

109TH CONGRESS
1ST SESSION

H. R. 3899

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide for the combination of defined benefit plans and deferred compensation arrangements in a single plan, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2005

Mr. ANDREWS (for himself and Mr. NUSSLE) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, 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 Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide for the combination of defined benefit plans and deferred compensation arrangements in a single plan, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Small Employer De-
5 fined Benefit Expansion Act”.

1 **SEC. 2. TREATMENT OF ELIGIBLE COMBINED DEFINED**
2 **BENEFIT PLANS AND QUALIFIED CASH OR**
3 **DEFERRED ARRANGEMENTS.**

4 (a) AMENDMENTS OF ERISA.—

5 (1) IN GENERAL.—Section 210 of the Employee
6 Retirement Income Security Act of 1974 is amended
7 by adding at the end the following new subsection:

8 “(e) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
9 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
10 FERRED ARRANGEMENTS.—

11 “(1) GENERAL RULE.—Except as provided in
12 this subsection, in the case of any defined benefit
13 plan or applicable individual account plan forming a
14 part of an eligible combined plan, the requirements
15 of this Act shall be applied to such defined benefit
16 plan or applicable individual account plan in the
17 same manner as if such plan were not a part of the
18 eligible combined plan.

19 “(2) ELIGIBLE COMBINED PLAN.—For pur-
20 poses of this subsection—

21 “(A) IN GENERAL.—The term ‘eligible
22 combined plan’ means an arrangement—

23 “(i) which consists of a defined ben-
24 efit plan and an applicable individual ac-
25 count plan,

1 “(ii) the assets of which are held in a
2 single trust forming part of the arrange-
3 ment and are clearly identified and allo-
4 cated to the defined benefit plan and the
5 applicable individual account plan to the
6 extent necessary for the separate applica-
7 tion of this Act under paragraph (1), and

8 “(iii) with respect to which the ben-
9 efit, contribution, vesting, and distribution
10 requirements of subparagraphs (B), (C),
11 (D), and (E) are met.

12 “(B) BENEFIT REQUIREMENTS.—

13 “(i) IN GENERAL.—The benefit re-
14 quirements of this subparagraph are met
15 with respect to the defined benefit plan
16 forming part of the eligible combined plan
17 if the accrued benefit of each participant
18 derived from employer contributions, when
19 expressed as an annual retirement benefit,
20 is not less than the applicable percentage
21 of the participant’s final average pay. For
22 purposes of this clause, final average pay
23 shall be determined using the period of
24 consecutive years (not exceeding 5) during

which the participant had the greatest aggregate compensation from the employer.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

“(I) 1 percent multiplied by the number of years of service with the employer, or

“(II) 20 percent.

“(iii) SPECIAL RULE FOR CASH BALANCE PLANS.—

“(I) IN GENERAL.—If the defined benefit plan under clause (i) is a cash balance plan, the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if the employer contribution to the hypothetical account balance expressed as a percentage of the participant’s compensation for the year is equal to the percentage determined in accordance with the following table:

“If the participant’s age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

1 “(II) CASH BALANCE PLAN DE-
2 FINED.—For purposes of subclause
3 (I), a cash balance plan is a defined
4 benefit plan that defines an employ-
5 ee’s benefits by reference to the em-
6 ployee’s hypothetical account. Such
7 hypothetical account is determined by
8 reference, first, to hypothetical con-
9 tribution allocations, and, second, to
10 hypothetical interest credits (on an
11 annual or more frequent basis). The
12 right to future interest credits are de-
13 termined without regard to future
14 service.

15 “(III) NO PREDECESSOR DE-
16 FINED BENEFIT PLAN.—Notwith-
17 standing subclause (I), the require-
18 ments of clause (i) shall not be treat-
19 ed as met if, during the 3-year period
20 immediately preceding the effective
21 date of a cash balance plan meeting
22 the requirements of subclause (I), the
23 employer (or any related employer,
24 within the meaning of subsection (b),
25 (c), (m), or (o) of section 414 of the

1 Internal Revenue Code of 1986),
2 maintained a defined benefit plan that
3 was not a cash balance plan and
4 which benefited any participant who is
5 a participant in the plan which meets
6 the requirements of subclause (I).

7 “(iv) YEARS OF SERVICE.—For pur-
8 poses of this subparagraph, years of serv-
9 ice shall be determined under the rules of
10 paragraphs (1), (2), and (3) of section
11 203(b), except that the plan may not dis-
12 regard any year of service because of a
13 participant making, or failing to make, any
14 elective deferral with respect to the quali-
15 fied cash or deferred arrangement to which
16 subparagraph (C) applies.

17 “(C) CONTRIBUTION REQUIREMENTS.—

18 “(i) IN GENERAL.—The contribution
19 requirements of this subparagraph with re-
20 spect to any applicable individual account
21 plan forming part of an eligible combined
22 plan are met if—

23 “(I) the qualified cash or de-
24 ferred arrangement included in such
25 applicable individual account plan

1 constitutes an automatic contribution
2 arrangement, and

3 “(II) the employer makes match-
4 ing contributions on behalf of each
5 employee eligible to participate in the
6 arrangement in an amount equal to
7 50 percent of the elective contribu-
8 tions of the employee to the extent
9 such elective contributions do not ex-
10 ceed 4 percent of compensation.

11 Rules similar to the rules of clauses (ii)
12 and (iii) of section 401(k)(12)(B) of the
13 Internal Revenue Code of 1986 shall apply
14 of purposes of this clause.

15 “(ii) NONELECTIVE CONTRIBU-
16 TIONS.—An applicable individual account
17 plan shall not be treated as failing to meet
18 the requirements of clause (i) because the
19 employer makes nonelective contributions
20 under the plan but such contributions shall
21 not be taken into account in determining
22 whether the requirements of clause (i)(II)
23 are met.

1 “(D) VESTING REQUIREMENTS.—The vest-
2 ing requirements of this subparagraph are met
3 if—

4 “(i) in the case of a defined benefit
5 plan forming part of an eligible combined
6 plan, an employee who has completed at
7 least 3 years of service has a nonforfeitable
8 right to 100 percent of the employee’s ac-
9 crued benefit under the plan derived from
10 employer contributions, and

11 “(ii) in the case of an applicable indi-
12 vidual account plan forming part of eligible
13 combined plan—

14 “(I) an employee has a non-
15 forfeitable right to any matching con-
16 tribution made under the qualified
17 cash or deferred arrangement included
18 in such plan by an employer with re-
19 spect to any elective contribution, in-
20 cluding matching contributions in ex-
21 cess of the contributions required
22 under subparagraph (C)(i)(II), and

23 “(II) an employee who has com-
24 pleted at least 3 years of service has
25 a nonforfeitable right to 100 percent

1 of the employee's accrued benefit de-
2 rived under the arrangement from
3 nonelective contributions of the em-
4 ployer.

5 For purposes of this subparagraph, the
6 rules of section 203 shall apply to the ex-
7 tent not inconsistent with this subpara-
8 graph.

9 “(E) SPOUSAL CONSENT FOR DISTRIBUTIONS.—The distribution requirements of this
10 subparagraph are met if, in the case of a mar-
11 ried participant, no distribution may be made
12 from the plan without the written consent of
13 the spouse of such participant.

14 “(3) UNIFORM PROVISION OF BENEFITS.—In
15 the case of a defined benefit plan or applicable indi-
16 vidual account plan forming part of an eligible com-
17 bined plan, all benefits, rights, and features must be
18 provided uniformly to all participants.

19 “(4) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

20 “(A) IN GENERAL.—A qualified cash or
21 deferred arrangement shall be treated as an
22 automatic contribution arrangement if the ar-
23 rangement—
24
25

1 “(i) provides that each employee eligi-
2 ble to participate in the arrangement is
3 treated as having elected to have the em-
4 ployer make elective contributions in an
5 amount equal to the specified percentage
6 of the employee’s compensation unless the
7 employee specifically elects not to have
8 such contributions made or to have such
9 contributions made at a different rate or
10 amount, and

11 “(ii) meets the notice requirements
12 under subparagraph (B).

13 “(B) NOTICE REQUIREMENTS.—

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

17 “(ii) REASONABLE PERIOD TO MAKE
18 ELECTION.—The requirements of this
19 clause are met if each employee to whom
20 subparagraph (A)(i) applies—

21 “(I) receives a notice explaining
22 the employee’s right under the ar-
23 rangement to elect not to have elective
24 contributions made on the employee’s
25 behalf or to have the contributions

1 made at a different rate or amount,
2 and

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

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

15 The requirements of clauses (i) and (ii) of sec-
16 tion 401(k)(12)(D) of the Internal Revenue
17 Code of 1986 shall be met with respect to the
18 notices described in clauses (ii) and (iii) of this
19 subparagraph.

20 “(C) SPECIFIED PERCENTAGE.—For pur-
21 poses of this paragraph—

22 “(i) IN GENERAL.—The term ‘speci-
23 fied percentage’ means, with respect to any
24 employee—

1 “(I) 4 percent during the period
 2 ending on the last day of the first
 3 plan year which begins after the date
 4 on which the first elective contribution
 5 described in subparagraph (A)(i) is
 6 made with respect to such employee,
 7 and

8 “(II) in the case of any subse-
 9 quent plan year, the percentage which
 10 applied for the previous plan year in-
 11 creased by one percentage point.

12 “(ii) MAXIMUM PERCENTAGE.—Not-
 13 withstanding clause (i)(II), the specified
 14 percentage shall not exceed 10 percent.

15 “(5) TREATMENT AS SINGLE PLAN FOR RE-
 16 PORTING PURPOSES.—An eligible combined plan
 17 shall be treated as a single plan for purposes of sec-
 18 tion 103(b).

19 “(6) APPLICABLE INDIVIDUAL ACCOUNT
 20 PLAN.—For purposes of this subsection—

21 “(A) IN GENERAL.—The term ‘applicable
 22 individual account plan’ means an individual ac-
 23 count plan which includes a qualified cash or
 24 deferred arrangement.

1 “(B) QUALIFIED CASH OR DEFERRED AR-
2 RANGEMENT.—The term ‘qualified cash or de-
3 ferred arrangement’ has the meaning given
4 such term by section 401(k)(2) of the Internal
5 Revenue Code of 1986.”.

6 (2) PREEMPTION OF STATE LAW.—The amend-
7 ments made by this subsection supersede any provi-
8 sion of a statute, regulation, or rule of a State or
9 political subdivision of a State that would otherwise
10 require an employer to obtain an employee’s consent
11 before making a deduction from the wages of such
12 employee.

13 (3) GUIDELINES FOR MEETING FIDUCIARY RE-
14 QUIREMENTS.—Section 404(a) of the Employee Re-
15 tirement Income Security Act of 1974 (29 U.S.C.
16 1104(a)) is amended by adding at the end the fol-
17 lowing new paragraph:

18 “(3)(A) The Secretary shall prescribe by regulation
19 guidelines for compliance with the requirements of the di-
20 versification requirement of paragraph (1)(C) and the pru-
21 dence requirement (to the extent that it requires diver-
22 sification) of paragraph (1)(B) in the case of automatic
23 enrollment plans. Such guidelines shall consist of criteria
24 for meeting a standard of well-balanced and highly diversi-
25 fied investment of plan assets. Compliance with such

1 guidelines shall be deemed compliance with such require-
2 ments.

3 “(B) The criteria prescribed by the Secretary pursu-
4 ant to subparagraph (A) shall include at least the fol-
5 lowing:

6 “(i) sufficiently limited investment of plan as-
7 sets in securities issued by any single issuer (other
8 than in obligations issued by, or guaranteed as to
9 both principal and interest by, the Government of
10 the United States);

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

21 “(iii) adequate prospects for a reasonable rate
22 of return on the investment, together with adequate
23 assurance against loss of principal and minimization
24 of fees and other associated costs chargeable to par-
25 ticipants.

1 “(C) For purposes of this paragraph, the term ‘auto-
 2 matic enrollment plan’ means any plan which includes an
 3 automatic contribution arrangement (within the meaning
 4 of section 210(e)(3)).”.

5 (4) REDUCED PBGC PREMIUMS FOR CERTAIN
 6 DEFINED BENEFIT PLANS OFFERED WITH CASH OR
 7 DEFERRED ARRANGEMENTS.—

8 (A) REDUCTION IN BASIC PREMIUM FOR
 9 NEW PLANS OF SMALL EMPLOYERS.—Subpara-
 10 graph (A) of section 4006(a)(3) of the Em-
 11 ployee Retirement Income Security Act of 1974
 12 (29 U.S.C. 1306(a)(3)(A)) is amended—

13 (i) in clause (i), by inserting “(except
 14 as provided in clause (iv))” after “\$19” ;

15 (ii) in clause (iii), by striking the pe-
 16 riod at the end and inserting “, and”; and

17 (iii) by adding at the end the fol-
 18 lowing new clause:

19 “(iv) for plan years beginning after December
 20 31, 2005, in the case of a plan which is, for the plan
 21 year, a new cash-or-deferred single-employer plan
 22 maintained by a small employer, \$5 for each indi-
 23 vidual who is a participant in such plan during the
 24 plan year.”.

1 (B) DEFINITIONS.—Section 4006(a)(3) of
2 such Act (29 U.S.C. 1306(a)(3)) is amended by
3 adding at the end the following new subpara-
4 graph:

5 “(G)(i) For purposes of this paragraph, a single-em-
6 ployer plan maintained by a contributing sponsor shall be
7 treated as a new cash-or-deferred single-employer plan for
8 each of its first 5 plan years if—

9 “(I) during the 36-month period ending on the
10 date of the adoption of such plan, the sponsor or
11 any member of such sponsor’s controlled group (or
12 any predecessor of either) did not establish or main-
13 tain a plan to which this title applies with respect
14 to which benefits were accrued for substantially the
15 same employees as are in the new single-employer
16 plan, and

17 “(II) throughout the period beginning with the
18 date of the adoption of the plan and ending with the
19 first date of such plan year, the plan has formed a
20 part of an eligible combined plan (as defined in sec-
21 tion 210(e)(2)(A)).

22 “(ii)(I) For purposes of this paragraph, the term
23 ‘small employer’ for a plan year means an employer which
24 on the first day of the plan year has, in aggregation with

1 all members of the controlled group of such employer, 500
2 or fewer employees.

3 “(II) In the case of a plan maintained by two or more
4 contributing sponsors that are not part of the same con-
5 trolled group, the employees of all contributing sponsors
6 and controlled groups of such sponsors shall be aggregated
7 for purposes of determining whether any contributing
8 sponsor is a small employer.”.

9 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

13 “(w) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
14 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
15 FERRED ARRANGEMENTS.—

16 “(1) GENERAL RULE.—Except as provided in
17 this subsection, in the case of any defined benefit
18 plan or applicable defined contribution plan forming
19 a part of an eligible combined plan, the requirements
20 of this title shall be applied to such defined benefit
21 plan or applicable defined contribution plan in the
22 same manner as if such plan were not a part of the
23 eligible combined plan.

24 “(2) ELIGIBLE COMBINED PLAN.—For pur-
25 poses of this subsection—

1 “(A) IN GENERAL.—The term ‘eligible
2 combined plan’ means a plan—

3 “(i) which consists of a defined ben-
4 efit plan and an applicable defined con-
5 tribution plan,

6 “(ii) the assets of which are held in a
7 single trust forming part of the plan and
8 are clearly identified and allocated to the
9 defined benefit plan and the applicable de-
10 fined contribution plan to the extent nec-
11 essary for the separate application of this
12 title under paragraph (1), and

13 “(iii) with respect to which the ben-
14 efit, contribution, vesting, and distribution
15 requirements of subparagraphs (B), (C),
16 (D), and (E) are met.

17 “(B) BENEFIT REQUIREMENTS.—

18 “(i) IN GENERAL.—The benefit re-
19 quirements of this subparagraph are met
20 with respect to the defined benefit plan
21 forming part of the eligible combined plan
22 if the accrued benefit of each participant
23 derived from employer contributions, when
24 expressed as an annual retirement benefit,
25 is not less than the applicable percentage

1 of the participant's final average pay. For
2 purposes of this clause, final average pay
3 shall be determined using the period of
4 consecutive years (not exceeding 5) during
5 which the participant had the greatest ag-
6 gregate compensation from the employer.

7 “(ii) APPLICABLE PERCENTAGE.—For
8 purposes of clause (i), the applicable per-
9 centage is the lesser of—

10 “(I) 1 percent multiplied by the
11 number of years of service with the
12 employer, or

13 “(II) 20 percent.

14 “(iii) SPECIAL RULE FOR CASH BAL-
15 ANCE PLANS.—

16 “(I) IN GENERAL.—If the de-
17 fined benefit plan under clause (i) is
18 a cash balance plan, the plan shall be
19 treated as meeting the requirements
20 of clause (i) with respect to any plan
21 year if the employer contribution to
22 the hypothetical account balance ex-
23 pressed as a percentage of the partici-
24 pant's compensation for the year is
25 equal to the percentage of compensa-

1 tion determined in accordance with
2 the following table:

“If the participant’s age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

3 “(II) CASH BALANCE PLAN DE-
4 FINED.—For purposes of subclause
5 (I), a cash balance plan is a defined
6 benefit plan that defines an employ-
7 ee’s benefits by reference to the em-
8 ployee’s hypothetical account. Such
9 hypothetical account is determined by
10 reference, first, to hypothetical con-
11 tribution allocations, and, second, to
12 hypothetical interest credits (on an
13 annual or more frequent basis). The
14 right to future interest credits are de-
15 termined without regard to future
16 service.

17 “(III) NO PREDECESSOR DE-
18 FINED BENEFIT PLAN.—Notwith-
19 standing subclause (I), the require-
20 ments of clause (i) shall not be treat-
21 ed as met if, during the 3-year period
22 immediately preceding the effective

1 date of a cash balance plan meeting
2 the requirements of subclause (I), the
3 employer (or any related employer,
4 within the meaning of subsection (b),
5 (c), (m), or (o)), maintained a defined
6 benefit plan that was not a cash bal-
7 ance plan and which benefited any
8 participant who is a participant in the
9 plan which meets the requirements of
10 subclause (I).

11 “(iv) YEARS OF SERVICE.—For pur-
12 poses of this subparagraph, years of serv-
13 ice shall be determined under the rules of
14 paragraphs (4), (5), and (6) of section
15 411(a), except that the plan may not dis-
16 regard any year of service because of a
17 participant making, or failing to make, any
18 elective deferral with respect to the quali-
19 fied cash or deferred arrangement to which
20 subparagraph (C) applies.

21 “(C) CONTRIBUTION REQUIREMENTS.—

22 “(i) IN GENERAL.—The contribution
23 requirements of this subparagraph with re-
24 spect to any applicable defined contribu-

tion plan forming part of an eligible combined plan are met if—

“(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

“(II) the employer makes matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply of purposes of this clause.

“(ii) NONELECTIVE CONTRIBUTIONS.—An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining

1 whether the requirements of clause (i)(II)
2 are met.

3 “(iii) OTHER PLANS AND ARRANGE-
4 MENTS.—An applicable defined contribu-
5 tion plan may not be combined with any
6 other plan for purposes of determining
7 whether the requirements of section
8 401(a)(4) or 410(b) are met.

9 “(D) VESTING REQUIREMENTS.—The vest-
10 ing requirements of this subparagraph are met
11 if—

12 “(i) in the case of a defined benefit
13 plan forming part of an eligible combined
14 plan, an employee who has completed at
15 least 3 years of service has a nonforfeitable
16 right to 100 percent of the employee’s ac-
17 crued benefit under the plan derived from
18 employer contributions, and

19 “(ii) in the case of an applicable de-
20 fined contribution plan forming part of eli-
21 gible combined plan—

22 “(I) an employee has a non-
23 forfeitable right to any matching con-
24 tribution made under the qualified
25 cash or deferred arrangement included

1 in such plan by an employer with re-
2 spect to any elective contribution, in-
3 cluding matching contributions in ex-
4 cess of the contributions required
5 under subparagraph (C)(i)(II), and

6 “(II) an employee who has com-
7 pleted at least 3 years of service has
8 a nonforfeitable right to 100 percent
9 of the employee’s accrued benefit de-
10 rived under the arrangement from
11 nonelective contributions of the em-
12 ployer.

13 For purposes of this subparagraph, the
14 rules of section 411 shall apply to the ex-
15 tent not inconsistent with this subpara-
16 graph.

17 “(E) SPOUSAL CONSENT FOR DISTRIBU-
18 TIONS.—The distribution requirements of this
19 subparagraph are met if, in the case of a mar-
20 ried participant, no distribution may be made
21 from the plan without the written consent of
22 the spouse of such participant.

23 “(3) APPLICATION OF NONDISCRIMINATION
24 RULES.—

1 “(A) UNIFORM PROVISION OF BENE-
2 FITS.—In the case of a defined benefit plan or
3 applicable defined contribution plan forming
4 part of an eligible combined plan, all benefits,
5 rights, and features must be provided uniformly
6 to all participants.

7 “(B) NONDISCRIMINATION REQUIREMENTS
8 FOR QUALIFIED CASH OR DEFERRED ARRANGE-
9 MENT.—

10 “(i) IN GENERAL.—A qualified cash
11 or deferred arrangement which is included
12 in an applicable defined contribution plan
13 forming part of an eligible combined plan
14 shall be treated as meeting the require-
15 ments of section 401(k)(3)(A)(ii) if the re-
16 quirements of paragraph (2)(C) are met
17 with respect to such arrangement.

18 “(ii) MATCHING CONTRIBUTIONS.—In
19 applying section 401(m)(11) to any match-
20 ing contribution with respect to a contribu-
21 tion to which paragraph (2)(C) applies, the
22 contribution requirement of paragraph
23 (2)(C) and the notice requirements of
24 paragraph (5)(B) shall be substituted for
25 the requirements otherwise applicable

1 under clauses (i) and (ii) of section
2 401(m)(11)(A).

3 “(C) REQUIREMENTS MUST BE MET WITH-
4 OUT TAKING INTO ACCOUNT SOCIAL SECURITY
5 AND SIMILAR CONTRIBUTIONS AND BENE-
6 FITS.—The requirements of subparagraphs (B)
7 and (C) of paragraph (2) and subparagraph
8 (B) of this paragraph shall not be treated as
9 being met unless such requirements are met
10 without regard to section 401(l), and, for pur-
11 poses of section 402(l), employer contributions
12 under subparagraphs (B) and (C) of paragraph
13 (2) shall not be taken into account .

14 “(4) SATISFACTION OF TOP-HEAVY RULES.—A
15 defined benefit plan and applicable defined contribu-
16 tion plan forming part of an eligible combined plan
17 for any plan year shall be treated as meeting the re-
18 quirements of section 416 for the plan year.

19 “(5) AUTOMATIC CONTRIBUTION ARRANGE-
20 MENT.—For purposes of this subsection—

21 “(A) IN GENERAL.—A qualified cash or
22 deferred arrangement shall be treated as an
23 automatic contribution arrangement if the ar-
24 rangement—

1 “(i) provides that each employee eligi-
2 ble to participate in the arrangement is
3 treated as having elected to have the em-
4 ployer make elective contributions in an
5 amount equal to the specified percentage
6 of the employee’s compensation unless the
7 employee specifically elects not to have
8 such contributions made or to have such
9 contributions made at a different rate or
10 amount, and

11 “(ii) meets the notice requirements
12 under subparagraph (B).

13 “(B) NOTICE REQUIREMENTS.—

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

17 “(ii) REASONABLE PERIOD TO MAKE
18 ELECTION.—The requirements of this
19 clause are met if each employee to whom
20 subparagraph (A)(i) applies—

21 “(I) receives a notice explaining
22 the employee’s right under the ar-
23 rangement to elect not to have elective
24 contributions made on the employee’s
25 behalf or to have the contributions

1 made at a different rate or amount,
2 and

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

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

15 The requirements of clauses (i) and (ii) of sec-
16 tion 401(k)(12)(D) shall be met with respect to
17 the notices described in clauses (ii) and (iii) of
18 this subparagraph.

19 “(C) SPECIFIED PERCENTAGE.—For pur-
20 poses of this paragraph—

21 “(i) IN GENERAL.—The term ‘speci-
22 fied percentage’ means, with respect to any
23 employee—

24 “(I) 4 percent during the period
25 ending on the last day of the first

1 plan year which begins after the date
 2 on which the first elective contribution
 3 described in subparagraph (A)(i) is
 4 made with respect to such employee,
 5 and

6 “(II) in the case of any subse-
 7 quent plan year, the percentage which
 8 applied for the previous plan year in-
 9 creased by one percentage point.

10 “(ii) MAXIMUM PERCENTAGE.—Not-
 11 withstanding clause (i)(II), the specified
 12 percentage shall not exceed 10 percent.

13 “(6) COORDINATION WITH OTHER REQUIRE-
 14 MENTS.—

15 “(A) TREATMENT OF SEPARATE PLANS.—
 16 Section 414(k) shall not apply to an eligible
 17 combined plan.

18 “(B) REPORTING.—An eligible combined
 19 plan shall be treated as a single plan for pur-
 20 poses of sections 6058 and 6059.

21 “(7) APPLICABLE DEFINED CONTRIBUTION
 22 PLAN.—For purposes of this subsection—

23 “(A) IN GENERAL.—The term ‘applicable
 24 defined contribution plan’ means a defined con-

1 tribution plan which includes a qualified cash or
2 deferred arrangement.

3 “(B) QUALIFIED CASH OR DEFERRED AR-
4 RANGEMENT.—The term ‘qualified cash or de-
5 ferred arrangement’ has the meaning given
6 such term by section 401(k)(2).”.

7 (2) ADDITIONAL ACCRUALS UNDER DEFINED
8 BENEFIT PLAN FORMING PART OF ELIGIBLE COM-
9 BINED PLAN PROVIDED AS MATCHING CONTRIBU-
10 TIONS.—

11 (A) CERTAIN ARRANGEMENTS UNDER DE-
12 FINED BENEFIT PLAN SATISFY DEFINITELY DE-
13 TERMINABLE BENEFIT REQUIREMENT.—Sub-
14 section (a) of section 401 of the Internal Rev-
15 enue Code of 1986 is amended by adding at the
16 end the following new paragraph:

17 “(35) QUALIFIED MATCHING ACCRUAL UNDER
18 ELIGIBLE COMBINED PLAN SATISFIES DEFINITELY
19 DETERMINABLE BENEFIT REQUIREMENT.—A trust
20 forming part of a defined benefit plan which forms
21 part of an eligible combined plan (as defined in sec-
22 tion 414(x)) shall not be treated as failing to con-
23 stitute a qualified trust merely because such plan in-
24 cludes qualified matching accruals (as defined in
25 subsection (m)(12)).”.

1 (B) MATCHING ACCRUALS.—Subsection
 2 (m) of section 401 of such Code is amended by
 3 redesignating paragraph (12) as paragraph
 4 (13) and by inserting after paragraph (11) the
 5 following new paragraph:

6 “(12) SPECIAL RULES RELATING TO QUALIFIED
 7 MATCHING ACCRUALS UNDER A ELIGIBLE COMBINED
 8 PLAN.—For purposes of this section—

9 “(A) QUALIFIED MATCHING ACCRUAL.—
 10 The term ‘qualified matching accrual’ means an
 11 amount funded by an employer in the form of
 12 a benefit accrual under a defined benefit plan
 13 forming part of an eligible combined plan (as
 14 defined in section 414(x)) to match elective de-
 15 ferrals under a qualified cash or deferred ar-
 16 rangement which is part of such eligible com-
 17 bined plan (as so defined) and which meets the
 18 formula requirements of subparagraph (B). The
 19 benefit accrual shall be determined under a
 20 nondiscretionary formula set forth in the de-
 21 fined benefit plan. For purposes of determining
 22 such benefit accrual, the amount of elective de-
 23 ferrals taken into account under such formula
 24 may be limited under the plan.

1 “(B) FORMULA REQUIREMENTS.—A ben-
2 efit accrual meets the requirements of this sub-
3 paragraph if such accrual is a hypothetical con-
4 tribution that is added to a participant’s hypo-
5 thetical account balance, the amount of which is
6 determined, in accordance with the matching
7 accrual formula set forth in the plan, with ref-
8 erence to the amount of the elective deferrals
9 made by the participant for the plan year to a
10 qualified cash or deferred arrangement which is
11 part of the eligible combined plan (as defined in
12 section 414(x)). Matching accruals under the
13 formula may vary with age or other employ-
14 ment-related factors.

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

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

1 “(i) ELECTIVE DEFERRALS AT OR
2 ABOVE MAXIMUM MATCHABLE RATE.—For
3 an employee who makes elective deferrals
4 at or above the maximum matchable rate,
5 the qualified matching benefit accrual for
6 the plan year is a hypothetical allocation
7 under a cash balance plan that equals a
8 percentage (not greater than 4 percent) of
9 compensation (as defined in section
10 414(s)).

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

22 “(iii) MAXIMUM MATCHABLE RATE.—
23 For purposes of this subparagraph, the
24 maximum matchable rate must be a speci-

1 fied percentage of compensation which
2 does not exceed 4 percent.

3 “(iv) CASH BALANCE PLAN DE-
4 FINED.—For purposes of clause (i), a cash
5 balance plan is a defined benefit plan that
6 defines an employee’s benefits by reference
7 to the employee’s hypothetical account.
8 Such hypothetical account is determined by
9 reference, first, to hypothetical contribu-
10 tion allocations, and, second, to hypo-
11 thetical interest credits (on an annual or
12 more frequent basis). The right to future
13 interest credits are determined without re-
14 gard to future service.”.

15 (C) EXCEPTION TO BENEFIT CONTIN-
16 GENCY RULE.—Subparagraph (A) of section
17 401(k)(4) of such Code is amended by inserting
18 “or qualified matching accruals (as defined in
19 subsection (m)(12))” after “section 401(m))”.

20 (D) FORFEITURES BY REASON OF EXCESS
21 DEFERRAL.—Subparagraph (G) of section
22 411(a)(3) of the Code is amended by adding at
23 the end the following: “A rule similar to the
24 rule of the preceding sentence shall apply with

1 respect to qualified matching accruals (as de-
2 fined in section 401(m)(12)).”

3 (E) ACCRUED BENEFIT REQUIREMENT
4 WITH RESPECT TO MATCHING ACCRUALS.—
5 Paragraph (1) of section 411(b) of such Code
6 is amended by adding at the end the following
7 new subparagraph:

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

16 (F) PARTICIPATION REQUIREMENTS WITH
17 RESPECT TO QUALIFIED MATCHING ACCRU-
18 ALS.—Paragraph (26) of section 401(a) of such
19 Code is amended by redesignating subpara-
20 graph (I) as subparagraph (J), and by inserting
21 after subparagraph (H) the following new sub-
22 paragraph:

23 “(I) SPECIAL TESTING RULES FOR QUALI-
24 FIED MATCHING ACCRUALS.—

1 “(i) If an eligible combined plan (as
2 defined in section 414(x)) includes quali-
3 fied matching accruals (as defined in sec-
4 tion 401(m)(12)), the rules in clauses (ii)
5 and (iii) shall apply.

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

24 “(iii) MULTIPLE FORMULAS.—If the
25 defined benefit plan includes one or more

1 benefit formulas in addition to a qualified
2 matching accrual formula, the employer
3 may elect to apply clause (ii) to the quali-
4 fied matching accrual formulas only if the
5 requirements of this paragraph are satis-
6 fied separately with respect to the benefit
7 accruals that are determined without re-
8 gard to the qualified matching accrual for-
9 mula.”.

10 (G) REGULATIONS FOR MEETING NON-
11 DISCRIMINATION REQUIREMENTS.—

12 (i) IN GENERAL.—The Secretary of
13 the Treasury shall prescribe regulations on
14 ways in which qualified matching accruals
15 (as defined by section 401(m)(12) of the
16 the Internal Revenue Code of 1986, as
17 added by this section) that do not satisfy
18 the formula requirements of section
19 401(m)(12)(D) of such Code (as enacted
20 by subsection (b) of this section) can sat-
21 isfy the nondiscrimination requirements of
22 section 401(a)(4) of such Code. The regu-
23 lations may prescribe safe harbor formulas
24 in addition to those prescribed by section
25 401(m)(12)(D).

1 (ii) TEMPORARY AND FINAL FORM.—

2 The Secretary shall prescribe the regula-
 3 tions required by clause (i) in temporary
 4 form not later than 6 months after the ef-
 5 fective date of this section and in final
 6 form not later than 18 months after the
 7 effective date of this section.

8 (H) PLAN YEARS BEGINNING BEFORE
 9 ISSUANCE OF REGULATIONS.—For plan years
 10 beginning prior to the date the regulations de-
 11 scribed in subsection (g) are issued in final
 12 form (and after the effective date of this sec-
 13 tion), a plan’s qualified matching accrual for-
 14 mula must satisfy a reasonable, good faith, in-
 15 terpretation of section 401(a)(4) of such Code.

16 (3) UPDATING DEDUCTION RULES FOR COM-
 17 BINATION OF PLANS.—

18 (A) IN GENERAL.—Subparagraph (C) of
 19 section 404(a)(7) of such Code (relating to limi-
 20 tation on deductions where combination of de-
 21 fined contribution plan and defined benefit
 22 plan) is amended by adding after clause (ii) the
 23 following new clause:

24 “(iii) CERTAIN EXCESS CONTRIBU-
 25 TIONS.—In the case of employer contribu-

tions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions (other than elective deferrals (as defined in section 402(g)(3)) exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.”.

(B) CONFORMING AMENDMENT.—Subparagraph (A) of section 4972(c)(6) of such Code (relating to nondeductible contributions) is amended to read as follows:

“(A) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the sum of—

1 “(i) the amount of contributions de-
2 scribed in section 401(m)(4)(A), plus

3 “(ii) the amount of contributions de-
4 scribed in section 402(g)(3)(A), or”.

5 (c) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as otherwise pro-
7 vided in this subsection, the amendments made by
8 this section shall apply to plan years beginning after
9 December 31, 2006.

10 (2) PBGC PREMIUMS.—The amendments made
11 by subsection (a)(4) shall apply to plans first effec-
12 tive after December 31, 2005.

13 (3) DEDUCTION RULES FOR COMBINATION OF
14 PLANS.—The amendments made by subsection
15 (b)(3) shall apply to contributions for taxable years
16 beginning after December 31, 2005.

17 (4) CASH BALANCE RULES.—Section
18 210(e)(2)(B)(iii) of the Employee Retirement In-
19 come Security Act of 1974 (as added by this sec-
20 tion), section 414(w)(2)(B)(iii) of the Internal Rev-
21 enue Code of 1986 (as so added), and each of the
22 amendments made by subsection (b)(2) shall not
23 apply to plan years beginning before the effective
24 date of an Act which provides for clarification of the
25 application of section 204(b)(1)(H) of such Act, sec-

1 tion 411(b)(1)(H) of such Code, and section 4 of the
2 Age Discrimination in Employment Act of 1967 (29
3 U.S.C. 623) to cash balance plans.

○