of this paragraph (other than sec-
3 tions 72(b)(5) and 101(d)(4)).

4 “(C) LIMITATION.—

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

21 “(ii) AGGREGATION RULE.—For pur-
22 poses of this subparagraph, all lifetime an-
23 nuity payments received by a qualified dis-
24 tributee shall be taken into account to the
25 extent that such payments are subject to

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

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

6 “(i) LIFETIME ANNUITY PAYMENT.—

7 “(I) IN GENERAL.—The term
8 ‘lifetime annuity payment’ means a
9 distribution which is a part of a series
10 of substantially equal periodic pay-
11 ments (made not less frequently than
12 annually) made over the life of the
13 qualified distributee or the joint lives
14 of the qualified distributee and the
15 qualified distributee’s designated ben-
16 eficiary.

17 “(II) CERTAIN FLUCTUATING
18 PAYMENTS.—Annuity payments shall
19 not fail to be treated as part of a se-
20 ries of substantially equal periodic
21 payments merely because the amount
22 of the periodic payments may vary in
23 accordance with investment experi-
24 ence, reallocations among investment
25 options, actuarial gains or losses, cost

1 of living indices, a constant percent-
2 age (not less than zero) applied not
3 less frequently than annually, or simi-
4 lar fluctuating criteria.

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

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

1 beneficiary are less than the amounts
2 payable during their joint lives.

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

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

23 “(VII) QUALIFIED DOMESTIC RE-
24 LATIONS ORDERS.—Annuity payments
25 shall not fail to be treated as a series

1 of substantially equal periodic pay-
2 ments merely because the payments
3 are reduced on account of a qualified
4 domestic relations order (within the
5 meaning of section 414(p)) that be-
6 comes effective after the commence-
7 ment of the annuity payments.

8 “(ii) QUALIFIED DISTRIBUTEES.—The
9 term ‘qualified distributee’ means the em-
10 ployee, the surviving spouse of the em-
11 ployee, and an alternate payee who is the
12 spouse or former spouse of the employee.

13 “(E) RECAPTURE TAX.—

14 “(i) IN GENERAL.—If—

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

18 “(II) the series of payments of
19 which such payment is a part is sub-
20 sequently modified (other than by rea-
21 son of death or disability) so that
22 some or all future payments are not
23 lifetime annuity payments,

24 the qualified distributee’s gross income for
25 the first taxable year in which such modi-

1 fication occurs shall be increased by an
2 amount, determined under rules prescribed
3 by the Secretary, equal to the amount
4 which (but for subparagraph (A)) would
5 have been includible in the qualified
6 distributee's gross income if the modifica-
7 tion had been in effect at all times, plus in-
8 terest for the deferral period at the under-
9 payment rate established under section
10 6621.

11 “(ii) DEFERRAL PERIOD.—For pur-
12 poses of this subparagraph, the term ‘de-
13 ferral period’ means the period beginning
14 with the taxable year in which (without re-
15 gard to subparagraph (A)) the payment
16 would have been includible in gross income
17 and ending with the taxable year in which
18 the modification described in clause (i)(II)
19 occurs.

20 “(F) PHASEOUT OF EXCLUSION.—

21 “(i) IN GENERAL.—In any taxable
22 year, the exclusion from gross income for
23 any qualified distributee under this para-
24 graph and under rules similar to the rules
25 of this paragraph (other than sections

1 72(b)(5) and 101(d)(4) shall not exceed
2 the income-adjusted limit.

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

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

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

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

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

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

22 “(iv) LIMITATION ON REDUCTION.—
23 The income-adjusted limit shall not be re-
24 duced below \$200 by clause (ii)(II) unless

1 (without regard to this clause) such limit is
2 reduced to zero.

3 “(v) ROUNDING RULE.—Any income-
4 adjusted limit determined under this sub-
5 paragraph which is not a multiple of \$10
6 shall be rounded to the next lowest mul-
7 tiple of \$10.

8 “(vi) ADJUSTED GROSS INCOME.—For
9 purposes of this subparagraph, adjusted
10 gross income of any taxpayer shall be de-
11 termined in the same manner as under sec-
12 tion 219(g)(3) except that any amount in-
13 cluded in income under section 408A(d)(3)
14 shall not be taken into account.

15 “(vii) APPLICABLE DOLLAR LIMIT.—
16 For purposes of this subparagraph, the ap-
17 plicable dollar amount is—

18 “(I) in the case of a taxpayer fil-
19 ing a joint return, an amount equal to
20 twice the amount in effect under sub-
21 clause (II),

22 “(II) in the case of any other
23 taxpayer (other than a married indi-
24 vidual filing a separate return),
25 \$60,000, and

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

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

8 “(ix) COST-OF-LIVING ADJUST-
9 MENT.—In the case of taxable years begin-
10 ning after December 31, 2006, the Sec-
11 retary shall adjust the \$60,000 amount in
12 clause (vii)(II) at the same time and in the
13 same manner as under section 415(d), ex-
14 cept that the base period shall be the cal-
15 endar quarter beginning July 1, 2005, and
16 any increase under this clause which is not
17 a multiple of \$5,000 shall be rounded to
18 the next lowest multiple of \$5,000.

19 “(G) INVESTMENT IN THE CONTRACT.—
20 For purposes of section 72, the investment in
21 the contract shall be determined without regard
22 to this paragraph.”.

23 (2) SECTION 403(a) PLANS.—Paragraph (4) of
24 section 403(a) of such Code (relating to qualified

1 annuity plans) is amended by adding at the end the
2 following new subparagraph:

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

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

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

17 (4) IRAS.—Section 408(d) of such Code (relat-
18 ing to tax treatment of distributions) is amended by
19 adding at the end the following new paragraph:

20 “(8) EXCLUSION OF PERCENTAGE OF LIFETIME
21 ANNUITY PAYMENTS.—Rules similar to the rules of
22 section 402(e)(7) shall apply to distributions out of
23 an individual retirement plan.”.

24 (5) SECTION 457 PLANS.—Section 457(e) of
25 such Code (relating to special rules for deferred

1 compensation plans) is amended by adding at the
2 end the following new paragraph:

3 “(18) 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 from an eligible deferred compensation plan of an el-
7 ible employer described in subsection (e)(1)(A).”.

8 (b) FACILITATION OF CERTAIN ROLLOVERS AND AN-
9 NUITY DISTRIBUTIONS.—Section 404(c) of the Employee
10 Retirement Income Security Act of 1974 (29 U.S.C.
11 1104(c)) is amended by adding at the end the following
12 new paragraph:

13 “(7)(A) In the case of a pension plan which makes
14 a transfer under section 401(a)(31)(A) of the Internal
15 Revenue Code of 1986 to an individual retirement plan
16 (as defined in section 7701(a)(37) of such Code) in con-
17 nection with a participant or beneficiary or makes a dis-
18 tribution to a participant or beneficiary of an annuity con-
19 tract described in subparagraph (B), the participant or
20 beneficiary shall, for purposes of paragraph (1), be treated
21 as exercising control over the transfer or distribution if—

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

24 “(ii) in connection with such election, the par-
25 ticipant or beneficiary was given an opportunity to

1 elect any other individual retirement plan (in the
2 case of a transfer) or any other annuity contract de-
3 scribed in subparagraph (B) (in the case of a dis-
4 tribution).

5 “(B) An annuity contract is described in this sub-
6 paragraph if it provides, either on an immediate or de-
7 ferred basis, a series of substantially equal periodic pay-
8 ments (not less frequently than annually) for the life of
9 the participant or beneficiary or the joint lives of the par-
10 ticipant or beneficiary and such individual’s designated
11 beneficiary. Annuity payments shall not fail to be treated
12 as part of a series of substantially equal periodic payments
13 merely because the amount of the periodic payments may
14 vary in accordance with investment experience, realloca-
15 tions among investment options, actuarial gains or losses,
16 cost of living indices, a constant percentage (not less than
17 zero) applied not less frequently than annually, or similar
18 fluctuating criteria. Annuity payments shall not fail to be
19 treated as part of a series of substantially equal periodic
20 payments merely because the period between each such
21 payment is lengthened or shortened, but only if at all
22 times such period is not longer than one year. The avail-
23 ability of a commutation benefit or other feature permit-
24 ting acceleration of annuity payments (or a modification
25 of the period during which such a benefit is available),

1 a minimum period of payments certain, or a minimum
2 amount to be paid in any event shall not affect the treat-
3 ment of an annuity contract as an annuity contract de-
4 scribed in this subparagraph.

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

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

17 (c) EFFECTIVE DATE.—

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

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

24 (3) ISSUANCE OF FINAL REGULATIONS.—Final
25 regulations under section 404(c)(7) of the Employee

1 Retirement Income Security Act of 1974 (added by
2 this section) shall be issued no later than 1 year
3 after the date of the enactment of this Act.

4 **SEC. 208. EXCLUSION OF CERTAIN NONQUALIFIED ANNU-**
5 **ITY PAYMENTS.**

6 (a) IN GENERAL.—

7 (1) NONQUALIFIED ANNUITIES.—

8 (A) IN GENERAL.—Section 72(b) of the In-
9 ternal Revenue Code of 1986 (relating to annu-
10 ities) is amended by adding at the end the fol-
11 lowing new paragraph:

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

14 “(A) IN GENERAL.—In the case of a life-
15 time annuity payment to a qualified distributee,
16 gross income shall not include 10 percent of the
17 amount otherwise includible in gross income
18 (determined without regard to this paragraph).

19 “(B) 5-YEAR LIMITATION.—Subparagraph
20 (A) shall apply to a qualified distributee only in
21 the first 5 taxable years in which the qualified
22 distributee receives lifetime annuity payments
23 for the entire taxable year. For purposes of this
24 subparagraph, all lifetime annuity payments re-
25 ceived by a qualified distributee shall be taken

1 into account to the extent that such payments
2 are subject to this paragraph or to the rules of
3 section 101(d)(4).

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

8 “(D) LIMITATION.—

9 “(i) IN GENERAL.—With respect to
10 any qualified distributee, subparagraph (A)
11 shall not apply to any lifetime annuity pay-
12 ment to the extent that the portion of such
13 payment that is includible in income, when
14 added to the portion of all previous and si-
15 multaneous lifetime annuity payments that
16 was included in gross income and that was
17 paid to such qualified distributee during
18 the taxable year, exceeds 50 percent of the
19 applicable amount for such year under sec-
20 tion 415(c)(1)(A). For purposes of the pre-
21 ceding sentence, the portion of lifetime an-
22 nuity payments includible in gross income
23 shall be determined without regard to sub-
24 paragraph (A).

1 “(ii) AGGREGATION RULE.—For pur-
2 poses of this subparagraph, all lifetime an-
3 nuity payments received by a qualified dis-
4 tributee shall be taken into account to the
5 extent that such payments are subject to
6 this paragraph or to the rules of section
7 101(d)(4).

8 “(E) PHASEOUT OF EXCLUSION.—

9 “(i) IN GENERAL.—In any taxable
10 year, the exclusion from gross income for
11 any qualified distributee under this para-
12 graph and under the rules of section
13 101(d)(4) shall not exceed the income-ad-
14 justed limit.

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

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

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

23 “(iii) AMOUNT DETERMINED.—The
24 amount determined under this clause shall
25 be the amount which bears the same ratio

1 to the amount described in clause (ii)(I)
2 as—

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

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

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

14 “(v) ROUNDING RULE.—Any income
15 adjusted limit determined under this sub-
16 paragraph which is not a multiple of \$10
17 shall be rounded to the next lowest mul-
18 tiple of \$10.

19 “(vi) ADJUSTED GROSS INCOME.—For
20 purposes of this subparagraph, adjusted
21 gross income of any taxpayer shall be de-
22 termined in the same manner as under sec-
23 tion 219(g)(3) except that any amount in-
24 cluded in income under section 408A(d)(3)
25 shall not be taken into account.

1 “(vii) APPLICABLE DOLLAR LIMIT.—

2 For purposes of this subparagraph, the ap-
3 plicable dollar amount is—

4 “(I) in the case of a taxpayer fil-
5 ing a joint return, an amount equal to
6 twice the amount in effect under sub-
7 clause (II),

8 “(II) in the case of any other
9 taxpayer (other than a married indi-
10 vidual filing a separate return),
11 \$60,000, and

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

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

19 “(ix) COST-OF-LIVING ADJUST-
20 MENT.—In the case of taxable years begin-
21 ning after December 31, 2006, the Sec-
22 retary shall adjust the \$60,000 amount in
23 clause (vii)(II) at the same time and in the
24 same manner as under section 415(d), ex-
25 cept that the base period shall be the cal-

1 endar quarter beginning July 1, 2005, and
2 any increase under this clause which is not
3 a multiple of \$5,000 shall be rounded to
4 the next lowest multiple of \$5,000.”.

5 (B) DEFINITIONS.—Section 72(c) of such
6 Code is amended by adding at the end the fol-
7 lowing new paragraphs:

8 “(5) LIFETIME ANNUITY PAYMENT.—

9 “(A) IN GENERAL.—For purposes of sub-
10 section (b)(5), the term ‘lifetime annuity pay-
11 ment’ means a distribution from an annuity
12 contract (as defined in paragraph (7)) that is a
13 part of a series of substantially equal periodic
14 payments—

15 “(i) made not less frequently than an-
16 nually over the life of the qualified dis-
17 tributee or the joint lives of the qualified
18 distributee and the qualified distributee’s
19 designated beneficiary, and

20 “(ii) that would satisfy the require-
21 ments of section 408(b)(3) if the annuity
22 contract were treated as an individual re-
23 tirement annuity.

24 “(B) EXCEPTIONS.—

1 “(i) CERTAIN FLUCTUATING PAY-
2 MENTS.—Annuity payments shall not fail
3 to be treated as part of a series of substan-
4 tially equal periodic payments merely be-
5 cause the amount of the periodic payments
6 may vary in accordance with investment
7 experience, reallocations among investment
8 options, actuarial gains or losses, cost of
9 living indices, a constant percentage (not
10 less than zero) applied not less frequently
11 than annually, or similar fluctuating cri-
12 teria.

13 “(ii) CERTAIN CHANGES IN THE MODE
14 OF PAYMENTS.—Annuity payments shall
15 not fail to be treated as part of a series of
16 substantially equal periodic payments
17 merely because the period between each
18 such payment is lengthened or shortened,
19 but only if at all times such period is no
20 longer than one year.

21 “(iii) PERMITTED REDUCTIONS.—An-
22 nuity payments shall not fail to be treated
23 as part of a series of substantially equal
24 periodic payments merely because, in the
25 case of an annuity payable over the lives of

1 the qualified distributee and the qualified
2 distributee's designated beneficiary, the
3 amounts paid after the death of the quali-
4 fied distributee or the qualified
5 distributee's designated beneficiary are less
6 than the amounts payable during their
7 joint lives.

8 “(iv) CERTAIN CONTRACT BENE-
9 FITS.—The availability of a commutation
10 benefit or other feature permitting accel-
11 eration of annuity payments (or modifica-
12 tion of the period during which such a ben-
13 efit is available), a minimum period of pay-
14 ments certain, or a minimum amount to be
15 paid in any event shall not affect the treat-
16 ment of a distribution as a lifetime annuity
17 payment.

18 “(v) ELIGIBLE RETIREMENT PLANS.—
19 Payments from an eligible retirement plan
20 (within the meaning of section 402(c)(8))
21 shall not be treated as lifetime annuity
22 payments.

23 “(6) QUALIFIED DISTRIBUTE.—

24 “(A) IN GENERAL.—For purposes of sub-
25 section (b)(5), the term ‘qualified distributee’

1 means an annuitant, the surviving spouse of an
2 annuitant, or an alternate payee of an annu-
3 itant under the contract.

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

21 “(7) ANNUITY CONTRACT.—For purposes of
22 subsections (b)(5), (c)(5), and (x), the term ‘annuity
23 contract’—

1 “(A) means a commercial annuity within
2 the meaning of section 3405(e)(6), other than
3 an endowment or life insurance contract, and

4 “(B) does not include any annuity contract
5 that is a qualified funding asset (as defined in
6 section 130(d)), but without regard to whether
7 there is a qualified assignment.”.

8 (C) RECAPTURE TAX.—Section 72 of such
9 Code is amended by redesignating subsection
10 (x) as subsection (y) and inserting after sub-
11 section (w) the following new subsection:

12 “(x) RECAPTURE TAX.—

13 “(1) IN GENERAL.—If—

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

17 “(B) the series of payments of which such
18 payment is a part is subsequently modified
19 (other than by reason of death or disability) so
20 that some or all future payments are not life-
21 time annuity payments,

22 the qualified distributee’s gross income for the first
23 taxable year in which such modification occurs shall
24 be increased by an amount, determined under rules
25 prescribed by the Secretary, equal to the amount

1 which (but for subsection (b)(5)) would have been
2 includible in the qualified distributee's gross income
3 if the modification had been in effect at all times,
4 plus interest for the deferral period at the under-
5 payment rate established under section 6621.

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

13 (2) LIFE INSURANCE DEATH BENEFITS.—

14 (A) IN GENERAL.—Section 101(d) of such
15 Code (relating to life insurance proceeds) is
16 amended by adding at the end the following
17 new paragraph:

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

20 “(A) IN GENERAL.—In the case of
21 amounts to which this subsection applies, gross
22 income shall not include 10 percent of the
23 amount otherwise includible in gross income
24 (determined without regard to this paragraph).

1 “(B) RULES OF SECTION 72(b)(5) TO
2 APPLY.—For purposes of this paragraph, rules
3 similar to the rules of section 72(b)(5) and sec-
4 tion 72(x) shall apply, substituting the term
5 ‘beneficiary of the life insurance contract’ for
6 the term ‘annuitant’ wherever it appears, and
7 substituting the term ‘life insurance contract’
8 for the term ‘annuity contract’ wherever it ap-
9 pears.”.

10 (B) CONFORMING AMENDMENT.—Section
11 101(d)(1) of such Code is amended by adding
12 “or paragraph (4) of this subsection” following
13 “to the extent not excluded by the preceding
14 sentence”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to distributions made after Decem-
17 ber 31, 2005.

18 **SEC. 209. INCREASING PARTICIPATION THROUGH AUTO-**
19 **MATIC CONTRIBUTION ARRANGEMENTS.**

20 (a) IN GENERAL.—Section 401(k) of the Internal
21 Revenue Code of 1986 (relating to cash or deferred ar-
22 rangement) is amended by adding at the end the following
23 new paragraph:

24 “(13) NONDISCRIMINATION REQUIREMENTS
25 FOR AUTOMATIC CONTRIBUTION TRUSTS.—

1 “(A) IN GENERAL.—A cash or deferred ar-
2 rangement shall be treated as meeting the re-
3 quirements of paragraph (3)(A)(ii) if such ar-
4 rangement constitutes an automatic contribu-
5 tion trust.

6 “(B) AUTOMATIC CONTRIBUTION TRUST.—

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

10 “(I) under which each employee
11 eligible to participate in the arrange-
12 ment is treated as having elected to
13 have the employer make elective con-
14 tributions in an amount equal to the
15 applicable percentage of compensation
16 until the employee affirmatively elects
17 not to have such contributions made
18 or affirmatively elects to make elective
19 contributions at a specified level, and

20 “(II) which meets the other re-
21 quirements of this paragraph.

22 Subclause (I) of this clause shall not apply
23 to any employee who was eligible to par-
24 ticipate in the arrangement (or a prede-
25 cessor arrangement) immediately before

1 the first date on which the arrangement is
2 an automatic contribution trust. The elec-
3 tion treated as having been made under
4 subclause (I) shall cease to apply to com-
5 pensation paid after the effective date of
6 the affirmative election by the employee.

7 “(ii) For purposes of this subpara-
8 graph, with respect to an employee, the
9 term ‘applicable percentage’ means the
10 percentage determined under the arrange-
11 ment that is—

12 “(I) at least 3 percent as of the
13 first date that the election described
14 in clause (i)(I) is in effect with re-
15 spect to the employee,

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

20 “(III) at least 5 percent by a
21 date that is not later than the first
22 day of the third plan year beginning
23 after the date described in subclause
24 (I),

1 “(IV) at least 6 percent by a
2 date that is no later than the first day
3 of the fourth plan year beginning
4 after the date described in subclause
5 (I),

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

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

15 “(VII) applied uniformly with re-
16 spect to similarly situated employees.

17 “(C) PARTICIPATION.—

18 “(i) Except as provided in clause (ii),
19 an arrangement meets the requirements of
20 this subparagraph for any year if, during
21 the plan year or the preceding plan year,
22 elective contributions are made on behalf
23 of at least 70 percent of the employees eli-
24 gible to participate in the arrangement
25 other than—

1 “(I) highly compensated employ-
2 ees, and

3 “(II) employees who were eligible
4 to participate in the arrangement (or
5 a predecessor arrangement) imme-
6 diately before the first date on which
7 the arrangement is an automatic con-
8 tribution trust.

9 “(ii) An arrangement (other than a
10 successor arrangement) shall be treated as
11 meeting the requirements of this subpara-
12 graph with respect to the first plan year in
13 which the arrangement is effective.

14 “(D) MATCHING OR NONELECTIVE CON-
15 TRIBUTIONS.—

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

19 “(I) makes matching contribu-
20 tions on behalf of each employee who
21 is not a highly compensated employee
22 in an amount equal to 50 percent of
23 the elective contributions of the em-
24 ployee to the extent such elective con-

1 tributions do not exceed 6 percent of
2 compensation, or

3 “**(II)** is required, without regard
4 to whether the employee makes an
5 elective contribution or employee con-
6 tribution, to make a contribution to a
7 defined contribution plan on behalf of
8 each employee who is not a highly
9 compensated employee and who is eli-
10 gible to participate in the arrange-
11 ment in an amount equal to at least
12 2 percent of the employee’s compensa-
13 tion.

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

19 “(ii) **OTHER PLANS.**—An arrange-
20 ment shall be treated as meeting the re-
21 quirements under clause (i) if any other
22 plan maintained by the employer meets
23 such requirements with respect to employ-
24 ees eligible under the arrangement.

1 “(E) VESTING.—The requirements of this
2 subparagraph are met if an employee who has
3 completed at least 2 years of service (within the
4 meaning of section 411(a)) has a nonforfeitable
5 right to 100 percent of the employee’s accrued
6 benefit derived from employer contributions
7 taken into account in determining whether the
8 requirements of subparagraph (D) are met.

9 “(F) NOTICE REQUIREMENTS.—

10 “(i) IN GENERAL.—The requirements
11 of this subparagraph are met if the re-
12 quirements of clauses (ii) and (iii) are met.

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

17 “(I) receives a notice explaining
18 the employee’s right under the ar-
19 rangement to elect not to have elective
20 contributions made on the employee’s
21 behalf and how contributions made
22 under the arrangement will be in-
23 vested in the absence of any invest-
24 ment election by the employee, and

1 “(II) has a reasonable period of
2 time after receipt of such notice and
3 before the first elective contribution is
4 made to make either such election.

5 “(iii) ANNUAL NOTICE OF RIGHTS
6 AND OBLIGATIONS.—The requirements of
7 this clause are met if each employee eligi-
8 ble to participate in the arrangement is,
9 within a reasonable period before any year,
10 given notice of the employee’s rights and
11 obligations under the arrangement.

12 The requirements of clauses (i) and (ii) of para-
13 graph (12)(D) shall be met with respect to the
14 notices described in clauses (ii) and (iii) of this
15 subparagraph.”.

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

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

24 “(A) IN GENERAL.—A defined contribution
25 plan shall be treated as meeting the require-

1 ments of paragraph (2) with respect to match-
2 ing contributions if the plan—

3 “(i) meets the contribution require-
4 ments of subparagraphs (B)(i) and (D) of
5 subsection (k)(13),

6 “(ii) meets the participation require-
7 ments of subsection (k)(13)(C),

8 “(iii) meets the vesting and notice re-
9 quirements of subparagraphs (E) and (F)
10 of subsection (k)(13), and

11 “(iv) meets the requirements of para-
12 graph (11)(B).

13 “(B) MATCHING CONTRIBUTIONS.—An an-
14 nuity contract under section 403(b) shall be
15 treated as meeting the requirements of para-
16 graph (2) with respect to matching contribu-
17 tions if such contract meets requirements simi-
18 lar to the requirements under subparagraph
19 (A).”.

20 (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY
21 PLANS.—

22 (1) ELECTIVE CONTRIBUTION RULE.—Clause
23 (i) of section 416(g)(4)(H) of such Code is amended
24 by inserting “or 401(k)(13)” after “section
25 401(k)(12)”.

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

5 (d) DEFINITION OF COMPENSATION.—

6 (1) BASE PAY OR RATE OF PAY.—The Sec-
7 retary of the Treasury shall, by no later than De-
8 cember 31, 2006, modify Treasury Regulation sec-
9 tion 1.414(s)–1(d)(3) to facilitate the use of the safe
10 harbors in sections 401(k)(12), 401(k)(13),
11 401(m)(11), and 401(m)(12) of the Internal Rev-
12 enue Code of 1986, and in Treasury Regulation sec-
13 tion 1.401(a)(4)–3(b) by plans that use base pay or
14 rate of pay in determining contributions or benefits.
15 Such facilitation shall include increased flexibility in
16 satisfying section 414(s) of such Code in situations
17 where the amount of overtime compensation payable
18 in a year can vary significantly.

19 (2) APPLICATION OF REQUIREMENTS TO SEPA-
20 RATE PAYROLL PERIODS.—Not later than December
21 31, 2005, the Secretary of the Treasury shall issue
22 rules under subparagraphs (B)(i) and (D)(i) of sec-
23 tion 401(k)(13) of such Code and under clause (i)
24 of section 401(m)(12)(A) of such Code that, effec-
25 tive for plan years beginning after December 31,

1 2005, permit such requirements to be applied sepa-
2 rately to separate payroll periods based on rules
3 similar to the rules described in Treasury Regulation
4 sections 1.401(k)-3(c)(5)(ii) and 1.401(m)-3(d)(4).

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

8 “(C) SECTION 403(b) CONTRACTS.—An an-
9 nuity contract under section 403(b) shall be
10 treated as meeting the requirements of para-
11 graph (2) with respect to matching contribu-
12 tions if such contract meets requirements simi-
13 lar to the requirements under subparagraph
14 (A).”.

15 (f) INVESTMENTS AND PREEMPTION.—

16 (1) CONTROL DEEMED TO HAVE BEEN EXER-
17 CISED WITH RESPECT TO AMOUNT OF AUTOMATIC
18 CONTRIBUTIONS.—Section 404(c) of the Employee
19 Retirement Income Security Act of 1974 (29 U.S.C.
20 1104(c)) (as amended by this Act) is amended by
21 adding at the end the following new paragraphs:

22 “(5)(A) A participant in an individual account plan
23 shall, for purposes of paragraph (1), be treated as exer-
24 cising control over the assets in the account with respect

1 to the amount of contributions made under an automatic
2 contribution arrangement.

3 “(B) For purposes this paragraph, the term ‘auto-
4 matic contribution arrangement’ means an arrangement—

5 “(i) which meets the requirements of subpara-
6 graph (C),

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

11 “(iii) under which the participant is treated as
12 having elected to have the employer make such con-
13 tributions in an amount equal to a specified percent-
14 age of compensation provided under the plan until
15 the participant affirmatively elects not to have such
16 contributions made (or affirmatively elects to have
17 such contributions made at a different percentage),
18 and

19 “(iv) under which contributions described in
20 clause (iii) are invested in accordance with regula-
21 tions prescribed by the Secretary, which regulations
22 shall provide for the investment of the contributions
23 in one or more diversified funds that include invest-
24 ments that provide long-term capital appreciation
25 and investments that provide preservation of capital.

1 “(C)(i) The administrator of an individual account
2 plan shall, within a reasonable period before each plan
3 year, give to each employee to whom an automatic con-
4 tribution arrangement applies for such plan year notice
5 of the employee’s rights and obligations under the ar-
6 rangement which—

7 “(I) is sufficiently accurate and comprehensive
8 to apprise the employee of such rights and obliga-
9 tions, and

10 “(II) is written in a manner calculated to be
11 understood by the average employee to whom the ar-
12 rangement applies.

13 “(ii) A notice shall not be treated as meeting the re-
14 quirements of clause (i) with respect to an employee
15 unless—

16 “(I) the notice includes a notice explaining the
17 employee’s right under the arrangement to elect not
18 to have elective contributions made on the employ-
19 ee’s behalf (or to elect to have such contributions
20 made at a different percentage),

21 “(II) the notice explains how contributions
22 made under the arrangement will be invested in the
23 absence of any investment election by the employee,
24 and

1 “(III) the employee has a reasonable period of
2 time after receipt of the notice described in sub-
3 clauses (I) and (II) and before the first elective con-
4 tribution is made to make either such election.

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

9 “(B) Contributions are described in this subpara-
10 graph (B) if—

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

13 “(ii) the administrator of the plan satisfies
14 rules similar to the rules of paragraph (5)(C) (ex-
15 cept that the notice shall relate to the employee’s
16 right to make a different investment election), and

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

19 (2) PREEMPTION OF CONFLICTING STATE REG-
20 ULATION.—Section 514(b) of such Act (29 U.S.C.
21 1144(b)) is amended—

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

24 (B) by inserting after paragraph (8) the
25 following new paragraph:

1 “(9) Notwithstanding any other provision of this sec-
2 tion, any law of a State which would directly or indirectly
3 prohibit or restrict the inclusion in any plan of an auto-
4 matic contribution arrangement (as defined in section
5 404(c)(5)(B)) shall be superseded. The Secretary may
6 prescribe regulations which would establish minimum
7 standards that such arrangements would be required to
8 satisfy in order for this paragraph to apply.”.

9 (g) CORRECTIVE DISTRIBUTIONS.—

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

14 “(bb) AUTOMATIC CONTRIBUTION ARRANGE-
15 MENTS.—

16 “(1) IN GENERAL.—For purposes of this title,
17 the amount of any corrective distribution from a
18 plan shall be treated as if such amount had never
19 been held in such plan and shall be treated as a pay-
20 ment of compensation from the employer maintain-
21 ing the plan to the employee receiving such distribu-
22 tion.

23 “(2) CORRECTIVE DISTRIBUTION.—For pur-
24 poses of this subsection, the term ‘corrective dis-
25 tribution’ means a distribution from an applicable

1 employer plan of all amounts attributable to an erro-
2 neous automatic contribution.

3 “(3) ERRONEOUS AUTOMATIC CONTRIBU-
4 TION.—For purposes of this subsection, the term
5 ‘erroneous automatic contribution’ means an elective
6 contribution made on behalf of an employee under
7 any applicable employer plan pursuant to a plan pro-
8 vision treating the employee as having elected to
9 have the employer make such elective contribution
10 until the employee affirmatively elects not to have
11 such contribution made or affirmatively elects to
12 make contributions at a specified level, if the fol-
13 lowing requirements are satisfied—

14 “(A) within the applicable period, the em-
15 ployee notifies the plan administrator that the
16 employee elects to have the elective contribution
17 treated as an erroneous automatic contribution,
18 and

19 “(B) the sum of the elective contributions
20 that are treated as erroneous automatic con-
21 tributions with respect to an employee does not
22 exceed \$500.

23 “(4) APPLICABLE EMPLOYER PLAN.—For pur-
24 poses of this subsection, the term ‘applicable em-
25 ployer plan’ has the meaning described in subsection

1 (v)(6)(A) except that the term shall not include an
2 eligible deferred compensation plan maintained by
3 an eligible employer described in section
4 457(e)(1)(B).

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

12 (2) VESTING CONFORMING AMENDMENTS.—

13 (A) INTERNAL REVENUE CODE OF 1986.—

14 (i) Section 411(a)(3)(G) of such Code
15 is amended by inserting “an erroneous
16 automatic contribution under section
17 414(bb),” after “402(g)(2)(A),”.

18 (ii) The heading of section
19 411(a)(3)(G) of such Code is amended by
20 inserting “OR ERRONEOUS AUTOMATIC
21 CONTRIBUTION” before the period.

22 (iii) Section 401(k)(8)(E) of such
23 Code is amended by inserting “an erro-
24 neous automatic contribution under section
25 414(bb),” after “402(g)(2)(A),”.

1 (iv) The heading of section
2 401(k)(8)(E) of such Code is amended by
3 inserting “OR ERRONEOUS AUTOMATIC
4 CONTRIBUTION” before the period.

5 (B) EMPLOYEE RETIREMENT INCOME SE-
6 CURITY ACT OF 1974.—Section 203(a)(3)(F) of
7 the Employee Retirement Income Security Act
8 of 1974 (29 U.S.C. 1053(a)(3)(F)) is amended
9 by inserting “an erroneous automatic contribu-
10 tion under section 414(bb) of such Code,” after
11 “402(g)(2)(A) of such Code,”.

12 (h) EFFECTIVE DATE.—

13 (1) IN GENERAL.—Except as provided by para-
14 graph (2), the amendments made by this section
15 shall apply to plan years beginning after December
16 31, 2005.

17 (2) SECTION 403(b) CONTRACTS.—The amend-
18 ments made by subsection (e) shall apply to years
19 beginning after December 31, 1998.

20 (3) REGULATIONS.—Final regulations under
21 section 404(c)(5)(B)(iv) of the Employee Retirement
22 Income Security Act of 1974 (added by this section)
23 shall be issued no later than 6 months after the date
24 of enactment of this Act.

1 **SEC. 210. FACILITATING LONGEVITY INSURANCE.**

2 (a) IN GENERAL.—Paragraph (9) of section 401(a)
3 of the Internal Revenue Code of 1986, as amended by this
4 Act, is amended by inserting after subparagraph (H) the
5 following new subparagraph:

6 “(I) LONGEVITY INSURANCE.—

7 “(i) IN GENERAL.—For purposes of
8 this paragraph, any value attributable to
9 longevity insurance shall be disregarded in
10 determining the value of an employee’s in-
11 terest under a plan prior to the first date
12 that payments are made under the lon-
13 gevity insurance.

14 “(ii) LONGEVITY INSURANCE DE-
15 FINED.—For purposes of this subpara-
16 graph, the term ‘longevity insurance’
17 means an annuity payable on behalf of the
18 employee under which—

19 “(I) payments commence not
20 later than 12 months following the
21 calendar month in which the employee
22 attains age 85 (or would have at-
23 tained age 85),

24 “(II) payments are made in sub-
25 stantially equal periodic payments
26 (not less frequently than annually)

1 over the life of the employee or the
2 joint lives of the employee and the
3 employee's designated beneficiary,
4 taking into account the rules of clause
5 (i)(II) of section 402(e)(7)(D), except
6 as otherwise provided in subclause
7 (III),

8 “(III) prior to the death of the
9 employee, the annuity does not make
10 available any commutation benefit,
11 cash surrender value, or other similar
12 feature, and

13 “(IV) except as provided in rules
14 prescribed by the Secretary, in the
15 case of an employee's death prior to
16 the date that payments commence, the
17 value of any death benefits paid may
18 not exceed the premiums paid for
19 such annuity, plus interest com-
20 pounded annually at 3 percent.

21 “(iii) ADJUSTING AGE.—For purposes
22 of clause (ii)(I), the Secretary shall annu-
23 ally increase age 85 to reflect increases in
24 life expectancy (as determined by the Sec-
25 retary) that occur on or after January 1,

1 2006, except that any such increased age
2 which is not a whole number shall be
3 rounded to the next lower whole number.”.

4 (b) RULES.—Not later than one year after the date
5 of enactment of this Act, the Secretary of the Treasury
6 shall prescribe rules under which all or a portion of a par-
7 ticipant’s benefits under any plan described in section
8 402(c)(8)(B) of the Internal Revenue Code of 1986 may
9 be treated as longevity insurance under the rules of section
10 401(a)(9)(I) of such Code.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to years beginning after December
13 31, 2006.

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

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

19 “(3) TIME WHEN CONTRIBUTIONS MADE.—

20 “(A) IN GENERAL.—Except as provided in
21 subparagraph (B), for purposes of this sub-
22 section, a taxpayer shall be deemed to have
23 made a contribution to an individual retirement
24 plan on the last day of the preceding taxable
25 year if the contribution is made on account of

1 such taxable year and is made not later than
2 the time prescribed by law for filing the return
3 for such taxable year (not including extensions
4 thereof).

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

7 “(i) IN GENERAL.—To the extent pro-
8 vided in rules prescribed by the Secretary,
9 a tax refund owed to a taxpayer and paid
10 directly to an individual retirement plan
11 shall be deemed a contribution made by
12 the taxpayer—

13 “(I) on the last day of the tax-
14 able year to which such refund re-
15 lates, and

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

18 “(ii) LIMITATION.—This subpara-
19 graph (B) shall not apply to a tax refund
20 unless such refund is shown on a return
21 filed not later than the time prescribed by
22 law for filing the return for the taxable
23 year to which such refund relates (not in-
24 cluding extensions thereof).

1 “(iii) DIRECT PAYMENT.—For pur-
2 poses of this subparagraph, a tax refund is
3 paid directly to an individual retirement
4 plan if it is paid in the form of a direct
5 transfer from the Secretary to the trustee
6 or issuer of the individual retirement plan.

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

11 (b) REGULATIONS.—

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

16 (A) to elect to have all or any portion of
17 a tax refund owed to the taxpayer paid directly
18 to an RSA, or, if the Secretary determines that
19 such direct payments are reasonably admin-
20 istrable, to individual retirement plans which
21 are not RSAs,

22 (B) to specify the individual retirement
23 plan to which such tax refund is to be paid
24 (and the investment option in which such tax
25 refund is to be invested), and

1 (C) to the extent provided in rules pre-
2 scribed by the Secretary, to specify the taxable
3 year on account of which such payment is
4 made,
5 except that the Secretary may require that the
6 amount subject to such an election exceed a dollar
7 threshold determined by the Secretary as necessary
8 or appropriate to ensure the administrability of such
9 elections.

10 (2) INFORMATION.—The Secretary may require
11 that the taxpayer provide, and agree to the disclo-
12 sure of, any information necessary to pay the tax re-
13 fund to the individual retirement plan specified by
14 the taxpayer.

15 (3) SPECIAL RULE.—The Secretary may pro-
16 vide that if, for any reason, the trustee or issuer
17 does not accept payment of a tax refund, the tax re-
18 fund shall instead be paid as if the taxpayer had not
19 elected a direct payment to an individual retirement
20 plan.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Paragraph (3) of section 408(o) of the In-
23 ternal Revenue Code of 1986 is amended by striking
24 “rule” and inserting “rules”.

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

4 (d) EFFECTIVE DATE.—The amendments made by
5 this section shall be effective for tax returns filed after
6 final rules implementing the amendments made by this
7 section are prescribed.

8 **SEC. 212. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
9 **NING SERVICES.**

10 (a) IN GENERAL.—Subsection (m) of section 132 of
11 the Internal Revenue Code of 1986 (defining qualified re-
12 tirement services) is amended by adding at the end the
13 following new paragraph:

14 “(4) NO CONSTRUCTIVE RECEIPT.—No amount
15 shall be included in the gross income of any em-
16 ployee solely because the employee may choose be-
17 tween any qualified retirement planning services pro-
18 vided by a qualified investment advisor and com-
19 pensation which would otherwise be includible in the
20 gross income of such employee. The preceding sen-
21 tence shall apply to highly compensated employees
22 only if the choice described in such sentence is avail-
23 able on substantially the same terms to each mem-
24 ber of the group of employees normally provided

1 education and information regarding the employer's
2 qualified employer plan.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 403(b)(3)(B) of such Code is
5 amended by inserting “132(m)(4),” after
6 “132(f)(4),”.

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

9 (3) Section 415(c)(3)(D)(ii) of such Code is
10 amended by inserting “132(m)(4),” after
11 “132(f)(4),”.

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

15 **SEC. 213. REPEAL OF COMBINED PLAN DEDUCTION LIMIT.**

16 (a) IN GENERAL.—Paragraph (7) of section 404(a)
17 of the Internal Revenue Code of 1986 (relating to limita-
18 tions on deductions where combination of defined con-
19 tribution plan and defined benefit plan) is amended by
20 adding at the end the following:

21 “(D) EXEMPTION.—This paragraph shall
22 not apply to contributions by any employer if
23 such employer or any member of such employ-
24 er's controlled group (within the meaning of
25 section 412(l)(8)(C)) maintains a defined ben-

1 efit plan that is covered by title IV of the Em-
2 ployee Retirement Income Security Act of
3 1974.”.

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

7 **TITLE III—EXPANDING SMALL**
8 **BUSINESS RETIREMENT PLAN**
9 **COVERAGE AND MAKING THE**
10 **ELECTIVE DEFERRAL RULES**
11 **SIMPLER AND MORE UNI-**
12 **FORM**

13 **SEC. 301. ALLOW ADDITIONAL NONELECTIVE CONTRIBU-**
14 **TIONS TO SIMPLE PLANS.**

15 (a) IN GENERAL.—

16 (1) MODIFICATION TO DEFINITION.—Subpara-
17 graph (A) of section 408(p)(2) of the Internal Rev-
18 enue Code of 1986 (defining qualified salary reduc-
19 tion arrangement) is amended by striking “and” at
20 the end of clause (iii), by redesignating clause (iv)
21 as clause (v), and by inserting after clause (iii) the
22 following new clause:

23 “(iv) the employer may make nonelec-
24 tive contributions of a uniform percentage
25 (up to 10 percent) of compensation for

1 each employee who is eligible to participate
2 in the arrangement and who has at least
3 \$5,000 of compensation from the employer
4 for the year, and”.

5 (2) LIMITATION.—Subparagraph (A) of section
6 408(p)(2) of such Code (defining qualified salary re-
7 duction arrangement) is amended by adding at the
8 end the following: “The compensation taken into ac-
9 count under clause (iv) for any year shall not exceed
10 the limitation in effect for such year under section
11 401(a)(17).”.

12 (b) CONFORMING AMENDMENTS.—

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

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

21 (3) Section 401(k)(11)(B)(i) of such Code is
22 amended by striking “and” at the end of subclause
23 (II), by redesignating subclause (III) as subclause
24 (IV), and by inserting after subclause (II) the fol-
25 lowing new subclause:

1 **SEC. 303. UNIFORM CATCH-UP CONTRIBUTION RULE.**

2 (a) IN GENERAL.—Clause (iii) of section
3 414(v)(6)(A) of the Internal Revenue Code of 1986 is
4 amended to read as follows:

5 “(iii) an eligible deferred compensa-
6 tion plan (as defined in section 457(b)),
7 and”.

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

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to years beginning after December
14 31, 2005.

15 **SEC. 304. UNIFORM DEFINITION OF COMPENSATION.**

16 (a) COMPENSATION.—

17 (1) IN GENERAL.—Subparagraph (A) of section
18 415(c)(3) of the Internal Revenue Code of 1986 is
19 amended to read as follows:

20 “(A) IN GENERAL.—The term ‘partici-
21 pant’s compensation’ means wages (as defined
22 by section 3401(a)) and all other payments of
23 compensation to an employee by his employer
24 (in the course of the employer’s trade or busi-
25 ness) for the year for which the employer is re-
26 quired to furnish the employee a written state-

1 ment under section 6041(d), 6051(a)(3), or
2 6052. In accordance with rules prescribed by
3 the Secretary, compensation shall be deter-
4 mined without regard to any rules under section
5 3401(a) that limit the remuneration included in
6 wages based on the nature or location of the
7 employment or the services performed.”.

8 (2) CERTAIN PICKED UP CONTRIBUTIONS.—
9 Subparagraph (D) of section 415(c)(3) of such Code
10 is amended by striking “and” at the end of clause
11 (i), redesignating clause (ii) as clause (iii), and in-
12 serting after clause (i) the following:

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

16 (3) FIVE-YEAR RULE.—Subparagraph (E) of
17 section 415(c)(3) of such Code is amended to read
18 as follows:

19 “(E) FIVE-YEAR RULE.—In the case of an
20 annuity contract described in section 403(b), at
21 the election of the employer maintaining the ar-
22 rangement, the term ‘participant’s compensa-
23 tion’ shall not be determined for the year but
24 shall be determined for the most recent period
25 (ending not later than the close of the year)

1 which constitutes a year of service and which
2 precedes the year by no more than five years.
3 For purposes of the preceding sentence, under
4 rules prescribed by the Secretary, a year of
5 service shall be a full year of full-time service
6 as an employee (or a combination of more than
7 one year of part-year or part-time service).”.

8 (4) APPLICABILITY.—Paragraph (3) of section
9 415(c) of such Code is amended by striking “For
10 purposes of paragraph (1)—” and inserting “For
11 purposes of this section—”.

12 (b) 403(b) PLANS.—

13 (1) IN GENERAL.—Subsection (b) of section
14 403 of such Code is amended by striking paragraphs
15 (3) and (4).

16 (2) CONFORMING AMENDMENTS.—

17 (A) Clauses (i) and (ii) of section
18 414(e)(5)(B) of such Code are amended to read
19 as follows:

20 “(i) the minister’s compensation
21 under section 415(c)(3) shall be deter-
22 mined by reference to the minister’s earned
23 income (within the meaning of section
24 401(c)(2)) from such ministry rather than

1 the amount of compensation which is re-
2 ceived from an employer, and

3 “(ii) the years (and portions of years)
4 in which such minister was a self-employed
5 individual (within the meaning of section
6 401(c)(1)(B)) with respect to such min-
7 istry shall be included for purposes of sec-
8 tion 415(c)(3)(E).”.

9 (B) Paragraph (7) of section 414(u) of
10 such Code is amended by striking “403(b)(3),
11 415(c)(3),” and inserting “415(c)(3)”.

12 (C) Subparagraph (C) of section 415(c)(7)
13 of such Code is amended by striking “includible
14 compensation determined under section
15 403(b)(3)” and inserting “compensation deter-
16 mined under section 415(c)(3)”.

17 (c) SIMPLIFIED EMPLOYEE PENSIONS.—Subpara-
18 graph (A) of section 402(h)(2) of such Code is amended
19 to read as follows:

20 “(A) 25 percent of the compensation (with-
21 in the meaning of section 415(c)(3), except that
22 for purposes of this subsection, amounts de-
23 scribed in section 6051(a)(3) shall be deter-
24 mined without regard to section 3401(a)(3))
25 from such employer for the year, or”.

1 (d) SIMPLE PLANS.—Subparagraph (A) of section
2 408(p)(6) of such Code is amended to read as follows:

3 “(A) COMPENSATION.—The term ‘com-
4 pensation’ has the same meaning as the term
5 ‘participant’s compensation’ (as defined in sec-
6 tion 415(c)(3)), except that for purposes of this
7 subsection, amounts described in section
8 6051(a)(3) shall be determined without regard
9 to section 3401(a)(3).”.

10 (e) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to years beginning after December
12 31, 2005.

13 **SEC. 305. UNIFORM WITHDRAWAL RULES.**

14 (a) IN GENERAL.—Section 414 of the Internal Rev-
15 enue Code of 1986 is amended by adding at the end the
16 following:

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

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

21 “(A) attainment of age 59½,

22 “(B) death,

23 “(C) disability (within the meaning of sec-
24 tion 72(m)(7)),

25 “(D) severance from employment,

1 “(E) hardship, or

2 “(F) termination of the plan without the
3 establishment or maintenance of a successor
4 plan (other than an employee stock ownership
5 plan as defined in section 4975(e)(7)).

6 “(2) SPECIAL RULES.—

7 “(A) Subparagraphs (A) and (E) of para-
8 graph (1) shall not apply to a defined contribu-
9 tion plan to which section 412 applies.

10 “(B) Paragraph (1)(E) shall only apply to
11 amounts described in clauses (i) or (ii) of sec-
12 tion 415(c)(3)(D) (without regard to earnings
13 attributable to such amounts).

14 “(C) Paragraph (1)(F) shall not apply to
15 a plan described in subsection (v)(6)(A)(ii) un-
16 less the employer maintaining such plan elects
17 to maintain the plan pursuant to a plan docu-
18 ment. Under rules prescribed by the Secretary,
19 a plan described in subsection (v)(6)(A)(ii) may
20 be treated as terminated without regard to
21 whether all assets of the plan are distributed.

22 “(D)(i) Paragraph (1)(F) shall not apply
23 to an employee unless the employee receives a
24 lump sum distribution by reason of the termi-
25 nation.

1 “(ii) For purposes of this subparagraph,
2 the determination of whether a distribution is a
3 lump sum distribution shall be made under sec-
4 tion 402(e)(4)(D) (without regard to subclauses
5 (I), (II), (III), and (IV) of clause (i) thereof)
6 or, in the case of plans not described in such
7 section, under similar rules. Such term includes
8 a distribution that consists in whole or in part
9 of an annuity contract.”.

10 (b) 401(k) PLANS.—

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

13 “(i) may not be distributable to par-
14 ticipants or other beneficiaries earlier than
15 the occurrence of a distributable event,
16 and”.

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

19 (3) The last sentence of subparagraph (C) of
20 section 401(k)(7) of such Code is amended to read
21 as follows: “For purposes of this section, the term
22 ‘hardship distribution’ means a distribution de-
23 scribed in section 414(w)(1)(E) (taking section
24 414(w)(2)(B) into account but without regard to
25 section 414(w)(2)(A)).

1 (c) 403(b) PLANS.—

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

4 “(ii) under the custodial account, no
5 such amounts may be paid or made avail-
6 able to any distributee before the occur-
7 rence of a distributable event.”.

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

12 (d) ELIGIBLE DEFERRED COMPENSATION PLANS.—

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

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

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

21 “(1) IN GENERAL.—Any amount of compensa-
22 tion deferred under an eligible deferred compensa-
23 tion plan, and any income attributable to the
24 amounts so deferred, shall be includible in gross in-
25 come only for the taxable year in which such com-

1 pensation or other income is paid to the participant
2 or other beneficiary.”.

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

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

7 “(9) SMALL BENEFITS NOT TREATED AS MADE
8 AVAILABLE BY REASON OF CERTAIN ELECTIONS.—
9 For purposes of subsection (d)(1)(A), the total
10 amount payable to a participant under an eligible
11 deferred compensation plan shall not be treated as
12 made available merely because the participant may
13 elect to receive such amount (or the plan may dis-
14 tribute such amount without the participant’s con-
15 sent) if—

16 “(A) the portion of such amount which is
17 not attributable to rollover contributions (as de-
18 fined in section 411(a)(11)(D)) does not exceed
19 the dollar limit under section 411(a)(11)(A),
20 and

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

23 “(i) no amount has been deferred
24 under the plan with respect to such partici-

1 pant during the 2-year period ending on
2 the date of the distribution, and

3 “(ii) there has been no prior distribu-
4 tion under the plan to such participant to
5 which this subparagraph applied.”.

6 (e) **HARDSHIP DEFINITION.**—

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

17 (2) **BENEFICIARIES.**—Within 180 days after
18 the date of enactment of this Act, the Secretary of
19 the Treasury shall modify the rules for determining
20 whether a participant has had a hardship for pur-
21 poses of section 414(w)(1)(E) of such Code. Pursu-
22 ant to such modification, any event, such as a med-
23 ical expense, that would constitute a hardship if it
24 occurred with respect to a participant’s spouse or
25 dependent (as defined in section 152 of such Code)

1 shall, to the extent permitted under a plan, con-
2 stitute a hardship if it occurs with respect to a per-
3 son who is a beneficiary with respect to the partici-
4 pant under the plan.

5 (f) EFFECTIVE DATE.—

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

10 (2) SPECIAL RULE.—In the case of amounts at-
11 tributable to contributions to an eligible deferred
12 compensation plan (as defined in section 457(b) of
13 the Internal Revenue Code of 1986) made before the
14 first day of the first year beginning after December
15 31, 2005, withdrawals of such amounts from such a
16 plan may be permitted upon unforeseeable emer-
17 gency (as defined under section 457(d)(1)(A)(iii) of
18 such Code, as in effect on the day before the enact-
19 ment of this Act).

20 **SEC. 306. ALLOW LEVEL DOLLAR CONTRIBUTIONS TO SEPS.**

21 (a) IN GENERAL.—Subparagraph (C) of section
22 408(k)(3) of the Internal Revenue Code of 1986 (relating
23 to contributions must bear uniform relationship to total
24 compensation) is amended by inserting before the period
25 at the end the following: “or unless such contributions are

1 a uniform dollar amount on behalf of each such em-
2 ployee.”.

3 (b) EFFECTIVE DATE.—The amendment made by
4 this section shall apply to years beginning after December
5 31, 2005.

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

8 (a) IN GENERAL.—Subparagraph (B) of section
9 4972(c)(6) of the Internal Revenue Code of 1986 (relating
10 to exceptions) is amended—

11 (1) by striking “408(p) or” and inserting
12 “408(p),”, and

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

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to years beginning after December
18 31, 2005.

19 **SEC. 308. UNIFORM AVAILABILITY OF DESIGNATED RSA**
20 **CONTRIBUTIONS.**

21 (a) IN GENERAL.—Paragraph (1) of section 402A(e)
22 of the Internal Revenue Code of 1986 is amended by strik-
23 ing “and” at the end of subparagraph (A), by striking
24 the period at the end of subparagraph (B) and inserting

1 “, and”, and by adding at the end the following subpara-
2 graphs:

3 “(C) an eligible deferred compensation
4 plan under section 457 of an eligible employer
5 described in section 457(e)(1)(A), and

6 “(D) an annuity plan described in section
7 403(a).”.

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

11 **SEC. 309. ALLOW CERTAIN PLAN TRANSFERS AND MERG-**
12 **ERS.**

13 (a) AMENDMENT TO THE INTERNAL REVENUE CODE
14 OF 1986.—

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

19 “(x) CERTAIN PLAN TRANSFERS AND MERGERS.—

20 “(1) IN GENERAL.—Under rules prescribed by
21 the Secretary, no amount shall be includible in gross
22 income by reason of—

23 “(A) a transfer of all or a portion of the
24 account balance of a participant or beneficiary,
25 whether or not vested, from a defined contribu-

1 tion plan described in section 401(a) or section
2 403(a) of an employer to an annuity contract
3 described in section 403(b) of the same em-
4 ployer,

5 “(B) a transfer of all or a portion of the
6 account balance of a participant or beneficiary,
7 whether or not vested, from an annuity contract
8 described in section 403(b) of an employer to a
9 defined contribution plan described in section
10 401(a) or section 403(a) of the same employer,
11 or

12 “(C) a merger of a defined contribution
13 plan described in section 401(a) or section
14 403(a) of an employer with an annuity contract
15 described in section 403(b) of the same em-
16 ployer,

17 so long as the transfer or merger does not cause a
18 reduction in the vested benefit or total benefit (in-
19 cluding non-vested benefit) of any participant or
20 beneficiary. A plan or contract shall not fail to be
21 considered to be described in sections 401(a),
22 403(a), or 403(b) (as applicable) merely because
23 such plan or contract engages in a transfer or merg-
24 er described in this paragraph.

1 “(2) DISTRIBUTIONS.—Amounts transferred or
2 merged pursuant to paragraph (1) shall be subject
3 to the requirements of paragraphs (3) and (4) and
4 to the distribution requirements under sections
5 401(a), 403(a), or 403(b) applicable to the trans-
6 feree or merged plan.

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

12 “(A)(i) be subject to section 401(a)(11) or
13 section 205 of the Employee Retirement Income
14 Security Act of 1974 to the extent that such
15 sections applied to such amounts in the trans-
16 feror or predecessor plan, or

17 “(ii) be required to satisfy the require-
18 ments of section 401(a)(11)(B)(iii)(I) or section
19 205(b)(1)(C)(i) of the Employee Retirement In-
20 come Security Act of 1974 to the extent that
21 such sections applied to such amounts in the
22 transferor or predecessor plan, and

23 “(B) be treated as subject to section
24 411(d)(6) and section 204(g) of the Employee
25 Retirement Income Security Act of 1974 to the

1 extent that such amounts were subject to such
2 sections in the transferor or predecessor plan.

3 “(4) SPECIAL RULES.—Under rules prescribed
4 by the Secretary, to the extent amounts transferred
5 or merged pursuant to paragraph (1) were otherwise
6 entitled to grandfather treatment under the trans-
7 feror or predecessor plan, such amounts (and income
8 or loss attributable thereto) shall remain entitled to
9 such treatment under the transferee or merged plan.
10 The rules prescribed by the Secretary shall require
11 that such amounts be separately accounted for by
12 the transferee or merged plan. For purposes of this
13 paragraph, ‘grandfather treatment’ shall mean spe-
14 cial treatment under the Internal Revenue Code of
15 1986 that is provided for prior benefits, prior peri-
16 ods of time, or certain individuals in connection with
17 a change in the applicable law.

18 “(5) CONSENT.—In the case of a qualified trust
19 described in section 401(a) or 403(a) and an annu-
20 ity contract described in section 403(b) with respect
21 to which transfers may be made only with the con-
22 sent of a participant or beneficiary pursuant to the
23 terms of such trust or contract or pursuant to appli-
24 cable law, such consent requirement shall apply
25 without regard to this subsection. Nothing in this

1 subsection shall affect the application of contract or
2 plan terms otherwise applicable in the case of a
3 withdrawal from the contract or plan.”.

4 (2) AGGREGATION.—Paragraph (2) of section
5 414(t) of such Code is amended by inserting
6 “414(x),” after “274(j),”.

7 (b) AMENDMENT TO THE EMPLOYEE RETIREMENT
8 INCOME SECURITY ACT OF 1974.—Section 4 of the Em-
9 ployee Retirement Income Security Act of 1974 (29
10 U.S.C. 1003) is amended by adding at the end the fol-
11 lowing new subsection:

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

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
18 this section shall apply to transfers or mergers in
19 years beginning after the Secretary of the Treasury
20 prescribes rules under section 414(x) of the Internal
21 Revenue Code of 1986.

22 (2) RULES.—The Secretary of the Treasury
23 shall issue rules under section 414(x) of the Internal
24 Code of 1986 within 1 year after the date of enact-
25 ment of this Act.

1 **TITLE IV—EXPANDING RETIRE-**
2 **MENT SAVINGS FOR TAX-EX-**
3 **EMPT ORGANIZATION AND**
4 **GOVERNMENT EMPLOYEES**

5 **SEC. 401. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**
6 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**
7 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**
8 **PLOYEES.**

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

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

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

21 “(B) QUALIFIED PUBLIC SAFETY EM-
22 PLOYEE.—For purposes of this paragraph, the
23 term ‘qualified public safety employee’ means
24 any employee of a State or political subdivision
25 of a State who provides police protection, fire-

1 fighting services, or emergency medical services
2 for any area within the jurisdiction of such
3 State or political subdivision.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to distributions after the date of
6 the enactment of this Act.

7 **SEC. 402. CLARIFICATIONS REGARDING PURCHASE OF PER-**
8 **MISSIVE SERVICE CREDIT.**

9 (a) IN GENERAL.—Subparagraph (A) of section
10 457(e)(17) of the Internal Revenue Code of 1986 (relating
11 to trustee-to-trustee transfers to purchase permissive serv-
12 ice credit), and subparagraph (A) of section 403(b)(13)
13 of such Code (relating to trustee-to-trustee transfers to
14 purchase permissive service credit), are both amended by
15 striking “section 415(n)(3)(A)” and inserting “section
16 415(n)(3) (without regard to subparagraphs (B) and (C)
17 thereof)”.

18 (b) DISTRIBUTION REQUIREMENTS.—Section
19 457(e)(17) and section 403(b)(13) of such Code are both
20 amended by adding at the end the following sentence:
21 “Amounts transferred under this paragraph shall be dis-
22 tributed solely in accordance with section 401(a) as appli-
23 cable to such defined benefit plan.”.

24 (c) SERVICE CREDIT.—Clause (ii) of section
25 415(n)(3)(A) of such Code is amended to read as follows:

1 “(ii) which relates to benefits with re-
2 spect to which such participant is not oth-
3 erwise entitled, and”.

4 (d) **EFFECTIVE DATE.**—The amendments made by
5 this section shall take effect as if included in the amend-
6 ments made by section 647 of the Economic Growth and
7 Tax Relief Reconciliation Act of 2001.

8 **SEC. 403. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**
9 **MENT PLANS.**

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

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

18 The Secretary of the Treasury shall issue regulations
19 under which a governmental plan (as defined in section
20 414(d) of the Internal Revenue Code of 1986) shall, for
21 all years to which section 401(a)(9) of such Code applies
22 to such plan, be treated as having complied with such sec-
23 tion 401(a)(9) if such plan complies with a reasonable
24 good faith interpretation of such section 401(a)(9).

1 **SEC. 405. CHURCH PLAN RULE.**

2 (a) IN GENERAL.—Paragraph (11) of section 415(b)
3 of the Internal Revenue Code of 1986 is amended by add-
4 ing at the end the following: “Subparagraph (B) of para-
5 graph (1) shall not apply to a plan maintained by an orga-
6 nization described in section 3121(w)(3) except with re-
7 spect to highly compensated benefits. For purposes of this
8 paragraph, the term ‘highly compensated benefits’ means
9 any benefits accrued for an employee in any year on or
10 after the first year in which such employee is a highly com-
11 pensated employee (as defined in section 414(q)) of the
12 organization described in section 3121(w)(3). For pur-
13 poses of applying paragraph (1)(B) to highly compensated
14 benefits, all benefits of the employee otherwise taken into
15 account (without regard to this paragraph) shall be taken
16 into account.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to plan years beginning after De-
19 cember 31, 2005.

20 **SEC. 406. CLARIFICATION OF TREATMENT OF INDIAN TRIB-**
21 **AL GOVERNMENTS.**

22 (a) DEFINITION OF GOVERNMENTAL PLAN.—

23 (1) AMENDMENT TO INTERNAL REVENUE CODE
24 OF 1986.—Section 414(d) of the Internal Revenue
25 Code of 1986 (definition of governmental plan) is
26 amended by adding at the end thereof the following

1 new sentence: “The term ‘governmental plan’ also
2 includes a plan established or maintained for its em-
3 ployees by an Indian tribal government (as defined
4 in section 7701(a)(40)), a subdivision of an Indian
5 tribal government (determined in accordance with
6 section 7871(d)), an agency or instrumentality of an
7 Indian tribal government or a subdivision thereof, or
8 an entity established under tribal, Federal, or State
9 law which is wholly owned or controlled by any of
10 the foregoing.”.

11 (2) AMENDMENT TO EMPLOYEE RETIREMENT
12 INCOME SECURITY ACT OF 1974.—Section 3(32) of
13 the Employee Retirement Income Security Act of
14 1974 (29 U.S.C. 1002(32)) is amended by adding at
15 the end the following new sentence: “The term ‘gov-
16 ernmental plan’ also includes a plan established or
17 maintained for its employees by an Indian tribal
18 government (as defined in section 7701(a)(40) of the
19 Internal Revenue Code of 1986), a subdivision of an
20 Indian tribal government (determined in accordance
21 with section 7871(d) of such Code), an agency or in-
22 strumentality of an Indian tribal government or sub-
23 division thereof, or an entity established under trib-
24 al, Federal, or State law which is wholly owned or
25 controlled by any of the foregoing.”.

1 (b) CLARIFICATION OF TREATMENT OF INDIAN
2 TRIBAL GOVERNMENTS.—

3 (1) AMENDMENTS TO INTERNAL REVENUE
4 CODE OF 1986.—

5 (A) POLICE AND FIREFIGHTERS.—Sub-
6 paragraph (H) of section 415(b)(2) of the In-
7 ternal Revenue Code of 1986 (defining partici-
8 pant) is amended—

9 (i) in clause (i) by striking “State or
10 political subdivision” and inserting “State,
11 Indian tribal government (as defined in
12 section 7701(a)(40)), or any political sub-
13 division”, and

14 (ii) in clause (ii)(I) by striking “State
15 or political subdivision” both places it ap-
16 pears and inserting “State, Indian tribal
17 government (as so defined), or any political
18 subdivision”.

19 (B) STATE AND LOCAL GOVERNMENT
20 PLANS.—

21 (i) IN GENERAL.—Subparagraph (A)
22 of section 415(b)(10) of such Code (relat-
23 ing to limitation to equal accrued benefit)
24 is amended—

1 (I) by inserting “, Indian tribal
2 government (as defined in section
3 7701(a)(40)),” after “State”,

4 (II) by inserting “any” before
5 “political subdivision”, and

6 (III) by inserting “any of” before
7 “the foregoing”.

8 (ii) CONFORMING AMENDMENT.—The
9 heading for paragraph (10) of section
10 415(b) of such Code is amended to read as
11 follows:

12 “(10) SPECIAL RULE FOR STATE, INDIAN TRIB-
13 AL, AND LOCAL GOVERNMENT PLANS.—”.

14 (C) GOVERNMENT PICK UP CONTRIBU-
15 TIONS.—Paragraph (2) of section 414(h) of
16 such Code (relating to designation by units of
17 government) is amended by striking “State or
18 political subdivision” and inserting “State, In-
19 dian tribal government (as defined in section
20 7701(a)(40)), or any political subdivision”.

21 (D) DISTRIBUTIONS TO PUBLIC SAFETY
22 EMPLOYEES.—Subparagraph (B) of section
23 72(t)(10) of such Code, as added by this Act,
24 is amended—

1 (i) by striking “State or political sub-
2 division of a State” and inserting “State,
3 Indian tribal government (as defined in
4 section 7701(a)(4)), or political subdivision
5 thereof”, and

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

11 (2) AMENDMENTS TO EMPLOYEE RETIREMENT
12 INCOME SECURITY ACT OF 1974.—Section 4021(b) of
13 the Employee Retirement Income Security Act of
14 1974 (29 U.S.C. 1321(b)) is amended—

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

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

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

21 “(14) established and maintained for its em-
22 ployees by an Indian tribal government (as defined
23 in section 7701(a)(40) of the Internal Revenue Code
24 of 1986), a subdivision of an Indian tribal govern-
25 ment (determined in accordance with section

1 7871(d) of such Code), an agency or instrumentality
2 of an Indian tribal government or subdivision there-
3 of, or an entity established under tribal, Federal, or
4 State law which is wholly owned or controlled by any
5 of the foregoing.”.

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

9 **SEC. 407. DEFERRAL AGREEMENTS.**

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

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply to years beginning after December
18 31, 2005.

19 **SEC. 408. PLANS MAINTAINED BY STATE OR LOCAL GOV-**
20 **ERNMENTS.**

21 (a) IN GENERAL.—Subparagraph (F) of section
22 415(b)(2) of the Internal Revenue Code of 1986 is amend-
23 ed to read as follows:

24 “(F) PLANS MAINTAINED BY STATE OR
25 LOCAL GOVERNMENTS.—

1 “(i) IN GENERAL.—In the case of a
2 governmental plan (within the meaning of
3 section 414(d)) maintained by a State of
4 local government or political subdivision
5 thereof (or agency or instrumentality
6 thereof), subparagraph (C) shall be applied
7 as if the following sentence were added at
8 the end: ‘The reduction under this sub-
9 paragraph shall not reduce the limitation
10 of paragraph (1)(A) below (i) \$130,000 if
11 the benefit begins at or after age 55, or
12 (ii) if the benefit begins before age 55, the
13 equivalent of the \$130,000 limitation at
14 age 55.’”.

15 (b) COST-OF-LIVING ADJUSTMENTS.—

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

22 “(C) the \$130,000 amount in subsection
23 (b)(2)(F), and”.

24 (2) BASE PERIOD.—Paragraph (3) of section
25 415(d) of such Code is amended by redesignating

1 subparagraph (D) as subparagraph (E) and by in-
2 sserting after subparagraph (C) the following new
3 subparagraph:

4 “(D) \$130,000 AMOUNT.—The base period
5 taken into account for purposes of paragraph
6 (l)(C) is the calendar quarter beginning July 1,
7 2005.”.

8 (3) ROUNDING RULE RELATING TO DEFINED
9 BENEFIT PLANS.—Subparagraph (B) of section
10 415(d)(4) of such Code is amended to read as fol-
11 lows:

12 “(B) \$130,000 AND \$40,000 AMOUNTS.—
13 Any increase under subparagraph (C) or (D) of
14 paragraph (1) which is not a multiple of \$1,000
15 shall be rounded to the next lowest multiple of
16 \$1,000.”.

17 (4) CONFORMING AMENDMENT.—Subparagraph
18 (E) of section 415(d)(3) of such Code (as amended
19 by paragraph (2)) is amended by striking “para-
20 graph (l)(C)” and inserting “paragraph (l)(D)”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to years beginning after December
23 31, 2005.

1 **SEC. 409. CLARIFICATION OF TREATMENT OF SECTION**
2 **403(b) PROGRAMS.**

3 (a) **ADMINISTRATION.**—The Secretary of the Treas-
4 ury shall not issue any rules which would impose materi-
5 ally greater burdens and responsibilities on employers with
6 respect to the administration of a program described in
7 section 403(b) of the Internal Revenue Code of 1986 than
8 are imposed as of the date of enactment of this Act.

9 (b) **TRANSFERS.**—Under rules prescribed by the Sec-
10 retary of the Treasury, participants shall be permitted to
11 directly transfer all or part of their interest in a section
12 403(b) annuity contract or custodial account to another
13 section 403(b) annuity contract or custodial account with-
14 out violating the prohibitions against in-service with-
15 draws in sections 403(b)(7) and 403(b)(11) of such
16 Code. These rules shall be consistent with the principles
17 of Revenue Ruling 90–24.

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

22 (d) **EFFECTIVE DATE.**—The provisions of this sec-
23 tion shall take effect on the date of enactment of this Act.

1 **TITLE V—SIMPLIFICATION AND**
2 **EQUITY**

3 **SEC. 501. UPDATING AND SIMPLIFYING THE MINIMUM DIS-**
4 **TRIBUTION RULES.**

5 (a) REQUIRED DISTRIBUTIONS.—

6 (1) INCREASE IN AGE FOR REQUIRED BEGIN-
7 NING DATE.—Clauses (i) and (ii) of section
8 401(a)(9)(C) of the Internal Revenue Code of 1986
9 (relating to required beginning date) are amended by
10 striking “age 70½” each place it appears and in-
11 serting “the applicable age”.

12 (2) MANDATORY DISTRIBUTION AGE.—Para-
13 graph (9) of section 401(a) of such Code (relating
14 to required distributions) is amended by inserting at
15 the end the following new subparagraph:

16 “(H) APPLICABLE AGE.—

17 “(i) IN GENERAL.—For purposes of
18 this paragraph, the applicable age shall be
19 70½, adjusted pursuant to clause (ii).

20 “(ii) ADJUSTMENT.—The Secretary shall
21 increase the applicable age annually in a man-
22 ner proportional to increases in life expectancy
23 (as determined by the Secretary) that occur on
24 or after January 1, 2005, except that no ad-
25 justment shall be made until the applicable age

1 as adjusted would equal or exceed age 72. Any
2 applicable age which is not a whole number
3 shall be rounded to the next lower whole num-
4 ber.”.

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

10 (4) ACTUARIAL ADJUSTMENT OF BENEFIT
11 UNDER DEFINED BENEFIT PLAN.—Clause (iii) of
12 section 401(a)(9)(C) of such Code (relating to actu-
13 arial adjustment) is amended to read as follows:

14 “(iii) ACTUARIAL ADJUSTMENT.—

15 “(I) IN GENERAL.—In the case
16 of a defined benefit plan, an employ-
17 ee’s accrued benefit shall be actuari-
18 ally increased to take into account the
19 period after the applicable date during
20 which the employee was not receiving
21 any benefits under the plan.

22 “(II) APPLICABLE DATE.—For
23 purposes of clause (I), the term ‘appli-
24 cable date’ means April 1 of the cal-
25 endar year following the calendar year

1 in which the employee attains age
2 70½.”.

3 (b) REDUCTION IN EXCISE TAX.—Subsection (a) of
4 section 4974 of such Code (relating to excise tax on cer-
5 tain accumulations in qualified retirement plans) is
6 amended by striking “50 percent” and inserting “25 per-
7 cent”.

8 (c) SIMPLIFICATION FOR INDIVIDUALS.—

9 (1) IN GENERAL.—Section 408(a) of such Code
10 is amended by redesignating subsection (r) as sub-
11 section (s) and by inserting after subsection (q) the
12 following subsection—

13 “(r) MINIMUM DISTRIBUTION EXEMPTION FOR
14 SMALL ACCOUNTS.—

15 “(1) IN GENERAL.—Subsections (a)(6) and
16 (b)(3) shall not apply to the individual retirement
17 accounts and individual retirement annuities of an
18 individual described in paragraph (2).

19 “(2) INDIVIDUALS AFFECTED.—

20 “(A) IN GENERAL.—An individual is de-
21 scribed in this paragraph for a taxable year if,
22 as of the last day of the preceding taxable year,
23 the individual’s vested interest in all affected
24 retirement plans has a combined value that
25 does not exceed \$100,000.

1 “(B) LIFE ANNUITY RULE.—For purposes
2 of subparagraph (A), an individual’s vested in-
3 terest in an affected retirement plan shall not
4 be taken into account to the extent that such
5 interest has been used to purchase an annuity
6 contract under which payments described in
7 section 402(e)(7)(D)(i) are made.

8 “(3) AFFECTED RETIREMENT PLANS.—

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

13 “(B) SPECIAL RULE.—A plan described in
14 section 4974(e)(3) shall not be treated as an af-
15 fected retirement plan with respect to an indi-
16 vidual for any year prior to the first year for
17 which a distribution would be required under
18 section 403(b)(10) (without regard to this sub-
19 section).

20 “(4) LIMITATION ON TOTAL REQUIRED DIS-
21 TRIBUTIONS.—Under rules prescribed by the Sec-
22 retary, in the case of an individual not described in
23 paragraph (2), the total amount required to be dis-
24 tributed under subsections (a)(6) and (b)(3), in com-
25 bination with the total amount required to be dis-

1 tributed under section 403(b)(10), shall not exceed
2 the excess of the combined value of the individual's
3 vested interest in all affected retirement plans over
4 \$100,000.

5 “(5) COST-OF-LIVING ADJUSTMENT.—The Sec-
6 retary shall adjust the \$100,000 amount in para-
7 graphs (2) and (4) at the same time and in the
8 same manner as under section 415(d), except that
9 the base period shall be the calendar quarter ending
10 September 30, 2005.”.

11 (2) PARALLEL RULE FOR SECTION 403(b)
12 PLANS.—Paragraph (10) of section 403(b) of such
13 Code is amended by adding at the end the following:
14 “For purposes of applying the requirements of this
15 paragraph, rules similar to the rules of section
16 408(r) shall apply.”.

17 (3) CONFORMING AMENDMENTS.—

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

22 (B) Paragraph (3) of section 408(b) of
23 such Code is amended by striking “Under regu-
24 lations” and inserting “Except as provided in
25 subsection (r), under regulations”.

1 (d) EFFECTIVE DATE.—

2 (1) IN GENERAL.—Except as provided in para-
3 graph (2), the amendments made by this section
4 shall apply to years beginning after December 31,
5 2005.

6 (2) TRANSITION.—A plan shall not be treated
7 as failing to meet the requirements of section
8 401(a)(9) of the Internal Revenue Code of 1986
9 merely because, in years beginning after December
10 31, 2005, no distribution is made to an employee be-
11 fore the employee's required beginning date, as de-
12 termined in accordance with the amendments made
13 by this section.

14 **SEC. 502. CLARIFICATION OF CATCH-UP CONTRIBUTIONS.**

15 (a) EXCEPTION TO NONDISCRIMINATION RULES.—

16 (1) IN GENERAL.—Paragraph (4) of section
17 414(v) of the Internal Revenue Code of 1986 (relat-
18 ing to application of nondiscrimination rules) is
19 amended by redesignating subparagraph (B) as sub-
20 paragraph (C) and by inserting after subparagraph
21 (A) the following new subparagraph:

22 “(B) EXCEPTION.—An applicable employer
23 plan shall not fail to satisfy the requirements of
24 this subparagraph solely because another appli-
25 cable employer plan maintained by the employer

1 that is qualified under Puerto Rico law does not
2 provide for additional elective deferrals under
3 this subsection.”.

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

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect as if included in section
17 631(a) of the Economic Growth and Tax Relief Reconcili-
18 ation Act of 2001.

19 **SEC. 503. TREATMENT OF UNCLAIMED BENEFITS.**

20 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
21 1986.—

22 (1) AMENDMENT TO SECTION 401(a)(34).—Sec-
23 tion 401(a)(34) of the Internal Revenue Code of
24 1986 (relating to benefits of missing participants) is
25 amended to read as follows:

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

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

11 “(y) UNCLAIMED BENEFITS.—

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

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

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

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

1 “(iii) Any other treatment permitted
2 under rules prescribed by the Secretary.

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

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

9 “(I) In the case of an unclaimed
10 benefit to which section 401(a)(31)(B)
11 applies, a transfer under section
12 401(a)(31)(B).

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

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

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

1 “(V) Any other treatment per-
2 mitted under rules prescribed by the
3 Secretary.

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

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

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

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

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

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

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

3 “(A) TRANSFERS TO PBGC.—Amounts
4 transferred from a plan to the Pension Benefit
5 Guaranty Corporation pursuant to paragraph
6 (1) shall be treated as a transfer under section
7 401(a)(31)(A).

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

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

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

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

1 became so distributable or the participant's
2 severance from employment;

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

7 “(iii) any benefit to which section
8 401(a)(31)(B) applies or would apply if
9 subclause (I) of section 401(a)(31)(B)(i)
10 did not require the distribution to exceed
11 \$1,000.

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

1 notice to the participant or beneficiary for pur-
2 poses of this paragraph.

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

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

9 “(D) MISSING PARTICIPANT.—The term
10 ‘missing participant’ shall have the meaning
11 given to such term by section 4050(b)(1) of the
12 Employee Retirement Income Security Act of
13 1974.”.

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

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

23 (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-
24 COME SECURITY ACT OF 1974.—

1 (1) IN GENERAL.—Subsection (b) of section
2 4050 of the Employee Retirement Income Security
3 Act of 1974 (29 U.S.C. 1350) is amended by adding
4 at the end the following paragraph:

5 “(3) UNCLAIMED BENEFIT.—The term ‘un-
6 claimed benefit’ means—

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

14 “(B) any benefit or other amount of a par-
15 ticipant or beneficiary which is distributable
16 under the terms of the plan with respect to a
17 missing participant; or

18 “(C) any benefit to which section
19 401(a)(31)(B) of the Internal Revenue Code of
20 1986 applies or would apply if subclause (I) of
21 section 401(a)(31)(B)(i) of such Code did not
22 require the distribution to exceed \$1,000.

23 A benefit otherwise described in subparagraph (A)
24 shall not be treated as an unclaimed benefit under
25 subparagraph (A) if the participant or beneficiary

1 elects not to have such treatment apply. Any such
2 participant or beneficiary shall be given reasonable
3 notice of the opportunity to make such an election.
4 If the participant or beneficiary fails to make such
5 an election within a reasonable period specified in
6 the notice, any subsequent election shall not be given
7 effect and the benefit shall be treated as an un-
8 claimed benefit. A notice mailed to the last known
9 address of the participant or beneficiary shall be
10 treated as a notice to the participant or beneficiary
11 for purposes of this paragraph.”.

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

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

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

21 “(1) TRANSFER TO CORPORATION.—The plan
22 administrator of a plan described in paragraph (4)
23 may elect to transfer a missing participant’s benefits
24 to the corporation upon termination of the plan.

1 “(2) INFORMATION TO THE CORPORATION.—To
2 the extent provided in regulations, the plan adminis-
3 trator of a plan described in paragraph (4) shall,
4 upon termination of the plan, provide the corpora-
5 tion information with respect to the benefits of a
6 missing participant if the plan transfers such
7 benefits—

8 “(A) to the corporation, or

9 “(B) to an entity other than the corpora-
10 tion or a plan described in paragraph (4)(B)(ii).

11 “(3) PAYMENT BY THE CORPORATION.—If ben-
12 efits of a missing participant were transferred to the
13 corporation under paragraph (1), the corporation
14 shall, upon location of the participant or beneficiary,
15 pay to the participant or beneficiary the amount
16 transferred (or the appropriate survivor benefit)
17 either—

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

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

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

23 “(A) the plan is a pension plan (within the
24 meaning of section 3(2))—

1 “(i) to which the provisions of this
2 section do not apply (without regard to
3 this subsection), and

4 “(ii) which is not a plan described in
5 paragraphs (2) through (11) of section
6 4021(b), and

7 “(B) at the time the assets are to be dis-
8 tributed upon termination, the plan—

9 “(i) has missing participants, and

10 “(ii) has not provided for the transfer
11 of assets to pay the benefits of all missing
12 participants to another pension plan (with-
13 in the meaning of section 3(2)).

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

17 “(e) UNCLAIMED BENEFITS.—

18 “(1) TRANSFER TO CORPORATION.—The plan
19 administrator of a plan described in paragraph (6)
20 may elect to transfer unclaimed benefits to the cor-
21 poration.

22 “(2) INFORMATION TO THE CORPORATION.—
23 The corporation may impose such conditions on
24 transfers of unclaimed benefits to the corporation as
25 the corporation determines are necessary to facilitate

1 administration of this subsection and are not incon-
2 sistent with the purposes of this subsection. Such
3 conditions may include requirements that the trans-
4 ferring plan provide to the corporation specified in-
5 formation and documentation.

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

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

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

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

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

1 be prescribed in regulations of the corporation,
2 and

3 “(B) such benefits shall—

4 “(i) in the case of an individual ac-
5 count plan, be paid in a single sum (plus
6 interest) or in such other form as is speci-
7 fied in regulations of the corporation, or

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

10 “(I) in an amount based on the
11 designated benefit and the assump-
12 tions prescribed by the corporation at
13 the time that the corporation received
14 the benefit, and

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

17 “(5) NOTICE.—Any transfer of unclaimed bene-
18 fits of a participant or beneficiary to the corporation
19 pursuant to this subsection may occur only after
20 reasonable advance notice of such transfer is pro-
21 vided by the plan administrator to the participant or
22 beneficiary. The plan administrator shall also pro-
23 vide to the participant or beneficiary notice of any
24 such transfer not later than 30 days after the date
25 of the transfer. Notice mailed to the last known ad-

1 dress of the participant or beneficiary shall be treat-
2 ed as a notice to the participant or beneficiary for
3 purposes of this paragraph. Any such notice shall in-
4 clude information regarding procedures for obtaining
5 the distribution of benefits from the corporation in
6 accordance with paragraph (4).

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

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

12 “(ii) in the case of an unclaimed benefit to
13 which section 401(a)(31)(B) of the Internal
14 Revenue Code of 1986 applies (other than an
15 unclaimed benefit of a missing participant),
16 which has terminated or is in the process of ter-
17 minating, and

18 “(B) which is not a plan described in para-
19 graphs (2) through (11) of section 4021(b).

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

23 (3) CONFORMING AMENDMENT.—Section
24 4021(b) of such Act (29 U.S.C. 1321(b)(1)) is
25 amended by striking “This” and inserting “Except

1 to the extent provided in subsections (d) and (e) of
2 section 4050, this”.

3 (c) ESCHEAT LAWS SUPERSEDED.—Section 514(b)
4 of the Employee Retirement Income Security Act of 1974
5 (29 U.S.C. 1144 (b) (as amended by this Act) is further
6 amended—

7 (1) by redesignating paragraph (10) as para-
8 graph (11), and

9 (2) by inserting after paragraph (9) the fol-
10 lowing new paragraph:

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

16 (d) EFFECTIVE DATES AND RELATED RULES.—

17 (1) IN GENERAL.—The amendments made by
18 subsections (a) and (b) shall apply to years begin-
19 ning after December 31, 2006.

20 (2) REGULATIONS.—The Pension Benefit Guar-
21 anty Corporation shall issue regulations necessary to
22 carry out the amendments made by subsection (b)
23 not later than December 31, 2006.

1 (3) ESCHEAT LAWS SUPERSEDED.—The
2 amendment made by subsection (c) shall apply as of
3 the date of enactment of this Act.

4 **SEC. 504. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**
5 **PLANS TO RSA.**

6 (a) IN GENERAL.—Subsection (e) of section 408A of
7 the Internal Revenue Code of 1986 (defining qualified roll-
8 over contribution) is amended to read as follows:

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

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

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

15 “(A) in the case of an individual retire-
16 ment plan, such rollover contribution meets the
17 requirements of section 408(d)(3), and

18 “(B) in the case of any eligible retirement
19 plan (as defined in section 402(c)(8)(B) other
20 than clauses (i) and (ii) thereof), such rollover
21 contribution meets the requirements of section
22 402(c), 403(b)(8), or 457(e)(16), as applicable.

23 For purposes of section 408(d)(3)(B), there shall be dis-
24 regarded any qualified rollover contribution from an indi-
25 vidual retirement plan (other than an RSA) to an RSA.”.

1 (b) CONFORMING AMENDMENTS.—Section
2 408A(d)(3) of such Code is amended—

3 (1) in subparagraph (A) by striking “section
4 408(d)(3)” inserting “sections 402(c), 403(b)(8),
5 408(d)(3), and 457(e)(16)”,

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

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

11 (4) in subparagraph (D) by striking “or both”
12 and inserting “persons subject to section
13 6047(d)(1), or all of the foregoing persons”, and

14 (5) in the heading by striking “IRA” and insert-
15 ing “ELIGIBLE RETIREMENT PLAN”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to distributions after December 31,
18 2005.

19 **SEC. 505. REFORM EXCISE TAX ON EXCESS CONTRIBU-**
20 **TIONS.**

21 (a) EXPANSION OF CORRECTIVE DISTRIBUTION PE-
22 RIOD.—Subsection (f) of section 4979 of the Internal Rev-
23 enue Code of 1986 is amended—

24 (1) in paragraph (1) by striking “2½ months”
25 and inserting “6 months”, and

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

3 (b) YEAR OF INCLUSION.—Paragraph (2) of section
4 4979(f) of such Code is amended to read as follows:

5 “(2) YEAR OF INCLUSION.—Any amount dis-
6 tributed as provided in paragraph (1) shall be treat-
7 ed as earned and received by the recipient in his tax-
8 able year in which such distributions were made.”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to years beginning after December
11 31, 2005.

12 **SEC. 506. INTERMEDIATE SANCTIONS FOR INADVERTENT**
13 **FAILURES.**

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

18 “(36) PROTECTION FROM DISQUALIFICATION
19 UPON TIMELY CORRECTION OR PAYMENT OF FINE.—
20 A trust shall not fail to constitute a qualified trust
21 under this section if the plan of which such trust is
22 a part has made good faith efforts to meet the re-
23 quirements of this section, has inadvertently failed
24 to satisfy 1 or more of such requirements, and
25 either—

1 “(A) substantially corrects (to the extent
2 possible) such failure before the date the plan
3 becomes subject to a plan examination for the
4 applicable year (as determined under rules pre-
5 scribed by the Secretary), or

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

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

14 (b) APPLICATION TO CASH OR DEFERRED ARRANGE-
15 MENTS.—Section 401(k) of such Code is amended by in-
16 serting after paragraph (13) the following new paragraph:

17 “(14) PROTECTION FROM DISQUALIFICATION.—
18 Rules similar to the rules set forth in section
19 401(a)(36) shall apply for purposes of determining
20 whether a cash or deferred arrangement is a quali-
21 fied cash or deferred arrangement.”.

22 (c) APPLICATION TO SECTION 403(b) ANNUITY CON-
23 TRACTS.—Section 403(b) of such Code is amended by in-
24 serting after paragraph (12) the following:

1 “(13) CORRECTION OF ERRORS.—For purposes
2 of determining whether the exclusion from gross in-
3 come under paragraph (1) is applicable to an em-
4 ployee for any taxable year, rules similar to the rules
5 set forth in section 401(a)(36) shall apply to any an-
6 nuity contract purchased under this subsection or
7 any plan established to meet the requirements of
8 this subsection.”.

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

12 **SEC. 507. CLARIFICATION OF SUBSTANTIALLY EQUAL PERI-**
13 **ODIC PAYMENT RULE.**

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

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

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

23 “(ii) a transfer or a rollover from the
24 qualified retirement plan is made to an-
25 other qualified retirement plan of all or a

1 portion of the taxpayer's benefit under the
2 transferor plan, and

3 “(iii) distributions from the transferor
4 and transferee plans would in combination
5 continue to satisfy paragraph (2)(A)(iv) if
6 made only from the transferor plan,
7 such transfer or rollover shall not be treated as
8 a modification under subparagraph (A)(ii) and
9 compliance with paragraph (2)(A)(iv) shall be
10 determined on the basis of the combined dis-
11 tributions described in clause (iii).

12 “(D) INTEREST RATE.—Any reasonable in-
13 terest rate may be used in determining whether
14 payments are substantially equal under para-
15 graph (2)(A)(iv).”.

16 (b) EFFECTIVE DATES.—

17 (1) ROLLOVERS.—Section 72(t)(4)(C) of the
18 Internal Revenue Code of 1986, as added by sub-
19 section (a), shall apply to transfers and rollovers
20 after the date of enactment of this Act.

21 (2) INTEREST RATE.—Section 72(t)(4)(D) of
22 such Code, as so added, shall apply to series of pay-
23 ments commencing on or after the date of enactment
24 of this Act.

1 **SEC. 508. CLARIFICATION OF TREATMENT OF DISTRIBUTIONS OF ANNUITY CONTRACTS.**
2

3 (a) IN GENERAL.—Clause (i) of section 402(e)(4)(D)
4 of the Internal Revenue Code of 1986 is amended by add-
5 ing after “section 401(c)(1).” the following: “A distribu-
6 tion of an annuity contract from a trust or annuity plan
7 referred to in the first sentence of this clause may be
8 treated as a part of a lump sum distribution.”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall take effect as if included in section
11 1401(b)(1) of the Small Business Job Protection Act of
12 1996.

13 **SEC. 509. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO**
14 **EXCESSIVE EMPLOYEE REMUNERATION PAID**
15 **BY CORPORATION AFTER DECLARATION OF**
16 **BANKRUPTCY.**

17 (a) IN GENERAL.—Section 4999 of the Internal Rev-
18 enue Code of 1986 (relating to golden parachute pay-
19 ments) is amended by redesignating subsection (c) as sub-
20 section (d) and by inserting after subsection (b) the fol-
21 lowing new subsection:

22 “(c) TAX ON EXCESSIVE EMPLOYEE REMUNERATION
23 IN THE CASE OF BANKRUPTCY.—

24 “(1) IN GENERAL.—There is hereby imposed a
25 tax on any person who is a covered employee equal
26 to 50 percent of any payment of excessive employee

1 remuneration from a corporation which becomes a
2 debtor in a title 11 or similar case (as defined in
3 section 368(a)(3)(A) of this title, but not including
4 a case under chapter 12 of title 11, United States
5 Code). The tax imposed under subsection (a) shall
6 not apply to the extent that a tax is imposed under
7 this subsection.

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

11 “(A) EXCESS EMPLOYEE REMUNERATION
12 DEFINED.—The term ‘excess employee remun-
13 eration’ means remuneration paid directly or
14 indirectly to a covered employee during the
15 bankruptcy period—

16 “(i) for which a deduction is not al-
17 lowed under chapter 1 by reason of the ap-
18 plication of section 162(m) or would not be
19 allowed if section 162(m) applied to the
20 covered employee at the time of payment,
21 or

22 “(ii) in the case of remuneration to a
23 covered employee of a corporation that is
24 not a publicly held corporation described in
25 section 162(m)(2), that exceeds

1 \$1,000,000, other than remuneration that
2 meets requirements similar to the stand-
3 ards for performance-based compensation
4 under section 162(m)(4)(C).

5 “(B) Such term shall not include—

6 “(i) remuneration that, on the date
7 immediately prior to the beginning of the
8 bankruptcy period, was payable to the cov-
9 ered employee under a binding obligation
10 and not subject to a substantial risk of for-
11 feiture,

12 “(ii) remuneration attributable to con-
13 tributions to or benefits from an excess re-
14 tirement plan to the extent that such plan
15 is maintained solely for the purpose of pro-
16 viding benefits to employees in excess of
17 the limitations imposed by 1 or more of
18 sections 401(a)(17), 401(k), 401(m), and
19 415,

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

23 “(iv) any payment that is avoided or
24 approved by a bankruptcy trustee.

1 “(C) BANKRUPTCY PERIOD.—The term
2 ‘bankruptcy period’ means any time during the
3 period beginning 2 years before the date on
4 which the corporation becomes a debtor de-
5 scribed in paragraph (1) and ending on the
6 date such corporation ceases to be such a debt-
7 or.

8 “(D) COVERED EMPLOYEE.—The term
9 ‘covered employee’—

10 “(i) has the meaning given such term
11 by section 162(m)(3), except that such
12 term shall include an individual who is not
13 a covered employee under section
14 162(m)(3) for the taxable year in which
15 such remuneration is paid but who pre-
16 viously was a covered employee within the
17 meaning of section 162(m)(3) during the
18 bankruptcy period, and

19 “(ii) with respect to an employee of a
20 corporation that is not subject to section
21 162(m), includes any employee of such cor-
22 poration who would be subject to the re-
23 quirement described in section
24 162(m)(3)(B) (as modified by this para-
25 graph) if such corporation were a publicly

1 held corporation (as defined in section
2 162(m)(2)).

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

9 “(E) CHANGE IN OWNERSHIP CONTIN-
10 GENCY NOT TO APPLY.—Subsection (b) shall be
11 applied without regard to clause (i) of section
12 280G(b)(2)(A).”.

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

18 **SEC. 510. DIFFERENTIAL PAY.**

19 (a) INCOME TAX WITHHOLDING.—Section 3401 of
20 the Internal Revenue Code of 1986 (relating to defini-
21 tions) is amended by adding at the end the following new
22 subsection:

23 “(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE
24 DUTY MEMBERS OF THE UNIFORMED SERVICES.—

1 “(1) IN GENERAL.—For purposes of subsection
2 (a), any differential wage payment shall be treated
3 as a payment of wages by an employer to an em-
4 ployee.

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

8 “(A) is made by an employer to an indi-
9 vidual with respect to any period during which
10 the individual is performing service in the uni-
11 formed services while on active duty for a pe-
12 riod of more than 30 days, and

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

17 (b) RETIREMENT PLANS.—

18 (1) IN GENERAL.—Section 414(u) of the Inter-
19 nal Revenue Code of 1986 (relating to special rules
20 relating to veterans’ reemployment rights under
21 USERRA) is amended by adding at the end the fol-
22 lowing new paragraph:

23 “(11) TREATMENT OF DIFFERENTIAL WAGE
24 PAYMENTS.—

1 “(A) IN GENERAL.—Except as provided in
2 this paragraph, for purposes of applying this
3 title to a plan to which this subsection
4 applies—

5 “(i) an individual receiving a differen-
6 tial wage payment shall be treated as an
7 employee of the employer making the pay-
8 ment,

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

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

16 “(B) SPECIAL RULE FOR DISTRIBUTIONS.—
17

18 “(i) IN GENERAL.—Notwithstanding
19 subparagraph (A)(i), for purposes of sub-
20 section (w)(1)(D), an individual shall be
21 treated as having been severed from em-
22 ployment during any period the individual
23 is performing service in the uniformed
24 services described in section 3401(i)(2)(A).

1 “(ii) LIMITATION.—If an individual
2 elects to receive a distribution by reason of
3 clause (i), the plan shall provide that the
4 individual may not make an elective deferral or employee contribution during the 6-
5 month period beginning on the date of the
6 distribution.
7

8 “(C) NONDISCRIMINATION REQUIRE-
9 MENT.—Subparagraph (A)(iii) shall apply only
10 if all employees of an employer (as determined
11 under subsections (b), (c), (m), and (o)) performing service in the uniformed services described in section 3401(i)(2)(A) are entitled to receive differential wage payments on reasonably equivalent terms and, if eligible to participate in a plan maintained by the employer, to have contributions made to such plan based on the payments on reasonably equivalent terms.
12 For purposes of applying this subparagraph,
13 the provisions of paragraphs (3), (4), and (5) of
14 section 410(b) shall apply.
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22 “(D) DIFFERENTIAL WAGE PAYMENT.—
23 For purposes of this paragraph, the term ‘differential wage payment’ has the meaning given
24 such term by section 3401(i)(2).”
25

1 (2) CONFORMING AMENDMENT.—The heading
2 for section 414(u) of such Code is amended by in-
3 serting “and to Differential Wage Payments to
4 Members on Active Duty” after “USERRA”.

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

12 (d) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to years beginning after December
14 31, 2005.

15 **SEC. 511. EXCESS BENEFIT PLANS.**

16 (a) IN GENERAL.—Section 3(36) of the Employee
17 Retirement Income Security Act of 1974 (29 U.S.C.
18 1002(36)) is amended to read as follows:

19 “(36) The term ‘excess benefit plan’ means a
20 plan, without regard to whether such plan is funded,
21 maintained by an employer solely for the purpose of
22 providing benefits to employees in excess of any limi-
23 tation imposed by section 401(a)(17),
24 401(k)(3)(A)(ii), 401(m)(2), or 415 of the Internal
25 Revenue Code of 1986. To the extent that a sepa-

1 rable part of a plan (as determined by the Secretary
2 of Labor) maintained by an employer is maintained
3 for such purpose, that part shall be treated as a sep-
4 arate plan which is an excess benefit plan.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to plan years beginning after De-
7 cember 31, 2005.

8 **SEC. 512. TAX TREATMENT OF EMPLOYEE CONTRIBUTIONS**
9 **TO CONTRIBUTORY DEFINED BENEFIT**
10 **PLANS.**

11 (a) AMENDMENT TO THE INTERNAL REVENUE CODE
12 OF 1986.—Subsection (e) of section 402 of the Internal
13 Revenue Code of 1986 (relating to other rules applicable
14 to exempt trusts) is amended by adding at the end the
15 following new paragraph:

16 “(8) MANDATORY EMPLOYEE CONTRIBUTIONS
17 TO DEFINED BENEFIT PLANS.—

18 “(A) IN GENERAL.—Qualified mandatory
19 employee contributions shall not be includible in
20 gross income for the taxable year of such con-
21 tribution.

22 “(B) QUALIFIED MANDATORY EMPLOYEE
23 CONTRIBUTIONS.—For purposes of subpara-
24 graph (A), the term ‘qualified mandatory em-
25 ployee contributions’ means employee contribu-

1 tions made pursuant to the terms of a defined
2 benefit plan described in subparagraph (C) in
3 effect on January 1, 2003 (determined without
4 regard to any plan amendment made after such
5 date), which—

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

8 “(ii) do not exceed 2 percent of com-
9 pensation (within the meaning of section
10 415(c)(3)).

11 “(C) DEFINED BENEFIT PLAN DE-
12 SCRIBED.—For purposes of subparagraph (B),
13 a defined benefit plan is described in this sub-
14 paragraph if such plan—

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

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

21 “(iii) does not provide for employee
22 contributions with respect to which a sepa-
23 rate account is maintained and treated as
24 a defined contribution plan under section
25 414(k), and

1 “(iv) is not a governmental plan
2 (within the meaning of section 414(d)).”.

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

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

15 (c) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to contributions made in years be-
17 ginning after December 31, 2005.

18 **SEC. 513. PROTECTING OLDER, LONGER SERVICE PARTICI-**
19 **PANTS.**

20 (a) PROTECTION OF OLDER, LONGER SERVICE PAR-
21 TICIPANTS IN DEFINED BENEFIT PLANS.—

22 (1) Not later than one year after the date of
23 the enactment of this Act, the Secretary of the
24 Treasury shall amend section 1.401(a)(4)–4 of the
25 Treasury Regulations (as in effect on the date of the

1 enactment of this Act) to permit a plan to provide
2 benefits, rights, and features to a closed class of
3 grandfathered participants, provided that such class
4 of participants satisfies the requirements of such
5 section as of the date that the class of participants
6 was closed. Such section as amended shall ensure
7 that participants who have been grandfathered
8 under a former defined benefit plan formula may
9 continue to receive all benefits, rights, and features
10 under that formula, including early retirement bene-
11 fits.

12 (2) Not later than one year after the date of
13 the enactment of this Act, the Secretary of the
14 Treasury shall amend section 1.401(a)(4)-
15 8(b)(1)(iii)(D) of the Treasury Regulations (as in ef-
16 fect on the date of the enactment of this Act) to per-
17 mit a defined contribution plan to provide make
18 whole contributions to a closed class of participants
19 whose defined benefit plan accruals have been re-
20 duced or eliminated, provided that such class of par-
21 ticipants satisfies section 410(b)(2)(A)(i) of the In-
22 ternal Revenue Code of 1986 as of the date that the
23 class of participants was closed.

1 (b) EFFECTIVE DATE.—This provisions of this sec-
2 tion shall take effect on the date of the enactment of this
3 Act.

4 **SEC. 514. CLARIFICATION REGARDING ELECTIVE DEFER-**
5 **RALS.**

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

10 (1) elective deferrals described in section
11 402(g)(3)(A), (B), or (C) of the Internal Revenue
12 Code of 1986 (other than elective deferrals under
13 section 401(k)(11) of such Code),

14 (2) elective contributions under an eligible de-
15 ferred compensation plan described in section 457(b)
16 of such Code, and

17 (3) to the extent provided by the Secretary,
18 elective deferrals described in section 402(g)(3)(D)
19 or 401(k)(11) of such Code.

20 Such rules shall only permit such contributions or defer-
21 rals with respect to payments of bona fide accumulated
22 sick leave, accumulated vacation pay, severance, or back
23 pay. The Secretary may apply such other conditions on
24 such contributions or deferrals as are necessary or appro-
25 priate to carry out the purposes of this section.

1 (b) TREATMENT OF DEFERRALS.—Except as other-
2 wise determined by the Secretary to be necessary to carry
3 out the purposes of this section, the rules described in sub-
4 section (a) shall provide that the contributions or deferrals
5 shall, for purposes of section 457 of such Code and sub-
6 chapter D of chapter 1 of subtitle A of such Code, be
7 treated as contributions or deferrals made on behalf of ac-
8 tive employees, not on behalf of former employees.

9 (c) EFFECTIVE DATE.—The provisions of this section
10 shall take effect on the date of enactment of this Act.

11 **SEC. 515. REFORM OF THE MINIMUM PARTICIPATION RULE.**

12 (a) IN GENERAL.—Subparagraph (I) of section
13 401(a)(26) of the Internal Revenue Code of 1986 (relating
14 to additional participation requirements) is amended by
15 adding at the end the following: “Not later than December
16 31, 2006, the Secretary shall issue final regulations under
17 which this paragraph may be applied separately to bona
18 fide separate subsidiaries or divisions.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall take effect on the date of enactment
21 of this Act.

1 **TITLE VI—IMPROVEMENTS IN**
2 **PENSION SECURITY**

3 **SEC. 601. PERIODIC PENSION BENEFITS STATEMENTS.**

4 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
5 INCOME SECURITY ACT OF 1974.—

6 (1) REQUIREMENTS.—

7 (A) IN GENERAL.—Section 105(a) of the
8 Employee Retirement Income Security Act of
9 1974 (29 U.S.C. 1025(a)) is amended to read
10 as follows:

11 “(a)(1)(A) The administrator of an individual ac-
12 count plan shall furnish a pension benefit statement—

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

14 “(ii) to each plan beneficiary upon written re-
15 quest, and

16 “(iii) in the case of an applicable individual ac-
17 count plan, to each individual who is a plan partici-
18 pant or beneficiary and who has a right to direct in-
19 vestments, at least quarterly.

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

22 “(i) at least once every 3 years to each partici-
23 pant with a nonforfeitable accrued benefit who is
24 employed by the employer maintaining the plan at

1 the time the statement is furnished to participants,
2 and

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

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

9 “(2) A pension benefit statement under paragraph
10 (1)—

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

13 “(i) the total benefits accrued, and

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

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

19 “(C) may be provided in written form or in
20 electronic or other appropriate form to the extent
21 that such form is reasonably accessible to the recipi-
22 ent.

23 “(3)(A) In the case of a defined benefit plan, the re-
24 quirements of paragraph (1)(B)(i) shall be treated as met
25 with respect to a participant if the administrator, at least

1 once each year, provides the participant with notice, at
2 the participant's last known address, of the availability of
3 the pension benefit statement and the ways in which the
4 participant may obtain such statement. Such notice shall
5 be provided in written, electronic, or other appropriate
6 form, and may be included with other communications to
7 the participant if done in a manner reasonably designed
8 to attract the attention of the participant.

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

15 (B) CONFORMING AMENDMENTS.—

16 (i) Section 105 of the Employee Re-
17 tirement Income Security Act of 1974 (29
18 U.S.C. 1025) is amended by striking sub-
19 section (d).

20 (ii) Section 105(b) of such Act (29
21 U.S.C. 1025(b)) is amended to read as fol-
22 lows:

23 “(b) In no case shall a participant or beneficiary of
24 a plan be entitled to more than one statement described
25 in clause (i) or (ii) of subsection (a)(1)(A) or clause (i)

1 or (ii) of subsection (a)(1)(B), whichever is applicable, in
2 any 12-month period. If such report is required under sub-
3 section (a) to be furnished at least quarterly, the require-
4 ments of the preceding sentence shall be applied with re-
5 spect to each quarter in lieu of the 12-month period.”.

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

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

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

24 “(B) an explanation, written in a manner cal-
25 culated to be understood by the average plan partici-

1 pant, of any limitations or restrictions on the right
2 of the participant or beneficiary to direct an invest-
3 ment, and

4 “(C) an explanation, written in a manner cal-
5 culated to be understood by the average plan partici-
6 pant, of the importance, for the long-term retire-
7 ment security of participants and beneficiaries, of a
8 well-balanced and diversified investment portfolio,
9 including a discussion of the risk of holding more
10 than 25 percent of a portfolio in the security of any
11 one entity, such as employer securities.

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

14 (3) DEFINITION OF APPLICABLE INDIVIDUAL
15 ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.
16 1002) is amended by adding at the end the following
17 new paragraph:

18 “(42)(A) The term ‘applicable individual account
19 plan’ means any individual account plan, except that such
20 term does not include an employee stock ownership plan
21 (within the meaning of section 4975(e)(7) of the Internal
22 Revenue Code of 1986) unless there are any contributions
23 to such plan (or earnings thereunder) held within such
24 plan that are subject to subsection (k)(3) or (m)(2) of sec-

1 tion 401 of the Internal Revenue Code of 1986. Such term
2 shall not include a one-participant retirement plan.

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

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

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

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

14 “(ii) the plan meets the minimum coverage re-
15 quirements of section 410(b) of the Internal Rev-
16 enue Code of 1986 (as in effect on the date of the
17 enactment of this paragraph) without being com-
18 bined with any other plan of the business that covers
19 the employees of the business;

20 “(iii) the plan does not provide benefits to any-
21 one except the individual (and the individual’s
22 spouse) or the partners (and their spouses);

23 “(iv) the plan does not cover a business that is
24 a member of an affiliated service group, a controlled

1 group of corporations, or a group of businesses
2 under common control; and

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

5 (4) CIVIL PENALTIES FOR FAILURE TO PRO-
6 VIDE QUARTERLY BENEFIT STATEMENTS.—Section
7 502 of such Act (29 U.S.C. 1132) is amended—

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

10 (B) by redesignating paragraph (8) of sub-
11 section (c) as paragraph (9); and

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

14 “(8) The Secretary may assess a civil penalty against
15 any plan administrator of up to \$1,000 a day for each
16 day on which the plan administrator has failed to comply
17 with the requirements of clause (iii) of section
18 105(a)(1)(A) and has not corrected such failure by pro-
19 viding the required pension benefit statements to the af-
20 fected participants and beneficiaries.”.

21 (5) MODEL STATEMENTS.—The Secretary of
22 Labor shall, not later than 180 days after the date
23 of the enactment of this Act, issue initial guidance
24 and a model benefit statement, written in a manner
25 calculated to be understood by the average plan par-

1 ticipant, that may be used by plan administrators in
2 complying with the requirements of section 105 of
3 the Employee Retirement Income Security Act of
4 1974. Not later than 75 days after the date of the
5 enactment of this Act, the Secretary shall promul-
6 gate interim final rules necessary to carry out the
7 amendments made by this subsection.

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

10 (1) PROVISION OF INVESTMENT EDUCATION
11 NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—

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

15 “(aa) PROVISION OF INVESTMENT EDUCATION NO-
16 TICES TO PARTICIPANTS IN CERTAIN PLANS.—

17 “(1) IN GENERAL.—The plan administrator of
18 an applicable pension plan shall provide to each ap-
19 plicable individual an investment education notice
20 described in paragraph (2) at the time of the enroll-
21 ment of the applicable individual in the plan and not
22 less often than annually thereafter.

23 “(2) INVESTMENT EDUCATION NOTICE.—An in-
24 vestment education notice is described in this para-
25 graph if such notice contains—

1 “(A) an explanation, for the long-term re-
2 tirement security of participants and bene-
3 ficiaries, of generally accepted investment prin-
4 ciples, including principles of risk management
5 and diversification, and

6 “(B) a discussion of the risk of holding
7 substantial portions of a portfolio in the secu-
8 rity of any one entity, such as employer securi-
9 ties.

10 “(3) UNDERSTANDABILITY.—Each notice re-
11 quired by paragraph (1) shall be written in a man-
12 ner calculated to be understood by the average plan
13 participant and shall provide sufficient information
14 (as determined in accordance with guidance provided
15 by the Secretary) to allow recipients to understand
16 such notice.

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

23 “(5) DEFINITIONS.—For purposes of this
24 subsection—

1 “(A) APPLICABLE INDIVIDUAL.—The term
2 ‘applicable individual’ means—

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

5 “(ii) any beneficiary who is an alter-
6 nate payee (within the meaning of section
7 414(p)(8)) under a qualified domestic rela-
8 tions order (within the meaning of section
9 414(p)(1)(A)), and

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

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

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

16 “(ii) an eligible deferred compensation
17 plan (as defined in section 457(b)) of an
18 eligible employer described in section
19 457(e)(1)(A),

20 which permits any participant to direct the in-
21 vestment of some or all of his account in the
22 plan or under which the accrued benefit of any
23 participant depends in whole or in part on hy-
24 pothetical investments directed by the partici-
25 pant. Such term shall not include a one-partici-

1 pant retirement plan or a plan to which section
2 105 of the Employee Retirement Income Secu-
3 rity Act of 1974 applies.

4 “(C) ONE-PARTICIPANT RETIREMENT
5 PLAN DEFINED.—The term ‘one-participant re-
6 tirement plan’ means a retirement plan with re-
7 spect to which the following requirements are
8 met:

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

11 “(I) the plan covered only one in-
12 dividual (or the individual and the in-
13 dividual’s spouse) and the individual
14 owned 100 percent of the plan spon-
15 sor (whether or not incorporated), or

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

19 “(ii) the plan meets the minimum cov-
20 erage requirements of 410(b) without
21 being combined with any other plan of the
22 business that covers the employees of the
23 business;

24 “(iii) the plan does not provide bene-
25 fits to anyone except the individual (and

1 the individual's spouse) or the partners
2 (and their spouses);

3 “(iv) the plan does not cover a busi-
4 ness that is a member of an affiliated serv-
5 ice group, a controlled group of corpora-
6 tions, or a group of businesses under com-
7 mon control; and

8 “(v) the plan does not cover a busi-
9 ness that leases employees.

10 “(6) CROSS REFERENCE.—For provisions relat-
11 ing to penalty for failure to provide the notice re-
12 quired by this section, see section 6652(m).”.

13 (2) PENALTY FOR FAILURE TO PROVIDE NO-
14 TICE.—Section 6652 of such Code (relating to fail-
15 ure to file certain information returns, registration
16 statements, etc.) is amended by redesignating sub-
17 section (m) as subsection (n) and by inserting after
18 subsection (l) the following new subsection:

19 “(m) FAILURE TO PROVIDE INVESTMENT EDU-
20 CATION NOTICES TO PARTICIPANTS IN CERTAIN
21 PLANS.—In the case of each failure to provide a written
22 explanation as required by section 414(aa) with respect
23 to an applicable individual (as defined in such section),
24 at the time prescribed therefor, unless it is shown that
25 such failure is due to reasonable cause and not to willful

1 neglect, there shall be paid, on notice and demand of the
2 Secretary and in the same manner as tax, by the person
3 failing to provide such notice, an amount equal to \$100
4 for each such failure, but the total amount imposed on
5 such person for all such failures during any calendar year
6 shall not exceed \$50,000.”.

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

9 (a) IN GENERAL.—Section 404(c) of the Employee
10 Retirement Income Security Act of 1974 (29 U.S.C.
11 1104(c)) is amended by adding at the end the following
12 new paragraph:

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

20 “(B) If the fiduciary authorizing a blackout period
21 meets the requirements of this title in connection with au-
22 thorizing such blackout period, no person who is a fidu-
23 ciary shall be liable under this title for any loss occurring
24 during the blackout period as a result of any exercise by
25 the participant or beneficiary of control over assets in his

1 or her account prior to the blackout period. Matters to
2 be considered in determining whether a fiduciary has met
3 the requirements of this title include whether such
4 fiduciary—

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

7 “(ii) has provided the notice required under sec-
8 tion 101(i)(2), and

9 “(iii) has acted in accordance with the require-
10 ments of subsection (a) in determining whether to
11 enter into the blackout period.

12 “(C) If a blackout period arises in connection with
13 a change in the investment options offered under the plan,
14 a participant or beneficiary shall be deemed to have exer-
15 cised control over the assets in his or her account prior
16 to the blackout period, if, after reasonable notice of the
17 change in investment options is given to such participant
18 or beneficiary before such blackout period, assets in the
19 account of the participant or beneficiary are transferred—

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

23 “(ii) in any case in which there is no such elec-
24 tion, in the manner set forth in such notice.

1 “(D) Any imposition of any limitation or restriction
2 that may govern the frequency of transfers between invest-
3 ment vehicles shall not be treated as the imposition of a
4 blackout period to the extent such limitation or restriction
5 is disclosed to participants or beneficiaries through the
6 summary plan description or materials describing specific
7 investment alternatives under the plan.

8 “(E) For purposes of this paragraph, the term ‘black-
9 out period’ has the meaning given such term by section
10 101(i)(7).”.

11 (b) GUIDANCE.—The Secretary of Labor shall, on or
12 before December 31, 2006, issue interim final regulations
13 providing guidance on how plan sponsors or any other af-
14 fected fiduciaries can satisfy their fiduciary responsibilities
15 during any blackout period during which the ability of a
16 participant or beneficiary to direct the investment of as-
17 sets in his or her individual account is suspended.

18 **SEC. 603. DIVERSIFICATION REQUIREMENTS FOR DEFINED**
19 **CONTRIBUTION PLANS THAT HOLD EM-**
20 **PLOYER SECURITIES.**

21 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
22 INCOME SECURITY ACT OF 1974.—Section 204 of the
23 Employee Retirement Income Security Act of 1974 (29
24 U.S.C. 1054) is amended—

1 (1) by redesignating subsection (j) as sub-
2 section (k); and

3 (2) by inserting after subsection (i) the fol-
4 lowing new subsection:

5 “(j) DIVERSIFICATION REQUIREMENTS FOR INDI-
6 VIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECUR-
7 RITIES.—

8 “(1) IN GENERAL.—An applicable individual ac-
9 count plan shall meet the requirements of para-
10 graphs (2) and (3).

11 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
12 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-
13 TIES.—In the case of the portion of the account at-
14 tributable to employee contributions and elective de-
15 ferrals which is invested in employer securities, a
16 plan meets the requirements of this paragraph if
17 each applicable individual may elect to direct the
18 plan to divest any such securities in the individual’s
19 account and to reinvest an equivalent amount in
20 other investment options which meet the require-
21 ments of paragraph (4).

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

24 “(A) IN GENERAL.—In the case of the por-
25 tion of the account attributable to employer

1 contributions (other than elective deferrals to
2 which paragraph (2) applies) which is invested
3 in employer securities, a plan meets the require-
4 ments of this paragraph if, under the plan—

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

12 “(ii) with respect to any employer se-
13 curity allocated to an applicable individ-
14 ual’s account during any plan year, such
15 applicable individual may elect to direct
16 the plan to divest such employer security
17 after a date which is not later than 3 years
18 after the end of such plan year and to re-
19 invest an equivalent amount in other in-
20 vestment options which meet the require-
21 ments of paragraph (4).

22 “(B) APPLICABLE INDIVIDUAL WITH BEN-
23 EFIT BASED ON 3 YEARS OF SERVICE.—For
24 purposes of subparagraph (A), an applicable in-
25 dividual has a benefit based on 3 years of serv-

1 ice if such individual would be an applicable in-
2 dividual if only participants in the plan who
3 have completed at least 3 years of service (as
4 determined under section 203(b)) were referred
5 to in paragraph (5)(B)(i).

6 “(4) INVESTMENT OPTIONS.—The requirements
7 of this paragraph are met if—

8 “(A) the plan offers not less than 3 invest-
9 ment options, other than employer securities, to
10 which an applicable individual may direct the
11 proceeds from the divestment of employer secu-
12 rities pursuant to this subsection, each of which
13 is diversified and has materially different risk
14 and return characteristics, and

15 “(B) the plan permits the applicable indi-
16 vidual to choose from any of the investment op-
17 tions made available under the plan to which
18 such proceeds may be so directed, subject to
19 such restrictions as may be provided by the
20 plan limiting such choice to periodic, reasonable
21 opportunities occurring no less frequently than
22 on a quarterly basis.

23 “(5) DEFINITIONS AND RULES.—For purposes
24 of this subsection—

1 “(A) APPLICABLE INDIVIDUAL ACCOUNT
2 PLAN.—The term ‘applicable individual account
3 plan’ means any individual account plan, except
4 that such term does not include an employee
5 stock ownership plan (within the meaning of
6 section 4975(e)(7) of the Internal Revenue
7 Code of 1986) unless there are any contribu-
8 tions to such plan (or earnings thereon) held
9 within such plan that are subject to subsection
10 (k)(3) or (m)(2) of section 401 of the Internal
11 Revenue Code of 1986.

12 “(B) APPLICABLE INDIVIDUAL.—The term
13 ‘applicable individual’ means—

14 “(i) any participant in the plan, and

15 “(ii) any beneficiary of a participant
16 referred to in clause (i) who has an ac-
17 count under the plan with respect to which
18 the beneficiary is entitled to exercise the
19 rights of the participant.

20 “(C) ELECTIVE DEFERRAL.—The term
21 ‘elective deferral’ means an employer contribu-
22 tion described in section 402(g)(3)(A) of the In-
23 ternal Revenue Code of 1986 (as in effect on
24 the date of the enactment of this subsection).

1 “(D) EMPLOYER SECURITY.—The term
2 ‘employer security’ shall have the meaning
3 given such term by section 407(d)(1) of this
4 Act (as in effect on the date of the enactment
5 of this subsection).

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

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

15 “(6) EXCEPTION WHERE THERE IS NO READILY
16 TRADABLE STOCK.—This subsection shall not apply
17 if there is no class of stock issued by the employer
18 (or by a corporation which is an affiliate of the em-
19 ployer (as defined in section 407(d)(7))) that is
20 readily tradable on an established securities market
21 (or in such other circumstances as may be deter-
22 mined jointly by the Secretary of Labor and the Sec-
23 retary of the Treasury in regulations).

24 “(7) TRANSITION RULE.—

1 “(A) IN GENERAL.—In the case of any in-
 2 dividual account plan which, on the first day of
 3 the first plan year to which this subsection ap-
 4 plies, holds employer securities of any class that
 5 were acquired before such date and on which
 6 there is a restriction on diversification otherwise
 7 precluded by this subsection, this subsection
 8 shall apply to such securities of such class held
 9 in any plan year only with respect to the num-
 10 ber of such securities equal to the applicable
 11 percentage of the total number of such securi-
 12 ties of such class held on such date.

13 “(B) APPLICABLE PERCENTAGE.—For
 14 purposes of subparagraph (A), the applicable
 15 percentage shall be as follows:

“Plan years for which provi- sions are effective:	Applicable percentage:
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

16 “(C) ELECTIVE DEFERRALS TREATED AS
 17 SEPARATE PLAN NOT INDIVIDUAL ACCOUNT
 18 PLAN.—For purposes of subparagraph (A), the
 19 applicable percentage shall be 100 percent with
 20 respect to—

21 “(i) employee contributions to a plan
 22 under which any portion attributable to

1 elective deferrals is treated as a separate
2 plan under section 407(b)(2) as of the date
3 of the enactment of this paragraph, and

4 “(ii) such elective deferrals.

5 “(D) COORDINATION WITH PRIOR ELEC-
6 TIONS.—In any case in which a divestiture of
7 investment in employer securities of any class
8 held by an employee stock ownership plan prior
9 to the effective date of this subsection was un-
10 dertaken pursuant to other applicable Federal
11 law prior to such date, the applicable percent-
12 age (as determined without regard to this sub-
13 paragraph) in connection with such securities
14 shall be reduced to the extent necessary to ac-
15 count for the amount to which such election ap-
16 plied.

17 “(8) REGULATIONS.—The Secretary of the
18 Treasury shall prescribe regulations under this sub-
19 section in consultation with the Secretary of
20 Labor.”.

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

23 (1) IN GENERAL.—Section 401(a) of the Inter-
24 nal Revenue Code of 1986 (relating to requirements

1 for qualification) is amended by inserting after para-
2 graph (34) the following new paragraph:

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

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

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

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

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

1 deferrals to which subparagraph (B) ap-
2 plies) which is invested in employer securi-
3 ties, a plan meets the requirements of this
4 subparagraph if, under the plan—

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

13 “(II) with respect to any em-
14 ployer security allocated to an applica-
15 ble individual’s account during any
16 plan year, such applicable individual
17 may elect to direct the plan to divest
18 such employer security after a date
19 which is not later than 3 years after
20 the end of such plan year and to rein-
21 vest an equivalent amount in other in-
22 vestment options which meet the re-
23 quirements of subparagraph (D).

24 “(ii) APPLICABLE INDIVIDUAL WITH
25 BENEFIT BASED ON 3 YEARS OF SERV-

1 ICE.—For purposes of clause (i), an appli-
2 cable individual has a benefit based on 3
3 years of service if such individual would be
4 an applicable individual if only participants
5 in the plan who have completed at least 3
6 years of service (as determined under sec-
7 tion 411(a)) were referred to in subpara-
8 graph (E)(ii)(I).

9 “(D) INVESTMENT OPTIONS.—The require-
10 ments of this subparagraph are met if—

11 “(i) the plan offers not less than 3 in-
12 vestment options, other than employer se-
13 curities, to which an applicable individual
14 may direct the proceeds from the divest-
15 ment of employer securities pursuant to
16 this paragraph, each of which is diversified
17 and has materially different risk and re-
18 turn characteristics, and

19 “(ii) the plan permits the applicable
20 individual to choose from any of the invest-
21 ment options made available under the
22 plan to which such proceeds may be so di-
23 rected, subject to such restrictions as may
24 be provided by the plan limiting such
25 choice to periodic, reasonable opportunities

1 occurring no less frequently than on a
2 quarterly basis.

3 “(E) DEFINITIONS AND RULES.—For pur-
4 poses of this paragraph—

5 “(i) APPLICABLE DEFINED CONTRIBU-
6 TION PLAN.—The term ‘applicable defined
7 contribution plan’ means any defined con-
8 tribution plan, except that such term does
9 not include an employee stock ownership
10 plan (within the meaning of section
11 4975(e)(7)) unless there are any contribu-
12 tions to such plan (or earnings thereon)
13 held within such plan that are subject to
14 subsection (k)(3) or (m)(2).

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

17 “(I) any participant in the plan,
18 and

19 “(II) any beneficiary of a partici-
20 pant referred to in clause (i) who has
21 an account under the plan with re-
22 spect to which the beneficiary is enti-
23 tled to exercise the rights of the par-
24 ticipant.

1 “(iii) ELECTIVE DEFERRAL.—The
2 term ‘elective deferral’ means an employer
3 contribution described in section
4 402(g)(3)(A) (as in effect on the date of
5 the enactment of this paragraph).

6 “(iv) EMPLOYER SECURITY.—The
7 term ‘employer security’ shall have the
8 meaning given such term by section
9 407(d)(1) of the Employee Retirement In-
10 come Security Act of 1974 (as in effect on
11 the date of the enactment of this para-
12 graph).

13 “(v) EMPLOYEE STOCK OWNERSHIP
14 PLAN.—The term ‘employee stock owner-
15 ship plan’ shall have the same meaning
16 given to such term by section 4975(e)(7)
17 of the Internal Revenue Code of 1986 (as
18 in effect on the date of the enactment of
19 this paragraph).

20 “(vi) ELECTIONS.—Elections under
21 this paragraph may be made not less fre-
22 quently than quarterly.

23 “(F) EXCEPTION WHERE THERE IS NO
24 READILY TRADABLE STOCK.—This paragraph
25 shall not apply if there is no class of stock

1 issued by the employer that is readily tradable
 2 on an established securities market (or in such
 3 other circumstances as may be determined
 4 jointly by the Secretary of the Treasury and the
 5 Secretary of Labor in regulations).

6 “(G) TRANSITION RULE.—

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

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

**“Plan years for which provi- Applicable percentage:
 sions are effective:**

1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

1 “(iii) ELECTIVE DEFERRALS TREATED
2 AS SEPARATE PLAN NOT INDIVIDUAL AC-
3 COUNT PLAN.—For purposes of clause (i),
4 the applicable percentage shall be 100 per-
5 cent with respect to—

6 “(I) employee contributions to a
7 plan under which any portion attrib-
8 utable to elective deferrals is treated
9 as a separate plan under section
10 407(b)(2) of the Employee Retirement
11 Income Security Act of 1974 as of the
12 date of the enactment of this para-
13 graph, and

14 “(II) such elective deferrals.

15 “(iv) CONTRIBUTIONS HELD WITHIN
16 AN ESOP.—In the case of contributions
17 (other than elective deferrals and employee
18 contributions) held within an employee
19 stock ownership plan, in the case of the 1st
20 and 2nd plan years referred to in the table
21 in clause (ii), the applicable percentage
22 shall be the greater of the amount deter-
23 mined under clause (ii) or the percentage
24 determined under paragraph (28) (deter-

1 mined as if paragraph (28) applied to a
2 plan described in this paragraph).

3 “(v) COORDINATION WITH PRIOR
4 ELECTIONS UNDER PARAGRAPH (28).—In
5 any case in which a divestiture of invest-
6 ment in employer securities of any class
7 held by an employee stock ownership plan
8 prior to the effective date of this para-
9 graph was undertaken pursuant to an elec-
10 tion under paragraph (28) prior to such
11 date, the applicable percentage (as deter-
12 mined without regard to this clause) in
13 connection with such securities shall be re-
14 duced to the extent necessary to account
15 for the amount to which such election ap-
16 plied.

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

20 (2) CONFORMING AMENDMENTS.—

21 (A) Section 401(a)(28) of such Code is
22 amended by adding at the end the following
23 new subparagraph:

1 “(D) APPLICATION.—This paragraph shall
2 not apply to a plan to which paragraph (35) ap-
3 plies.”.

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

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

12 (c) EFFECTIVE DATE.—

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

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

23 **SEC. 604. EFFECTIVE DATES AND RELATED RULES.**

24 (a) IN GENERAL.—Except as otherwise provided in
25 the preceding provisions of this title or in subsection (c),

1 the amendments made by this title shall apply with respect
2 to plan years beginning on or after the general effective
3 date.

4 (b) GENERAL EFFECTIVE DATE.—For purposes of
5 this section, the term “general effective date” means the
6 date which is 1 year after the date of the enactment of
7 this Act.

8 (c) SPECIAL RULE FOR COLLECTIVELY BARGAINED
9 PLANS.—In the case of a plan maintained pursuant to 1
10 or more collective bargaining agreements between em-
11 ployee representatives and 1 or more employers ratified
12 on or before the date of the enactment of this Act, sub-
13 section (a) shall be applied to benefits pursuant to, and
14 individuals covered by, any such agreement by substituting
15 for “the general effective date” the date of the commence-
16 ment of the first plan year beginning on or after the ear-
17 lier of—

18 (1) the later of—

19 (A) the date which is 1 year after the gen-
20 eral effective date, or

21 (B) the date on which the last of such col-
22 lective bargaining agreements terminates (de-
23 termined without regard to any extension there-
24 of after the date of the enactment of this Act),

25 or

1 (2) the date which is 2 years after the general
2 effective date.

3 **TITLE VII—OTHER TAX PROVI-**
4 **SIONS RELATING TO PEN-**
5 **SIONS**

6 **SEC. 701. REPORTING SIMPLIFICATION.**

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

9 (1) IN GENERAL.—The Secretary of the Treas-
10 ury and the Secretary of Labor shall modify the re-
11 quirements for filing annual returns with respect to
12 one-participant retirement plans to ensure that such
13 plans with assets of \$250,000 or less as of the close
14 of the plan year need not file a return for that year.

15 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
16 FINED.—For purposes of this subsection, the term
17 “one-participant retirement plan” means a retire-
18 ment plan with respect to which the following re-
19 quirements are met:

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

21 (i) the plan covered only one indi-
22 vidual (or the individual and the individ-
23 ual’s spouse) and the individual owned 100
24 percent of the plan sponsor (whether or
25 not incorporated), or

1 (ii) the plan covered only one or more
2 partners (or partners and their spouses) in
3 the plan sponsor;

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

9 (C) the plan does not provide benefits to
10 anyone except the individual (and the individ-
11 ual's spouse) or the partners (and their
12 spouses);

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

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

19 (3) OTHER DEFINITIONS.—Terms used in para-
20 graph (2) which are also used in section 414 of the
21 Internal Revenue Code of 1986 shall have the re-
22 spective meanings given such terms by such section.

23 (4) EFFECTIVE DATE.—The provisions of this
24 subsection shall apply to plan years beginning on or
25 after January 1, 2005.

1 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
2 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
3 of plan years beginning after December 31, 2006, the Sec-
4 retary of the Treasury and the Secretary of Labor shall
5 provide for the filing of a simplified annual return for any
6 retirement plan which covers less than 25 employees on
7 the first day of a plan year and which meets the require-
8 ments described in subparagraphs (B), (D), and (E) of
9 subsection (a)(2).

10 **SEC. 702. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**
11 **ANCE RESOLUTION SYSTEM.**

12 The Secretary of the Treasury shall continue to up-
13 date and improve the Employee Plans Compliance Resolu-
14 tion System (or any successor program) giving special at-
15 tention to—

16 (1) increasing the awareness and knowledge of
17 small employers concerning the availability and use
18 of the program;

19 (2) taking into account special concerns and
20 circumstances that small employers face with respect
21 to compliance and correction of compliance failures;

22 (3) extending the duration of the self-correction
23 period under the Self-Correction Program for signifi-
24 cant compliance failures;

1 (4) expanding the availability to correct insig-
2 nificant compliance failures under the Self-Correc-
3 tion Program during audit; and

4 (5) assuring that any tax, penalty, or sanction
5 that is imposed by reason of a compliance failure is
6 not excessive and bears a reasonable relationship to
7 the nature, extent, and severity of the failure.

8 The Secretary of the Treasury shall have full authority
9 to effectuate the foregoing and to implement the Employee
10 Plans Compliance Resolution System (or any successor
11 program) and any other employee plans correction poli-
12 cies, including the authority to waive income, excise, or
13 other taxes to ensure that any tax, penalty, or sanction
14 is not excessive and bears a reasonable relationship to the
15 nature, extent, and severity of the failure.

16 **SEC. 703. EXTENSION OF MORATORIUM ON APPLICATION**
17 **OF CERTAIN NONDISCRIMINATION RULES TO**
18 **ALL GOVERNMENTAL PLANS.**

19 (a) IN GENERAL.—

20 (1) Subparagraph (G) of section 401(a)(5) and
21 subparagraph (G) of section 401(a)(26) of the Inter-
22 nal Revenue Code of 1986 are each amended by
23 striking “section 414(d)” and all that follows and
24 inserting “section 414(d).”.

1 (2) Subparagraph (G) of section 401(k)(3) of
2 such Code and paragraph (2) of section 1505(d) of
3 the Taxpayer Relief Act of 1997 (26 U.S.C. 401
4 note) are each amended by striking “maintained by
5 a State or local government or political subdivision
6 thereof (or agency or instrumentality thereof)”.

7 (b) CONFORMING AMENDMENTS.—

8 (1) The heading for subparagraph (G) of sec-
9 tion 401(a)(5) of such Code is amended to read as
10 follows: “GOVERNMENTAL PLANS.—”.

11 (2) The heading for subparagraph (G) of sec-
12 tion 401(a)(26) of such Code is amended to read as
13 follows: “EXCEPTION FOR GOVERNMENTAL PLANS.—
14 ”.

15 (3) Subparagraph (G) of section 401(k)(3) of
16 such Code is amended by inserting “GOVERN-
17 MENTAL PLANS.—” after “(G)”.

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

21 **SEC. 704. NOTICE AND CONSENT PERIOD REGARDING DIS-**
22 **TRIBUTIONS.**

23 (a) EXPANSION OF PERIOD.—

24 (1) AMENDMENT OF INTERNAL REVENUE
25 CODE.—

1 (A) IN GENERAL.—Subparagraph (A) of
2 section 417(a)(6) of the Internal Revenue Code
3 of 1986 is amended by striking “90-day” and
4 inserting “180-day”.

5 (B) MODIFICATION OF REGULATIONS.—
6 The Secretary of the Treasury shall modify the
7 regulations under sections 402(f), 411(a)(11),
8 and 417 of the Internal Revenue Code of 1986
9 to substitute “180 days” for “90 days” each
10 place it appears in Treasury Regulations sec-
11 tions 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-
12 1(b).

13 (2) AMENDMENT OF ERISA.—

14 (A) IN GENERAL.—Section 205(c)(7)(A) of
15 the Employee Retirement Income Security Act
16 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended
17 by striking “90-day” and inserting “180-day”.

18 (B) MODIFICATION OF REGULATIONS.—
19 The Secretary of the Treasury shall modify the
20 regulations under part 2 of subtitle B of title
21 I of the Employee Retirement Income Security
22 Act of 1974 to the extent that they relate to
23 sections 203(e) and 205 of such Act to sub-
24 stitute “180 days” for “90 days” each place it
25 appears.

1 (3) EFFECTIVE DATE.—The amendments made
2 by paragraphs (1)(A) and (2)(A) and the modifica-
3 tions required by paragraphs (1)(B) and (2)(B)
4 shall apply to years beginning after December 31,
5 2005.

6 (b) CONSENT REGULATION INAPPLICABLE TO CER-
7 TAIN DISTRIBUTIONS.—

8 (1) IN GENERAL.—The Secretary of the Treas-
9 ury shall modify the regulations under section
10 411(a)(11) of the Internal Revenue Code of 1986
11 and under section 205 of the Employee Retirement
12 Income Security Act of 1974 to provide that the de-
13 scription of a participant's right, if any, to defer re-
14 ceipt of a distribution shall also describe the con-
15 sequences of failing to defer such receipt.

16 (2) EFFECTIVE DATE.—

17 (A) IN GENERAL.—The modifications re-
18 quired by paragraph (1) shall apply to years be-
19 ginning after December 31, 2005.

20 (B) REASONABLE NOTICE.—In the case of
21 any description of such consequences made be-
22 fore the date that is 90 days after the date on
23 which the Secretary of the Treasury issues a
24 safe harbor description under paragraph (1), a
25 plan shall not be treated as failing to satisfy the

1 requirements of section 411(a)(11) of such
2 Code or section 205 of such Act by reason of
3 the failure to provide the information required
4 by the modifications made under paragraph (1)
5 if the Administrator of such plan makes a rea-
6 sonable attempt to comply with such require-
7 ments.

8 **SEC. 705. QUALIFIED GROUP LEGAL SERVICES PLANS.**

9 (a) IN GENERAL.—Subsection (e) of section 120 of
10 the Internal Revenue Code of 1986 is amended to read
11 as follows:

12 “(e) APPLICATION OF SECTION.—This section and
13 section 501(c)(20) shall apply to taxable years
14 beginning—

15 “(1) after December 31, 1976, and before July
16 1, 1992, and

17 “(2) after December 31, 2005, and before Jan-
18 uary 1, 2009.”.

19 (b) INCREASE IN MAXIMUM EXCLUSION.—The last
20 sentence of section 120(a) of such Code is amended by
21 striking “\$70” and inserting “\$150”.

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

1 **SEC. 706. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**
2 **TIREMENT PLANS FOR CHARITABLE PUR-**
3 **POSES.**

4 (a) IN GENERAL.—Subsection (d) of section 408 of
5 the Internal Revenue Code of 1986 (relating to individual
6 retirement accounts) is amended by adding at the end the
7 following new paragraph:

8 “(8) DISTRIBUTIONS FOR CHARITABLE PUR-
9 POSES.—

10 “(A) IN GENERAL.—No amount shall be
11 includible in gross income by reason of a quali-
12 fied charitable distribution.

13 “(B) QUALIFIED CHARITABLE DISTRIBUTI-
14 ON.—For purposes of this paragraph, the
15 term ‘qualified charitable distribution’ means
16 any distribution from an individual retirement
17 plan other than a plan described in subsection
18 (k) or (p) of section 408—

19 “(i) which is made on or after the
20 date that the individual for whose benefit
21 the plan is maintained has attained age
22 70½, and

23 “(ii) which is made directly by the
24 trustee—

25 “(I) to an organization described
26 in section 170(c), or

1 “(II) to a split-interest entity.

2 A distribution shall be treated as a qualified
3 charitable distribution only to the extent that
4 the distribution would be includible in gross in-
5 come without regard to subparagraph (A) and,
6 in the case of a distribution to a split-interest
7 entity, only if no person holds an income inter-
8 est in the amounts in the split-interest entity
9 attributable to such distribution other than one
10 or more of the following: the individual for
11 whose benefit such plan is maintained, the
12 spouse of such individual, or any organization
13 described in section 170(c).

14 “(C) CONTRIBUTIONS MUST BE OTHER-
15 WISE DEDUCTIBLE.—For purposes of this
16 paragraph—

17 “(i) DIRECT CONTRIBUTIONS.—A dis-
18 tribution to an organization described in
19 section 170(c) shall be treated as a quali-
20 fied charitable distribution only if a deduc-
21 tion for the entire distribution would be al-
22 lowable under section 170 (determined
23 without regard to subsection (b) thereof
24 and this paragraph).

1 “(ii) SPLIT-INTEREST GIFTS.—A dis-
2 tribution to a split-interest entity shall be
3 treated as a qualified charitable distribu-
4 tion only if a deduction for the entire value
5 of the interest in the distribution for the
6 use of an organization described in section
7 170(c) would be allowable under section
8 170 (determined without regard to sub-
9 section (b) thereof and this paragraph).

10 “(D) APPLICATION OF SECTION 72.—Not-
11 withstanding section 72, in determining the ex-
12 tent to which a distribution is a qualified chari-
13 table distribution, the entire amount of the dis-
14 tribution shall be treated as includible in gross
15 income without regard to subparagraph (A) to
16 the extent that such amount does not exceed
17 the aggregate amount which would have been so
18 includible if all amounts distributed from all in-
19 dividual retirement plans were treated as 1 con-
20 tract under paragraph (2)(A) for purposes of
21 determining the inclusion of such distribution
22 under section 72. Proper adjustments shall be
23 made in applying section 72 to other distribu-
24 tions in such taxable year and subsequent tax-
25 able years.

1 “(E) SPECIAL RULES FOR SPLIT-INTEREST
2 ENTITIES.—

3 “(i) CHARITABLE REMAINDER
4 TRUSTS.—Notwithstanding section 664(b),
5 distributions made from a trust described
6 in subparagraph (G)(i) shall be treated as
7 ordinary income in the hands of the bene-
8 ficiary to whom is paid the annuity de-
9 scribed in section 664(d)(1)(A) or the pay-
10 ment described in section 664(d)(2)(A).

11 “(ii) POOLED INCOME FUNDS.—No
12 amount shall be includible in the gross in-
13 come of a pooled income fund (as defined
14 in subparagraph (G)(ii)) by reason of a
15 qualified charitable distribution to such
16 fund, and all distributions from the fund
17 which are attributable to qualified chari-
18 table distributions shall be treated as ordi-
19 nary income to the beneficiary.

20 “(iii) CHARITABLE GIFT ANNU-
21 TIES.—Qualified charitable distributions
22 made for a charitable gift annuity shall not
23 be treated as an investment in the con-
24 tract.

1 “(F) DENIAL OF DEDUCTION.—Qualified
2 charitable distributions shall not be taken into
3 account in determining the deduction under sec-
4 tion 170.

5 “(G) SPLIT-INTEREST ENTITY DEFINED.—
6 For purposes of this paragraph, the term ‘split-
7 interest entity’ means—

8 “(i) a charitable remainder annuity
9 trust or a charitable remainder unitrust
10 (as such terms are defined in section
11 664(d)) which must be funded exclusively
12 by qualified charitable distributions,

13 “(ii) a pooled income fund (as defined
14 in section 642(c)(5)), but only if the fund
15 accounts separately for amounts attrib-
16 utable to qualified charitable distributions,
17 and

18 “(iii) a charitable gift annuity (as de-
19 fined in section 501(m)(5)).”.

20 (b) MODIFICATIONS RELATING TO INFORMATION RE-
21 TURNS BY CERTAIN TRUSTS.—

22 (1) RETURNS.—Section 6034 of such Code (re-
23 lating to returns by trusts described in section
24 4947(a)(2) or claiming charitable deductions under
25 section 642(c)) is amended to read as follows:

1 **“SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION**
2 **4947(a)(2) OR CLAIMING CHARITABLE DEDUC-**
3 **TIONS UNDER SECTION 642(c).**

4 **“(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—**
5 Every trust described in section 4947(a)(2) shall furnish
6 such information with respect to the taxable year as the
7 Secretary may by forms or regulations require.

8 **“(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION**
9 **UNDER SECTION 642(c).—**

10 **“(1) IN GENERAL.—**Every trust not required to
11 file a return under subsection (a) but claiming a de-
12 duction under section 642(c) for the taxable year
13 shall furnish such information with respect to such
14 taxable year as the Secretary may by forms or regu-
15 lations prescribe, including—

16 **“(A)** the amount of the deduction taken
17 under section 642(c) within such year,

18 **“(B)** the amount paid out within such year
19 which represents amounts for which deductions
20 under section 642(c) have been taken in prior
21 years,

22 **“(C)** the amount for which such deductions
23 have been taken in prior years but which has
24 not been paid out at the beginning of such year,

1 “(D) the amount paid out of principal in
2 the current and prior years for the purposes de-
3 scribed in section 642(c),

4 “(E) the total income of the trust within
5 such year and the expenses attributable thereto,
6 and

7 “(F) a balance sheet showing the assets, li-
8 abilities, and net worth of the trust as of the
9 beginning of such year.

10 “(2) EXCEPTIONS.—Paragraph (1) shall not
11 apply to a trust for any taxable year if—

12 “(A) all the net income for such year, de-
13 termined under the applicable principles of the
14 law of trusts, is required to be distributed cur-
15 rently to the beneficiaries, or

16 “(B) the trust is described in section
17 4947(a)(1).”.

18 (2) INCREASE IN PENALTY RELATING TO FIL-
19 ING OF INFORMATION RETURN BY SPLIT-INTEREST
20 TRUSTS.—Paragraph (2) of section 6652(c) of such
21 Code (relating to returns by exempt organizations
22 and by certain trusts) is amended by adding at the
23 end the following new subparagraph:

24 “(C) SPLIT-INTEREST TRUSTS.—In the
25 case of a trust which is required to file a return

1 under section 6034(a), subparagraphs (A) and
2 (B) of this paragraph shall not apply and para-
3 graph (1) shall apply in the same manner as if
4 such return were required under section 6033,
5 except that—

6 “(i) the 5 percent limitation in the
7 second sentence of paragraph (1)(A) shall
8 not apply,

9 “(ii) in the case of any trust with
10 gross income in excess of \$250,000, the
11 first sentence of paragraph (1)(A) shall be
12 applied by substituting ‘\$100’ for ‘\$20’,
13 and the second sentence thereof shall be
14 applied by substituting ‘\$50,000’ for
15 ‘\$10,000’, and

16 “(iii) the third sentence of paragraph
17 (1)(A) shall be disregarded.

18 In addition to any penalty imposed on the trust
19 pursuant to this subparagraph, if the person re-
20 quired to file such return knowingly fails to file
21 the return, such penalty shall also be imposed
22 on such person who shall be personally liable
23 for such penalty.”.

24 (3) CONFIDENTIALITY OF NONCHARITABLE
25 BENEFICIARIES.—Subsection (b) of section 6104 of

1 such Code (relating to inspection of annual informa-
2 tion returns) is amended by adding at the end the
3 following new sentence: “In the case of a trust which
4 is required to file a return under section 6034(a),
5 this subsection shall not apply to information re-
6 garding beneficiaries which are not organizations de-
7 scribed in section 170(c).”.

8 (c) EFFECTIVE DATES.—

9 (1) SUBSECTION (a).—The amendment made by
10 subsection (a) shall apply to distributions made after
11 December 31, 2005.

12 (2) SUBSECTION (b).—The amendments made
13 by subsection (b) shall apply to returns for taxable
14 years beginning after December 31, 2005.

15 **TITLE VIII—MISCELLANEOUS** 16 **PROVISIONS**

17 **SEC. 801. PROVISIONS RELATING TO PLAN AMENDMENTS.**

18 (a) IN GENERAL.—If this section applies to any plan
19 or contract amendment—

20 (1) such plan or contract shall be treated as
21 being operated in accordance with the terms of the
22 plan during the period described in subsection
23 (b)(2)(A), and

24 (2) except as provided by the Secretary of the
25 Treasury, such plan shall not fail to meet the re-

1 requirements of section 411(d)(6) of the Internal Rev-
2 enue Code of 1986 and section 204(g) of the Em-
3 ployee Retirement Income Security Act of 1974 by
4 reason of such amendment.

5 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

6 (1) IN GENERAL.—This section shall apply to
7 any amendment to any plan or annuity contract
8 which is made—

9 (A) pursuant to any amendment made by
10 this Act or title VI of the Economic Growth and
11 Tax Relief Reconciliation Act of 2001, or pur-
12 suant to any regulation issued by the Secretary
13 of the Treasury or the Secretary of Labor
14 under this Act or such title VI, and

15 (B) on or before the last day of the first
16 plan year beginning on or after January 1,
17 2008.

18 In the case of a governmental plan (as defined in
19 section 414(d) of the Internal Revenue Code of
20 1986), this paragraph shall be applied by sub-
21 stituting “2010” for “2008”.

22 (2) CONDITIONS.—This section shall not apply
23 to any amendment unless—

24 (A) during the period—

1 (i) beginning on the date the legisla-
2 tive or regulatory amendment described in
3 paragraph (1)(A) takes effect (or in the
4 case of a plan or contract amendment not
5 required by such legislative or regulatory
6 amendment, the effective date specified by
7 the plan), and

8 (ii) ending on the date described in
9 paragraph (1)(B) (or, if earlier, the date
10 the plan or contract amendment is adopt-
11 ed),

12 the plan or contract is operated as if such plan
13 or contract amendment were in effect; and

14 (B) such plan or contract amendment ap-
15 plies retroactively for such period.