

109TH CONGRESS  
2D SESSION

# H. R. 4884

To amend the Internal Revenue Code of 1986 to include in gross income the value of assets set aside under an employer nonqualified deferred compensation plan when the employer defined benefit plan has a funding target attainment percentage of less than 80 percent.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2006

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

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## A BILL

To amend the Internal Revenue Code of 1986 to include in gross income the value of assets set aside under an employer nonqualified deferred compensation plan when the employer defined benefit plan has a funding target attainment percentage of less than 80 percent.

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 “No Special Deals for  
5       Executives Act of 2006”.

1 **SEC. 2. TREATMENT OF NONQUALIFIED DEFERRED COM-**  
 2 **PENSATION PLANS WHEN EMPLOYER DE-**  
 3 **FINED BENEFIT PLAN HAS FUNDING TARGET**  
 4 **ATTAINMENT PERCENTAGE OF LESS THAN 80**  
 5 **PERCENT.**

6 (a) IN GENERAL.—Subsection (b) of section 409A of  
 7 the Internal Revenue Code of 1986 (providing rules relat-  
 8 ing to funding) is amended by redesignating paragraphs  
 9 (3) and (4) as paragraphs (4) and (5), respectively, and  
 10 by inserting after paragraph (2) the following new para-  
 11 graph:

12 “(3) WHEN EMPLOYER’S DEFINED BENEFIT  
 13 PLAN HAS FUNDING TARGET ATTAINMENT PERCENT-  
 14 AGE OF LESS THAN 80 PERCENT.—If—

15 “(A) as of the valuation date of a defined  
 16 benefit plan to which section 412 applies for the  
 17 plan year which includes any portion of a period  
 18 in which the plan has a funding target attain-  
 19 ment percentage less than 80 percent—

20 “(i) assets are set aside (directly or  
 21 indirectly) in a trust (or other arrange-  
 22 ment determined by the Secretary), or

23 “(ii) transferred to such a trust or  
 24 other arrangement,

25 for purposes of paying deferred compensation  
 26 under a nonqualified deferred compensation

1 plan of the employer maintaining the defined  
2 benefit plan, or

3 “(B) a nonqualified deferred compensation  
4 plan of the employer provides that assets will  
5 become restricted to the provision of benefits  
6 under the plan in connection with such funding  
7 target attainment percentage of less than 80  
8 percent (or other similar financial measure de-  
9 termined by the Secretary) of the defined ben-  
10 efit plan, or assets are so restricted,

11 such assets shall for purposes of section 83 be treat-  
12 ed as property transferred in connection with the  
13 performance of services whether or not such assets  
14 are available to satisfy claims of general creditors.  
15 Subparagraph (A) shall not apply with respect to  
16 any assets which are so set aside before the defined  
17 benefit plan has a funding target attainment per-  
18 centage of less than 80 percent.”.

19 (b) FUNDING TARGET ATTAINMENT PERCENTAGE.—  
20 Section 409A(d) of such Code is amended by adding at  
21 the end the following new paragraph:

22 “(7) FUNDING TARGET ATTAINMENT PERCENT-  
23 AGE.—

1                   “(A) IN GENERAL.—The ‘funding target  
2                   attainment percentage’ of a plan for a plan year  
3                   is the ratio (expressed as a percentage) which—

4                   “(i) the value of plan assets for the  
5                   plan year (determined without regard to  
6                   accumulated credits in excess of accumu-  
7                   lated charges to the funding standard ac-  
8                   count under section 412), bears to

9                   “(ii) the funding target of the plan for  
10                  the plan year.

11                  “(B) FUNDING TARGET.—Funding target  
12                  of a plan for a plan year is the present value  
13                  of all liabilities to participants and their bene-  
14                  ficiaries under the plan for the plan year.”.

15           (c) CONFORMING AMENDMENTS.—Paragraphs (4)  
16   and (5) of section 409A(b) of such Code, as redesignated  
17   by subsection (a) of this subsection, are each amended by  
18   striking “paragraph (1) or (2)” each place it appears and  
19   inserting “paragraph (1), (2), or (3)”.

20           (d) EFFECTIVE DATE.—The amendments made by  
21   this section shall apply to transfers or reservations of as-  
22   sets after December 31, 2005.

23           (e) SPECIAL RULE FOR 2006.—For purposes of de-  
24   termining if a plan has a funding target attainment per-  
25   centage of less than 80 percent (within the meaning of

1 section 409A of such Code, as added by this section) for  
2 any plan year beginning in 2006, such section shall be ap-  
3 plied by substituting the plan's modified funded current  
4 liability percentage for the plan's funding target attain-  
5 ment percentage. For purposes of the preceding sentence,  
6 the term "modified funded current liability percentage"  
7 means the funded current liability percentage (as defined  
8 in section 412(l)(8) of such Code), reduced as described  
9 in subparagraph (E) thereof.

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