

108TH CONGRESS
2D SESSION

H. R. 5398

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

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2004

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

A BILL

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

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

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

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

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

Sec. 1. Short title and table of contents.

TITLE I—PUBLIC EMPLOYEE PENSION PLANS

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

TITLE II—PENSION IMPROVEMENTS

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

TITLE III—TAX CREDITS TO PROMOTE PENSION COVERAGE

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

TITLE IV—IMPROVED PENSION PROTECTIONS FOR WOMEN

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

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

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

TITLE VI—ADDITIONAL AMENDMENTS

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

TITLE VII—GENERAL PROVISIONS

Sec. 701. General effective date.

Sec. 702. Plan amendments.

TITLE I—PUBLIC EMPLOYEE PENSION PLANS

SEC. 101. NEW QUALIFICATION REQUIREMENTS FOR PUBLIC EMPLOYEE PENSION PLANS.

(a) IN GENERAL.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (34) the following new paragraph:

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

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

“Subpart F—Public Employee Pension Plans

“Sec. 420A. Reporting and disclosure requirements.

“Sec. 420B. Review by qualified review boards of changes in employer contributions.

“Sec. 420C. Definitions and coverage.

“SEC. 420A. REPORTING AND DISCLOSURE REQUIREMENTS.

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

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

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

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

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

16 “(3) a report containing—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(b) MEMBERSHIP.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(b) COVERAGE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(I) any participant in the plan,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 “(v) **APPLICABLE AGE.**—

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

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

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

7 (c) INDIVIDUAL RETIREMENT ACCOUNTS.—Para-
 8 graph (1) of section 219(d) of such Code is amended—
 9 (1) by striking “age 70½” in the text and in-
 10 serting “the applicable age (as defined in section
 11 401(a)(9)(C)(v))”, and
 12 (2) by striking “AGE 70½” in the heading and
 13 inserting “THE APPLICABLE AGE”.

14 (d) ROTH IRA’S.—Paragraph (4) of section 408A(c)
 15 of such Code is amended—
 16 (1) by striking “age 70½” in the text and in-
 17 serting “the applicable age (as defined in section
 18 401(a)(9)(C)(v))”, and
 19 (2) by striking “AGE 70½” in the heading and
 20 inserting “THE APPLICABLE AGE”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (a) SAVERS CREDIT MADE REFUNDABLE.—

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

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

4 (2) CONFORMING AMENDMENTS.—

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

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

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

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

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

18 (ii) Section 904(h).

19 (iii) Section 1400C(d).

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

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

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

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

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

7 (b) SAVERS CREDIT MADE PERMANENT.—

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

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

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

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

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

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

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

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

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

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

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

highly compensated employee to the extent that the accrued benefit of such employee derived from such contributions for the year do not exceed the equivalent (as determined under regulations prescribed by the Secretary and without regard to contributions and benefits under the Social Security Act) of 3 percent of such employee's compensation from the employer for the year.

“(d) QUALIFIED RETIREMENT PLAN.—

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

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

“(B) the vesting requirements of paragraph (3), and

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

“(2) CONTRIBUTION REQUIREMENTS.—

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

“(i) the employer is required to make nonelective contributions of at least 1 percent of compensation (or the equivalent

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

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

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

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

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

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

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

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

9 “(4) DISTRIBUTION REQUIREMENTS.—

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

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

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

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

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

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

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

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

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

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

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

20 “(f) SPECIAL RULES.—

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

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

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

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

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

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

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

5 (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

6 **SEC. 303. NOTICE.**

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

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

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

17 (a) **AMOUNT OF ANNUITY.**—

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

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

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

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

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

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

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

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

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

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

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

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

16 “(2) APPLICABLE PERCENTAGE.—

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

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

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

1 “(B) SURVIVOR ANNUITY PERCENTAGE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (f) RULES FOR INCOME TAX DEDUCTION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(D) BENEFIT ACCRUALS.—

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

19 “(ii) TRADITIONAL FORMULA.—

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

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

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

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

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

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

11 “(iii) CASH BALANCE FORMULA.—

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

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

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

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

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

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

21 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(I) MULTIPLE FORMULAS.—

“(i) IN GENERAL.—If a defined benefit plan contains multiple accrual formulas, the requirements of this paragraph may be satisfied separately for each formula.

“(ii) CERTAIN BENEFIT ACCRUALS TREATED AS MULTIPLE ACCRUALS TREATED AS MULTIPLE ACCRUAL FORMULAS.—

For purposes of this subparagraph, a plan has multiple accrual formulas if a participant’s accrued benefit is determined either as the greater of the benefit determined under two or more separate formulas or as the sum of the benefit determined under two or more separate formulas.

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

8 (c) EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) TEMPORARY AND FINAL FORM.—The Secretary shall prescribe the regulations required by paragraph (1) in temporary form not later than 6 months after the effective date of this section and in final form not later than 18 months after the effective date of this section.

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

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

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

(a) **ELECTIVE DEFERRALS.**—Clause (ii) of section 404(a)(7)(C) of the Internal Revenue Code of 1986 (relating to elective deferrals) is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(i) consists of—

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

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

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

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

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

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

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

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

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

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

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

23 “(ii) for job training expenses.”.

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

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

5 “(16) any loan—

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

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

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

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

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

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

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

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

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

10 “(w) UNCLAIMED BENEFITS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(c) ANNUITY.—For purposes of subsection (b), the
5 term ‘annuity’ has the meaning given to such term by sec-
6 tion 7704(c) of title 5, United States Code.

7 “(d) FINALITY OF ELECTION.—An election under
8 subsection (a) with respect to a corrected civil service an-
9 nuity benefit payment for a taxable year may not be
10 changed after the due date of the return for such taxable
11 year.”.

(b) CLERICAL AMENDMENT.—The table of sections for part I of subchapter Q of chapter 1 of such Code is amended by inserting after the item relating to section 1301 the following new item:

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to payments received after December 31, 2004.

19 SEC. 605. PROHIBITED TRANSACTION EXEMPTION FOR THE
20 PROVISION OF INVESTMENT ADVICE.

(a) PROHIBITED TRANSACTION EXEMPTION.—Sub-
section (d) of section 4975 of the Internal Revenue Code
of 1986 (relating to exemptions from tax on prohibited
transactions), as amended by this Act, is further amend-
ed—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(iv) EXTENT OF REPORTED COM-
6 PLAINTS.—The extent to which complaints
7 to relevant agencies have been made in
8 connection with the provision of the advice.
9 Any proprietary information obtained by the
10 Secretary shall be treated as confidential.

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

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

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

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

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

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

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

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

graph (H)(i), except that an alternative investment adviser may not be a fiduciary of the plan other than in connection with the provision of the advice.

“(iii) SCOPE AND FEES OF ALTERNATIVE INVESTMENT ADVICE.—Any qualified investment advice provided pursuant to this subparagraph by an alternative investment adviser shall be of the same type and scope, and provided under the same terms and conditions (including no additional charge to the participant or beneficiary), as apply with respect to the qualified investment advice to be provided by the fiduciary adviser.

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

“(i) IN GENERAL.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 accepted investment management
2 principles, and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(i) consists of—

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(c) LIMITATIONS ON AMOUNT OF TAX.—

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

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

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

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

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

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

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

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

“(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (c) EFFECTIVE DATE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (1) the later of—

11 (A) January 1, 2006, or

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

17 (2) January 1, 2007.

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

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

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

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

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

○