

110TH CONGRESS
1ST SESSION

S. 1288

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase the retirement security of women and small business owners, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 3, 2007

Mr. SMITH (for himself, Mr. CONRAD, Mr. KERRY, Mr. BINGAMAN, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase the retirement security of women and small business owners, 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; AMENDMENT OF 1986 CODE;**

4 **TABLE OF CONTENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Women’s Retirement Security Act of 2007”.

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 for
 6 this Act is as follows:

Sec. 1. Short title; amendment of 1986 Code; table of contents.

TITLE I—PROVISIONS TO INCREASE RETIREMENT SAVINGS

Subtitle A—Employee Access to Retirement Savings at Work

Sec. 101. Employees not covered by qualified retirement plans or arrangements entitled to participate in payroll deposit IRA arrangements.
 Sec. 102. Credit for small employers maintaining payroll deposit IRA arrangements.
 Sec. 103. Establishment of automatic IRAs.
 Sec. 104. Establishment of TSP II Board.

Subtitle B—Other Provisions

Sec. 111. Modifications to computation of saver's credit; saver's credit made refundable.
 Sec. 112. Qualified cash or deferred arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate.
 Sec. 113. Transfers of unused benefits of health flexible spending arrangement to certain retirement plans.
 Sec. 114. Computation of limits on IRA and Roth IRA contributions.

TITLE II—PROVISIONS PROVIDING FOR PRESERVATION OF INCOME

Sec. 201. Exclusion of certain qualified annuity payments.
 Sec. 202. Exclusion for lifetime annuity payments.
 Sec. 203. Joint study of application of spousal consent rules to defined contribution plans.
 Sec. 204. Facilitating longevity insurance.

TITLE III—PROVISIONS ENSURING EQUITY IN DIVORCE

Sec. 301. Special rules relating to treatment of qualified domestic relations orders.
 Sec. 302. Elimination of current connection requirement under Railroad Retirement Act for certain survivors.
 Sec. 303. Permitting divorced spouses and widows and widowers to remarry after turning 60 without a penalty under Railroad Retirement Act.
 Sec. 304. Repeal of jurisdictional requirement for court to treat military retirement pay as property of the military member and spouse.

Sec. 305. Modification of reductions in disposable retired pay for payments in compliance with court orders.

TITLE IV—PROVISIONS TO IMPROVE FINANCIAL LITERACY

Sec. 401. Grants to community-based taxpayer clinics to provide retirement savings advice.

Sec. 402. Treatment of qualified retirement planning services.

Sec. 403. Retirement handbook and retirement readiness checklist.

TITLE V—INCENTIVES FOR SMALL BUSINESSES TO ESTABLISH AND MAINTAIN RETIREMENT PLANS FOR EMPLOYEES

Sec. 501. Credit for qualified pension plan contributions of small employers.

Sec. 502. Deduction for pension contributions allowed in computing net earnings from self-employment.

Sec. 503. Exemption of deferral-only qualified cash or deferred arrangements from top-heavy plan rules.

Sec. 504. Extension of time for small pension plans to adopt required plan qualification amendments.

1 1 TITLE I—PROVISIONS TO IN-

2 2 CREASE RETIREMENT SAV-

3 3 INGS

4 4 Subtitle A—Employee Access to

5 5 Retirement Savings at Work

6 6 SEC. 101. EMPLOYEES NOT COVERED BY QUALIFIED RE-

7 7 TIREMENT PLANS OR ARRANGEMENTS ENTI-

8 8 TLED TO PARTICIPATE IN PAYROLL DEPOSIT

9 9 IRA ARRANGEMENTS.

10 10 (a) IN GENERAL.—Subpart A of part I of subchapter
11 11 A of chapter 1 (relating to pension, profit-sharing, stock
12 12 bonus plans, etc.) is amended by inserting after section
13 13 408A the following new section:

1 **“SEC. 408B. RIGHT TO PAYROLL DEPOSIT IRA ARRANGE-**2 **MENTS AT WORK.**3 “(a) REQUIREMENT TO PROVIDE PAYROLL DEPOSIT
4 IRA ARRANGEMENT.—Each employer (other than an em-
5 ployer described in subsection (e)) shall provide to each
6 applicable employee of the employer for any calendar year
7 the opportunity to participate in a payroll deposit IRA ar-
8 rangement which meets the requirements of this section.9 “(b) PAYROLL DEPOSIT IRA ARRANGEMENT.—For
10 purposes of this section—11 “(1) IN GENERAL.—The term ‘payroll deposit
12 IRA arrangement’ means a written arrangement of
13 an employer—14 “(A) under which an applicable employee
15 eligible to participate in the arrangement may
16 elect to contribute to an individual retirement
17 plan established by or on behalf of the employee
18 by having the employer make periodic direct de-
19 posit or other payroll deposit payments (includ-
20 ing electronic payments) to the plan by payroll
21 deduction, and22 “(B) which meets the requirements of
23 paragraph (2).24 “(2) ADMINISTRATIVE REQUIREMENTS.—The
25 requirements of this paragraph are met with respect
26 to any payroll deposit IRA arrangement if—

1 “(A) the employer must make the pay-
2 ments elected under paragraph (1)(A) on or be-
3 fore the later of—

4 “(i) the due date for the deposit of
5 tax required to be deducted and withheld
6 under chapter 24 (relating to collection of
7 income tax at source on wages) for the
8 payroll period to which such payments re-
9 late, or

10 “(ii) the 30th day following the last
11 day of the month with respect to which the
12 payments are to be made,

13 “(B) subject to a requirement for reason-
14 able notice, an employee may elect to terminate
15 participation in the arrangement at any time
16 during a calendar year, except that if an em-
17 ployee so terminates, the arrangement may pro-
18 vide that the employee may not elect to resume
19 participation until the beginning of the next cal-
20 endar year,

21 “(C) each employee eligible to participate
22 may elect, during the 60-day period or other pe-
23 riod specified by the Secretary before the begin-
24 ning of any calendar year (and during the 60-
25 day period or other period specified by the Sec-

8 “(D) the employer provides—

21 “(E) subject to subsection (f), the arrange-
22 ment provides that an employee may elect to
23 have contributions made to any individual re-
24 tirement plan specified by the employee, and

1 “(F) if the arrangement does not include
2 an automatic enrollment arrangement—

3 “(i) the arrangement requires the em-
4 ployer to take all reasonable actions to so-
5 licit from all employees eligible to partici-
6 pate in the arrangement an explicit elec-
7 tion to either participate or not to partici-
8 pate in the arrangement, and

9 “(ii) the arrangement provides that if
10 an employee fails to make an explicit elec-
11 tion under clause (i) within the time pre-
12 scribed under the arrangement, the em-
13 ployee will be treated as having made an
14 election to participate in the arrangement
15 (and amounts shall be invested on behalf
16 of the participant) in the same manner as
17 if the arrangement had included an auto-
18 matic enrollment arrangement under sub-
19 section (g).

20 “(c) APPLICABLE EMPLOYEE DEFINED; RELATED
21 DEFINITIONS AND RULES.—For purposes of this sec-
22 tion—

23 “(1) APPLICABLE EMPLOYEE.—

1 “(A) IN GENERAL.—The term ‘applicable
2 employee’ means, with respect to any calendar
3 year, any employee—

4 “(i) who was not eligible under a
5 qualified plan or arrangement maintained
6 by the employer for service for the pre-
7 ceding calendar year, and

8 “(ii) with respect to whom it is rea-
9 sonable to expect that the employee will
10 not be eligible during the calendar year
11 under such a qualified plan or arrange-
12 ment.

13 “(B) SPECIAL RULES.—For purposes of
14 subparagraph (A)(i)—

15 “(i) ELIGIBILITY.—An employee shall
16 be treated as eligible under a plan for a
17 preceding calendar year if, as of the last
18 day of the last plan year ending in the pre-
19 ceding calendar year, the employee has sat-
20 isfied the plan’s eligibility requirements.

21 “(ii) EXCLUDED PLANS.—A qualified
22 plan or arrangement shall not be taken
23 into account under this paragraph if—

1 “(I) the plan or arrangement is
2 frozen as of the first day of the pre-
3 ceding calendar year, or

4 “(II) in the case of a plan or ar-
5 rangement under which the only con-
6 tributions are discretionary on the
7 part of the sponsor, there has not
8 been an employer contribution made
9 to the plan or arrangement for the 2-
10 plan-year period ending with the last
11 plan year ending in the second pre-
12 ceding calendar year and it is not rea-
13 sonable to assume that an employer
14 contribution will be made for the plan
15 year ending in the preceding calendar
16 year.

17 “(2) EXCLUDABLE EMPLOYEES.—An employer
18 may elect to exclude from treatment as applicable
19 employees under paragraph (1)—

20 “(A) employees described in section
21 410(b)(3),

22 “(B) employees who have not attained the
23 age of 18 before the beginning of the calendar
24 year,

1 “(C) employees who have not completed at
2 least 3 months of service with the employer,

3 “(D) in the case of an employer that main-
4 tains a qualified plan or arrangement which
5 generally excludes employees who have not sat-
6 isfied the eligibility requirements described in
7 section 410(a)(1)(A) (without regard to section
8 410(a)(1)(B)), employees who have not yet sat-
9 isfied such requirements,

10 “(E) employees who are eligible to make
11 salary reduction contributions under an ar-
12 rangement which meets the requirements of
13 section 403(b), and

14 “(F) all employees of the employer if the
15 employer maintains an arrangement described
16 in section 408(p).

17 “(3) QUALIFIED PLAN OR ARRANGEMENT.—
18 The term ‘qualified plan or arrangement’ means a
19 plan, contract, pension, or trust described in section
20 219(g)(5).

21 “(4) EXCEPTION FOR EMPLOYEES OF GOVERN-
22 MENTS AND CHURCHES.—The term ‘applicable em-
23 ployee’ shall not include an employee of—

24 “(A) a government or entity described in
25 section 414(d), or

1 “(B) a church or a convention or association of churches which is exempt from tax
2 under section 501, including any employee described in section 414(e)(3)(B).

5 “(5) DESIGNATION OF APPLICABLE EMPLOYEES.—The Secretary shall issue guidelines for determining the class or classes of employees to be covered by a payroll deposit IRA arrangement. Such guidelines shall provide that if an employer elects under paragraph (2) to exclude employees from the arrangement, the employer shall specify the classification or categories of employees who are not so covered.

14 “(d) PAYROLL DEPOSIT IRA CONTRIBUTIONS
15 TREATED LIKE OTHER CONTRIBUTIONS TO INDIVIDUAL
16 RETIREMENT PLANS.—

17 “(1) TAX TREATMENT UNAFFECTED.—The fact
18 that a contribution to an individual retirement plan
19 is made on behalf of an employee under a payroll deposit IRA arrangement instead of being made directly by the employee shall not affect the deductibility or other tax treatment of the contribution or of other amounts under this title.

24 “(2) PAYROLL SAVINGS CONTRIBUTIONS TAKEN
25 INTO ACCOUNT.—Any contribution made on behalf

1 of an employee under a payroll deposit IRA arrange-
2 ment shall be taken into account in applying the lim-
3 itations on contributions to individual retirement
4 plans and the other provisions of this title applicable
5 to individual retirement plans as if the contribution
6 had been made directly by the employee.

7 “(e) EXCEPTION FOR CERTAIN SMALL AND NEW
8 EMPLOYERS.—

9 “(1) IN GENERAL.—The requirements of this
10 section shall not apply for any calendar year to an
11 employer if—

12 “(A) the employer did not have more than
13 10 employees who received at least \$5,000 of
14 compensation from the employer for the pre-
15 ceding calendar year, or

16 “(B) was not in existence at all times dur-
17 ing the 2 preceding calendar years and did not
18 have more than 100 employees who received at
19 least \$5,000 of compensation from the employer
20 on any day during either of the 2 preceding cal-
21 endar years.

22 “(2) OPERATING RULES.—In determining the
23 number of employees for purposes of this sub-
24 section—

1 “(A) any rule applicable in determining the
2 number of employees for purposes of section
3 408(p)(2)(C) shall be applicable under this sub-
4 section,

5 “(B) all members of the same family
6 (within the meaning of section 318(a)(1)) shall
7 be treated as 1 individual, and

8 “(C) any reference to an employer shall in-
9 clude a reference to any predecessor employer.

10 “(f) DEPOSITS TO INDIVIDUAL RETIREMENT PLANS
11 OTHER THAN THOSE SELECTED BY EMPLOYEE.—

12 “(1) IN GENERAL.—An employer shall not be
13 treated as failing to satisfy the requirements of this
14 section or any other provision of this title merely be-
15 cause the employer makes all contributions (or all
16 contributions on behalf of employees who do not
17 specify an individual retirement plan, trustee, or
18 issuer to receive the contributions) to individual re-
19 tirement plans specified in paragraph (2) or (4).

20 “(2) PLANS OF A DESIGNATED TRUSTEE OR
21 ISSUER.—An employer may elect to have contribu-
22 tions for all applicable employees participating in a
23 payroll deposit IRA arrangement made to individual
24 retirement plans of a designated trustee or issuer
25 under the arrangement. The preceding sentence

1 shall not apply unless each participant is notified in
2 writing that the participant's balance may be trans-
3 ferred without cost or penalty to another individual
4 retirement plan established by or on behalf of the
5 participant.

6 “(3) PAYROLL TAX DEPOSIT PROCEDURE.—The
7 Secretary, in consultation with the TSP II Board,
8 shall establish a procedure under which an em-
9 ployer—

10 “(A) may include with each deposit of tax
11 required to be deducted and withheld under
12 chapter 24 the aggregate amounts, for the pe-
13 riod covered by the deposit, which applicable
14 employees have designated under subsection
15 (b)(1)(A) (or are deemed to have designated
16 under subsection (b)(2)(F)(ii) or under an auto-
17 matic enrollment arrangement described in sub-
18 section (g)) for contribution to individual retire-
19 ment plans, established on behalf of the employ-
20 ees under paragraph (4), and

21 “(B) specifies, in such manner as the Sec-
22 retary may prescribe, the following information
23 for each applicable employee for whom a con-
24 tribution is to be made:

25 “(i) The employee's name and TIN.

1 “(ii) The amount of the contribution.
2 “(iii) The investment options selected
3 by the employee (or deemed to have been
4 selected by the employee under such auto-
5 matic enrollment arrangement) and the
6 amount of the contribution allocated to
7 each option.

8 “(4) ESTABLISHMENT AND MAINTENANCE OF
9 ACCOUNTS UNDER PAYROLL TAX DEPOSIT PROCE-
10 DURE.—

11 “(A) IN GENERAL.—Subject to the provi-
12 sions of this section and section 408C, the TSP
13 II Board shall provide for the establishment
14 and maintenance of individual retirement plans
15 (including automatic IRAs) into which contribu-
16 tions may be deposited under paragraph (3). To
17 the maximum extent practicable, the TSP II
18 Board shall—

19 “(i) enter into contracts with persons
20 eligible to be trustees of individual retire-
21 ment plans under section 408 to establish
22 such plans, to provide the investment
23 funds and investment management, and to
24 provide notice, record keeping, and other
25 administrative services, and

1 “(ii) ensure that the costs of invest-
2 ment management and administration are
3 kept to a minimum, including through con-
4 sideration of the use of investments which
5 involve passive management and which
6 seek to replicate the performance of a por-
7 tion of the market.

8 “(B) PAYROLL DEPOSIT FEATURES.—The
9 TSP II Board shall establish procedures so that
10 contributions may be made to individual retire-
11 ment plans (including automatic IRAs) under
12 paragraph (3) without undue administrative or
13 paperwork requirements on participating em-
14 ployers. Such procedures shall ensure that only
15 1 such plan may be established for each TIN.

16 “(C) LIMITATION ON ROLLOVERS.—If—

17 “(i) any amount is paid or distributed
18 out of an individual retirement plan estab-
19 lished under this paragraph, and

20 “(ii) such amount is paid into an indi-
21 vidual retirement plan which was not es-
22 tablished under this paragraph,

23 the payment described in clause (ii) shall be
24 treated as a rollover contribution for purposes
25 of section 408(d)(3) if and only if the balance

1 to the credit of the individual in such individual
2 retirement plan or arrangement immediately be-
3 fore the payment described in clause (i) was at
4 least \$15,000.

5 “(g) COORDINATION WITH AUTOMATIC ENROLL-
6 MENT AND OTHER DEFAULT ELECTION PROVISIONS.—

7 “(1) IN GENERAL.—Contributions under a pay-
8 roll deposit IRA arrangement may be made pursuant
9 to an automatic enrollment arrangement.

10 “(2) AUTOMATIC ENROLLMENT ARRANGE-
11 MENT.—The term ‘automatic enrollment arrange-
12 ment’ means an arrangement under a payroll deposit
13 IRA arrangement and subject to rules prescribed by
14 the Secretary—

15 “(A) under which an individual may elect
16 to have the employer make payments as con-
17 tributions to an individual account plan on be-
18 half of the individual, or to the individual di-
19 rectly in cash,

20 “(B) under which the individual is treated
21 as having elected to have the employer make
22 such contributions in an amount equal to a
23 specified percentage of compensation or dollar
24 amount until the individual specifically elects
25 not to have such contributions made (or specifi-

1 cally elects to have such contributions made at
2 a different percentage or in a different
3 amount), and

4 “(C) which meets notice requirements sub-
5 stantially similar to those described in section
6 414(w)(4).

7 “(3) DEFAULT INVESTMENTS.—If an employee
8 is deemed under an automatic enrollment arrange-
9 ment to have made an election to participate in a
10 payroll deposit IRA arrangement—

11 “(A) the employee shall be deemed to have
12 made an election to make contributions in the
13 amount specified in paragraph (4),

14 “(B) such contributions shall be trans-
15 ferred to—

16 “(i) an automatic IRA, or

17 “(ii) if the employer has made an elec-
18 tion under subsection (f)(2), to an indi-
19 vidual retirement plan of the designated
20 trustee or issuer but only if the require-
21 ments of subparagraph (C) are met with
22 respect to such individual retirement plan,
23 and

24 “(C) such contributions shall be invested
25 as provided in paragraph (5).

1 “(4) AMOUNT OF CONTRIBUTIONS.—

2 “(A) IN GENERAL.—The amount specified
3 in this paragraph is 3 percent of compensation.

4 “(B) AUTHORITY OF BOARD TO PROVIDE
5 FOR ANNUAL INCREASES.—The TSP II Board
6 may by regulation provide for annual increases
7 in the percentage of compensation an employee
8 is deemed to have elected under paragraph (2)
9 but in no event shall the percentage of com-
10 pensation an employee is deemed to have elect-
11 ed exceed 8 percent.

12 “(C) CONTRIBUTION LIMIT.—The con-
13 tributions under paragraph (2) on behalf of an
14 employee for any calendar year shall not exceed
15 the dollar limits applicable to the employee for
16 the calendar year under section 219 or 408A.

17 “(5) INVESTMENT IN LIFE CYCLE FUND OR
18 OTHER INVESTMENTS SPECIFIED BY THE BOARD.—
19 Amounts contributed under paragraph (3) shall be
20 invested in—

21 “(A) a life cycle fund similar to the life
22 cycle funds offered under the Thrift Savings
23 Fund established under subchapter III of chap-
24 ter 84 of title 5, United States Code, or

1 “(B) such other investment or investments
2 as the TSP II Board specifies in regulations
3 (which shall be promulgated after taking into
4 account, but not necessarily conforming to, reg-
5 ulations prescribed by the Secretary of Labor
6 under section 404(c)(5) of the Employee Retire-
7 ment Income Security Act of 1974) and which
8 entails asset allocation and extensive diversifica-
9 tion.

10 “(6) COORDINATION WITH WITHHOLDING.—
11 The Secretary shall modify the withholding exemp-
12 tion certificate under section 3402(f) so that any no-
13 tice and election requirements with respect to an
14 automatic enrollment arrangement which is part of
15 a payroll deposit IRA arrangement may be met
16 through the use of such certificate.

17 “(h) MODEL NOTICE.—The Secretary, in consulta-
18 tion with the TSP II Board, shall—

19 “(1) provide a model notice, written in a man-
20 ner calculated to be understandable to the average
21 worker, that is simple for employers to use—

22 “(A) to notify employees of the require-
23 ment under this section for the employer to pro-
24 vide certain employees with the opportunity to

1 participate in a payroll deposit IRA arrange-
2 ment, and

3 “(B) to satisfy the requirements of sub-
4 section (b)(2)(D),

5 “(2) provide uniform forms for enrollment, in-
6 cluding automatic enrollment, in a payroll deposit
7 IRA arrangement, and

8 “(3) establish a web site or other electronic
9 means for small employers to access and use to ob-
10 tain information on payroll deposit IRA arrange-
11 ments and to obtain required notices and forms.

12 “(i) CROSS REFERENCE.—For provision preempting
13 conflicting State laws, see section 2(g) of the Women’s Re-
14 tirement Security Act of 2007.”.

15 (b) NOTICE OF AVAILABILITY OF INVESTMENT
16 GUIDELINES.—Section 408(i) (relating to reports) is
17 amended by adding at the end the following new sentence:
18 “Any report furnished under paragraph (2) to an indi-
19 vidual shall include notice of the availability of, and meth-
20 ods of acquiring, the basic investment guidelines prepared
21 by the Secretary of Labor.”.

22 (c) DEVELOPMENT OF BASIC INVESTMENT GUIDE-
23 LINES.—

24 (1) IN GENERAL.—The Secretary of Labor
25 shall, in consultation with the Secretary of Treasury,

1 develop and publish basic guidelines for investing for
2 retirement. Except as otherwise provided by the Sec-
3 retary of Labor, such guidelines shall include—

4 (A) information on the benefits of diver-
5 sification,

6 (B) information on the essential dif-
7 ferences, in terms of risk and return, between
8 various pension plan investments, including
9 stocks, bonds, mutual funds, and money market
10 investments,

11 (C) information on how an individual's
12 pension plan investment allocations may differ
13 depending on the individual's age and years to
14 retirement and on other factors determined by
15 the Secretary of Labor,

16 (D) sources of information where individ-
17 uals may learn more about pension rights, indi-
18 vidual investing, and investment advice, and

19 (E) such other information related to indi-
20 vidual investing as the Secretary of Labor de-
21 termines appropriate.

22 (2) CALCULATION INFORMATION.—The guide-
23 lines under paragraph (1) shall include addresses for
24 Internet sites and worksheets which a participant or
25 beneficiary in a pension plan may use to calculate—

7 (B) other important amounts relating to
8 retirement savings, including the amount which
9 a participant or beneficiary would be required
10 to save annually to provide a retirement income
11 equal to various percentages of their current
12 salary (adjusted for expected growth prior to
13 retirement).

18 (4) RULES RELATING TO GUIDELINES.—The
19 guidelines under paragraph (1)—

20 (A) shall be written in a manner calculated
21 to be understood by the average plan partici-
22 pant, and

(B) may be delivered in written, electronic,
or other appropriate manner to the extent such
manner would ensure that the guidelines are

1 reasonably accessible to participants and bene-
2 ficiaries.

3 (d) PENALTY FOR FAILURE TO PROVIDE ACCESS TO
4 PAYROLL SAVINGS ARRANGEMENTS.—Chapter 43 (relat-
5 ing to qualified pension, etc., plans) is amended by adding
6 at the end the following new section:

7 **“SEC. 4980H. REQUIREMENTS FOR EMPLOYERS TO PRO-**
8 **VIDE EMPLOYEES ACCESS TO PAYROLL DE-**
9 **POSIT IRA ARRANGEMENTS.**

10 “(a) GENERAL RULE.—There is hereby imposed a
11 tax on any failure by an employer to meet the require-
12 ments of subsection (d) for a calendar year.

13 “(b) AMOUNT.—

14 “(1) IN GENERAL.—The amount of the tax im-
15 posed by subsection (a) on any failure for any cal-
16 endar year shall be \$100 with respect to each em-
17 ployee to whom such failure relates.

18 “(2) TAX NOT TO APPLY WHERE FAILURE NOT
19 DISCOVERED AND REASONABLE DILIGENCE EXER-
20 CISED.—No tax shall be imposed by subsection (a)
21 on any failure during any period for which it is es-
22 tablished to the satisfaction of the Secretary that the
23 employer subject to liability for the tax did not know
24 that the failure existed and exercised reasonable dili-
25 gence to meet the requirements of subsection (d). In

1 no event shall the tax be imposed with respect to
2 any failure that ends before the expiration of 90
3 days after the employer has responded or has had a
4 reasonable opportunity to respond to a request for
5 confirmation of compliance under subsection (c).

6 “(3) TAX NOT TO APPLY TO FAILURES COR-
7 RECTED WITHIN 30 DAYS.—No tax shall be imposed
8 by subsection (a) on any failure if—

9 “(A) the employer subject to liability for
10 the tax under subsection (a) exercised reason-
11 able diligence to meet the requirements of sub-
12 section (d), and

13 “(B) the employer provides the payroll de-
14 posit IRA arrangement described in section
15 408B to each employee eligible to participate in
16 the arrangement by the end of the 30-day pe-
17 riod beginning on the first date the employer
18 knew, or exercising reasonable diligence would
19 have known, that such failure existed.

20 “(4) WAIVER BY SECRETARY.—In the case of a
21 failure which is due to reasonable cause and not to
22 willful neglect, the Secretary may waive part or all
23 of the tax imposed by subsection (a) to the extent
24 that the payment of such tax would be excessive or
25 otherwise inequitable relative to the failure involved.

1 “(c) PROCEDURES FOR NOTICE.—Not later than 6
2 months after the date of the enactment of this section,
3 the Secretary shall prescribe and implement procedures
4 for obtaining from employers confirmation that such em-
5 ployers are in compliance with the requirements of sub-
6 section (d). The Secretary, in the Secretary’s discretion,
7 may prescribe that the confirmation shall be obtained on
8 an annual or less frequent basis, and may use for this
9 purpose the annual report or quarterly report for employ-
10 ment taxes, or such other means as the Secretary may
11 deem advisable.

12 “(d) REQUIREMENT TO PROVIDE EMPLOYEE ACCESS
13 TO PAYROLL DEPOSIT IRA ARRANGEMENTS.—The re-
14 quirements of this subsection are met if the employer
15 meets the requirements of section 408B.”.

16 (e) COORDINATION WITH ERISA FIDUCIARY DU-
17 TIES.—Section 404(c)(2) of Employee Retirement Income
18 Security Act of 1974 (29 U.S.C. 1104(c)(2)) is amend-
19 ed—

20 (1) by inserting “or an individual retirement
21 plan designated by the employer under section 408B
22 of such Code” after “1986”,

23 (2) by inserting “(7 days after notice has been
24 given to an employee that an individual retirement
25 plan has been established on behalf of the employee

1 under section 408B of such Code)" after "estab-
2 lished" in subparagraph (C), and

3 (3) by inserting "or with respect to an indi-
4 vidual retirement plan designated by an employer
5 under section 408B of such Code" after "arrange-
6 ment" in the last sentence.

7 (f) CONFORMING AMENDMENTS.—

8 (1) The table of sections for subpart A of part
9 I of subchapter A of chapter 1 is amended by insert-
10 ing after the item relating to section 408A the fol-
11 lowing new item:

"Sec. 408B. Right to payroll deposit IRA arrangements at work."

12 (2) The table of sections for chapter 43 is
13 amended by adding at the end the following new
14 item:

"Sec. 4980H. Requirements for employers to provide employees access to pay-
roll deposit IRA arrangements."

15 (g) PREEMPTION OF CONFLICTING STATE LAWS.—
16 The amendments made by this section shall supersede any
17 law of a State that would directly or indirectly prohibit
18 or restrict the establishment or operation of a payroll de-
19 posit IRA arrangement meeting the requirements of sec-
20 tion 408B of the Internal Revenue Code of 1986 (includ-
21 ing the inclusion in any such arrangement of an automatic
22 enrollment arrangement as defined in section 408B(g) of
23 such Code).

1 (h) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to calendar years beginning after
3 December 31, 2008.

4 **SEC. 102. CREDIT FOR SMALL EMPLOYERS MAINTAINING**
5 **PAYROLL DEPOSIT IRA ARRANGEMENTS.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-
7 chapter A of chapter 1 (relating to business related cred-
8 its) is amended by adding at the end the following new
9 section:

10 **“SEC. 450. SMALL EMPLOYER PAYROLL DEPOSIT IRA AR-**
11 **RANGEMENT COSTS.**

12 “(a) GENERAL RULE.—For purposes of section 38,
13 in the case of an eligible employer maintaining a payroll
14 deposit IRA arrangement meeting the requirements of sec-
15 tion 408B (without regard to whether or not the employer
16 is required to maintain the arrangement), the small em-
17 ployer payroll deposit IRA arrangement cost credit deter-
18 mined under this section for any taxable year is the
19 amount determined under subsection (b).

20 “(b) AMOUNT OF CREDIT.—

21 “(1) IN GENERAL.—The amount of the credit
22 determined under this section for any taxable year
23 with respect to an eligible employer shall be equal to
24 the lesser of—

1 “(A) \$25 multiplied by the number of ap-
2 plicable employees (within the meaning of sec-
3 tion 408B(c)) for whom contributions are made
4 under the payroll deposit IRA arrangement re-
5 ferred to in subsection (a) for the calendar year
6 in which the taxable year begins, or

7 “(B) \$250.

8 “(2) DURATION OF CREDIT.—No credit shall be
9 determined under this section for any taxable year
10 other than a taxable year which begins in the first
11 2 calendar years in which the eligible employer
12 maintains a payroll deposit IRA arrangement meet-
13 ing the requirements of section 408B.

14 “(3) COORDINATION WITH SMALL EMPLOYER
15 STARTUP CREDIT.—No credit shall be allowed under
16 this section for any taxable year if a credit is deter-
17 mined under section 45E for the taxable year.

18 “(c) ELIGIBLE EMPLOYER.—For purposes of this
19 section, the term ‘eligible employer’ means, with respect
20 to any calendar year in which the taxable year begins, an
21 employer which maintains a payroll deposit IRA arrange-
22 ment meeting the requirements of section 408B and
23 which, on each day during the preceding calendar year,
24 had no more than 100 employees.”.

1 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
2 NESS CREDIT.—Section 38(b) (defining current year busi-
3 ness credit) is amended by striking “plus” at the end of
4 paragraph (30), by striking the period at the end of para-
5 graph (31) and inserting “, plus”, and by adding at the
6 end the following new paragraph:

7 “(32) in the case of an eligible employer (as de-
8 fined in section 45O(c)) maintaining a payroll de-
9 posit IRA arrangement meeting the requirements of
10 section 408B, the small employer payroll deposit
11 IRA arrangement cost credit determined under sec-
12 tion 45O(a).”

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for subpart D of part IV of subchapter A of chapter 1
15 is amended by adding at the end the following new item:

“See. 45O. Small employer payroll deposit IRA arrangement costs.”.

16 (d) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to taxable years beginning after
18 December 31, 2008.

19 **SEC. 103. ESTABLISHMENT OF AUTOMATIC IRAS.**

20 (a) IN GENERAL.—Subpart A of part I of subchapter
21 A of chapter 1 (relating to pension, profit-sharing, stock
22 bonus plans, etc.), as amended by section 101, is amended
23 by inserting after section 408B the following new section:

1 **“SEC. 408C. AUTOMATIC IRAS.**

2 “(a) GENERAL RULE.—An automatic IRA shall be
3 treated for purposes of this title in the same manner as
4 an individual retirement plan. An automatic IRA may also
5 be treated as a Roth IRA for purposes of this title if it
6 meets the requirements of section 408A.

7 “(b) AUTOMATIC IRA.—For purposes of this section,
8 the term ‘automatic IRA’ means an individual retirement
9 plan (as defined in section 7701(a)(37)) which meets the
10 investment and fee requirements under the regulations
11 under subsection (c).

12 “(c) INVESTMENT AND FEE REQUIREMENTS.—

13 “(1) IN GENERAL.—The TSP II Board, in con-
14 sultation with the Secretary and the Secretary of
15 Labor, shall, not later than 1 year after the date of
16 the enactment of this section, prescribe regulations
17 which set forth the requirements of this subsection
18 which an individual retirement plan must meet in
19 order to be treated as an automatic IRA.

20 “(2) INVESTMENT OPTIONS.—The regulations
21 under paragraph (1) shall provide that an automatic
22 IRA shall allow the individual on whose behalf the
23 individual retirement plan is established to invest
24 contributions to, and earnings of, the plan in all of
25 the following investment options:

1 “(A) Options which are similar to all in-
2 vestment options which are available (at the
3 time the plan is established) to a participant in
4 the Thrift Savings Fund established under sub-
5 chapter III of chapter 84 of title 5, United
6 States Code.

7 “(B) Any other investment option specified
8 in the regulations.

9 Such regulations shall specify which of the invest-
10 ment options shall be treated as default investment
11 options for purposes of section 408B(g)(5).

12 “(3) INVESTMENT FEES.—

13 “(A) IN GENERAL.—The regulations under
14 paragraph (1) shall provide that an automatic
15 IRA shall not charge any investment fees
16 which, in the aggregate, are not reasonable (as
17 determined under such regulations).

18 “(B) INVESTMENT FEES.—For purposes of
19 this paragraph, the term ‘investment fees’ in-
20 cludes any fee, commission, asset management
21 fee, compensation for services, or any other
22 charge or fee specified in the regulations under
23 paragraph (1) which is imposed with respect to
24 the automatic IRA.”.

1 (b) STUDIES OF SPOUSAL CONSENT REQUIREMENTS
2 AND PROMOTION OF CERTAIN LIFETIME INCOME AR-
3 RANGEMENTS.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury and the Secretary of Labor shall jointly conduct
6 a separate study of the feasibility and desirability of
7 each of the following:

8 (A) Extending to automatic IRAs spousal
9 consent requirements similar to, or based on,
10 those that apply under the Federal employees'
11 Thrift Savings Plan, including consideration of
12 whether modifications of such requirements are
13 necessary to apply them to automatic IRAs.

14 (B) Promoting the use of low-cost annu-
15 ies, longevity insurance, or other guaranteed
16 lifetime income arrangements in automatic
17 IRAs, including consideration of—

18 (i) appropriate means of arranging
19 for, or encouraging, individuals to receive
20 at least a portion of their distributions in
21 some form of low-cost guaranteed lifetime
22 income, and

23 (ii) issues presented by possible addi-
24 tional differences in, or uniformity of, pro-
25 visions governing different IRAs.

10 (c) MANDATORY TRANSFERS.—Section
11 401(a)(31)(B) is amended—

12 (1) by inserting “(including an automatic
13 IRA)” after “individual retirement plan” each place
14 it appears, and

15 (2) by adding at the end the following new sen-
16 tence: "Any amount so transferred (and any earn-
17 ings thereon) shall be invested in a default invest-
18 ment described in section 408B(g)(5)."

19 (d) CLERICAL AMENDMENT.—The table of sections
20 for subpart A of part I of subchapter A of chapter 1 is
21 amended by inserting after the item relating to section
22 408B the following new item:

“Sec. 408C. Automatic IRAs.”

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to calendar years beginning on or
25 after the date on which proposed and temporary or final

1 regulations described in section 408C(c) of the Internal
2 Revenue Code of 1986 (as added by this Act) are issued.

3 **SEC. 104. ESTABLISHMENT OF TSP II BOARD.**

4 (a) ESTABLISHMENT.—There is established in the ex-
5 ecutive branch of the Government a TSP II Board. The
6 board shall be established and maintained in the same
7 manner as the Federal Retirement Thrift Investment
8 Board under subchapter VII of chapter 84 of title 5,
9 United States Code.

10 (b) EXECUTIVE DIRECTOR.—The TSP II Board shall
11 appoint an Executive Director in a similar manner and
12 with similar functions as the Executive Director of the
13 Federal Retirement Thrift Investment Board under sec-
14 tion 8474 of title 5, United States Code.

15 (c) DUTIES OF BOARD.—The TSP II Board shall es-
16 tablish policies and procedures for—

17 (1) establishment and maintenance of individual
18 retirement plans under section 408B(f)(3) of the In-
19 ternal Revenue Code of 1986,

20 (2) the investment and management of con-
21 tributions to such individual retirement plans,

22 (3) the amount of contributions, and the invest-
23 ment of such contributions, under automatic con-
24 tribution arrangements under section 408B(g) of
25 such Code, including the designation of investment

1 funds in which such contributions may be invested,
2 and

3 (4) the establishment of automatic IRAs under
4 section 408C of such Code, including the issuance of
5 regulations under subsection (c) of such section.

6 (d) BEST PRACTICES.—The TSP II Board shall, on
7 a continual basis, prescribe and encourage best practices
8 (including cost efficiencies and innovations) in enrollment,
9 investment, distribution, and other procedures or arrange-
10 ments relating to retirement savings and investment. In
11 carrying out its responsibilities under this section, the
12 TSP II Board may implement (by contract or otherwise)
13 pilot projects to help assess the efficacy and workability
14 of specific practices and arrangements.

15 (e) EXPANSION OF USE OF IRAS BY SELF-EM-
16 PLOYED AND OTHER INDIVIDUALS.—The TSP II Board
17 shall establish procedures to disseminate information
18 (through use of the Internet and other appropriate means)
19 to facilitate and encourage—

20 (1) the use by self-employed and other individ-
21 uals of automatic debit and similar arrangements for
22 investment in individual retirement plans, including
23 automatic IRAs,

7 (f) EXCLUSIVE INTEREST.—The members of the
8 TSP II Board shall discharge their responsibilities solely
9 in the interest of participants and beneficiaries under indi-
10 vidual retirement plans described in section 408B of the
11 Internal Revenue Code of 1986.

12 (g) OTHER PROVISIONS MADE APPLICABLE.—The
13 provisions of subsections (f)(3), (g), (i), and (j) of section
14 8472 of title 5, United States Code, shall apply to the
15 TSP II Board.

16 Subtitle B—Other Provisions

17 SEC. 111. MODIFICATIONS TO COMPUTATION OF SAVER'S
18 CREDIT; SAVER'S CREDIT MADE REFUND-
19 ABLE.

20 (a) IN GENERAL.—Section 25B(b) (defining applica-
21 ble percentage), as amended by section 833 of the Pension
22 Protection Act of 2006, is amended to read as follows:
23 “(b) APPLICABLE PERCENTAGE.—For purposes of
24 this section—

1 “(1) IN GENERAL.—The applicable percentage
 2 is 50 percent reduced (but not below zero) by 1 per-
 3 centage point for each phaseout amount by which
 4 the taxpayer’s adjusted gross income for the taxable
 5 year exceeds the threshold amount.

6 “(2) PHASEOUT AMOUNT; THRESHOLD
 7 AMOUNT.—The phaseout amount and the threshold
 8 amount shall be determined as follows:

“In the case of:	The phaseout amount is:	The threshold amount is:
A joint return	\$200	\$50,000
A head of household return	\$150	\$37,500
Any other return	\$100	\$25,000.

9 “(3) INFLATION ADJUSTMENT.—

10 “(A) JOINT RETURNS.—In the case of any
 11 taxable year beginning in a calendar year after
 12 2008, the \$50,000 amount under paragraph (2)
 13 shall be increased by an amount equal to—

14 “(i) such dollar amount, multiplied by
 15 “(ii) the cost-of-living adjustment de-
 16 termined under section 1(f)(3) for the cal-
 17 endar year in which the taxable year be-
 18 gins, determined by substituting ‘calendar
 19 year 2007’ for ‘calendar year 1992’ in sub-
 20 paragraph (B) thereof.

1 Any increase determined under the preceding
2 sentence shall be rounded to the nearest mul-
3 tiple of \$500.

4 “(B) OTHER RETURNS.—In the case of
5 any taxable year for which there is an increase
6 under subparagraph (A)—

7 “(i) the \$37,500 under paragraph (2)
8 shall be increased to an amount equal to
9 75 percent of the amount determined
10 under subparagraph (A), and

11 “(ii) the \$25,000 amount under para-
12 graph (2) shall be increased to an amount
13 equal to 50 percent of the amount deter-
14 mined under subparagraph (A).”.

15 (b) CREDIT MADE REFUNDABLE.—

16 (1) TRANSFER OF CREDIT TO REFUNDABLE
17 CREDITS.—

18 (A) IN GENERAL.—Section 25B, as
19 amended by subsection (a), is hereby moved to
20 subpart C of part IV of subchapter A of chap-
21 ter 1 (relating to refundable credits) and in-
22 serted after section 35.

23 (B) CONFORMING AMENDMENTS.—

24 (i) Section 24(b)(3)(B) is amended by
25 striking “and 25B”.

3 (iii) Section 25D(c)(2) is amended by
4 striking “24, and 25B” and inserting “and
5 24”.

6 (iv) Section 26(a)(1) is amended by
7 striking “24, and 25B” and inserting “and
8 24”.

9 (v) Section 25B, as moved by sub-
10 paragraph (A), is redesignated as section
11 36.

12 (vi) Section 904(i) is amended by
13 striking “24, and 25B” and inserting “
14 and 24”.

15 (vii) Section 1400C(d)(2) is amended
16 by striking “, 25B”.

17 (viii) The table of sections for subpart
18 C of part IV of subchapter A of chapter 1
19 is amended by striking the item relating to
20 section 36 and inserting the following:

“Sec. 36. Elective deferrals and IRA contributions by certain individuals.
“Sec. 37. Overpayments of tax.”.

21 (ix) The table of sections for subpart
22 A of part IV of subchapter A of chapter 1
23 is amended by striking the item relating to
24 section 25B.

1 (x) Section 1324 of title 31, United
2 States Code, is amended by inserting “, or
3 enacted by the Women’s Retirement Secu-
4 rity Act of 2007” before the period at the
5 end.

6 (2) MANDATORY DEPOSIT INTO QUALIFIED AC-
7 COUNT.—

13 (B) DEPOSIT INTO QUALIFIED AC-
14 COUNT.—Subsection (g) of section 36, as moved
15 and redesignated by paragraph (1), is amended
16 to read as follows:

17 "(g) DEPOSIT INTO QUALIFIED ACCOUNT.—

18 “(1) IN GENERAL.—Any amount allowed as a
19 tax credit under subsection (a) shall not be allowed
20 as a credit against any tax imposed by this subtitle
21 but instead shall be treated as an overpayment
22 under section 6401(b) and—

23 “(A) shall be paid on behalf of the individual
24 taxpayer to an applicable retirement plan
25 designated by the individual to be invested in a

1 manner designated by the individual, except
2 that in the case of a joint return, each spouse
3 shall be entitled to designate an applicable re-
4 tirement plan and investments with respect to
5 payments attributable to such spouse, or

6 “(B) in the case of taxpayer who does not
7 properly designate an applicable retirement plan
8 in a timely manner or who designates an appli-
9 cable retirement plan that does not accept such
10 amount in a timely manner, shall be paid or
11 credited on behalf of the individual taxpayer in
12 a manner determined under rules prescribed by
13 the Secretary that provides treatment com-
14 parable to the treatment under subparagraph
15 (A).

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

22 “(3) TREATMENT OF DIRECT PAYMENTS.—All
23 amounts paid under this subsection shall be treated
24 for purposes of this title as income attributable to—

1 “(A) a Roth IRA contribution in the case
2 of a payments to an individual retirement plan,
3 or

4 “(B) a designated Roth contribution in the
5 case of a payment to an applicable retirement
6 plan described in section 402A(e).”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to taxable years beginning after
9 December 31, 2007.

10 **SEC. 112. QUALIFIED CASH OR DEFERRED ARRANGEMENTS**
11 **MUST ALLOW LONG-TERM EMPLOYEES**
12 **WORKING MORE THAN 500 BUT LESS THAN**
13 **1,000 HOURS PER YEAR TO PARTICIPATE.**

14 (a) PARTICIPATION REQUIREMENT.—

15 (1) IN GENERAL.—Subparagraph (D) of section
16 401(k)(2) (defining qualified cash or deferred ar-
17 rangement) is amended to read as follows:

18 “(D) which does not require, as a condi-
19 tion of participation in the arrangement, that
20 an employee complete a period of service with
21 the employer (or employers) maintaining the
22 plan extending beyond the close of the earlier
23 of—

1 “(i) the period permitted under sec-
2 tion 410(a)(1) (determined without regard
3 to subparagraph (B)(i) thereof), or

4 “(ii) subject to the provisions of para-
5 graph (14), the first period of 3 consecu-
6 tive 12-month periods during each of which
7 the employee has at least 500 hours of
8 service.”.

9 (2) SPECIAL RULES.—Section 401(k) (relating
10 to cash or deferred arrangements), as amended by
11 section 902 of the Pension Protection Act of 2006,
12 is amended by adding at the end the following new
13 paragraph:

14 “(14) SPECIAL RULES FOR PARTICIPATION RE-
15 QUIREMENT FOR LONG-TERM, PART-TIME WORK-
16 ERS.—For purposes of paragraph (2)(D)(ii)—

17 “(A) AGE REQUIREMENT MUST BE MET.—
18 Paragraph (2)(D)(ii) shall not apply to an em-
19 ployee unless the employee has met the require-
20 ment of section 410(a)(1)(A)(i) by the close of
21 the last of the 12-month periods described in
22 such paragraph.

23 “(B) NONDISCRIMINATION AND TOP-
24 HEAVY RULES NOT TO APPLY.—

1 “(i) NONDISCRIMINATION RULES.—In
2 the case of employees who are eligible to
3 participate in the arrangement solely by
4 reason of paragraph (2)(D)(ii)—

5 “(I) notwithstanding subsection
6 (a)(4), an employer shall not be re-
7 quired to make nonelective or match-
8 ing contributions on behalf of such
9 employees even if such contributions
10 are made on behalf of other employees
11 eligible to participate in the arrange-
12 ment, and

13 “(II) an employer may elect to
14 exclude such employees from the ap-
15 plication of paragraph (3) and sub-
16 section (m)(2).

17 “(ii) TOP-HEAVY RULES.—An em-
18 ployer may elect to exclude all employees
19 who are eligible to participate in a plan
20 maintained by the employer solely by rea-
21 son of paragraph (2)(D)(ii) from—

22 “(I) the determination of whether
23 the plan is a top-heavy plan under
24 section 416, and

1 “(II) if the plan is a top-heavy
2 plan under such section, the applica-
3 tion of the vesting and benefit re-
4 quirements under subsections (b) and
5 (c) of such section.

6 “(iii) VESTING.—For purposes of de-
7 termining whether an employee described
8 in clause (i) has a nonforfeitable right to
9 employer contributions (other than con-
10 tributions described in paragraph
11 (3)(D)(i)) under the arrangement, each
12 12-month period for which the employee
13 has at least 500 hours of service shall be
14 treated as a year of service.

15 “(iv) EMPLOYEES WHO BECOME
16 FULL-TIME EMPLOYEES.—This subparagraph
17 shall cease to apply to any employee
18 after the date on which the employee meets
19 the requirements of section
20 410(a)(1)(A)(ii) without regard to para-
21 graph (2)(D)(ii).

22 “(C) EXCEPTION FOR EMPLOYEES UNDER
23 COLLECTIVELY BARGAINED PLANS, ETC.—Para-
24 graph (2)(D)(ii) shall not apply to employees
25 described in section 410(b)(3).

1 “(D) SPECIAL RULES.—

2 “(i) TIME OF PARTICIPATION.—The
3 rules of section 410(a)(4) shall apply to an
4 employee eligible to participate in an ar-
5 rangement solely by reason of paragraph
6 (2)(D)(ii).7 “(ii) 12-MONTH PERIODS.—12-month
8 periods shall be determined in the same
9 manner as under the last sentence of sec-
10 tion 410(a)(3)(A).”.11 (b) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to plan years beginning after De-
13 cember 31, 2008, except that, for purposes of section
14 401(k)(2)(D)(ii) of the Internal Revenue Code of 1986 (as
15 added by such amendments), 12-month periods beginning
16 before January 1, 2009, shall not be taken into account.17 **SEC. 113. TRANSFERS OF UNUSED BENEFITS OF HEALTH**
18 **FLEXIBLE SPENDING ARRANGEMENT TO**
19 **CERTAIN RETIREMENT PLANS.**20 (a) IN GENERAL.—Section 125 (relating to cafeteria
21 plans) is amended by redesignating subsections (h) and
22 (i) as subsections (i) and (j), respectively, and by inserting
23 after subsection (g) the following:24 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH
25 BENEFITS.—

1 “(1) IN GENERAL.—For purposes of this title,
2 a plan or other arrangement shall not fail to be
3 treated as a cafeteria plan solely because qualified
4 benefits of a participant under such plan include a
5 health flexible spending arrangement under which
6 not more than \$500 of unused health benefits may
7 be contributed on behalf of the participant to—

8 “(A) a qualified retirement plan (as de-
9 fined in section 4974(c)), or

10 “(B) an eligible deferred compensation
11 plan (as defined in section 457(b)) maintained
12 by an eligible employer described in section
13 457(e)(1)(A).

14 “(2) TREATMENT OF CONTRIBUTION OF UN-
15 USED HEALTH BENEFITS.—

16 “(A) IN GENERAL.—For purposes of this
17 title, contributions described in paragraph (1)
18 shall be treated as elective contributions made
19 pursuant to an election by the participant be-
20 tween such contributions and compensation
21 which would otherwise be includible in the gross
22 income of the employee.

23 “(B) EXCLUSION OR DEDUCTION.—Con-
24 tributions described in paragraph (1) shall be
25 excluded from gross income, or included in

1 gross income and allowed as a deduction, to the
2 same extent that elective contributions would be
3 so treated under this title.

4 “(3) HEALTH FLEXIBLE SPENDING ARRANGE-
5 MENT.—For purposes of this subsection, the term
6 ‘health flexible spending arrangement’ means a flexi-
7 ble spending arrangement (as defined in section
8 106(c)) which is a qualified benefit and only permits
9 reimbursement for expenses for medical care (as de-
10 fined in section 213(d)(1) without regard to sub-
11 paragraphs (C) and (D) thereof).

12 “(4) UNUSED HEALTH BENEFITS.—For pur-
13 poses of this subsection, the term ‘unused health
14 benefits’ means, with respect to a participant, the
15 excess of—

16 “(A) the maximum amount of reimburse-
17 ment allowable to the participant with respect
18 to a plan year under a health flexible spending
19 arrangement, taking into account any election
20 by the participant, over

21 “(B) the actual amount of reimbursement
22 with respect to such year under such arrange-
23 ment.”.

24 (b) SPECIAL RULES.—The Secretary of the Treasury
25 shall prescribe such rules as are appropriate to carry out

1 the purposes of the amendments made by this section.
2 Such rules may permit elections by plan sponsors with re-
3 spect to the year to which the contributions relate and may
4 provide for special treatment for purposes of applying the
5 requirements applicable to such contributions.

6 (c) EFFECTIVE DATE.—The amendment made by
7 subsection (a) shall apply to years beginning after Decem-
8 ber 31, 2007.

9 **SEC. 114. COMPUTATION OF LIMITS ON IRA AND ROTH IRA**

10 **CONTRIBUTIONS.**

11 (a) CERTAIN WAGE REPLACEMENT INCOME TREAT-
12 ED AS COMPENSATION.—

13 (1) WAGE REPLACEMENT INCOME.—Section
14 219(f) (relating to other definitions and special
15 rules) is amended by redesignating paragraph (8) as
16 paragraph (9) and by inserting after paragraph (7)
17 the following new paragraph:

18 “(8) TREATMENT OF CERTAIN WAGE REPLACE-
19 MENT INCOME AS COMPENSATION.—

20 (A) IN GENERAL.—Notwithstanding para-
21 graph (1), applicable wage replacement income
22 not otherwise treated as compensation shall be
23 treated as compensation for purposes of this
24 section.

1 “(B) APPLICABLE WAGE REPLACEMENT
2 INCOME.—For purposes of this paragraph, the
3 term ‘applicable wage replacement income’
4 means any amount received by an individual—
5 “(i) as the result of the individual
6 having become disabled,
7 “(ii) as unemployment compensation
8 (as defined in section 85(b)),
9 “(iii) under workmen’s compensation
10 acts, or
11 “(iv) which constitutes wage replace-
12 ment income under regulations prescribed
13 by the Secretary.”.

14 (2) CERTAIN EXCLUDABLE AMOUNTS MAY BE
15 TAKEN INTO ACCOUNT FOR PURPOSES OF ROTH
16 IRAS.—Section 408A(c)(2) (relating to contribution
17 limit) is amended by adding at the end the following
18 new flush sentence:
19 “In determining the maximum amount under sub-
20 paragraph (A), subsections (b)(1)(B) and (c) of sec-
21 tion 219 shall be applied by taking into account
22 compensation described in section 219(f)(8) without
23 regard to whether it is includible in gross income.”.

4 (b) COMPUTATION OF MAXIMUM IRA DEDUCTION
5 FOR ROTH IRAs USING COMPENSATION FROM 2 PRE-
6 CEDING TAXABLE YEARS.—

10 “(8) COMPENSATION FROM PRECEDING 2
11 YEARS MAY BE TAKEN INTO ACCOUNT.—

12 “(A) IN GENERAL.—A taxpayer may elect
13 for purposes of paragraph (2) to take into ac-
14 count any unused compensation from the 2 tax-
15 able years immediately preceding the taxable
16 year.

1 “(ii) the amount of any designated
2 nondeductible contribution (as defined in
3 section 408(o)) on behalf of such individual
4 for such taxable year,

5 “(iii) the amount of any contribution
6 on behalf of such individual to a Roth IRA
7 under this section for such taxable year,
8 and

9 “(iv) the amount of compensation in-
10 cludible in such individual’s gross income
11 for such taxable year taken into account
12 under section 219(c) in determining the
13 limitation under section 219 or paragraph
14 (2) for the individual’s spouse.

15 “(C) APPLICATION TO SPECIAL RULE FOR
16 MARRIED INDIVIDUALS.—Under rules pre-
17 scribed by the Secretary, in applying section
18 219(c) for any taxable year for purposes of ap-
19 plying paragraph (2)(A), unused compensation
20 of an individual or an individual’s spouse for
21 the 2 taxable years immediately preceding the
22 taxable year may be taken into account.”.

23 (2) EFFECTIVE DATE.—The amendment made
24 by this subsection shall apply to taxable years begin-
25 ning after December 31, 2007, but unused com-

1 pensation for taxable years beginning before January
2 1, 2008, may be taken into account for taxable
3 years beginning after December 31, 2007.

4 **TITLE II—PROVISIONS PRO-**
5 **VIDING FOR PRESERVATION**
6 **OF INCOME**

7 **SEC. 201. EXCLUSION OF CERTAIN QUALIFIED ANNUITY**
8 **PAYMENTS.**

9 (a) EXCLUSION.—

10 (1) QUALIFIED PLANS.—Section 402(e) (relat-
11 ing to exempt trusts) is amended by adding at the
12 end the following new paragraph:

13 “(7) EXCLUSION OF PERCENTAGE OF LIFETIME
14 ANNUITY PAYMENTS.—

15 “(A) IN GENERAL.—In the case of a life-
16 time annuity payment to a qualified distributee
17 from a qualified trust (within the meaning of
18 subsection (c)(8)(A)) maintained in connection
19 with a defined contribution plan, gross income
20 shall not include 10 percent of the amount oth-
21 erwise includible in gross income (determined
22 without regard to this paragraph). For pur-
23 poses of this paragraph, payments from an an-
24 nuity contract distributed by the qualified trust

1 shall be treated as payments from the qualified
2 trust.

3 “(B) LIMITATION.—

4 “(i) IN GENERAL.—If—

5 “(I) the aggregate amount of
6 lifetime annuity payments to the dis-
7 tributee during the taxable year which
8 are includible in gross income (deter-
9 mined without regard to this para-
10 graph) and which are subject to this
11 paragraph or to rules similar to the
12 rules of this paragraph (other than
13 section 72(b)(5) or 101(d)(4)), ex-
14 ceeds

15 “(II) 50 percent of the applicable
16 amount for the taxable year under
17 section 415(a),

18 then the aggregate amount otherwise ex-
19 cludable under subparagraph (A) for the
20 taxable year shall be reduced by 10 percent
21 of the portion of such excess which is allo-
22 cable under clause (ii) to payments which
23 are subject to this paragraph.

24 “(ii) ALLOCATION RULE.—Any excess
25 described in clause (i) for any taxable year

1 shall be allocated ratably among all life-
2 time annuity payments to the qualified dis-
3 tributee described in clause (i)(I).

4 “(C) DEFINITIONS.—For purposes of this
5 paragraph—

6 “(i) LIFETIME ANNUITY PAYMENT.—

7 “(I) IN GENERAL.—Except as
8 provided in this clause, the term ‘life-
9 time annuity payment’ means a dis-
10 tribution from an annuity contract
11 which is a part of a series of substan-
12 tially equal periodic payments (not
13 less frequently than annually) made
14 over the life of the qualified dis-
15 tributee or the joint lives of the quali-
16 fied distributee and the qualified
17 distributee’s designated beneficiary.

18 For purposes of this paragraph, the
19 term ‘annuity contract’ means a com-
20 mercial annuity (as defined in section
21 3405(e)(6)), other than an endowment
22 or life insurance contract.

23 “(II) CERTAIN FLUCTUATING
24 PAYMENTS.—Annuity payments shall
25 not fail to be treated as part of a se-

1 the qualified distributee and the qual-
2 ified distributee's designated bene-
3 ficiary, the amounts paid after the
4 death of the qualified distributee or
5 the qualified distributee's designated
6 beneficiary are less than the amounts
7 payable during their joint lives.

1 tributee shall constitute lifetime annu-
2 ity payments if such payments are
3 made within a reasonable period after
4 receipt by the qualified trust.

21 " (i) IN GENERAL.—If—

1 “(II) the series of payments of
2 which such payment is a part is sub-
3 sequently modified (other than by rea-
4 son of death or disability) so that
5 some or all future payments are not
6 lifetime annuity payments,
7 the qualified distributee's gross income for
8 the first taxable year in which such modi-
9 fication occurs shall be increased by an
10 amount, determined under rules prescribed
11 by the Secretary, equal to the amount
12 which (but for subparagraph (A)) would
13 have been includible in the qualified
14 distributee's gross income if the modifica-
15 tion had been in effect at all times, plus in-
16 terest for the deferral period at the under-
17 payment rate established under section
18 6621.

19 “(ii) DEFERRAL PERIOD.—For pur-
20 poses of this subparagraph, the term 'de-
21 ferral period' means, with respect to any
22 amount, the period beginning with the tax-
23 able year in which (without regard to sub-
24 paragraph (A)) the amount would have
25 been includible in gross income and ending

1 with the taxable year in which the modi-
2 fication described in clause (i)(II) occurs.

3 “(E) INVESTMENT IN THE CONTRACT.—
4 For purposes of section 72, the investment in
5 the contract shall be determined without regard
6 to this paragraph.”.

7 (2) QUALIFIED ANNUITY PLANS.—Section
8 403(a) (relating to qualified annuity plans) is
9 amended by adding at the end the following new
10 paragraph:

11 “(6) EXCLUSION OF PERCENTAGE OF LIFETIME
12 ANNUITY PAYMENTS.—Rules similar to the rules of
13 section 402(e)(7) shall apply to distributions under
14 any annuity contract to which this subsection ap-
15 plies.”.

16 (3) PURCHASED ANNUITIES.—Section 403(b)
17 (relating to purchased annuities) is amended by add-
18 ing at the end the following new paragraph:

19 “(14) EXCLUSION OF PERCENTAGE OF LIFE-
20 TIME ANNUITY PAYMENTS.—Rules similar to the
21 rules of section 402(e)(7) shall apply to distributions
22 under any annuity contract or custodial account to
23 which this subsection applies.”.

24 (4) IRAS.—Section 408(d) (relating to tax
25 treatment of distributions), as amended by section

1 1201 of the Pension Protection Act of 2006, is
2 amended by adding at the end the following new
3 paragraph:

4 “(10) EXCLUSION OF PERCENTAGE OF LIFE-
5 TIME ANNUITY PAYMENTS.—Rules similar to the
6 rules of section 402(e)(7) shall apply to distributions
7 out of an individual retirement plan.”.

8 (5) SECTION 457 PLANS.—Section 457(e) (relat-
9 ing to special rules for deferred compensation plans)
10 is amended by adding at the end the following new
11 paragraph:

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

17 (b) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to distributions made after Decem-
19 ber 31, 2007.

20 **SEC. 202. EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.**

21 (a) LIFETIME ANNUITY PAYMENTS UNDER ANNUITY
22 CONTRACTS.—Section 72(b) (relating to exclusion ratio)
23 is amended by adding at the end the following new para-
24 graph:

1 “(5) EXCLUSION FOR LIFETIME ANNUITY PAY-
2 MENTS.—

3 “(A) IN GENERAL.—In the case of lifetime
4 annuity payments received as an annuity under
5 1 or more annuity contracts in any taxable
6 year, gross income shall not include the lesser
7 of—

8 “(i) 50 percent of the portion of the
9 lifetime annuity payments which (without
10 regard to this paragraph) is includible in
11 gross income under this section for the
12 taxable year, or

13 “(ii) \$20,000.

14 “(B) COST-OF-LIVING ADJUSTMENT.—In
15 the case of taxable years beginning after De-
16 cember 31, 2008, the \$20,000 amount in sub-
17 paragraph (A)(ii) shall be increased by an
18 amount equal to—

19 “(i) such dollar amount, multiplied by

20 “(ii) the cost-of-living adjustment de-
21 termined under section 1(f)(3) for the cal-
22 endar year in which the taxable year be-
23 gins, determined by substituting ‘calendar
24 year 2007’ for ‘calendar year 1992’ in sub-
25 paragraph (B) thereof.

1 If any amount as increased under the preceding
2 sentence is not a multiple of \$500, such amount
3 shall be rounded to the next lower multiple of
4 \$500.

5 “(C) APPLICATION OF PARAGRAPH.—Sub-
6 paragraph (A) shall not apply to—

7 “(i) any amount received under an eli-
8 gible deferred compensation plan (as de-
9 fined in section 457(b)) or under a qual-
10 fied retirement plan (as defined in section
11 4974(c)),

12 “(ii) any amount paid under an annu-
13 ity contract which is received by the bene-
14 ficiary under the contract—

15 “(I) after the death of the annu-
16 itant in the case of payments de-
17 scribed in subsection (c)(5)(A)(ii)(III),
18 unless the beneficiary is the surviving
19 spouse of the annuitant, or

20 “(II) after the death of the annu-
21 itant and joint annuitant in the case
22 of payments described in subsection
23 (c)(5)(A)(ii)(IV), unless the bene-
24 ficiary is the surviving spouse of the

8 For purposes of this section, the investment in
9 the contract shall be determined without regard
10 to this paragraph.”.

11 (b) DEFINITIONS.—Section 72(c) is amended by add-
12 ing at the end the following new paragraph:

14 “(A) IN GENERAL.—For purposes of sub-
15 section (b)(5), the term ‘lifetime annuity pay-
16 ment’ means any amount received as an annu-
17 ity under any portion of an annuity contract,
18 but only if—

1 itant or joint annuitant is such annuitant
2 or joint annuitant, and

3 “(ii) such amount is part of a series
4 of substantially equal periodic payments
5 made not less frequently than annually
6 over—

7 “(I) the life of the annuitant,

8 “(II) the lives of the annuitant
9 and a joint annuitant, but only if the
10 annuitant is the spouse of the joint
11 annuitant as of the annuity starting
12 date or the difference in age between
13 the annuitant and joint annuitant is
14 15 years or less,

15 “(III) the life of the annuitant
16 with a minimum period of payments
17 or with a minimum amount that must
18 be paid in any event, or

19 “(IV) the lives of the annuitant
20 and a joint annuitant with a minimum
21 period of payments or with a min-
22 imum amount that must be paid in
23 any event, but only if the annuitant is
24 the spouse of the joint annuitant as of
25 the annuity starting date or the dif-

“(III) because the period between each such payment is lengthened or shortened, but only if at all times

such period is no longer than 1 calendar year.

9 “(C) MINIMUM PERIOD OF PAYMENTS.—
10 For purposes of subparagraph (A), the minimum
11 period of payments is a guaranteed term
12 of payments which does not exceed the greater
13 of—

1 For purposes of this subparagraph, life expect-
2 ancy shall be computed with reference to the ta-
3 bles prescribed by the Secretary under para-
4 graph (3). For purposes of subsection
5 (x)(1)(C)(ii), the permissible minimum period of
6 payments shall be determined as of the annuity
7 starting date and reduced by one for each sub-
8 sequent year.

9 “(D) MINIMUM AMOUNT THAT MUST BE
10 PAID IN ANY EVENT.—For purposes of subpara-
11 graph (A), the minimum amount that must be
12 paid in any event is an amount payable to the
13 designated beneficiary under an annuity con-
14 tract which is in the nature of a refund and
15 does not exceed the greater of the amount ap-
16 plied to produce the lifetime annuity payments
17 under the contract or the amount, if any, avail-
18 able for withdrawal under the contract on the
19 date of death.”.

20 (c) RECAPTURE TAX FOR LIFETIME ANNUITY PAY-
21 MENTS.—Section 72 is amended by redesignating sub-
22 section (x) as subsection (y) and by inserting after sub-
23 section (x) the following new subsection:

24 “(x) RECAPTURE TAX FOR MODIFICATIONS TO OR
25 REDUCTIONS IN LIFETIME ANNUITY PAYMENTS.—

1 “(1) IN GENERAL.—If—

2 “(A) any amount received under an annu-
3 ity contract is excluded from income by reason
4 of subsection (b)(5) (relating to lifetime annuity
5 payments) for any taxable year, and

6 “(B) a recapture event described in para-
7 graph (2) occurs in any subsequent taxable
8 year,

9 then gross income for the first taxable year in which
10 the recapture event occurs shall be increased by the
11 recapture amount.

12 “(2) RECAPTURE EVENT.—For purposes of
13 paragraph (1), a recapture event occurs if—

14 “(A) the series of payments under an an-
15 nuity contract is subsequently modified so any
16 future payments are not lifetime annuity pay-
17 ments,

18 “(B) after the date of receipt of the first
19 lifetime annuity payment under the contract an
20 annuitant receives a lump sum and thereafter is
21 to receive annuity payments in a reduced
22 amount under the contract, or

23 “(C) after the date of receipt of the first
24 lifetime annuity payment under the contract the
25 dollar amount of any subsequent annuity pay-

ment is reduced and a lump sum is not paid in connection with the reduction, unless such reduction is—

12 “(3) RECAPTURE AMOUNT.—

13 “(A) IN GENERAL.—For purposes of this
14 subsection, the recapture amount shall be the
15 amount, determined under rules prescribed by
16 the Secretary, equal to the amount which (but
17 for subsection (b)(5)) would have been includ-
18 ible in the taxpayer’s gross income if the modi-
19 fication or reduction described in subparagraph
20 (A), (B), or (C) of paragraph (2) had been in
21 effect at all times, plus interest for the deferral
22 period at the underpayment rate established by
23 section 6621.

1 means, with respect to any amount, the period
2 beginning with the taxable year in which (with-
3 out regard to subsection (b)(5)) the amount
4 would have been includible in gross income and
5 ending with the taxable year in which the modi-
6 fication or reduction described in subparagraph
7 (A), (B), or (C) of paragraph (2) occurs.

8 “(4) EXCEPTIONS TO RECAPTURE TAX.—Para-
9 graph (1) shall not apply in the case of any recap-
10 ture event which occurs because an annuitant—

11 “(A) dies or becomes disabled (within the
12 meaning of subsection (m)(7)),

13 “(B) becomes a chronically ill individual
14 within the meaning of section 7702B(c)(2), or

15 “(C) encounters hardship.”.

16 (d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE
17 DEATH BENEFITS.—

18 (1) IN GENERAL.—Section 101(d) (relating to
19 payment of life insurance proceeds at a date later
20 than death) is amended by adding at the end the fol-
21 lowing new paragraph:

22 “(4) EXCLUSION FOR LIFETIME ANNUITY PAY-
23 MENTS.—

24 “(A) IN GENERAL.—In the case of
25 amounts to which this subsection applies, gross

1 income for any taxable year shall not include
2 the lesser of—

3 “(i) 50 percent of the portion of life-
4 time annuity payments which (without re-
5 gard to this paragraph) is includable in
6 gross income under this section, or

7 “(ii) the amount in effect under sec-
8 tion 72(b)(5)(A)(ii) for the taxable year.

9 “(B) RULES OF SECTION 72(b)(5) TO
10 APPLY.—For purposes of this paragraph, rules
11 similar to the rules of section 72(b)(5) and sec-
12 tion 72(x) shall apply, except that the term
13 ‘beneficiary of the life insurance contract’ shall
14 be substituted for the term ‘annuitant’ each
15 place it appears, and the term ‘life insurance
16 contract’ shall be substituted for the term ‘an-
17 nuity contract’ each place it appears.”.

18 (2) CONFORMING AMENDMENT.—Section
19 101(d)(1) is amended by inserting “or paragraph
20 (4)” after “to the extent not excluded by the pre-
21 ceding sentence”.

22 (e) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by
24 this section shall apply to amounts received in cal-

1 endar years beginning after the date of the enact-
2 ment of this Act.

3 (2) SPECIAL RULE FOR EXISTING CON-
4 TRACTS.—In the case of a contract in force on the
5 date of the enactment of this Act that does not sat-
6 isfy the requirements of section 72(c)(5)(A) of the
7 Internal Revenue Code of 1986 (as added by this
8 section), or requirements similar to such section
9 72(c)(5)(A) in the case of a life insurance contract,
10 any modification to such contract (including a
11 change in ownership) or to the payments under such
12 contract that is made to satisfy the requirements of
13 such section (or similar requirements) shall not re-
14 sult in the recognition of any gain or loss, any
15 amount being included in gross income, or any addi-
16 tion to tax that otherwise might result from such
17 modification, but only if the modification is com-
18 pleted before the date which is 2 years after the date
19 of the enactment of this Act.

20 **SEC. 203. JOINT STUDY OF APPLICATION OF SPOUSAL CON-**
21 **SENT RULES TO DEFINED CONTRIBUTION**
22 **PLANS.**

23 (a) STUDY.—The Secretary of Labor and the Sec-
24 retary of the Treasury shall jointly conduct a study of the
25 feasibility and desirability of extending the application of

1 the requirements of section 205 of the Employee Retire-
2 ment Income Security Act of 1974 and sections
3 401(a)(11) and 417 of the Internal Revenue Code of 1986
4 (relating to spousal consent requirements) to defined con-
5 tribution plans to which such requirements do not apply.
6 Such study shall include consideration of any modifica-
7 tions of such requirements that are necessary to apply
8 such requirements to such plans.

9 (b) REPORT.—Not later than 2 years after the date
10 of the enactment of this Act, the Secretaries shall report
11 the results of the study, together with any recommenda-
12 tions for legislative changes, to the Committees on Fi-
13 nance and Health, Education, Labor, and Pensions of the
14 Senate and the Committees on Ways and Means and Edu-
15 cation and Labor of the House of Representatives.

16 **SEC. 204. FACILITATING LONGEVITY INSURANCE.**

17 (a) IN GENERAL.—Paragraph (9) of section 401(a)
18 is amended by inserting after subparagraph (G) the fol-
19 lowing new subparagraph:

20 “(H) LONGEVITY INSURANCE.—

21 “(i) IN GENERAL.—For purposes of
22 this paragraph, any value attributable to
23 longevity insurance shall be disregarded in
24 determining the value of an employee’s in-
25 terest under a plan prior to the first date

1 that payments are made under the lon-
2 gevity insurance.

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

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

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

23 “(III) prior to the death of the
24 employee, the annuity does not make
25 available any commutation benefit,

1 cash surrender value, or other similar
2 feature, and

19 (b) RULES.—Not later than one year after the date
20 of enactment of this Act, the Secretary of the Treasury
21 shall prescribe rules under which all or a portion of a par-
22 ticipant's benefits under any plan described in section
23 402(c)(8)(B) of the Internal Revenue Code of 1986 may
24 be treated as longevity insurance under the rules of section
25 401(a)(9)(H) of such Code.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to years beginning after December
3 31, 2008.

4 **TITLE III—PROVISIONS**
5 **ENSURING EQUITY IN DIVORCE**

6 **SEC. 301. SPECIAL RULES RELATING TO TREATMENT OF**
7 **QUALIFIED DOMESTIC RELATIONS ORDERS.**

8 (a) PRESERVATION OF ASSETS.—

9 (1) AMENDMENT OF 1986 CODE.—Section
10 414(p) is amended by redesignating paragraph (13)
11 as paragraph (14) and by inserting after paragraph
12 (12) the following new paragraph:

13 “(13) PRESERVATION OF ASSETS.—

14 “(A) IN GENERAL.—If a spouse or former
15 spouse of a participant notifies a plan in writ-
16 ing that—

17 “(i) an action is pending pursuant to
18 a State domestic relations law (including a
19 community property law), and

20 “(ii) all or a portion of the benefits
21 payable with respect to the participant
22 under the plan are a subject of such ac-
23 tion,

24 and includes with the notice evidence of the
25 pendency of the action, the plan administrator

1 shall, during the segregation period, separately
2 account for 50 percent of such benefits. Any
3 amounts so separately accounted for may not
4 be distributed by the plan during the segrega-
5 tion period.

6 “(B) SEGREGATION PERIOD.—For pur-
7 poses of subparagraph (A), the term ‘segrega-
8 tion period’ means the period—

9 “(i) beginning on the date of the re-
10 ceipt of the notice, and

11 “(ii) ending as of the close of the 90-
12 day period beginning on such date (or, if
13 earlier, the date of receipt of a domestic
14 relations order with respect to the partici-
15 pant and the spouse or former spouse or
16 the date the action is no longer pending).

17 The segregation period shall be extended for 1
18 or more additional periods described in the pre-
19 ceding sentence upon notice by the spouse or
20 former spouse that the action described in sub-
21 paragraph (A) is still pending as of the close of
22 any prior segregation period.”

23 (2) AMENDMENT OF ERISA.—Section 206(d)(3)
24 of the Employee Retirement Income Security Act of
25 1974 (29 U.S.C. 1056(d)(3)) is amended by redesign-

1 nating subparagraph (N) as subparagraph (O) and
2 by inserting after subparagraph (M) the following
3 new subparagraph:

4 “(N) PRESERVATION OF ASSETS.—

5 “(i) IN GENERAL.—If a spouse or
6 former spouse of a participant notifies a
7 plan in writing that—

8 “(I) an action is pending pursuant
9 to a State domestic relations law
10 (including a community property law),
11 and

12 “(II) all or a portion of the benefits
13 payable with respect to the participant
14 under the plan are a subject of
15 such action,

16 and includes with the notice evidence of
17 the pendency of the action, the plan administrator
18 shall, during the segregation period,
19 separately account for 50 percent
20 of such benefits. Any amounts so separately
21 accounted for may not be distributed
22 by the plan during the segregation period.

23 “(ii) SEGREGATION PERIOD.—For
24 purposes of clause (i), the term ‘segregation
25 period’ means the period—

1 “(I) beginning on the date of the
2 receipt of the notice, and

3 “(II) ending as of the close of the
4 90-day period beginning on such date
5 (or, if earlier, the date of receipt of a
6 domestic relations order with respect
7 to the participant and the spouse or
8 former spouse or the date the action
9 is no longer pending).

10 The segregation period shall be extended
11 for 1 or more additional periods described
12 in the preceding sentence upon notice by
13 the spouse or former spouse that the ac-
14 tion described in clause (i) is still pending
15 as of the close of any prior segregation pe-
16 riod.”

17 (b) PENALTY FOR FAILURE TO PROVIDE INFORMA-
18 TION REGARDING ALTERNATE PAYEES.—Section 502(c)
19 of the Employee Retirement Income Security Act of 1974
20 (29 U.S.C. 1132(c)) is amended by redesignating para-
21 graph (8) as paragraph (9) and by inserting after para-
22 graph (7) the following new paragraph:

23 “(8) FAILURE TO PROVIDE INFORMATION RE-
24 GARDING ALTERNATE PAYEES.—The Secretary may
25 assess a civil penalty against any plan administrator

1 of up to \$100 a day from the date of the plan ad-
2 ministrator's failure or refusal to provide the infor-
3 mation the plan administrator is required to provide
4 under regulations under this Act to prospective al-
5 ternative payees under a domestic relations order
6 under section 206(d)(3) or to the Secretary or any
7 representative of a prospective alternative payee in
8 connection with such an order."

9 (c) ALLOCATION OF PLAN EXPENSES IN COMPLYING
10 WITH DOMESTIC RELATIONS ORDERS.—

11 (1) AMENDMENT OF 1986 CODE.—Section
12 414(p), as amended by subsection (a), is amended
13 by redesignating paragraph (14) as paragraph (15)
14 and by inserting after paragraph (13) the following
15 new paragraph:

16 "(14) ALLOCATION OF EXPENSES.—Any ex-
17 penses incurred by a plan with respect to compliance
18 with the requirements of this subsection shall not be
19 allocated to an individual participant but rather
20 shall be allocated among all participants on the basis
21 of the relative value of each participant's share of
22 the assets of the plan, on the basis of a flat amount
23 per participant, or on any other reasonable basis
24 provided for under the plan."

8 “(O) ALLOCATION OF EXPENSES.—Any
9 expenses incurred by a plan with respect to
10 compliance with the requirements of this para-
11 graph shall not be allocated to an individual
12 participant but rather shall be allocated among
13 all participants on the basis of the relative value
14 of each participant’s share of the assets of the
15 plan, on the basis of a flat amount per partici-
16 pant, or on any other reasonable basis provided
17 for under the plan.”

21 (a) IN GENERAL.—Section 2(d)(1) of the Railroad
22 Retirement Act of 1974 (45 U.S.C. 231a(d)(1)), in the
23 matter preceding paragraph (i), is amended by inserting
24 “, except with respect to survivors described in paragraph
25 (i), (ii), or (v),” after “December 31, 1995) and”.

1 (b) EFFECTIVE DATES.—

(2) RETROACTIVE APPLICATION TO CERTAIN SURVIVORS.—If a survivor of a deceased employee would be entitled to an annuity by reason of the amendment made by subsection (a) but for the fact that the employee died before the date of the enactment of this Act, the survivor shall be entitled to such an annuity but only with respect to annuity payments for months beginning on or after such date. Appropriate adjustments shall be made in annuity payments of other individuals to reflect any annuity payable by reason of this paragraph.

16 SEC. 303. PERMITTING DIVORCED SPOUSES AND WIDOWS
17 AND WIDOWERS TO REMARRY AFTER TURN-
18 ING 60 WITHOUT A PENALTY UNDER RAIL-
19 ROAD RETIREMENT ACT.

20 (a) IN GENERAL.—

1 60, such marriage shall be deemed not to have oc-
2 curred.”

10 (b) EFFECTIVE DATES.—

1 **SEC. 304. REPEAL OF JURISDICTIONAL REQUIREMENT FOR**
2 **COURT TO TREAT MILITARY RETIREMENT**
3 **PAY AS PROPERTY OF THE MILITARY MEM-**
4 **BER AND SPOUSE.**

5 (a) IN GENERAL.—Section 1408(c) of title 10,
6 United States Code, is amended by striking paragraph (4).

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply to final decrees issued on or after
9 the date of the enactment of this Act.

10 **SEC. 305. MODIFICATION OF REDUCTIONS IN DISPOSABLE**
11 **RETIRED PAY FOR PAYMENTS IN COMPLI-**
12 **ANCE WITH COURT ORDERS.**

13 (a) IN GENERAL.—Section 1408(d) of title 10,
14 United States Code, is amended by adding at the end the
15 following new paragraph:

16 “(8) Notwithstanding subsection (a)(4) or
17 (e)(1), if the disposable retired pay of a member is
18 reduced under subparagraph (B) of subsection
19 (a)(4) as a result of a waiver required to receive
20 compensation under title 38, or is reduced under
21 subparagraph (C) of subsection (a)(4), the Secretary
22 concerned shall pay (subject to any other limitation
23 under this section) to the spouse or former spouse
24 the lesser of —

1 “(A) the amount payable under the final
2 court order from the disposable retired pay (de-
3 termined without regard to such reductions), or

4 “(B) 100 percent of the disposable retired
5 pay (determined after such reductions).”

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to payments of disposable retired
8 pay attributable to periods beginning on or after the date
9 of the enactment of this Act with respect to final court
10 orders issued on, before, or after such date.

11 **TITLE IV—PROVISIONS TO 12 IMPROVE FINANCIAL LITERACY**

13 **SEC. 401. GRANTS TO COMMUNITY-BASED TAXPAYER CLIN- 14 ICS TO PROVIDE RETIREMENT SAVINGS AD- 15 VICE.**

16 (a) IN GENERAL.—Section 7526 (relating to low-in-
17 come taxpayer clinics) is amended by adding at the end
18 the following:

19 “(d) ADDITIONAL GRANTS FOR RETIREMENT SAV-
20 INGS ADVICE.—

21 “(1) MAKING OF GRANTS.—The Secretary may,
22 subject to the availability of appropriated funds,
23 make grants to qualified low-income taxpayer clinics
24 to provide retirement savings counseling to low-in-
25 come taxpayers.

1 “(2) USE OF GRANT FUNDS.—Grants under
2 paragraph (1) shall be used to—

3 “(A) develop the infrastructure necessary
4 to carry out retirement savings counseling for
5 low-income taxpayers, including the develop-
6 ment of software to assist low-income taxpayers
7 in beginning a retirement savings program,
8 monitoring their savings behavior, and taking
9 advantage of tax benefits provided under this
10 title to assist in retirement savings,

11 “(B) develop partnerships with certified fi-
12 nancial planners and other financial experts to
13 assist in carrying out the retirement savings
14 program, and

15 “(C) train advisors to assist low-income
16 taxpayers with retirement savings.

17 “(3) CRITERIA FOR AWARDS.—The provisions
18 of subsection (c)(4) shall apply in determining
19 whether to make a grant under paragraph (1).

20 “(4) LIMITATIONS AND SPECIAL RULES.—

21 “(A) AGGREGATE LIMITATION.—Unless
22 otherwise provided by specific appropriations,
23 the Secretary shall not allocate more than
24 \$25,000,000 per year (exclusive of costs of ad-

1 ministering the program) to grants under para-
2 graph (1).

3 “(B) LIMITATION ON ANNUAL GRANTS TO
4 A CLINIC.—The aggregate amount of grants
5 which may be made under paragraph (1) to a
6 clinic for a year shall not exceed \$100,000.

7 “(C) MULTI-YEAR GRANTS.—The provi-
8 sions of subsection (c)(3) shall apply to grants
9 under paragraph (1).

10 “(D) ADDITIONAL AMOUNTS.—Grants
11 under paragraph (1) shall be in addition to any
12 grants under subsection (a).”

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 7526(c) (relating to special rules
15 and limitations) is amended by striking “this sec-
16 tion” each place it appears and inserting “subsection
17 (a)”.

18 (2) Section 7526(c)(3) is amended by inserting
19 “under subsection (a)” after “award”.

20 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
21 authorized to be appropriated for each fiscal year begin-
22 ning after September 30, 2007, \$25,000,000 to carry out
23 the provisions of this section.

1 **SEC. 402. 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.—**

7 “(A) IN GENERAL.—No amount shall be
8 included in the gross income of any employee
9 solely because the employee may choose between
10 any qualified retirement planning services pro-
11 vided by an eligible investment advisor and
12 compensation which would otherwise be includ-
13 ible in the gross income of such employee. The
14 preceding sentence shall apply to highly com-
15 pensated employees only if the choice described
16 in such sentence is available on substantially
17 the same terms to each member of the group of
18 employees normally provided education and in-
19 formation regarding the employer’s qualified
20 employer plan.

21 “(B) LIMITATION.—The maximum amount
22 which may be excluded under subparagraph (A)
23 with respect to any employee for any taxable
24 year shall not exceed \$1,000.

25 “(C) ELIGIBLE INVESTMENT ADVISER.—
26 For purposes of this paragraph, the term ‘eligi-

1 ble investment adviser' means, with respect to
2 a plan, a person—

3 “(i) who—

4 “(I) is registered as an invest-
5 ment adviser under the Investment
6 Advisers Act of 1940 (15 U.S.C. 80b-
7 1 et seq.),

8 “(II) is registered as an invest-
9 ment adviser under the laws of the
10 State in which such adviser maintains
11 the principal office and place of busi-
12 ness of such adviser, but only if such
13 State laws are consistent with section
14 203A of the Investment Advisers Act
15 of 1940 (15 U.S.C. 80b-3a),

16 “(III) is a bank or similar finan-
17 cial institution referred to in section
18 408(b)(4),

19 “(IV) is an insurance company
20 qualified to do business under the
21 laws of a State, or

22 “(V) is any other comparably
23 qualified entity which satisfies such
24 criteria as the Secretary determines

1 appropriate, consistent with the pur-
2 poses of this subsection, and
3 “(ii) who meets the requirements of
4 subparagraph (D).

5 “(D) ADVISER REQUIREMENTS.—The re-
6 quirements of this subparagraph are met if
7 every individual employed (or otherwise com-
8 pensated) by a person described in subpara-
9 graph (C)(i) who provides investment advice on
10 behalf of such person to any plan participant or
11 beneficiary is—

1 Investment Advisers Act of 1940 (15
2 U.S.C. 80b-2(a)(17)), or

8 “(E) TERMINATION.—This paragraph
9 shall not apply to taxable years beginning after
10 December 31, 2012.”.

11 (b) CONFORMING AMENDMENTS.—

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2007.

21 SEC. 403. RETIREMENT HANDBOOK AND RETIREMENT
22 READINESS CHECKLIST.

23 (a) IN GENERAL.—Section 704 of the Social Security
24 Act is amended by adding at the end the following new
25 subsection:

1 “(f) RETIREMENT INFORMATION.—

2 “(1) IN GENERAL.—The Commissioner, in con-
3 sultation with the Social Security Advisory Board,
4 shall prepare—

5 “(A) the financial reference handbook de-
6 scribed in paragraph (2), and

7 “(B) the retirement readiness checklist de-
8 scribed in paragraph (3).

9 “(2) FINANCIAL REFERENCE HANDBOOK.—The
10 handbook described in this paragraph is a pamphlet
11 which—

12 “(A) includes definitions of basic financial
13 terms,

14 “(B) contains a listing of financial issues
15 and problems facing individuals who are retir-
16 ing and explanations of methods of dealing with
17 the issues and problems, and

18 “(C) is in a form readily understandable
19 by the average retiree.

20 “(3) READINESS CHECKLIST.—The checklist
21 described in this paragraph is a list of questions that
22 individuals need to consider in preparation for re-
23 tirement, including the following:

24 “(A) What annual income will the indi-
25 vidual need in retirement?

1 “(B) How many years will the individual
2 live in retirement?

3 “(C) What will be the cost of Medicare
4 premiums?

5 “(D) What will be the cost of insurance
6 necessary to supplement Medicare?

7 “(E) How will savings be invested in re-
8 tirement?

9 “(F) How will taxes affect your retirement
10 income?

11 The checklist will include answers to the questions
12 or directions as to where information is available to
13 answer the questions. All information shall be in a
14 form readily understandable to the average recipient
15 of the checklist.

16 “(4) REVISIONS.—The Commissioner shall peri-
17 odically revise and update the handbook and check-
18 list prepared under this subsection.

19 “(5) DISTRIBUTION OF MATERIALS.—

20 “(A) HANDBOOK.—The financial reference
21 handbook described in paragraph (2) shall be
22 included with materials provided to an indi-
23 vidual when the individual first applies for ben-
24 efits under title II and such other times as the
25 Commissioner determines appropriate.

1 “(B) CHECKLIST.—The retirement readiness
2 checklist described in paragraph (3) shall
3 be included with an individual’s annual social
4 security account statement provided under sec-
5 tion 1143.”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall take effect on the date of the enactment
8 of this Act, but the handbooks and checklists required to
9 be provided by such amendment shall be provided on or
10 after January 1, 2009 (or such earlier date as the Com-
11 missioner of Social Security may provide).

12 **TITLE V—INCENTIVES FOR
13 SMALL BUSINESSES TO ES-
14 TABLISH AND MAINTAIN RE-
15 TIREMENT PLANS FOR EM-
16 PLOYEES**

17 **SEC. 501. CREDIT FOR QUALIFIED PENSION PLAN CON-
18 TRIBUTIONS OF SMALL EMPLOYERS.**

19 (a) IN GENERAL.—Subpart D of part IV of sub-
20 chapter A of chapter 1 (relating to business related cred-
21 its), as amended by section 102, is amended by adding
22 at the end the following new section:

3 “(a) GENERAL RULE.—For purposes of section 38,
4 in the case of an eligible employer, the small employer pen-
5 sion plan contribution credit determined under this section
6 for any taxable year is an amount equal to 50 percent
7 of the amount which would (but for subsection (f)(1)) be
8 allowed as a deduction under section 404 for such taxable
9 year for qualified employer contributions made to any
10 qualified retirement plan on behalf of any employee who
11 is not a highly compensated employee.

12 "(b) CREDIT LIMITED TO 3 YEARS.—The credit al-
13 lowable by this section shall be allowed only with respect
14 to the period of 3 taxable years beginning with the first
15 taxable year for which a credit is allowable with respect
16 to a plan under this section.

17 "(c) QUALIFIED EMPLOYER CONTRIBUTION.—For
18 purposes of this section—

19 “(1) DEFINED CONTRIBUTION PLANS.—In the
20 case of a defined contribution plan, the term ‘quali-
21 fied employer contribution’ means the amount of
22 nonelective and matching contributions to the plan
23 made by the employer on behalf of any employee
24 who is not a highly compensated employee to the ex-
25 tent such amount does not exceed 3 percent of such

1 employee's compensation from the employer for the
2 year.

3 “(2) DEFINED BENEFIT PLANS.—In the case of
4 a defined benefit plan, the term ‘qualified employer
5 contribution’ means the amount of employer con-
6 tributions to the plan made on behalf of any em-
7 ployee who is not a highly compensated employee to
8 the extent that the accrued benefit of such employee
9 derived from employer contributions for the year
10 does not exceed the equivalent (as determined under
11 regulations prescribed by the Secretary and without
12 regard to contributions and benefits under the Social
13 Security Act) of 3 percent of such employee’s com-
14 pensation from the employer for the year.

15 “(d) QUALIFIED RETIREMENT PLAN.—

16 “(1) IN GENERAL.—The term ‘qualified retire-
17 ment plan’ means any plan described in section
18 401(a) which includes a trust exempt from tax
19 under section 501(a), any simplified pension (as de-
20 fined in section 408(k)), or any simple retirement
21 account (as defined in section 408(p) if the following
22 requirements are met with respect to such plan, pen-
23 sion, or account:

24 “(A) The contribution requirements of
25 paragraph (2).

1 “(B) The vesting requirements of para-
2 graph (3).

3 “(C) The distribution requirements of
4 paragraph (4).

5 The contribution and vesting requirements of para-
6 graphs (2) and (3) shall be treated as met in the
7 case of a simple retirement account under a qualifi-
8 ed salary reduction arrangement (as defined in sec-
9 tion 408(p)(2)) or a cash or deferred arrangement
10 meeting the requirements of section 401(k)(11).

11 “(2) CONTRIBUTION REQUIREMENTS.—

12 “(A) IN GENERAL.—The requirements of
13 this paragraph are met if, under the plan—

14 “(i) the employer is required to make
15 nonelective contributions of at least 1 per-
16 cent of compensation (or the equivalent
17 thereof in the case of a defined benefit
18 plan) for each employee who is not a high-
19 ly compensated employee who is eligible to
20 participate in the plan, and

21 “(ii) allocations of nonelective em-
22 ployer contributions, in the case of a de-
23 fined contribution plan, are either in equal
24 dollar amounts for all employees covered
25 by the plan or bear a uniform relationship

1 to the total compensation, or the basic or
2 regular rate of compensation, of the em-
3 ployees covered by the plan (and an equiv-
4 alent requirement is met with respect to a
5 defined benefit plan).

6 “(B) COMPENSATION LIMITATION.—The
7 compensation taken into account under sub-
8 paragraph (A) for any year shall not exceed the
9 limitation in effect for such year under section
10 401(a)(17).

11 “(3) VESTING REQUIREMENTS.—The require-
12 ments of this paragraph are met if the plan satisfies
13 the requirements of either of the following subpara-
14 graphs:

15 “(A) 3-YEAR VESTING.—A plan satisfies
16 the requirements of this subparagraph if an em-
17 ployee who has completed at least 3 years of
18 service has a nonforfeitable right to 100 percent
19 of the employee’s accrued benefit derived from
20 employer contributions.

21 “(B) 5-YEAR GRADED VESTING.—A plan
22 satisfies the requirements of this subparagraph
23 if an employee has a nonforfeitable right to a
24 percentage of the employee’s accrued benefit de-

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

Years of service:	The nonforfeitable percentage is:
1	20
2	40
3	60
4	80
5	100.

3 “(4) DISTRIBUTION REQUIREMENTS.—In the
 4 case of a profit-sharing or stock bonus plan, the re-
 5 quirements of this paragraph are met if, under the
 6 plan, qualified employer contributions are distribut-
 7 able only as provided in section 401(k)(2)(B).

8 “(e) OTHER DEFINITIONS.—For purposes of this
 9 section—

10 “(1) ELIGIBLE EMPLOYER.—

11 “(A) IN GENERAL.—The term ‘eligible em-
 12 ployer’ means, with respect to any year, an em-
 13 ployer which has no more than 25 employees
 14 who received at least \$5,000 of compensation
 15 from the employer for the preceding year.

16 “(B) REQUIREMENT FOR NEW QUALIFIED
 17 EMPLOYER PLANS.—Such term shall not in-
 18 clude an employer if, during the 3-taxable year
 19 period immediately preceding the first taxable
 20 year for which the credit under this section is
 21 otherwise allowable for a qualified employer
 22 plan of the employer, the employer or any mem-

1 ber of any controlled group including the em-
2 ployer (or any predecessor of either) established
3 or maintained a qualified employer plan with
4 respect to which contributions were made, or
5 benefits were accrued, for substantially the
6 same employees as are in the qualified employer
7 plan.

8 “(2) HIGHLY COMPENSATED EMPLOYEE.—The
9 term ‘highly compensated employee’ has the mean-
10 ing given such term by section 414(q) (determined
11 without regard to section 414(q)(1)(B)(ii)).

12 “(f) SPECIAL RULES.—

13 “(1) DISALLOWANCE OF DEDUCTION.—No de-
14 duction shall be allowed for that portion of the qual-
15 ified employer contributions paid or incurred for the
16 taxable year which is equal to the credit determined
17 under subsection (a).

18 “(2) ELECTION NOT TO CLAIM CREDIT.—This
19 section shall not apply to a taxpayer for any taxable
20 year if such taxpayer elects to have this section not
21 apply for such taxable year.

22 “(3) AGGREGATION RULES.—All persons treat-
23 ed as a single employer under subsection (a) or (b)
24 of section 52, or subsection (n) or (o) of section 414,

1 shall be treated as one person. All eligible employer
2 plans shall be treated as 1 eligible employer plan.

3 “(g) RECAPTURE OF CREDIT ON FORFEITED CON-
4 TRIBUTIONS.—

5 “(1) IN GENERAL.—Except as provided in para-
6 graph (2), if any accrued benefit which is forfeitable
7 by reason of subsection (d)(3) is forfeited, the em-
8 ployer’s tax imposed by this chapter for the taxable
9 year in which the forfeiture occurs shall be increased
10 by 35 percent of the employer contributions from
11 which such benefit is derived to the extent such con-
12 tributions were taken into account in determining
13 the credit under this section.

14 “(2) REALLOCATED CONTRIBUTIONS.—Para-
15 graph (1) shall not apply to any contribution which
16 is reallocated by the employer under the plan to em-
17 ployees who are not highly compensated employees.”.

18 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
19 NESS CREDIT.—Section 38(b) (defining current year busi-
20 ness credit) , as amended by section 102, is amended by
21 striking “and” at the end of paragraph (31), by striking
22 the period at the end of paragraph (32) and inserting “,
23 and”, and by adding at the end the following new para-
24 graph:

1 “(33) in the case of an eligible employer (as de-
 2 fined in section 45P(e)), the small employer pension
 3 plan contribution credit determined under section
 4 45P(a).”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Subsection (c) of section 196 is amended by
 7 striking “and” at the end of paragraph (12), by
 8 striking the period at the end of paragraph (13) and
 9 inserting “, and”, and by adding at the end the fol-
 10 lowing new paragraph:

11 “(14) the small employer pension plan contribu-
 12 tion credit determined under section 45P(a).”.

13 (2) The table of sections for subpart D of part
 14 IV of subchapter A of chapter 1, as amended by sec-
 15 tion 102, is amended by adding at the end the fol-
 16 lowing new item:

“Sec. 45P. Small employer pension plan contributions.”.

17 (d) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to contributions paid or incurred
 19 in taxable years beginning after December 31, 2007.

20 **SEC. 502. DEDUCTION FOR PENSION CONTRIBUTIONS AL-**
 21 **LOWED IN COMPUTING NET EARNINGS FROM**
 22 **SELF-EMPLOYMENT.**

23 (a) IN GENERAL.—Section 1402(a) (defining net
 24 earnings from self-employment) is amended by striking
 25 “and” at the end of paragraph (15), by striking the period

- 1 at the end of paragraph (16) and inserting “, and”, and
- 2 by inserting after paragraph (16) the following new para-
- 3 graph:

4 “(17) any deduction allowed under section 404
5 by reason of section 404(a)(8)(C) shall be allowed,
6 except that the amount of such deduction shall be
7 determined without regard to this paragraph.”.

8 (b) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 2007.

11 SEC. 503. EXEMPTION OF DEFERRAL-ONLY QUALIFIED
12 CASH OR DEFERRED ARRANGEMENTS FROM
13 TOP-HEAVY PLAN RULES.

14 (a) IN GENERAL.—Section 416(g) (defining top-
15 heavy plan) is amended by adding at the end the following
16 new paragraph:

17 “(5) EXCEPTION FOR DEFERRAL-ONLY CASH
18 OR DEFERRED ARRANGEMENTS.—In the case of a
19 plan which consists solely of a qualified cash or de-
20 ferred arrangement (as defined in section 401(k)(2))
21 under which no amounts may be contributed other
22 than elective deferrals (as defined in section
23 402(g)(3)), such plan shall not be treated as a top-
24 heavy plan.”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to years beginning after December
3 31, 2007.

4 **SEC. 504. EXTENSION OF TIME FOR SMALL PENSION PLANS**
5 **TO ADOPT REQUIRED PLAN QUALIFICATION**
6 **AMENDMENTS.**

7 (a) IN GENERAL.—In the case of an eligible small
8 plan for which a remedial amendment period is established
9 under Internal Revenue Procedure 2005–66 (or any regu-
10 lation, revenue ruling, revenue procedure, or guidance pro-
11 viding for a similar period), no amendment to the plan
12 necessary for the plan to meet the qualification require-
13 ments under the Internal Revenue Code of 1986 shall be
14 required before the close of such period.

15 (b) ADDITIONAL REQUIREMENTS.—Subsection (a)
16 shall not apply to an eligible small plan unless—

17 (1) any amendment described in subsection (a)
18 applies retroactively to the period during which such
19 amendment would otherwise have been required to
20 be in effect,

21 (2) the plan is operated during the period de-
22 scribed in paragraph (1) as if the amendment were
23 in effect, and

24 (3) the plan meets such requirements as the
25 Secretary of the Treasury may prescribe to ensure

1 that the Secretary, the Secretary of Labor, employers maintaining the plan, and participants and beneficiaries of the plan are adequately notified of the terms of the plan actually in effect during a plan year.

6 (c) ELIGIBLE SMALL PLAN.—For purposes of this
7 section—

8 (1) IN GENERAL.—The term “eligible small plan” means a plan which, as of the beginning of a remedial amendment or similar period described in subsection (a), had 100 or fewer participants. For purposes of this paragraph, all defined benefit plans which are single-employer plans and are maintained by the same employer (or any member of such employer’s controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

18 (2) APPLICATION OF CERTAIN RULES IN DE-
19 TERMINATION OF PLAN SIZE.—For purposes of this
20 subsection—

21 (A) PLANS NOT IN EXISTENCE IN PRE-
22 CEDING YEAR.—In the case of the first plan
23 year of any plan, subparagraph (B) shall apply
24 to such plan by taking into account the number
25 of participants that the plan is reasonably ex-

1 pected to have on days during such first plan
2 year.

3 (B) PREDECESSORS.—Any reference in
4 paragraph (1) to an employer shall include a
5 reference to any predecessor of such employer.

6 (d) EFFECTIVE DATE.—This section shall apply to
7 amendments required to be adopted for plan years begin-
8 ning after December 31, 2007.

○