

108TH CONGRESS
1ST SESSION

S. 1617

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide comprehensive pension protection for women.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15, 2003

Mr. KENNEDY (for himself and Ms. SNOWE) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide comprehensive pension protection for women.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Women’s Pension Protection Act of 2003”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—SPOUSAL CONSENT REQUIRED FOR DISTRIBUTIONS FROM DEFINED CONTRIBUTION PLANS

Sec. 101. Application of joint and survivor annuity rules to all defined contribution plans.

TITLE II—DIVISION OF PENSION BENEFITS UPON DIVORCE

Sec. 201. Regulations on time and order of issuance of domestic relations orders.

Sec. 202. Former spouses treated as surviving spouses in certain cases.

TITLE III—PROTECTION OF RIGHTS OF FORMER SPOUSES TO PENSION BENEFITS UNDER CERTAIN GOVERNMENT AND GOVERNMENT-SPONSORED RETIREMENT PROGRAMS

Subtitle A—Civil Service Retirement

Sec. 301. Survivor annuities for widows, widowers, and former spouses of Federal employees who die before attaining age for deferred annuity under civil service retirement system.

Sec. 302. Court orders relating to Federal retirement benefits for former spouses of Federal employees.

Sec. 303. Order of precedence for disposition of amounts remaining in the thrift savings account of a Federal employee (or former employee) who dies before making an effective election controlling such disposition.

Subtitle B—Railroad Retirement

Sec. 311. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.

Sec. 312. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.

TITLE IV—MODIFICATIONS OF JOINT AND SURVIVOR ANNUITY REQUIREMENTS

Sec. 401. Modifications of joint and survivor annuity requirements.

TITLE V—PLAN AMENDMENTS

Sec. 501. Provisions relating to plan amendments.

1 **TITLE I—SPOUSAL CONSENT RE-** 2 **QUIRED FOR DISTRIBUTIONS** 3 **FROM DEFINED CONTRIBU-** 4 **TION PLANS**

5 **SEC. 101. APPLICATION OF JOINT AND SURVIVOR ANNUITY** 6 **RULES TO ALL DEFINED CONTRIBUTION** 7 **PLANS.**

8 (a) APPLICATION TO ALL DEFINED CONTRIBUTION
9 PLANS.—

1 (1) AMENDMENTS TO ERISA.—

2 (A) IN GENERAL.—Section 205(a) of the
3 Employee Retirement Income Security Act of
4 1974 (29 U.S.C. 1055(a)) is amended by strik-
5 ing “to which this section applies”.

6 (B) CONFORMING AMENDMENTS.—

7 (i) Section 205(b) of such Act (29
8 U.S.C. 1055(b)) is amended to read as fol-
9 lows:

10 “(b)(1)(A) In the case of—

11 “(i) a tax credit employee stock ownership plan
12 (as defined in section 409(a) of the Internal Rev-
13 enue Code of 1986), or

14 “(ii) an employee stock ownership plan (as de-
15 fined in section 4975(e)(7) of such Code),

16 subsection (a) shall not apply to that portion of the em-
17 ployee’s accrued benefit to which the requirements of sec-
18 tion 409(h) of such Code apply.

19 “(B) Subparagraph (A) shall apply with respect to
20 any participant only if—

21 “(i) such plan provides that the participant’s
22 nonforfeitable accrued benefit (reduced by any secu-
23 rity interest held by the plan by reason of a loan
24 outstanding to such participant) is payable in full,
25 on the death of the participant, to the participant’s

1 surviving spouse (or, if there is no surviving spouse
2 or the surviving spouse consents in the manner re-
3 quired under subsection (c)(2), to a designated bene-
4 ficiary),

5 “(ii) such participant does not elect the pay-
6 ment of benefits in the form of a life annuity, and

7 “(iii) with respect to such participant, such
8 plan is not a direct or indirect transferee (in a
9 transfer after December 31, 1984) of a plan to
10 which, at the time of the transfer, subsection (a) ap-
11 plied (or to which this clause applied with respect to
12 the participant).

13 Clause (iii) shall apply only with respect to the transferred
14 assets (and income therefrom) if the plan separately ac-
15 counts for such assets and any income therefrom. A plan
16 shall not be treated as failing to meet the requirements
17 of this subparagraph merely because the plan provides
18 that benefits will not be payable to the surviving spouse
19 of the participant unless the participant and such spouse
20 had been married throughout the 1-year period ending on
21 the earlier of the participant’s annuity starting date or
22 the date of the participant’s death.

23 “(2) This section shall not apply to a plan which the
24 Secretary of the Treasury or his delegate has determined
25 is a plan described in section 404(c) of the Internal Rev-

1 enue Code of 1986 (or a continuation thereof) in which
 2 participation is substantially limited to individuals who,
 3 before January 1, 1976, ceased employment covered by
 4 the plan.”

5 (ii) Section 205(e)(2) of such Act (20
 6 U.S.C. 1055(e)(2)) is amended—

7 (I) by striking “individual ac-
 8 count plan or participant described in
 9 subparagraph (B) or (C) of subsection
 10 (b)(1)” and inserting “individual ac-
 11 count plan to which this section ap-
 12 plies, or any participant described in
 13 subsection (b)(1)(B)”, and

14 (II) by striking “50 percent of”.

15 (2) AMENDMENTS TO INTERNAL REVENUE
 16 CODE.—

17 (A) IN GENERAL.—Section 401(a)(11)(A)
 18 of the Internal Revenue Code of 1986 (relating
 19 to requirement of joint and survivor annuity
 20 and preretirement survivor annuity) is amended
 21 by striking the matter preceding clause (i) and
 22 inserting:

23 “(A) IN GENERAL.—Except as provided in
 24 section 417 and subparagraph (B), a trust
 25 forming part of a plan shall not constitute a

qualified trust under this section unless such plan provides—”.

(B) CONFORMING AMENDMENTS.—

(i) Section 401(a)(11) of such Code is amended by striking subparagraphs (B), (C), and (D) and inserting the following new subparagraphs:

“(B) EXCEPTION FOR CERTAIN ESOP BENEFITS.—

“(i) IN GENERAL.—In the case of—

“(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

“(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee’s accrued benefit to which the requirements of section 409(h) apply.

“(ii) NONFORFEITABLE BENEFIT MUST BE PAID IN FULL, ETC.—In the case of any participant, clause (i) shall apply only if—

1 “(I) such plan provides that the
2 participant’s nonforfeitable accrued
3 benefit (reduced by any security inter-
4 est held by the plan by reason of a
5 loan outstanding to such participant)
6 is payable in full, on the death of the
7 participant, to the participant’s sur-
8 viving spouse (or, if there is no sur-
9 viving spouse or the surviving spouse
10 consents in the manner required
11 under section 417(a)(2), to a des-
12 ignated beneficiary),

13 “(II) such participant does not
14 elect the payment of benefits in the
15 form of a life annuity, and

16 “(III) with respect to such par-
17 ticipant, such plan is not a direct or
18 indirect transferee (in a transfer after
19 December 31, 1984) of a plan to
20 which, at the time of the transfer,
21 subparagraph (A) applied (or to which
22 this subclause applied with respect to
23 the participant).

24 Subclause (III) shall apply only with re-
25 spect to the transferred assets (and income

1 therefrom) if the plan separately accounts
 2 for such assets and any income therefrom.

3 “(C) SPECIAL RULE WHERE PARTICIPANT
 4 AND SPOUSE MARRIED LESS THAN 1 YEAR.—A
 5 plan shall not be treated as failing to meet the
 6 requirements of subparagraph (B)(ii) merely
 7 because the plan provides that benefits will not
 8 be payable to the surviving spouse of the partic-
 9 ipant unless the participant and such spouse
 10 had been married throughout the 1-year period
 11 ending on the earlier of the participant’s annu-
 12 ity starting date or the date of the participant’s
 13 death.”

14 (ii) Section 401(a)(11) of such Code
 15 is amended by redesignating subpara-
 16 graphs (E) and (F) as subparagraphs (D)
 17 and (E), respectively.

18 (iii) Section 417(c)(2) of such Code is
 19 amended—

20 (I) by striking “defined contribu-
 21 tion plan or participant described in
 22 clause (ii) or (iii) of section
 23 401(a)(11)(B)” and inserting “de-
 24 fined contribution plan to which sec-
 25 tion 401(a)(11) applies, or any partic-

1 ipant described in section
 2 401(a)(11)(B)(ii),”; and
 3 (II) by striking “50 percent of”.

4 (b) SPECIAL RULES RELATING TO DEFINED CON-
 5 TRIBUTION PLANS.—

6 (1) AMENDMENTS TO ERISA.—

7 (A) LOANS.—Section 205(c)(4) of the Em-
 8 ployee Retirement Income Security Act of 1974
 9 (29 U.S.C. 1055(c)(4)) is amended by adding
 10 at the end the following flush sentence:

11 “This paragraph shall not apply to an individual account
 12 plan other than a plan which is subject to the funding
 13 standards of section 302.”

14 (B) HARDSHIP WITHDRAWALS.—Section
 15 205(c) of such Act (29 U.S.C. 1055(c)) is
 16 amended by adding at the end the following
 17 new paragraph:

18 “(9) Nothing in this section shall be construed as re-
 19 quiring an individual account plan to obtain the consent
 20 of the spouse of a participant before making a hardship
 21 distribution to the participant.”

22 (C) PAYMENTS IN LIEU OF ANNUITY.—
 23 Section 205 of such Act (29 U.S.C. 1055) is
 24 amended by redesignating subsection (l) as sub-

1 section (m) and by inserting after subsection
2 (k) the following new subsection:

3 “(l)(1) For purposes of this section, an individual ac-
4 count plan required to provide a qualified joint and sur-
5 vivor annuity or a qualified preretirement survivor annuity
6 shall be treated as providing—

7 “(A) a qualified joint and survivor annuity if
8 the plan provides that the account balance of the
9 participant to which the participant had a non-
10 forfeitable right (within the meaning of section 203)
11 will be distributed in a series of periodic payments
12 (determined in accordance with tables prescribed by
13 the Secretary of the Treasury) over the joint life ex-
14 pectancy of the participant and the participant’s
15 spouse, and

16 “(B) a qualified preretirement survivor annuity
17 if the plan provides that the account balance of the
18 participant (as of the date of death) to which the
19 participant had a nonforfeitable right (as so defined)
20 will be distributed to the surviving spouse, at the op-
21 tion of the spouse, in either such a series of periodic
22 payments over the life expectancy of the surviving
23 spouse or any other form of benefit payment that
24 the plan provides.

1 A plan shall not be treated as failing to meet the require-
 2 ments of subparagraph (A) merely because the plan pro-
 3 vides that a participant may, with the consent of the
 4 spouse, elect at any time to have the plan pay all of the
 5 remaining portion of the account balance in any other
 6 form of benefit payment that the plan provides.

7 “(2) In the case of a termination of an individual ac-
 8 count plan that provides for payments described in para-
 9 graph (1), such plan shall be treated as meeting the re-
 10 quirements of paragraph (1) only if, for each participant
 11 or surviving spouse eligible to receive such payments who
 12 is not paid the remaining account balance in a lump sum,
 13 the plan administrator purchases from an insurer an irrev-
 14 ovable commitment to provide—

15 “(A) the payments described in paragraph (1),

16 or

17 “(B) either—

18 “(i) a qualified joint and survivor annuity
 19 (and, if applicable, a qualified preretirement
 20 survivor annuity) in the case of a participant,

21 or

22 “(ii) a single life annuity or qualified pre-
 23 retirement survivor annuity, whichever is appli-
 24 cable, in the case of a surviving spouse of a
 25 participant.

1 “(3) The requirements of paragraph (2) are met with
 2 respect to a purchase only if, within a reasonable time
 3 after the effective date of the purchase, the individual enti-
 4 tled to payments from the insurer is provided a copy of
 5 the insurance contract or a certificate showing the insur-
 6 er’s name and address and clearly stating the insurer’s
 7 obligation to provide the required payments.”.

8 (D) CONFORMING AMENDMENT.—Section
 9 206 of such Act (29 U.S.C. 1056) is amended
 10 by adding at the end the following:

11 “(g) FINAL DISTRIBUTIONS FROM TERMINATED IN-
 12 DIVIDUAL ACCOUNT PLANS.—In the case of an individual
 13 account plan which provides for payments described in
 14 section 205(l)(1), the plan shall provide that, upon termi-
 15 nation of such plan, benefits of married participants and
 16 surviving spouses shall be paid in accordance with section
 17 205(l)(2).”.

18 (2) AMENDMENTS TO INTERNAL REVENUE
 19 CODE.—

20 (A) LOANS.—Section 417(a)(4) of the In-
 21 ternal Revenue Code of 1986 is amended by
 22 adding at the end the following flush sentence:
 23 “‘This paragraph shall not apply to a defined con-
 24 tribution plan other than a plan which is subject to
 25 the funding standards of section 412.’”

1 (B) HARDSHIP WITHDRAWALS.—Section
 2 417(a) of such Code is amended by adding at
 3 the end the following new paragraph:

4 “(8) HARDSHIP DISTRIBUTIONS.—Nothing in
 5 this section or section 401(a)(11) shall be construed
 6 as requiring a defined contribution plan to obtain
 7 the consent of the spouse of a participant before
 8 making a hardship distribution to the participant.”

9 (C) PAYMENTS IN LIEU OF ANNUITY.—
 10 Section 417 of such Code (relating to defini-
 11 tions and special rules for purposes of minimum
 12 survivor annuity requirements) is amended by
 13 adding at the end the following new subsection:

14 “(g) SPECIAL RULES FOR DEFINED CONTRIBUTION
 15 PLANS.—For purposes of this section and section
 16 401(a)(11)—

17 “(1) PAYMENTS IN LIEU OF ANNUITIES.—A de-
 18 fined contribution plan required to provide a quali-
 19 fied joint and survivor annuity or a qualified pre-
 20 retirement survivor annuity shall be treated as pro-
 21 viding—

22 “(A) a qualified joint and survivor annuity
 23 if the plan provides that the account balance of
 24 the participant to which the participant had a
 25 nonforfeitable right (within the meaning of sec-

tion 411(a)) will be distributed in a series of periodic payments (determined in accordance with tables prescribed by the Secretary) over the joint life expectancy of the participant and the participant's spouse, and

“(B) a qualified preretirement survivor annuity if the plan provides that the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (as so defined) will be distributed to the surviving spouse, at the option of the spouse, in either such a series of periodic payments over the life expectancy of the surviving spouse or any other form of benefit payment that the plan provides.

A plan shall not be treated as failing to meet the requirements of subparagraph (A) merely because the plan provides that a participant may, with the consent of the spouse, elect at any time to have the plan pay all of the remaining portion of the account balance in any other form of benefit payment that the plan provides.

“(2) TERMINATING PLANS.—In the case of a termination of a defined contribution plan that provides for payments described in paragraph (1), such

1 plan shall be treated as meeting the requirements of
2 paragraph (1) only if, for each participant or sur-
3 viving spouse eligible to receive such payments who
4 is not paid the remaining account balance in a lump
5 sum, the plan administrator purchases from an in-
6 surer an irrevocable commitment to provide—

7 “(A) the payments described in paragraph
8 (1), or

9 “(B) either—

10 “(i) a qualified joint and survivor an-
11 nuity (and, if applicable, a qualified pre-
12 retirement survivor annuity) in the case of
13 a participant, or

14 “(ii) a single life annuity or qualified
15 preretirement survivor annuity, whichever
16 is applicable, in the case of a surviving
17 spouse of a participant.

18 “(3) NOTICE.—The requirements of paragraph
19 (2) are met with respect to a purchase only if, with-
20 in a reasonable time after the effective date of the
21 purchase, the individual entitled to payments from
22 the insurer is provided a copy of the insurance con-
23 tract or a certificate showing the insurer’s name and
24 address and clearly stating the insurer’s obligation
25 to provide the required payments.”.

1 (D) CONFORMING AMENDMENT.—Section
 2 401(a) of such Code (relating to requirements
 3 for a qualified trust) is amended by inserting
 4 after paragraph (34) the following new para-
 5 graph:

6 “(35) FINAL DISTRIBUTIONS FROM TERMI-
 7 NATED DEFINED CONTRIBUTION PLANS.—In the
 8 case of a defined contribution plan which provides
 9 for payments described in section 417(g)(1), a trust
 10 forming part of such plan shall not be treated as
 11 failing to constitute a qualified trust under this sec-
 12 tion merely because the pension plan of which such
 13 trust is a part pays, upon its termination, benefits
 14 in accordance with section 417(g)(2).”

15 (c) TRANSFERS BETWEEN PLANS.—

16 (1) AMENDMENT TO ERISA.—Section 205(c) of
 17 the Employee Retirement Income Security Act of
 18 1974 (29 U.S.C. 1055(c)), as amended by this Act,
 19 is amended by adding at the end the following new
 20 paragraph:

21 “(10) Nothing in this section shall be treated as re-
 22 quiring a plan to obtain the consent of the spouse of the
 23 participant before making a direct trustee-to-trustee
 24 transfer of any portion of the balance to the credit of the

1 participant to another pension plan if the other plan is
 2 a plan to which this section applies.”

3 (2) AMENDMENT TO INTERNAL REVENUE
 4 CODE.—Section 417(a) of the Internal Revenue
 5 Code of 1986, as amended by this Act, is amended
 6 by adding at the end the following new paragraph:

7 “(9) TRANSFERS.—Nothing in this section or
 8 section 401(a)(11) shall be treated as requiring a
 9 plan to obtain the consent of the spouse of the par-
 10 ticipant before making a direct trustee-to-trustee
 11 transfer of any portion of the balance to the credit
 12 of the participant to another plan if the other plan
 13 is a plan to which this section and section
 14 401(a)(11) apply.”

15 (d) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
 17 graph (2), the amendments made by this section
 18 shall apply to plan years beginning after December
 19 31, 2003.

20 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 21 GAINED PLANS.—In the case of a plan maintained
 22 pursuant to 1 or more collective bargaining agree-
 23 ments between employee representatives and 1 or
 24 more employers ratified on or before the date of the
 25 enactment of this Act the amendments made by this

section shall not, in the case of employees covered by any such agreement, apply to plan years beginning before the earlier of—

(A) the later of—

(i) January 1, 2004, or

(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of enactment of this Act), or

(B) January 1, 2005.

(3) 1 HOUR OF SERVICE REQUIREMENT.—The amendments made by this section shall apply only in the case of participants who have at least 1 hour of service under the plan on or after the date of the enactment of this Act or who have at least 1 hour of paid leave on or after such date.

TITLE II—DIVISION OF PENSION BENEFITS UPON DIVORCE

SEC. 201. REGULATIONS ON TIME AND ORDER OF ISSUANCE OF DOMESTIC RELATIONS OR- DERS.

Not later than one year after the date of the enactment of this Act, the Secretary of the Treasury shall issue regulations under section 206(d)(3) of the Employee Re-

1 tirement Security Act of 1974 and section 414(p) of the
 2 Internal Revenue Code of 1986 which clarify that—

3 (1) a domestic relations order otherwise meet-
 4 ing the requirements to be a qualified domestic rela-
 5 tions order, including the requirements of section
 6 206(d)(3)(D) of such Act and section 414(p)(3) of
 7 such Code, shall not fail to be treated as a qualified
 8 domestic relations order solely because—

9 (A) the order is issued after, or revises, an-
 10 other domestic relations order or qualified do-
 11 mestic relations order; or

12 (B) of the time at which it is issued; and

13 (2) any order described in paragraph (1) shall
 14 be subject to the same requirements and protections
 15 which apply to qualified domestic relations orders,
 16 including the provisions of section 206(d)(3)(H) of
 17 such Act and section 414(p)(7) of such Code.

18 **SEC. 202. FORMER SPOUSES TREATED AS SURVIVING**
 19 **SPOUSES IN CERTAIN CASES.**

20 (a) AMENDMENT TO ERISA.—Section 205 of the
 21 Employee Retirement Income Security Act of 1974 (29
 22 U.S.C. 1055), as amended by this Act, is amended by re-
 23 designating subsection (m) as subsection (n) and by in-
 24 serting after subsection (l) the following new subsection:

1 “(m)(1)(A) For purposes of this section, a former
2 spouse to whom this subsection applies shall, upon the
3 death of the participant to whom the former spouse was
4 married, be entitled to receive a qualified joint and sur-
5 vivor annuity or qualified preretirement survivor annuity
6 in the same manner, and to the same extent, as if the
7 former spouse were the surviving spouse of the partici-
8 pant.

9 “(B) This subsection applies to a former spouse of
10 a participant in a plan if—

11 “(i) the plan is a defined benefit plan or an in-
12 dividual account plan subject to the funding stand-
13 ards under section 302,

14 “(ii) an election by the former spouse to waive
15 the benefits of this section was not in effect during
16 the period the participant was covered by the plan
17 or at the time of the dissolution of the marriage,

18 “(iii) there is no domestic relations order which
19 specifically provides that the survivor benefits under
20 the plan were considered by the participant and the
21 former spouse and that the survivor benefits were
22 expressly awarded, denied, or waived by the former
23 spouse, and

24 “(iv) the requirements of either paragraph (2)
25 or (3) are met with respect to the participant.

1 “(2) In the case of a qualified joint and survivor an-
2 nuity, the requirements of this paragraph are met with
3 respect to a participant if the participant and the former
4 spouse were married on the annuity starting date and—

5 “(A) the participant’s annuity was reduced in
6 order to provide a qualified joint and survivor annu-
7 ity under this section, or

8 “(B) the participant was receiving a subsidized
9 annuity described in subsection (c)(5).

10 “(3) In the case of a qualified preretirement survivor
11 annuity, the requirements of this paragraph are met with
12 respect to a participant if the participant—

13 “(A) was married to the former spouse for at
14 least 1 year during the period the participant was
15 covered by the plan,

16 “(B) did not remarry at any time following the
17 dissolution of the marriage to the former spouse,
18 and

19 “(C) did not make a subsequent beneficiary
20 designation at any time after dissolution of the mar-
21 riage to the former spouse, and the plan does not
22 provide for the payment of an equivalent or greater
23 benefit to a default beneficiary.

24 “(4)(A) This subsection shall not apply to a former
25 spouse unless the former spouse notifies the plan of pos-

1 sible eligibility for a benefit under this subsection within
2 one year of the participant's death or one year after the
3 effective date of this subsection, whichever is later, and
4 provides such information as may be necessary to establish
5 each element of eligibility.

6 “(B) The plan may waive the one-year requirement
7 under this paragraph where the failure to waive such re-
8 quirement would be against equity or good conscience, in-
9 cluding casualty, disaster, or other events beyond the rea-
10 sonable control of the individual subject to such require-
11 ment.

12 “(C) Payments to a former spouse under this sub-
13 section shall not be made before the earliest date the par-
14 ticipant would have been eligible to receive a retirement
15 benefit under the plan.

16 “(D) Any payments to a former spouse pursuant to
17 this subsection shall be prospective only, beginning from
18 the date the former spouse notifies the plan of the former
19 spouse's potential eligibility for benefits under this sub-
20 section.

21 “(E) In making determinations under this subsection,
22 the plan may reasonably rely on the validity of marriage
23 certificates, divorce decrees, death certificates, and other
24 documentation such as obituaries and affidavits, and need
25 not independently authenticate their validity. Any plan fi-

1 duciary that in good faith pays a qualified preretirement
2 survivor annuity benefit to a former spouse in accordance
3 with this subsection shall be discharged from liability to
4 any other claimant.

5 “(F) In the event that the plan makes payments to
6 a former spouse under this section, and a surviving spouse
7 or another former spouse comes forward and establishes
8 that the participant had remarried after dissolution of the
9 marriage to the former spouse who is receiving benefits,
10 the plan shall cease payments to that former spouse. If
11 the plan has evidence that the former spouse’s representa-
12 tions to the plan on the participant’s remarriage status
13 were not in good faith, the plan may seek repayment of
14 any amounts paid. If the plan determines that the partici-
15 pant was legally married at the time of death, it shall
16 make payments on a prospective basis only to that sur-
17 viving spouse.”

18 (b) AMENDMENT TO INTERNAL REVENUE CODE.—
19 Section 417 of the Internal Revenue Code of 1986 (relat-
20 ing to definitions and special rules for purposes of min-
21 imum survivor annuity requirements), as amended by this
22 Act, is amended by adding at the end the following new
23 subsection:

24 “(h) TREATMENT OF CERTAIN FORMER SPOUSES.—

1 “(1) IN GENERAL.—For purposes of this sec-
 2 tion and section 401(a)(11), a former spouse to
 3 whom this subsection applies shall, upon the death
 4 of the participant to whom the former spouse was
 5 married, be entitled to receive a qualified joint and
 6 survivor annuity or qualified preretirement survivor
 7 annuity in the same manner, and to the same ex-
 8 tent, as if the former spouse were the surviving
 9 spouse of the participant.

10 “(2) APPLICATION.—This subsection applies to
 11 a former spouse of a participant in a plan if—

12 “(A) the plan is a defined benefit plan or
 13 a defined contribution plan subject to the fund-
 14 ing standards under section 412,

15 “(B) an election by the former spouse to
 16 waive the benefits of this section was not in ef-
 17 fect during the period the participant was cov-
 18 ered by the plan or at the time of the dissolu-
 19 tion of the marriage,

20 “(C) there is no domestic relations order
 21 which specifically provides that the survivor
 22 benefits under the plan were considered by the
 23 participant and the former spouse and that the
 24 survivor benefits were expressly awarded, de-
 25 nied, or waived by the former spouse, and

1 “(D) the requirements of either paragraph
2 (3) or (4) are met with respect to the partici-
3 pant.

4 “(3) QUALIFIED JOINT AND SURVIVOR ANNU-
5 ITY.—In the case of a qualified joint and survivor
6 annuity, the requirements of this paragraph are met
7 with respect to a participant if the participant and
8 the former spouse were married on the annuity
9 starting date and—

10 “(A) the participant’s annuity was reduced
11 in order to provide a qualified joint and sur-
12 vivor annuity under this section, or

13 “(B) the participant was receiving a sub-
14 sidized annuity described in section 417(a)(5).

15 “(4) QUALIFIED PRERETIREMENT SURVIVOR
16 ANNUITY.—In the case of a qualified preretirement
17 survivor annuity, the requirements of this paragraph
18 are met with respect to a participant if the partici-
19 pant—

20 “(A) was married to the former spouse for
21 at least 1 year during the period the participant
22 was covered by the plan,

23 “(B) did not remarry at any time following
24 the dissolution of the marriage to the former
25 spouse, and

1 “(C) did not make a subsequent bene-
2 ficiary designation at any time after dissolution
3 of the marriage to the former spouse, and the
4 plan does not provide for the payment of an
5 equivalent or greater benefit to a default bene-
6 ficiary.

7 “(5) OTHER RULES.—

8 “(A) NOTICE.—

9 “(i) IN GENERAL.—This subsection
10 shall not apply to a former spouse unless
11 the former spouse notifies the plan of the
12 former spouse’s eligibility under this sub-
13 section within one year of the participant’s
14 death or one year after the effective date
15 of this subsection, whichever is later, and
16 provides such information as may be re-
17 quired to establish each element of eligi-
18 bility.

19 “(ii) WAIVER.—The plan may waive
20 the one-year requirement under clause (i)
21 where the failure to waive such require-
22 ment would be against equity or good con-
23 science, including casualty, disaster, or
24 other events beyond the reasonable control

1 of the individual subject to such require-
2 ment.

3 “(B) TIME FOR PAYMENT.—Payments to a
4 former spouse under this subsection shall not
5 be made before the earliest date the participant
6 would have been eligible to receive a retirement
7 benefit under the plan.

8 “(C) PROSPECTIVE PAYMENTS.—Payments
9 to a former spouse under this subsection shall
10 be prospective only, beginning from the date the
11 former spouse notifies the plan of the former
12 spouse’s potential eligibility for benefits under
13 this subsection.

14 “(D) RELIANCE.—In making determina-
15 tions under this subsection, the plan may rea-
16 sonably rely on the validity of marriage certifi-
17 cates, divorce decrees, death certificates, and
18 other documentation such as obituaries and af-
19 fidavits, and need not independently authen-
20 ticate their validity. Any plan fiduciary that in
21 good faith pays a qualified preretirement sur-
22 vivor annuity to a former spouse under this
23 subsection shall be discharged from liability to
24 any other claimant.

1 “(E) SUBSEQUENT CLAIMS.—In the event
 2 that the plan makes payments to a former
 3 spouse under this section, and a surviving
 4 spouse or another former spouse comes forward
 5 and establishes that the participant had remar-
 6 ried after dissolution of the marriage to the
 7 former spouse who is receiving benefits, the
 8 plan shall cease payments to that former
 9 spouse. If the plan has evidence that the former
 10 spouse’s representations to the plan on the par-
 11 ticipant’s remarriage status were not in good
 12 faith, the plan may seek repayment of any
 13 amounts paid. If the plan determines that the
 14 participant was legally married at the time of
 15 death, it shall make payments on a prospective
 16 basis only to that surviving spouse.”

17 (c) EFFECTIVE DATES.—

18 (1) IN GENERAL.—Except as provided in para-
 19 graph (2), the amendments made by this subsection
 20 shall apply to plan years after December 31, 2003.

21 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 22 GAINED PLANS.—In the case of a plan maintained
 23 pursuant to 1 or more collective bargaining agree-
 24 ments between employee representatives and 1 or
 25 more employers ratified on or before the date of the

1 enactment of this Act, the amendments made by this
2 section shall not, in the case of employees covered by
3 any such agreement, apply to benefits which are
4 payable (without regard to when the participant
5 died) in plan years before the earlier of—

6 (A) the later of January 1, 2004, or the
7 date on which the last of such collective bar-
8 gaining agreements terminates (determined
9 without regard to any extension thereof after
10 the date of enactment of this Act), or

11 (B) January 1, 2005.

1 **TITLE III—PROTECTION OF**
 2 **RIGHTS OF FORMER SPOUSES**
 3 **TO PENSION BENEFITS**
 4 **UNDER CERTAIN GOVERN-**
 5 **MENT AND GOVERNMENT-**
 6 **SPONSORED RETIREMENT**
 7 **PROGRAMS**

8 **Subtitle A—Civil Service**
 9 **Retirement**

10 **SEC. 301. SURVIVOR ANNUITIES FOR WIDOWS, WIDOWERS,**
 11 **AND FORMER SPOUSES OF FEDERAL EM-**
 12 **PLOYEES WHO DIE BEFORE ATTAINING AGE**
 13 **FOR DEFERRED ANNUITY UNDER CIVIL**
 14 **SERVICE RETIREMENT SYSTEM.**

15 (a) BENEFITS FOR WIDOW OR WIDOWER.—Section
 16 8341(f) of title 5, United States Code, is amended—

17 (1) in the matter preceding paragraph (1)—

18 (A) by inserting “a former employee sepa-
 19 rated from the service with title to deferred an-
 20 nuity from the Fund dies before having estab-
 21 lished a valid claim for annuity and is survived
 22 by a spouse, or if” before “a Member”; and

23 (B) by inserting “of such former employee
 24 or Member” after “the surviving spouse”;

25 (2) in paragraph (1)—

1 (A) by inserting “former employee or” be-
 2 fore “Member commencing”; and

3 (B) by inserting “former employee or” be-
 4 fore “Member dies”; and

5 (3) in the undesignated sentence following para-
 6 graph (2)—

7 (A) in the matter preceding subparagraph
 8 (A), by inserting “former employee or” before
 9 “Member”; and

10 (B) in subparagraph (B), by inserting
 11 “former employee or” before “Member”.

12 (b) BENEFITS FOR FORMER SPOUSE.—Section
 13 8341(h) of title 5, United States Code, is amended—

14 (1) in paragraph (1), by adding after the first
 15 sentence “Subject to paragraphs (2) through (5) of
 16 this subsection, a former spouse of a former em-
 17 ployee who dies after having separated from the
 18 service with title to a deferred annuity under section
 19 8338(a) but before having established a valid claim
 20 for annuity is entitled to a survivor annuity under
 21 this subsection, if and to the extent expressly pro-
 22 vided for in an election under section 8339(j)(3) of
 23 this title, or in the terms of any decree of divorce
 24 or annulment or any court order or court-approved

1 property settlement agreement incident to such de-
 2 cree.”; and

3 (2) in paragraph (2)—

4 (A) in subparagraph (A)(ii), by striking
 5 “or annuitant,” and inserting “annuitant, or
 6 former employee”; and

7 (B) in subparagraph (B)(iii), by inserting
 8 “former employee or” before “Member”.

9 (c) PROTECTION OF SURVIVOR BENEFIT RIGHTS.—
 10 Section 8339(j)(3) of title 5, United States Code, is
 11 amended by inserting at the end the following: “The Office
 12 shall provide by regulation for the application of this sub-
 13 section to the widow, widower, or surviving former spouse
 14 of a former employee who dies after having separated from
 15 the service with title to a deferred annuity under section
 16 8338(a) but before having established a valid claim for
 17 annuity.”.

18 (d) EFFECTIVE DATE.—The amendments made by
 19 this section shall take effect on the date of the enactment
 20 of this Act and shall apply only in the case of a former
 21 employee who dies on or after such date.

22 **SEC. 302. COURT ORDERS RELATING TO FEDERAL RETIRE-**
 23 **MENT BENEFITS FOR FORMER SPOUSES OF**
 24 **FEDERAL EMPLOYEES.**

25 (a) CIVIL SERVICE RETIREMENT SYSTEM.—

1 (1) IN GENERAL.—Section 8345(j) of title 5,
2 United States Code, is amended—

3 (A) by redesignating paragraph (3) as
4 paragraph (4); and

5 (B) by inserting after paragraph (2) the
6 following:

7 “(3)(A) Except as provided in this paragraph,
8 a court decree, court order, property settlement, or
9 similar process referred to under paragraph (1)(A)
10 shall not be treated as failing to meet the require-
11 ments of such paragraph solely because it authorizes
12 payment of benefits to be made to the former spouse
13 of the employee or Member before the employee or
14 Member begins to receive payment of benefits.

15 “(B) Subparagraph (A) shall only apply if the
16 payment of benefits—

17 “(i) are not required to be made before the
18 date on which the employee or Member attains
19 (or would have attained) the earliest retirement
20 age; and

21 “(ii) are required to be made as if the em-
22 ployee or Member had retired on the date on
23 which such payment is to begin, but taking into
24 account only the present value of the benefits as
25 calculated on the basis of the employee’s or

1 Member's service at the time the former spouse
2 begins collecting benefits.

3 “(C) For purposes of this paragraph, the term
4 ‘earliest retirement age’ means the date on which
5 the employee or Member is entitled to an annuity
6 under this chapter (without regard to whether the
7 employee or Member separated from service or made
8 any required election).

9 “(D) For purposes of this paragraph, former
10 employees or Members shall be treated as employees
11 or Members.

12 “(E)(i) The Office of Personnel Management
13 shall make such adjustments as are necessary to the
14 benefits of a former spouse under this paragraph to
15 reflect any increase in creditable service that affects
16 the benefit of the former spouse and that occurs at
17 the time the employee or Member actually retires.

18 “(ii) To ensure that the total of all benefits
19 payable under this chapter (other than benefits
20 based on participation in the Thrift Savings Plan)
21 based on the service of an employee or Member do
22 not actuarially exceed all benefits which could other-
23 wise be payable under section 8339, the Office of
24 Personnel Management may make an adjustment in
25 the payment of benefits to—

1 “(I) a former spouse under this paragraph;

2 or

3 “(II) the employee or Member.

4 Such actuarial value shall in no event be less than
5 the present value determined under subparagraph
6 (B).”

7 (b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—

8 Section 8467 of title 5, United States Code, is amended—

9 (1) by redesignating subsection (c) as sub-
10 section (d); and

11 (2) by inserting after subsection (b) the fol-
12 lowing:

13 “(c)(1) Except as provided in this subsection, a court
14 decree, court order, property settlement, or similar process
15 referred to under subsection (a)(1) shall not be treated
16 as failing to meet the requirements of such subsection
17 solely because it authorizes payment of benefits to be
18 made to the former spouse of the employee or Member
19 before the employee or Member begins to receive payment
20 of benefits.

21 “(2) Paragraph (1) shall only apply if the payment
22 of benefits—

23 “(A) are not required to be made before the
24 date on which the employee or Member attains (or
25 would have attained) the earliest retirement age; and

1 “(B) are required to be made as if the employee
2 or Member had retired on the date on which such
3 payment is to begin, but taking into account only
4 the present value of the benefits as calculated on the
5 basis of the employee’s or Member’s service at the
6 time the former spouse begins collecting benefits.

7 “(3) For purposes of this subsection, the term ‘ear-
8 liest retirement age’ means the date on which the em-
9 ployee or Member is entitled to an annuity under this
10 chapter (without regard to whether the employee or Mem-
11 ber separated from service or made any required election).

12 “(4) For purposes of this subsection, former employ-
13 ees or Members shall be treated as employees or Members.

14 “(5)(A) The Office of Personnel Management shall
15 make such adjustments as are necessary to the benefits
16 of a former spouse under this subsection to reflect any
17 increase in creditable service that affects the benefit of the
18 former spouse and that occurs at the time the employee
19 or Member actually retires.

20 “(B) To ensure that the total of all benefits payable
21 under this chapter (other than benefits based on participa-
22 tion in the Thrift Savings Plan) based on the service of
23 an employee or Member do not actuarially exceed all bene-
24 fits which could otherwise be payable under section 8415,

1 the Office of Personnel Management may make an adjust-
 2 ment in the payment of benefits to—

3 “(i) a former spouse under this subsection; or

4 “(ii) the employee or Member.

5 Such actuarial value shall in no event be less than
 6 the present value determined under paragraph (2).”

7 (c) REGULATIONS.—Not later than 1 year after the
 8 date of enactment of this Act, the Office of Personnel
 9 Management shall prescribe regulations to carry out the
 10 amendments made by this section.

11 (d) EFFECTIVE DATE.—The amendments made by
 12 this section shall take effect 1 year after the date of enact-
 13 ment of this Act and apply to any court decree, court
 14 order, property settlement, or similar process issued after
 15 such effective date.

16 **SEC. 303. ORDER OF PRECEDENCE FOR DISPOSITION OF**
 17 **AMOUNTS REMAINING IN THE THRIFT SAV-**
 18 **INGS ACCOUNT OF A FEDERAL EMPLOYEE**
 19 **(OR FORMER EMPLOYEE) WHO DIES BEFORE**
 20 **MAKING AN EFFECTIVE ELECTION CONTROL-**
 21 **LING SUCH DISPOSITION.**

22 (a) IN GENERAL.—Section 8433(e) of title 5, United
 23 States Code, is amended—

24 (1) by striking “(e)” and inserting “(e)(1)”;

1 (2) by striking all that follows “paid” and in-
2 serting “in accordance with paragraph (2).”; and

3 (3) by adding at the end the following:

4 “(2)(A) An amount under paragraph (1) shall be paid
5 in a manner consistent with the provisions of section
6 8424(d), except that, in applying the order of precedence
7 under such provisions—

8 “(i) the widow or widower of the decedent shall
9 be the first party entitled to receive (instead of any
10 designated beneficiary); and

11 “(ii) if there is no widow or widower, the party
12 next entitled to receive shall be the beneficiary or
13 beneficiaries designated by the employee or Member
14 (or former employee or Member) in accordance with
15 the procedures that would otherwise normally apply,
16 subject to such additional conditions as the Execu-
17 tive Director shall by regulation prescribe based on
18 section 205(c)(2) of the Employee Retirement In-
19 come Security Act of 1974 (29 U.S.C. 1055(c)(2)).

20 “(B) The order of precedence under subparagraph
21 (A) shall not apply if the widow or widower consents in
22 writing to the application of the order of precedence under
23 section 8424(d).

24 “(C) For purposes of this paragraph, the term
25 ‘widow’ or ‘widower’ shall not include a common law

1 spouse of a deceased employee or Member (or former em-
 2 ployee or Member).”

3 (b) EFFECTIVE DATE.—The amendments made by
 4 this section shall take effect on the date which is 1 year
 5 after the date of the enactment of this Act (or such earlier
 6 date as the Executive Director of the Federal Retirement
 7 Thrift Investment Board may prescribe), and shall apply
 8 in the case of any individual who dies on or after such
 9 date.

10 **Subtitle B—Railroad Retirement**

11 **SEC. 311. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-** 12 **ROAD RETIREMENT ANNUITIES INDE-** 13 **PENDENT OF ACTUAL ENTITLEMENT OF EM-** 14 **PLOYEE.**

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

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

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

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

1 **SEC. 312. EXTENSION OF TIER II RAILROAD RETIREMENT**
2 **BENEFITS TO SURVIVING FORMER SPOUSES**
3 **PURSUANT TO DIVORCE AGREEMENTS.**

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

7 “(d) Notwithstanding any other provision of law, the
8 payment of any portion of an annuity computed under sec-
9 tion 3(b) to a surviving former spouse in accordance with
10 a court decree of divorce, annulment, or legal separation
11 or the terms of any court-approved property settlement
12 incident to any such court decree shall not be terminated
13 upon the death of the individual who performed the service
14 with respect to which such annuity is so computed unless
15 such termination is otherwise required by the terms of
16 such court decree.”

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

20 **TITLE IV—MODIFICATIONS OF**
21 **JOINT AND SURVIVOR ANNU-**
22 **ITY REQUIREMENTS**

23 **SEC. 401. MODIFICATIONS OF JOINT AND SURVIVOR ANNU-**
24 **ITY REQUIREMENTS.**

25 (a) AMENDMENTS TO ERISA.—

26 (1) AMOUNT OF ANNUITY.—

(A) IN GENERAL.—Paragraph (1) of section 205(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(a)) is amended by inserting “or, at the election of the participant, shall be provided in the form of a qualified joint and $\frac{3}{4}$ survivor annuity,” after “survivor annuity,”.

(B) DEFINITION.—Subsection (d) of section 205 of such Act (29 U.S.C. 1055) is amended—

(i) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively,

(ii) by inserting “(1)” after “(d)”, and

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

“(2)(A) For purposes of this section, the term ‘qualified joint and $\frac{3}{4}$ survivor annuity’ means an annuity—

“(i) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 75 percent of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

1 “(ii) which is the actuarial equivalent of a sin-
2 gle annuity for the life of the participant.

3 “(B) For purposes of this Act, a qualified joint and
4 $\frac{3}{4}$ survivor annuity shall be treated as a qualified joint
5 and survivor annuity.”

6 (2) ILLUSTRATION REQUIREMENT.—Clause (i)
7 of section 205(c)(3)(A) of such Act (29 U.S.C.
8 1055(c)(3)(A)) is amended to read as follows:

9 “(i) the terms and conditions of each qualified
10 joint and survivor annuity and qualified joint and $\frac{3}{4}$
11 survivor annuity offered, accompanied by an illustra-
12 tion of the benefits under each such annuity for the
13 particular participant and spouse,”.

14 (b) AMENDMENTS TO INTERNAL REVENUE CODE.—

15 (1) AMOUNT OF ANNUITY.—

16 (A) IN GENERAL.—Clause (i) of section
17 401(a)(11)(A) of the Internal Revenue Code of
18 1986 (relating to requirement of joint and sur-
19 vivor annuity and preretirement survivor annu-
20 ity) is amended by inserting “or, at the election
21 of the participant, shall be provided in the form
22 of a qualified joint and $\frac{3}{4}$ survivor annuity,”
23 after “survivor annuity,”.

24 (B) DEFINITION.—Section 417 (relating to
25 definitions and special rules for purposes of

1 minimum survivor annuity requirements), as
 2 amended by this Act, is amended by adding at
 3 the end the following new subsection:

4 “(i) DEFINITION OF QUALIFIED JOINT AND $\frac{3}{4}$ SUR-
 5 VIVOR ANNUITY.—

6 “(1) IN GENERAL.—For purposes of this sec-
 7 tion and section 401(a)(11), the term ‘qualified joint
 8 and $\frac{3}{4}$ survivor annuity’ means an annuity—

9 “(A) for the life of the participant with a
 10 survivor annuity for the life of the spouse which
 11 is not less than 75 percent of the amount of the
 12 annuity which is payable during the joint lives
 13 of the participant and the spouse, and

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

16 “(2) TREATMENT.—For purposes of this title, a
 17 qualified joint and $\frac{3}{4}$ survivor annuity shall be
 18 treated as a qualified joint and survivor annuity.”

19 (2) ILLUSTRATION REQUIREMENT.—Clause (i)
 20 of section 417(a)(3)(A) (relating to explanation of
 21 joint and survivor annuity) is amended to read as
 22 follows:

23 “(i) the terms and conditions of each
 24 qualified joint and survivor annuity and
 25 qualified joint and $\frac{3}{4}$ survivor annuity of-

1 ferred, accompanied by an illustration of
 2 the benefits under each such annuity for
 3 the particular participant and spouse,”.

4 (c) EFFECTIVE DATES.—

5 (1) IN GENERAL.—The amendments made by
 6 this section shall apply to plan years beginning on
 7 or after January 1, 2005.

8 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 9 GAINED PLANS.—In the case of a plan maintained
 10 pursuant to 1 or more collective bargaining agree-
 11 ments between employee representatives and 1 or
 12 more employers ratified on or before the date of the
 13 enactment of this Act, the amendments made by this
 14 section shall apply to the first plan year beginning
 15 on or after the earlier of—

16 (A) the later of—

17 (i) January 1, 2005, or

18 (ii) the date on which the last of such
 19 collective bargaining agreements termi-
 20 nates (determined without regard to any
 21 extension thereof after the date of enact-
 22 ment of this Act), or

23 (B) January 1, 2006.

24 (3) FORM OF ACCRUED BENEFIT NOT TREATED
 25 AS DECREASED BY REASON OF AMENDMENT.—For

1 purposes of sections 204(g) of the Employee Retire-
 2 ment Income Security Act of 1974 (29 U.S.C.
 3 1054(g)) and 411(d)(6) of the Internal Revenue
 4 Code of 1986, a plan shall not be treated as having
 5 decreased the accrued benefit of a participant solely
 6 by reason of the adoption of a plan amendment
 7 which provides for a qualified joint and $\frac{3}{4}$ survivor
 8 annuity.

9 **TITLE V—PLAN AMENDMENTS**

10 **SEC. 501. PROVISIONS RELATING TO PLAN AMENDMENTS.**

11 (a) IN GENERAL.—If this section applies to any plan
 12 or contract amendment, such plan or contract shall be
 13 treated as being operated in accordance with the terms
 14 of the plan during the period described in subsection
 15 (b)(2)(A).

16 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

17 (1) IN GENERAL.—This section shall apply to
 18 any amendment to any plan or annuity contract
 19 which is made—

20 (A) pursuant to any amendment made by
 21 this Act, or pursuant to any regulation issued
 22 under this Act, and

23 (B) on or before the last day of the first
 24 plan year beginning on or after January 1,
 25 2005.

1 In the case of a governmental plan (as defined in
2 section 414(d) of the Internal Revenue Code of
3 1986), this paragraph shall be applied by sub-
4 stituting “2007” for “2005”.

5 (2) CONDITIONS.—This section shall not apply
6 to any amendment unless—

7 (A) during the period—

8 (i) beginning on the date the legisla-
9 tive or regulatory amendment described in
10 paragraph (1)(A) takes effect (or in the
11 case of a plan or contract amendment not
12 required by such legislative or regulatory
13 amendment, the effective date specified by
14 the plan); and

15 (ii) ending on the date described in
16 paragraph (1)(B) (or, if earlier, the date
17 the plan or contract amendment is adopt-
18 ed),

19 the plan or contract is operated as if such plan
20 or contract amendment were in effect; and

21 (B) such plan or contract amendment ap-
22 plies retroactively for such period.

○