

109TH CONGRESS
1ST SESSION

H. R. 1961

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2005

Mr. CARDIN introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

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

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

7 (b) AMENDMENT OF 1986 CODE.—Except as other-
8 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
 2 to, or repeal of, a section or other provision, the reference
 3 shall be considered to be made to a section or other provi-
 4 sion of the Internal Revenue Code of 1986.

5 (c) TABLE OF CONTENTS.—The table of contents of
 6 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MAKING TODAY’S RETIREMENT SAVINGS
 OPPORTUNITIES PERMANENT

Sec. 101. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.
 Sec. 102. Saver’s credit made permanent.

TITLE II—BUILDING AND PRESERVING RETIREMENT ASSETS
 AND ENHANCING PORTABILITY

Sec. 201. Expansion of Saver’s credit.
 Sec. 202. Faster vesting of employer nonelective contributions.
 Sec. 203. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
 Sec. 204. Enhancing portability of after-tax amounts.
 Sec. 205. IRA eligibility for the disabled.
 Sec. 206. Exclusion of certain qualified annuity payments.
 Sec. 207. Exclusion of certain nonqualified annuity payments.
 Sec. 208. Facilitation under fiduciary rules of certain rollovers and annuity distributions.
 Sec. 209. Increasing participation through automatic contribution arrangements.
 Sec. 210. Facilitating longevity insurance.
 Sec. 211. Direct payment of tax refunds to individual retirement plans.
 Sec. 212. Treatment of qualified retirement planning services.
 Sec. 213. Repeal of combined plan deduction limit.

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

Sec. 301. Allow additional nonelective contributions to SIMPLE Plans.
 Sec. 302. Conform matching contribution rules for SIMPLE IRAs and SIMPLE 401(k)s.
 Sec. 303. Uniform catch-up contribution rule.
 Sec. 304. Uniform definition of compensation.
 Sec. 305. Uniform withdrawal rules.
 Sec. 306. Allow level dollar contributions to SEPs.
 Sec. 307. Tax treatment of certain nontrade or business SEP contributions.
 Sec. 308. Allow certain plan transfers and mergers.

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

- Sec. 401. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
- Sec. 402. Clarifications regarding purchase of permissive service credit.
- Sec. 403. Eligibility for participation in retirement plans.
- Sec. 404. Clarification of minimum distribution rules.
- Sec. 405. Church plan rule.
- Sec. 406. Clarification of treatment of Indian tribal governments.
- Sec. 407. Deferral agreements.
- Sec. 408. Plans maintained by State or local governments.
- Sec. 409. Clarification of treatment of section 403(b) programs.

TITLE V—SIMPLIFICATION AND EQUITY

- Sec. 501. Updating and simplifying the minimum distribution rules.
- Sec. 502. Clarification of catch-up contributions.
- Sec. 503. Treatment of unclaimed benefits.
- Sec. 504. Allow direct rollovers from retirement plans to Roth IRA.
- Sec. 505. Reform excise tax on excess contributions.
- Sec. 506. Intermediate sanctions for inadvertent failures.
- Sec. 507. Clarification of substantially equal periodic payment rule.
- Sec. 508. Clarification of treatment of distributions of annuity contracts.
- Sec. 509. Golden parachute excise tax to apply to excessive employee remuneration paid by corporation after declaration of bankruptcy.
- Sec. 510. Differential pay.
- Sec. 511. Excess benefit plans.
- Sec. 512. Tax treatment of employee contributions to contributory defined benefit plans.
- Sec. 513. Protecting older, longer service participants.
- Sec. 514. Clarification regarding elective deferrals.
- Sec. 515. Reform of the minimum participation rule.
- Sec. 516. Repeal of optional treatment of elective deferrals as Roth contributions.

TITLE VI—IMPROVEMENTS IN PENSION SECURITY

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

TITLE VII—OTHER TAX PROVISIONS RELATING TO PENSIONS

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

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Provisions relating to plan amendments.

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

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

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

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

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

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

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

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

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

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

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

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

10 **SEC. 201. EXPANSION OF SAVER'S CREDIT.**

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

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

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

20 “(h) ADJUSTMENT FOR INFLATION.—

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

6 “(A) such dollar amount, multiplied by

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

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

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

19 “(A) there shall be substituted for each
20 dollar amount in the table contained in sub-
21 section (b) in the columns under the heading
22 ‘Joint return’ a dollar amount equal to twice
23 the corresponding dollar amount in such table
24 in the columns under the heading ‘All other
25 cases’ (as increased under paragraph (1)), and

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

9 (c) TESTING PERIOD.—Subparagraph (B) of section
10 25B(d)(2) of such Code is amended to read as follows:

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

15 “(i) such taxable year, and

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

17 (d) TREATMENT AS REFUNDABLE.—

18 (1) CREDIT MOVED TO SUBPART RELATING TO
19 REFUNDABLE CREDIT.—

20 (A) IN GENERAL.—Section 25B of such
21 Code, as amended by this Act, is hereby moved
22 to subpart C of part IV of subchapter A of
23 chapter 1 (relating to refundable credits) and
24 inserted after section 35.

25 (B) TECHNICAL AMENDMENTS.—

1 (i) Section 36 of such Code is redesignig-
2 nated as section 37.

3 (ii) Section 25B of such Code (as
4 moved by subparagraph (A)) is redesignig-
5 nated as section 36.

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

9 (iv) The table of sections for subpart
10 C of such part is amended by redesignig-
11 nating the item relating to section 36 as
12 an item relating to section 37 and by in-
13 sserting after section 35 the following new
14 item:

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

15 (2) MANDATORY DEPOSIT INTO QUALIFIED AC-
16 COUNT.—

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

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

1 “(g) DEPOSIT INTO QUALIFIED ACCOUNT.—

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

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

15 “(B) in the case of taxpayer who does not
16 properly designate an applicable retirement plan
17 in a timely manner or who designates an appli-
18 cable retirement plan that does not accept such
19 amount in a timely manner, shall be paid or
20 credited on behalf of the individual taxpayer in
21 a manner determined under rules prescribed by
22 the Secretary that provide treatment com-
23 parable to the treatment under subparagraph
24 (A).

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

7 “(3) TREATMENT OF DIRECT PAYMENTS.—All
8 amounts paid under this subsection shall be treated
9 for purposes of this title as income attributable to a
10 Roth IRA contribution in the case of a payment to
11 an individual retirement plan.”.

12 (3) REGULATION AND PROMOTION.—Section 36
13 of such Code, as amended and redesignated by this
14 section, is amended by adding at the end the fol-
15 lowing new subsection:

16 “(h) REGULATION AND PROMOTION.—The Secretary
17 may prescribe such regulations and other guidance as may
18 be necessary or appropriate to carry out this section. The
19 Secretary shall also take such steps as he determines nec-
20 essary and appropriate to increase public awareness of the
21 credit provided under this section.”.

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 2006.

1 **SEC. 202. FASTER VESTING OF EMPLOYER NONELECTIVE**
2 **CONTRIBUTIONS.**

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

5 (1) IN GENERAL.—Paragraph (2) of section
6 411(a) of the Internal Revenue Code of 1986 (relat-
7 ing to employer contributions) is amended to read as
8 follows:

9 “(2) EMPLOYER CONTRIBUTIONS.—

10 “(A) DEFINED BENEFIT PLANS.—

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

15 “(ii) 5-YEAR VESTING.—A plan satis-
16 fies the requirements of this clause if an
17 employee who has completed at least 5
18 years of service has a nonforfeitable right
19 to 100 percent of the employee’s accrued
20 benefit derived from employer contribu-
21 tions.

22 “(iii) 3 TO 7 YEAR VESTING.—A plan
23 satisfies the requirements of this clause if
24 an employee has a nonforfeitable right to
25 a percentage of the employee’s accrued

1 benefit derived from employer contribu-
 2 tions determined under the following table:

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

3 “(B) DEFINED CONTRIBUTION PLANS.—

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

9 “(ii) 3-YEAR VESTING.—A plan satis-
 10 fies the requirements of this clause if an
 11 employee who has completed at least 3
 12 years of service has a nonforfeitable right
 13 to 100 percent of the employee’s accrued
 14 benefit derived from employer contribu-
 15 tions.

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

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

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

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

7 (1) IN GENERAL.—Paragraph (2) of section
 8 203(a) of the Employee Retirement Income Security
 9 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to
 10 read as follows:

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

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

19 “(iii) A plan satisfies the requirements of this
 20 clause if an employee has a nonforfeitable right to
 21 a percentage of the employee’s accrued benefit de-

1 rived from employer contributions determined under
 2 the following table:

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

3 “(B)(i) In the case of an individual account
 4 plan, a plan satisfies the requirements of this para-
 5 graph if it satisfies the requirements of clause (ii) or
 6 (iii).

7 “(ii) A plan satisfies the requirements of this
 8 clause if an employee who has completed at least 3
 9 years of service has a nonforfeitable right to 100
 10 percent of the employee’s accrued benefit derived
 11 from employer contributions.

12 “(iii) A plan satisfies the requirements of this
 13 clause if an employee has a nonforfeitable right to
 14 a percentage of the employee’s accrued benefit de-
 15 rived from employer contributions determined under
 16 the following table:

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

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

4 (c) EFFECTIVE DATES.—

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

9 (2) COLLECTIVE BARGAINING AGREEMENTS.—

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

18 (A) the later of—

19 (i) the date on which the last of such
20 collective bargaining agreements termi-
21 nates (determined without regard to any
22 extension thereof on or after such date of
23 the enactment); or

24 (ii) January 1, 2006; or

25 (B) January 1, 2008.

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

7 **SEC. 203. ALLOW ROLLOVERS BY NONSPOUSE BENE-**
8 **FICIARIES OF CERTAIN RETIREMENT PLAN**
9 **DISTRIBUTIONS.**

10 (a) IN GENERAL.—

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

15 “(11) DISTRIBUTIONS TO INHERITED INDI-
16 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-
17 FICIARY.—

18 “(A) IN GENERAL.—If, with respect to any
19 portion of a distribution from an eligible retire-
20 ment plan of a deceased employee, a direct
21 trustee-to-trustee transfer is made to an indi-
22 vidual retirement plan described in clause (i) or
23 (ii) of paragraph (8)(B) established for the pur-
24 poses of receiving the distribution on behalf of
25 an individual who is a designated beneficiary

1 (as defined by section 401(a)(9)(E)) of the em-
2 ployee and who is not the surviving spouse of
3 the employee—

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

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

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

16 “(B) CERTAIN TRUSTS TREATED AS BENE-
17 FICIARIES.—For purposes of this paragraph, to
18 the extent provided in rules prescribed by the
19 Secretary, a trust maintained for the benefit of
20 one or more designated beneficiaries shall be
21 treated in the same manner as a trust des-
22 ignated beneficiary.”.

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

1 rollover amounts) is amended by inserting “and
2 (11)” after “(7)”.

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

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

11 (b) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to distributions after December 31,
13 2005.

14 **SEC. 204. ENHANCING PORTABILITY OF AFTER-TAX**
15 **AMOUNTS.**

16 (a) ROLLOVERS BETWEEN QUALIFIED PLANS AND
17 SECTION 403(b) PLANS.—Subparagraph (A) of section
18 402(e)(2) of such Code (relating to maximum amount
19 which may be rolled over) is amended by striking “and
20 which” and inserting “or to an annuity contract described
21 in section 403(b) and such plan or contract”.

22 (b) ROLLOVERS TO DEFINED BENEFIT PLANS.—
23 Subparagraph (A) of section 402(e)(2) of such Code (re-
24 lating to maximum amount which may be rolled over) is

1 amended by striking “which is a part of a plan which is
2 a defined contribution plan and”.

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

6 **SEC. 205. IRA ELIGIBILITY FOR THE DISABLED.**

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

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

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

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

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

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

23 **SEC. 206. EXCLUSION OF CERTAIN QUALIFIED ANNUITY**
24 **PAYMENTS.**

25 (a) IN GENERAL.—

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

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

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

15 “(B) 5-YEAR LIMITATION.—Subparagraph
16 (A) shall apply to a qualified distributee only in
17 the first 5 taxable years in which the qualified
18 distributee receives lifetime annuity payments
19 for the entire taxable year. For purposes of this
20 subparagraph, all lifetime annuity payments re-
21 ceived by a qualified distributee shall be taken
22 into account to the extent that such payments
23 are subject to this paragraph or to rules similar
24 to the rules of this paragraph (other than sec-
25 tions 72(b)(5) and 101(d)(4)).

1 “(C) LIMITATION.—

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

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

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

3 “(i) LIFETIME ANNUITY PAYMENT.—

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

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

1 less frequently than annually, or simi-
2 lar fluctuating criteria.

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

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

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

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

21 “(ii) QUALIFIED DISTRIBUTEES.—The
22 term ‘qualified distributee’ means the em-
23 ployee, the surviving spouse of the em-
24 ployee, and an alternate payee who is the
25 spouse or former spouse of the employee.

1 “(E) RECAPTURE TAX.—

2 “(i) IN GENERAL.—If—

3 “(I) a an amount is not includ-
4 ible in gross income by reason of sub-
5 paragraph (A), and

6 “(II) the series of payments of
7 which such payment is a part is sub-
8 sequently modified (other than by rea-
9 son of death or disability) so that
10 some or all future payments are not
11 lifetime annuity payments,

12 the qualified distributee’s gross income for
13 the first taxable year in which such modi-
14 fication occurs shall be increased by an
15 amount, determined under rules prescribed
16 by the Secretary, equal to the amount
17 which (but for subparagraph (A)) would
18 have been includible in the qualified
19 distributee’s gross income if the modifica-
20 tion had been in effect at all times, plus in-
21 terest for the deferral period at the under-
22 payment rate established under section
23 6621.

24 “(ii) DEFERRAL PERIOD.—For pur-
25 poses of this subparagraph, the term ‘de-

1 ferral period' means the period beginning
2 with the taxable year in which (without re-
3 gard to subparagraph (A)) the payment
4 would have been includible in gross income
5 and ending with the taxable year in which
6 the modification described in clause (i)(II)
7 occurs.

8 “(F) PHASEOUT OF EXCLUSION.—

9 “ (i) IN GENERAL.—In any taxable
10 year, the exclusion from gross income for
11 any qualified distributee under this para-
12 graph and under rules similar to the rules
13 of this paragraph (other than sections
14 72(b)(5) and 101(d)(4)) shall not exceed
15 the income-adjusted limit.

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

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

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

24 “ (iii) AMOUNT DETERMINED.—The
25 amount determined under this clause shall

1 be the amount which bears the same ratio
2 to the amount described in clause (ii)(I)
3 as—

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

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

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

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

20 “(vi) ADJUSTED GROSS INCOME.—For
21 purposes of this subparagraph, adjusted
22 gross income of any taxpayer shall be de-
23 termined in the same manner as under sec-
24 tion 408A(c)(3)(C)(i) except that section

1 408A(c)(3)(C)(i)(II) shall not apply for
2 this purpose.

3 “(vii) APPLICABLE DOLLAR LIMIT.—
4 For purposes of this subparagraph, the ap-
5 plicable dollar amount is—

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

10 “(II) in the case of any other
11 taxpayer (other than a married indi-
12 vidual filing a separate return),
13 \$60,000, and

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

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

21 “(ix) COST-OF-LIVING ADJUST-
22 MENT.—In the case of taxable years begin-
23 ning after December 31, 2006, the Sec-
24 retary shall adjust the \$60,000 amount in
25 clause (vii)(II) at the same time and in the

1 same manner as under section 415(d), ex-
2 cept that the base period shall be the cal-
3 endar quarter beginning July 1, 2005, and
4 any increase under this clause which is not
5 a multiple of \$5,000 shall be rounded to
6 the next lowest multiple of \$5,000.

7 “(G) INVESTMENT IN THE CONTRACT.—
8 For purposes of section 72, the investment in
9 the contract shall be determined without regard
10 to this paragraph.”.

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

15 “(C) EXCLUSION OF PERCENTAGE OF
16 LIFETIME ANNUITY PAYMENTS.—Rules similar
17 to the rules of section 402(e)(7) shall apply to
18 distributions under any annuity contract to
19 which this subsection applies.”.

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

24 “(14) EXCLUSION OF PERCENTAGE OF LIFE-
25 TIME ANNUITY PAYMENTS.—Rules similar to the

1 rules of section 402(e)(7) shall apply to distributions
2 under any annuity contract or custodial account to
3 which this subsection applies.”.

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

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

11 (5) SECTION 457 PLANS.—Section 457(e) of
12 such Code (relating to special rules for deferred
13 compensation plans) is amended by adding at the
14 end the following new paragraph:

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

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

23 **SEC. 207. EXCLUSION OF CERTAIN NONQUALIFIED ANNU-**
24 **ITY PAYMENTS.**

25 (a) IN GENERAL.—

1 (1) NONQUALIFIED ANNUITIES.—

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

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

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

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

23 “(C) INVESTMENT IN THE CONTRACT.—
24 For purposes of this section, the investment in

1 the contract shall be determined without regard
2 to this paragraph (5).

3 “(D) LIMITATION.—

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

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

1 this paragraph or to the rules of section
2 101(d)(4).

3 “(E) PHASEOUT OF EXCLUSION.—

4 “(i) IN GENERAL.—In any taxable
5 year, the exclusion from gross income for
6 any qualified distributee under this para-
7 graph and under the rules of section
8 101(d)(4) shall not exceed the income-ad-
9 justed limit.

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

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

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

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

23 “(I) the excess of the taxpayer’s
24 adjusted gross income for such tax-

1 able year over the applicable dollar
2 amount bears to

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

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

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

15 “(vi) ADJUSTED GROSS INCOME.—For
16 purposes of this subparagraph, adjusted
17 gross income of any taxpayer shall be de-
18 termined in the same manner as under sec-
19 tion 408A(c)(3)(C)(i) except that section
20 408A(c)(3)(C)(i)(II) shall not apply for
21 this purpose.

22 “(vii) APPLICABLE DOLLAR LIMIT.—
23 For purposes of this subparagraph, the ap-
24 plicable dollar amount is—

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

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

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

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

16 “(ix) COST-OF-LIVING ADJUST-
17 MENT.—In the case of taxable years begin-
18 ning after December 31, 2006, the Sec-
19 retary shall adjust the \$60,000 amount in
20 clause (vii)(II) at the same time and in the
21 same manner as under section 415(d), ex-
22 cept that the base period shall be the cal-
23 endar quarter beginning July 1, 2005, and
24 any increase under this clause which is not

1 a multiple of \$5,000 shall be rounded to
2 the next lowest multiple of \$5,000.”.

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

6 “(5) LIFETIME ANNUITY PAYMENT.—

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

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

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

22 “(B) EXCEPTIONS.—

23 “(i) CERTAIN FLUCTUATING PAY-
24 MENTS.—Annuity payments shall not fail
25 to be treated as part of a series of substan-

1 tially equal periodic payments merely be-
2 cause the amount of the periodic payments
3 may vary in accordance with investment
4 experience, reallocations among investment
5 options, actuarial gains or losses, cost of
6 living indices, a constant percentage (not
7 less than zero) applied not less frequently
8 than annually, or similar fluctuating cri-
9 teria.

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

18 “(iii) PERMITTED REDUCTIONS.—An-
19 nuity payments shall not fail to be treated
20 as part of a series of substantially equal
21 periodic payments merely because, in the
22 case of an annuity payable over the joint
23 lives of the qualified distributee and the
24 qualified distributee’s designated bene-
25 ficiary, the amounts paid after the death of

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

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

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

20 “(6) QUALIFIED DISTRIBUTE.—

21 “(A) IN GENERAL.—For purposes of sub-
22 section (b)(5), the term ‘qualified distributee’
23 means an annuitant, the surviving spouse of an
24 annuitant, or an alternate payee of an annu-
25 itant under the contract.

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

18 “(7) ANNUITY CONTRACT.—For purposes of
19 subsections (b)(5), (c)(5), and (w), the term ‘annuity
20 contract’—

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

24 “(B) does not include any annuity contract
25 that is a qualified funding asset (as defined in

1 section 130(d)), but without regard to whether
2 there is a qualified assignment.”.

3 (C) RECAPTURE TAX.—Section 72 of such
4 Code is amended by redesignating subsection
5 (w) as subsection (x) and inserting after sub-
6 section (v) the following new subsection (w):

7 “(w) RECAPTURE TAX.—

8 “(1) IN GENERAL.—If—

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

12 “(B) the series of payments of which such
13 payment is a part is subsequently modified
14 (other than by reason of death or disability) so
15 that some or all future payments are not life-
16 time annuity payments,

17 the qualified distributee’s gross income for the first
18 taxable year in which such modification occurs shall
19 be increased by an amount, determined under rules
20 prescribed by the Secretary, equal to the amount
21 which (but for subsection (b)(5)) would have been
22 includible in the qualified distributee’s gross income
23 if the modification had been in effect at all times,
24 plus interest for the deferral period at the under-
25 payment rate established under section 6621.

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

8 (2) LIFE INSURANCE DEATH BENEFITS.—

9 (A) IN GENERAL.—Section 101(d) of such
10 Code (relating to life insurance proceeds) is
11 amended by adding at the end the following
12 new paragraph:

13 “(4) EXCLUSION FOR LIFETIME ANNUITY PAY-
14 MENTS.—

15 “(A) IN GENERAL.—In the case of
16 amounts to which this subsection applies, gross
17 income shall not include 10 percent of the
18 amount otherwise includible in gross income
19 (determined without regard to this paragraph).

20 “(B) RULES OF SECTION 72(B)(5) TO
21 APPLY.—For purposes of this paragraph, rules
22 similar to the rules of section 72(b)(5) and sec-
23 tion 72(w) shall apply, substituting the term
24 ‘beneficiary of the life insurance contract’ for
25 the term ‘annuitant’ wherever it appears, and

1 substituting the term ‘life insurance contract’
2 for the term ‘annuity contract’ wherever it ap-
3 pears.”.

4 (B) CONFORMING AMENDMENT.—Section
5 101(d)(1) of such Code is amended by adding
6 “or paragraph (4) of this subsection” following
7 “to the extent not excluded by the preceding
8 sentence”.

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

12 **SEC. 208. FACILITATION UNDER FIDUCIARY RULES OF CER-**
13 **TAIN ROLLOVERS AND ANNUITY DISTRIBUTI-**
14 **TIONS.**

15 (a) IN GENERAL.—Section 404(c) of the Employee
16 Retirement Income Security Act of 1974 (29 U.S.C.
17 1104(c)) is amended by adding at the end the following
18 new paragraph:

19 “(4)(A) In the case of a pension plan which makes
20 a transfer under section 401(a)(31)(A) of the Internal
21 Revenue Code of 1986 to an individual retirement plan
22 (as defined in section 7701(a)(37) of such Code) in con-
23 nection with a participant or beneficiary or makes a dis-
24 tribution to a participant or beneficiary of an annuity con-
25 tract described in subparagraph (B), the participant or

1 beneficiary shall, for purposes of paragraph (1), be treated
2 as exercising control over the transfer or distribution if—

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

5 “(ii) in connection with such election, the par-
6 ticipant or beneficiary was given an opportunity to
7 elect any other individual retirement plan (in the
8 case of a transfer) or any other annuity contract de-
9 scribed in subparagraph (B) (in the case of a dis-
10 tribution).

11 “(B) An annuity contract is described in this sub-
12 paragraph if it provides, either on an immediate or de-
13 ferred basis, a series of substantially equal periodic pay-
14 ments (not less frequently than annually) for the life of
15 the participant or beneficiary or the joint lives of the par-
16 ticipant or beneficiary and such individual’s designated
17 beneficiary. Annuity payments shall not fail to be treated
18 as part of a series of substantially equal periodic payments
19 merely because the amount of the periodic payments may
20 vary in accordance with investment experience, realloca-
21 tions among investment options, actuarial gains or losses,
22 cost of living indices, a constant percentage (not less than
23 zero) applied not less frequently than annually, or similar
24 fluctuating criteria. Annuity payments shall not fail to be
25 treated as part of a series of substantially equal periodic

1 payments merely because the period between each such
2 payment is lengthened or shortened, but only if at all
3 times such period is not longer than one year. The avail-
4 ability of a commutation benefit or other feature permit-
5 ting acceleration of annuity payments (or a modification
6 of the period during which such a benefit is available),
7 a minimum period of payments certain, or a minimum
8 amount to be paid in any event shall not affect the treat-
9 ment of an annuity contract as an annuity contract de-
10 scribed in this subparagraph.

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

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

23 (b) EFFECTIVE DATE AND RELATED RULES.—

1 (1) EFFECTIVE DATE.—The amendment made
2 by this section shall take effect on the date of the
3 enactment of this Act.

4 (2) ISSUANCE OF FINAL REGULATIONS.—Final
5 regulations under section 404(c)(4) of the Employee
6 Retirement Income Security Act of 1974 (added by
7 this section) shall be issued no later than 1 year
8 after the date of the enactment of this Act.

9 **SEC. 209. INCREASING PARTICIPATION THROUGH AUTO-**
10 **MATIC CONTRIBUTION ARRANGEMENTS.**

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

15 “(13) NONDISCRIMINATION REQUIREMENTS
16 FOR AUTOMATIC CONTRIBUTION TRUSTS.—

17 “(A) IN GENERAL.—A cash or deferred ar-
18 rangement shall be treated as meeting the re-
19 quirements of paragraph (3)(A)(ii) if such ar-
20 rangement constitutes an automatic contribu-
21 tion trust.

22 “(B) AUTOMATIC CONTRIBUTION TRUST.—

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

1 “(I) under which each employee
2 eligible to participate in the arrange-
3 ment is treated as having elected to
4 have the employer make elective con-
5 tributions in an amount equal to the
6 applicable percentage of compensation
7 until the employee affirmatively elects
8 not to have such contributions made
9 or affirmatively elects to make elective
10 contributions at a specified level, and

11 “(II) which meets the other re-
12 quirements of this paragraph.

13 Subclause (I) of this clause shall not apply
14 to any employee who was eligible to par-
15 ticipate in the arrangement (or a prede-
16 cessor arrangement) immediately before
17 the first date on which the arrangement is
18 an automatic contribution trust. The elec-
19 tion treated as having been made under
20 subclause (I) shall cease to apply to com-
21 pensation paid after the affirmative elec-
22 tion by the employee.

23 “(ii) For purposes of this subpara-
24 graph, with respect to an employee, the
25 term “applicable percentage” means the

1 percentage determined under the arrange-
2 ment that is—

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

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

11 “(III) at least 5 percent by a
12 date that is not later than the first
13 day of the third plan year beginning
14 after the date described in subclause
15 (I),

16 “(IV) at least 6 percent by a
17 date that is no later than the first day
18 of the fourth plan year beginning
19 after the date described in subclause
20 (I),

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

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

6 “(VII) applied uniformly with re-
7 spect to similarly situated employees.

8 “(C) PARTICIPATION.—

9 “(i) Except as provided in clause (ii),
10 an arrangement meets the requirements of
11 this subparagraph for any year if, during
12 the plan year or the preceding plan year,
13 elective contributions are made on behalf
14 of at least 70 percent of employees other
15 than highly compensated employees eligible
16 to participate in the arrangement.

17 “(ii) An arrangement (other than a
18 successor arrangement) shall be treated as
19 meeting the requirements of this subpara-
20 graph with respect to the first plan year in
21 which the arrangement is effective.

22 “(D) MATCHING OR NONELECTIVE CON-
23 TRIBUTIONS.—The requirements of this sub-
24 paragraph are met if, under the arrangement,
25 the employer—

1 “(i) makes matching contributions on
2 behalf of each employee who is not a highly
3 compensated employee in an amount equal
4 to 50 percent of the elective contributions
5 of the employee to the extent such elective
6 contributions do not exceed 6 percent of
7 compensation, or

8 “(ii) is required, without regard to
9 whether the employee makes an elective
10 contribution or employee contribution, to
11 make a contribution to a defined contribu-
12 tion plan on behalf of each employee who
13 is not a highly compensated employee and
14 who is eligible to participate in the ar-
15 rangement in an amount equal to at least
16 2 percent of the employee’s compensation.

17 The rules of clauses (ii) and (iii) of paragraph
18 (12)(B) shall apply for purposes of clause (i).

19 The rules of clause (ii) of paragraph (12)(E)
20 shall apply for purposes of clauses (i) and (ii).

21 “(E) VESTING.—The requirements of this
22 subparagraph are met if an employee who has
23 completed at least 2 years of service (within the
24 meaning of section 411(a)) has a nonforfeitable
25 right to 100 percent of the employee’s accrued

1 benefit derived from employer contributions
2 taken into account in determining whether the
3 requirements of subparagraph (D) are met.

4 “(F) NOTICE REQUIREMENTS.—

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

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

12 “(I) receives a notice explaining
13 the employee’s right under the ar-
14 rangement to elect not to have elective
15 contributions made on the employee’s
16 behalf, and

17 “(II) has a reasonable period of
18 time after receipt of such notice and
19 before the first elective contribution is
20 made to make such election.

21 “(iii) ANNUAL NOTICE OF RIGHTS
22 AND OBLIGATIONS.—The requirements of
23 this clause are met if each employee eligi-
24 ble to participate in the arrangement is,
25 within a reasonable period before any year,

1 given notice of the employee’s rights and
2 obligations under the arrangement.

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

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

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

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

19 “(i) meets the contribution require-
20 ments of subparagraphs (B)(i) and (D) of
21 subsection (k)(13),

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

1 “(iii) meets the vesting and notice re-
2 quirements of subparagraphs (E) and (F)
3 of subsection (k)(13), and

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

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

13 (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY
14 PLANS.—

15 (1) ELECTIVE CONTRIBUTION RULE.—Clause
16 (i) of section 416(g)(4)(H) of such Code is amended
17 by inserting “or 401(k)(13)” after “section
18 401(k)(12)”.

19 (2) MATCHING CONTRIBUTION RULE.—Clause
20 (ii) of section 416(g)(4)(H) of such Code is amended
21 by inserting “or 401(m)(12)” after “section
22 401(m)(11)”.

23 (d) DEFINITION OF COMPENSATION.—

24 (1) BASE PAY OR RATE OF PAY.—The Sec-
25 retary of the Treasury shall, by no later than De-

1 cember 31, 2006, modify Treasury Regulation sec-
2 tion 1.414(s)–1(d)(3) to facilitate the use of the safe
3 harbors in section 401(k)(12), 401(k)(13),
4 401(m)(11), and 401(m)(12) of the Internal Rev-
5 enue Code of 1986, and in Treasury Regulation sec-
6 tion 1.401(a)(4)–3(b) by plans that use base pay or
7 rate of pay in determining contributions or benefits.
8 Such facilitation shall include increased flexibility in
9 satisfying section 414(s) of such Code in situations
10 where the amount of overtime compensation payable
11 in a year can vary significantly.

12 (2) APPLICATION OF REQUIREMENTS TO SEPA-
13 RATE PAYROLL PERIODS.—Not later than December
14 31, 2005, the Secretary of the Treasury shall issue
15 rules under subparagraphs (B)(i) and (D)(i) of sec-
16 tion 401(k)(13) of such Code and under clause (i)
17 of section 401(m)(12)(A) of such Code that, effec-
18 tive for plan years beginning after December 31,
19 2005, permit such requirements to be applied sepa-
20 rately to separate payroll periods based on rules
21 similar to the rules described in Proposed Treasury
22 Regulation sections 1.401(k)–3(c)(5)(ii) and
23 1.401(m)–3(d)(4).

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

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

11 (f) INVESTMENTS AND PREEMPTION.—

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

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

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

1 “(i) which meets the requirements of subpara-
2 graph (C),

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

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

15 “(iv) under which contributions described in
16 clause (iii) are invested in accordance with regula-
17 tions prescribed by the Secretary, which regulations
18 shall provide for the investment of a portion of the
19 contributions in a diversified investment vehicle that
20 is intended to provide long-term capital appreciation.

21 “(C)(i) The administrator of an individual account
22 plan shall, within a reasonable period before each plan
23 year, give to each employee to whom an automatic con-
24 tribution arrangement applies for such plan year notice

1 of the employee's rights and obligations under the ar-
2 rangement which—

3 “(I) is sufficiently accurate and comprehensive
4 to appraise the employee of such rights and obliga-
5 tions, and

6 “(II) is written in a manner calculated to be
7 understood by the average employee to whom the ar-
8 rangement applies.

9 “(ii) A notice shall not be treated as meeting the re-
10 quirements of clause (i) with respect to an employee un-
11 less—

12 “(I) the notice includes a notice explaining the
13 employee's right under the arrangement to elect not
14 to have elective contributions made on the employ-
15 ee's behalf (or to elect to have such contributions
16 made at a different percentage),

17 “(II) the employee has a reasonable period of
18 time after receipt of the notice described in sub-
19 clause (I) and before the first elective contribution
20 is made to make such election, and

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

24 “(6)(A) A participant in an individual account plan
25 shall, for purposes of paragraph (1), be treated as exer-

1 cising control over the assets in the account with respect
2 to contributions described in subparagraph (B).

3 “(B) Contributions are described in this subpara-
4 graph (B) if—

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

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

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

13 (2) PREEMPTION OF CONFLICTING STATE REG-
14 ULATION.—Section 514(b) of such Act (29 U.S.C.
15 1144(b)) is amended—

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

18 (B) by inserting after paragraph (8) the
19 following new paragraph:

20 “(9) Notwithstanding any other provision of this sec-
21 tion, any law of a State which would directly or indirectly
22 prohibit or restrict the inclusion in any plan of an auto-
23 matic contribution arrangement (as defined in section
24 404(c)(4)(B)) shall be superseded. The Secretary may
25 prescribe regulations which would establish minimum

1 standards that such arrangements would be required to
2 satisfy in order for this paragraph to apply.”.

3 (g) CORRECTIVE DISTRIBUTIONS.—Section 414 (re-
4 lating to definitions and special rules) is amended by add-
5 ing at the end the following new subsection:

6 “(y) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

7 “(1) IN GENERAL.—For purposes of this title,
8 the amount of any corrective distribution from a
9 plan shall be treated as if such amount had never
10 been held in such plan and shall be treated as a pay-
11 ment of compensation from the employer maintain-
12 ing the plan to the employee receiving such distribu-
13 tion.

14 “(2) CORRECTIVE DISTRIBUTION.—For pur-
15 poses of this subsection, the term ‘corrective dis-
16 tribution’ means a distribution from an applicable
17 employer plan of all amounts attributable to an erro-
18 neous automatic contribution.

19 “(3) ERRONEOUS AUTOMATIC CONTRIBU-
20 TION.—For purposes of this subsection, the term
21 ‘erroneous automatic contribution’ means an elective
22 contribution made on behalf of an employee under
23 any applicable employer plan pursuant to a plan pro-
24 vision treating the employee as having elected to
25 have the employer make such elective contribution

1 until the employee affirmatively elects not to have
2 such contribution made or affirmatively elects to
3 make contributions at a specified level, if the fol-
4 lowing requirements are satisfied—

5 “(A) within the applicable period, the em-
6 ployee notifies the plan administrator that the
7 employee had not known that the elective con-
8 tribution would be made and that the employee
9 would not have elected to have such contribu-
10 tion made, and

11 “(B) the sum of the elective contributions
12 that are treated as erroneous automatic con-
13 tributions with respect to an employee does not
14 exceed \$500.

15 “(4) APPLICABLE EMPLOYER PLAN.—For pur-
16 poses of this subsection, the term ‘applicable em-
17 ployer plan’ has the meaning described in subsection
18 (v)(6)(A) except that the term shall not include an
19 eligible deferred compensation plan maintained by
20 an eligible employer described in section
21 457(e)(1)(B).

22 “(5) APPLICABLE PERIOD.—For purposes of
23 this subsection, with respect to an employee, the
24 term ‘applicable period’ means the three month pe-
25 riod that begins on the first date that an amount is

1 withheld from compensation payable to the employee
2 in order to make a plan contribution pursuant to a
3 plan provision described in paragraph (3).”.

4 (h) EFFECTIVE DATE.—

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

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

12 (3) REGULATIONS.—Final regulations under
13 section 404(c)(5)(B)(iv) of the Employee Retirement
14 Income Security Act of 1974 (added by this section)
15 shall be issued no later than 6 months after the date
16 of enactment of this Act.

17 **SEC. 210. FACILITATING LONGEVITY INSURANCE.**

18 (a) IN GENERAL.—Paragraph (9) of section 401(a)
19 of the Internal Revenue Code of 1986, as amended by this
20 Act, is amended by inserting after subparagraph (H) the
21 following new subparagraph:

22 “(I) LONGEVITY INSURANCE.—

23 “(i) IN GENERAL.—For purposes of
24 this paragraph, any value attributable to
25 longevity insurance shall be disregarded in

1 determining the value of an employee's in-
2 terest under a plan prior to the first date
3 that payments are made under the lon-
4 gevity insurance.

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

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

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

1 “(III) prior to the death of the
2 employee, the annuity does not make
3 available any commutation benefit,
4 cash surrender value, or other similar
5 feature, and

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

14 “(iii) ADJUSTING AGE.—For purposes
15 of clause (ii)(I), the Secretary shall annu-
16 ally increase age 85 to reflect increases in
17 life expectancy (as determined by the Sec-
18 retary) that occur on or after January 1,
19 2006, except that any such increased age
20 which is not a whole number shall be
21 rounded to the next lower whole number.”.

22 (b) RULES.—Not later than one year after the date
23 of enactment of this Act, the Secretary of the Treasury
24 shall prescribe rules under which all or a portion of a par-
25 ticipant’s benefits under any plan described in section

1 402(c)(8)(B) of the Internal Revenue Code of 1986 may
2 be treated as longevity insurance under the rules of section
3 401(a)(9)(I) of such Code.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to years beginning after December
6 31, 2006.

7 **SEC. 211. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.**

8
9 (a) IN GENERAL.—Paragraph (3) of section 219(f)
10 of the Internal Revenue Code of 1986 is amended to read
11 as follows:

12 “(3) TIME WHEN CONTRIBUTIONS MADE.—

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

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

1 “(i) IN GENERAL.—To the extent pro-
2 vided in rules prescribed by the Secretary,
3 a tax refund owed to a taxpayer and paid
4 directly to an individual retirement plan
5 shall be deemed a contribution made by
6 the taxpayer—

7 “(I) on the last day of the tax-
8 able year to which such refund re-
9 lates, and

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

12 “(ii) LIMITATION.—This subpara-
13 graph (B) shall not apply to a tax refund
14 unless such refund is shown on a return
15 filed not later than the time prescribed by
16 law for filing the return for the taxable
17 year to which such refund relates (not in-
18 cluding extensions thereof).

19 “(iii) DIRECT PAYMENT.—For pur-
20 poses of this subparagraph, a tax refund is
21 paid directly to an individual retirement
22 plan if it is paid in the form of a direct
23 transfer from the Secretary to the trustee
24 or issuer of the individual retirement plan.

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

5 (b) REGULATIONS.—

6 (1) IN GENERAL.—Not later than 1 year after
7 the date of enactment of this Act, the Secretary of
8 the Treasury shall issue rules which permit a tax-
9 payer—

10 (A) to elect to have all or any portion of
11 a tax refund owed to the taxpayer paid directly
12 to a Roth IRA, or, if the Secretary determines
13 that such direct payments are reasonably ad-
14 ministrable, to individual retirement plans
15 which are not Roth IRAs,

16 (B) to specify the individual retirement
17 plan to which such tax refund is to be paid
18 (and the investment option in which such tax
19 refund is to be invested), and

20 (C) to the extent provided in rules pre-
21 scribed by the Secretary, to specify the taxable
22 year on account of which such payment is
23 made,

24 except that the Secretary may require that the
25 amount subject to such an election exceed a dollar

1 threshold determined by the Secretary as necessary
2 or appropriate to ensure the administrability of such
3 elections.

4 (2) INFORMATION.—The Secretary may require
5 that the taxpayer provide, and agree to the disclo-
6 sure of, any information necessary to pay the tax re-
7 fund to the individual retirement plan specified by
8 the taxpayer.

9 (3) SPECIAL RULE.—The Secretary may pro-
10 vide that if, for any reason, the trustee or issuer
11 does not accept payment of a tax refund, the tax re-
12 fund shall instead be paid as if the taxpayer had not
13 elected a direct payment to an individual retirement
14 plan.

15 (c) CONFORMING AMENDMENTS.—

16 (1) Paragraph (3) of section 408(o) of such
17 Code is amended by striking “rule” and inserting
18 “rules”.

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

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall be effective for tax returns filed after
24 final rules implementing the amendments made by this
25 section are prescribed.

1 **SEC. 212. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
2 **NING SERVICES.**

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

6 “(4) NO CONSTRUCTIVE RECEIPT.—No amount
7 shall be included in the gross income of any em-
8 ployee solely because the employee may choose be-
9 tween any qualified retirement planning services pro-
10 vided by a qualified investment advisor and com-
11 pensation which would otherwise be includible in the
12 gross income of such employee. The preceding sen-
13 tence shall apply to highly compensated employees
14 only if the choice described in such sentence is avail-
15 able on substantially the same terms to each mem-
16 ber of the group of employees normally provided
17 education and information regarding the employer’s
18 qualified employer plan.”.

19 (b) CONFORMING AMENDMENTS.—

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

22 (2) Section 414(s)(2) is amended by inserting
23 “132(m)(4),” after “132(f)(4),”.

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

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

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

5 (a) **IN GENERAL.**—Paragraph (7) of section 404(a)
6 of such Code (relating to limitations on deductions where
7 combination of defined contribution plan and defined ben-
8 efit plan) is amended by adding at the end the following:

9 “(D) **EXEMPTION.**—This paragraph shall
10 not apply to contributions by any employer if
11 such employer or any member of such employ-
12 er’s controlled group (within the meaning of
13 section 412(l)(8)(C)) maintains a defined ben-
14 efit plan that is covered by title IV of the Em-
15 ployee Retirement Income Security Act of
16 1974.”.

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

1 **TITLE III—EXPANDING SMALL**
2 **BUSINESS RETIREMENT PLAN**
3 **COVERAGE AND MAKING THE**
4 **ELECTIVE DEFERRAL RULES**
5 **SIMPLER AND MORE UNI-**
6 **FORM**

7 **SEC. 301. ALLOW ADDITIONAL NONELECTIVE CONTRIBU-**
8 **TIONS TO SIMPLE PLANS.**

9 (a) IN GENERAL.—

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

17 “(iv) the employer may make nonelec-
18 tive contributions of a uniform percentage
19 (up to 10 percent) of compensation for
20 each employee who is eligible to participate
21 in the arrangement and who has at least
22 \$5,000 of compensation from the employer
23 for the year, and”.

24 (2) LIMITATION.—Subparagraph (A) of section
25 408(p)(2) of such Code (defining qualified salary reduc-

1 tion arrangement) is amended by adding at the end the
2 following: “The compensation taken into account under
3 clause (iv) for any year shall not exceed the limitation in
4 effect for such year under section 401(a)(17).”.

5 (b) CONFORMING AMENDMENTS.—

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

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

14 (3) Section 401(k)(11)(B)(i) of such Code is
15 amended by striking “and” at the end of subclause
16 (II), by redesignating subclause (III) as subclause
17 (IV), and by inserting after subclause (II) the fol-
18 lowing new subclause:

19 “(III) the employer may make
20 nonelective contributions of a uniform
21 percentage (up to 10 percent) of com-
22 pensation for each employee who is el-
23 igible to participate in the arrange-
24 ment and who has at least \$5,000 of

1 compensation from the employer for
2 the year, and”

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

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to years beginning after December
8 31, 2005.

9 **SEC. 302. CONFORM MATCHING CONTRIBUTION RULES FOR**
10 **SIMPLE IRAS AND SIMPLE 401(K)S.**

11 (a) IN GENERAL.—Subclause (II) of section
12 401(k)(11)(B)(i) of the Internal Revenue Code of 1986
13 (relating to general rule for contribution requirements) is
14 amended by striking “3 percent” and inserting “the appli-
15 cable percentage (as defined in section 408(p)(2)(C)(ii))”.

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

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

20 (a) IN GENERAL.—Clause (iii) of section
21 414(v)(6)(A) of the Internal Revenue Code of 1986 is
22 amended to read as follows:

23 “(iii) an eligible deferred compensa-
24 tion plan (as defined in section 457(b)),
25 and”.

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

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to years beginning after December
7 31, 2005.

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

9 (a) COMPENSATION.—

10 (1) IN GENERAL.—Subparagraph (A) of section
11 415(c)(3) of the Internal Revenue Code of 1986 is
12 amended to read as follows:

13 “(A) IN GENERAL.—The term ‘partici-
14 pant’s compensation’ means wages (as defined
15 by section 3401(a)) and all other payments of
16 compensation to an employee by his employer
17 (in the course of the employer’s trade or busi-
18 ness) for the year for which the employer is re-
19 quired to furnish the employee a written state-
20 ment under section 6041(d), 6051(a)(3), or
21 6052. In accordance with rules prescribed by
22 the Secretary, compensation shall be deter-
23 mined without regard to any rules under section
24 3401(a) that limit the remuneration included in

1 wages based on the nature or location of the
2 employment or the services performed.”.

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

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

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

14 “(E) FIVE-YEAR RULE.—In the case of an
15 annuity contract described in section 403(b), at
16 the election of the employer maintaining the ar-
17 rangement, the term ‘participant’s compensa-
18 tion’ shall not be determined for the year but
19 shall be determined for the most recent period
20 (ending not later than the close of the year)
21 which constitutes a year of service and which
22 precedes the year by no more than five years.
23 For purposes of the preceding sentence, under
24 rules prescribed by the Secretary, a year of
25 service shall be a full year of full-time service

1 as an employee (or a combination of more than
2 one year of part-year or part-time service).”.

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

7 (b) 403(b) PLANS.—

8 (1) IN GENERAL.—Subsection (b) of section
9 403 of such Code is amended by striking paragraphs
10 (3) and (4).

11 (2) CONFORMING AMENDMENTS.—

12 (A) Clauses (i) and (ii) of section
13 414(e)(5)(B) of such Code are amended to read
14 as follows:

15 “(i) the minister’s compensation
16 under section 415(c)(3) shall be deter-
17 mined by reference to the minister’s earned
18 income (within the meaning of section
19 401(c)(2)) from such ministry rather than
20 the amount of compensation which is re-
21 ceived from an employer, and

22 “(ii) the years (and portions of years)
23 in which such minister was a self-employed
24 individual (within the meaning of section
25 401(c)(1)(B)) with respect to such min-

1 istry shall be included for purposes of sec-
2 tion 415(c)(3)(E).”.

3 (B) Paragraph (7) of section 414(u) of
4 such Code is amended by striking “403(b)(3),
5 415(c)(3),” and inserting “415(c)(3)”.

6 (C) Subparagraph (C) of section 415(c)(7)
7 of such Code is amended by striking “includible
8 compensation determined under section
9 403(b)(3)” and inserting “compensation deter-
10 mined under section 415(c)(3)”.

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

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

20 (d) SIMPLE PLANS.—Subparagraph (A) of section
21 408(p)(6) of such Code is amended to read as follows:

22 “(A) COMPENSATION.—The term ‘com-
23 pensation’ has the same meaning as the term
24 ‘participant’s compensation’ (as defined in sec-
25 tion 415(c)(3)), except that for purposes of this

1 subsection, amounts described in section
2 6051(a)(3) shall be determined without regard
3 to section 3401(a)(3).”.

4 (e) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to years beginning after December
6 31, 2005.

7 **SEC. 305. UNIFORM WITHDRAWAL RULES.**

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

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

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

15 “(A) attainment of age 59½,

16 “(B) death,

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

19 “(D) severance from employment,

20 “(E) hardship, or

21 “(F) termination of the plan without the
22 establishment or maintenance of a successor
23 plan (other than an employee stock ownership
24 plan as defined in section 4975(e)(7)).

25 “(2) SPECIAL RULES.—

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

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

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

16 “(D)(i) Paragraph (1)(F) shall not apply
17 to an employee unless the employee receives a
18 lump sum distribution by reason of the termi-
19 nation.

20 “(ii) For purposes of this subparagraph,
21 the determination of whether a distribution is a
22 lump sum distribution shall be made under sec-
23 tion 402(e)(4)(D) (without regard to subclauses
24 (I), (II), (III), and (IV) of clause (i) thereof)
25 or, in the case of plans not described in such

1 section, under similar rules. Such term includes
2 a distribution that consists in whole or in part
3 of an annuity contract.”.

4 (b) 401(k) PLANS.—

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

7 “(i) may not be distributable to par-
8 ticipants or other beneficiaries earlier than
9 the occurrence of a distributable event,
10 and”.

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

13 (3) The last sentence of subparagraph (C) of
14 section 401(k)(7) of such Code is amended to read
15 as follows: “For purposes of this section, the term
16 ‘hardship distribution’ means a distribution de-
17 scribed in section 414(w)(1)(E) (taking section
18 414(w)(2)(B) into account but without regard to
19 section 414(w)(2)(A)).

20 (c) 403(b) PLANS.—

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

23 “(ii) under the custodial account, no
24 such amounts may be paid or made avail-

1 able to any distributee before the occur-
2 rence of a distributable event.”.

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

7 (d) ELIGIBLE DEFERRED COMPENSATION PLANS.—

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

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

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

16 “(1) IN GENERAL.—Any amount of compensa-
17 tion deferred under an eligible deferred compensa-
18 tion plan, and any income attributable to the
19 amounts so deferred, shall be includible in gross in-
20 come only for the taxable year in which such com-
21 pensation or other income is paid to the participant
22 or other beneficiary.”.

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

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

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

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

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

19 “(i) no amount has been deferred
20 under the plan with respect to such partici-
21 pant during the 2-year period ending on
22 the date of the distribution, and

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

1 (e) HARDSHIP DEFINITION.—

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

12 (2) BENEFICIARIES.—Within 180 days after
13 the date of enactment of this Act, the Secretary of
14 the Treasury shall modify the rules for determining
15 whether a participant has had a hardship for pur-
16 poses of section 414(w)(1)(E) of such Code. Pursu-
17 ant to such modification, any event, such as a med-
18 ical expense, that would constitute a hardship if it
19 occurred with respect to a participant's spouse or
20 dependent (as defined in section 152 of such Code)
21 shall, to the extent permitted under a plan, con-
22 stitute a hardship if it occurs with respect to a per-
23 son who is a beneficiary with respect to the partici-
24 pant under the plan.

25 (f) EFFECTIVE DATE.—

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

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

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

16 (a) IN GENERAL.—Subparagraph (C) of section
17 408(k)(3) of the Internal Revenue Code of 1986 (relating
18 to contributions must bear uniform relationship to total
19 compensation) is amended by inserting before the period
20 at the end the following: “or unless such contributions are
21 a uniform dollar amount on behalf of each such em-
22 ployee.”.

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

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

3 (a) IN GENERAL.—Subparagraph (B) of section
4 4972(c)(6) of the Internal Revenue Code of 1986 (relating
5 to exceptions) is amended—

6 (1) by striking “408(p) or” and inserting
7 “408(p),”, and

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

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

14 **SEC. 308. ALLOW CERTAIN PLAN TRANSFERS AND MERG-**
15 **ERS.**

16 (a) AMENDMENT TO THE INTERNAL REVENUE CODE
17 OF 1986.—

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

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

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

1 “(A) a transfer of all or a portion of the
2 account balance of a participant or beneficiary,
3 whether or not vested, from a defined contribu-
4 tion plan described in section 401(a) or section
5 403(a) of an employer to an annuity contract
6 described in section 403(b) of the same em-
7 ployer,

8 “(B) a transfer of all or a portion of the
9 account balance of a participant or beneficiary,
10 whether or not vested, from an annuity contract
11 described in section 403(b) of an employer to a
12 defined contribution plan described in section
13 401(a) or section 403(a) of the same employer,
14 or

15 “(C) a merger of a defined contribution
16 plan described in section 401(a) or section
17 403(a) of an employer with an annuity contract
18 described in section 403(b) of the same em-
19 ployer,

20 so long as the transfer or merger does not cause a
21 reduction in the vested benefit or total benefit (in-
22 cluding non-vested benefit) of any participant or
23 beneficiary. A plan or contract shall not fail to be
24 considered to be described in sections 401(a),
25 403(a), or 403(b) (as applicable) merely because

1 such plan or contract engages in a transfer or merg-
2 er described in this paragraph.

3 “(2) DISTRIBUTIONS.—Amounts transferred or
4 merged pursuant to paragraph (1) shall be subject
5 to the requirements of paragraphs (3) and (4) and
6 to the distribution requirements under sections
7 401(a), 403(a), or 403(b) applicable to the trans-
8 feree or merged plan.

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

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

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

1 “(B) be treated as subject to section
2 411(d)(6) and section 204(g) of the Employee
3 Retirement Income Security Act of 1974 to the
4 extent that such amounts were subject to such
5 sections in the transferor or predecessor plan.

6 “(4) SPECIAL RULES.—Under rules prescribed
7 by the Secretary, to the extent amounts transferred
8 or merged pursuant to paragraph (1) were otherwise
9 entitled to grandfather treatment under the trans-
10 feror or predecessor plan, such amounts (and income
11 or loss attributable thereto) shall remain entitled to
12 such treatment under the transferee or merged plan.
13 The rules prescribed by the Secretary shall require
14 that such amounts be separately accounted for by
15 the transferee or merged plan. For purposes of this
16 paragraph, ‘grandfather treatment’ shall mean spe-
17 cial treatment under the Internal Revenue Code of
18 1986 that is provided for prior benefits, prior peri-
19 ods of time, or certain individuals in connection with
20 a change in the applicable law.

21 “(5) CONSENT.—In the case of a qualified trust
22 described in section 401(a) or 403(a) and an annu-
23 ity contract described in section 403(b) with respect
24 to which transfers may be made only with the con-
25 sent of a participant or beneficiary pursuant to the

1 terms of such trust or contract or pursuant to appli-
2 cable law, such consent requirement shall apply
3 without regard to this subsection. Nothing in this
4 subsection shall affect the application of contract or
5 plan terms otherwise applicable in the case of a
6 withdrawal from the contract or plan.”.

7 (2) AGGREGATION.—Paragraph (2) of section
8 414(t) of such Code is amended by inserting
9 “414(x),” after “274(j),”.

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

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

19 (c) EFFECTIVE DATE.—

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

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

5 **TITLE IV—EXPANDING RETIRE-**
6 **MENT SAVINGS FOR TAX-EX-**
7 **EMPT ORGANIZATION AND**
8 **GOVERNMENT EMPLOYEES**

9 **SEC. 401. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**
10 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**
11 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**
12 **PLOYEES.**

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

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

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

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

9 (b) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to distributions after the date of
11 the enactment of this Act.

12 **SEC. 402. CLARIFICATIONS REGARDING PURCHASE OF PER-**
13 **MISSIVE SERVICE CREDIT.**

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

22 (b) DISTRIBUTION REQUIREMENTS.—Section
23 457(e)(17) and section 403(b)(13) of such Code are both
24 amended by adding at the end the following sentence:
25 “Amounts transferred under this paragraph shall be dis-

1 tributed solely in accordance with section 401(a) as appli-
2 cable to such defined benefit plan.”.

3 (c) SERVICE CREDIT.—Clause (ii) of section
4 415(n)(3)(A) of such Code is amended to read as follows:

5 “(ii) which relates to benefits with re-
6 spect to which such participant is not oth-
7 erwise entitled, and”.

8 (d) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect as if included in the amend-
10 ments made by section 647 of the Economic Growth and
11 Tax Relief Reconciliation Act of 2001.

12 **SEC. 403. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**
13 **MENT PLANS.**

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

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

22 The Secretary of the Treasury shall issue regulations
23 under which a governmental plan (as defined in section
24 414(d) of the Internal Revenue Code of 1986) shall, for
25 all years to which section 401(a)(9) of such Code applies

1 to such plan, be treated as having complied with such sec-
2 tion 401(a)(9) if such plan complies with a reasonable
3 good faith interpretation of such section 401(a)(9).

4 **SEC. 405. CHURCH PLAN RULE.**

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

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

23 **SEC. 406. CLARIFICATION OF TREATMENT OF INDIAN TRIB-**
24 **AL GOVERNMENTS.**

25 (a) DEFINITION OF GOVERNMENTAL PLAN.—

1 (1) AMENDMENT TO INTERNAL REVENUE CODE
2 OF 1986.—Section 414(d) of the Internal Revenue
3 Code of 1986 (definition of governmental plan) is
4 amended by adding at the end thereof the following
5 new sentence: “The term ‘governmental plan’ also
6 includes a plan established or maintained for its em-
7 ployees by an Indian tribal government (as defined
8 in section 7701(a)(40)), a subdivision of an Indian
9 tribal government (determined in accordance with
10 section 7871(d)), an agency or instrumentality of an
11 Indian tribal government or a subdivision thereof, or
12 an entity established under tribal, Federal, or State
13 law which is wholly owned or controlled by any of
14 the foregoing.”.

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

1 strumentality of an Indian tribal government or sub-
2 division thereof, or an entity established under trib-
3 al, Federal, or State law which is wholly owned or
4 controlled by any of the foregoing.”.

5 (b) CLARIFICATION OF TREATMENT OF INDIAN
6 TRIBAL GOVERNMENTS.—

7 (1) AMENDMENTS TO INTERNAL REVENUE
8 CODE OF 1986.—

9 (A) POLICE AND FIREFIGHTERS.—Sub-
10 paragraph (H) of section 415(b)(2) of the In-
11 ternal Revenue Code of 1986 (defining partici-
12 pant) is amended—

13 (i) in clause (i) by striking “State or
14 political subdivision” and inserting “State,
15 Indian tribal government (as defined in
16 section 7701(a)(40)), or any political sub-
17 division”, and

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

23 (B) STATE AND LOCAL GOVERNMENT
24 PLANS.—

1 (i) IN GENERAL.—Subparagraph (A)
2 of section 415(b)(10) of such Code (relat-
3 ing to limitation to equal accrued benefit)
4 is amended—

5 (I) by inserting “, Indian tribal
6 government (as defined in section
7 7701(a)(40)),” after “State”,

8 (II) by inserting “any” before
9 “political subdivision”, and

10 (III) by inserting “any of” before
11 “the foregoing”.

12 (ii) CONFORMING AMENDMENT.—The
13 heading for paragraph (10) of section
14 415(b) of such Code is amended to read as
15 follows:

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

18 (C) GOVERNMENT PICK UP CONTRIBU-
19 TIONS.—Paragraph (2) of section 414(h) of
20 such Code (relating to designation by units of
21 government) is amended by striking “State or
22 political subdivision” and inserting “State, In-
23 dian tribal government (as defined in section
24 7701(a)(40)), or any political subdivision”.

1 (D) DISTRIBUTIONS TO PUBLIC SAFETY
2 EMPLOYEES.—Subparagraph (B) of section
3 72(t)(10) of such Code, as added by this Act,
4 is amended—

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

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

15 (2) AMENDMENTS TO EMPLOYEE RETIREMENT
16 INCOME SECURITY ACT OF 1974.—Section 4021(b) of
17 the Employee Retirement Income Security Act of
18 1974 (29 U.S.C. 1321(b)) is amended—

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

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

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

1 “(14) established and maintained for its em-
2 ployees by an Indian tribal government (as defined
3 in section 7701(a)(40) of the Internal Revenue Code
4 of 1986), a subdivision of an Indian tribal govern-
5 ment (determined in accordance with section
6 7871(d) of such Code), an agency or instrumentality
7 of an Indian tribal government or subdivision there-
8 of, or an entity established under tribal, Federal, or
9 State law which is wholly owned or controlled by any
10 of the foregoing.”.

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

14 **SEC. 407. DEFERRAL AGREEMENTS.**

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

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

1 **SEC. 408. PLANS MAINTAINED BY STATE OR LOCAL GOV-**
2 **ERNMENTS.**

3 (a) IN GENERAL.—Subparagraph (F) of section
4 415(b)(2) of the Internal Revenue Code of 1986 is amend-
5 ed to read as follows:

6 “(F) PLANS MAINTAINED BY STATE OR
7 LOCAL GOVERNMENTS.—

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

22 (b) COST-OF-LIVING ADJUSTMENTS.—

23 (1) PLANS MAINTAINED BY STATE OR LOCAL
24 GOVERNMENTS.—Paragraph (1) of section 415(d) of
25 such Code is amended by striking “and” at the end
26 of subparagraph (B), by redesignating subparagraph

1 (C) as subparagraph (D), and by inserting after sub-
2 paragraph (B) the following new subparagraph:

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

5 (2) BASE PERIOD.—Paragraph (3) of section
6 415(d) of such Code is amended by redesignating
7 subparagraph (D) as subparagraph (E) and by in-
8 serting after subparagraph (C) the following new
9 subparagraph:

10 “(D) \$130,000 AMOUNT.—The base period
11 taken into account for purposes of paragraph
12 (l)(C) is the calendar quarter beginning July 1,
13 2005.”.

14 (3) ROUNDING RULE RELATING TO DEFINED
15 BENEFIT PLANS.—Subparagraph (B) of section
16 415(d)(4) of such Code is amended to read as fol-
17 lows:

18 “(B) \$130,000 AND \$40,000 AMOUNTS.—
19 Any increase under subparagraph (C) or (D) of
20 paragraph (1) which is not a multiple of \$1,000
21 shall be rounded to the next lowest multiple of
22 \$1,000.”.

23 (4) CONFORMING AMENDMENT.—Subparagraph
24 (E) of section 415(d)(3) of such Code (as amended

1 by paragraph (2)) is amended by striking “para-
2 graph (1)(C)” and inserting “paragraph (1)(D)”.

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

6 **SEC. 409. CLARIFICATION OF TREATMENT OF SECTION**
7 **403(b) PROGRAMS.**

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

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

23 (c) PROPOSED REGULATIONS.—The Secretary of the
24 Treasury shall not finalize proposed regulations published

1 on November 15, 2004, unless such regulations reflect the
2 requirements of this section.

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

5 **TITLE V—SIMPLIFICATION AND** 6 **EQUITY**

7 **SEC. 501. UPDATING AND SIMPLIFYING THE MINIMUM DIS-** 8 **TRIBUTION RULES.**

9 (a) REQUIRED DISTRIBUTIONS.—

10 (1) INCREASE IN AGE FOR REQUIRED BEGIN-
11 NING DATE.—Clauses (i) and (ii) of section
12 401(a)(9)(C) of the Internal Revenue Code of 1986
13 (relating to required beginning date) are amended by
14 striking “age 70½” each place it appears and in-
15 serting “the applicable age”.

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

20 “(H) APPLICABLE AGE.—

21 “(i) IN GENERAL.—For purposes of
22 this paragraph, the applicable age shall be
23 70½, adjusted pursuant to clause (ii).

24 “(ii) ADJUSTMENT.—The Secretary
25 shall increase the applicable age annually

1 in a manner proportional to increases in
2 life expectancy (as determined by the Sec-
3 retary) that occur on or after January 1,
4 2005, except that no adjustment shall be
5 made until the applicable age as adjusted
6 would equal or exceed age 72. Any applica-
7 ble age which is not a whole number shall
8 be rounded to the next lower whole num-
9 ber.”.

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

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

19 “(iii) ACTUARIAL ADJUSTMENT.—

20 “(I) IN GENERAL.—In the case
21 of a defined benefit plan, an employ-
22 ee’s accrued benefit shall be actuari-
23 ally increased to take into account the
24 period after the applicable date during

1 which the employee was not receiving
2 any benefits under the plan.

3 “(II) APPLICABLE DATE.—For
4 purposes of clause (I), the term ‘appli-
5 cable date’ means April 1 of the cal-
6 endar year following the calendar year
7 in which the employee attains age
8 70½.”.

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

14 (c) SIMPLIFICATION FOR INDIVIDUALS.—

15 (1) IN GENERAL.—Section 408(a) of such Code
16 is amended by redesignating subsection (r) as sub-
17 section (s) and by inserting after subsection (q) the
18 following subsection—

19 “(r) MINIMUM DISTRIBUTION EXEMPTION FOR
20 SMALL ACCOUNTS.—

21 “(1) IN GENERAL.—Subsections (a)(6) and
22 (b)(3) shall not apply to the individual retirement
23 accounts and individual retirement annuities of an
24 individual described in paragraph (2).

25 “(2) INDIVIDUALS AFFECTED.—

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

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

14 “(3) AFFECTED RETIREMENT PLANS.—

15 “(A) IN GENERAL.—With respect to an in-
16 dividual, the term ‘affected retirement plan’
17 means any plan described in paragraph (3), (4),
18 or (5) of section 4974(c), other than a Roth
19 IRA.

20 “(B) SPECIAL RULE.—A plan described in
21 section 4974(c)(3) shall not be treated as an af-
22 fected retirement plan with respect to an indi-
23 vidual for any year prior to the first year for
24 which a distribution would be required under

1 section 403(b)(10) (without regard to this sub-
2 section).

3 “(4) LIMITATION ON TOTAL REQUIRED DIS-
4 TRIBUTIONS.—Under rules prescribed by the Sec-
5 retary, in the case of an individual not described in
6 paragraph (2), the total amount required to be dis-
7 tributed under subsections (a)(6) and (b)(3), in com-
8 bination with the total amount required to be dis-
9 tributed under section 403(b)(10), shall not exceed
10 the excess of the combined value of the individual’s
11 vested interest in all affected retirement plans over
12 \$100,000.

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

19 (2) PARALLEL RULE FOR SECTION 403(b)
20 PLANS.—Paragraph (10) of section 403(b) of such
21 Code is amended by adding at the end the following:
22 “For purposes of applying the requirements of this
23 paragraph, rules similar to the rules of section
24 408(r) shall apply.”.

25 (3) CONFORMING AMENDMENTS.—

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

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

9 (d) EFFECTIVE DATE.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the amendments made by this section
12 shall apply to years beginning after December 31,
13 2006.

14 (2) TRANSITION.—A plan shall not be treated
15 as failing to meet the requirements of section
16 401(a)(9) of the Internal Revenue Code of 1986
17 merely because, in years beginning after December
18 31, 2004, no distribution is made to an employee be-
19 fore the employee’s required beginning date, as de-
20 termined in accordance with the amendments made
21 by this section.

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

23 (a) EXCEPTION TO NONDISCRIMINATION RULES.—

24 (1) IN GENERAL.—Paragraph (4) of section
25 414(v) of the Internal Revenue Code of 1986 (relat-

1 ing to application of nondiscrimination rules) is
2 amended by redesignating subparagraph (B) as sub-
3 paragraph (C) and by inserting after subparagraph
4 (A) the following new subparagraph:

5 “(B) EXCEPTION.—An applicable employer
6 plan shall not fail to satisfy the requirements of
7 this subparagraph solely because another appli-
8 cable employer plan maintained by the employer
9 that is qualified under Puerto Rico law does not
10 provide for additional elective deferrals under
11 this subsection.”.

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

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall take effect as if included in section

1 631(a) of the Economic Growth and Tax Relief Reconcili-
2 ation Act of 2001.

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

4 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
5 1986.—

6 (1) AMENDMENT TO SECTION 401(a)(34).—
7 Section 401(a)(34) of the Internal Revenue Code of
8 1986 (relating to benefits of missing participants) is
9 amended to read as follows:

10 “(34) UNCLAIMED BENEFITS.—A trust forming
11 part of a plan shall not be treated as failing to con-
12 stitute a qualified trust under this section merely be-
13 cause the plan of which such trust is a part treats
14 unclaimed benefits in a manner that satisfies the re-
15 quirements of section 414(y).”.

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

20 “(y) UNCLAIMED BENEFITS.—

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

23 “(A) ONGOING PLANS.—In the case of an
24 ongoing plan, the plan provides for one or more

1 of the following with respect to unclaimed bene-
2 fits:

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

6 “(ii) A transfer to the Pension Benefit
7 Guaranty Corporation, in accordance with
8 section 4050(e) of the Employee Retire-
9 ment Income Security Act of 1974.

10 “(iii) Any other treatment permitted
11 under rules prescribed by the Secretary.

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

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

18 “(I) In the case of an unclaimed
19 benefit to which section 401(a)(31)(B)
20 applies, a transfer under section
21 401(a)(31)(B).

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

1 “(III) The purchase of an annu-
2 ity contract to provide for an individ-
3 ual’s unclaimed benefit.

4 “(IV) A transfer to the Pension
5 Benefit Guaranty Corporation in ac-
6 cordance with section 4050(a) or
7 4050(e) (as applicable) of the Em-
8 ployee Retirement Income Security
9 Act of 1974.

10 “(V) Any other treatment per-
11 mitted under rules prescribed by the
12 Secretary.

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

16 “(I) In the case of an unclaimed
17 benefit to which section 401(a)(31)(B)
18 applies, a transfer under section
19 401(a)(31)(B).

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

23 “(III) The purchase of an annu-
24 ity contract to provide for an individ-
25 ual’s unclaimed benefit.

1 “(IV) A transfer to the Pension
2 Benefit Guaranty Corporation in ac-
3 cordance with section 4050(d) or
4 4050(e) (as applicable) of the Em-
5 ployee Retirement Income Security
6 Act of 1974.

7 “(V) Any other treatment per-
8 mitted under rules prescribed by the
9 Secretary.

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

12 “(A) TRANSFERS TO PBGC.—Amounts
13 transferred from a plan to the Pension Benefit
14 Guaranty Corporation pursuant to paragraph
15 (1) shall be treated as a transfer under section
16 401(a)(31)(A).

17 “(B) DISTRIBUTIONS FROM PBGC.—Ex-
18 cept as provided in rules prescribed by the Sec-
19 retary, amounts distributed by the Pension
20 Benefit Guaranty Corporation shall be treated
21 as distributed by an individual retirement plan
22 under section 408(d) (without regard to para-
23 graphs (4), (5) and (7) thereof). Rules similar
24 to the rules of section 402(c)(4) shall apply.

1 “(3) DEFINITIONS.—For purposes of this sub-
2 section—

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

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

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

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

22 A benefit otherwise described in clause (i) shall
23 not be treated as an unclaimed benefit under
24 clause (i) if the participant or beneficiary elects
25 not to have such treatment apply. Any such

1 participant or beneficiary shall be given reason-
2 able notice of the opportunity to make such an
3 election. If the participant or beneficiary fails to
4 make such an election within a reasonable pe-
5 riod specified in the notice, any subsequent elec-
6 tion shall not be given effect and the benefit
7 shall be treated as an unclaimed benefit. A no-
8 tice mailed to the last known address of the
9 participant or beneficiary shall be treated as a
10 notice to the participant or beneficiary for pur-
11 poses of this paragraph.

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

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

18 “(D) MISSING PARTICIPANT.—The term
19 ‘missing participant’ shall have the meaning
20 given to such term by section 4050(b)(1) of the
21 Employee Retirement Income Security Act of
22 1974.”.

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

1 “(iii) OTHER PERMITTED TRANS-
2 FERS.—A plan administrator shall be
3 treated as having complied with the re-
4 quirements of this subparagraph if such
5 plan administrator complies with the re-
6 quirements of section 414(y).”.

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

9 (1) IN GENERAL.—Subsection (b) of section
10 4050 of the Employee Retirement Income Security
11 Act of 1974 (29 U.S.C. 1350) is amended by adding
12 at the end the following paragraph:

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

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

22 “(B) any benefit or other amount of a par-
23 ticipant or beneficiary which is distributable
24 under the terms of the plan with respect to a
25 missing participant; or

1 “(C) any benefit to which section
2 401(a)(31)(B) of the Internal Revenue Code of
3 1986 applies or would apply if subclause (I) of
4 section 401(a)(31)(B)(i) of such Code did not
5 require the distribution to exceed \$1,000.

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

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

24 “(c) MULTIEMPLOYER PLANS.—The corporation
25 shall prescribe rules similar to the rules in subsection (a)

1 for multiemployer plans covered by this title that termi-
2 nate under section 4041A.

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

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

8 “(2) INFORMATION TO THE CORPORATION.—To
9 the extent provided in regulations, the plan adminis-
10 trator of a plan described in paragraph (4) shall,
11 upon termination of the plan, provide the corpora-
12 tion information with respect to the benefits of a
13 missing participant if the plan transfers such bene-
14 fits—

15 “(A) to the corporation, or

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

18 “(3) PAYMENT BY THE CORPORATION.—If ben-
19 efits of a missing participant were transferred to the
20 corporation under paragraph (1), the corporation
21 shall, upon location of the participant or beneficiary,
22 pay to the participant or beneficiary the amount
23 transferred (or the appropriate survivor benefit) ei-
24 ther—

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

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

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

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

7 “(i) to which the provisions of this
8 section do not apply (without regard to
9 this subsection), and

10 “(ii) which is not a plan described in
11 paragraphs (2) through (11) of section
12 4021(b), and

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

15 “(i) has missing participants, and

16 “(ii) has not provided for the transfer
17 of assets to pay the benefits of all missing
18 participants to another pension plan (with-
19 in the meaning of section 3(2)).

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

23 “(e) UNCLAIMED BENEFITS.—

24 “(1) TRANSFER TO CORPORATION.—The plan
25 administrator of a plan described in paragraph (6)

1 may elect to transfer unclaimed benefits to the cor-
2 poration.

3 “(2) INFORMATION TO THE CORPORATION.—

4 The corporation may impose such conditions on
5 transfers of unclaimed benefits to the corporation as
6 the corporation determines are necessary to facilitate
7 administration of this subsection and are not incon-
8 sistent with the purposes of this subsection. Such
9 conditions may include requirements that the trans-
10 ferring plan provide to the corporation specified in-
11 formation and documentation.

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

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

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

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

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

10 “(B) such benefits shall—

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

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

17 “(I) in an amount based on the
18 designated benefit and the assump-
19 tions prescribed by the corporation at
20 the time that the corporation received
21 the benefit, and

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

24 “(5) NOTICE.—Any transfer of unclaimed bene-
25 fits of a participant or beneficiary to the corporation

1 pursuant to this subsection may occur only after
2 reasonable advance notice of such transfer is pro-
3 vided by the plan administrator to the participant or
4 beneficiary. The plan administrator shall also pro-
5 vide to the participant or beneficiary notice of any
6 such transfer not later than 30 days after the date
7 of the transfer. Notice mailed to the last known ad-
8 dress of the participant or beneficiary shall be treat-
9 ed as a notice to the participant or beneficiary for
10 purposes of this paragraph. Any such notice shall in-
11 clude information regarding procedures for obtaining
12 the distribution of benefits from the corporation in
13 accordance with paragraph (4).

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

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

19 “(ii) in the case of an unclaimed benefit to
20 which section 401(a)(31)(B) of the Internal
21 Revenue Code of 1986 applies (other than an
22 unclaimed benefit of a missing participant),
23 which has terminated or is in the process of ter-
24 minating, and

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

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

6 (3) CONFORMING AMENDMENT.—Section
7 4021(b) of such Act (29 U.S.C. 1321(b)(1)) is
8 amended by striking “This” and inserting “Except
9 to the extent provided in subsections (d) and (e) of
10 section 4050, this”.

11 (c) ESCHEAT LAWS SUPERSEDED.—Section 514(b)
12 of the Employee Retirement Income Security Act of 1974
13 (29 U.S.C. 1144 (b) (as amended by this Act) is further
14 amended—

15 (1) by redesignating paragraph (10) as para-
16 graph (11), and

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

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

24 (d) EFFECTIVE DATES AND RELATED RULES.—

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

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

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

11 **SEC. 504. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**
12 **PLANS TO ROTH IRA.**

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

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

19 “(1) to a Roth IRA from another such account,

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

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

1 “(B) in the case of any eligible retirement
2 plan (as defined in section 402(c)(8)(B) other
3 than clauses (i) and (ii) thereof), such rollover
4 contribution meets the requirements of section
5 402(c), 403(b)(8), or 457(e)(16), as applicable.
6 For purposes of section 408(d)(3)(B), there shall be dis-
7 regarded any qualified rollover contribution from an indi-
8 vidual retirement plan (other than a Roth IRA) to a Roth
9 IRA.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 408A(c)(3)(B) of such Code is
12 amended—

13 (A) in the text by striking “individual re-
14 tirement plan” and inserting “an eligible retire-
15 ment plan (as defined by section
16 402(c)(8)(B))”, and

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

19 (2) Section 408A(d)(3) of such Code is amend-
20 ed—

21 (A) in subparagraph (A) by striking “sec-
22 tion 408(d)(3)” inserting “sections 402(c),
23 403(b)(8), 408(d)(3), and 457(e)(16)”,

24 (B) in subparagraph (B) by striking “indi-
25 vidual retirement plan” and inserting “eligible

1 retirement plan (as defined by section
2 402(c)(8)(B))”,

3 (C) in subparagraph (D) by striking “or
4 6047” after “408(i)”,

5 (D) in subparagraph (D) by striking “or
6 both” and inserting “persons subject to section
7 6047(d)(1), or all of the foregoing persons”,
8 and

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

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

14 **SEC. 505. REFORM EXCISE TAX ON EXCESS CONTRIBU-**
15 **TIONS.**

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

19 (1) in paragraph (1) by striking “2½ months”
20 and inserting “6 months”, and

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

23 (b) YEAR OF INCLUSION.—Paragraph (2) of section
24 4972(f) of such Code is amended to read as follows:

1 applicable year (as determined under rules pre-
2 scribed by the Secretary), or

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

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

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

14 “(14) PROTECTION FROM DISQUALIFICATION.—
15 Rules similar to the rules set forth in section
16 401(a)(35) shall apply for purposes of determining
17 whether a cash or deferred arrangement is a quali-
18 fied cash or deferred arrangement.”.

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

22 “(13) CORRECTION OF ERRORS.—For purposes
23 of determining whether the exclusion from gross in-
24 come under paragraph (1) is applicable to an em-
25 ployee for any taxable year, rules similar to the rules

1 set forth in section 401(a)(35) shall apply to any an-
 2 nuity contract purchased under this subsection or
 3 any plan established to meet the requirements of
 4 this subsection.”.

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

8 **SEC. 507. CLARIFICATION OF SUBSTANTIALLY EQUAL PERI-**
 9 **ODIC PAYMENT RULE.**

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

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

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

19 “(ii) a transfer or a rollover from the
 20 qualified retirement plan is made to an-
 21 other qualified retirement plan of all or a
 22 portion of the taxpayer’s benefit under the
 23 transferor plan, and

24 “(iii) distributions from the transferor
 25 and transferee plans would in combination

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

8 “(D) INTEREST RATE.—Any reasonable in-
9 terest rate may be used in determining whether
10 payments are substantially equal under para-
11 graph (2)(A)(iv).”.

12 (b) EFFECTIVE DATES.—

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

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

21 **SEC. 508. CLARIFICATION OF TREATMENT OF DISTRIBUTIONS OF ANNUITY CONTRACTS.**

22 (a) IN GENERAL.—Clause (i) of section 402(e)(4)(D)
23 of the Internal Revenue Code of 1986 is amended by add-
24 ing after “section 401(c)(1).” the following: “A distribu-
25 ing after “section 401(c)(1).” the following: “A distribu-

1 tion of an annuity contract from a trust or annuity plan
 2 referred to in the first sentence of this clause may be
 3 treated as a part of a lump sum distribution.”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 this section shall take effect as if included in section
 6 1401(b)(1) of the Small Business Job Protection Act of
 7 1996.

8 **SEC. 509. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO**
 9 **EXCESSIVE EMPLOYEE REMUNERATION PAID**
 10 **BY CORPORATION AFTER DECLARATION OF**
 11 **BANKRUPTCY.**

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

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

19 “(1) IN GENERAL.—There is hereby imposed a
 20 tax on any person who is a covered employee equal
 21 to 50 percent of any payment of excessive employee
 22 remuneration from a corporation which becomes a
 23 debtor in a title 11 or similar case (as defined in
 24 section 368(a)(3)(A) of this title, but not including
 25 a case under chapter 12 of title 11, United States

1 Code). The tax imposed under subsection (a) shall
2 not apply to the extent that a tax is imposed under
3 this subsection.

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

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

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

18 “(ii) in the case of remuneration to a
19 covered employee of a corporation that is
20 not a publicly held corporation described in
21 section 162(m)(2), that exceeds
22 \$1,000,000, other than remuneration that
23 meets requirements similar to the stand-
24 ards for performance-based compensation
25 under section 162(m)(4)(C).

1 “(B) Such term shall not include—

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

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

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

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

21 “(C) BANKRUPTCY PERIOD.—The term
22 ‘bankruptcy period’ means any time during the
23 period beginning 2 years before the date on
24 which the corporation becomes a debtor de-
25 scribed in paragraph (1) and ending on the

1 date such corporation ceases to be such a debt-
2 or.

3 “(D) COVERED EMPLOYEE.—The term
4 ‘covered employee’—

5 “(i) has the meaning given such term
6 by section 162(m)(3), except that such
7 term shall include an individual who is not
8 a covered employee under section
9 162(m)(3) for the taxable year in which
10 such remuneration is paid but who pre-
11 viously was a covered employee within the
12 meaning of section 162(m)(3) during the
13 bankruptcy period, and

14 “(ii) with respect to an employee of a
15 corporation that is not subject to section
16 162(m), includes any employee of such cor-
17 poration who would be subject to the re-
18 quirement described in section
19 162(m)(3)(B) (as modified by this para-
20 graph) if such corporation were a publicly
21 held corporation (as defined in section
22 162(m)(2)).

23 “(E) 100 PERCENT TAX FOR GROSS UP
24 PAYMENTS.—Subsection (b) shall be applied by
25 substituting ‘100 percent’ for ‘50 percent’ to

1 the extent that any payment is made during the
2 bankruptcy period that is contingent upon a tax
3 being imposed under this section.

4 “(F) CHANGE IN OWNERSHIP CONTIN-
5 GENCY NOT TO APPLY.—Subsection (b) shall be
6 applied without regard to clause (i) of section
7 280G(b)(2)(A).”.

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

13 **SEC. 510. DIFFERENTIAL PAY.**

14 (a) INCOME TAX WITHHOLDING.—Section 3401 of
15 the Internal Revenue Code of 1986 (relating to defini-
16 tions) is amended by adding at the end the following new
17 subsection:

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

20 “(1) IN GENERAL.—For purposes of subsection
21 (a), any differential way payment shall be treated as
22 a payment of wages by an employer to an employee.

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

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

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

10 (b) RETIREMENT PLANS.—

11 (1) IN GENERAL.—Section 414(u) of the Inter-
12 nal Revenue Code of 1986 (relating to special rules
13 relating to veterans’ reemployment rights under
14 USERRA) is amended by adding at the end the fol-
15 lowing new paragraph:

16 “(11) TREATMENT OF DIFFERENTIAL WAGE
17 PAYMENTS.—

18 “(A) IN GENERAL.—Except as provided in
19 this paragraph, for purposes of applying this
20 title to a plan to which this subsection ap-
21 plies—

22 “(i) an individual receiving a differen-
23 tial wage payment shall be treated as an
24 employee of the employer making the pay-
25 ment,

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

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

8 “(B) SPECIAL RULE FOR DISTRIBUTIONS.—
9

10 “(i) IN GENERAL.—Notwithstanding
11 subparagraph (A)(i), for purposes of sub-
12 section (w)(1)(D), an individual shall be
13 treated as having been severed from em-
14 ployment during any period the individual
15 is performing service in the uniformed
16 services described in section 3401(i)(2)(A).

17 “(ii) LIMITATION.—If an individual
18 elects to receive a distribution by reason of
19 clause (i), the plan shall provide that the
20 individual may not make an elective defer-
21 ral or employee contribution during the 6-
22 month period beginning on the date of the
23 distribution.

24 “(C) NONDISCRIMINATION REQUIRE-
25 MENT.—Subparagraph (A)(iii) shall apply only

1 if all employees of an employer (as determined
2 under subsections (b), (c), (m), and (o)) per-
3 forming service in the uniformed services de-
4 scribed in section 3401(i)(2)(A) are entitled to
5 receive differential wage payments on reason-
6 ably equivalent terms and, if eligible to partici-
7 pate in a plan maintained by the employer, to
8 have contributions made to such plan based on
9 the payments on reasonably equivalent terms.
10 For purposes of applying this subparagraph,
11 the provisions of paragraphs (3), (4), and (5) of
12 section 410(b) shall apply.

13 “(D) DIFFERENTIAL WAGE PAYMENT.—
14 For purposes of this paragraph, the term ‘dif-
15 ferential wage payment’ has the meaning given
16 such term by section 3401(i)(2).”.

17 (2) CONFORMING AMENDMENT.—The heading
18 for section 414(u) of such Code is amended by in-
19 sserting “and to Differential Wage Payments to
20 Members on Active Duty” after “USERRA”.

21 (c) DIFFERENTIAL WAGE PAYMENTS TREATED AS
22 COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—
23 Section 219(f)(1) of the Internal Revenue Code of 1986
24 (defining compensation) is amended by adding at the end
25 the following new sentence: “The term ‘compensation’ in-

1 cludes any differential wage payments (as defined in sec-
2 tion 3401(i)(2)).”.

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

6 **SEC. 511. EXCESS BENEFIT PLANS.**

7 (a) **IN GENERAL.**—Section 3(36) of the Employee
8 Retirement Income Security Act of 1974 (29 U.S.C.
9 1002(36)) is amended to read as follows:

10 “(36) The term ‘excess benefit plan’ means a
11 plan, without regard to whether such plan is funded,
12 maintained by an employer solely for the purpose of
13 providing benefits to employees in excess of any limi-
14 tation imposed by section 401(a)(17),
15 401(k)(3)(A)(ii), 401(m)(2), or 415 of the Internal
16 Revenue Code of 1986. To the extent that a sepa-
17 rable part of a plan (as determined by the Secretary
18 of Labor) maintained by an employer is maintained
19 for such purpose, that part shall be treated as a sep-
20 arate plan which is an excess benefit plan.”.

21 (b) **EFFECTIVE DATE.**—The amendment made by
22 this section shall apply to plan years beginning after De-
23 cember 31, 2005.

1 **SEC. 512. TAX TREATMENT OF EMPLOYEE CONTRIBUTIONS**
2 **TO CONTRIBUTORY DEFINED BENEFIT**
3 **PLANS.**

4 (a) AMENDMENT TO THE INTERNAL REVENUE CODE
5 OF 1986.—Subsection (e) of section 402 of the Internal
6 Revenue Code of 1986 (relating to other rules applicable
7 to exempt trusts) is amended by adding at the end the
8 following new paragraph:

9 “(8) MANDATORY EMPLOYEE CONTRIBUTIONS
10 TO DEFINED BENEFIT PLANS.—

11 “(A) IN GENERAL.—Qualified mandatory
12 employee contributions shall not be includible in
13 gross income for the taxable year of such con-
14 tribution.

15 “(B) QUALIFIED MANDATORY EMPLOYEE
16 CONTRIBUTIONS.—For purposes of subpara-
17 graph (A), the term ‘qualified mandatory em-
18 ployee contributions’ means employee contribu-
19 tions made pursuant to the terms of a defined
20 benefit plan described in subparagraph (C) in
21 effect on January 1, 2003 (determined without
22 regard to any plan amendment made after such
23 date), which—

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

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

4 “(C) DEFINED BENEFIT PLAN DE-
5 SCRIBED.—For purposes of subparagraph (B),
6 a defined benefit plan is described in this sub-
7 paragraph if such plan—

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

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

14 “(iii) does not provide for employee
15 contributions with respect to which a sepa-
16 rate account is maintained and treated as
17 a defined contribution plan under section
18 414(k), and

19 “(iv) is not a governmental plan
20 (within the meaning of section 414(d)).”.

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

1 inserting after paragraph (21) the following new para-
2 graph:

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

9 (c) EFFECTIVE DATE.—The amendment made by
10 this section shall apply to contributions made in years be-
11 ginning after December 31, 2005.

12 **SEC. 513. PROTECTING OLDER, LONGER SERVICE PARTICI-**
13 **PANTS.**

14 (a) PROTECTION OF OLDER, LONGER SERVICE PAR-
15 TICIPANTS IN DEFINED BENEFIT PLANS.—

16 (1) Not later than one year after the date of
17 the enactment of this Act, the Secretary of the
18 Treasury shall amend section 1.401(a)(4)–4 of the
19 Treasury Regulations (as in effect on the date of the
20 enactment of this Act) to permit a plan to provide
21 benefits, rights, and features to a closed class of
22 grandfathered participants, provided that such class
23 of participants satisfies the requirements of such
24 section as of the date that the class of participants
25 was closed. Such section as amended shall ensure

1 that participants who have been grandfathered
2 under a former defined benefit plan formula may
3 continue to receive all benefits, rights, and features
4 under that formula, including early retirement bene-
5 fits.

6 (2) Not later than one year after the date of
7 the enactment of this Act, the Secretary of the
8 Treasury shall amend section 1.401(a)(4)–
9 8(b)(1)(iii)(D) of the Treasury Regulations (as in ef-
10 fect on the date of the enactment of this Act) to per-
11 mit a defined contribution plan to provide make
12 whole contributions to a closed class of participants
13 whose defined benefit plan accruals have been re-
14 duced or eliminated, provided that such class of par-
15 ticipants satisfies section 410(b)(2)(A)(i) of the In-
16 ternal Revenue Code of 1986 as of the date that the
17 class of participants was closed.

18 (b) EFFECTIVE DATE.—This provisions of this sec-
19 tion shall take effect on the date of the enactment of this
20 Act.

21 **SEC. 514. CLARIFICATION REGARDING ELECTIVE DEFER-**
22 **RALS.**

23 (a) IN GENERAL.—Not later than 6 months after the
24 date of enactment of this Act, the Secretary of the Treas-

1 ury shall issue rules clarifying that employees who have
2 had a severance from employment may make—

3 (1) elective deferrals described in section
4 402(g)(3)(A), (B), or (C) of the Internal Revenue
5 Code of 1986 (other than elective deferrals under
6 section 401(k)(11) of such Code),

7 (2) elective contributions under an eligible de-
8 ferred compensation plan described in section 457(b)
9 of such Code, and

10 (3) to the extent provided by the Secretary,
11 elective deferrals described in section 402(g)(3)(D)
12 or 401(k)(11) of such Code.

13 Such rules shall only permit such contributions or defer-
14 rals with respect to payments of bona fide accumulated
15 sick leave, accumulated vacation pay, severance, or back
16 pay. The Secretary may apply such other conditions on
17 such contributions or deferrals as are necessary or appro-
18 priate to carry out the purposes of this section.

19 (b) TREATMENT OF DEFERRALS.—Except as other-
20 wise determined by the Secretary to be necessary to carry
21 out the purposes of this section, the rules described in sub-
22 section (a) shall provide that the contributions or deferrals
23 shall, for purposes of section 457 of such Code and sub-
24 chapter D of chapter 1 of subtitle A of such Code, be

1 treated as contributions or deferrals made on behalf of ac-
2 tive employees, not on behalf of former employees.

3 (c) EFFECTIVE DATE.—The provisions of this section
4 shall take effect on the date of enactment of this Act.

5 **SEC. 515. REFORM OF THE MINIMUM PARTICIPATION RULE.**

6 (a) IN GENERAL.—Subparagraph (I) of section
7 401(a)(26) of the Internal Revenue Code of 1986 (relating
8 to additional participation requirements) is amended by
9 adding at the end the following: “Not later than December
10 31, 2006, the Secretary shall issue final regulations under
11 which this paragraph may be applied separately to bona
12 fide separate subsidiaries or divisions.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall take effect on the date of enactment
15 of this Act.

16 **SEC. 516. REPEAL OF OPTIONAL TREATMENT OF ELECTIVE**
17 **DEFERRALS AS ROTH CONTRIBUTIONS.**

18 (a) IN GENERAL.—Section 402A of the Internal Rev-
19 enue Code of 1986 (relating to optional treatment of elec-
20 tive deferrals as Roth contributions) is hereby repealed
21 and the table of sections for part I of subchapter D of
22 chapter 1 of such Code is amended by striking the item
23 relating to section 402A.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 402(g)(1)(A) of such Code is
2 amended by striking the last sentence.

3 (2) Section 402(c)(8)(B) of such Code is
4 amended by striking the last sentence.

5 (3) Section 6051(a)(8) of such Code is amended
6 by striking “, including the amount of designated
7 Roth contributions (as defined in section 402A)”.

8 (4) Section 6047 of such Code is amended by
9 striking subsection (f) and redesignating subsection
10 (g) as subsection (f).

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

14 **TITLE VI—IMPROVEMENTS IN**
15 **PENSION SECURITY**

16 **SEC. 601. PERIODIC PENSION BENEFITS STATEMENTS.**

17 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
18 INCOME SECURITY ACT OF 1974.—

19 (1) REQUIREMENTS.—

20 (A) IN GENERAL.—Section 105(a) of the
21 Employee Retirement Income Security Act of
22 1974 (29 U.S.C. 1025(a)) is amended to read
23 as follows:

24 “(a)(1)(A) The administrator of an individual ac-
25 count plan shall furnish a pension benefit statement—

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

2 “(ii) to each plan beneficiary upon written re-
3 quest, and

4 “(iii) in the case of an applicable individual ac-
5 count plan, to each individual who is a plan partici-
6 pant or beneficiary and who has a right to direct in-
7 vestments, at least quarterly.

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

10 “(i) at least once every 3 years to each partici-
11 pant with a nonforfeitable accrued benefit who is
12 employed by the employer maintaining the plan at
13 the time the statement is furnished to participants,
14 and

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

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

21 “(2) A pension benefit statement under paragraph
22 (1)—

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

25 “(i) the total benefits accrued, and

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

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

6 “(C) may be provided in written form or in
7 electronic or other appropriate form to the extent
8 that such form is reasonably accessible to the recipi-
9 ent.

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

21 “(B) The Secretary may provide that years in which
22 no employee or former employee benefits (within the
23 meaning of section 410(b) of the Internal Revenue Code
24 of 1986) under the plan need not be taken into account

1 in determining the 3-year period under paragraph
2 (1)(B)(i).”.

3 (B) CONFORMING AMENDMENTS.—

4 (i) Section 105 of the Employee Re-
5 tirement Income Security Act of 1974 (29
6 U.S.C. 1025) is amended by striking sub-
7 section (d).

8 (ii) Section 105(b) of such Act (29
9 U.S.C. 1025(b)) is amended to read as fol-
10 lows:

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

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

24 “(d)(1) The statements required to be provided at
25 least quarterly under subsection (a)(1)(A)(iii) in the case

1 of applicable individual account plans shall include (to-
2 gether with the information required in subsection (a)) the
3 following:

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

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

17 “(C) an explanation, written in a manner cal-
18 culated to be understood by the average plan partici-
19 pant, of the importance, for the long-term retire-
20 ment security of participants and beneficiaries, of a
21 well-balanced and diversified investment portfolio,
22 including a discussion of the risk of holding more
23 than 25 percent of a portfolio in the security of any
24 one entity, such as employer securities.

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

3 (3) DEFINITION OF APPLICABLE INDIVIDUAL
4 ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.
5 1002) is amended by adding at the end the following
6 new paragraph:

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

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

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

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

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

4 “(ii) the plan meets the minimum coverage re-
5 quirements of section 410(b) of the Internal Rev-
6 enue Code of 1986 (as in effect on the date of the
7 enactment of this paragraph) without being com-
8 bined with any other plan of the business that covers
9 the employees of the business;

10 “(iii) the plan does not provide benefits to any-
11 one except the individual (and the individual’s
12 spouse) or the partners (and their spouses);

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

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

19 (4) CIVIL PENALTIES FOR FAILURE TO PRO-
20 VIDE QUARTERLY BENEFIT STATEMENTS.—Section
21 502 of such Act (29 U.S.C. 1132) is amended—

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

24 (B) by redesignating paragraph (8) of sub-
25 section (c) as paragraph (9); and

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

3 “(8) The Secretary may assess a civil penalty against
4 any plan administrator of up to \$1,000 a day for each
5 day on which the plan administrator has failed to comply
6 with the requirements of clause (iii) of section
7 105(a)(1)(A) and has not corrected such failure by pro-
8 viding the required pension benefit statements to the af-
9 fected participants and beneficiaries.”.

10 (5) MODEL STATEMENTS.—The Secretary of
11 Labor shall, not later than 180 days after the date
12 of the enactment of this Act, issue initial guidance
13 and a model benefit statement, written in a manner
14 calculated to be understood by the average plan par-
15 ticipant, that may be used by plan administrators in
16 complying with the requirements of section 105 of
17 the Employee Retirement Income Security Act of
18 1974. Not later than 75 days after the date of the
19 enactment of this Act, the Secretary shall promul-
20 gate interim final rules necessary to carry out the
21 amendments made by this subsection.

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

24 (1) PROVISION OF INVESTMENT EDUCATION
25 NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—

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

4 “(aa) PROVISION OF INVESTMENT EDUCATION NO-
5 TICES TO PARTICIPANTS IN CERTAIN PLANS.—

6 “(1) IN GENERAL.—The plan administrator of
7 an applicable pension plan shall provide to each ap-
8 plicable individual an investment education notice
9 described in paragraph (2) at the time of the enroll-
10 ment of the applicable individual in the plan and not
11 less often than annually thereafter.

12 “(2) INVESTMENT EDUCATION NOTICE.—An in-
13 vestment education notice is described in this para-
14 graph if such notice contains—

15 “(A) an explanation, for the long-term re-
16 tirement security of participants and bene-
17 ficiaries, of generally accepted investment prin-
18 ciples, including principles of risk management
19 and diversification, and

20 “(B) a discussion of the risk of holding
21 substantial portions of a portfolio in the secu-
22 rity of any one entity, such as employer securi-
23 ties.

24 “(3) UNDERSTANDABILITY.—Each notice re-
25 quired by paragraph (1) shall be written in a man-

1 ner calculated to be understood by the average plan
2 participant and shall provide sufficient information
3 (as determined in accordance with guidance provided
4 by the Secretary) to allow recipients to understand
5 such notice.

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

12 “(5) DEFINITIONS.—For purposes of this sub-
13 section—

14 “(A) APPLICABLE INDIVIDUAL.—The term
15 ‘applicable individual’ means—

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

18 “(ii) any beneficiary who is an alter-
19 nate payee (within the meaning of section
20 414(p)(8)) under a qualified domestic rela-
21 tions order (within the meaning of section
22 414(p)(1)(A)), and

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

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

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

5 “(ii) an eligible deferred compensation
6 plan (as defined in section 457(b)) of an
7 eligible employer described in section
8 457(e)(1)(A),

9 which permits any participant to direct the in-
10 vestment of some or all of his account in the
11 plan or under which the accrued benefit of any
12 participant depends in whole or in part on hy-
13 pothetical investments directed by the partici-
14 pant. Such term shall not include a one-partici-
15 pant retirement plan or a plan to which section
16 105 of the Employee Retirement Income Secu-
17 rity Act of 1974 applies.

18 “(C) ONE-PARTICIPANT RETIREMENT
19 PLAN DEFINED.—The term ‘one-participant re-
20 tirement plan’ means a retirement plan with re-
21 spect to which the following requirements are
22 met:

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

1 “(I) the plan covered only one in-
2 dividual (or the individual and the in-
3 dividual’s spouse) and the individual
4 owned 100 percent of the plan spon-
5 sor (whether or not incorporated), or

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

9 “(ii) the plan meets the minimum cov-
10 erage requirements of 410(b) without
11 being combined with any other plan of the
12 business that covers the employees of the
13 business;

14 “(iii) the plan does not provide bene-
15 fits to anyone except the individual (and
16 the individual’s spouse) or the partners
17 (and their spouses);

18 “(iv) the plan does not cover a busi-
19 ness that is a member of an affiliated serv-
20 ice group, a controlled group of corpora-
21 tions, or a group of businesses under com-
22 mon control; and

23 “(v) the plan does not cover a busi-
24 ness that leases employees.

1 “(6) CROSS REFERENCE.—For provisions relat-
2 ing to penalty for failure to provide the notice re-
3 quired by this section, see section 6652(m).”.

4 (2) PENALTY FOR FAILURE TO PROVIDE NO-
5 TICE.—Section 6652 of such Code (relating to fail-
6 ure to file certain information returns, registration
7 statements, etc.) is amended by redesignating sub-
8 section (m) as subsection (n) and by inserting after
9 subsection (l) the following new subsection:

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

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

3 (a) IN GENERAL.—Section 404(c) of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C.
5 1104(c)) is amended by adding at the end the following
6 new paragraph:

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

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

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

1 “(ii) has provided the notice required under sec-
2 tion 101(i)(2), and

3 “(iii) has acted in accordance with the require-
4 ments of subsection (a) in determining whether to
5 enter into the blackout period.

6 “(C) If a blackout period arises in connection with
7 a change in the investment options offered under the plan,
8 a participant or beneficiary shall be deemed to have exer-
9 cised control over the assets in his or her account prior
10 to the blackout period, if, after reasonable notice of the
11 change in investment options is given to such participant
12 or beneficiary before such blackout period, assets in the
13 account of the participant or beneficiary are transferred—

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

17 “(ii) in any case in which there is no such elec-
18 tion, in the manner set forth in such notice.

19 “(D) Any imposition of any limitation or restriction
20 that may govern the frequency of transfers between invest-
21 ment vehicles shall not be treated as the imposition of a
22 blackout period to the extent such limitation or restriction
23 is disclosed to participants or beneficiaries through the
24 summary plan description or materials describing specific
25 investment alternatives under the plan.

1 “(E) For purposes of this paragraph, the term ‘black-
2 out period’ has the meaning given such term by section
3 101(i)(7).”.

4 (b) GUIDANCE.—The Secretary of Labor shall, on or
5 before December 31, 2006, issue interim final regulations
6 providing guidance on how plan sponsors or any other af-
7 fected fiduciaries can satisfy their fiduciary responsibilities
8 during any blackout period during which the ability of a
9 participant or beneficiary to direct the investment of as-
10 sets in his or her individual account is suspended.

11 **SEC. 603. DIVERSIFICATION REQUIREMENTS FOR DEFINED**
12 **CONTRIBUTION PLANS THAT HOLD EM-**
13 **PLOYER SECURITIES.**

14 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
15 INCOME SECURITY ACT OF 1974.—Section 204 of the
16 Employee Retirement Income Security Act of 1974 (29
17 U.S.C. 1054) is amended—

18 (1) by redesignating subsection (j) as sub-
19 section (k); and

20 (2) by inserting after subsection (i) the fol-
21 lowing new subsection:

22 “(j) DIVERSIFICATION REQUIREMENTS FOR INDI-
23 VIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURITIES.—
24 RITIES.—

1 “(1) IN GENERAL.—An applicable individual ac-
2 count plan shall meet the requirements of para-
3 graphs (2) and (3).

4 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
5 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-
6 TIES.—In the case of the portion of the account at-
7 tributable to employee contributions and elective de-
8 ferrals which is invested in employer securities, a
9 plan meets the requirements of this paragraph if
10 each applicable individual may elect to direct the
11 plan to divest any such securities in the individual’s
12 account and to reinvest an equivalent amount in
13 other investment options which meet the require-
14 ments of paragraph (4).

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

17 “(A) IN GENERAL.—In the case of the por-
18 tion of the account attributable to employer
19 contributions (other than elective deferrals to
20 which paragraph (2) applies) which is invested
21 in employer securities, a plan meets the require-
22 ments of this paragraph if, under the plan—

23 “(i) each applicable individual with a
24 benefit based on 3 years of service may
25 elect to direct the plan to divest any such

1 securities in the individual's account and
2 to reinvest an equivalent amount in other
3 investment options which meet the require-
4 ments of paragraph (4), or

5 “(ii) with respect to any employer se-
6 curity allocated to an applicable individ-
7 ual's account during any plan year, such
8 applicable individual may elect to direct
9 the plan to divest such employer security
10 after a date which is not later than 3 years
11 after the end of such plan year and to re-
12 invest an equivalent amount in other in-
13 vestment options which meet the require-
14 ments of paragraph (4).

15 “(B) APPLICABLE INDIVIDUAL WITH BEN-
16 EFIT BASED ON 3 YEARS OF SERVICE.—For
17 purposes of subparagraph (A), an applicable in-
18 dividual has a benefit based on 3 years of serv-
19 ice if such individual would be an applicable in-
20 dividual if only participants in the plan who
21 have completed at least 3 years of service (as
22 determined under section 203(b)) were referred
23 to in paragraph (5)(B)(i).

24 “(4) INVESTMENT OPTIONS.—The requirements
25 of this paragraph are met if—

1 “(A) the plan offers not less than 3 invest-
2 ment options, other than employer securities, to
3 which an applicable individual may direct the
4 proceeds from the divestment of employer secu-
5 rities pursuant to this subsection, each of which
6 is diversified and has materially different risk
7 and return characteristics, and

8 “(B) the plan permits the applicable indi-
9 vidual to choose from any of the investment op-
10 tions made available under the plan to which
11 such proceeds may be so directed, subject to
12 such restrictions as may be provided by the
13 plan limiting such choice to periodic, reasonable
14 opportunities occurring no less frequently than
15 on a quarterly basis.

16 “(5) DEFINITIONS AND RULES.—For purposes
17 of this subsection—

18 “(A) APPLICABLE INDIVIDUAL ACCOUNT
19 PLAN.—The term ‘applicable individual account
20 plan’ means any individual account plan, except
21 that such term does not include an employee
22 stock ownership plan (within the meaning of
23 section 4975(e)(7) of the Internal Revenue
24 Code of 1986) unless there are any contribu-
25 tions to such plan (or earnings thereon) held

1 within such plan that are subject to subsection
2 (k)(3) or (m)(2) of section 401 of the Internal
3 Revenue Code of 1986.

4 “(B) APPLICABLE INDIVIDUAL.—The term
5 ‘applicable individual’ means—

6 “(i) any participant in the plan, and

7 “(ii) any beneficiary of a participant
8 referred to in clause (i) who has an ac-
9 count under the plan with respect to which
10 the beneficiary is entitled to exercise the
11 rights of the participant.

12 “(C) ELECTIVE DEFERRAL.—The term
13 ‘elective deferral’ means an employer contribu-
14 tion described in section 402(g)(3)(A) of the In-
15 ternal Revenue Code of 1986 (as in effect on
16 the date of the enactment of this subsection).

17 “(D) EMPLOYER SECURITY.—The term
18 ‘employer security’ shall have the meaning
19 given such term by section 407(d)(1) of this
20 Act (as in effect on the date of the enactment
21 of this subsection).

22 “(E) EMPLOYEE STOCK OWNERSHIP
23 PLAN.—The term ‘employee stock ownership
24 plan’ shall have the same meaning given to
25 such term by section 4975(e)(7) of the Internal

1 Revenue Code of 1986 (as in effect on the date
2 of the enactment of this subsection).

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

6 “(6) EXCEPTION WHERE THERE IS NO READILY
7 TRADABLE STOCK.—This subsection shall not apply
8 if there is no class of stock issued by the employer
9 (or by a corporation which is an affiliate of the em-
10 ployer (as defined in section 407(d)(7))) that is
11 readily tradable on an established securities market
12 (or in such other circumstances as may be deter-
13 mined jointly by the Secretary of Labor and the Sec-
14 retary of the Treasury in regulations).

15 “(7) TRANSITION RULE.—

16 “(A) IN GENERAL.—In the case of any in-
17 dividual account plan which, on the first day of
18 the first plan year to which this subsection ap-
19 plies, holds employer securities of any class that
20 were acquired before such date and on which
21 there is a restriction on diversification otherwise
22 precluded by this subsection, this subsection
23 shall apply to such securities of such class held
24 in any plan year only with respect to the num-
25 ber of such securities equal to the applicable

1 percentage of the total number of such securi-
 2 ties of such class held on such date.

3 “(B) APPLICABLE PERCENTAGE.—For
 4 purposes of subparagraph (A), the applicable
 5 percentage shall be as follows:

“Plan years for which provisions are effective:	Applicable percentage:
1st plan year	20
2nd plan year	40
3rd plan year	60
4th plan year	80
5th plan year or thereafter	100.

6 “(C) ELECTIVE DEFERRALS TREATED AS
 7 SEPARATE PLAN NOT INDIVIDUAL ACCOUNT
 8 PLAN.—For purposes of subparagraph (A), the
 9 applicable percentage shall be 100 percent with
 10 respect to—

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

16 “(ii) such elective deferrals.

17 “(D) COORDINATION WITH PRIOR ELEC-
 18 TIONS.—In any case in which a divestiture of
 19 investment in employer securities of any class
 20 held by an employee stock ownership plan prior
 21 to the effective date of this subsection was un-
 22 dertaken pursuant to other applicable Federal

1 law prior to such date, the applicable percent-
2 age (as determined without regard to this sub-
3 paragraph) in connection with such securities
4 shall be reduced to the extent necessary to ac-
5 count for the amount to which such election ap-
6 plied.

7 “(8) REGULATIONS.—The Secretary of the
8 Treasury shall prescribe regulations under this sub-
9 section in consultation with the Secretary of
10 Labor.”.

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

13 (1) IN GENERAL.—Section 401(a) of the Inter-
14 nal Revenue Code of 1986 (relating to requirements
15 for qualification) is amended by inserting after para-
16 graph (34) the following new paragraph:

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

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

23 “(B) EMPLOYEE CONTRIBUTIONS AND
24 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
25 SECURITIES.—In the case of the portion of the

1 account attributable to employee contributions
2 and elective deferrals which is invested in em-
3 ployer securities, a plan meets the requirements
4 of this subparagraph if each applicable indi-
5 vidual in such plan may elect to direct the plan
6 to divest any such securities in the individual's
7 account and to reinvest an equivalent amount
8 in other investment options which meet the re-
9 quirements of subparagraph (D).

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

12 “(i) IN GENERAL.—In the case of the
13 portion of the account attributable to em-
14 ployer contributions (other than elective
15 deferrals to which subparagraph (B) ap-
16 plies) which is invested in employer securi-
17 ties, a plan meets the requirements of this
18 subparagraph if, under the plan—

19 “(I) each applicable individual
20 with a benefit based on 3 years of
21 service may elect to direct the plan to
22 divest any such securities in the indi-
23 vidual's account and to reinvest an
24 equivalent amount in other investment

1 options which meet the requirements
2 of subparagraph (D), or

3 “(II) with respect to any em-
4 ployer security allocated to an applica-
5 ble individual’s account during any
6 plan year, such applicable individual
7 may elect to direct the plan to divest
8 such employer security after a date
9 which is not later than 3 years after
10 the end of such plan year and to rein-
11 vest an equivalent amount in other in-
12 vestment options which meet the re-
13 quirements of subparagraph (D).

14 “(ii) APPLICABLE INDIVIDUAL WITH
15 BENEFIT BASED ON 3 YEARS OF SERV-
16 ICE.—For purposes of clause (i), an appli-
17 cable individual has a benefit based on 3
18 years of service if such individual would be
19 an applicable individual if only participants
20 in the plan who have completed at least 3
21 years of service (as determined under sec-
22 tion 411(a)) were referred to in subpara-
23 graph (E)(ii)(I).

24 “(D) INVESTMENT OPTIONS.—The require-
25 ments of this subparagraph are met if—

1 “(i) the plan offers not less than 3 in-
2 vestment options, other than employer se-
3 curities, to which an applicable individual
4 may direct the proceeds from the divest-
5 ment of employer securities pursuant to
6 this paragraph, each of which is diversified
7 and has materially different risk and re-
8 turn characteristics, and

9 “(ii) the plan permits the applicable
10 individual to choose from any of the invest-
11 ment options made available under the
12 plan to which such proceeds may be so di-
13 rected, subject to such restrictions as may
14 be provided by the plan limiting such
15 choice to periodic, reasonable opportunities
16 occurring no less frequently than on a
17 quarterly basis.

18 “(E) DEFINITIONS AND RULES.—For pur-
19 poses of this paragraph—

20 “(i) APPLICABLE DEFINED CONTRIBU-
21 TION PLAN.—The term ‘applicable defined
22 contribution plan’ means any defined con-
23 tribution plan, except that such term does
24 not include an employee stock ownership
25 plan (within the meaning of section

1 4975(e)(7)) unless there are any contribu-
2 tions to such plan (or earnings thereon)
3 held within such plan that are subject to
4 subsection (k)(3) or (m)(2).

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

7 “(I) any participant in the plan,

8 and

9 “(II) any beneficiary of a partici-
10 pant referred to in clause (i) who has
11 an account under the plan with re-
12 spect to which the beneficiary is enti-
13 tled to exercise the rights of the par-
14 ticipant.

15 “(iii) ELECTIVE DEFERRAL.—The
16 term ‘elective deferral’ means an employer
17 contribution described in section
18 402(g)(3)(A) (as in effect on the date of
19 the enactment of this paragraph).

20 “(iv) EMPLOYER SECURITY.—The
21 term ‘employer security’ shall have the
22 meaning given such term by section
23 407(d)(1) of the Employee Retirement In-
24 come Security Act of 1974 (as in effect on

1 the date of the enactment of this para-
2 graph).

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

10 “(vi) ELECTIONS.—Elections under
11 this paragraph may be made not less fre-
12 quently than quarterly.

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

21 “(G) TRANSITION RULE.—

22 “(i) IN GENERAL.—In the case of any
23 defined contribution plan which, on the ef-
24 fective date of this subsection, holds em-
25 ployer securities of any class that were ac-

1 required before such date and on which there
 2 is a restriction on diversification otherwise
 3 precluded by this paragraph, this para-
 4 graph shall apply to such securities of such
 5 class held in any plan year only with re-
 6 spect to the number of such securities
 7 equal to the applicable percentage of the
 8 total number of such securities of such
 9 class held on such date.

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

“Plan years for which provisions are effective:	Applicable percentage:
1st plan year	20
2nd plan year	40
3rd plan year	60
4th plan year	80
5th plan year or thereafter	100.

13 “(iii) ELECTIVE DEFERRALS TREATED
 14 AS SEPARATE PLAN NOT INDIVIDUAL AC-
 15 COUNT PLAN.—For purposes of clause (i),
 16 the applicable percentage shall be 100 per-
 17 cent with respect to—

18 “(I) employee contributions to a
 19 plan under which any portion attrib-
 20 utable to elective deferrals is treated
 21 as a separate plan under section
 22 407(b)(2) of the Employee Retirement

1 Income Security Act of 1974 as of the
2 date of the enactment of this para-
3 graph, and

4 “(II) such elective deferrals.

5 “(iv) CONTRIBUTIONS HELD WITHIN
6 AN ESOP.—In the case of contributions
7 (other than elective deferrals and employee
8 contributions) held within an employee
9 stock ownership plan, in the case of the 1st
10 and 2nd plan years referred to in the table
11 in clause (ii), the applicable percentage
12 shall be the greater of the amount deter-
13 mined under clause (ii) or the percentage
14 determined under paragraph (28) (deter-
15 mined as if paragraph (28) applied to a
16 plan described in this paragraph).

17 “(v) COORDINATION WITH PRIOR
18 ELECTIONS UNDER PARAGRAPH (28).—In
19 any case in which a divestiture of invest-
20 ment in employer securities of any class
21 held by an employee stock ownership plan
22 prior to the effective date of this para-
23 graph was undertaken pursuant to an elec-
24 tion under paragraph (28) prior to such
25 date, the applicable percentage (as deter-

1 mined without regard to this clause) in
2 connection with such securities shall be re-
3 duced to the extent necessary to account
4 for the amount to which such election ap-
5 plied.

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

9 (2) CONFORMING AMENDMENTS.—

10 (A) Section 401(a)(28) of such Code is
11 amended by adding at the end the following
12 new subparagraph:

13 “(D) APPLICATION.—This paragraph shall
14 not apply to a plan to which paragraph (35) ap-
15 plies.”.

16 (B) Section 409(h)(7) of such Code is
17 amended by inserting before the period at the
18 end “or subparagraph (B) or (C) of section
19 401(a)(35)”.

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

24 (c) EFFECTIVE DATE.—

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

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

11 **SEC. 604. EFFECTIVE DATES AND RELATED RULES.**

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

17 (b) GENERAL EFFECTIVE DATE.—For purposes of
18 this section, the term “general effective date” means the
19 date which is 1 year after the date of the enactment of
20 this Act.

21 (c) SPECIAL RULE FOR COLLECTIVELY BARGAINED
22 PLANS.—In the case of a plan maintained pursuant to 1
23 or more collective bargaining agreements between em-
24 ployee representatives and 1 or more employers ratified
25 on or before the date of the enactment of this Act, sub-

1 section (a) shall be applied to benefits pursuant to, and
2 individuals covered by, any such agreement by substituting
3 for “the general effective date” the date of the commence-
4 ment of the first plan year beginning on or after the ear-
5 lier of—

6 (1) the later of—

7 (A) the date which is 1 year after the gen-
8 eral effective date, or

9 (B) the date on which the last of such col-
10 lective bargaining agreements terminates (de-
11 termined without regard to any extension there-
12 of after the date of the enactment of this Act),

13 or

14 (2) the date which is 2 years after the general
15 effective date.

16 **TITLE VII—OTHER TAX PROVI-**
17 **SIONS RELATING TO PEN-**
18 **SIONS**

19 **SEC. 701. REPORTING SIMPLIFICATION.**

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

22 (1) IN GENERAL.—The Secretary of the Treas-
23 ury and the Secretary of Labor shall modify the re-
24 quirements for filing annual returns with respect to
25 one-participant retirement plans to ensure that such

1 plans with assets of \$250,000 or less as of the close
2 of the plan year need not file a return for that year.

3 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
4 FINED.—For purposes of this subsection, the term
5 “one-participant retirement plan” means a retire-
6 ment plan with respect to which the following re-
7 quirements are met:

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

9 (i) the plan covered only one indi-
10 vidual (or the individual and the individ-
11 ual’s spouse) and the individual owned 100
12 percent of the plan sponsor (whether or
13 not incorporated), or

14 (ii) the plan covered only one or more
15 partners (or partners and their spouses) in
16 the plan sponsor;

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

22 (C) the plan does not provide benefits to
23 anyone except the individual (and the individ-
24 ual’s spouse) or the partners (and their
25 spouses);

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

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

7 (3) OTHER DEFINITIONS.—Terms used in para-
8 graph (2) which are also used in section 414 of the
9 Internal Revenue Code of 1986 shall have the re-
10 spective meanings given such terms by such section.

11 (4) EFFECTIVE DATE.—The provisions of this
12 subsection shall apply to plan years beginning on or
13 after January 1, 2005.

14 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
15 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
16 of plan years beginning after December 31, 2006, the Sec-
17 retary of the Treasury and the Secretary of Labor shall
18 provide for the filing of a simplified annual return for any
19 retirement plan which covers less than 25 employees on
20 the first day of a plan year and which meets the require-
21 ments described in subparagraphs (B), (D), and (E) of
22 subsection (a)(2).

1 **SEC. 702. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**
2 **ANCE RESOLUTION SYSTEM.**

3 The Secretary of the Treasury shall continue to up-
4 date and improve the Employee Plans Compliance Resolu-
5 tion System (or any successor program) giving special at-
6 tention to—

7 (1) increasing the awareness and knowledge of
8 small employers concerning the availability and use
9 of the program;

10 (2) taking into account special concerns and
11 circumstances that small employers face with respect
12 to compliance and correction of compliance failures;

13 (3) extending the duration of the self-correction
14 period under the Self-Correction Program for signifi-
15 cant compliance failures;

16 (4) expanding the availability to correct insig-
17 nificant compliance failures under the Self-Correc-
18 tion Program during audit; and

19 (5) assuring that any tax, penalty, or sanction
20 that is imposed by reason of a compliance failure is
21 not excessive and bears a reasonable relationship to
22 the nature, extent, and severity of the failure.

23 The Secretary of the Treasury shall have full authority
24 to effectuate the foregoing and to implement the Employee
25 Plans Compliance Resolution System (or any successor
26 program) and any other employee plans correction poli-

1 cies, including the authority to waive income, excise, or
2 other taxes to ensure that any tax, penalty, or sanction
3 is not excessive and bears a reasonable relationship to the
4 nature, extent, and severity of the failure.

5 **SEC. 703. EXTENSION OF MORATORIUM ON APPLICATION**
6 **OF CERTAIN NONDISCRIMINATION RULES TO**
7 **ALL GOVERNMENTAL PLANS.**

8 (a) IN GENERAL.—

9 (1) Subparagraph (G) of section 401(a)(5) and
10 subparagraph (H) of section 401(a)(26) of the In-
11 ternal Revenue Code of 1986 are each amended by
12 striking “section 414(d)” and all that follows and
13 inserting “section 414(d).”.

14 (2) Subparagraph (G) of section 401(k)(3) and
15 paragraph (2) of section 1505(d) of the Taxpayer
16 Relief Act of 1997 (26 U.S.C. 401 note) are each
17 amended by striking “maintained by a State or local
18 government or political subdivision thereof (or agen-
19 cy or instrumentality thereof)”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) The heading for subparagraph (G) of sec-
22 tion 401(a)(5) of such Code is amended to read as
23 follows: “GOVERNMENTAL PLANS.—”.

24 (2) The heading for subparagraph (H) of sec-
25 tion 401(a)(26) of such Code is amended to read as

1 follows: “EXCEPTION FOR GOVERNMENTAL PLANS.—
2 ”.

3 (3) Subparagraph (G) of section 401(k)(3) of
4 such Code is amended by inserting “GOVERN-
5 MENTAL PLANS.—” after “(G)”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply to years beginning after December
8 31, 2005.

9 **SEC. 704. NOTICE AND CONSENT PERIOD REGARDING DIS-**
10 **TRIBUTIONS.**

11 (a) EXPANSION OF PERIOD.—

12 (1) AMENDMENT OF INTERNAL REVENUE
13 CODE.—

14 (A) IN GENERAL.—Subparagraph (A) of
15 section 417(a)(6) of the Internal Revenue Code
16 of 1986 is amended by striking “90-day” and
17 inserting “180-day”.

18 (B) MODIFICATION OF REGULATIONS.—

19 The Secretary of the Treasury shall modify the
20 regulations under sections 402(f), 411(a)(11),
21 and 417 of the Internal Revenue Code of 1986
22 to substitute “180 days” for “90 days” each
23 place it appears in Treasury Regulations sec-
24 tions 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-
25 1(b).

1 (2) AMENDMENT OF ERISA.—

2 (A) IN GENERAL.—Section 205(c)(7)(A) of
3 the Employee Retirement Income Security Act
4 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended
5 by striking “90-day” and inserting “180-day”.

6 (B) MODIFICATION OF REGULATIONS.—

7 The Secretary of the Treasury shall modify the
8 regulations under part 2 of subtitle B of title
9 I of the Employee Retirement Income Security
10 Act of 1974 to the extent that they relate to
11 sections 203(e) and 205 of such Act to sub-
12 stitute “180 days” for “90 days” each place it
13 appears.

14 (3) EFFECTIVE DATE.—The amendments made
15 by paragraphs (1)(A) and (2)(A) and the modifica-
16 tions required by paragraphs (1)(B) and (2)(B)
17 shall apply to years beginning after December 31,
18 2005.

19 (b) CONSENT REGULATION INAPPLICABLE TO CER-
20 TAIN DISTRIBUTIONS.—

21 (1) IN GENERAL.—The Secretary of the Treas-
22 ury shall modify the regulations under section
23 411(a)(11) of the Internal Revenue Code of 1986
24 and under section 205 of the Employee Retirement
25 Income Security Act of 1974 to provide that the de-

1 scription of a participant's right, if any, to defer re-
2 ceipt of a distribution shall also describe the con-
3 sequences of failing to defer such receipt.

4 (2) EFFECTIVE DATE.—

5 (A) IN GENERAL.—The modifications re-
6 quired by paragraph (1) shall apply to years be-
7 ginning after December 31, 2005.

8 (B) REASONABLE NOTICE.—In the case of
9 any description of such consequences made be-
10 fore the date that is 90 days after the date on
11 which the Secretary of the Treasury issues a
12 safe harbor description under paragraph (1), a
13 plan shall not be treated as failing to satisfy the
14 requirements of section 411(a)(11) of such
15 Code or section 205 of such Act by reason of
16 the failure to provide the information required
17 by the modifications made under paragraph (1)
18 if the Administrator of such plan makes a rea-
19 sonable attempt to comply with such require-
20 ments.

21 **SEC. 705. QUALIFIED GROUP LEGAL SERVICES PLANS.**

22 (a) IN GENERAL.—Subsection (e) of section 120 of
23 the Internal Revenue Code of 1986 is amended to read
24 as follows:

1 “(e) APPLICATION OF SECTION.—This section and
2 section 501(c)(20) shall apply to taxable years begin-
3 ning—

4 “(1) after December 31, 1976, and before July
5 1, 1992, and

6 “(2) after December 31, 2005, and before Jan-
7 uary 1, 2009.”.

8 (b) INCREASE IN MAXIMUM EXCLUSION.—The last
9 sentence of section 120(a) is amended by striking “\$70”
10 and inserting “\$150”.

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

14 **SEC. 706. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**
15 **TIREMENT PLANS FOR CHARITABLE PUR-**
16 **POSES.**

17 (a) IN GENERAL.—Subsection (d) of section 408 of
18 the Internal Revenue Code of 1986 (relating to individual
19 retirement accounts) is amended by adding at the end the
20 following new paragraph:

21 “(8) DISTRIBUTIONS FOR CHARITABLE PUR-
22 POSES.—

23 “(A) IN GENERAL.—No amount shall be
24 includible in gross income by reason of a quali-
25 fied charitable distribution.

1 “(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the
2 term ‘qualified charitable distribution’ means
3 any distribution from an individual retirement
4 plan other than a plan described in subsection
5 (k) or (p) of section 408—
6

7 “(i) which is made on or after the
8 date that the individual for whose benefit
9 the plan is maintained has attained age
10 70½, and

11 “(ii) which is made directly by the
12 trustee—

13 “(I) to an organization described
14 in section 170(c), or

15 “(II) to a split-interest entity.

16 A distribution shall be treated as a qualified
17 charitable distribution only to the extent that
18 the distribution would be includible in gross in-
19 come without regard to subparagraph (A) and,
20 in the case of a distribution to a split-interest
21 entity, only if no person holds an income inter-
22 est in the amounts in the split-interest entity
23 attributable to such distribution other than one
24 or more of the following: the individual for
25 whose benefit such plan is maintained, the

1 spouse of such individual, or any organization
2 described in section 170(e).

3 “(C) CONTRIBUTIONS MUST BE OTHER-
4 WISE DEDUCTIBLE.—For purposes of this para-
5 graph—

6 “(i) DIRECT CONTRIBUTIONS.—A dis-
7 tribution to an organization described in
8 section 170(e) shall be treated as a quali-
9 fied charitable distribution only if a deduc-
10 tion for the entire distribution would be al-
11 lowable under section 170 (determined
12 without regard to subsection (b) thereof
13 and this paragraph).

14 “(ii) SPLIT-INTEREST GIFTS.—A dis-
15 tribution to a split-interest entity shall be
16 treated as a qualified charitable distribu-
17 tion only if a deduction for the entire value
18 of the interest in the distribution for the
19 use of an organization described in section
20 170(e) would be allowable under section
21 170 (determined without regard to sub-
22 section (b) thereof and this paragraph).

23 “(D) APPLICATION OF SECTION 72.—Not-
24 withstanding section 72, in determining the ex-
25 tent to which a distribution is a qualified chari-

1 table distribution, the entire amount of the dis-
2 tribution shall be treated as includible in gross
3 income without regard to subparagraph (A) to
4 the extent that such amount does not exceed
5 the aggregate amount which would have been so
6 includible if all amounts distributed from all in-
7 dividual retirement plans were treated as 1 con-
8 tract under paragraph (2)(A) for purposes of
9 determining the inclusion of such distribution
10 under section 72. Proper adjustments shall be
11 made in applying section 72 to other distribu-
12 tions in such taxable year and subsequent tax-
13 able years.

14 “(E) SPECIAL RULES FOR SPLIT-INTEREST
15 ENTITIES.—

16 “(i) CHARITABLE REMAINDER
17 TRUSTS.—Notwithstanding section 664(b),
18 distributions made from a trust described
19 in subparagraph (G)(i) shall be treated as
20 ordinary income in the hands of the bene-
21 ficiary to whom is paid the annuity de-
22 scribed in section 664(d)(1)(A) or the pay-
23 ment described in section 664(d)(2)(A).

24 “(ii) POOLED INCOME FUNDS.—No
25 amount shall be includible in the gross in-

1 come of a pooled income fund (as defined
2 in subparagraph (G)(ii)) by reason of a
3 qualified charitable distribution to such
4 fund, and all distributions from the fund
5 which are attributable to qualified chari-
6 table distributions shall be treated as ordi-
7 nary income to the beneficiary.

8 “(iii) CHARITABLE GIFT ANNU-
9 ITIES.—Qualified charitable distributions
10 made for a charitable gift annuity shall not
11 be treated as an investment in the con-
12 tract.

13 “(F) DENIAL OF DEDUCTION.—Qualified
14 charitable distributions shall not be taken into
15 account in determining the deduction under sec-
16 tion 170.

17 “(G) SPLIT-INTEREST ENTITY DEFINED.—
18 For purposes of this paragraph, the term ‘split-
19 interest entity’ means—

20 “(i) a charitable remainder annuity
21 trust or a charitable remainder unitrust
22 (as such terms are defined in section
23 664(d)) which must be funded exclusively
24 by qualified charitable distributions,

1 “(ii) a pooled income fund (as defined
2 in section 642(c)(5)), but only if the fund
3 accounts separately for amounts attrib-
4 utable to qualified charitable distributions,
5 and

6 “(iii) a charitable gift annuity (as de-
7 fined in section 501(m)(5)).”.

8 (b) MODIFICATIONS RELATING TO INFORMATION RE-
9 TURNS BY CERTAIN TRUSTS.—

10 (1) RETURNS.—Section 6034 of such Code (re-
11 lating to returns by trusts described in section
12 4947(a)(2) or claiming charitable deductions under
13 section 642(c)) is amended to read as follows:

14 **“SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION**
15 **4947(a)(2) OR CLAIMING CHARITABLE DEDUC-**
16 **TIONS UNDER SECTION 642(c).**

17 “(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—
18 Every trust described in section 4947(a)(2) shall furnish
19 such information with respect to the taxable year as the
20 Secretary may by forms or regulations require.

21 “(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION
22 UNDER SECTION 642(c).—

23 “(1) IN GENERAL.—Every trust not required to
24 file a return under subsection (a) but claiming a de-
25 duction under section 642(c) for the taxable year

1 shall furnish such information with respect to such
2 taxable year as the Secretary may by forms or regu-
3 lations prescribe, including—

4 “(A) the amount of the deduction taken
5 under section 642(c) within such year,

6 “(B) the amount paid out within such year
7 which represents amounts for which deductions
8 under section 642(c) have been taken in prior
9 years,

10 “(C) the amount for which such deductions
11 have been taken in prior years but which has
12 not been paid out at the beginning of such year,

13 “(D) the amount paid out of principal in
14 the current and prior years for the purposes de-
15 scribed in section 642(c),

16 “(E) the total income of the trust within
17 such year and the expenses attributable thereto,
18 and

19 “(F) a balance sheet showing the assets, li-
20 abilities, and net worth of the trust as of the
21 beginning of such year.

22 “(2) EXCEPTIONS.—Paragraph (1) shall not
23 apply to a trust for any taxable year if—

24 “(A) all the net income for such year, de-
25 termined under the applicable principles of the

1 law of trusts, is required to be distributed cur-
2 rently to the beneficiaries, or

3 “(B) the trust is described in section
4 4947(a)(1).”.

5 (2) INCREASE IN PENALTY RELATING TO FIL-
6 ING OF INFORMATION RETURN BY SPLIT-INTEREST
7 TRUSTS.—Paragraph (2) of section 6652(c) of such
8 Code (relating to returns by exempt organizations
9 and by certain trusts) is amended by adding at the
10 end the following new subparagraph:

11 “(C) SPLIT-INTEREST TRUSTS.—In the
12 case of a trust which is required to file a return
13 under section 6034(a), subparagraphs (A) and
14 (B) of this paragraph shall not apply and para-
15 graph (1) shall apply in the same manner as if
16 such return were required under section 6033,
17 except that—

18 “(i) the 5 percent limitation in the
19 second sentence of paragraph (1)(A) shall
20 not apply,

21 “(ii) in the case of any trust with
22 gross income in excess of \$250,000, the
23 first sentence of paragraph (1)(A) shall be
24 applied by substituting ‘\$100’ for ‘\$20’,
25 and the second sentence thereof shall be

1 applied by substituting ‘\$50,000’ for
2 ‘\$10,000’, and

3 “(iii) the third sentence of paragraph
4 (1)(A) shall be disregarded.

5 In addition to any penalty imposed on the trust
6 pursuant to this subparagraph, if the person re-
7 quired to file such return knowingly fails to file
8 the return, such penalty shall also be imposed
9 on such person who shall be personally liable
10 for such penalty.”.

11 (3) CONFIDENTIALITY OF NONCHARITABLE
12 BENEFICIARIES.—Subsection (b) of section 6104 of
13 such Code (relating to inspection of annual informa-
14 tion returns) is amended by adding at the end the
15 following new sentence: “In the case of a trust which
16 is required to file a return under section 6034(a),
17 this subsection shall not apply to information re-
18 garding beneficiaries which are not organizations de-
19 scribed in section 170(c).”.

20 (c) EFFECTIVE DATES.—

21 (1) SUBSECTION (a).—The amendment made by
22 subsection (a) shall apply to distributions made after
23 December 31, 2005.

1 (2) SUBSECTION (b).—The amendments made
2 by subsection (b) shall apply to returns for taxable
3 years beginning after December 31, 2005.

4 **TITLE VIII—MISCELLANEOUS**
5 **PROVISIONS**

6 **SEC. 801. PROVISIONS RELATING TO PLAN AMENDMENTS.**

7 (a) IN GENERAL.—If this section applies to any plan
8 or contract amendment—

9 (1) such plan or contract shall be treated as
10 being operated in accordance with the terms of the
11 plan during the period described in subsection
12 (b)(2)(A), and

13 (2) except as provided by the Secretary of the
14 Treasury, such plan shall not fail to meet the re-
15 quirements of section 411(d)(6) of the Internal Rev-
16 enue Code of 1986 and section 204(g) of the Em-
17 ployee Retirement Income Security Act of 1974 by
18 reason of such amendment.

19 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

20 (1) IN GENERAL.—This section shall apply to
21 any amendment to any plan or annuity contract
22 which is made—

23 (A) pursuant to any amendment made by
24 this Act or title VI of the Economic Growth and
25 Tax Relief Reconciliation Act of 2001, or pur-

1 suant to any regulation issued by the Secretary
2 of the Treasury or the Secretary of Labor
3 under this Act or such title VI, and

4 (B) on or before the last day of the first
5 plan year beginning on or after January 1,
6 2008.

7 In the case of a governmental plan (as defined in
8 section 414(d) of the Internal Revenue Code of
9 1986), this paragraph shall be applied by sub-
10 stituting “2010” for “2008”.

11 (2) CONDITIONS.—This section shall not apply
12 to any amendment unless—

13 (A) during the period—

14 (i) beginning on the date the legisla-
15 tive or regulatory amendment described in
16 paragraph (1)(A) takes effect (or in the
17 case of a plan or contract amendment not
18 required by such legislative or regulatory
19 amendment, the effective date specified by
20 the plan), and

21 (ii) ending on the date described in
22 paragraph (1)(B) (or, if earlier, the date
23 the plan or contract amendment is adopt-
24 ed),

1 the plan or contract is operated as if such plan
2 or contract amendment were in effect; and

3 (B) such plan or contract amendment ap-
4 plies retroactively for such period.

○