

109TH CONGRESS  
1ST SESSION

# S. 547

To amend the Internal Revenue Code of 1986 to provide for employer  
retirement savings accounts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 8, 2005

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

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## A BILL

To amend the Internal Revenue Code of 1986 to provide  
for employer retirement savings accounts, 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. EMPLOYER RETIREMENT SAVINGS ACCOUNTS.**

4       (a) IN GENERAL.—Subpart A of part 1 of subchapter  
5 D of chapter 1 of the Internal Revenue Code of 1986 is  
6 amended by inserting after section 401 the following new  
7 section:

8       **“SEC. 401A. EMPLOYER RETIREMENT SAVINGS ACCOUNTS.**

9       “(a) IN GENERAL.—A defined contribution plan shall  
10 not fail to meet the requirements of section 401(a) merely

1 because the plan includes an employer retirement savings  
2 account arrangement.

3       “(b) EMPLOYER RETIREMENT SAVINGS ACCOUNT  
4 ARRANGEMENT.—An employer retirement savings account  
5 arrangement is any arrangement which is part of a plan  
6 which meets the requirements of section 401(a)—

7           “(1) under which a covered employee may elect  
8           to have the employer make payments as contribu-  
9           tions to a trust under the plan on behalf of the em-  
10          ployee, or to the employee directly in cash,

11           “(2) under which amounts held by the trust  
12          which are attributable to employer contributions  
13          made pursuant to the employee’s election—

14           “(A) may not be distributable to partici-  
15          pants or other beneficiaries earlier than—

16            “(i) severance from employment,  
17            death, or disability,

18            “(ii) an event described in subsection  
19          (g),

20            “(iii) the attainment of age 59, or

21            “(iv) upon hardship of the employee,  
22          and

23            “(B) will not be distributable merely by  
24          reason of the completion of a stated period of

1 participation or the lapse of a fixed number of  
2 years,

3 “(3) which provides that an employee’s right to  
4 the employee’s accrued benefit derived from em-  
5 ployer contributions made to the trust pursuant to  
6 the employee’s election is nonforfeitable, and

7 “(4) which does not require, as a condition of  
8 participation in the arrangement, that an employee  
9 complete a period of service with the employer (or  
10 employers) maintaining the plan extending beyond  
11 the period permitted under section 410(a)(1) (deter-  
12 mined without regard to subparagraph (B)(i) there-  
13 of).

14 “(c) APPLICATION OF NONDISCRIMINATION STAND-  
15 ARDS.—

16 “(1) CONTRIBUTION PERCENTAGE REQUIRE-  
17 MENT.—An arrangement shall not be treated as an  
18 employer retirement savings account arrangement  
19 for any plan year unless—

20 “(A) the contribution percentage for eligi-  
21 ble highly compensated employees for the plan  
22 year does not exceed 200 percent of such per-  
23 centage for all other eligible employees for the  
24 preceding plan year, or

1                     “(B) the contribution percentage of non-  
2                     highly compensated employees for the preceding  
3                     plan year exceeded 6 percent.

4                     “(2) ALTERNATIVE METHODS OF MEETING  
5                     NONDISCRIMINATION REQUIREMENTS.—

6                     “(A) IN GENERAL.—An arrangement shall  
7                     be treated as meeting the requirements of para-  
8                     graph (1)(A) if such arrangement—

9                         “(i) meets the contribution require-  
10                     ments of subparagraph (B), and  
11                         “(ii) meets the notice requirements of  
12                     subparagraph (D).

13                     “(B) CONTRIBUTION REQUIREMENT.—The  
14                     requirements of this subparagraph are met if,  
15                     under the arrangement, the employer is re-  
16                     quired to make contributions to a defined con-  
17                     tribution plan on behalf of each eligible em-  
18                     ployee who is not a highly compensated em-  
19                     ployee in an amount equal to at least 3 percent  
20                     of the employee’s compensation. For purposes  
21                     of this subparagraph, elective deferrals and em-  
22                     ployee contributions shall not be taken into ac-  
23                     count in determining the amount of contribu-  
24                     tions the employer makes to the plan.

1                   “(C) SPECIAL RULES FOR MATCHING CON-  
2                   TRIBUTIONS.—

3                   “(i) IN GENERAL.—If an employer  
4                   takes matching contributions into account  
5                   for purposes of subparagraph (B), the re-  
6                   quirements of such subparagraph shall be  
7                   treated as met only if the matching con-  
8                   tributions on behalf of each employee who  
9                   is not a highly compensated employee are  
10                   equal to 50 percent of the elective deferrals  
11                   of the employee to the extent that such  
12                   elective deferrals do not exceed 6 percent  
13                   of the employee’s compensation.

14                   “(ii) ALTERNATIVE PLAN DESIGNS.—  
15                   If the rate of any matching contribution  
16                   with respect to any rate of elective deferral  
17                   is not equal to the percentage required  
18                   under clause (i), an arrangement shall not  
19                   be treated as failing to meet the require-  
20                   ments of clause (i) if—

21                   “(I) the rate of an employer’s  
22                   matching contribution does not in-  
23                   crease as an employee’s rate of elec-  
24                   tive contributions increases, and

1                             “(II) the aggregate amount of  
2                             matching contributions at such rate of  
3                             elective contribution is at least equal  
4                             to the aggregate amount of matching  
5                             contributions which would be made if  
6                             matching contributions were made on  
7                             the basis of the percentages described  
8                             in clause (i).

9                             “(iii) RATE FOR HIGHLY COM-  
10                             PENSATED EMPLOYEES.—The require-  
11                             ments of this subparagraph are not met if,  
12                             under the arrangement, the rate of match-  
13                             ing contribution with respect to any elec-  
14                             tive deferral of a highly compensated em-  
15                             ployee at any rate of elective deferral is  
16                             greater than that with respect to an em-  
17                             ployee who is not a highly compensated  
18                             employee.

19                             “(D) NOTICE REQUIREMENT.—An ar-  
20                             rangement meets the requirements of this sub-  
21                             paragraph if, under the arrangement, each em-  
22                             ployee eligible to participate is, within a reason-  
23                             able period before any year, given written notice  
24                             of the employee’s rights and obligations under  
25                             the arrangement which—

1                     “(i) is sufficiently accurate and com-  
2                     prehensive to apprise the employee of such  
3                     rights and obligations, and

4                     “(ii) is written in a manner calculated  
5                     to be understood by the average employee  
6                     eligible to participate.

7                     “(E) OTHER REQUIREMENTS.—

8                     “(i) WITHDRAWAL AND VESTING RE-  
9                     STRICTIONS.—An arrangement shall not be  
10                    treated as meeting the requirements of  
11                    subparagraph (B) unless the requirements  
12                    of paragraphs (2) and (3) of subsection (b)  
13                    are met with respect to all employer con-  
14                    tributions (including matching contribu-  
15                    tions) taken into account in determining  
16                    whether the requirements of subparagraph  
17                    (B) are met.

18                     “(ii) SOCIAL SECURITY AND SIMILAR  
19                     CONTRIBUTIONS NOT TAKEN INTO AC-  
20                     COUNT.—An arrangement shall not be  
21                     treated as meeting the requirements of  
22                     subparagraph (B) unless such require-  
23                     ments are met without regard to section  
24                     401(l), and, for purposes of section 401(l),

1                   employer contributions under subparagraph  
2                   (B) shall not be taken into account.

3                   “(F) OTHER PLANS.—An arrangement  
4                   shall be treated as meeting the requirements of  
5                   subparagraph (B) if any other plan maintained  
6                   by the employer meets such requirements with  
7                   respect to employees eligible under the arrange-  
8                   ment.

9                   “(3) CONTRIBUTION PERCENTAGE.—For pur-  
10                  poses of paragraph (1), the contribution percentage  
11                  for an eligible employee for a specified group of em-  
12                  ployees for a plan year shall be the average of the  
13                  ratios (calculated separately for each employee in  
14                  such group) of—

15                   “(A) the sum of the elective deferrals,  
16                  matching contributions, employee contributions,  
17                  and qualified nonelective contributions paid  
18                  under the plan on behalf of each such employee  
19                  for such plan year, to

20                   “(B) the employee’s compensation for such  
21                  plan year.

22                   “(4) SPECIAL RULES.—For purposes of this  
23                  subsection—

24                   “(A) MULTIPLE ARRANGEMENTS.—If 2 or  
25                  more plans which include employer retirement

1           savings account arrangements are considered as  
2           1 plan for purposes of section 401(a)(4) or  
3           410(b), all such arrangements included in such  
4           plans shall be treated as 1 arrangement.

5           “(B) EMPLOYEES IN MORE THAN 1 AR-  
6           RANGEMENT.—If any highly compensated em-  
7           ployee is a participant under 2 or more em-  
8           ployer retirement savings account arrangements  
9           of the employer, for purposes of determining  
10           the contribution percentage with respect to such  
11           employee, all such arrangements shall be treat-  
12           ed as 1 arrangement.

13           “(C) USE OF CURRENT YEAR.—An em-  
14           ployer may elect to apply paragraph (1) (A) or  
15           (B) by using the plan year rather than the pre-  
16           ceding plan year. An employer may change such  
17           an election only with the consent of the Sec-  
18           retary.

19           “(D) 1ST PLAN YEAR.—In the case of the  
20           first plan year of any plan (other than a suc-  
21           cessor plan), the amount taken into account as  
22           the contribution percentage of nonhighly com-  
23           pensated employees for the preceding plan year  
24           shall be—

25           “(i) 3 percent, or

1                     “(ii) if the employer makes an election  
2                     under this clause, the contribution percent-  
3                     age of nonhighly compensated employees  
4                     determined for such first plan year.

5                     “(E) SPECIAL RULE FOR EARLY PARTICI-  
6                     PATION.—If an employer elects to apply section  
7                     410(b)(4)(B) in determining whether an em-  
8                     ployer retirement savings account arrangement  
9                     meets the requirements of section 410(b)(1),  
10                    the employer may, in determining whether the  
11                    arrangement meets the requirements of this  
12                    subsection, exclude from consideration all eligi-  
13                    ble employees (other than highly compensated  
14                    employees) who have not met the minimum age  
15                    and service requirements of section  
16                    410(a)(1)(A).

17                    “(5) EXCEPTIONS.—

18                    “(A) GOVERNMENTAL PLANS.—A govern-  
19                    mental plan (within the meaning of section  
20                    414(d)) maintained by a State or local govern-  
21                    ment or political subdivision thereof (or agency  
22                    or instrumentality thereof) shall be treated as  
23                    meeting the requirements of this subsection.

24                    “(B) TAX EXEMPT PLANS.—

1                             “(i) IN GENERAL.—A plan not de-  
2                             scribed in subparagraph (A) which is  
3                             maintained by an organization described in  
4                             section 501(c)(3) shall be treated as meet-  
5                             ing the requirements of this subsection for  
6                             any plan year if the plan provides that all  
7                             employees of such organization may elect  
8                             to have the employer make contributions of  
9                             more than \$200 pursuant to a salary re-  
10                             duction agreement if any employee of the  
11                             organization may elect to have the organi-  
12                             zation make contributions pursuant to  
13                             such agreement.

14                             “(ii) EXCEPTION.—Clause (i) shall  
15                             not apply to any plan if under the plan—

16                                 “(I) matching contributions may  
17                             be made on behalf of any employee, or  
18                                 “(II) an employee may make con-  
19                             tributions other than elective defer-  
20                             rals.

21                             “(iii) EXCLUSION.—For purposes of  
22                             clause (i), there may be excluded any em-  
23                             ployee who is—

1                             “(I) a participant in another em-  
2                             ployer retirement savings account ar-  
3                             rangement of the organization,

4                             “(II) a nonresident alien de-  
5                             scribed in section 410(b)(3)(C), or

6                             “(III) subject to the conditions  
7                             applicable under section 410(b)(4), a  
8                             student performing services described  
9                             in section 3121(b)(10) or an employee  
10                            who normally works less than 20  
11                            hours per week.

12                             “(6) COORDINATION WITH SUBSECTION

13                             (a)(4).—A cash or deferred arrangement shall be  
14                             treated as meeting the requirements of subsection  
15                             (a)(4) with respect to contributions if the require-  
16                             ments of paragraph (1) are met.

17                             “(d) OTHER REQUIREMENTS.—For purposes of this  
18                             section—

19                             “(1) BENEFITS (OTHER THAN MATCHING CON-  
20                             TRIBUTIONS) MUST NOT BE CONTINGENT ON ELEC-  
21                             TION TO DEFER.—An employer retirement savings  
22                             account arrangement of any employer shall not be  
23                             treated as such an arrangement if any other benefit  
24                             is conditioned (directly or indirectly) on the em-  
25                             ployee electing to have the employer make or not

1 make contributions under the arrangement in lieu of  
2 receiving cash. The preceding sentence shall not  
3 apply to any matching contribution made by reason  
4 of such an election.

5       “(2) COORDINATION WITH OTHER PLANS.—Any  
6 employer contribution made pursuant to an employ-  
7 ee’s election under an employer retirement savings  
8 account arrangement shall not be taken into account  
9 for purposes of determining whether any other plan  
10 meets the requirements of section 401(a) or 410(b).  
11 This paragraph shall not apply for purposes of de-  
12 termining whether a plan meets the average benefit  
13 requirement of section 410(b)(2)(A)(ii).

14       “(e) DEFINITIONS.—For purposes of this section—  
15           “(1) ELIGIBLE EMPLOYEE.—The term ‘eligible  
16 employee’ means any employee who is eligible to  
17 benefit under the employer retirement savings ac-  
18 count arrangement.

19           “(2) HIGHLY COMPENSATED EMPLOYEE.—For  
20 purposes of this subsection, the term ‘highly com-  
21 pensated employee’ has the meaning given such term  
22 by section 414(q).

23           “(3) MATCHING CONTRIBUTION.—The term  
24 ‘matching contribution’ means—

1               “(A) any employer contribution made to a  
2               defined contribution plan on behalf of an em-  
3               ployee on account of an employee contribution  
4               made by such employee, and

5               “(B) any employer contribution made to a  
6               defined contribution plan on behalf of an em-  
7               ployee on account of an employee’s elective de-  
8               ferral.

9               “(4) ELECTIVE DEFERRAL.—The term ‘elective  
10               deferral’ means any employer contribution described  
11               in section 402(g)(3).

12               “(5) QUALIFIED NONELECTIVE CONTRIBUTU-  
13               TIONS.—The term ‘qualified nonelective contribu-  
14               tion’ means any employer contribution (other than a  
15               matching contribution) with respect to which—

16               “(A) the employee may not elect to have  
17               the contribution paid to the employee in cash  
18               instead of being contributed to the plan, and

19               “(B) the requirements of paragraphs (2)  
20               and (3) of subsection (b) are met.

21               “(6) COMPENSATION.—The term ‘compensa-  
22               tion’ has the meaning given such term by section  
23               414(s).

24               “(f) ARRANGEMENT NOT DISQUALIFIED IF EXCESS  
25               CONTRIBUTIONS DISTRIBUTED.—

1           “(1) IN GENERAL.—An employer retirement  
2       savings account arrangement shall not be treated as  
3       failing to meet the requirements of subsection  
4       (c)(1)(A) for any plan year if, before the close of the  
5       following plan year—

6           “(A) the amount of the excess contribu-  
7       tions for such plan year (and any income allo-  
8       cable to such contributions) is distributed, or

9           “(B) to the extent provided in regulations,  
10       the employee elects to treat the amount of the  
11       excess contributions as an amount distributed  
12       to the employee and then contributed by the  
13       employee to the plan.

14       Any distribution of excess contributions (and in-  
15       come) may be made without regard to any other pro-  
16       vision of law.

17           “(2) EXCESS CONTRIBUTIONS.—For purposes  
18       of paragraph (1), the term ‘excess contributions’  
19       means, with respect to any plan year, the excess  
20       of—

21           “(A) the aggregate amount of employer  
22       contributions actually paid over to the trust on  
23       behalf of highly compensated employees for  
24       such plan year, over

1                   “(B) the maximum amount of such con-  
2                   tributions permitted under the limitations of  
3                   subsection (c)(1)(A) (determined by reducing  
4                   contributions made on behalf of highly com-  
5                   pensated employees in order of the contribution  
6                   percentages beginning with the highest of such  
7                   percentages).

8                   “(3) METHOD OF DISTRIBUTING EXCESS CON-  
9                   TRIBUTIONS.—Any distribution of the excess con-  
10                   tributions for any plan year shall be made to highly  
11                   compensated employees on the basis of the amount  
12                   of contributions by, or on behalf of, each of such em-  
13                   ployees.

14                   “(4) ADDITIONAL TAX UNDER SECTION 72(t)  
15                   NOT TO APPLY.—No tax shall be imposed under sec-  
16                   tion 72(t) on any amount required to be distributed  
17                   under this subsection.

18                   “(5) TREATMENT OF MATCHING CONTRIBU-  
19                   TIONS FORFEITED BY REASON OF EXCESS DEFER-  
20                   RAL OR CONTRIBUTION.—For purposes of subsection  
21                   (b)(3), a matching contribution shall not be treated  
22                   as forfeitable merely because such contribution is  
23                   forfeitable if the contribution to which the matching  
24                   contribution relates is treated as an excess contribu-

1       tion under paragraph (2) or an excess deferral under  
2       section 402(g)(2)(A).

3           “(6) CROSS REFERENCE.—For excise tax on  
4       certain excess contributions, see section 4979.

5       “(g) DISTRIBUTIONS UPON TERMINATION OF  
6       PLAN.—

7           “(1) IN GENERAL.—An event described in this  
8       subsection is the termination of the plan without es-  
9       tablishment or maintenance of another defined con-  
10       tribution plan (other than an employee stock owner-  
11       ship plan as defined in section 4975(e)(7)).

12           “(2) DISTRIBUTIONS MUST BE LUMP SUM DIS-  
13       TRIBUTIONS.—

14           “(A) IN GENERAL.—A termination shall  
15       not be treated as described in paragraph (1)  
16       with respect to any employee unless the em-  
17       ployee receives a lump sum distribution by rea-  
18       son of the termination.

19           “(B) LUMP-SUM DISTRIBUTION.—For pur-  
20       poses of this paragraph, the term ‘lump-sum  
21       distribution’ has the meaning given such term  
22       by section 402(e)(4)(D) (without regard to sub-  
23       clauses (I), (II), (III), and (IV) of clause (i)  
24       thereof). Such term includes a distribution of  
25       an annuity contract from—

1                     “(i) a trust which forms a part of a  
2                     plan described in section 401(a) and which  
3                     is exempt from tax under section 501(a),  
4                     or  
5                     “(ii) an annuity plan described in sec-  
6                     tion 403(a).

7     “(h) SPECIAL RULES FOR SMALL EMPLOYERS.—

8                     “(1) IN GENERAL.—An arrangement main-  
9                     tained by an eligible employer shall not fail to meet  
10                    the requirements of this section merely because con-  
11                    tributions under the arrangement on behalf of any  
12                    employee are made to an individual retirement plan  
13                    (as defined under section 7701(a)(37)) established  
14                    on behalf of the employee.

15                    “(2) ELIGIBLE EMPLOYER.—For purposes of  
16                    paragraph (1), the term ‘eligible employer’ means,  
17                    with respect to any year, an employer which had no  
18                    more than 10 employees who received at least  
19                    \$5,000 of compensation from the employer for the  
20                    preceding year. An eligible employer who establishes  
21                    and maintains an arrangement under this subsection  
22                    for 1 or more years and who fails to be an eligible  
23                    employer for any subsequent year shall be treated as  
24                    an eligible employer for the 2 years following the  
25                    last year the employer was an eligible employer. If

1 such failure is due to any acquisition, disposition, or  
2 similar transaction involving an eligible employer,  
3 the preceding sentence shall not apply.

4 “(i) REGULATIONS.—The Secretary shall prescribe  
5 such regulations as may be necessary to carry out the pur-  
6 poses of this section, including regulations permitting ap-  
7 propriate aggregation of plans and contributions.

8 “(j) TRANSITION RULES.—

9 “(1) DEEMED ERSAS.—Any arrangement  
10 which, as of December 31, 2005—

11 “(A) is part of a plan meeting the require-  
12 ments of section 401(a), and

13 “(B) is—

14 “(i) a qualified cash or deferred ar-  
15 rangement (as defined in section  
16 401(k)(2)), or

17 “(ii) subject to the requirements of  
18 section 401(m),

19 shall be treated as an employer retirement savings  
20 account arrangement and subject to the require-  
21 ments of this title applicable to such an arrangement  
22 for plan years beginning after December 31, 2005.

23 “(2) ELECTABLE ERSAS.—

24 “(A) IN GENERAL.—If an employer makes  
25 an election under this paragraph with respect to

1                   any applicable arrangement, such arrangement  
2                   shall be treated as an employer retirement sav-  
3                   ings account arrangement and subject to the re-  
4                   quirements of this title applicable to such an  
5                   arrangement for plan years beginning after De-  
6                   cember 31, 2005.

7                   “(B) APPLICABLE ARRANGEMENT.—For  
8                   purposes of subparagraph (A), the term ‘appli-  
9                   cable arrangement’ means an arrangement  
10                  which, as of December 31, 2005, is—

11                  “(i) an arrangement under which  
12                  amounts are contributed by an individual’s  
13                  employer for an annuity contract described  
14                  in section 403(b),

15                  “(ii) an eligible deferred compensation  
16                  plan (within the meaning of section  
17                  457(b)) maintained by an eligible employer  
18                  described in section 457(e)(1)(A),

19                  “(iii) a simplified employee pension  
20                  (within the meaning of section 408(k)) for  
21                  which an election is in effect under para-  
22                  graph (6) thereof, or

23                  “(iv) a simple retirement account  
24                  (within the meaning of section 408(p).”.

1       (b) ELECTIVE DEFERRALS.—Section 402 of such  
2 Code is amended—

3               (1) in subsection (e)(3), by inserting “, an em-  
4 ployer retirement savings account arrangement (as  
5 defined in section 401A(b)),” after “section  
6 401(k)(2))”, and

7               (2) in subsection (g)(3)(A), by inserting “, or  
8 an employer retirement savings account arrangement  
9 (as defined in section 401A(b)),” before “to the ex-  
10 tent”.

11       (c) TERMINATION OF CONTRIBUTIONS TO OTHER  
12 PLANS.—

13               (1) 401(k) PLANS.—Section 401(k) of such  
14 Code is amended by adding at the end the following  
15 new paragraph:

16               “(13) TERMINATION.—This subsection shall not  
17 apply to any plan year beginning after December 31,  
18 2005.”.

19               (2) 403(b) ANNUITY CONTRACTS.—Section  
20 403(b) of such Code is amended by adding at the  
21 end the following new paragraph:

22               “(14) TERMINATION.—No elective deferral (as  
23 defined in section 402(g)(3)) may be contributed  
24 under this subsection by an employer, and no  
25 amount may be transferred under an eligible roll-

1 over, for an annuity contract after December 31,  
2 2006.”.

3 (3) GOVERNMENTAL 457 PLANS.—Section 457  
4 of such Code is amended by adding at the end the  
5 following new subsection:

6 “(h) TERMINATION.—No amount may be deferred  
7 under this subsection under a plan maintained by an eligi-  
8 ble employer described in subsection (e)(1)(A), and no  
9 amount may be transferred under an eligible rollover to  
10 an eligible deferred compensation plan maintained by such  
11 an employer, after December 31, 2006.”.

12 (4) SARSEPS.—Subparagraph (H) of section  
13 408(k)(6) of such Code is amended by adding at the  
14 end the following new sentence: “No amount may be  
15 contributed under this paragraph to a simplified em-  
16 ployee pension by an employer, and no amount may  
17 be transferred to a simplified employee pension  
18 maintained under this paragraph under an eligible  
19 rollover, after December 31, 2006.”.

20 (5) SIMPLE IRAS.—Section 408(p) of such Code  
21 is amended by adding at the end the following new  
22 paragraph:

23 “(11) TERMINATION.—No amount may be con-  
24 tributed under this paragraph to a simple retirement  
25 account after December 31, 2006.”.

## 1 (d) OTHER CONFORMING CHANGES.—

2 (1) Section 401 of such Code is amended by  
3 striking subsection (m).4 (2) Section 7701(j) of such Code (relating to  
5 tax treatment of Federal Thrift Savings Fund) is  
6 amended—7 (A) in paragraph (1)(C), by striking “sec-  
8 tion 401(k)(4)(B)” and inserting “section  
9 401A(d)(1)”, and10 (B) in paragraph (2), by striking “section  
11 401(k)” and inserting “section 401A”.12 (3) The Secretary of the Treasury shall, not  
13 later than 90 days after the date of the enactment  
14 of this Act, submit such technical and other con-  
15 forming changes as are necessary to carry out the  
16 amendments made by this section.17 (e) CLERICAL AMENDMENT.—The table of sections  
18 for subpart A of part 1 of subchapter D of chapter 1 of  
19 such Code is amended by inserting after the item relating  
20 to section 401 the following new item:

“Sec. 401A. Employer Retirement Savings Accounts.”.

21 (f) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to years beginning after December  
23 31, 2005.24 (g) PROVISIONS RELATING TO PLAN AMEND-  
25 MENTS.—

12 (2) AMENDMENTS TO WHICH SECTION AP-  
13 PLIES.—

14 (A) IN GENERAL.—This subsection shall  
15 apply to any amendment to any plan or annuity  
16 contract which is made—

22 (ii) on or before the last day of the  
23 first plan year beginning on or after Janu-  
24 ary 1, 2007.

1 (B) GOVERNMENTAL PLAN.—In the case  
2 of a governmental plan (as defined in section  
3 414(d) of the Internal Revenue Code of 1986),  
4 subparagraph (A) shall be applied by sub-  
5 stituting “2009” for “2007”.

6 (C) CONDITIONS.—This subsection shall  
7 not apply to any amendment unless—

8 (i) during the period—

9 (I) beginning on the date the leg-  
10 islative or regulatory amendment de-  
11 scribed in subparagraph (A)(i) takes  
12 effect (or in the case of a plan or con-  
13 tract amendment not required by such  
14 legislative or regulatory amendment,  
15 the effective date specified by the  
16 plan), and

17 (II) ending on the date described  
18 in subparagraph (A)(ii) (or, if earlier,  
19 the date the plan or contract amend-  
20 ment is adopted), the plan or contract  
21 is operated as if such plan or contract  
22 amendment were in effect; and

23 (ii) such plan or contract amendment  
24 applies retroactively for such period.

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