

108TH CONGRESS  
1ST SESSION

# H. R. 1776

To amend the Internal Revenue Code of 1986 to make today's retirement savings opportunities permanent, to expand and improve retirement savings vehicles, to extend pension coverage through regulatory simplification and small business incentives, to enhance fairness and pension portability, to revitalize defined benefit plans, to provide additional defined contribution plan protections, to assist individuals in preserving their income throughout retirement, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

APRIL 11, 2003

Mr. PORTMAN (for himself, Mr. CARDIN, Mrs. JOHNSON of Connecticut, Mr. POMEROY, Mr. BLUNT, Mr. MOORE, Mr. UPTON, Mrs. TAUSCHER, Mr. GALLEGLY, and Mr. WYNN) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To amend the Internal Revenue Code of 1986 to make today's retirement savings opportunities permanent, to expand and improve retirement savings vehicles, to extend pension coverage through regulatory simplification and small business incentives, to enhance fairness and pension portability, to revitalize defined benefit plans, to provide additional defined contribution plan protections, to assist individuals in preserving their income throughout retirement, 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 “Pension Preservation and Savings Expansion Act of  
 7 2003”.

8 (b) AMENDMENT OF 1986 CODE.—Except as other-  
 9 wise expressly provided, whenever in this Act an amend-  
 10 ment or repeal is expressed in terms of an amendment  
 11 to, or repeal of, a section or other provision, the reference  
 12 shall be considered to be made to a section or other provi-  
 13 sion of the Internal Revenue Code of 1986.

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

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

**TITLE I—MAKING TODAY’S RETIREMENT SAVINGS  
 OPPORTUNITIES PERMANENT**

Sec. 101. Pensions and individual retirement arrangement provisions of Eco-  
 nomic Growth and Tax Relief Reconciliation Act of 2001 made  
 permanent.

Sec. 102. Saver’s credit made permanent.

**TITLE II—PRESERVING RETIREMENT ASSETS**

Sec. 201. Simplification and updating of the minimum distribution rules.

Sec. 202. Treatment of unclaimed benefits.

Sec. 203. Facilitation under fiduciary rules of certain rollovers and annuity dis-  
 tributions.

Sec. 204. Equalizing treatment of defined benefit plans and defined contribu-  
 tion plans.

Sec. 205. Study concerning defined contribution plan losses due to market vola-  
 tility.

**TITLE III—ENHANCING FAIRNESS AND PENSION PORTABILITY**

Sec. 301. Allow transfers to spouse’s retirement plans.

- Sec. 302. Faster vesting of employer nonelective contributions.
- Sec. 303. Rollovers by nonspouse beneficiaries.
- Sec. 304. Allow direct rollovers from retirement plans to ROTH IRAs.
- Sec. 305. Exclusion of percentage of lifetime annuity payments.
- Sec. 306. Rollover of after-tax amounts in annuity contracts.
- Sec. 307. Fair treatment under substantially equal periodic payments rule.
- Sec. 308. Treatment of subsequent qualified domestic relations orders.
- Sec. 309. Treatment of delayed qualified domestic relations orders.
- Sec. 310. Treatment of annuity contracts.
- Sec. 311. Preservation of pension plans.
- Sec. 312. Certain plan transfers and mergers.

#### TITLE IV—INCREASING RETIREMENT PLAN PARTICIPATION AND SAVINGS

- Sec. 401. Expansion of the Saver's credit.
- Sec. 402. Acceleration of scheduled increases in pension plan contribution limits.
- Sec. 403. Removing barriers to automatic contribution trust arrangements.
- Sec. 404. Disposition of unused health benefits in cafeteria plans and flexible spending arrangements.
- Sec. 405. Updating deduction rules for combination of plans.

#### TITLE V—EXPANDING RETIREMENT PLAN COVERAGE TO EMPLOYEES OF SMALL BUSINESSES

- Sec. 501. Additional nonelective employer contributions to simple plans.
- Sec. 502. Matching contribution rules for Simple IRAs and Simple 401(k)s conformed.
- Sec. 503. Salary-reduction only Simple plans.
- Sec. 504. Permit a mid-year change from a Simple plan to another plan.
- Sec. 505. Elimination of higher penalty on certain Simple distributions.
- Sec. 506. Simple plan portability.
- Sec. 507. Correction of Simplified Employee Pension compensation inconsistency.
- Sec. 508. Equalization of tax treatment of retirement plan contributions of the self-employed.

#### TITLE VI—STRENGTHENING INDIVIDUAL RETIREMENT ARRANGEMENTS

- Sec. 601. Acceleration of increases in IRA contribution limits.
- Sec. 602. Acceleration and expansion of certain scheduled increases in eligibility for IRAs and elimination of IRA marriage penalty.
- Sec. 603. IRA eligibility for the disabled.
- Sec. 604. Protecting IRA assets.

#### TITLE VII—REVITALIZING DEFINED BENEFIT PLANS

- Sec. 701. Multiple employer plans permitted to elect separate or aggregate treatment for purposes of applying the funding rules and deduction limitations.
- Sec. 702. Treatment of employee contributions to contributory defined benefit plans.
- Sec. 703. Reform of the minimum participation rule.
- Sec. 704. Plan valuation data collection.

- Sec. 705. Replacement of interest rate on 30-year Treasury securities with interest rate on conservatively-invested long-term corporate bonds.
- Sec. 706. Interest rate range for additional funding requirements.
- Sec. 707. Asset valuation.
- Sec. 708. Multiemployer plan emergency investment loss rule.
- Sec. 709. Mortality table adjustment.

#### TITLE VIII—SIMPLIFY AND STREAMLINE RETIREMENT PLAN RULES

- Sec. 801. Excise tax on excess contributions.
- Sec. 802. Excess benefit plans.
- Sec. 803. Paperless technologies in retirement plans.
- Sec. 804. Elimination of unintended consequences attributable to use of base pay or rate of pay.
- Sec. 805. Repeal of the gateway test.
- Sec. 806. Intermediate sanctions for inadvertent failures.
- Sec. 807. Qualified preretirement survivor annuity.
- Sec. 808. Cost-of-living adjustment of \$5,000 cash-out amount.
- Sec. 809. Catch-up contributions.
- Sec. 810. Reverse match salary reduction arrangement simplified employee annuity.
- Sec. 811. Level dollar contributions to SEPs.
- Sec. 812. Tax on nondeductible contributions not to apply to certain nontrade or business SEP contributions.
- Sec. 813. Clarification of fiduciary duty.
- Sec. 814. Multiemployer plan clarification.
- Sec. 815. Clarification of status of Young Men's Christian Association Retirement Fund.

#### TITLE IX—EXPANDING RETIREMENT SAVINGS OPPORTUNITIES FOR EMPLOYEES OF TAX-EXEMPT ORGANIZATIONS AND GOVERNMENTS

- Sec. 901. Deferred compensation plans of tax-exempt organizations.
- Sec. 902. Inapplicability of 10 percent additional tax on early distributions of pension plans of public safety employees.
- Sec. 903. Clarifications regarding purchase of permissive service credit.
- Sec. 904. Certain rollovers of benefits permitted
- Sec. 905. Minimum distribution rules.
- Sec. 906. Church plan rule.
- Sec. 907. Plans maintained by governments and tax-exempt organizations.

#### TITLE X—RESTRICTING EXCESSIVE REMUNERATION

- Sec. 1001. Golden parachute excise tax to apply to excessive employee remuneration paid by corporation after declaration of bankruptcy.

#### TITLE XI—DEFINED CONTRIBUTION PLAN PROTECTIONS

- Sec. 1101. Provision of investment education notices to participants.
- Sec. 1102. Notice of blackout periods to participant or beneficiary under defined contribution plan.
- Sec. 1103. Diversification requirements for defined contribution plans that hold employer securities.
- Sec. 1104. Treatment of qualified retirement planning services.

Sec. 1105. Special rules.

#### TITLE XII—OTHER TAX PROVISIONS RELATING TO PENSIONS

Sec. 1201. Amendments to Retirement Protection Act of 1994.

Sec. 1202. Reporting simplification.

Sec. 1203. Improvement of employee plans compliance resolution system.

Sec. 1204. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.

Sec. 1205. Notice and consent period regarding distributions.

Sec. 1206. Reduced PBGC premium for new plans of small employers.

Sec. 1207. Reduction of additional PBGC premium for new and small plans.

Sec. 1208. Authorization for PBGC to pay interest on premium overpayment refunds.

Sec. 1209. Substantial owner benefits in terminated plans.

Sec. 1210. Qualified group legal services plans.

Sec. 1211. Studies.

#### TITLE XIII—STOCK OPTIONS

Sec. 1301. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

#### TITLE XIV—OTHER ELEMENTS OF RETIREMENT SECURITY

Sec. 1401. Employee pre-tax payments for retiree health.

Sec. 1402. Encouraging employers to maintain retiree health plans.

#### TITLE XV—REDUCING REGULATORY BURDENS

Sec. 1501. Provisions relating to plan amendments.

#### TITLE XVI—SOCIAL SECURITY AND MEDICARE HELD HARMLESS

Sec. 1601. Protection of Social Security and Medicare.

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

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

8 (a) IN GENERAL.—Section 901 of the Economic  
9 Growth and Tax Relief Reconciliation Act of 2001 is

1 amended by adding at the end the following new sub-  
2 section:

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

7 (b) CONFORMING AMENDMENTS.—Section 901(b) of  
8 such Act is amended—

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

11 (2) by striking “OF CERTAIN LAWS” in the  
12 heading.

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

14 (a) IN GENERAL.—Section 25B (relating to elective  
15 deferrals and IRA contributions by certain individuals) is  
16 amended by striking subsection (h).

17 (b) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2003.

20 **TITLE II—PRESERVING**  
21 **RETIREMENT ASSETS**

22 **SEC. 201. SIMPLIFICATION AND UPDATING OF THE MIN-**  
23 **IMUM DISTRIBUTION RULES.**

24 (a) REQUIRED DISTRIBUTIONS.—

1 (1) INCREASE IN AGE FOR REQUIRED BEGIN-  
 2 NING DATE.—Clauses (i) and (ii) of section  
 3 401(a)(9)(C) (relating to required beginning date)  
 4 are amended by striking “age 70½” each place it  
 5 appears and inserting “the applicable age”.

6 (2) MANDATORY DISTRIBUTION AGE.—Para-  
 7 graph (9) of section 401(a) (relating to required dis-  
 8 tributions) is amended by inserting at the end the  
 9 following new subparagraph:

10 “(H) APPLICABLE AGE.—For purposes of  
 11 this paragraph, the applicable age shall be de-  
 12 termined in accordance with the following table:

<b>“Calendar year:</b>	<b>Applicable age is:</b>
2004 and 2005 .....	72
2006 and 2007 .....	73
2008 and 2009 .....	74
2010 and thereafter .....	75.”.

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

17 (4) ACTUARIAL ADJUSTMENT OF BENEFIT  
 18 UNDER DEFINED BENEFIT PLAN.—Clause (iii) of  
 19 section 401(a)(9)(C) (relating to actuarial adjust-  
 20 ment) is amended to read as follows:

21 “(iii) ACTUARIAL ADJUSTMENT.—

22 “(I) IN GENERAL.—In the case  
 23 of a defined benefit plan, an employ-

1                   ee's accrued benefit shall be actuari-  
 2                   ally increased to take into account the  
 3                   period after the applicable date during  
 4                   which the employee was not receiving  
 5                   any benefits under the plan.

6                   “(II) APPLICABLE DATE.—For  
 7                   purposes of clause (I), the term ‘appli-  
 8                   cable date’ means April 1 of the cal-  
 9                   endar year following the calendar year  
 10                  in which the employee attains age  
 11                  70½.”.

12           (b) PREVENTING TWO REQUIRED DISTRIBUTIONS IN  
 13 A YEAR.—

14           (1) IN GENERAL.—The portion of clause (i) of  
 15           section 401(a)(9)(C) that precedes subclause (I) is  
 16           amended to read as follows:

17                   “(i) IN GENERAL.—The term ‘re-  
 18                   quired beginning date’ means the Decem-  
 19                   ber 31 of the later of—”.

20           (2) DATE OF RETIREMENT.—Clause (i) of sec-  
 21           tion 401(a)(9)(C) is amended by adding at the end  
 22           the following: “Solely for purposes of subclause (II),  
 23           an employee who retires during December of a cal-  
 24           endar year shall be treated as retiring in the fol-  
 25           lowing calendar year.”.



1 (c) REDUCTION IN EXCISE TAX.—Subsection (a) of  
 2 section 4974 (relating to excise tax on certain accumula-  
 3 tions in qualified retirement plans) is amended by striking  
 4 “50 percent” and inserting “20 percent”.

5 (d) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as provided in para-  
 7 graph (2), the amendments made by this section  
 8 shall apply to years beginning after December 31,  
 9 2003.

10 (2) SPECIAL RULE.—In the case of a partici-  
 11 pant who attains age 70½ prior to January 1, 2004,  
 12 the amendments made by this section shall apply to  
 13 years beginning after December 31, 2003, as if such  
 14 amendments had been effective in years beginning  
 15 before January 1, 2004.

16 **SEC. 202. TREATMENT OF UNCLAIMED BENEFITS.**

17 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF  
 18 1986.—

19 (1) AMENDMENT TO SECTION 401(a)(34).—Sec-  
 20 tion 401(a)(34) (relating to benefits of missing par-  
 21 ticipants) is amended to read as follows:

22 “(34) UNCLAIMED BENEFITS.—A trust forming  
 23 part of a plan shall not be treated as failing to con-  
 24 stitute a qualified trust under this section merely be-  
 25 cause the plan of which such trust is a part treats

1 unclaimed benefits in a manner that satisfies the re-  
2 quirements of section 414(y).”.

3 (2) AMENDMENT TO SECTION 414.—Section 414  
4 (relating to definitions and special rules) (as amend-  
5 ed by this Act) is amended by adding at the end the  
6 following new subsection:

7 “(y) UNCLAIMED BENEFITS.—

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

10 “(A) ONGOING PLANS.—In the case of an  
11 ongoing plan, the plan provides for one or more  
12 of the following with respect to unclaimed bene-  
13 fits:

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

17 “(ii) A transfer to the Pension Benefit  
18 Guaranty Corporation, in accordance with  
19 section 4050(e) of the Employee Retire-  
20 ment Income Security Act of 1974.

21 “(iii) Any other treatment permitted  
22 under rules prescribed by the Secretary.

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

1 “(i) DEFINED BENEFIT PLANS.—In  
2 the case of a defined benefit plan, one or  
3 more of the following:

4 “(I) In the case of an unclaimed  
5 benefit to which section 401(a)(31)(B)  
6 applies, a transfer under section  
7 401(a)(31)(B).

8 “(II) A transfer of the unclaimed  
9 benefit to another defined benefit plan  
10 maintained by the employer.

11 “(III) The purchase of an annu-  
12 ity contract to provide for an individ-  
13 ual’s unclaimed benefit.

14 “(IV) A transfer to the Pension  
15 Benefit Guaranty Corporation in ac-  
16 cordance with section 4050(a) or  
17 4050(e) (as applicable) of the Em-  
18 ployee Retirement Income Security  
19 Act of 1974.

20 “(V) Any other treatment per-  
21 mitted under rules prescribed by the  
22 Secretary.

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

1 “(I) In the case of an unclaimed  
2 benefit to which section 401(a)(31)(B)  
3 applies, a transfer under section  
4 401(a)(31)(B).

5 “(II) A transfer of the unclaimed  
6 benefit to another defined contribution  
7 plan maintained by the employer.

8 “(III) The purchase of an annu-  
9 ity contract to provide for an individ-  
10 ual’s unclaimed benefit.

11 “(IV) A transfer to the Pension  
12 Benefit Guaranty Corporation in ac-  
13 cordance with section 4050(d) or  
14 4050(e) (as applicable) of the Em-  
15 ployee Retirement Income Security  
16 Act of 1974.

17 “(V) Any other treatment per-  
18 mitted under rules prescribed by the  
19 Secretary.

20 “(2) TREATMENT OF TRANSFERS TO PENSION  
21 BENEFIT GUARANTY CORPORATION.—

22 “(A) TRANSFERS TO PBGC.—Amounts  
23 transferred from a plan to the Pension Benefit  
24 Guaranty Corporation pursuant to paragraph

1 (1) shall be treated as a transfer under section  
2 401(a)(31)(A).

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

11 “(3) DEFINITIONS.—For purposes of this sub-  
12 section—

13 “(A) UNCLAIMED BENEFIT.—The term  
14 ‘unclaimed benefit’ means—

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

23 “(ii) any benefit or other amount of a  
24 participant or beneficiary which is distrib-

1           utable under the terms of the plan with re-  
2           spect to a missing participant, or

3           “(iii) any benefit to which section  
4           401(a)(31)(B) applies or would apply if  
5           subclause (I) of section 401(a)(31)(B)(i)  
6           did not require the distribution to exceed  
7           \$1,000.

8           A benefit otherwise described in clause (i) shall  
9           not be treated as an unclaimed benefit under  
10          clause (i) if the participant or beneficiary elects  
11          not to have such treatment apply. Any such  
12          participant or beneficiary shall be given reason-  
13          able notice of the opportunity to make such an  
14          election. If the participant or beneficiary fails to  
15          make such an election within a reasonable pe-  
16          riod specified in the notice, any subsequent elec-  
17          tion shall not be given effect and the benefit  
18          shall be treated as an unclaimed benefit. A no-  
19          tice mailed to the last known address of the  
20          participant or beneficiary shall be treated as a  
21          notice to the participant or beneficiary for pur-  
22          poses of this paragraph.

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

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

4           “(D) MISSING PARTICIPANT.—The term  
 5           ‘missing participant’ shall have the meaning  
 6           given to such term by section 4050(b)(1) of the  
 7           Employee Retirement Income Security Act of  
 8           1974.”.

9           (3) CONFORMING AMENDMENT.—Subparagraph  
 10          (B) of section 401(a)(31) is amended by adding at  
 11          the end the following:

12                   “(iii) OTHER PERMITTED TRANS-  
 13                   FERS.—A plan administrator shall be  
 14                   treated as having complied with the re-  
 15                   quirements of this subparagraph if such  
 16                   plan administrator complies with the re-  
 17                   quirements of section 414(y).”.

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

20           (1) IN GENERAL.—Subsection (b) of section  
 21          4050 of the Employee Retirement Income Security  
 22          Act of 1974 (29 U.S.C. 1350) is amended by adding  
 23          at the end the following paragraph:

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

1           “(A) any benefit of a participant or bene-  
2           ficiary which is distributable under the terms of  
3           the plan to the participant or beneficiary, if the  
4           distribution of the benefit has not commenced  
5           within 1 year after the later of the date on  
6           which the benefit first became so distributable  
7           or the participant’s severance from employment;

8           “(B) any benefit or other amount of a par-  
9           ticipant or beneficiary which is distributable  
10          under the terms of the plan with respect to a  
11          missing participant, or

12          “(C) any benefit to which section  
13          401(a)(31)(B) of the Internal Revenue Code of  
14          1986 applies or would apply if subclause (I) of  
15          section 401(a)(31)(B)(i) of such Code did not  
16          require the distribution to exceed \$1,000.

17       A benefit otherwise described in subparagraph (A)  
18       shall not be treated as an unclaimed benefit under  
19       subparagraph (A) if the participant or beneficiary  
20       elects not to have such treatment apply. Any such  
21       participant or beneficiary shall be given reasonable  
22       notice of the opportunity to make such an election.  
23       If the participant or beneficiary fails to make such  
24       an election within a reasonable period specified in  
25       the notice, any subsequent election shall not be given



1 effect and the benefit shall be treated as an un-  
 2 claimed benefit. A notice mailed to the last known  
 3 address of the participant or beneficiary shall be  
 4 treated as a notice to the participant or beneficiary  
 5 for purposes of this paragraph.”.

6 (2) OTHER AMENDMENTS.—Section 4050 of  
 7 such Act is amended by redesignating subsection (c)  
 8 as subsection (f) and by inserting after subsection  
 9 (b) the following new subsections:

10 “(c) MULTIEMPLOYER PLANS.—The corporation  
 11 shall prescribe rules similar to the rules in subsection (a)  
 12 for multiemployer plans covered by this title that termi-  
 13 nate under section 4041A.

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

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

19 “(2) INFORMATION TO THE CORPORATION.—To  
 20 the extent provided in regulations, the plan adminis-  
 21 trator of a plan described in paragraph (4) shall,  
 22 upon termination of the plan, provide the corpora-  
 23 tion information with respect to the benefits of a  
 24 missing participant if the plan transfers such bene-  
 25 fits—

1 “(A) to the corporation, or

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

4 “(3) PAYMENT BY THE CORPORATION.—If ben-  
5 efits of a missing participant were transferred to the  
6 corporation under paragraph (1), the corporation  
7 shall, upon location of the participant or beneficiary,  
8 pay to the participant or beneficiary the amount  
9 transferred (or the appropriate survivor benefit) ei-  
10 ther—

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

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

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

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

18 “(i) to which the provisions of this  
19 section do not apply (without regard to  
20 this subsection), and

21 “(ii) which is not a plan described in  
22 paragraphs (2) through (11) of section  
23 4021(b), and

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

1 “(i) has missing participants, and

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

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

9 “(e) UNCLAIMED BENEFITS.—

10 “(1) TRANSFER TO CORPORATION.—The plan  
11 administrator of a plan described in paragraph (6)  
12 may elect to transfer unclaimed benefits to the cor-  
13 poration.

14 “(2) INFORMATION TO THE CORPORATION.—  
15 The corporation may impose such conditions on  
16 transfers of unclaimed benefits to the corporation as  
17 the corporation determines are necessary to facilitate  
18 administration of this subsection and are not incon-  
19 sistent with the purposes of this subsection. Such  
20 conditions may include requirements that the trans-  
21 ferring plan provide to the corporation specified in-  
22 formation and documentation.

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

1           “(A) in the case of a defined benefit plan,  
2           be a transfer of the participant’s designated  
3           benefit, or

4           “(B) in the case of an individual account  
5           plan, be a transfer of the participant’s vested  
6           account balance under the plan.

7           “(4) PAYMENT BY THE CORPORATION.—Subject  
8           to such reasonable restrictions as may be prescribed  
9           in regulations of the corporation (relating to invest-  
10          ment limitations and otherwise)—

11          “(A) unclaimed benefits of a participant or  
12          beneficiary which are transferred to the cor-  
13          poration pursuant to this subsection shall be  
14          distributed by the corporation to the participant  
15          or beneficiary not later than upon application  
16          filed by the participant or beneficiary with the  
17          corporation in such form and manner as may  
18          be prescribed in regulations of the corporation,  
19          and

20          “(B) such benefits shall—

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

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

3                   “(I) in an amount based on the  
4                   designated benefit and the assump-  
5                   tions prescribed by the corporation at  
6                   the time that the corporation received  
7                   the benefit, and

8                   “(II) in a form determined under  
9                   regulations of the corporation.

10                  “(5) NOTICE.—Any transfer of unclaimed bene-  
11                  fits of a participant or beneficiary to the corporation  
12                  pursuant to this subsection may occur only after  
13                  reasonable advance notice of such transfer is pro-  
14                  vided by the plan administrator to the participant or  
15                  beneficiary. The plan administrator shall also pro-  
16                  vide to the participant or beneficiary notice of any  
17                  such transfer not later than 30 days after the date  
18                  of the transfer. Notice mailed to the last known ad-  
19                  dress of the participant or beneficiary shall be treat-  
20                  ed as a notice to the participant or beneficiary for  
21                  purposes of this paragraph. Any such notice shall in-  
22                  clude information regarding procedures for obtaining  
23                  the distribution of benefits from the corporation in  
24                  accordance with paragraph (4).

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

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

6                   “(ii) in the case of an unclaimed benefit to  
7                   which section 401(a)(31)(B) of the Internal  
8                   Revenue Code of 1986 applies (other than an  
9                   unclaimed benefit of a missing participant),  
10                  which has terminated or is in the process of ter-  
11                  minating, and

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

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

17           (3) CONFORMING AMENDMENT.—Section  
18           4021(b) of such Act (29 U.S.C. 1321(b)(1)) is  
19           amended by striking “This” and inserting “Except  
20           to the extent provided in subsections (d) and (e) of  
21           section 4050, this”.

22           (c) ESCHEAT LAWS SUPERSEDED.—Section 514(b)  
23           of the Employee Retirement Income Security Act of 1974  
24           (29 U.S.C. 1144 (b) (as amended by this Act) is further  
25           amended—

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

3 (2) by inserting after paragraph (9) the fol-  
 4 lowing new paragraph:

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

10 (d) EFFECTIVE DATES AND RELATED RULES.—

11 (1) IN GENERAL.—The amendments made by  
 12 subsections (a) and (b) shall apply to years begin-  
 13 ning after December 31, 2004.

14 (2) REGULATIONS.—The Pension Benefit Guar-  
 15 anty Corporation shall issue regulations necessary to  
 16 carry out the amendments made by subsection (b)  
 17 not later than December 31, 2004.

18 (3) ESCHEAT LAWS SUPERSEDED.—The  
 19 amendment made by subsection (c) shall apply as of  
 20 the date of enactment of this Act.

21 **SEC. 203. FACILITATION UNDER FIDUCIARY RULES OF CER-**  
 22 **TAIN ROLLOVERS AND ANNUITY DISTRIBUTI-**  
 23 **ONS.**

24 (a) IN GENERAL.—Section 404(c) of the Employee  
 25 Retirement Income Security Act of 1974 (29 U.S.C.

1 1104(c)) is amended by adding at the end the following  
2 new paragraph:

3 “(4)(A) In the case of a pension plan which makes  
4 a transfer under section 401(a)(31)(A) of the Internal  
5 Revenue Code of 1986 to an individual retirement plan  
6 (as defined in section 7701(a)(37) of such Code) in con-  
7 nection with a participant or beneficiary or makes a dis-  
8 tribution to a participant or beneficiary of an annuity con-  
9 tract described in subparagraph (B), the participant or  
10 beneficiary shall, for purposes of paragraph (1), be treated  
11 as exercising control over the transfer or distribution if—

12 “(i) the participant or beneficiary elected such  
13 transfer or distribution, and

14 “(ii) in connection with such election, the par-  
15 ticipant or beneficiary was given an opportunity to  
16 elect any other individual retirement plan (in the  
17 case of a transfer) or any other annuity contract de-  
18 scribed in subparagraph (B) (in the case of a dis-  
19 tribution).

20 “(B) An annuity contract is described in this sub-  
21 paragraph if it provides, either on an immediate or de-  
22 ferred basis, a series of substantially equal periodic pay-  
23 ments (not less frequently than annually) for the life of  
24 the participant or beneficiary or the joint lives of the par-  
25 ticipant or beneficiary and such individual’s designated



1 beneficiary. Annuity payments shall not fail to be treated  
2 as part of a series of substantially equal periodic payments  
3 because the amount of the periodic payments may vary  
4 in accordance with investment experience, reallocations  
5 among investment options, actuarial gains or losses, cost  
6 of living indices, or similar fluctuating criteria. The avail-  
7 ability of a commutation benefit, a minimum period of  
8 payments certain, or a minimum amount to be paid in  
9 any event shall not affect the treatment of an annuity con-  
10 tract as an annuity contract described in this subpara-  
11 graph.

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

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

24 (b) EFFECTIVE DATE AND RELATED RULES.—

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

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

9       **SEC. 204. EQUALIZING TREATMENT OF DEFINED BENEFIT**  
10                           **PLANS AND DEFINED CONTRIBUTION PLANS.**

11       The Secretary of Treasury would be directed to per-  
12       mit defined benefit plans to satisfy the required distribu-  
13       tion rules of section 401(a)(9) of the Internal Revenue  
14       Code of 1986 (and provisions which cross reference section  
15       401(a)(9) of such Code) by satisfying Temporary Treas-  
16       ury Regulation 1.401(a)(9)–6T Q&A 4(b) (the rules appli-  
17       cable to annuity contracts distributed under defined con-  
18       tribution plans) or by satisfying any final regulations to  
19       the extent that such final regulations permit additional  
20       means of satisfying section 401(a)(9) of such Code.

21       **SEC. 205. STUDY CONCERNING DEFINED CONTRIBUTION**  
22                           **PLAN LOSSES DUE TO MARKET VOLATILITY.**

23       (a) IN GENERAL.—The Secretary of the Treasury  
24       shall conduct a study to evaluate possible ways to lessen

1 defined contribution plan losses due to volatility of the eco-  
2 nomic markets.

3 (b) REQUIREMENTS.—In conducting the study, the  
4 Secretary shall investigate—

5 (1) the extent to which both long- and short-  
6 term stock market volatility affects defined contribu-  
7 tion savings,

8 (2) the effect that this volatility has on the con-  
9 tinuation and creation of defined contribution plans,

10 (3) investment alternatives and lifetime dis-  
11 tribution options for defined contribution plans that  
12 may help to ameliorate market risks, and

13 (4) what legislative or administrative steps may  
14 be taken to lessen defined contribution plan losses in  
15 the future.

16 (c) REPORT.—The Secretary shall transmit to the  
17 Committee on Ways and Means of the House of Rep-  
18 resentatives and the Committee on Finance of the Senate,  
19 within 1 year after the date of enactment of this Act, a  
20 report containing the findings and conclusions of such  
21 study, together with recommendations for any legislation  
22 or administrative actions which the Secretary considers  
23 appropriate.

1 **TITLE III—ENHANCING FAIR-**  
2 **NESS AND PENSION PORT-**  
3 **ABILITY**

4 **SEC. 301. ALLOW TRANSFERS TO SPOUSE'S RETIREMENT**  
5 **PLANS.**

6 (a) IN GENERAL.—Paragraph (6) of section 408(d)  
7 (relating to transfers incident to divorce) is amended by—

8 (1) striking “his spouse or former spouse under  
9 a divorce or separation instrument described in sub-  
10 paragraph (A) of section 71(b)(2)” and inserting  
11 “his spouse (or his former spouse under a divorce or  
12 separation instrument described in subparagraph  
13 (A) of section 71(b)(2))”, and

14 (2) striking the heading and inserting “TRANS-  
15 FER OF ACCOUNT TO SPOUSE OR FORMER  
16 SPOUSE.—”.

17 (b) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to years beginning after the date  
19 of the enactment of this Act.

20 **SEC. 302. FASTER VESTING OF EMPLOYER NONELECTIVE**  
21 **CONTRIBUTIONS.**

22 (a) AMENDMENTS TO THE INTERNAL REVENUE  
23 CODE OF 1986.—

(1) IN GENERAL.—Paragraph (2) of section 411(a) (relating to employer contributions) is amended to read as follows:

“(2) EMPLOYER CONTRIBUTIONS.—

“(A) DEFINED BENEFIT PLANS.—

“(i) IN GENERAL.—In the case of a defined benefit plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

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

“(iii) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:

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

“(B) DEFINED CONTRIBUTION PLANS.—

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

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

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

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

1           (2)     CONFORMING     AMENDMENT.—Section  
 2     411(a) (relating to general rule for minimum vesting  
 3     standards) is amended by striking paragraph (12).  
 4     (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
 5 INCOME SECURITY ACT OF 1974.—

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

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

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

18           “(iii) A plan satisfies the requirements of this  
 19     clause if an employee has a nonforfeitable right to  
 20     a percentage of the employee’s accrued benefit de-  
 21     rived from employer contributions determined under  
 22     the following table:

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

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

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

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

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

15          (2) CONFORMING AMENDMENT.—Section  
16          203(a) of such Act is amended by striking para-  
17          graph (4).

18          (c) EFFECTIVE DATES.—

19          (1) IN GENERAL.—Except as provided in para-  
20          graph (2), the amendments made by this section  
21          shall apply to contributions for plan years beginning  
22          after December 31, 2003.



1 (2) COLLECTIVE BARGAINING AGREEMENTS.—

2 In the case of a plan maintained pursuant to one or  
 3 more collective bargaining agreements between em-  
 4 ployee representatives and one or more employers  
 5 ratified by the date of the enactment of this Act, the  
 6 amendments made by this section shall not apply to  
 7 contributions on behalf of employees covered by any  
 8 such agreement for plan years beginning before the  
 9 earlier of—

10 (A) the later of—

11 (i) the date on which the last of such  
 12 collective bargaining agreements termi-  
 13 nates (determined without regard to any  
 14 extension thereof on or after such date of  
 15 the enactment); or

16 (ii) January 1, 2004; or

17 (B) January 1, 2008.

18 (3) SERVICE REQUIRED.—With respect to any  
 19 plan, the amendments made by this section shall not  
 20 apply to any employee before the date that such em-  
 21 ployee has 1 hour of service under such plan in any  
 22 plan year to which the amendments made by this  
 23 section apply.

24 **SEC. 303. ROLLOVERS BY NONSPOUSE BENEFICIARIES.**

25 (a) IN GENERAL.—

1           (1) QUALIFIED PLANS.—Section 402(c) (relat-  
2           ing to rollovers from exempt trusts) is amended by  
3           adding at the end the following new paragraph:

4           “(11) ROLLOVER WHERE NONSPOUSE BENE-  
5           FICIARY RECEIVES DISTRIBUTION AFTER DEATH OF  
6           EMPLOYEE.—

7           “(A) IN GENERAL.—If any distribution at-  
8           tributable to an employee is paid to a des-  
9           ignated beneficiary (as defined by section  
10          401(a)(9)(E)) other than the surviving spouse  
11          of the employee after the employee’s death, the  
12          preceding provisions of this subsection shall  
13          apply to such distribution in the same manner  
14          as if the designated beneficiary were the em-  
15          ployee, except that only a plan described in  
16          clause (i) or (ii) of paragraph (8)(B) that is es-  
17          tablished in the name of the employee for the  
18          benefit of the designated beneficiary shall be  
19          treated as an eligible retirement plan with re-  
20          spect to such distribution.

21          “(B) SPECIAL RULES.—

22                 “(i) DEATH OF EMPLOYEE BEFORE  
23                 ENTIRE INTEREST DISTRIBUTED.—An eli-  
24                 gible retirement plan that receives a trans-  
25                 fer described in this paragraph shall, with

1           respect to amounts attributable to such  
2           transferred amount, be subject to rules  
3           similar to clauses (ii) and (iii) of section  
4           401(a)(9)(B).

5           “(ii) DISTRIBUTIONS ATTRIBUTED TO  
6           EMPLOYEE.—For purposes of this sub-  
7           section, any distribution from the eligible  
8           retirement plan of amounts attributable to  
9           such transferred amount shall be treated  
10          as a distribution attributable to the em-  
11          ployee, not as a distribution attributable to  
12          the designated beneficiary.

13          “(iii) CERTAIN TRUSTS TREATED AS  
14          BENEFICIARIES.—For purposes of this  
15          paragraph, to the extent provided in rules  
16          prescribed by the Secretary, a trust main-  
17          tained for the benefit of one or more des-  
18          ignated beneficiaries shall be treated in the  
19          same manner as a designated bene-  
20          ficiary.”.

21          (2) SECTION 403(a) PLANS.—Subparagraph (B)  
22          of section 403(a)(4) (relating to rollover amounts) is  
23          further amended by striking “and (9)” and inserting  
24          “, (9), and (11)”.

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

5           (4) SECTION 457 PLANS.—Subparagraph (B) of  
 6           section 457(e)(16) (relating to rollover amounts) is  
 7           amended by striking “and (9)” and inserting “, (9),  
 8           and (11)”.

9           (b) EFFECTIVE DATE.—The amendments made by  
 10          this section shall apply to distributions after December 31,  
 11          2003.

12   **SEC. 304. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
 13                           **PLANS TO ROTH IRAS.**

14          (a) IN GENERAL.—Subsection (e) of section 408A  
 15          (defining qualified rollover contribution) is amended to  
 16          read as follows:

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

20                  “(1) to a Roth IRA from another such account,  
 21                  “(2) from an eligible retirement plan, but only  
 22          if—

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

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

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 408A(c)(3)(B) is amended—

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

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

18 (2) Section 408A(d)(3) is amended—

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

22 (B) in subparagraph (B) by striking “indi-  
 23 vidual retirement plan” and inserting “eligible  
 24 retirement plan (as defined by section  
 25 402(c)(8)(B))”,

1 (C) in subparagraph (D) by striking “or  
2 6047” after “408(i)”,

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

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

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to distributions after December 31,  
11 2003.

12 **SEC. 305. EXCLUSION OF PERCENTAGE OF LIFETIME ANNU-**  
13 **ITY PAYMENTS.**

14 (a) IN GENERAL.—

15 (1) QUALIFIED PLANS.—Subsection (e) of sec-  
16 tion 402 (relating to exempt trusts) is amended by  
17 adding at the end the following new paragraph:

18 “(7) EXCLUSION OF PERCENTAGE OF LIFETIME  
19 ANNUITY PAYMENTS.—

20 “(A) IN GENERAL.—In the case of a life-  
21 time annuity payment from a qualified trust  
22 (within the meaning of subsection (c)(8)(A)) to  
23 a qualified distributee, gross income shall not  
24 include the applicable percentage of the amount

1 otherwise includible in gross income (deter-  
 2 mined without regard to this paragraph).

3 “(B) APPLICABLE PERCENTAGE.—For  
 4 purposes of subparagraph (A), applicable per-  
 5 centage shall be determined in accordance with  
 6 the following table:

<b>“For taxable years beginning in calendar year—</b>	<b>The applicable percentage is—</b>
2004, 2005, 2006, and 2007 .....	5
2008 and thereafter .....	10.

7 “(C) LIMITATION.—With respect to any  
 8 qualified distributee, subparagraph (A) shall  
 9 not apply to any lifetime annuity payment to  
 10 the extent that such payments, when added to  
 11 all previous payments under such annuity to  
 12 such qualified distributee during the taxable  
 13 year, exceed 50 percent of the applicable  
 14 amount for such year under section  
 15 415(c)(1)(A). For purposes of this subpara-  
 16 graph, all lifetime annuity payments received by  
 17 a qualified distributee shall be taken into ac-  
 18 count to the extent that such payments are sub-  
 19 ject to this paragraph or to rules similar to the  
 20 rules of this paragraph.

21 “(D) DEFINITIONS.—For purposes of this  
 22 paragraph—

23 “(i) LIFETIME ANNUITY PAYMENT.—

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

11                  “(II) EXCEPTIONS.—Annuity  
12                  payments shall not fail to be treated  
13                  as part of a series of substantially  
14                  equal periodic payments because the  
15                  amount of the periodic payments may  
16                  vary in accordance with investment  
17                  experience, reallocations among in-  
18                  vestment options, actuarial gains or  
19                  losses, cost of living indices, or similar  
20                  fluctuating criteria. The availability of  
21                  a commutation benefit, a minimum  
22                  period of payments certain, or a min-  
23                  imum amount to be paid in any event  
24                  shall not affect the treatment of a dis-  
25                  tribution as a lifetime annuity pay-



1           ment. In the case of lifetime annuity  
2           payments being made to a qualified  
3           trust, payments by the qualified trust  
4           to a qualified distributee of the entire  
5           amount received by the qualified trust  
6           with respect to the qualified dis-  
7           tributee shall constitute lifetime annu-  
8           ity payments.

9           “(ii) QUALIFIED DISTRIBUTE.—The  
10          term ‘qualified distributee’ means the em-  
11          ployee, the surviving spouse of the em-  
12          ployee, and an alternate payee who is the  
13          spouse or former spouse of the employee.

14         “(E) RECAPTURE TAX.—

15                 “(i) IN GENERAL.—If—

16                         “(I) the applicable percentage of  
17                         a lifetime annuity payment is not in-  
18                         cludible in gross income by reason of  
19                         subparagraph (A), and

20                         “(II) the series of payments of  
21                         which such payment is a part is sub-  
22                         sequently modified (other than by rea-  
23                         son of death or disability) so that  
24                         some or all future payments are not  
25                         lifetime annuity payments,

1 the qualified distributee's gross income for  
2 the first taxable year in which such modi-  
3 fication occurs shall be increased by an  
4 amount, determined under rules prescribed  
5 by the Secretary, equal to the amount  
6 which (but for subparagraph (A)) would  
7 have been includible in the qualified  
8 distributee's gross income if the modifica-  
9 tion had been in effect at all times, plus in-  
10 terest for the deferral period.

11 “(ii) DEFERRAL PERIOD.—For pur-  
12 poses of this subparagraph, the term ‘de-  
13 ferral period’ means the period beginning  
14 with the taxable year in which (without re-  
15 gard to subparagraph (A)) the payment  
16 would have been includible in gross income  
17 and ending with the taxable year in which  
18 the modification described in clause (i)(II)  
19 occurs.

20 “(F) PHASE-OUT OF EXCLUSION.—

21 “(i) IN GENERAL.—In any taxable  
22 year, the exclusion from gross income for  
23 any qualified distributee under this para-  
24 graph and under rules similar to the rules

1 of this paragraph shall not exceed the in-  
 2 come-adjusted limit.

3 “(ii) INCOME-ADJUSTED LIMIT.—For  
 4 purposes of this subparagraph, the income-  
 5 adjusted limit shall be—

6 “(I) the product of the applicable  
 7 percentage described in subparagraph  
 8 (B) and the limitation described in  
 9 subparagraph (C), reduced (but not  
 10 below zero) by

11 “(II) the amount determined  
 12 under clause (iii).

13 “(iii) AMOUNT DETERMINED.—The  
 14 amount determined under this clause shall  
 15 be the amount which bears the same ratio  
 16 to the amount described in clause (ii)(I)  
 17 as—

18 “(I) the excess of the taxpayer’s  
 19 adjusted gross income for such tax-  
 20 able year over the applicable dollar  
 21 amount, bears to

22 “(II) \$15,000 (\$30,000 for a  
 23 joint return).

24 “(iv) LIMITATION ON REDUCTION.—  
 25 The income-adjusted limit shall not be re-

duced below \$200 by clause (ii)(II) unless  
(without regard to this clause) such limit is  
reduced to zero.

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

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

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

“(I) in the case of a taxpayer fil-  
ing a joint return, \$150,000,

“(II) in the case of any other  
taxpayer (other than a married indi-  
vidual filing a separate return),  
\$75,000, and

1 “(III) in the case of a married  
2 individual filing a separate return,  
3 zero.

4 “(viii) SPECIAL RULE FOR MARRIED  
5 INDIVIDUALS FILING SEPARATELY AND  
6 LIVING APART.—Section 219(g)(4) shall  
7 apply for purposes of this subparagraph.”.

8 (2) SECTION 403(a) PLANS.—Paragraph (4) of  
9 section 403(a) (relating to qualified annuity plans)  
10 is amended by adding at the end the following new  
11 subparagraph:

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

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

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

1           (4) IRAs.—Section 408(d) (relating to tax  
2           treatment of distributions) is amended by adding at  
3           the end the following new paragraph:

4           “(8) EXCLUSION OF PERCENTAGE OF LIFETIME  
5           ANNUITY PAYMENTS.—Rules similar to the rules of  
6           section 402(e)(7) shall apply to distributions out of  
7           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          “(18) 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, 2003.

20       **SEC. 306. ROLLOVER OF AFTER-TAX AMOUNTS IN ANNUITY**  
21                               **CONTRACTS.**

22          (a) IN GENERAL.—Subparagraph (A) of section  
23          402(c)(2) (maximum amount which may be rolled over)  
24          is amended by striking “and which” and inserting “or to

1 an annuity contract described in section 403(b) and such  
 2 plan or contract”.

3 (b) EFFECTIVE DATE.—The amendment made by  
 4 subsection (a) shall apply to taxable years beginning after  
 5 December 31, 2003.

6 **SEC. 307. FAIR TREATMENT UNDER SUBSTANTIALLY**  
 7 **EQUAL PERIODIC PAYMENTS RULE.**

8 (a) IN GENERAL.—Paragraph (4) of section 72(t)  
 9 (relating to change in substantially equal payments) is  
 10 amended by inserting at the end the following new sub-  
 11 paragraphs:

12 “(C) CHANGE IN PERMISSIBLE METH-  
 13 ODS.—If—

14 “(i) the taxpayer changes from one  
 15 permissible method of determining sub-  
 16 stantially equal periodic payments to an-  
 17 other permissible method for purposes of  
 18 such determination, and

19 “(ii) such change results in an initial  
 20 reduction in the amount of payments re-  
 21 quired to be made,

22 such change shall not be treated as a modifica-  
 23 tion under subparagraph (A)(ii).

24 “(D) ROLLOVERS TO SUBSEQUENT  
 25 PLAN.—If—

1 “(i) payments satisfying paragraph  
 2 (2)(A)(iv) are being made from a qualified  
 3 retirement plan,

4 “(ii) a transfer or a rollover from the  
 5 qualified retirement plan is made to an-  
 6 other qualified retirement plan of all or a  
 7 portion of the taxpayer’s benefit under the  
 8 transferor plan, and

9 “(iii) distributions from the transferor  
 10 and transferee plans would in combination  
 11 continue to satisfy paragraph (2)(A)(iv) if  
 12 made only from the transferor plan,

13 such transfer or rollover shall not be treated as  
 14 a modification under subparagraph (A)(ii) and  
 15 compliance with paragraph (2)(A)(iv) shall be  
 16 determined on the basis of the combined dis-  
 17 tributions described in clause (iii).

18 “(E) INTEREST RATE.—Any reasonable in-  
 19 terest rate may be used in determining whether  
 20 payments are substantially equal under para-  
 21 graph (2)(A)(iv).”.

22 (b) EFFECTIVE DATE.—The amendments made by  
 23 this section shall apply to any series of payments com-  
 24 mencing on or after the date of enactment of this Act.



1   **SEC. 308. TREATMENT OF SUBSEQUENT QUALIFIED DOMES-**  
2                   **TIC RELATIONS ORDERS.**

3           (a) AMENDMENT TO ERISA.—Section 206(d)(3)(B)  
4 of the Employee Retirement Income Security Act of 1974  
5 (29 U.S.C. 1056(d)(3)(B)) is amended by adding at the  
6 end of the following flush sentence: “A domestic relations  
7 order otherwise meeting the requirements to be treated as  
8 a qualified domestic relations order shall not fail to be so  
9 treated solely because it is issued after, or revises, another  
10 qualified domestic relations order, but only with respect  
11 to amounts payable after the date the order is determined  
12 to be qualified.”.

13          (b) AMENDMENT TO INTERNAL REVENUE CODE.—  
14 Section 414(p)(1)(A) is amended by adding at the end the  
15 following flush sentence: “A domestic relations order oth-  
16 erwise meeting the requirements to be treated as a quali-  
17 fied domestic relations order shall not fail to be so treated  
18 solely because it is issued after, or revises, another quali-  
19 fied domestic relations order, but only with respect to  
20 amounts payable after the date the order is determined  
21 to be qualified.”.

22          (c) EFFECTIVE DATE.—

23               (1) IN GENERAL.—The amendments made by  
24 this section shall apply to transfers made after De-  
25 cember 31, 2003.

1           (2) PRIOR TRANSFERS.—Transfers made prior  
 2           to January 1, 2004 under qualified domestic rela-  
 3           tions orders that were issued after, or that revised,  
 4           a prior qualified domestic relations order shall not  
 5           be deemed invalid by reason of the amendments  
 6           made by this section.

7   **SEC. 309. TREATMENT OF DELAYED QUALIFIED DOMESTIC**  
 8                           **RELATIONS ORDERS.**

9           (a) AMENDMENT TO ERISA.—Section 206(d)(3)(B)  
 10          of the Employee Retirement Income Security Act of 1974  
 11          (29 U.S.C. 1056(d)(3)) (as amended by this Act) is  
 12          amended by adding at the end the following flush sen-  
 13          tence: “A domestic relations order otherwise meeting the  
 14          requirements to be treated as a qualified domestic rela-  
 15          tions order shall not fail to be to be treated (subject to  
 16          subparagraph (H)) solely because of the time at which it  
 17          is issued.”.

18          (b) AMENDMENT TO INTERNAL REVENUE CODE.—  
 19          Section 414(p)(1)(A) (as amended by this Act) is amended  
 20          by adding at the end the following flush sentence: “A do-  
 21          mestic relations order otherwise meeting the requirements  
 22          to be treated as a qualified domestic relations order shall  
 23          not fail to be so treated (subject to paragraph (7)) solely  
 24          because of the time at which it is issued.”.

25          (c) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendments made by  
2           this section apply to transfers made after December  
3           31, 2003.

4           (2) PRIOR ORDERS.—Transfers made prior to  
5           January 1, 2004 under qualified domestic relations  
6           orders that were issued subsequent to the events giv-  
7           ing rise to such orders shall not be deemed invalid  
8           by reason of the amendments made by this section.

9   **SEC. 310. TREATMENT OF ANNUITY CONTRACTS.**

10          (a) IN GENERAL.—Clause (i) of section 402(e)(4)(D)  
11          is amended by adding after “section 401(c)(1).” the fol-  
12          lowing: “A distribution of an annuity contract from a trust  
13          or annuity plan referred to in the first sentence of this  
14          clause may be treated as a part of a lump sum distribu-  
15          tion.”.

16          (b) EFFECTIVE DATE.—The amendment made by  
17          this section shall take effect as if included in section  
18          1401(b)(1) of the Small Business Job Protection Act of  
19          1996.

20   **SEC. 311. PRESERVATION OF PENSION PLANS.**

21          (a) Section 1612 of the Social Security Act is amend-  
22          ed—

23                  (1) in subsection (b)—

24                          (A) in paragraph (21), by striking “; and”  
25                  and inserting “;”;

1 (B) by striking the period at the end of  
2 paragraph (22) and inserting “; and”;

3 (C) by adding at the end the following  
4 paragraph:

5 “(23) except as otherwise provided in this para-  
6 graph, retirement benefits to which the individual is  
7 or may become entitled, including any balances cred-  
8 ited to the individual’s account and any other ac-  
9 crued benefits, under a qualifying retirement plan.”;  
10 and

11 (2) adding at the end the following new sub-  
12 section:

13 “RULES RELATING TO QUALIFIED RETIREMENT PLANS

14 “(c)(1) For purposes of subsection (b)(23), a quali-  
15 fying retirement plan is a qualified retirement plan as de-  
16 fined in section 4974(c) of the Internal Revenue Code of  
17 1986, an eligible deferred compensation plan under section  
18 457(b) of such Code, or a trust as described in section  
19 501(c)(18) of such Code.

20 “(2) Subsection (b)(23) shall not require the Com-  
21 missioner to exclude the aggregate value of qualifying re-  
22 tirement plan balances of an individual to the extent they  
23 exceed \$75,000.

24 “(3) Except as provided in paragraph (4), in the case  
25 of an individual who has attained the age specified in sec-  
26 tion 72(t)(2)(A)(i) of the Internal Revenue Code of 1986,

1 subsection (b)(23) shall not require the Commissioner to  
2 exclude an amount up to the monthly annuity value of the  
3 current aggregate value of qualifying retirement plan bal-  
4 ances of the individual as determined under a schedule  
5 issued by the Commissioner.

6 “(4) Upon determining that an applicant for or re-  
7 cipient of benefits has attained the age specified in section  
8 72(t)(2)(A)(i) of the Internal Revenue Code of 1986 and  
9 is entitled to benefits under a qualifying retirement plan,  
10 the Commissioner shall—

11 “(A) notify the applicant or recipient of the  
12 provisions of this subsection and of the importance  
13 of obtaining competent financial advice on the possi-  
14 bility of converting the value of the plan into an an-  
15 nuity;

16 “(B) continue to exclude the value of the quali-  
17 fying retirement plan without regard to paragraph  
18 (3) for a period of one year following the provision  
19 of the notice specified in subparagraph (A).

20 “(C) after the period specified in subparagraph  
21 (B), not count as monthly income more than the  
22 monthly annuity value of any current balance of the  
23 qualifying retirement plan as determined under a  
24 schedule issued by the Commissioner.

1 “(5) Nothing in subsection (b)(23) shall be construed  
 2 to authorize or require any benefits to be reduced or de-  
 3 nied to any individual because of a qualifying retirement  
 4 plan (including defined benefit retirement plans) whose  
 5 consideration is excluded under any other provision of  
 6 law.”.

7 (b) Section 1613 of the Social Security Act is amend-  
 8 ed—

9 (1) in subsection (a)—

10 (A) in paragraph (12), by striking “; and”  
 11 and inserting “;”;

12 (B) by striking the period at the end of  
 13 paragraph (13) and inserting “; and”; and

14 (C) by adding after paragraph (13) the fol-  
 15 lowing paragraph:

16 “(14) benefits to which the individual is or may  
 17 become entitled, including any balances credited to  
 18 the individual’s account and any other accrued bene-  
 19 fits, qualifying retirement plan.”; and

20 (2) by adding at the end the following new sub-  
 21 section:

22 “RULES RELATING TO QUALIFIED RETIREMENT PLANS

23 “(f)(1) For purposes of subsection (a)(14) a quali-  
 24 fying retirement plan is a qualified retirement plan as de-  
 25 fined in section 4974(c) of the Internal Revenue Code of  
 26 1986, an eligible deferred compensation plan under section

1 457(b) of such Code, or a trust as described in section  
 2 501(c)(18) of such Code.

3 “(2) Subsection (a)(14) shall not require the Com-  
 4 missioner to exclude—

5 “(A) funds that have been distributed from a  
 6 qualifying retirement plan; or

7 “(B) the value of a qualifying retirement plan  
 8 to the extent the aggregate value of qualifying re-  
 9 tirement plan balances of an individual exceed  
 10 \$75,000.

11 “(3) Nothing in subsection (a)(14) shall be construed  
 12 to authorize or require any benefits to be reduced or de-  
 13 nied to any individual because of a qualifying retirement  
 14 plan (including defined benefit retirement plans) whose  
 15 consideration is excluded under any other provision of  
 16 law.”.

17 (c) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply as of the date of enactment of this  
 19 Act.

20 **SEC. 312. CERTAIN PLAN TRANSFERS AND MERGERS.**

21 (a) AMENDMENT TO THE INTERNAL REVENUE CODE  
 22 OF 1986.—Section 414 (relating to definitions and special  
 23 rules) (as amended by this Act) is amended by adding at  
 24 the end the following new subsection:

25 “(z) CERTAIN PLAN TRANSFERS AND MERGERS.—

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

4                   “(A) a transfer of all or a portion of the  
5                   account balance of a participant or beneficiary,  
6                   whether or not vested, from a defined contribu-  
7                   tion plan described in section 401(a) or section  
8                   403(a) to an annuity contract described in sec-  
9                   tion 403(b),

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

16                   “(C) a merger of a defined contribution  
17                   plan described in section 401(a) or section  
18                   403(a) with an annuity contract described in  
19                   section 403(b),

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



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

3               “(2) DISTRIBUTIONS.—Except to the extent  
4       provided in paragraphs (3) and (4), amounts trans-  
5       ferred or merged pursuant to paragraph (1) shall be  
6       distributed solely in accordance with the terms of  
7       the transferee or merged plan.

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

13               “(A)(i) be treated in the same manner as  
14      amounts in a plan to which section 401(a)(11)  
15      or section 205 of the Employee Retirement In-  
16      come Security Act of 1974 applies to the extent  
17      that such sections applied to such amounts in  
18      the transferor or predecessor plan, or

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

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

6           “(4) SPECIAL RULES.—Under rules prescribed  
7           by the Secretary, to the extent amounts transferred  
8           or merged pursuant to paragraph (1) were otherwise  
9           entitled to grandfather treatment under the trans-  
10          feror or predecessor plan, such amounts (and income  
11          or loss attributable thereto) shall remain entitled to  
12          such treatment under the transferee or merged plan.  
13          The rules prescribed by the Secretary shall require  
14          that such amounts be separately accounted for by  
15          the transferee or merged plan. For purposes of this  
16          paragraph, ‘grandfather treatment’ shall mean spe-  
17          cial treatment under the Internal Revenue Code of  
18          1986 or the Employee Retirement Income Security  
19          Act of 1974 that is provided for prior benefits, prior  
20          periods of time, or certain individuals in connection  
21          with a change in the applicable law.

22          “(5) CONSENT.—In the case of an annuity con-  
23          tract described in section 403(b) with respect to  
24          which transfers may be made only with the consent  
25          of a participant or beneficiary pursuant to the terms

1 of such contract or pursuant to applicable law, a  
2 transfer from such contract pursuant to paragraph  
3 (1) may be made only if such participant or bene-  
4 ficiary consents to such transfer. For purposes of  
5 this paragraph, a merger of an annuity contract de-  
6 scribed in section 403(b) with a plan described in  
7 section 401(a) or 403(a) shall be treated as a trans-  
8 fer from the predecessor plan or contract to the  
9 merged plan or contract. Nothing in this subsection  
10 shall affect the application of contract or plan terms  
11 otherwise applicable in the case of a withdrawal  
12 from the contract or plan.”.

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

18 “(d) This title shall apply to any plan or contract de-  
19 scribed in section 414(z) of the Internal Revenue Code of  
20 1986 to the extent necessary to comply with the require-  
21 ments of such section. Transfers or mergers permitted  
22 under such section shall be treated as satisfying the re-  
23 quirements of this title.”.

24 (c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after the Secretary of the Treasury prescribes rules under section 414(z) of the Internal Revenue Code of 1986.

(2) RULES.—The Secretary of the Treasury shall issue rules under section 414(z) of the Internal Code of 1986 within 1 year after the date of enactment of this Act.

## **TITLE IV—INCREASING RETIREMENT PLAN PARTICIPATION AND SAVINGS**

### **SEC. 401. EXPANSION OF THE SAVER'S CREDIT.**

(a) IN GENERAL.—The table contained in subsection (b) of section 25B (relating to applicable percentage) is amended to read as follows:

“Adjusted Gross Income						Applicable percentage
Joint return		Head of a household		All other cases		
Over	Not over	Over	Not over	Over	Not over	
	\$30,000		\$22,500		\$15,000	55
30,000	40,000	22,500	30,000	15,000	20,000	25
40,000	50,000	30,000	37,500	20,000	25,000	20
50,000	60,000	37,500	45,000	25,000	30,000	10
60,000		45,000		30,000		0”

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

### **SEC. 402. ACCELERATION OF SCHEDULED INCREASES IN PENSION PLAN CONTRIBUTION LIMITS.**

(a) ELECTIVE DEFERRALS.—

1 (1) IN GENERAL.—Section 402(g)(1) (relating  
2 to general rule for limitation on exclusion for elective  
3 deferrals) is amended—

4 (A) in subparagraph (A) by striking “the  
5 applicable dollar amount” and inserting  
6 “\$15,000”,

7 (B) by striking subparagraph (B) and re-  
8 designating subparagraph (C) as subparagraph  
9 (B).

10 (2) CONFORMING AMENDMENTS.—

11 (A) Section 402(g)(1)(B) (as redesignated  
12 by paragraph (1)) is amended by striking “ap-  
13 plicable dollar amount under subparagraph  
14 (B)” and inserting “amount in effect under  
15 subparagraph (A)”.

16 (B) Section 402(g)(4) is amended—

17 (i) by striking “2006” and inserting  
18 “2004”,

19 (ii) by striking “paragraph (1)(B)”  
20 and inserting “paragraph (1)(A)”, and

21 (iii) by striking “2005” and inserting  
22 “2003”.

23 (b) DEFERRED COMPENSATION PLANS OF STATE  
24 AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANI-  
25 ZATIONS.—

1           (1) IN GENERAL.—Subsection (b)(2)(A) of sec-  
2           tion 457 (defining eligible deferred compensation  
3           plan) is amended by striking “the applicable dollar  
4           amount” and inserting “\$15,000”.

5           (2) CONFORMING AMENDMENT.—Paragraph  
6           (15) of section 457(e) is amended to read as follows:

7           “(15) COST-OF-LIVING ADJUSTMENTS.—In the  
8           case of taxable years beginning after December 31,  
9           2003, the Secretary shall adjust the \$15,000  
10          amount in subsection (b)(2)(A) at the same time  
11          and in the same manner as under section 415(d),  
12          except that the base period shall be the calendar  
13          quarter beginning July 1, 2002, and any increase  
14          under this paragraph which is not a multiple of  
15          \$500 shall be rounded to the next lowest multiple of  
16          \$500.”.

17          (c) SIMPLE RETIREMENT ACCOUNTS.—

18               (1) IN GENERAL.—Clause (ii) of section  
19               408(p)(2)(A) (relating to general rule for qualified  
20               salary reduction arrangement) is amended by strik-  
21               ing “the applicable dollar amount” and inserting  
22               “\$10,000”.

23               (2) CONFORMING AMENDMENT.—Subparagraph  
24               (E) of section 408(p)(2) is amended to read as fol-  
25               lows:

1           “(E) COST-OF-LIVING ADJUSTMENT.—In  
 2           the case of a year beginning after December 31,  
 3           2003, the Secretary shall adjust the \$10,000  
 4           amount in subparagraph (A)(ii) at the same  
 5           time and in the same manner as under section  
 6           415(d), except that the base period taken into  
 7           account shall be the calendar quarter beginning  
 8           July 1, 2002, and any increase under this sub-  
 9           paragraph which is not a multiple of \$500 shall  
 10          be rounded to the next lower multiple of  
 11          \$500.”.

12          (d) CATCH-UP CONTRIBUTIONS.—

13           (1) IN GENERAL.—Subparagraph (B) of section  
 14          414(v)(2) (relating to applicable dollar amount) is  
 15          amended—

16           (A) in clause (i) by striking “shall be” and  
 17           all that follows and inserting “is \$5,000.”, and

18           (B) in clause (ii) by striking “shall be”  
 19           and all that follows and inserting “is \$2,500.”.

20           (2) CONFORMING AMENDMENTS.—Section  
 21          414(v)(2)(C) is amended—

22           (A) by striking “2006” and inserting  
 23           “2003”, and

24           (B) by striking “2005” and inserting  
 25           “2002”.

1 (e) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to years beginning after December  
3 31, 2003.

4 **SEC. 403. REMOVING BARRIERS TO AUTOMATIC CONTRIBU-**  
5 **TION TRUST ARRANGEMENTS.**

6 (a) IN GENERAL.—

7 (1) CONTROL DEEMED TO HAVE BEEN EXER-  
8 CISED WITH RESPECT TO AMOUNT OF AUTOMATIC  
9 CONTRIBUTIONS.—Section 404(c) of the Employee  
10 Retirement Income Security Act of 1974 (29 U.S.C.  
11 1104(c)) (as amended by this Act) is amended by  
12 adding at the end the following new paragraph:

13 “(5)(A) A participant in an individual account plan  
14 shall, for purposes of paragraph (1), be treated as exer-  
15 cising control over the assets in the account with respect  
16 to the amount of contributions made under an automatic  
17 contribution trust arrangement.

18 “(B) For purposes this paragraph, the term ‘auto-  
19 matic contribution trust arrangement’ means an arrange-  
20 ment—

21 “(i) which meets the requirements of subpara-  
22 graph (C),

23 “(ii) under which a participant may elect to  
24 have the employer make payments as contributions



1 to a trust under the plan on behalf of the partici-  
2 pant, or to the participant directly in cash,

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

11 “(iv) under which contributions described in  
12 clause (iii) are invested in accordance with regula-  
13 tions prescribed by the Secretary.

14 “(C)(i) The administrator of an individual account  
15 plan shall, within a reasonable period before each plan  
16 year, give to each employee to whom an automatic con-  
17 tribution trust arrangement applies for such plan year no-  
18 tice of the employee’s rights and obligations under the ar-  
19 rangement which—

20 “(I) is sufficiently accurate and comprehensive  
21 to appraise the employee of such rights and obliga-  
22 tions, and

23 “(II) is written in a manner calculated to be  
24 understood by the average employee to whom the ar-  
25 rangement applies.

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

4               “(I) the notice includes a notice explaining the  
 5       employee’s right under the arrangement to elect not  
 6       to have elective contributions made on the employ-  
 7       ee’s behalf (or to elect to have such contributions  
 8       made at a different percentage),

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

13               “(III) the notice explains how contributions  
 14       made under the arrangement will be invested in the  
 15       absence of any investment election by the em-  
 16       ployee.”.

17               (2) PREEMPTION OF CONFLICTING STATE REG-  
 18       ULATION.—Section 514(b) of such Act (29 U.S.C.  
 19       1144(b)) is amended—

20                       (A) by redesignating paragraph (9) as  
 21                       paragraph (10); and

22                       (B) by inserting after paragraph (8) the  
 23                       following new paragraph:

24               “(9) Any law of a State which would directly or indi-  
 25       rectly prohibit or restrict the inclusion in any plan of an

1 automatic contribution trust arrangement (as defined in  
 2 section 404(c)(4)(B)) shall be superseded. The Secretary  
 3 may prescribe regulations which would establish minimum  
 4 standards that such arrangements would be required to  
 5 satisfy in order for this paragraph to apply.”.

6 (b) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendments made by  
 8 this section shall apply to plan years beginning after  
 9 December 31, 2003.

10 (2) REGULATIONS.—Final regulations under  
 11 section 404(c)(5)(B)(iv) of the Employee Retirement  
 12 Income Security Act of 1974 (added by this section)  
 13 shall be issued no later than 1 year after the date  
 14 of enactment of this Act.

15 **SEC. 404. DISPOSITION OF UNUSED HEALTH BENEFITS IN**  
 16 **CAFETERIA PLANS AND FLEXIBLE SPENDING**  
 17 **ARRANGEMENTS.**

18 (a) IN GENERAL.—Section 125 (relating to cafeteria  
 19 plans) is amended by redesignating subsections (h) and  
 20 (i) as subsections (i) and (j), respectively, and by inserting  
 21 after subsection (g) the following:

22 “(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH  
 23 BENEFITS.—

24 “(1) IN GENERAL.—For purposes of this title,  
 25 a plan or other arrangement shall not fail to be

1 treated as a cafeteria plan solely because qualified  
2 benefits under such plan include a health flexible  
3 spending arrangement under which not more than  
4 \$500 of unused health benefits may be contributed  
5 on behalf of an employee to a qualified retirement  
6 plan (as defined in section 4974(c)) or an eligible  
7 deferred compensation plan (as defined in section  
8 457(b)).

9 “(2) CONTRIBUTION OF UNUSED HEALTH BEN-  
10 EFITS ON BEHALF OF EMPLOYEE.—For purposes of  
11 this title, contributions on behalf of an employee de-  
12 scribed in paragraph (1) shall be treated as elective  
13 contributions made pursuant to a choice by the em-  
14 ployee between such contributions and compensation  
15 which would otherwise be includible in the gross in-  
16 come of the employee. Contributions described in  
17 paragraph (1) shall be excluded from the gross in-  
18 come of the employee, or included in the gross in-  
19 come of the employee and allowed as a deduction by  
20 the employee, to the extent that elective contribu-  
21 tions would be treated in that manner under this  
22 title.

23 “(3) HEALTH FLEXIBLE SPENDING ARRANGE-  
24 MENT.—For purposes of this subsection, the term  
25 ‘health flexible spending arrangement’ means a flexi-

1       ble spending arrangement (as defined in section  
 2       106(c)) that is a qualified benefit and only permits  
 3       reimbursement for expenses for medical care (as de-  
 4       fined in section 213(d)(1) (without regard to sub-  
 5       paragraphs (C) and (D) thereof).

6               “(4) UNUSED HEALTH BENEFITS.—For pur-  
 7       poses of this subsection, with respect to an em-  
 8       ployee, the term ‘unused health benefits’ means the  
 9       excess of—

10               “(A) the maximum amount of reimburse-  
 11       ment allowable to the employee during a plan  
 12       year under a health flexible spending arrange-  
 13       ment, taking into account any election by the  
 14       employee, over

15               “(B) the actual amount of reimbursement  
 16       during such year under such arrangement.”.

17       (b) EFFECTIVE DATE.—The amendment made by  
 18       subsection (a) shall apply to taxable years beginning after  
 19       December 31, 2003.

20       **SEC. 405. UPDATING DEDUCTION RULES FOR COMBINA-**  
 21       **TION OF PLANS.**

22       (a) IN GENERAL.—Subparagraph (C) of section  
 23       404(a)(7) (relating to limitation on deductions where com-  
 24       bination of defined contribution plan and defined benefit

1 plan) is amended by adding after clause (ii) the following  
2 new clause:

3                   “(iii) In the case of employer con-  
4 tributions to 1 or more defined contribu-  
5 tion plans, this paragraph shall only apply  
6 to the extent that such contributions (other  
7 than elective deferrals (as defined in sec-  
8 tion 402(g)(3)) exceed 6 percent of the  
9 compensation otherwise paid or accrued  
10 during the taxable year to the beneficiaries  
11 under such plans. For purposes of this  
12 clause, amounts carried over from pre-  
13 ceding taxable years under subparagraph  
14 (B) shall be treated as employer contribu-  
15 tions to 1 or more defined contributions to  
16 the extent attributable to employer con-  
17 tributions to such plans in such preceding  
18 taxable years.”.

19       (b) CONFORMING AMENDMENTS.—Subparagraph (A)  
20 of section 4972(c)(6) (relating to nondeductible contribu-  
21 tions) is amended to read as follows:

22                   “(A) so much of the contributions to 1 or  
23 more defined contribution plans which are not  
24 deductible when contributed solely because of

1           section 404(a)(7) as does not exceed the sum  
2           of—

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

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

7           (c) EFFECTIVE DATE.—The amendments made by  
8 this section shall apply to years beginning after December  
9 31, 2003.

10 **TITLE V—EXPANDING RETIRE-**  
11 **MENT PLAN COVERAGE TO**  
12 **EMPLOYEES OF SMALL BUSI-**  
13 **NESSES**

14 **SEC. 501. ADDITIONAL NONELECTIVE EMPLOYER CON-**  
15 **TRIBUTIONS TO SIMPLE PLANS.**

16           (a) IN GENERAL.—

17                   (1) MODIFICATION TO DEFINITION.—Subpara-  
18 graph (A) of section 408(p)(2) (defining qualified  
19 salary reduction arrangement) is amended by strik-  
20 ing “and” at the end of clause (iii), by redesignating  
21 clause (iv) as clause (v), and by inserting after  
22 clause (iii) the following new clause:

23                           “(iv) the employer may make nonelec-  
24                           tive contributions of a uniform percentage  
25                           (up to 10 percent) of compensation for

1           each employee who is eligible to participate  
2           in the arrangement and who has at least  
3           \$5,000 of compensation from the employer  
4           for the year, and”.

5       (2) LIMITATION.—Subparagraph (A) of section  
6 408(p)(2) (defining qualified salary reduction arrange-  
7 ment) is amended by adding at the end the following:  
8 “The compensation taken into account under clause (iv)  
9 for any year shall not exceed the limitation in effect for  
10 such year under section 401(a)(17).”.

11       (b) CONFORMING AMENDMENTS.—

12           (1) Section 408(p)(2)(A)(v), as redesignated by  
13 subsection (a), is amended by striking “or (iii)” and  
14 inserting “, (iii), or (iv)”.

15           (2) Paragraph (8) of section 408(p) is amended  
16 by inserting “, the employer contribution actually  
17 made under paragraph (2)(A)(iv) of this sub-  
18 section,” after “paragraph (2)(A)(ii) of this sub-  
19 section”.

20           (3) Section 401(k)(11)(B)(i) is amended by  
21 striking “and” at the end of subclause (II), by re-  
22 designating subclause (III) as subclause (IV), and  
23 by inserting after subclause (II) the following new  
24 subclause:



1 “(III) the employer may make  
 2 nonelective contributions of a uniform  
 3 percentage (up to 10 percent) of com-  
 4 pensation for each employee who is el-  
 5 igible to participate in the arrange-  
 6 ment and who has at least \$5,000 of  
 7 compensation from the employer for  
 8 the year, and”

9 (4) Section 401(k)(11)(B)(i)(IV), as redesign-  
 10 nated by paragraph (2), is amended by striking “or  
 11 (II)” and inserting “, (II), or (III)”.

12 (c) EFFECTIVE DATE.—The amendments made by  
 13 this section shall apply to years beginning after December  
 14 31, 2003.

15 **SEC. 502. MATCHING CONTRIBUTION RULES FOR SIMPLE**  
 16 **IRAS AND SIMPLE 401(k)S CONFORMED.**

17 (a) IN GENERAL.—Subclause (II) of section  
 18 401(k)(11)(B)(i) (relating to general rule for contribution  
 19 requirements) is amended by striking “3 percent” and in-  
 20 serting “the applicable percentage (as defined in section  
 21 408(p)(2)(C)(ii))”.

22 (b) EFFECTIVE DATE.—The amendment made by  
 23 this section shall apply to years beginning after December  
 24 31, 2003.

1 **SEC. 503. SALARY-REDUCTION ONLY SIMPLE PLANS.**

2 (a) SIMPLE RETIREMENT ACCOUNTS.—

3 (1) IN GENERAL.—Paragraph (2) of section  
4 408(p) (defining qualified salary reduction arrange-  
5 ment) is amended—

6 (A) by redesignating subparagraphs (C),  
7 (D), and (E) as subparagraphs (D), (E), and  
8 (F), respectively; and

9 (B) by inserting after subparagraph (B)  
10 the following:

11 “(C) EMPLOYER MAY ELECT SALARY RE-  
12 DUCATION ONLY ARRANGEMENT.—

13 “(i) IN GENERAL.—An employer shall  
14 be treated as meeting the requirements of  
15 subparagraph (A)(iii) for any year if, in  
16 lieu of the contributions described in such  
17 subparagraph, the employer elects to limit  
18 the amount which an employee may elect  
19 under subparagraph (A)(i) to a total of  
20 \$5,000 for the year. If an employer makes  
21 an election under this subparagraph for  
22 any year, the employer shall notify employ-  
23 ees of such election within a reasonable pe-  
24 riod of time before the 60-day period for  
25 such year under paragraph (5)(C).

1                   “(ii) EXCEPTION.—This subpara-  
2                   graph shall not apply to an employer if  
3                   such employer (or any predecessor em-  
4                   ployer) maintained another qualified plan  
5                   (as defined in subparagraph (E)(ii)) with  
6                   respect to which contributions were made,  
7                   or benefits were accrued, for service during  
8                   the year in which the arrangement de-  
9                   scribed in clause (i) became effective or ei-  
10                  ther of the 2 preceding years. If only indi-  
11                  viduals other than employees described in  
12                  subparagraph (A) of section 410(b)(3) are  
13                  eligible to participate in the arrangement  
14                  described in clause (i), the preceding sen-  
15                  tence shall be applied without regard to  
16                  any qualified plan in which only employees  
17                  so described are eligible to participate.”.

18                  (2) SPECIAL RULE FOR ACQUISITIONS, DISPOSI-  
19                  TIONS, AND SIMILAR TRANSACTIONS.—Subpara-  
20                  graph (B) of section 408(p)(10) (relating to special  
21                  rules for acquisitions, dispositions, and similar  
22                  transactions) is amended by striking “and” at the  
23                  end of clause (ii), by striking the period at the end  
24                  of clause (iii) and inserting “; and”, and by inserting  
25                  after clause (iii) the following:

1                   “(iv) the requirement under para-  
2                   graph (2)(C) that the employer not have  
3                   maintained another qualified plan de-  
4                   scribed therein.”.

5                   (3) COST-OF-LIVING ADJUSTMENT.—Subpara-  
6                   graph (F) of section 408(p)(2) (as so redesignated)  
7                   is amended by striking “In” and inserting “(i) In”  
8                   and by adding after clause (i) the following new  
9                   clause:

10                   “(ii) In the case of a year beginning  
11                   after December 31, 2004, the Secretary  
12                   shall adjust the \$5,000 amount in sub-  
13                   paragraph (C)(i) at the same time and in  
14                   the same manner as under section 415(d),  
15                   except that the base period taken into ac-  
16                   count shall be the calendar quarter begin-  
17                   ning July 1, 2003, and any increase under  
18                   this subparagraph which is not a multiple  
19                   of \$500 shall be rounded to the next lower  
20                   multiple of \$500.”.

21                   (4) COORDINATION WITH MAXIMUM LIMITA-  
22                   TION.—Paragraph (8) of section 408(p) (relating to  
23                   coordination with maximum limitation under sub-  
24                   section (a)) is amended by striking “paragraph  
25                   (2)(A)(ii) of this subsection” and inserting “sub-

1 paragraph (A)(ii) or (C) of paragraph (2) of this  
2 subsection, whichever is applicable,”.

3 (5) CONFORMING AMENDMENT.—Clause (ii) of  
4 section 408(p)(10)(B) is amended by striking “para-  
5 graph (2)(D)” and inserting “paragraph (2)(E)”.

6 (b) ADOPTION OF SIMPLE PLAN TO MEET NON-  
7 DISCRIMINATION TESTS.—Subparagraph (B) of section  
8 401(k)(11) (relating to contribution requirements) is  
9 amended by redesignating clause (iii) as clause (iv) and  
10 by inserting after clause (ii) the following new clause:

11 “(iii) EMPLOYER MAY ELECT SALARY  
12 REDUCTION ONLY ARRANGEMENT.—

13 “(I) IN GENERAL.—An employer  
14 shall be treated as meeting the re-  
15 quirements of clause (i)(II) for any  
16 year if, in lieu of the contributions de-  
17 scribed in such clause, the employer  
18 elects to limit the amount which an  
19 employee may elect under clause (i) to  
20 the amount in effect under section  
21 408(p)(2)(C)(i) for the year. If an  
22 employer makes an election under this  
23 clause for any year, the employer shall  
24 notify employees of such election with-  
25 in a reasonable period of time before

1 the 60-day period for such year under  
2 clause (iv)(II).

3 “(II) EXCEPTION.—This clause  
4 shall not apply to an employer if such  
5 employer (or any predecessor em-  
6 ployer) maintained another qualified  
7 plan (as defined in section  
8 408(p)(2)(E)(ii)) with respect to  
9 which contributions were made, or  
10 benefits were accrued, for service dur-  
11 ing the year in which the arrangement  
12 described in subclause (I) became ef-  
13 fective or either of the 2 preceding  
14 years. This subclause shall not apply  
15 if such contributions or benefits were  
16 solely on behalf of employees who are  
17 not eligible to participate in the ar-  
18 rangement described in subclause  
19 (I).”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to years beginning after December  
22 31, 2004.

1   **SEC. 504. PERMIT A MID-YEAR CHANGE FROM A SIMPLE**  
2                   **PLAN TO ANOTHER PLAN.**

3           (a) IN GENERAL.—Clause (i) of section 408(p)(2)(E)  
4 (relating to arrangement may be only plan of employer)  
5 is amended by striking “An arrangement” and inserting  
6 “Except as provided in regulations prescribed by the Sec-  
7 retary, an arrangement”.

8           (b)           CONFORMING           AMENDMENT.—Section  
9 401(k)(11)(C) is amended by inserting “, except as pro-  
10 vided in regulations prescribed by the Secretary,” after  
11 “if”.

12          (c) REGULATIONS.—Not later than December 31,  
13 2004, the Secretary shall issue final regulations under  
14 which an employer can cease to maintain a qualified salary  
15 reduction arrangement in a year and begin maintaining  
16 a qualified plan (within the meaning of section  
17 408(p)(2)(E)(ii) of the Internal Revenue Code of 1986).  
18 Such regulations shall provide safeguards to ensure that  
19 changing from such an arrangement to such a plan during  
20 a year is not used to circumvent otherwise applicable lim-  
21 its or rules.

22          (d) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to years beginning after December  
24 31, 2004.

1 **SEC. 505. ELIMINATION OF HIGHER PENALTY ON CERTAIN**  
2 **SIMPLE DISTRIBUTIONS.**

3 (a) IN GENERAL.—Subsection (t) of section 72 (re-  
4 lating to 10-percent additional tax on early distributions  
5 from qualified retirement plans) is amended by striking  
6 paragraph (6) and redesignating paragraphs (7), (8), and  
7 (9) as paragraphs (6), (7), and (8), respectively.

8 (b) CONFORMING AMENDMENTS.—

9 (1) Section 72(t)(2)(E) is amended by striking  
10 “paragraph (7)” and inserting “paragraph (6)”.

11 (2) Section 72(t)(2)(F) is amended by striking  
12 “paragraph (8)” and inserting “paragraph (7)”.

13 (3) Section 408(d)(3)(G) is amended by strik-  
14 ing “applies” and inserting “applied on the day be-  
15 fore the date of the enactment of the Pension Pres-  
16 ervation and Savings Expansion Act of 2003)”.

17 (4) Section 457(a)(2) is amended by striking  
18 “section 72(t)(9)” and inserting “section 72(t)(8)”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to years beginning after December  
21 31, 2003.

22 **SEC. 506. SIMPLE PLAN PORTABILITY.**

23 (a) REPEAL OF LIMITATION.—Paragraph (3) of sec-  
24 tion 408(d) (relating to rollover contributions), as amend-  
25 ed by this Act, is amended by striking subparagraph (G)



1 and redesignating subparagraph (H) as subparagraph  
2 (G).

3 (b) Section 402(c)(8)(B) is amended by adding at the  
4 end the following new sentence: “Individual retirement ac-  
5 counts and individual retirement annuities described in  
6 clauses (i) and (ii) shall be treated as eligible retirement  
7 plans without regard to whether they are part of a sim-  
8 plified employee pension (within the meaning of section  
9 408(k)) or a simplified retirement account (within the  
10 meaning of section 408(p)).”.

11 (c) EFFECTIVE DATE.—The amendment made by  
12 this section shall apply to years beginning after December  
13 31, 2003.

14 **SEC. 507. CORRECTION OF SIMPLIFIED EMPLOYEE PEN-**  
15 **SION COMPENSATION INCONSISTENCY.**

16 (a) IN GENERAL.—Subparagraph (A) of section  
17 402(h)(2) (relating to limitations on employer contribu-  
18 tions) is amended by striking “414(s)) from such employer  
19 includible in the employee’s gross income” and inserting  
20 “415(c)(3)) from such employer”.

21 (b) EFFECTIVE DATE.—The amendment made by  
22 this section shall apply to taxable years beginning after  
23 December 31, 2003.

1 **SEC. 508. EQUALIZATION OF TAX TREATMENT OF RETIRE-**  
2 **MENT PLAN CONTRIBUTIONS OF THE SELF-**  
3 **EMPLOYED.**

4 (a) IN GENERAL.—Subsection (b) of section 1402  
5 (defining self-employment income) is amended by striking  
6 “or” at the end of paragraph (1), by striking the period  
7 at the end of paragraph (2) and inserting “; or”, and by  
8 inserting after paragraph (2) the following:

9 “(3) any payment made to, or on behalf of, an  
10 individual—

11 “(A) from or to a trust described in sec-  
12 tion 401(a) which is exempt from tax under  
13 section 501(a) at the time of such payment un-  
14 less—

15 “(i) such payment is made to the indi-  
16 vidual by the trust as remuneration for  
17 services rendered and not as a beneficiary  
18 of the trust, or

19 “(ii) such payment is treated as an  
20 employer contribution under a qualified  
21 cash or deferred arrangement (as defined  
22 in section 401(k)) to the extent not in-  
23 cluded in gross income by reason of section  
24 402(e)(3),

25 “(B) under or to an annuity plan which, at  
26 the time of such payment, is a plan described

1 in section 403(a), other than any elective defer-  
2 rals (within the meaning of section 402(g)(3)),

3 “(C) under a simplified employee pension  
4 (as defined in section 408(k)(1)), other than  
5 any contributions described in section 408(k)(6)  
6 or 408(k)(7),

7 “(D) under or to an annuity contract de-  
8 scribed in section 403(b), other than a payment  
9 for the purchase of such contract which is made  
10 by reason of a salary reduction agreement  
11 (whether evidenced by a written instrument or  
12 otherwise), or

13 “(E) under an arrangement to which sec-  
14 tion 408(p) applies, other than any elective con-  
15 tributions under paragraph (2)(A)(i) thereof.”.

16 (b) EFFECTIVE DATE.—The amendment made by  
17 this section shall apply to taxable years beginning after  
18 December 31, 2003.

1 **TITLE VI—STRENGTHENING IN-**  
 2 **DIVIDUAL RETIREMENT AR-**  
 3 **RANGEMENTS**

4 **SEC. 601. ACCELERATION OF INCREASES IN IRA CONTRIBU-**  
 5 **TION LIMITS.**

6 (a) DEDUCTIBLE AMOUNT.—The table in subpara-  
 7 graph (A) of section 219(b)(5) (relating to general rule  
 8 for deductible amount) is amended to read as follows:

<b>“For taxable years beginning in:</b>	<b>The deductible amount is:</b>
2002 through 2003 .....	\$3,000
2004 and thereafter .....	\$5,000.”.

9 (b) CATCH-UP CONTRIBUTIONS.—The table in clause  
 10 (ii) of section 219(b)(5)(B) (relating to applicable  
 11 amount) is amended to read as follows:

<b>“For taxable years beginning in:</b>	<b>The applicable amount is:</b>
2002 through 2003 .....	\$500
2004 and thereafter .....	\$1,000.”.

12 (c) CONFORMING AMENDMENTS.—Section  
 13 219(b)(5)(C) is amended—

- 14 (1) by striking “2007” and inserting “2003”,  
 15 and  
 16 (2) by striking “2008” and inserting “2004”.

17 (d) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to taxable years beginning after  
 19 December 31, 2003.

1 **SEC. 602. ACCELERATION AND EXPANSION OF CERTAIN**  
2 **SCHEDULED INCREASES IN ELIGIBILITY FOR**  
3 **IRAS AND ELIMINATION OF IRA MARRIAGE**  
4 **PENALTY.**

5 (a) INCREASE IN LIMITATION ON DEDUCTION FOR  
6 ACTIVE PARTICIPANTS IN CERTAIN PENSION PLANS.—  
7 The table in clause (i) of section 219(g)(3)(B) (defining  
8 applicable dollar amount for taxpayers filing joint returns)  
9 is amended to read as follows:

<b>“For taxable years beginning in:</b>	<b>The applicable dollar amount is:</b>
2003 .....	\$60,000
2004 .....	\$70,000
2005 .....	\$75,000
2006 .....	\$80,000
2007 .....	\$85,000
2008 .....	\$90,000
2009 .....	\$95,000
2010 and thereafter .....	\$100,000.”.

10 (b) ROTH IRA INCREASE IN APPLICABLE DOLLAR  
11 AMOUNT FOR TAXPAYERS FILING JOINT RETURNS.—

12 (1) IN GENERAL.—Subclause (I) of section  
13 408A(c)(3)(C)(ii) (defining applicable dollar  
14 amount) is amended by striking “\$150,000” and in-  
15 serting “\$190,000”.

16 (2) PHASE-OUT RANGE.—Clause (ii) of section  
17 408A(c)(3)(A) is amended to read as follows:

18 “(ii) \$15,000 (\$30,000 in the case of  
19 a joint return).

20 (c) ELIMINATION OF MARRIAGE PENALTY ON IRA  
21 DEDUCTION FOR ACTIVE PENSION PLAN PARTICI-

1 PANTS.—Section 219(g) (relating to limitation on deduc-  
 2 tion for active participants in certain pension plans) is  
 3 amended—

4 (1) by striking “or the individual’s spouse” in  
 5 paragraph (1), and

6 (2) by striking paragraph (7).

7 (d) EFFECTIVE DATES.—

8 (1) SUBSECTIONS (A) AND (B).—The amend-  
 9 ments made by subsection (a) shall apply to taxable  
 10 years beginning after December 31, 2003.

11 (2) SUBSECTION (C).—The amendments made  
 12 by subsection (c) shall apply to taxable years begin-  
 13 ning after December 31, 2006.

14 **SEC. 603. IRA ELIGIBILITY FOR THE DISABLED.**

15 (a) IN GENERAL.—Subsection (f) of section 219 (re-  
 16 lating to other definitions and special rules) is amended  
 17 by adding at the end the following:

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

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

22 “(B) who has not attained age 70½ before  
 23 the close of the taxable year,

24 subparagraph (B) of subsection (b)(1) shall not  
 25 apply.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2003.

4 **SEC. 604. PROTECTING IRA ASSETS.**

5 The Secretary of the Treasury shall, no later than  
6 December 31, 2004, establish a correction procedure that  
7 specifically allows an individual to rescind one or more dis-  
8 tributions from an individual retirement plan (as defined  
9 in section 7701(a)(37) of the Internal Revenue Code of  
10 1986) (whether or not in the same taxable year) to correct  
11 errors that result from the individual's misunderstanding  
12 of applicable rules or an error of the trustee, custodian,  
13 or issuer of the individual retirement plan in processing  
14 a transaction in the form of a distribution rather than a  
15 transfer, rollover, or similar transaction. Such procedure  
16 shall provide for rescission of distributions without a filing  
17 with the Secretary in the case of errors that are corrected  
18 within a reasonable time as defined by the Secretary and  
19 may provide for other self-correction safe harbors. Such  
20 procedure shall also include appropriate conditions on the  
21 correction procedure to prevent abuse.

## **TITLE VII—REVITALIZING DEFINED BENEFIT PLANS**

### **SEC. 701. MULTIPLE EMPLOYER PLANS PERMITTED TO ELECT SEPARATE OR AGGREGATE TREAT- MENT FOR PURPOSES OF APPLYING THE FUNDING RULES AND DEDUCTION LIMITA- TIONS.**

(a) IN GENERAL.—Paragraph (4) of section 413(c)  
(relating to funding) is amended—

(1) in subparagraph (A) by striking “In the  
case of” and inserting “Except as provided in sub-  
paragraph (C), in the case of”, and

(2) in subparagraph (B)—

(A) by striking “In the case of” and in-  
serting “Except as provided in subparagraph  
(C), in the case of”,

(B) by striking “unless” and all that fol-  
lows and inserting a period, and

(C) by inserting after subparagraph (B)  
the following:

“(C) ELECTION TO BE TREATED AS SEPA-  
RATE OR AGGREGATE PLAN.—The plan admin-  
istrator may elect with respect to a plan—

“(i) to have subparagraph (A) apply  
to the plan, or



1 “(ii) to have the requirements of sec-  
 2 tion 412 be determined as if all partici-  
 3 pants in the plan were employed by a sin-  
 4 gle employer.

5 An election under the preceding sentence shall  
 6 take effect for the plan year in which made  
 7 and, once made, may be revoked only with the  
 8 consent of the Secretary.”.

9 (b) CONFORMING AMENDMENTS.—

10 (1) Paragraph (6) of section 413(c) is amend-  
 11 ed—

12 (A) by striking “In the case of” and in-  
 13 serting “Except provided in subparagraph (C),  
 14 in the case of”, and

15 (B) by adding at the end the following new  
 16 subparagraph:

17 “(C) ELECTION.—If with respect to a  
 18 plan—

19 “(i) paragraph (4)(A) applies, sub-  
 20 paragraph (A) of this paragraph shall  
 21 apply, and

22 “(ii) paragraph (4)(B) applies, sub-  
 23 paragraph (B) of this paragraph shall  
 24 apply.

1           (2) Section 413(c)(6)(B)(i) is amended by strik-  
 2           ing “except” and all that follows and inserting “ex-  
 3           cept as provided in subparagraph (C).”.

4           (3) Section 210(a)(3) of the Employee Retire-  
 5           ment Income Security Act of 1974 (29 U.S.C.  
 6           1060(a)(3)) is amended by striking “The” and in-  
 7           serting “Except as provided in section 413(c)(4) of  
 8           the Internal Revenue Code of 1986, the”.

9           (c) EFFECTIVE DATE.—The amendments made by  
 10          this section shall apply to years beginning after December  
 11          31, 2003.

12       **SEC. 702. TREATMENT OF EMPLOYEE CONTRIBUTIONS TO**  
 13               **CONTRIBUTORY DEFINED BENEFIT PLANS.**

14          (a) AMENDMENT TO THE INTERNAL REVENUE CODE  
 15          OF 1986.—Subsection (e) of section 402 (relating to other  
 16          rules applicable to exempt trusts) is amended by adding  
 17          at the end the following new paragraph:

18               “(7) CONTRIBUTORY DEFINED BENEFIT  
 19          PLANS.—For purposes of sections 72 and 451, an  
 20          amount shall not be treated as received by an em-  
 21          ployee if such amount is—

22                       “(A) contributed—

23                               “(i) to an employee’s trust described  
 24                               in section 401(a) which is maintained in  
 25                               connection with a defined benefit plan, or

1 “(ii) under a defined benefit plan de-  
 2 scribed in section 403(a), and

3 “(B) such contributions would be described  
 4 in section 414(h)(2) if the plan were established  
 5 by an entity described therein.

6 (b) EFFECTIVE DATE.—The amendment made by  
 7 this section shall apply to contributions made in years be-  
 8 ginning after December 31, 2003.

9 **SEC. 703. REFORM OF THE MINIMUM PARTICIPATION RULE.**

10 (a) IN GENERAL.—Subparagraph (A) of section  
 11 401(a)(26) (relating to additional participation require-  
 12 ments) is amended by striking “In the case of” and insert-  
 13 ing ““To the extent provided in regulations prescribed by  
 14 the Secretary, in the case of”.

15 (b) REGULATIONS.—Not later than December 31,  
 16 2003, the Secretary of the Treasury shall issue final regu-  
 17 lations under which the application of section 401(a)(26)  
 18 of the Internal Revenue Code of 1986 is restricted to—

19 (1) arrangements described in section  
 20 1.401(a)(26)-2(d)(1)(iii) of the Treasury Regula-  
 21 tions (as in effect on the date of the enactment of  
 22 this Act), and

23 (2) other arrangements that use multiple de-  
 24 fined benefit plans in a manner inconsistent with the

1 purposes of the nondiscrimination rules or with the  
 2 intended nature of a defined benefit plan.

3 (c) EFFECTIVE DATE.—The amendment made by  
 4 subsection (a) shall take effect on the date of enactment  
 5 of this Act.

6 **SEC. 704. PLAN VALUATION DATA COLLECTION.**

7 (a) AMENDMENT TO THE INTERNAL REVENUE CODE  
 8 OF 1986.—

9 (1) PLAN’S LIABILITY.—

10 (A) IN GENERAL.—Subparagraph (B) of  
 11 section 412(c)(9) (relating to annual valuation)  
 12 is amended by adding at the end the following:

13 “(v) VALUATION OF PLAN’S LIABIL-  
 14 ITY.—Valuation of the plan’s liability for  
 15 purposes of this paragraph may be based  
 16 on data determined as of a date within the  
 17 plan year to which the valuation refers or  
 18 as of a date within the plan year prior to  
 19 the year to which the valuation refers.”.

20 (B) CONFORMING AMENDMENT.—The  
 21 heading for section 412(c)(9)(B) is amended by  
 22 striking “VALUATION DATE” and inserting  
 23 “VALUATION OF EXPERIENCE GAINS AND  
 24 LOSSES”.

1           (2) PLAN’S ASSETS.—Subparagraph (B) of sec-  
2           tion 412(c)(9) (relating to annual valuation) is  
3           amended by adding at the end the following:

4                   “(vi) VALUATION OF PLAN’S AS-  
5                   SETS.—The valuation of a plan’s assets  
6                   may be made as of a date later than the  
7                   date as of which the plan’s liabilities are  
8                   valued if—

9                           “(I) the asset valuation date is  
10                           not later than the end of the plan  
11                           year to which the valuation refers,  
12                           and

13                           “(II) the value of such assets is  
14                           adjusted back to the date as of which  
15                           the plan’s liabilities are valued based  
16                           on the interest rate in subsection  
17                           (b)(5)(A) or (b)(5)(B), as applicable,  
18                           and adjusting for cash flows that are  
19                           not taken into account in the interest  
20                           assumption and that occur between  
21                           the date that the liabilities are valued  
22                           and the date that the assets are val-  
23                           ued.”.

24           (b) AMENDMENT TO THE EMPLOYEE RETIREMENT  
25 INCOME SECURITY ACT OF 1974.—

1           (1) PLAN’S LIABILITY.—Subparagraph (B) of  
2           section 302(c)(9) of the Employee Retirement In-  
3           come Security Act of 1974 (29 U.S.C.  
4           1082(c)(9)(B)) is amended by adding at the end the  
5           following:

6           “(iv) Valuation of the plan’s liability for purposes of  
7           this paragraph may be based on data determined as of  
8           a date within the plan year to which the valuation refers  
9           or as of a date within the plan year prior to the year to  
10          which the valuation refers.”.

11          (2) PLAN’S ASSETS.—Subparagraph (B) of sec-  
12          tion 302(c)(9) of the Employee Retirement Income  
13          Security Act of 1974 (29 U.S.C. 1082(c)(9)(B)) is  
14          amended by adding at the end the following:

15          “(v) The valuation of a plan’s assets may be made  
16          as of a date later than the date as of which the plan’s  
17          liabilities are valued if—

18               “(I) the asset valuation date is not later than  
19               the end of the plan year to which the valuation re-  
20               fers, and

21               “(II) the value of such assets is adjusted back  
22               to the date as of which the plan’s liabilities are val-  
23               ued based on the interest rate in subsection  
24               (b)(5)(A) or (b)(5)(B), as applicable, and adjusting  
25               for cash flows that are not taken into account in the

1 interest assumption and that occur between the date  
 2 that the liabilities are valued and the date that the  
 3 assets are valued.”.

4 (c) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendments made by  
 6 sections (a)(2) and (b)(2) shall apply to years begin-  
 7 ning after December 31, 2002.

8 (2) SPECIAL RULE.—The amendments made by  
 9 subsections (a)(1) and (b)(1) shall take effect as if  
 10 included in section 661(a) of the Economic Growth  
 11 and Tax Relief Reconciliation Act of 2001.

12 **SEC. 705. REPLACEMENT OF INTEREST RATE ON 30-YEAR**  
 13 **TREASURY SECURITIES WITH INTEREST**  
 14 **RATE ON CONSERVATIVELY-INVESTED LONG-**  
 15 **TERM CORPORATE BONDS.**

16 (a) INTERNAL REVENUE CODE OF 1986.—

17 (1) IN GENERAL.—Subclause (I) of section  
 18 412(b)(5)(B)(ii) and subclause (II) of section  
 19 417(e)(3)(A)(ii) are each amended by striking “30-  
 20 year Treasury securities” and inserting “amounts  
 21 conservatively invested in long-term corporate  
 22 bonds”.

23 (2) REGULATIONS.—

24 (A) Subclause (I) of section  
 25 412(b)(5)(B)(ii) is amended by adding at the

1 end the following: “The Secretary shall, by reg-  
 2 ulation, prescribe a method for determining the  
 3 rate of interest on amounts conservatively in-  
 4 vested in long-term corporate bonds, based on  
 5 one or more indices, as determined from time to  
 6 time by the Secretary.”.

7 (B) Subclause (II) of section  
 8 417(e)(3)(A)(ii) is amended by adding at the  
 9 end the following: “The Secretary shall, by reg-  
 10 ulations, prescribe a method for determining  
 11 this interest rate based on one or more indices,  
 12 as determined from time to time by the Sec-  
 13 retary.”.

14 (3) CONFORMING AMENDMENTS.—

15 (A) Section 412(b)(5)(B)(iii)(II) is amend-  
 16 ed to read as follows:

17 “(II) consistent with the rate of  
 18 return with respect to amounts con-  
 19 servatively invested in long-term cor-  
 20 porate bonds.”.

21 (B) Section 415(b)(2)(E)(ii) is amended by  
 22 striking “the applicable interest rate (as defined  
 23 in section 417(e)(3))” and inserting “5.5 per-  
 24 cent”.



(4) PHASEIN OF INTEREST RATE ON LONG-TERM CORPORATE BONDS.—Section 417(e)(3)(A)(ii) is amended by adding at the end the following:

“(III) PHASEIN OF INTEREST RATE ON LONG-TERM CORPORATE BONDS.—In the case of a plan year specified in the table in subclause (IV), the interest rate for purposes of subclause (II) shall be the lower of (aa) the rate specified in subclause (II) (without regard to this subclause), or (bb) the 30-year Treasury securities rate plus the applicable percentage of the excess of the rate specified in subclause (II) (without regard to this subclause) over the 30-year Treasury securities rate.

“(IV) APPLICABLE PERCENTAGE.—For purposes of subclause (III), the applicable percentage shall be determined in accordance with the following table:

<b>“Plan year beginning in calendar year:</b>	<b>Applicable percentage:</b>
2006 .....	20
2007 .....	40
2008 .....	60
2009 .....	80.

1                   “(V) SPECIAL RULE FOR COL-  
2                   LECTIVELY BARGAINED PLANS.—In  
3                   the case of a plan maintained pursu-  
4                   ant to one or more collective bar-  
5                   gaining agreements between employee  
6                   representatives and one or more em-  
7                   ployers ratified by the date of the en-  
8                   actment of this subclause, in lieu of  
9                   the 4 calendar years specified in sub-  
10                  clause (IV), the years corresponding  
11                  to the applicable percentages in sub-  
12                  clause (IV) shall be the first 4 years  
13                  in which subclause (III) applies to  
14                  employees covered by any such agree-  
15                  ment. This subclause shall only apply  
16                  to such employees.”.

17               (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT  
18               OF 1974.—

19               (1) IN GENERAL.—Subclause (II) of section  
20               205(g)(3)(A)(ii), subclause (I) of section  
21               302(b)(5)(B)(ii), and subclause (II) of section  
22               4006(a)(3)(E)(iii) of the Employee Retirement In-  
23               come Security Act of 1974 are each amended by  
24               striking “30-year Treasury securities” and inserting

1 “amounts conservatively invested in long-term cor-  
2 porate bonds”.

3 (2) REGULATIONS.—

4 (A) Subclause (II) of section  
5 205(g)(3)(A)(ii) of the Employee Retirement  
6 Income Security Act of 1974 is amended by  
7 adding at the end the following: “The Secretary  
8 of the Treasury shall, by regulation, prescribe a  
9 method for determining this interest rate based  
10 on one or more indices, as determined from  
11 time to time by the Secretary of the Treasury.”.

12 (B) Subclause (I) of section  
13 302(b)(5)(B)(ii) of the Employee Retirement  
14 Income Act of 1974 is amended by adding at  
15 the end the following: “The Secretary of the  
16 Treasury shall, by regulation, prescribe a meth-  
17 od for determining the rate of interest on  
18 amounts conservatively invested in long-term  
19 corporate bonds, based on one or more indices,  
20 as determined from time to time by the Sec-  
21 retary of the Treasury.”.

22 (C) Subclause (II) of section  
23 4006(a)(3)(E)(iii) of the Employee Retirement  
24 Income Security Act of 1974 is amended by  
25 adding at the end the following: “The Secretary

1 of the Treasury shall, by regulation, prescribe a  
2 method for determining such annual yield based  
3 on one or more indices, as determined from  
4 time by the Secretary of the Treasury.”.

5 (3) CONFORMING AMENDMENT.—Section  
6 302(b)(5)(B)(iii)(II) of such Act is amended to read  
7 as follows:

8 “(II) consistent with the rate of  
9 return with respect to amounts con-  
10 servatively invested in long-term cor-  
11 porate bonds.”.

12 (4) PHASEIN OF INTEREST RATE ON LONG-  
13 TERM CORPORATE BONDS.—Section 205(g)(3)(A)(ii)  
14 is amended by adding at the end the following:

15 “(III) In the case of a plan year specified  
16 in the table in subclause (IV), the interest rate  
17 for purposes of subclause (II) shall be the lower  
18 of (aa) the rate specified in subclause (II)  
19 (without regard to this subclause), or (bb) the  
20 30-year Treasury securities rate plus the appli-  
21 cable percentage of the excess of the rate speci-  
22 fied in subclause (II) (without regard to this  
23 subclause) over the 30-year Treasury securities  
24 rate.

1           “(IV) For purposes of subclause (III), the  
 2           applicable percentage shall be determined in ac-  
 3           cordance with the following table:

<b>“Plan year beginning in calendar year:</b>	<b>Applicable percentage:</b>
2006 .....	20
2007 .....	40
2008 .....	60
2009 .....	80.

4           “(V) SPECIAL RULE FOR COLLECTIVELY  
 5           BARGAINED PLANS.—In the case of a plan  
 6           maintained pursuant to one or more collective  
 7           bargaining agreements between employee rep-  
 8           resentatives and one or more employers ratified  
 9           by the date of the enactment of this subclause,  
 10          in lieu of the 4 calendar years specified in sub-  
 11          clause (IV), the years corresponding to the ap-  
 12          plicable percentages in subclause (IV) shall be  
 13          the first 4 years in which subclause (III) ap-  
 14          plies to employees covered by any such agree-  
 15          ment. This subclause shall only apply to such  
 16          employees.”.

17          (d) EFFECTIVE DATE.—

18               (1) IN GENERAL.—Except as provided in para-  
 19               graphs (2), (3), (4), and (5), the amendments made  
 20               by this section shall apply to years beginning after  
 21               December 31, 2003.

1           (2) SURVIVOR ANNUITIES.—Except as provided  
2           in paragraphs (3) and (4), in the case of amend-  
3           ments made by this section to section  
4           417(e)(3)(A)(ii) of the Internal Revenue Code of  
5           1986 and to section 205(g)(3)(A)(ii) of the Em-  
6           ployee Retirement Income Security Act of 1974, and  
7           for purposes of section 411(a)(11)(B) of the Internal  
8           Revenue Code of 1986 and section 203(e)(2) of the  
9           Employee Retirement Income Security Act of 1974,  
10          such amendments shall apply to years beginning  
11          after December 31, 2005.

12          (3) LOOKBACK RULES.—For purposes of apply-  
13          ing all applicable lookback rules in years beginning  
14          on or after the otherwise applicable effective date de-  
15          termined under paragraph (1), (2), or (4), the  
16          amendments made by this section shall be applied as  
17          if such amendments had been in effect for all years  
18          beginning before such effective date. For purposes of  
19          this paragraph, a lookback rule is a rule that uses  
20          data from a prior year in determining requirements  
21          applicable to the current year.

22          (4) COLLECTIVE BARGAINING AGREEMENTS.—  
23          Except as provided in paragraph (3), in the case of  
24          a plan maintained pursuant to one or more collective  
25          bargaining agreements between employee representa-

1       tives and one or more employers ratified by the date  
2       of the enactment of this Act, the amendments de-  
3       scribed in paragraph (2) shall not apply to employ-  
4       ees covered by any such agreement for plan years  
5       beginning before the earlier of—

6               (A) the later of—

7                   (i) the date on which the last of such  
8               collective bargaining agreements termi-  
9               nates (determined without regard to any  
10              extension thereof on or after such date of  
11              the enactment); or

12                  (ii) January 1, 2006, or

13               (B) January 1, 2008.

14       (5) NO REDUCTION REQUIRED.—In the case of  
15       any participant or beneficiary, the amount payable  
16       under any form of benefit subject to section  
17       417(e)(3) of the Internal Revenue Code of 1986  
18       shall not be required to be reduced below the  
19       amount determined as of the last day of the last  
20       plan year beginning before January 1, 2004, merely  
21       because of the amendments made by subsection  
22       (a)(3)(B).

1 **SEC. 706. INTEREST RATE RANGE FOR ADDITIONAL FUND-**  
 2 **ING REQUIREMENTS.**

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

5 (1) SPECIAL RULE.—Subclause (III) of section  
 6 412(1)(7)(C)(i) is amended—

7 (A) by striking “2002 or 2003” in the text  
 8 and inserting “2001, 2002, or 2003”, and

9 (B) by striking “2002 AND 2003” in the  
 10 heading and inserting “2001, 2002, AND 2003”.

11 (2) QUARTERLY CONTRIBUTIONS.—Paragraph  
 12 (7) of section 412(m) is amended to read as follows:

13 “(7) SPECIAL RULE FOR 2002.—In any case in  
 14 which the interest rate used to determine current li-  
 15 ability is determined under subsection  
 16 (1)(7)(C)(i)(III), for purposes of applying para-  
 17 graphs (1) and (4)(B)(ii) for plan years beginning in  
 18 2002, the current liability for the preceding plan  
 19 year shall be redetermined using 120 percent as the  
 20 specified percentage determined under subsection  
 21 (1)(7)(C)(i)(II).”

22 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
 23 INCOME SECURITY ACT OF 1974.—

24 (1) SPECIAL RULE.—Subclause (III) of section  
 25 302(d)(7)(C)(i) of the Employee Retirement Income



1 Security Act of 1974 (29 U.S.C. 1082(d)(7)(C))(i))  
2 is amended—

3 (A) by striking “2002 or 2003” in the text  
4 and inserting “2001, 2002, or 2003”, and

5 (B) by striking “2002 AND 2003” in the  
6 heading and inserting “2001, 2002, AND 2003”.

7 (2) QUARTERLY CONTRIBUTIONS.—Paragraph  
8 (7) of section 302(e) is amended to read as follows:

9 “(7) SPECIAL RULE FOR 2002.—In any case in  
10 which the interest rate used to determine current li-  
11 ability is determined under subsection  
12 (d)(7)(C)(i)(III), for purposes of applying para-  
13 graphs (1) and (4)(B)(ii) for plan years beginning in  
14 2002, the current liability for the preceding plan  
15 year shall be redetermined using 120 percent as the  
16 specified percentage determined under subsection  
17 (d)(7)(C)(i)(II).”

18 (c) PBGC.—Subclause (IV) of section  
19 4006(a)(3)(E)(iii) of such Act (29 U.S.C.  
20 1306(a)(3)(E)(iii)) is amended to read as follows:

21 “(IV) In the case of plan years  
22 beginning after December 31, 2001,  
23 and before January 1, 2004, sub-  
24 clause (II) shall be applied by sub-  
25 stituting ‘100 percent’ for ‘85 percent’

1 and by substituting ‘115 percent’ for  
 2 ‘100 percent’. Subclause (III) shall be  
 3 applied for such years without regard  
 4 to the preceding sentence.

5 (d) EFFECTIVE DATE.—The amendments made by  
 6 this section shall take effect as if included in the amend-  
 7 ments made by section 405 of the Job Creation and Work-  
 8 er Assistance Act of 2002.

9 **SEC. 707. ASSET VALUATION.**

10 (a) IN GENERAL.—Clause (iv) of section  
 11 4006(a)(3)(E) is amended by striking “1986” and insert-  
 12 ing “1986 (determined without regard to subclause (I) of  
 13 section 412(c)(7)(A)(ii) of such Code)”.

14 (b) EFFECTIVE DATE.—The amendment made by  
 15 this section shall apply to the determination of premiums  
 16 for plan years ending after December 31, 2003.

17 **SEC. 708. MULTIEMPLOYER PLAN EMERGENCY INVEST-**  
 18 **MENT LOSS RULE.**

19 (a) AMENDMENT TO THE INTERNAL REVENUE CODE  
 20 OF 1986.—Paragraph (7) of section 412(b) (relating to  
 21 special rules for multiemployer plans) is amended by add-  
 22 ing at the end the following new subparagraph:

23 “(F) EMERGENCY INVESTMENT LOSS  
 24 METHOD.—

1           “(i) IN GENERAL.—In lieu of amor-  
2           tizing its experience loss as prescribed in  
3           paragraph (2)(B)(iv), a multiemployer plan  
4           may elect to use the emergency investment  
5           loss method described in this subpara-  
6           graph, starting with the first plan year in  
7           which it has an emergency investment loss.

8           “(ii) EMERGENCY INVESTMENT  
9           LOSS.—An emergency investment loss is  
10          the difference between the market value of  
11          the plan’s assets as of the last day of a  
12          plan year beginning on or after July 1,  
13          1999 and ending before January 1, 2004,  
14          and what that market value would have  
15          been if the plan’s earnings had been equal  
16          to the projected investment return based  
17          on the actuarial interest rate under para-  
18          graph (5)(A) for the plan year, applied to  
19          the market value of assets as of the begin-  
20          ning of the year and noninvestment cash  
21          flows during the year.

22          “(iii) AMORTIZATION OF EMERGENCY  
23          INVESTMENT LOSS.—The funding standard  
24          account shall be charged with the amounts  
25          necessary to amortize in equal annual in-

1                   stallments (until fully amortized) the  
 2                   plan's emergency investment loss, over a  
 3                   period of 30 plan years.

4                   “(iv) ADJUSTED NET ACTUARIAL EX-  
 5                   PERIENCE.—The adjusted net actuarial ex-  
 6                   perience is the amount produced by sub-  
 7                   tracting the emergency investment loss  
 8                   from the net experience gain or loss for the  
 9                   plan year as otherwise determined for pur-  
 10                  poses of paragraph (2)(B)(iv) or (3)(B)(ii)  
 11                  of this subsection.

12                  “(v) AMORTIZATION OF ADJUSTED  
 13                  NET ACTUARIAL EXPERIENCE.—The ad-  
 14                  justed net actuarial experience is treated  
 15                  as a net experience gain or loss and  
 16                  charged or credited to the funding stand-  
 17                  ard account under paragraph (2)(B)(iv) or  
 18                  (3)(B)(ii), as applicable.”.

19           (b) AMENDMENT TO THE EMPLOYEE RETIREMENT  
 20 INCOME SECURITY ACT OF 1974.—Paragraph (7) of sec-  
 21 tion 302(b) of the Employee Retirement Income Security  
 22 Act of 1974 is amended by adding at the end the following  
 23 new subparagraph:

24           “(F)(i) In lieu of amortizing its experience loss as  
 25 prescribed in paragraph (2)(B)(iv), a multiemployer plan

1 may elect to use the emergency investment loss method  
2 described in this subparagraph, starting with the first plan  
3 year in which it has an emergency investment loss.

4 “(ii) An emergency investment loss is the difference  
5 between the market value of the plan’s assets as of the  
6 last day of a plan year beginning on or after July 1, 1999  
7 and ending before January 1, 2004, and what that market  
8 value would have been if the plan’s earnings had been  
9 equal to the projected investment return based on the ac-  
10 tuarial interest rate under paragraph (5)(A) for the plan  
11 year, applied to the market value of assets as of the begin-  
12 ning of the year and noninvestment cash flows during the  
13 year.

14 “(iii) The funding standard account shall be charged  
15 with the amounts necessary to amortize in equal annual  
16 installments (until fully amortized) the plan’s emergency  
17 investment loss, over a period of 30 plan years.

18 “(iv) The adjusted net actuarial experience is the  
19 amount produced by subtracting the emergency invest-  
20 ment loss from the net experience gain or loss for the plan  
21 year as otherwise determined for purposes of paragraph  
22 (2)(B)(iv) or (3)(B)(ii) of this subsection.

23 “(v) The adjusted net actuarial experience is treated  
24 as a net experience gain or loss and charged or credited

1 to the funding standard account under paragraph  
2 (2)(B)(iv) or (3)(B)(ii), as applicable.”.

3 (c) ELECTION PROCEDURE.—

4 (1) IN GENERAL.—The Secretary shall pre-  
5 scribe a procedure under which multiemployer plans  
6 that elect to use the emergency investment loss  
7 method, as described in section 412(b)(7)(F) of the  
8 Internal Revenue Code of 1986 and section  
9 302(b)(7)(F) of the Employee Retirement Income  
10 Security Act of 1974, may do so either by starting  
11 the special amortization periods in the actuarial  
12 valuations for each of the affected plan years or by  
13 starting with a cumulative emergency investment  
14 loss and adjusted net actuarial experience (based on  
15 the outstanding balance of the experience gain bases  
16 for the affected plan years, reduced by the cumu-  
17 lative emergency investment loss) in the actuarial  
18 valuation for the last plan year ending before Janu-  
19 ary 1, 2004.

20 (2) FILING PERIOD.—The procedures described  
21 in paragraph (1) shall provide a period of not less  
22 than 210 days after the date of enactment of this  
23 Act for multiemployer plans to file Schedule Bs to  
24 the Form 5500 Annual Reports for the plan years  
25 for which the emergency investment loss method is

1       elected, including amended Schedule Bs for annual  
2       reports previously filed.

3       (d) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to years beginning after June 30,  
5 1999.

6 **SEC. 709. MORTALITY TABLE ADJUSTMENT.**

7       (a) AMENDMENT TO THE INTERNAL REVENUE  
8 CODE.—Subparagraph (C) of section 412(l)(7) is amend-  
9 ed by adding at the end the following clause:

10                   “(iv) SEPARATE MORTALITY TABLES  
11                   FOR BLUE-COLLAR WORKERS.—Notwith-  
12                   standing clause (ii), in the case of plan  
13                   years beginning after December 31, 2003,  
14                   the Secretary shall establish mortality ta-  
15                   bles which may be used (in lieu of the ta-  
16                   bles under clause (ii)) to determine current  
17                   liability under this subsection for individ-  
18                   uals who are blue-collar workers (as de-  
19                   fined under rules prescribed by the Sec-  
20                   retary). For this purpose, the Secretary  
21                   shall take into account the Society of Actu-  
22                   aries RP–2000 Mortality Table, as ad-  
23                   justed to take into account the collar ad-  
24                   justment prescribed in such Table to re-  
25                   flect the workforce covered by the plan.”.

1 (b) AMENDMENT TO THE EMPLOYEE RETIREMENT  
2 INCOME SECURITY ACT OF 1974.—Subparagraph (C) of  
3 section 302(d)(7) of the Employee Retirement Income Se-  
4 curity Act of 1974 (29 U.S.C. 1082(d)(7)) is amended by  
5 adding at the end the following clause:

6 “(iv) SEPARATE MORTALITY TABLES  
7 FOR BLUE-COLLAR WORKERS.—Notwith-  
8 standing clause (ii), in the case of plan  
9 years beginning after December 31, 2003,  
10 the Secretary shall establish mortality ta-  
11 bles which may be used (in lieu of the ta-  
12 bles under clause (ii)) to determine current  
13 liability under this subsection for individ-  
14 uals who are blue-collar workers (as de-  
15 fined under rules prescribed by the Sec-  
16 retary). For this purpose, the Secretary  
17 shall take into account the Society of Actu-  
18 aries RP-2000 Mortality Table, as ad-  
19 justed to take into account the collar ad-  
20 justment prescribed in such Table to re-  
21 flect the workforce covered by the plan.”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall be effective as of the date of enactment  
24 of this Act.



1 **TITLE VIII—SIMPLIFY AND**  
2 **STREAMLINE RETIREMENT**  
3 **PLAN RULES**

4 **SEC. 801. EXCISE TAX ON EXCESS CONTRIBUTIONS.**

5 (a) EXPANSION OF CORRECTIVE DISTRIBUTION PER-  
6 IOD.—Subsection (f) of section 4979 is amended—

7 (1) in paragraph (1) by striking “2½ months”  
8 and inserting “6 months”, and

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

11 (b) INCREASE IN DE MINIMIS DISTRIBUTION  
12 AMOUNT.—Subparagraph (B) of section 4979(f)(2) is  
13 amended by striking “\$100” and inserting “\$1,000”.

14 (c) MODIFICATION OF DE MINIMIS RULE.—Subpara-  
15 graph (B) of section 4972(f)(2) is amended by striking  
16 “If” and inserting “To the extent that” and by striking  
17 “are less than” and inserting “do not exceed”.

18 (d) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to years beginning after December  
20 31, 2003.

21 **SEC. 802. EXCESS BENEFIT PLANS.**

22 (a) IN GENERAL.—Section 3(36) of the Employee  
23 Retirement Income Security Act of 1974 (29 U.S.C.  
24 1002(36)) is amended to read as follows:

1       “(36) The term ‘excess benefit plan’ means a plan,  
 2 without regard to whether such plan is funded, maintained  
 3 by an employer solely for the purpose of providing benefits  
 4 to employees in excess of any limitation imposed by section  
 5 401(a)(17), 401(k)(3)(A)(ii), 401(m)(2), or 415 of the In-  
 6 ternal Revenue Code of 1986. To the extent that a sepa-  
 7 rable part of a plan (as determined by the Secretary of  
 8 Labor) maintained by an employer is maintained for such  
 9 purpose, that part shall be treated as a separate plan  
 10 which is an excess benefit plan.”.

11       (b) EFFECTIVE DATE.—The amendment made by  
 12 this section shall apply to plan years beginning after De-  
 13 cember 31, 2003.

14       **SEC. 803. PAPERLESS TECHNOLOGIES IN RETIREMENT**  
 15                               **PLANS.**

16       (a) PAPERLESS TECHNOLOGIES.—Not later than De-  
 17 cember 31, 2004, except as provided in subsection (c), the  
 18 Secretary of the Treasury and the Secretary of Labor  
 19 shall, by regulation, allow the use of paperless technologies  
 20 for purposes of—

21               (1) notices, elections, and spousal consents re-  
 22               quired under sections 401(a)(11) and 417 of the In-  
 23               ternal Revenue Code of 1986 and section 205 of  
 24               Employee Retirement Income Security Act of 1974,

1           (2) providing information to satisfy the condi-  
2           tions for a hardship distribution under section  
3           401(k)(2)(B)(i)(IV) of such Code, and

4           (3) other plan transactions for which the Secre-  
5           taries determine that the use of paperless tech-  
6           nologies is appropriate.

7           (b) CONDITION OF USING PAPERLESS TECH-  
8           NOLOGIES.—Technologies permitted pursuant to sub-  
9           section (a) shall not—

10           (1) undermine the rights of any participant,  
11           any spouse of a participant, or any other beneficiary,  
12           or

13           (2) weaken the policy purposes of any rule for  
14           which such technologies are permitted.

15           (c) REPORT IN CASES WHERE PAPERLESS TECH-  
16           NOLOGY NOT USED.—

17           (1) IN GENERAL.—Not later than December 31,  
18           2004, if the Secretary of the Treasury or the Sec-  
19           retary of Labor determines that permitting the use  
20           of paperless technologies for a particular purpose is  
21           unworkable or would jeopardize individuals' rights or  
22           public policy objectives, the applicable Secretary  
23           shall not permit the use of paperless technologies for  
24           such purpose, but rather shall submit a report to the  
25           Committee on Ways and Means and the Committee

1 on Education and the Workforce of the House of  
 2 Representatives and the Committee on Finance and  
 3 the Committee on Health, Education, Labor and  
 4 Pensions of the Senate.

5 (2) CONTENTS OF REPORT.—The applicable  
 6 Secretary shall set forth in the report required by  
 7 subsection (a) the determination with respect to  
 8 each such purpose and recommendations for any  
 9 changes in law that would facilitate the greater use  
 10 of paperless technologies.

11 **SEC. 804. ELIMINATION OF UNINTENDED CONSEQUENCES**

12 **ATTRIBUTABLE TO USE OF BASE PAY OR**  
 13 **RATE OF PAY.**

14 Not later than December 31, 2003, the Secretary of  
 15 the Treasury shall issue final regulations under which the  
 16 rules in Treasury Regulation 1.414(s)–1 (without regard  
 17 to paragraph (d)(3) thereof) apply for purposes of the safe  
 18 harbor rules under Treasury Regulation 1.401(a)(4)–3(b).

19 **SEC. 805. REPEAL OF THE GATEWAY TEST.**

20 (a) IN GENERAL.—Paragraph (5) of section 410(b)  
 21 (relating to line of business exception) is amended to read  
 22 as follows:

23 “(5) LINE OF BUSINESS EXCEPTION.—If, under  
 24 section 414(r), an employer is treated as operating  
 25 separate lines of business for a year, the employer

1       may apply the requirements of this subsection for  
 2       such year separately with respect to employees in  
 3       each separate line of business.”.

4       (b) EFFECTIVE DATE.—The amendment made by  
 5 this subsection shall apply to years beginning after De-  
 6 cember 31, 2003.

7       **SEC. 806. INTERMEDIATE SANCTIONS FOR INADVERTENT**  
 8               **FAILURES.**

9       (a) IN GENERAL.—Section 401(a) (relating to quali-  
 10 fied pension, profit-sharing, and stock bonus plans) is  
 11 amended by inserting after paragraph (34) the following:

12               “(35) PROTECTION FROM DISQUALIFICATION  
 13       UPON TIMELY CORRECTION OR PAYMENT OF FINE.—

14       A trust shall not fail to constitute a qualified trust  
 15       under this section if the plan of which such trust is  
 16       a part has made good faith efforts to meet the re-  
 17       quirements of this section, has inadvertently failed  
 18       to satisfy 1 or more of such requirements, and ei-  
 19       ther—

20               “(A) substantially corrects (to the extent  
 21       possible) such failure before the date the plan  
 22       becomes subject to a plan examination for the  
 23       applicable year (as determined under rules pre-  
 24       scribed by the Secretary), or

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

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

9           (b) APPLICATION TO CASH OR DEFERRED ARRANGE-  
10          MENTS.—Section 401(k) is amended by inserting after  
11          paragraph (12) the following new paragraph:

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

17          (c) APPLICATION TO SECTION 403(b) ANNUITY CON-  
18          TRACTS.—Section 403(b) is amended by inserting after  
19          paragraph (12) the following:

20           “(13) CORRECTION OF ERRORS.—For purposes  
21          of determining whether the exclusion from gross in-  
22          come under paragraph (1) is applicable to an em-  
23          ployee for any taxable year, rules similar to the rules  
24          set forth in section 401(a)(35) shall apply to any an-  
25          nuity contract purchased under this subsection or

1       any plan established to meet the requirements of  
2       this subsection.”.

3       (d) INCOME INCLUSION FOR DISQUALIFICATION NOT  
4       APPLICABLE TO NONHIGHLY COMPENSATED EMPLOY-  
5       EES.—Section 402(b) (relating to taxability of beneficiary  
6       of nonexempt trust) is amended by striking paragraph (4)  
7       and inserting the following:

8               “(4) INCOME INCLUSION FOR DISQUALIFICA-  
9       TION NOT APPLICABLE TO NONHIGHLY COM-  
10       PENSATED EMPLOYEES.—Paragraphs (1) and (2)  
11       shall not apply to employees who are not highly com-  
12       pensated employees.

13              “(5) FAILURE TO MEET REQUIREMENTS OF  
14       SECTION 401(a)(26) OR 410(b).—If 1 of the reasons  
15       a trust is not exempt from tax under section 501(a)  
16       is the failure of the plan to meet the requirements  
17       of section 401(a)(26) or 410(b), then a highly com-  
18       pensated employee shall, in lieu of the amount deter-  
19       mined under paragraph (1) or (2), include in gross  
20       income for the taxable year with or within which the  
21       taxable year of the trust ends an amount equal to  
22       the vested accrued benefit of such employee (other  
23       than the employee’s investment in the contract) as  
24       of the close of such taxable year of the trust.

1           “(6) HIGHLY COMPENSATED EMPLOYEE.—For  
 2           purposes of this subsection, the term ‘highly com-  
 3           pensated employee’ has the meaning given such term  
 4           by section 414(q).”.

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

8   **SEC. 807. QUALIFIED PRERETIREMENT SURVIVOR ANNU-**  
 9                                   **ITY.**

10          (a) AMENDMENTS TO THE INTERNAL REVENUE  
 11          CODE OF 1986.—

12               (1) REPEAL OF AGE 35 WAIVER LIMITATION.—  
 13               Subparagraph (B) of section 417(a)(6) (defining ap-  
 14               plicable election period) is amended by striking “the  
 15               plan year in which the participant attains age 35”  
 16               and inserting “plan participation”.

17               (2) CONFORMING AMENDMENTS.—

18                       (A) Section 417(a)(6) is amended by strik-  
 19                       ing the last sentence.

20                       (B) Section 417(a)(3)(B) is amended—

21                               (i) in clause (ii) by striking subclause  
 22                               (I) and redesignating subclause (II), (III),  
 23                               and (IV) as subclause (I), (II), and (III),  
 24                               respectively, and

25                               (ii) striking the last sentence.



1 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
2 INCOME SECURITY ACT OF 1974.—

3 (1) REPEAL OF AGE 35 WAIVER LIMITATION.—

4 Subparagraph (B) of section 205(c)(7) of the Em-  
5 ployee Retirement Income Security Act of 1974 (29  
6 U.S.C. 1055(c)(7)(B)) is amended by striking “the  
7 plan year in which the participant attains age 35”  
8 and inserting “plan participation”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) Section 205(c)(7) of such Act is  
11 amended by striking the last sentence.

12 (B) Section 205(c)(3)(B) of such Act is  
13 amended—

14 (i) in clause (ii) by striking subclause  
15 (I) and redesignating subclause (II), (III),  
16 and (IV) as subclause (I), (II), and (III),  
17 respectively, and

18 (ii) striking the last sentence.

19 (c) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by  
21 this section shall apply to years beginning after De-  
22 cember 31, 2003.

23 (2) SPECIAL RULES.—A plan shall not be treat-  
24 ed as having failed to comply with section  
25 417(a)(3)(B) of the Internal Revenue Code of 1986

1 and section 205(c)(3)(B) of the Employee Retirement  
2 Income Security Act of 1974 due to the failure  
3 to provide an explanation required by reason of the  
4 amendments made by this section if such explanation  
5 is provided by a date that is one year after  
6 the date of enactment of this Act or by a later date  
7 (not later than 3 years after the date of enactment  
8 of this Act) determined under rules prescribed by  
9 the Secretary of the Treasury. With respect to a  
10 participant, if an explanation required by such section  
11 417(a)(3)(B) and such section 205(c)(3)(B) is  
12 permitted to be provided at a later date by reason  
13 of the preceding sentence, an election under section  
14 417(a)(1)(A)(i) of such Code and section  
15 205(c)(1)(A)(i) of the Employee Retirement Income  
16 Security Act of 1974 to waive a qualified preretirement  
17 survivor annuity shall not take effect unless  
18 such explanation has been provided with respect to  
19 such participant by a date that is no later than a  
20 reasonable period prior to the date of the election.

21 **SEC. 808. COST-OF-LIVING ADJUSTMENT OF \$5,000 CASH-**  
22 **OUT AMOUNT.**

23 (a) AMENDMENTS TO THE INTERNAL REVENUE  
24 CODE OF 1986.—

1           (1) IN GENERAL.—Paragraph (11) of section  
2           411(a) (relating to restrictions on certain mandatory  
3           distributions) is amended by adding at the end the  
4           following new subparagraph:

5                   “(E) COST-OF-LIVING ADJUSTMENT.—The  
6           Secretary shall adjust annually the \$5,000  
7           amount in subparagraph (A) for increases in  
8           the cost-of-living at the same time and in the  
9           same manner as adjustments under section  
10          415(d); except that the base period shall be the  
11          calendar quarter beginning July 1, 2003, and  
12          any increase which is not a multiple of \$500  
13          shall be rounded to the next lowest multiple of  
14          \$500.”.

15          (2) CONFORMING AMENDMENT.—Clause (ii) of  
16          section 401(a)(31)(B) is amended by striking  
17          “\$5,000” and inserting “the amount in effect under  
18          section 411(a)(11)(A)”.

19          (b) AMENDMENT TO THE EMPLOYEE RETIREMENT  
20          INCOME SECURITY ACT OF 1974.—Subsection (e) of sec-  
21          tion 203 of the Employee Retirement Income Security Act  
22          of 1974 (29 U.S.C. 1053(e)) is amended by adding at the  
23          end the following new paragraph:

24                 “(5) The Secretary of the Treasury shall adjust an-  
25          nually the \$5,000 amount in paragraph (1) for increases

1 in the cost-of-living at the same time and in the same  
 2 manner as adjustments under section 415(d) of the Inter-  
 3 nal Revenue Code of 1986; except that the base period  
 4 shall be the calendar quarter beginning July 1, 2003, and  
 5 any increase which is not a multiple of \$500 shall be  
 6 rounded to the next lowest multiple of \$500.”.

7 (c) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to years beginning after December  
 9 31, 2003.

10 **SEC. 809. CATCH-UP CONTRIBUTIONS.**

11 (a) NONDISCRIMINATION REQUIREMENT MOVED.—

12 (1) IN GENERAL.—Paragraph (4) of section  
 13 401(a) (relating to nondiscrimination requirements  
 14 for qualification) is amended to read as follows:

15 “(4) NONDISCRIMINATION.—

16 “(A) IN GENERAL.—If the contributions or  
 17 benefits provided under the plan do not dis-  
 18 criminate in favor of highly compensated em-  
 19 ployees (within the meaning of section 414(q)).

20 “(B) CERTAIN EMPLOYEES EXCLUDED.—

21 For purposes of this paragraph, there shall be  
 22 excluded from consideration employees de-  
 23 scribed in section 410(b)(3)(A) and (C).

24 “(C) SPECIAL RULES RELATING TO CATCH-  
 25 UP CONTRIBUTIONS.—

1           “(i) IN GENERAL.—An applicable em-  
2           ployer plan shall be treated as failing to  
3           meet the nondiscrimination requirements  
4           under subparagraph (A) with respect to  
5           benefits, rights, and features unless the  
6           plan allows all eligible participants to make  
7           the same election with respect to the addi-  
8           tional elective deferrals under section  
9           414(v).

10           “(ii) AGGREGATION.—Except as pro-  
11           vided in regulations prescribed by the Sec-  
12           retary, for purposes of clause (i), all plans  
13           maintained by employers who are treated  
14           as a single employer under subsection (b),  
15           (c), (m), or (o) of section 414 shall be  
16           treated as 1 plan, except that a plan de-  
17           scribed in clause (i) of section  
18           410(b)(6)(C) shall not be treated as a plan  
19           of the employer until the expiration of the  
20           transition period with respect to such plan  
21           (as determined under clause (ii) of such  
22           section).

23           “(iii) DEFINITIONS.—For purposes of  
24           this subparagraph, the terms ‘applicable  
25           employer plan’, ‘eligible participants’, and

1                   ‘elective deferral’ have the meaning given  
2                   such terms by section 414(v).”.

3                   (2)     CONFORMING     AMENDMENT.—Section  
4     414(v) is amended by striking paragraph (4) and re-  
5     designating paragraphs (5) and (6) as paragraphs  
6     (4) and (5), respectively.

7                   (b) EFFECTIVE DATE.—The amendments made by  
8     this section shall take effect as if included in section  
9     631(a) of the Economic Growth and Tax Relief Reconcili-  
10    ation Act of 2001.

11   **SEC. 810. REVERSE MATCH SALARY REDUCTION ARRANGE-**  
12                   **MENT SIMPLIFIED EMPLOYEE ANNUITY.**

13                  (a) IN GENERAL.—Subsection (k) of section 408 (de-  
14    fining simplified employee pension) is amended by redesignig-  
15    nating paragraphs (7), (8), and (9) as paragraphs (8), (9),  
16    and (10), respectively, and by inserting after paragraph  
17    (6) the following new paragraph:

18                   “(7) REVERSE MATCH SALARY REDUCTION AR-  
19                   RANGEMENT SIMPLIFIED EMPLOYEE ANNUITY.—

20                   “(A) EMPLOYEE MAY ELECT SALARY RE-  
21                   DUCTION ARRANGEMENT.—

22                   “(i) IN GENERAL.—A simplified em-  
23                   ployee pension shall not fail to meet the re-  
24                   quirements of this subsection for a year  
25                   merely because, under the terms of the

1 pension, an employee may elect to have the  
2 employer make payments—

3 “(I) as elective employer con-  
4 tributions to the simplified employee  
5 pension on behalf of the employee, or

6 “(II) to the employee directly in  
7 cash.

8 “(ii) LIMITATIONS ON ELECTIVE DE-  
9 FERRALS.—Clause (i) shall not apply to a  
10 simplified employee pension unless the re-  
11 quirements of section 401(a)(30) are met.

12 “(B) EXCEPTION WHERE MORE THAN 25  
13 EMPLOYEES.—This paragraph shall not apply  
14 with respect to any year in the case of a sim-  
15 plified employee pension maintained by an em-  
16 ployer with more than 25 employees who were  
17 eligible to participate (or would have been re-  
18 quired to be eligible to participate if a pension  
19 was maintained) at any time during the pre-  
20 ceding year. For purposes of this subparagraph,  
21 rules similar to the rules of sections  
22 408(p)(2)(C)(ii) and 408(p)(10) shall apply.

23 “(C) DEFERRAL PERCENTAGE.—

24 “(i) IN GENERAL.—The deferral per-  
25 centage for any employee for a year may

1 not exceed double the percentage which is  
2 the ratio that—

3 “(I) the amount of employer con-  
4 tributions (other than elective or  
5 matching contributions) actually paid  
6 over to the simplified employee pen-  
7 sion on behalf of the employee for the  
8 year, bears to

9 “(II) the employee’s compensa-  
10 tion (not in excess of the amount in  
11 effect under paragraph (6)(D)(ii)) for  
12 the year.

13 “(ii) DEFINITION.—For purposes of  
14 this paragraph, the deferral percentage of  
15 an employee for a year shall be the ratio  
16 which—

17 “(I) the amount of elective em-  
18 ployer contributions actually paid over  
19 to the simplified employee pension on  
20 behalf of the employee for the year,  
21 bears to

22 “(II) the employee’s compensa-  
23 tion (not in excess of the amount in  
24 effect under paragraph (6)(D)(ii)) for  
25 the year.



1           “(D) EXCEPTION FOR STATE AND LOCAL  
2           AND TAX-EXEMPT PENSIONS.—This paragraph  
3           shall not apply to a simplified employee pension  
4           maintained by a State or local government or  
5           political subdivision thereof, or any agency or  
6           instrumentality thereof.”.

7           (b) CONFORMING AMENDMENTS.—

8           (1) Subparagraph (B) of section 402(h)(1) is  
9           amended by striking “408(k)(6)” and inserting  
10          “408(k)(6) or 408(k)(7)”.

11          (2) Paragraph (2) of section 408(k) is amended  
12          by striking “subsection (k)(6)” and inserting “sub-  
13          section (k)(6) or (k)(7)”.

14          (3) Subparagraphs (C) and (D) of section  
15          408(k)(3) are each amended by striking “paragraph  
16          (6)” and inserting “paragraph (6) or (7)”.

17          (4) Subparagraph (C) of section 414(u)(1) is  
18          amended by striking “408(k)(6)” and inserting  
19          “408(k)(6), 408(k)(7)”.

20          (5) Subparagraph (C) of section 3121(a)(5) is  
21          amended by striking “408(k)(6)” and inserting  
22          “408(k)(6) or 408(k)(7)”.

23          (c) EFFECTIVE DATE.—The amendments made by  
24          this section shall apply to years beginning after December  
25          31, 2003.

1 **SEC. 811. LEVEL DOLLAR CONTRIBUTIONS TO SEPS.**

2 (a) IN GENERAL.—Subparagraph (C) of section  
3 408(k)(3) (relating to contributions must bear uniform re-  
4 lationship to total compensation) is amended by inserting  
5 before the period at the end the following: “or unless such  
6 contributions are a uniform dollar amount on behalf of  
7 each such employee.”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 this section shall apply to years beginning after December  
10 31, 2003.

11 **SEC. 812. TAX ON NONDEDUCTIBLE CONTRIBUTIONS NOT**  
12 **TO APPLY TO CERTAIN NONTRADE OR BUSI-**  
13 **NESS SEP CONTRIBUTIONS.**

14 (a) IN GENERAL.—Subparagraph (B) of section  
15 4972(c)(6) (relating to exceptions) is amended—

16 (1) by striking “408(p) or” and inserting  
17 “408(p),”, and

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

21 (b) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to years beginning after December  
23 31, 2003.

1 **SEC. 813. CLARIFICATION OF FIDUCIARY DUTY.**

2 (a) IN GENERAL.—Paragraph (3) of section 404(c)  
3 of the Employee Retirement Income Security Act of 1974  
4 (29 U.S.C. 1104(c)(3)) is amended to read as follows:

5 “(3) In the case of a pension plan which makes  
6 a transfer to an individual retirement account or an-  
7 nuity of a designated trustee or issuer under section  
8 401(a)(31)(B) of the Internal Revenue Code of  
9 1986, the fiduciary who selects the individual retire-  
10 ment account or annuity and the initial investments  
11 thereunder shall be subject to this part only with re-  
12 spect to such initial selections. Such fiduciary shall  
13 have no liability under this title if such selections are  
14 made in a manner consistent with guidance provided  
15 by the Secretary.”.

16 (b) EFFECTIVE DATE.—The amendment made this  
17 section shall take effect as if included in section 657 of  
18 the Economic Growth and Tax Relief Reconciliation Act  
19 of 2001.

20 **SEC. 814. MULTIEMPLOYER PLAN CLARIFICATION.**

21 (a) IN GENERAL.—Subsection (b) of section 413 is  
22 amended by adding at the end the following:

23 “(10) TREATMENT AS NOT AN EMPLOYER  
24 PLAN.—The Secretary may prescribe rules under  
25 which, for purposes of one or more specified provi-  
26 sions of this part relating directly or indirectly to

1       nondiscrimination in benefits or coverage, a plan de-  
2       scribed in section 414(f) is not treated as a plan of  
3       or maintained by the employers of the participating  
4       employees.”.

5       (b) EFFECTIVE DATE.—The amendment made by  
6       this section shall apply as of the date of enactment of this  
7       Act.

8       **SEC. 815. CLARIFICATION OF STATUS OF YOUNG MEN’S**  
9                       **CHRISTIAN       ASSOCIATION       RETIREMENT**  
10                      **FUND.**

11       (a) IN GENERAL.—Section 1012(c)(4)(C)(i) of the  
12       Tax Reform Act of 1986 (100 Stat. 2394) is amended  
13       by adding before the comma at the end thereof the fol-  
14       lowing: “(whose retirement plans (including the reserve  
15       accounts for such plans) are deemed to be plans described  
16       in section 403(b)(9)(B) of the Internal Revenue Code of  
17       1986 for years beginning on or after January 1, 2003)”.

18       (b) CLARIFICATION OF SCOPE OF CHURCH PLAN  
19       STATUS.—

20               (1) NONDISCRIMINATION TESTING.—Any fund  
21       or plan described in subsection (a) shall be subject  
22       to the nondiscrimination requirements of section  
23       403(b)(12) of such Code and shall not be treated as  
24       a contract purchased by a church for purposes of  
25       section 403(b)(1)(D) of such Code.

1           (2) APPLICABILITY OF 403(b)(9) RULES GEN-  
 2           ERALLY.—Nothing in this section shall exempt the  
 3           retirement fund of the YMCA from complying with  
 4           the rules otherwise applicable to a plan described in  
 5           section 403(b)(9)(B) of such Code in order for the  
 6           treatment described in section 403(b)(1) of such  
 7           Code to apply.

8           (c) EFFECTIVE DATE.—The amendments made by  
 9           this section shall apply to years beginning after December  
 10          31, 2002.

11 **TITLE IX—EXPANDING RETIRE-**  
 12 **MENT SAVINGS OPPORTUNI-**  
 13 **TIES FOR EMPLOYEES OF**  
 14 **TAX-EXEMPT ORGANIZATIONS**  
 15 **AND GOVERNMENTS**

16 **SEC. 901. DEFERRED COMPENSATION PLANS OF TAX-EX-**  
 17 **EMPT ORGANIZATIONS.**

18          (a) IN GENERAL.—Subpart B of part II of sub-  
 19          chapter E of chapter 1 (relating to taxable year for which  
 20          items of gross income included) is amended by inserting  
 21          after section 458 the following new section:

22 **“SEC. 459. DEFERRED COMPENSATION PLANS OF TAX-EX-**  
 23 **EMPT ORGANIZATIONS.**

24          “(a) IN GENERAL.—In the case of a plan of an orga-  
 25          nization (other than a governmental unit) exempt from tax

1 under this subtitle providing for a deferral of compensa-  
2 tion—

3 “(1) the excess deferred compensation shall be  
4 included in the gross income of the participant or  
5 beneficiary for the 1st taxable year in which there  
6 is no substantial risk of forfeiture of the rights to  
7 such compensation, and

8 “(2) the tax treatment of any amount made  
9 available under the plan to a participant or bene-  
10 ficiary shall be determined under section 72 (relat-  
11 ing to annuities, etc.).

12 “(b) EXCEPTIONS.—Subsection (a) shall not apply  
13 to—

14 “(1) a plan described in section 401(a) which  
15 includes a trust exempt from tax under section  
16 501(a),

17 “(2) an annuity plan or contract described in  
18 section 403,

19 “(3) that portion of any plan which consists of  
20 a transfer of property described in section 83, and

21 “(4) that portion of any plan which consists of  
22 a trust to which section 402(b) applies.

23 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-  
24 poses of this section—

1           “(1) EXCESS DEFERRED COMPENSATION.—The  
 2           term ‘excess deferred compensation’ means with re-  
 3           spect to a participant for any taxable year the excess  
 4           of the present value of the participant’s deferred  
 5           compensation for such year over the greater of—

6                       “(A) one third of the sum of such value  
 7                       plus the participant’s compensation (as defined  
 8                       in Code section 415(c)(3)) for such year, or

9                       “(B) the amount in effect for such year  
 10                      under section 457(b)(2) (as modified by any ad-  
 11                      justment permitted under subsection (b)(3) or  
 12                      section 414(v)).

13           “(2) PLAN INCLUDES ARRANGEMENTS, ETC.—  
 14           The term ‘plan’ includes any agreement or arrange-  
 15           ment.

16           “(3) SUBSTANTIAL RISK OF FORFEITURE.—The  
 17           rights of a person to compensation are subject to a  
 18           substantial risk of forfeiture if such person’s rights  
 19           to such compensation are conditioned upon the fu-  
 20           ture performance of substantial services by any indi-  
 21           vidual.

22           “(4) SPECIAL RULES.—Rules similar to the  
 23           rules of section 457(b)(6) and paragraphs (2), (3),  
 24           (4), (6), (7), (8), (9) (as in effect before the enact-  
 25           ment of the Pension Preservation and Savings Ex-

1       pansion Act of 2003), (10), (11), (12), and (13) of  
2       section 457(e) shall apply for purposes of this sec-  
3       tion.”.

4       (b) CONFORMING AMENDMENTS.—

5           (1) The heading for section 457 is amended by  
6       striking “AND TAX-EXEMPT ORGANIZA-  
7       TIONS”.

8           (2) Section 457(a)(1) is amended by striking  
9       “income—” and inserting “and all that follows and  
10      inserting the following: “income is paid to the par-  
11      ticipant or other beneficiary.”.

12          (3) Section 457(b) is amended by striking  
13      “which is established and maintained by an em-  
14      ployer which is described in subsection (e)(1)(A)  
15      and”.

16          (4) Section 457(d)(1)(C) is amended by strik-  
17      ing “in the case of a plan maintained by an em-  
18      ployer described in subsection (e)(1)(A),”.

19          (5) Section 457(d)(3) is amended—

20              (A) by striking “of an employer described  
21              in subsection (e)(1)(A)”, and

22              (B) by striking “FOR GOVERNMENT PLAN”.

23          (6) Paragraph (9) of section 457(e) is amended  
24      to read as follows:



1           “(9) EXCEPTION TO DISTRIBUTION REQUIRE-  
2           MENTS.—

3           “(A) A plan shall not be treated as failing  
4           to meet the distribution requirements of sub-  
5           section (d) by reason of a distribution to which  
6           this paragraph applies.

7           “(B) This paragraph applies to a distribu-  
8           tion if—

9           “(i) the distribution includes the total  
10           amount payable to a participant under the  
11           plan,

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

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

21           “(iv) there has been no prior distribu-  
22           tion under the plan to which this para-  
23           graph applied.”.

24           (7) Section 457(e)(1) is amended to read as fol-  
25           lows:

1           “(1) ELIGIBLE EMPLOYER.—The term ‘eligible  
2           employer’ means a State, political subdivision of a  
3           State, and any agency or instrumentality of a State  
4           or political subdivision of a State.”.

5           (8) Section 457(e)(16)(A) is amended by strik-  
6           ing “established and maintained by an employer de-  
7           scribed in subsection (e)(1)(A)”.

8           (9) Section 457(g) is amended—

9                   (A) in paragraph (1) by striking “main-  
10           tained by an eligible employer described in sub-  
11           section (e)(1)(A)”, and

12                   (B) in the heading by striking “GOVERN-  
13           MENTAL”.

14           (10) Section 25B(d)(1)(B)(ii) is amended by  
15           striking “of an eligible employer described in section  
16           457(e)(1)(A)”.

17           (11) Section 72(t)(9) is amended by striking  
18           “of an eligible employer described in section  
19           457(e)(1)(A)”.

20           (12) Section 402(c)(8)(B)(v) is amended by  
21           striking “which is maintained by an eligible em-  
22           ployer described in section 457(e)(1)(A)”.

23           (13) Section 408(q)(3)(A) is amended by strik-  
24           ing “of an eligible employer described in section  
25           457(e)(1)(A)”.

1           (14) Section 414(v)(6)(A)(iii) is amended by  
 2           striking “of an eligible employer described in section  
 3           457(e)(1)(A)”.

4           (15) Section 3401(a)(12)(E) is amended by  
 5           striking “which is maintained by an eligible em-  
 6           ployer described in section 457(e)(1)(A)”.

7           (16) Section 3405(d)(2)(B)(iv) is amended by  
 8           striking “and which is maintained by an eligible em-  
 9           ployer described in section 457(e)(1)(A)”.

10          (17) Section 4980G(f)(2)(B) (as added by this  
 11          Act) is amended by striking “of an eligible employer  
 12          described in section 457(e)(1)(A)”.

13          (18) Section 414(w)(5)(B)(ii) (as added by this  
 14          Act) is amended by striking “of an eligible employer  
 15          described in section 457(e)(1)(A)”.

16          (19) Section 414(x)(8(A)(ii) is amended by  
 17          striking “of an eligible employer described in section  
 18          457(e)(1)(A)”.

19          (c) CLERICAL AMENDMENTS.—

20          (1) The table of sections for subpart B of part  
 21          II of subchapter E of chapter 1 is amended by in-  
 22          serting after the item relating to section 458 the fol-  
 23          lowing new item:

“Sec. 459. Deferred compensation plans of tax-exempt organiza-  
 tions.”.

1           (2) The item in the table of sections for subpart  
 2       B of part II of subchapter E of chapter 1 relating  
 3       to section 457 is amended to read as follows:

          “Sec. 457. Deferred compensation plans of State and local gov-  
           ernments.”.

4       (d) EFFECTIVE DATE.—The amendments made by  
 5       this section shall apply to taxable years beginning after  
 6       December 31, 2003.

7       **SEC. 902. INAPPLICABILITY OF 10 PERCENT ADDITIONAL**  
 8                               **TAX ON EARLY DISTRIBUTIONS OF PENSION**  
 9                               **PLANS OF PUBLIC SAFETY EMPLOYEES.**

10       (a) IN GENERAL.—Section 72(t)(2) of the Internal  
 11       Revenue Code of 1986 (relating to subsection not to apply  
 12       to certain distributions) is amended by adding at the end  
 13       the following new subsection:

14                           “(G) DROP DISTRIBUTIONS TO QUALIFIED  
 15           PUBLIC SAFETY EMPLOYEES IN GOVERN-  
 16           MENTAL PLANS.—

17                           “(i) IN GENERAL.—Distributions to  
 18                           an individual who is a qualified public safe-  
 19                           ty employee from a governmental plan  
 20                           within the meaning of section 414(d) to  
 21                           the extent such distributions are attrib-  
 22                           utable to a DROP benefit.

23                           “(ii) DEFINITIONS.—For purposes of  
 24                           this subparagraph—

1           “(I) The term ‘DROP benefit’  
2           means a feature of a governmental  
3           plan under which an employee elects  
4           to receive credits to an account (in-  
5           cluding a notional account) in the  
6           plan in lieu of increases in the em-  
7           ployee’s accrued pension benefit based  
8           on years of service after the effective  
9           date of the DROP election.

10           “(II) The term ‘qualified public  
11           safety employee’ means any employee  
12           of any police department or fire de-  
13           partment organized and operated by a  
14           State or political subdivision of a  
15           State if the employee provides police  
16           protection, firefighting services, or  
17           emergency medical services for any  
18           area within the jurisdiction of such  
19           State or political subdivision.”.

20           (b) EFFECTIVE DATE.—The amendments made by  
21           this section shall apply to distributions after the date of  
22           enactment of this Act.

1 **SEC. 903. CLARIFICATIONS REGARDING PURCHASE OF PER-**  
2 **MISSIVE SERVICE CREDIT.**

3 (a) IN GENERAL.—Subparagraph (A) of section  
4 457(e)(17) (relating to trustee-to-trustee transfers to pur-  
5 chase permissive service credit), and subparagraph (A) of  
6 section 403(b)(13) (relating to trustee-to-trustee transfers  
7 to purchase permissive service credit), are both amended  
8 by striking “section 415(n)(3)(A)” and inserting “section  
9 415(n)(3) (without regard to subparagraphs (B) and (C)  
10 thereof)”.

11 (b) TRANSFERS MAY BE FROM ANY GOVERNMENTAL  
12 PLAN.—Section 457(e)(17), and section 403(b)(13), are  
13 both amended by inserting “from any governmental plan  
14 (as so defined)” after “414(d))” and by adding at the end  
15 the following sentence: “Amounts transferred under this  
16 paragraph shall be distributed solely in accordance with  
17 the terms of such defined benefit plan.”.

18 (c) SERVICE CREDIT.—Clause (ii) of section  
19 415(n)(3)(A) is amended to read as follows:

20 “(ii) which relates to benefits with re-  
21 spect to which such participant is not oth-  
22 erwise entitled, and”.

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

1 **SEC. 904. CERTAIN ROLLOVERS OF BENEFITS PERMITTED.**

2 (a) IN GENERAL.—Paragraph (10) of section 457(e)  
3 is amended—

4 (1) by striking “A participant” and inserting  
5 “(A) EXCLUSION FROM INCOME.—A participant”,  
6 and

7 (2) by adding at the end the following:

8 “(B) TRANSFERS PERMITTED.—A transfer  
9 from one such plan to another such plan of the  
10 entire benefit of one or more participants shall  
11 not fail to be permitted solely because all assets  
12 of the transferor plan are not transferred to the  
13 transferee plan.”.

14 (b) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by  
16 this section shall apply to taxable years beginning  
17 after December 31, 2003.

18 (2) SPECIAL RULE.—An individual shall not be  
19 precluded from participating in an eligible deferred  
20 compensation plan by reason of having received a  
21 distribution under Code section 457(e)(9) as in ef-  
22 fect prior to the enactment of the Small Business  
23 Job Protection Act of 1996.

24 **SEC. 905. MINIMUM DISTRIBUTION RULES.**

25 The Secretary of the Treasury shall issue regulations  
26 under which a governmental plan (as defined in section

1 414(d) of the Internal Revenue Code of 1986) shall, for  
2 all years to which section 401(a)(9) of such Code applies  
3 to such plan, be treated as having complied with such sec-  
4 tion 401(a)(9) if such plan complies with a reasonable  
5 good faith interpretation of such section 401(a)(9).

6 **SEC. 906. CHURCH PLAN RULE.**

7 (a) IN GENERAL.—Paragraph (11) of section 415(b)  
8 is amended by adding at the end the following: “Subpara-  
9 graph (B) of paragraph (1) shall not apply to a plan main-  
10 tained by an organization described in section  
11 3121(w)(3)(A) except with respect to highly compensated  
12 benefits. For purposes of this paragraph, the term ‘highly  
13 compensated benefits’ means any benefits accrued for an  
14 employee in any year on or after the first year in which  
15 such employee is a highly compensated employee (as de-  
16 fined in section 414(q)) of the organization described in  
17 section 3121(w)(3)(A). For purposes of applying para-  
18 graph (1)(B) to highly compensated benefits, all benefits  
19 of the employee otherwise taken into account (without re-  
20 gard to this paragraph) shall be taken into account.”.

21 (b) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to years beginning after December  
23 31, 2003.



1 **SEC. 907. PLANS MAINTAINED BY GOVERNMENTS AND TAX-**  
2 **EXEMPT ORGANIZATIONS.**

3 (a) IN GENERAL.—Subparagraph (F) of section  
4 415(b)(2) is amended to read as follows:

5 “(F) PLANS MAINTAINED BY GOVERN-  
6 MENTS AND TAX EXEMPT ORGANIZATIONS.—

7 “(i) IN GENERAL.—In the case of a  
8 governmental plan (within the meaning of  
9 section 414(d)), a plan maintained by an  
10 organization (other than a governmental  
11 unit) exempt from tax under this subtitle,  
12 or a qualified merchant marine plan, sub-  
13 paragraph (C) shall be applied as if the  
14 following sentence were added at the end:  
15 ‘The reduction under this subparagraph  
16 shall not reduce the limitation of para-  
17 graph (1)(A) below (i) \$130,000 if the  
18 benefit begins at or after age 55, or (ii) if  
19 the benefit begins before age 55, the equiv-  
20 alent of the \$130,000 limitation at age  
21 55.’.

22 “(ii) DEFINITIONS.—For purposes of  
23 this subparagraph—

24 “(I) QUALIFIED MERCHANT MA-  
25 RINE PLAN.—The term ‘qualified mer-  
26 chant marine plan’ means a plan in

1 existence on January 1, 1986, the  
2 participants in which are merchant  
3 marine officers holding licenses issued  
4 by the Secretary of Transportation  
5 under title 46, United States Code.

6 “(II) EXEMPT ORGANIZATION  
7 PLAN.—A plan shall be treated as a  
8 plan maintained by an organization  
9 (other than a governmental unit) ex-  
10 empt from tax under this subtitle if at  
11 least 50 percent of the employees ben-  
12 efitting under the plan are employees  
13 of an organization (other than govern-  
14 mental unit) exempt from tax under  
15 this subtitle. If less than 50 percent  
16 of the employees benefiting under a  
17 plan are employees of an organization  
18 (other than a governmental unit) ex-  
19 empt from tax under this subtitle, the  
20 plan shall be treated as a plan main-  
21 tained by an organization (other than  
22 a governmental unit) exempt from tax  
23 under this subtitle only with respect  
24 to employees of such an organiza-  
25 tion.”.

1 (b) COST-OF-LIVING ADJUSTMENTS.—

2 (1) PLANS MAINTAINED BY GOVERNMENTS AND  
3 TAX EXEMPT ORGANIZATIONS.—Paragraph (1) of  
4 section 415(d) is amended by striking “and” at the  
5 end of subparagraph (B), by redesignating subpara-  
6 graph (C) as subparagraph (D), and by inserting  
7 after subparagraph (B) the following new subpara-  
8 graph:

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

11 (2) BASE PERIOD.—Paragraph (3) of section  
12 415(d) is amended by redesignating subparagraph  
13 (D) as subparagraph (E) and by inserting after sub-  
14 paragraph (C) the following new subparagraph:

15 “(D) \$130,000 AMOUNT.—The base period  
16 taken into account for purposes of paragraph  
17 (1)(C) is the calendar quarter beginning July 1,  
18 2003.”.

19 (3) ROUNDING RULE RELATING TO DEFINED  
20 BENEFIT PLANS.—Subparagraph (B) of section  
21 415(d)(4) is amended to read as follows:

22 “(B) \$130,000 AND \$40,000 AMOUNTS.—  
23 Any increase under subparagraph (C) or (D) of  
24 paragraph (1) which is not a multiple of \$1,000

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

3           (4) CONFORMING AMENDMENT.—Subparagraph  
4           (E) of section 415(d)(3) (as amended by paragraph  
5           (2)) is amended by striking “paragraph (1)(C)” and  
6           inserting “paragraph (1)(D)”.

7           (c) EFFECTIVE DATE.—The amendments made by  
8           this section shall apply to years beginning after December  
9           31, 2003.

## 10                   **TITLE X—RESTRICTING** 11                   **EXCESSIVE REMUNERATION**

### 12   **SEC 1001. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO** 13                   **EXCESSIVE EMPLOYEE REMUNERATION PAID** 14                   **BY CORPORATION AFTER DECLARATION OF** 15                   **BANKRUPTCY.**

16           (a) IN GENERAL.—Section 4999 (relating to golden  
17           parachute payments) is amended by redesignating sub-  
18           section (c) as subsection (d) and by inserting after sub-  
19           section (b) the following new subsection:

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

22                   “(1) IN GENERAL.—There is hereby imposed a  
23           tax on any person who is a covered employee equal  
24           to 50 percent of any payment of excessive employee  
25           remuneration from a corporation which becomes a

1 debtor in a title 11 or similar case (as defined in  
2 section 368(a)(3)(A) of this title, but not including  
3 a case under chapter 12 of title 11, United States  
4 Code). The tax imposed under subsection (a) shall  
5 not apply to the extent that a tax is imposed under  
6 this subsection.

7 “(2) SPECIAL RULES RELATING TO EXCESSIVE  
8 EMPLOYEE REMUNERATION.—For purposes of this  
9 subsection—

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

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

21 “(ii) in the case of remuneration to a  
22 covered employee of a corporation that is  
23 not a publicly held corporation described in  
24 section 162(m)(2), that exceeds  
25 \$1,000,000, other than remuneration that

1 meets requirements similar to the stand-  
2 ards for performance-based compensation  
3 under section 162(m)(4)(C).

4 “(B) Such term shall not include—

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

11 “(ii) remuneration attributable to con-  
12 tributions to or benefits from an excess re-  
13 tirement plan to the extent that such plan  
14 is maintained solely for the purpose of pro-  
15 viding benefits to employees in excess of  
16 the limitations imposed by 1 or more of  
17 sections 401(a)(17), 401(k), 401(m), and  
18 415,

19 “(iii) contributions to or benefits from  
20 a qualified employer plan (as defined in  
21 section 132(m)), or

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

24 “(C) BANKRUPTCY PERIOD.—The term  
25 ‘bankruptcy period’ means any time during the

1 period beginning 2 years before the date on  
2 which the corporation becomes a debtor de-  
3 scribed in paragraph (1) and ending on the  
4 date such corporation ceases to be such a debt-  
5 or.

6 “(D) COVERED EMPLOYEE.—The term  
7 ‘covered employee’—

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

17 “(ii) with respect to an employee of a  
18 corporation that is not subject to section  
19 162(m), includes any employee of such cor-  
20 poration who would be subject to the re-  
21 quirement described in section  
22 162(m)(3)(B) (as modified by this para-  
23 graph) if such corporation were a publicly  
24 held corporation (as defined in section  
25 162(m)(2)).

1           “(E) 100 PERCENT TAX FOR GROSS UP  
 2           PAYMENTS.—Subsection (b) shall be applied by  
 3           substituting ‘100 percent’ for ‘50 percent’ to  
 4           the extent that any payment is made during the  
 5           bankruptcy period that is contingent upon a tax  
 6           being imposed under this section.

7           “(F) CHANGE IN OWNERSHIP CONTIN-  
 8           GENCY NOT TO APPLY.—Subsection (b) shall be  
 9           applied without regard to clause (i) of section  
 10          280G(b)(2)(A).”.

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

## 16   **TITLE XI—DEFINED CONTRIBUTION PLAN PROTECTIONS**

### 18   **SEC. 1101. PROVISION OF INVESTMENT EDUCATION NO-** 19                           **TICES TO PARTICIPANTS.**

20          (a) IN GENERAL.—Section 414 (relating to defini-  
 21          tions and special rules) is amended by adding at the end  
 22          the following:

23                       “(w) PROVISION OF INVESTMENT EDUCATION  
 24          NOTICES TO PARTICIPANTS.—



1           “(1) IN GENERAL.—The plan administrator of  
2           an applicable pension plan shall provide to each ap-  
3           plicable individual an investment education notice  
4           described in paragraph (2) at the time of the enroll-  
5           ment of the applicable individual in the plan and not  
6           less often than quarterly thereafter.

7           “(2) INVESTMENT EDUCATION NOTICE.—An in-  
8           vestment education notice is described in this para-  
9           graph if such notice contains—

10                   “(A) an explanation, for the long-term re-  
11                   tirement security of participants and bene-  
12                   ficiaries, of generally accepted investment prin-  
13                   ciples, including principles of risk management  
14                   and diversification, and

15                   “(B) a discussion of the risk of holding  
16                   substantial portions of a portfolio in the secu-  
17                   rity of any one entity, such as employer securi-  
18                   ties.

19           “(3) UNDERSTANDABILITY.—Each notice re-  
20           quired by paragraph (1) shall be written in a man-  
21           ner calculated to be understood by the average plan  
22           participant and shall provide sufficient information  
23           (as determined in accordance with guidance provided  
24           by the Secretary) to allow recipients to understand  
25           such notice.

1           “(4) FORM AND MANNER OF NOTICES.—The  
2        notices required by this subsection shall be in writ-  
3        ing, except that such notices may be in electronic or  
4        other form to the extent that such form is reason-  
5        ably accessible to the applicable individual.

6           “(5) DEFINITIONS.—For purposes of this sub-  
7        section—

8           “(A) APPLICABLE INDIVIDUAL.—The term  
9        ‘applicable individual’ means—

10           “(i) any participant in the applicable  
11        pension plan,

12           “(ii) any beneficiary who is an alter-  
13        nate payee (within the meaning of section  
14        414(p)(8)) under a qualified domestic rela-  
15        tions order (within the meaning of section  
16        414(p)(1)(A)), and

17           “(iii) any beneficiary of a deceased  
18        participant or alternate payee.

19           “(B) APPLICABLE PENSION PLAN.—The  
20        term ‘applicable pension plan’ means—

21           “(i) a plan described in clause (i), (ii),  
22        or (iv) of section 219(g)(5)(A), and

23           “(ii) an eligible deferred compensation  
24        plan (as defined in section 457(b)) of an

1 eligible employer described in section  
2 457(e)(1)(A),  
3 which permits any participant to direct the in-  
4 vestment of some or all of his account in the  
5 plan or under which the accrued benefit of any  
6 participant depends in whole or in part on hy-  
7 pothetical investments directed by the partici-  
8 pant. Such term shall not include a one-partici-  
9 pant retirement plan.

10 “(C) ONE-PARTICIPANT RETIREMENT  
11 PLAN DEFINED.—The term ‘one-participant re-  
12 tirement plan’ means a retirement plan that—

13 “(i) on the first day of the plan  
14 year—

15 “(I) covered only the employer  
16 (and the employer’s spouse) and the  
17 employer owned the entire business  
18 (whether or not incorporated), or

19 “(II) covered only one or more  
20 partners (and their spouses) in a busi-  
21 ness partnership (including partners  
22 in an S or C corporation),

23 “(ii) meets the minimum coverage re-  
24 quirements of section 410(b) without being  
25 combined with any other plan of the busi-

1                   ness that covers the employees of the busi-  
 2                   ness,

3                   “(iii) does not provide benefits to any-  
 4                   one except the employer (and the employ-  
 5                   er’s spouse) or the partners (and their  
 6                   spouses),

7                   “(iv) does not cover a business that is  
 8                   a member of an affiliated service group, a  
 9                   controlled group of corporations, or a  
 10                  group of businesses under common control,  
 11                  and

12                  “(v) does not cover a business that  
 13                  leases employees.

14                  “(6) CROSS REFERENCE.—For provisions relat-  
 15                  ing to penalty for failure to provide the notice re-  
 16                  quired by this subsection, see section 6652(m).”.

17                  (b) PENALTY FOR FAILURE TO PROVIDE NOTICE.—  
 18                  Section 6652 (relating to failure to file certain information  
 19                  returns, registration statements, etc.) is amended by re-  
 20                  designating subsection (m) as subsection (n) and by in-  
 21                  serting after subsection (1) the following new subsection:

22                  “(m) FAILURE TO PROVIDE INVESTMENT EDU-  
 23                  CATION NOTICES TO PARTICIPANTS IN CERTAIN  
 24                  PLANS.—In the case of each failure to provide a notice  
 25                  as required by section 414(w) with respect to an applicable

1 individual (as defined in such section), at the time pre-  
2 scribed therefore, unless it is shown that such failure is  
3 due to reasonable cause and not to willful neglect, there  
4 shall be paid, on notice and demand of the Secretary and  
5 in the same manner as tax, by the person failing to provide  
6 such notice, an amount equal to \$100 for each such fail-  
7 ure, but the total amount imposed on such person for all  
8 such failures during any calendar year shall not exceed  
9 \$500,000.”.

10 (c) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-  
12 graph (3), the amendments made by this section  
13 shall apply with respect to plan years beginning  
14 after December 31, 2003.

15 (2) MODEL INVESTMENT PRINCIPLES.—Not  
16 later than the earlier of January 1, 2004, or 120  
17 days after the date of the enactment of this Act, the  
18 Secretary of the Treasury, in consultation with the  
19 Secretary of Labor, shall issue guidance and model  
20 notices which meet the requirements of section  
21 414(w) of the Internal Revenue Code of 1986 (as  
22 added by this section).

23 (3) GOVERNMENTAL PLANS.—In the case of a  
24 governmental plan (as defined in section 414(d) of  
25 the Internal Revenue Code of 1986), the amend-

1       ments made by this section shall apply with respect  
2       to plan years beginning after December 31, 2005.

3   **SEC. 1102. NOTICE OF BLACKOUT PERIODS TO PARTICI-**  
4                   **PANT OR BENEFICIARY UNDER DEFINED**  
5                   **CONTRIBUTION PLAN.**

6       (a) IN GENERAL.—Section 414 (relating to defini-  
7       tions and special rules) (as amended by this Act) is  
8       amended by adding at the end the following:

9       “(x) NOTICE OF BLACKOUT PERIODS TO PARTICI-  
10      PANT OR BENEFICIARY UNDER APPLICABLE PENSION  
11      PLAN.—

12           “(1) DUTIES OF PLAN ADMINISTRATOR.—In  
13      advance of the commencement of any blackout pe-  
14      riod with respect to an applicable pension plan, the  
15      plan administrator shall notify the plan participants  
16      and beneficiaries who are affected by such action in  
17      accordance with this subsection.

18           “(2) NOTICE REQUIREMENTS.—

19           “(A) IN GENERAL.—The notices described  
20      in paragraph (1) shall be written in a manner  
21      calculated to be understood by the average plan  
22      participant and shall include—

23           “(i) the reasons for the blackout pe-  
24      riod,

1                   “(ii) an identification of the invest-  
2                   ments and other rights affected,

3                   “(iii) the expected beginning date and  
4                   length of the blackout period,

5                   “(iv) in the case of investments af-  
6                   fected, a statement that the participant or  
7                   beneficiary should evaluate the appro-  
8                   priateness of their current investment deci-  
9                   sions in light of their inability to direct or  
10                  diversify assets credited to their accounts  
11                  during the blackout period, and

12                  “(v) such other matters as the Sec-  
13                  retary may require by regulation.

14                  “(B) NOTICE TO PARTICIPANTS AND  
15                  BENEFICIARIES.—Except as otherwise provided  
16                  in this subsection, notices described in para-  
17                  graph (1) shall be furnished to all participants  
18                  and beneficiaries under the plan to whom the  
19                  blackout period applies at least 30 days in ad-  
20                  vance of the blackout period.

21                  “(C) EXCEPTION TO 30-DAY NOTICE RE-  
22                  QUIREMENT.—In any case in which—

23                         “(i) a deferral of the blackout period  
24                         would violate the requirements of subpara-  
25                         graph (A) or (B) of section 404(a)(1) of

1 the Employee Retirement Income Security  
2 Act of 1974, and a fiduciary of the plan  
3 reasonably so determines in writing, or

4 “(ii) the inability to provide the 30-  
5 day advance notice is due to events that  
6 were unforeseeable or circumstances be-  
7 yond the reasonable control of the plan ad-  
8 ministrator, and a fiduciary of the plan  
9 reasonably so determines in writing,

10 subparagraph (B) shall not apply, and the no-  
11 tice shall be furnished to all participants and  
12 beneficiaries under the plan to whom the black-  
13 out period applies as soon as reasonably pos-  
14 sible under the circumstances unless such a no-  
15 tice in advance of the termination of the black-  
16 out period is impracticable.

17 “(D) WRITTEN NOTICE.—The notice re-  
18 quired to be provided under this subsection  
19 shall be in writing, except that such notice may  
20 be in electronic or other form to the extent that  
21 such form is reasonably accessible to the recipi-  
22 ent.

23 “(E) NOTICE TO ISSUERS OF EMPLOYER  
24 SECURITIES SUBJECT TO BLACKOUT PERIOD.—  
25 In the case of any blackout period in connection



1 with an applicable pension plan, the plan ad-  
2 ministrator shall provide timely notice of such  
3 blackout period to the issuer of any employer  
4 securities subject to such blackout period.

5 “(3) EXCEPTION FOR BLACKOUT PERIODS  
6 WITH LIMITED APPLICABILITY.—In any case in  
7 which the blackout period applies only to 1 or more  
8 participants or beneficiaries in connection with a  
9 merger, acquisition, divestiture, or similar trans-  
10 action involving the plan or plan sponsor and occurs  
11 solely in connection with becoming or ceasing to be  
12 a participant or beneficiary under the plan by reason  
13 of such merger, acquisition, divestiture, or trans-  
14 action, the requirement of this subsection that the  
15 notice be provided to all participants and bene-  
16 ficiaries shall be treated as met if the notice required  
17 under paragraph (1) is provided to such participants  
18 or beneficiaries to whom the blackout period applies  
19 as soon as reasonably practicable.

20 “(4) CHANGES IN LENGTH OF BLACKOUT PE-  
21 RIOD.—If, following the furnishing of the notice pur-  
22 suant to this subsection, there is a change in the be-  
23 ginning date or length of the blackout period (speci-  
24 fied in such notice pursuant to paragraph  
25 (2)(A)(iii)), the administrator shall provide affected

1 participants and beneficiaries notice of the change as  
2 soon as reasonably practicable. In relation to the ex-  
3 tended blackout period, such notice shall meet the  
4 requirements of paragraph (2)(D) and shall specify  
5 any material change in the matters referred to in  
6 clauses (i) through (v) of paragraph (2)(A).

7 “(5) REGULATORY EXCEPTIONS.—The Sec-  
8 retary may provide by regulation for additional ex-  
9 ceptions to the requirements of this subsection which  
10 the Secretary determines are in the interests of par-  
11 ticipants and beneficiaries.

12 “(6) GUIDANCE AND MODEL NOTICES.—The  
13 Secretary shall issue guidance and model notices  
14 which meet the requirements of this subsection.

15 “(7) BLACKOUT PERIOD.—For purposes of this  
16 subsection—

17 “(A) IN GENERAL.—The term ‘blackout  
18 period’ means, in connection with an applicable  
19 pension plan, any period for which any ability  
20 of participants or beneficiaries under the plan,  
21 which is otherwise available under the terms of  
22 such plan, to direct or diversify assets credited  
23 to their accounts, to obtain loans from the plan,  
24 or to obtain distributions from the plan is tem-  
25 porarily suspended, limited, or restricted, if

1 such suspension, limitation, or restriction is for  
2 any period of more than 3 consecutive business  
3 days.

4 “(B) EXCLUSIONS.—The term ‘blackout  
5 period’ does not include a suspension, limita-  
6 tion, or restriction—

7 “(i) which occurs by reason of the ap-  
8 plication of the securities laws (as defined  
9 in section 3(a)(47) of the Securities Ex-  
10 change Act of 1934),

11 “(ii) which is a change to the plan  
12 which provides for a regularly scheduled  
13 suspension, limitation, or restriction which  
14 is disclosed to participants or beneficiaries  
15 through any summary of material modi-  
16 fications, any materials describing specific  
17 investment alternatives under the plan, or  
18 any changes thereto, or

19 “(iii) which applies only to 1 or more  
20 individuals, each of whom is the partici-  
21 pant, an alternate payee (as defined in sec-  
22 tion 414(p)(8), or any other beneficiary  
23 pursuant to a qualified domestic relations  
24 order (as defined in section 414(p)(1)(A)).

25 “(8) APPLICABLE PENSION PLAN.—

1           “(A) IN GENERAL.—For purposes of this  
2 subsection, the term ‘applicable pension plan’  
3 means—

4                   “(i) a plan described in clause (i), (ii),  
5 or (iv) of section 219(g)(5)(A), and

6                   “(ii) an eligible deferred compensation  
7 plan (as defined in section 457(b)) of an  
8 eligible employer described in section  
9 457(e)(1)(A),

10 which maintains accounts for participants  
11 under the plan or under which the accrued ben-  
12 efit of any participant depends in whole or in  
13 part on hypothetical investments directed by the  
14 participant.

15           “(B) EXCEPTIONS.—Such term shall not  
16 include a one-participant retirement plan or a  
17 plan to which section 101(i) of the Employee  
18 Retirement Income Security Act of 1974 ap-  
19 plies.

20           “(C) ONE-PARTICIPANT RETIREMENT  
21 PLAN.—For purposes of this paragraph, the  
22 term ‘one-participant retirement plan’ means a  
23 retirement plan that—

24                   “(i) on the first day of the plan  
25 year—

1           “(I) covered only the employer  
2           (and the employer’s spouse) and the  
3           employer owned the entire business  
4           (whether or not incorporated), or

5           “(II) covered only one or more  
6           partners (and their spouses) in a busi-  
7           ness partnership (including partners  
8           in an S or C corporation (as defined  
9           in section 1361(a)),

10          “(ii) meets the minimum coverage re-  
11          quirements of section 410(b) (as in effect  
12          on the date of the enactment of the Sar-  
13          banes-Oxley Act of 2002) without being  
14          combined with any other plan of the busi-  
15          ness that covers the employees of the busi-  
16          ness,

17          “(iii) does not provide benefits to any-  
18          one except the employer (and the employ-  
19          er’s spouse) or the partners (and their  
20          spouses),

21          “(iv) does not cover a business that is  
22          a member of an affiliated service group, a  
23          controlled group of corporations, or a  
24          group of businesses under common control,  
25          and

1 “(v) does not cover a business that  
2 leases employees.”.

3 “(9) CROSS REFERENCE.—For provisions relat-  
4 ing to penalty for failure to provide the notice re-  
5 quired by this section, see section 6652(n).”.

6 (b) PENALTY FOR FAILURE TO PROVIDE NOTICE.—  
7 Section 6652 (relating to failure to file certain information  
8 returns, registration statements, etc.) (as amended by this  
9 Act) is amended by redesignating subsection (n) as sub-  
10 section (o) and by inserting after subsection (m) the fol-  
11 lowing new subsection:

12 “(n) FAILURE TO PROVIDE BLACKOUT PERIOD NO-  
13 TICE TO PARTICIPANTS OR BENEFICIARIES.—In the case  
14 of each failure to provide a notice as required by section  
15 414(x) with respect to a participant or beneficiary entitled  
16 to such a notice under such section, at the time prescribed  
17 therefor, unless it is shown that such failure is due to rea-  
18 sonable cause and not to willful neglect, there shall be  
19 paid, on notice and demand of the Secretary and in the  
20 same manner as tax, by the person failing to provide such  
21 notice, an amount equal to \$100 for such failure but the  
22 total amount imposed on such person for all such failures  
23 during any calendar year shall not exceed \$500,000.”.

24 (c) PLAN AMENDMENTS.—If any amendment made  
25 by this subsection requires an amendment to any plan,

1 such plan amendment shall not be required to be made  
2 before the third plan year beginning on or after the effec-  
3 tive date of this section, if—

4 (1) during the period after such amendment  
5 made by this subsection takes effect and before such  
6 third plan year, the plan is operated in good faith  
7 compliance with the requirements of such amend-  
8 ment made by this subsection, and

9 (2) such plan amendment applies retroactively  
10 to the period after such amendment made by this  
11 subsection takes effect and before such third plan  
12 year.

13 (d) EFFECTIVE DATE.—The provisions of this sec-  
14 tion (including the amendments made thereby) shall take  
15 effect two years after the date of the enactment of this  
16 Act.

17 **SEC. 1103. DIVERSIFICATION REQUIREMENTS FOR DE-**  
18 **FINED CONTRIBUTION PLANS THAT HOLD**  
19 **EMPLOYER SECURITIES.**

20 (a) IN GENERAL.—Subsection (a) of section 401 (re-  
21 lating to requirements for qualification) is amended by  
22 adding at the end the following new paragraph:

23 “(35) DIVERSIFICATION REQUIREMENTS FOR  
24 DEFINED CONTRIBUTION PLANS THAT HOLD EM-  
25 PLOYER SECURITIES.—

1           “(A) IN GENERAL.—In the case of a de-  
2           fined contribution plan described in this sub-  
3           section that includes a trust which is exempt  
4           from tax under section 501(a) and which holds  
5           employer securities that are readily tradable on  
6           an established securities market, such trust  
7           shall not constitute a qualified trust under this  
8           section unless such plan meets the requirements  
9           of subparagraphs (B), (C), and (D).

10           “(B) ELECTIVE DEFERRALS AND EM-  
11           PLOYEE CONTRIBUTIONS INVESTED IN EM-  
12           PLOYER SECURITIES.—In the case of the por-  
13           tion of the account attributable to elective de-  
14           ferrals and employee contributions which is in-  
15           vested in employer securities, a plan meets the  
16           requirements of this subparagraph if each ap-  
17           plicable individual in such plan may elect to di-  
18           rect the plan to divest up to the applicable per-  
19           centage of such securities in the individual’s ac-  
20           count and to reinvest an equivalent amount in  
21           other investment options which meet the re-  
22           quirements of subparagraph (E).

23           “(C) MATCHING AND CERTAIN OTHER  
24           CONTRIBUTIONS.—



1           “(i) IN GENERAL.—In the case of the  
2           portion of the account attributable to con-  
3           tributions to which this subparagraph ap-  
4           plies and which is invested in employer se-  
5           curities, a plan meets the requirements of  
6           this subparagraph if each applicable 3-year  
7           individual in the plan may elect to direct  
8           the plan to divest up to the applicable per-  
9           centage of such securities in the individ-  
10          ual’s account and to reinvest an equivalent  
11          amount in other investment options which  
12          meet the requirements of subparagraph  
13          (E).

14           “(ii) CONTRIBUTIONS TO WHICH THIS  
15          SUBPARAGRAPH APPLIES.—This subpara-  
16          graph shall apply to—

17                   “(I) matching contributions (as  
18                   defined in subsection (m)(4)(A)),

19                   “(II) qualified nonelective con-  
20                   tributions (as defined in subsection  
21                   (m)(4)(C)), and

22                   “(III) contributions made in  
23                   order to meet the requirements of  
24                   subsection (k)(12)(C).

1           “(iii) APPLICABLE 3-YEAR INDI-  
2 VIDUAL.—For purposes of clause (i), the  
3 term ‘applicable 3-year individual’ means  
4 any individual who would be an applicable  
5 individual if only participants in the plan  
6 who have completed at least 3 years of  
7 service (as determined under section  
8 411(a)) were taken into account under  
9 subparagraph (G)(i)(I).

10           “(D) OTHER EMPLOYER CONTRIBU-  
11 TIONS.—

12           “(i) IN GENERAL.—In the case of the  
13 portion of the account attributable to em-  
14 ployer contributions (other than contribu-  
15 tions to which subparagraph (B) or (C)  
16 applies) which is invested in employer se-  
17 curities, a plan meets the requirements of  
18 this subparagraph if each applicable 5-year  
19 individual described in clause (ii) may elect  
20 to direct the plan to divest up to the appli-  
21 cable percentage of such securities in the  
22 individual’s account and to reinvest an  
23 equivalent amount in other investment op-  
24 tions which meet the requirements of sub-  
25 paragraph (E).

1                   “(ii) APPLICABLE 5-YEAR INDIVIDUAL.—For purposes of clause (i), the  
 2                   VIDUAL.—For purposes of clause (i), the  
 3                   term ‘5-year individual’ means any indi-  
 4                   vidual who would be an applicable indi-  
 5                   vidual if only participants in the plan who  
 6                   have completed at least 5 years of service  
 7                   (as determined under section 411(a)) were  
 8                   taken into account under subparagraph  
 9                   (G)(i)(I).

10                  “(E) INVESTMENT OPTIONS.—The require-  
 11                  ments of this subparagraph are met if the plan  
 12                  offers not less than 3 investment options (not  
 13                  inconsistent with regulations prescribed by the  
 14                  Secretary) other than employer securities.

15                  “(F) ELECTION.—Elections under this  
 16                  paragraph maybe made not less frequently than  
 17                  quarterly.

18                  “(G) OTHER DEFINITIONS AND RULES.—  
 19                  For purposes of this paragraph—

20                         “(i) APPLICABLE INDIVIDUAL.—The  
 21                         term ‘applicable individual’ means—

22                                 “(I) any participant in the plan,

23                                 “(II) any beneficiary who is an  
 24                                 alternate payee (within the meaning  
 25                                 of section 414(p)(8)) under an appli-

1 cable qualified domestic relations  
 2 order (within the meaning of section  
 3 414(p)(1)(A)), and

4 “(III) any beneficiary of a de-  
 5 ceased participant or alternate payee.

6 “(ii) ELECTIVE DEFERRALS.—The  
 7 term ‘elective deferrals’ means an employer  
 8 contribution described in section  
 9 402(g)(3)(A).

10 “(iii) EMPLOYER SECURITIES.—The  
 11 term ‘employer securities’ shall have the  
 12 meaning given such term by section  
 13 407(d)(1) of the Employee Retirement In-  
 14 come Security Act of 1974.

15 “(iv) EMPLOYEE STOCK OWNERSHIP  
 16 PLAN.—The term ‘employee stock owner-  
 17 ship plan’ shall have the same meaning  
 18 given to such term by section 4975(e)(7).

19 “(v) APPLICABLE PERCENTAGE.—

20 “(I) IN GENERAL.—The applica-  
 21 ble percentage shall be as follows:

<b>“Plan years beginning in:</b>	<b>Applicable percentage:</b>
2004 .....	20
2005 .....	40
2006 .....	60
2007 .....	80
2008 or thereafter .....	100.

1                   “(II)     ELECTIVE     DEFERRALS  
2                   TREATED AS SEPARATE PLAN NOT IN-  
3                   DIVIDUAL   ACCOUNT   PLAN.—In the  
4                   case of elective deferrals and employee  
5                   contributions (and any earnings allo-  
6                   cable thereto) held within a plan  
7                   treated as a separate plan as of the  
8                   date of the enactment of this para-  
9                   graph under section 407(b)(2) of the  
10                  Employee Retirement Income Security  
11                  Act of 1974, for purposes of subpara-  
12                  graph (B) the applicable percentage  
13                  shall be 100 percent.

14               “(III)    CONTRIBUTIONS   HELD  
15               WITHIN AN ESOP.—In the case of con-  
16               tributions (other than elective defer-  
17               rals and employee contributions) held  
18               within an employee stock ownership  
19               plan, in the case of years 2004 and  
20               2005, the applicable percentage shall  
21               be the greater of the amount deter-  
22               mined under subclause (I) or the per-  
23               centage determined under paragraph  
24               (28) (determined as if paragraph (28)

1 applied to a plan described in this  
2 paragraph).

3 “(vi) COORDINATION WITH PARA-  
4 GRAPH (28).—Subparagraphs (B), (C), and  
5 (D) shall apply to the extent that the  
6 amount attributable to the applicable per-  
7 centage under such subparagraph exceeds  
8 the amount to which a prior election under  
9 such subparagraph or paragraph (28) ap-  
10 plies.

11 “(H) EXCEPTION FOR CERTAIN ESOPS.—  
12 This paragraph shall apply to an employee  
13 stock ownership plan only if the plan holds  
14 amounts attributable to deferrals or contribu-  
15 tions to which subparagraph (B) or (C) apply.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 401(a)(28) is amended by adding at  
18 the end the following new subparagraph:

19 “(D) APPLICATION.—This paragraph shall  
20 not apply to a plan to which paragraph (35) ap-  
21 plies.”.

22 (2) Section 409(h)(7) is amended by inserting  
23 before the period at the end “or subparagraph (B),  
24 (C), or (D) of section 401(a)(35)”.

1           (3) Section 4980(c)(3)(A) is amended by strik-  
 2           ing “if—” and all that follows and inserting “if the  
 3           requirements of subparagraphs (B), (C), and (D)  
 4           are met.”.

5           (c) EFFECTIVE DATE.—

6           (1) IN GENERAL.—Except as provided in para-  
 7           graph (2), the amendments made by this section  
 8           shall apply to plan years beginning after December  
 9           31, 2003.

10          (2) EXCEPTION.—The amendments made by  
 11          this section shall not apply to employer securities  
 12          held by an employee stock ownership plan which are  
 13          not subject to section 401(a)(28) of the Internal  
 14          Revenue Code of 1986 by reason of section  
 15          1175(a)(2) of the Tax Reform Act of 1986 (100  
 16          Stat. 2519).

17       **SEC. 1104. TREATMENT OF QUALIFIED RETIREMENT PLAN-**  
 18                               **NING SERVICES.**

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

22               “(4) NO CONSTRUCTIVE RECEIPT.—No amount  
 23          shall be included in the gross income of any em-  
 24          ployee solely because the employee may choose be-  
 25          tween any qualified retirement planning services pro-

1 vided by a qualified investment advisor and com-  
2 pensation which would otherwise be includible in the  
3 gross income of such employee. The preceding sen-  
4 tence shall apply to highly compensated employees  
5 only if the choice described in such sentence is avail-  
6 able on substantially the same terms to each mem-  
7 ber of the group of employees normally provided  
8 education and information regarding the employer's  
9 qualified employer plan."

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 403(b)(3)(B) is amended by insert-  
12 ing "132(m)(4)," after "132(f)(4),".

13 (2) Section 414(s)(2) is amended by inserting  
14 "132(m)(4)," after "132(f)(4),".

15 (3) Section 415(c)(3)(D)(ii) is amended by in-  
16 serting "132(m)(4)," after "132(f)(4),".

17 (c) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply to taxable years beginning after  
19 December 31, 2003.

20 **SEC. 1105. SPECIAL RULES.**

21 In the case of a plan maintained pursuant to 1 or  
22 more collective bargaining agreements between employee  
23 representatives and 1 or more employers ratified on or be-  
24 fore the date of the enactment of this Act, the amend-



1 ments made by this title shall not apply to plan years be-  
 2 ginning before the earlier of—

3 (1) the later of—

4 (A) January 1, 2005, or

5 (B) the date on which the last of such col-  
 6 lective bargaining agreements terminates (de-  
 7 termined without regard to any extension there-  
 8 of after the date of the enactment of this Act),  
 9 or

10 (2) January 1, 2006.

11 **TITLE XII—OTHER TAX PROVI-**  
 12 **SIONS RELATING TO PEN-**  
 13 **SIONS**

14 **SEC. 1201. AMENDMENTS TO RETIREMENT PROTECTION**  
 15 **ACT OF 1994.**

16 (a) **TRANSITION RULE MADE PERMANENT.**—Para-  
 17 graph (1) of section 769(c) of the Retirement Protection  
 18 Act of 1994 is amended—

19 (1) by striking “transition” each place it ap-  
 20 pears in the heading and the text, and

21 (2) by striking “for any plan year beginning  
 22 after 1996 and before 2010”.

23 (b) **SPECIAL RULES.**—Paragraph (2) of section  
 24 769(c) of the Retirement Protection Act of 1994 is amend-  
 25 ed to read as follows:

1           “(2) SPECIAL RULES.—The rules described in  
2       this paragraph are as follows:

3           “(A) For purposes of section 412(l)(9)(A)  
4       of the Internal Revenue Code of 1986 and sec-  
5       tion 302(d)(9)(A) of the Employee Retirement  
6       Income Security Act of 1974, the funded cur-  
7       rent liability percentage for any plan year shall  
8       be treated as not less than 90 percent.

9           “(B) For purposes of section 412(m) of  
10       the Internal Revenue Code of 1986 and section  
11       302(e) of the Employee Retirement Income Se-  
12       curity Act of 1974, the funded current liability  
13       percentage for any plan year shall be treated as  
14       not less than 100 percent.

15          “(C) For purposes of determining un-  
16       funded vested benefits under section  
17       4006(a)(3)(E)(iii) of the Employee Retirement  
18       Income Security Act of 1974, the mortality  
19       table shall be the mortality table used by the  
20       plan.”.

21       (c) EFFECTIVE DATE.—The amendments made by  
22       this section shall apply to plan years beginning after De-  
23       cember 31, 2002.

1 **SEC. 1202. REPORTING SIMPLIFICATION.**

2 (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
3 OWNERS AND THEIR SPOUSES.—

4 (1) IN GENERAL.—The Secretary of the Treas-  
5 ury and the Secretary of Labor shall modify the re-  
6 quirements for filing annual returns with respect to  
7 one-participant retirement plans to ensure that such  
8 plans with assets of \$250,000 or less as of the close  
9 of the plan year need not file a return for that year.

10 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
11 FINED.—For purposes of this subsection, the term  
12 “one-participant retirement plan” means a retire-  
13 ment plan that—

14 (A) on the first day of the plan year—

15 (i) covered only the employer (and the  
16 employer’s spouse) and the employer  
17 owned the entire business (whether or not  
18 incorporated); or

19 (ii) covered only one or more partners  
20 (and their spouses) in a business partner-  
21 ship (including partners in an S or C cor-  
22 poration);

23 (B) meets the minimum coverage require-  
24 ments of section 410(b) of the Internal Revenue  
25 Code of 1986 without being combined with any

1 other plan of the business that covers the em-  
2 ployees of the business;

3 (C) does not provide benefits to anyone ex-  
4 cept the employer (and the employer's spouse)  
5 or the partners (and their spouses);

6 (D) does not cover a business that is a  
7 member of an affiliated service group, a con-  
8 trolled group of corporations, or a group of  
9 businesses under common control; and

10 (E) does not cover a business that leases  
11 employees.

12 (3) OTHER DEFINITIONS.—Terms used in para-  
13 graph (2) which are also used in section 414 of the  
14 Internal Revenue Code of 1986 shall have the re-  
15 spective meanings given such terms by such section.

16 (4) EFFECTIVE DATE.—The provisions of this  
17 subsection shall apply to plan years beginning on or  
18 after January 1, 2003.

19 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
20 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case  
21 of plan years beginning after December 31, 2004, the Sec-  
22 retary of the Treasury and the Secretary of Labor shall  
23 provide for the filing of a simplified annual return for any  
24 retirement plan which covers less than 25 employees on  
25 the first day of a plan year and which meets the require-

1 ments described in subparagraphs (B), (D), and (E) of  
2 subsection (a)(2).

3 **SEC. 1203. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**  
4 **ANCE RESOLUTION SYSTEM.**

5 The Secretary of the Treasury shall continue to up-  
6 date and improve the Employee Plans Compliance Resolu-  
7 tion System (or any successor program) giving special at-  
8 tention to—

9 (1) increasing the awareness and knowledge of  
10 small employers concerning the availability and use  
11 of the program;

12 (2) taking into account special concerns and  
13 circumstances that small employers face with respect  
14 to compliance and correction of compliance failures;

15 (3) extending the duration of the self-correction  
16 period under the Self-Correction Program for signifi-  
17 cant compliance failures;

18 (4) expanding the availability to correct insig-  
19 nificant compliance failures under the Self-Correc-  
20 tion Program during audit; and

21 (5) assuring that any tax, penalty, or sanction  
22 that is imposed by reason of a compliance failure is  
23 not excessive and bears a reasonable relationship to  
24 the nature, extent, and severity of the failure.

1 The Secretary of the Treasury shall have full authority  
 2 to effectuate the foregoing with respect to the Employee  
 3 Plans Compliance Resolution System (or any successor  
 4 program) and any other employee plans correction poli-  
 5 cies, including the authority to waive income, excise, or  
 6 other taxes to ensure that any tax, penalty, or sanction  
 7 is not excessive and bears a reasonable relationship to the  
 8 nature, extent, and severity of the failure.

9 **SEC. 1204. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
 10 **MORATORIUM ON APPLICATION OF CERTAIN**  
 11 **NONDISCRIMINATION RULES APPLICABLE TO**  
 12 **STATE AND LOCAL PLANS.**

13 (a) IN GENERAL.—

14 (1) Subparagraph (G) of section 401(a)(5) and  
 15 subparagraph (H) of section 401(a)(26) are each  
 16 amended by striking “section 414(d))” and all that  
 17 follows and inserting “section 414(d)).”.

18 (2) Subparagraph (G) of section 401(k)(3) and  
 19 paragraph (2) of section 1505(d) of the Taxpayer  
 20 Relief Act of 1997 are each amended by striking  
 21 “maintained by a State or local government or polit-  
 22 ical subdivision thereof (or agency or instrumentality  
 23 thereof)”.

24 (b) CONFORMING AMENDMENTS.—

(2) The heading for subparagraph (H) of section 401(a)(26) is amended to read as follows: “EXCEPTION FOR GOVERNMENTAL PLANS.—”.

(3) Subparagraph (G) of section 401(k)(3) is amended by inserting “GOVERNMENTAL PLANS.—” after “(G)”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2003.

13 **SEC. 1205. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
14 **TRIBUTIONS.**

15 (a) EXPANSION OF PERIOD.—

16 (1) AMENDMENT OF INTERNAL REVENUE  
17 CODE.—

(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) is amended by striking “90-day” and inserting “180-day”.

21 (B) MODIFICATION OF REGULATIONS.—

22 The Secretary of the Treasury shall modify the  
23 regulations under sections 402(f), 411(a)(11),  
24 and 417 of the Internal Revenue Code of 1986  
25 to substitute “180 days” for “90 days” each

1 place it appears in Treasury Regulations sec-  
 2 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–  
 3 1(b).

4 (2) EFFECTIVE DATE.—The amendment made  
 5 by paragraph (1)(A) and the modifications required  
 6 by paragraph (1)(B) shall apply to years beginning  
 7 after December 31, 2003.

8 (b) CONSENT REGULATION INAPPLICABLE TO CER-  
 9 TAIN DISTRIBUTIONS.—

10 (1) IN GENERAL.—The Secretary of the Treas-  
 11 ury shall modify the regulations under section  
 12 411(a)(11) of the Internal Revenue Code of 1986 to  
 13 provide that the description of a participant’s right,  
 14 if any, to defer receipt of a distribution shall also de-  
 15 scribe the consequences of failing to defer such re-  
 16 ceipt.

17 (2) EFFECTIVE DATE.—

18 (A) IN GENERAL.—The modifications re-  
 19 quired by paragraph (1) shall apply to years be-  
 20 ginning after December 31, 2003.

21 (B) REASONABLE NOTICE.—In the case of  
 22 any description of such consequences made be-  
 23 fore the date that is 90 days after the date on  
 24 which the Secretary of the Treasury issues a  
 25 safe harbor description under paragraph (1), a



1 plan shall not be treated as failing to satisfy the  
 2 requirements of section 411(a)(11) of such  
 3 Code by reason of the failure to provide the in-  
 4 formation required by the modifications made  
 5 under paragraph (1) if the Administrator of  
 6 such plan makes a reasonable attempt to com-  
 7 ply with such requirements.

8 **SEC. 1206. REDUCED PBGC PREMIUM FOR NEW PLANS OF**  
 9 **SMALL EMPLOYERS.**

10 (a) IN GENERAL.—Subparagraph (A) of section  
 11 4006(a)(3) of the Employee Retirement Income Security  
 12 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

13 (1) in clause (i), by inserting “other than a new  
 14 single-employer plan (as defined in subparagraph  
 15 (F)) maintained by a small employer (as so de-  
 16 fined),” after “single-employer plan,”

17 (2) in clause (iii), by striking the period at the  
 18 end and inserting “, and”, and

19 (3) by adding at the end the following new  
 20 clause:

21 “(iv) in the case of a new single-employer plan  
 22 (as defined in subparagraph (F)) maintained by a  
 23 small employer (as so defined) for the plan year, \$5  
 24 for each individual who is a participant in such plan  
 25 during the plan year.”.

1       (b)    DEFINITION   OF   NEW   SINGLE-EMPLOYER  
2   PLAN.—Section 4006(a)(3) of the Employee Retirement  
3   Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is  
4   amended by adding at the end the following new subpara-  
5   graph:

6       “(F)(i) For purposes of this paragraph, a single-em-  
7   ployer plan maintained by a contributing sponsor shall be  
8   treated as a new single-employer plan for each of its first  
9   5 plan years if, during the 36-month period ending on the  
10   date of the adoption of such plan, the sponsor or any  
11   member of such sponsor’s controlled group (or any prede-  
12   cessor of either) did not establish or maintain a plan to  
13   which this title applies with respect to which benefits were  
14   accrued for substantially the same employees as are in the  
15   new single-employer plan.

16       “(ii)(I) For purposes of this paragraph, the term  
17   ‘small employer’ means an employer which on the first day  
18   of any plan year has, in aggregation with all members of  
19   the controlled group of such employer, 100 or fewer em-  
20   ployees.

21       “(II) In the case of a plan maintained by two or more  
22   contributing sponsors that are not part of the same con-  
23   trolled group, the employees of all contributing sponsors  
24   and controlled groups of such sponsors shall be aggregated

1 for purposes of determining whether any contributing  
 2 sponsor is a small employer.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to plans established after Decem-  
 5 ber 31, 2002.

6 **SEC. 1207. REDUCTION OF ADDITIONAL PBGC PREMIUM**  
 7 **FOR NEW AND SMALL PLANS.**

8 (a) NEW PLANS.—Subparagraph (E) of section  
 9 4006(a)(3) of the Employee Retirement Income Security  
 10 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by  
 11 adding at the end the following new clause:

12 “(v) In the case of a new defined benefit plan, the  
 13 amount determined under clause (ii) for any plan year  
 14 shall be an amount equal to the product of the amount  
 15 determined under clause (ii) and the applicable percent-  
 16 age. For purposes of this clause, the term ‘applicable per-  
 17 centage’ means—

18 “(I) 0 percent, for the first plan year.

19 “(II) 20 percent, for the second plan year.

20 “(III) 40 percent, for the third plan year.

21 “(IV) 60 percent, for the fourth plan year.

22 “(V) 80 percent, for the fifth plan year.

23 For purposes of this clause, a defined benefit plan (as de-  
 24 fined in section 3(35)) maintained by a contributing spon-  
 25 sor shall be treated as a new defined benefit plan for each

1 of its first 5 plan years if, during the 36-month period  
2 ending on the date of the adoption of the plan, the sponsor  
3 and each member of any controlled group including the  
4 sponsor (or any predecessor of either) did not establish  
5 or maintain a plan to which this title applies with respect  
6 to which benefits were accrued for substantially the same  
7 employees as are in the new plan.”.

8 (b) SMALL PLANS.—Paragraph (3) of section  
9 4006(a) of the Employee Retirement Income Security Act  
10 of 1974 (29 U.S.C. 1306(a)), as amended by section  
11 207(b), is amended—

12 (1) by striking “The” in subparagraph (E)(i)  
13 and inserting “Except as provided in subparagraph  
14 (G), the”, and

15 (2) by inserting after subparagraph (F) the fol-  
16 lowing new subparagraph:

17 “(G)(i) In the case of an employer who has 25 or  
18 fewer employees on the first day of the plan year, the addi-  
19 tional premium determined under subparagraph (E) for  
20 each participant shall not exceed \$5 multiplied by the  
21 number of participants in the plan as of the close of the  
22 preceding plan year.

23 “(ii) For purposes of clause (i), whether an employer  
24 has 25 or fewer employees on the first day of the plan  
25 year is determined taking into consideration all of the em-

1 ployees of all members of the contributing sponsor’s con-  
 2 trolled group. In the case of a plan maintained by two  
 3 or more contributing sponsors, the employees of all con-  
 4 tributing sponsors and their controlled groups shall be ag-  
 5 gregated for purposes of determining whether the 25-or-  
 6 fewer-employees limitation has been satisfied.”.

7 (c) EFFECTIVE DATES.—

8 (1) SUBSECTION (a).—The amendments made  
 9 by subsection (a) shall apply to plans established  
 10 after December 31, 2002.

11 (2) SUBSECTION (b).—The amendments made  
 12 by subsection (b) shall apply to plan years beginning  
 13 after December 31, 2003.

14 **SEC. 1208. AUTHORIZATION FOR PBGC TO PAY INTEREST**  
 15 **ON PREMIUM OVERPAYMENT REFUNDS.**

16 (a) IN GENERAL.—Section 4007(b) of the Employ-  
 17 ment Retirement Income Security Act of 1974 (29 U.S.C.  
 18 1307(b)) is amended—

19 (1) by striking “(b)” and inserting “(b)(1)”,  
 20 and

21 (2) by inserting at the end the following new  
 22 paragraph:

23 “(2) The corporation is authorized to pay, subject to  
 24 regulations prescribed by the corporation, interest on the  
 25 amount of any overpayment of premium refunded to a des-

1   ignated payor. Interest under this paragraph shall be cal-  
2   culated at the same rate and in the same manner as inter-  
3   est is calculated for underpayments under paragraph  
4   (1).”.

5       (b) EFFECTIVE DATE.—The amendment made by  
6   subsection (a) shall apply to interest accruing for periods  
7   beginning not earlier than the date of the enactment of  
8   this Act.

9   **SEC. 1209. SUBSTANTIAL OWNER BENEFITS IN TERMI-**  
10                   **NATED PLANS.**

11       (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—  
12   Section 4022(b)(5) of the Employee Retirement Income  
13   Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended  
14   to read as follows:

15       “(5)(A) For purposes of this paragraph, the term  
16   ‘majority owner’ means an individual who, at any time  
17   during the 60-month period ending on the date the deter-  
18   mination is being made—

19               “(i) owns the entire interest in an unincor-  
20       porated trade or business,

21               “(ii) in the case of a partnership, is a partner  
22       who owns, directly or indirectly, 50 percent or more  
23       of either the capital interest or the profits interest  
24       in such partnership, or

1           “(iii) in the case of a corporation, owns, directly  
2           or indirectly, 50 percent or more in value of either  
3           the voting stock of that corporation or all the stock  
4           of that corporation.

5 For purposes of clause (iii), the constructive ownership  
6 rules of section 1563(e) of the Internal Revenue Code of  
7 1986 shall apply (determined without regard to section  
8 1563(e)(3)(C)).

9           “(B) In the case of a participant who is a majority  
10 owner, the amount of benefits guaranteed under this sec-  
11 tion shall equal the product of—

12           “(i) a fraction (not to exceed 1) the numerator  
13           of which is the number of years from the later of the  
14           effective date or the adoption date of the plan to the  
15           termination date, and the denominator of which is  
16           10, and

17           “(ii) the amount of benefits that would be guar-  
18           anteed under this section if the participant were not  
19           a majority owner.”.

20 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

21           (1) Section 4044(a)(4)(B) of the Employee Re-  
22           tirement Income Security Act of 1974 (29 U.S.C.  
23           1344(a)(4)(B)) is amended by striking “section  
24           4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

1           (2) Section 4044(b) of such Act (29 U.S.C.  
2   1344(b)) is amended—

3           (A) by striking “(5)” in paragraph (2) and  
4           inserting “(4), (5),” and

5           (B) by redesignating paragraphs (3)  
6           through (6) as paragraphs (4) through (7), re-  
7           spectively, and by inserting after paragraph (2)  
8           the following new paragraph:

9           “(3) If assets available for allocation under  
10          paragraph (4) of subsection (a) are insufficient to  
11          satisfy in full the benefits of all individuals who are  
12          described in that paragraph, the assets shall be allo-  
13          cated first to benefits described in subparagraph (A)  
14          of that paragraph. Any remaining assets shall then  
15          be allocated to benefits described in subparagraph  
16          (B) of that paragraph. If assets allocated to such  
17          subparagraph (B) are insufficient to satisfy in full  
18          the benefits described in that subparagraph, the as-  
19          sets shall be allocated pro rata among individuals on  
20          the basis of the present value (as of the termination  
21          date) of their respective benefits described in that  
22          subparagraph.”.

23          (c) CONFORMING AMENDMENTS.—



1           (1) Section 4021 of the Employee Retirement  
2       Income Security Act of 1974 (29 U.S.C. 1321) is  
3       amended—

4                   (A) in subsection (b)(9), by striking “as  
5       defined in section 4022(b)(6)”, and

6                   (B) by adding at the end the following new  
7       subsection:

8       “(d) For purposes of subsection (b)(9), the term ‘sub-  
9       stantial owner’ means an individual who, at any time dur-  
10      ing the 60-month period ending on the date the determina-  
11      tion is being made—

12                   “(1) owns the entire interest in an unincor-  
13      porated trade or business,

14                   “(2) in the case of a partnership, is a partner  
15      who owns, directly or indirectly, more than 10 per-  
16      cent of either the capital interest or the profits inter-  
17      est in such partnership, or

18                   “(3) in the case of a corporation, owns, directly  
19      or indirectly, more than 10 percent in value of either  
20      the voting stock of that corporation or all the stock  
21      of that corporation.

22      For purposes of paragraph (3), the constructive ownership  
23      rules of section 1563(e) of the Internal Revenue Code of  
24      1986 shall apply (determined without regard to section  
25      1563(e)(3)(C)).”.

1           (2) Section 4043(c)(7) of such Act (29 U.S.C.  
2   1343(c)(7)) is amended by striking “section  
3   4022(b)(6)” and inserting “section 4021(d)”.

4           (d) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as provided in para-  
6   graph (2), the amendments made by this section  
7   shall apply to plan terminations—

8           (A) under section 4041(c) of the Employee  
9   Retirement Income Security Act of 1974 (29  
10   U.S.C. 1341(c)) with respect to which notices  
11   of intent to terminate are provided under sec-  
12   tion 4041(a)(2) of such Act (29 U.S.C.  
13   1341(a)(2)) after December 31, 2002, and

14          (B) under section 4042 of such Act (29  
15   U.S.C. 1342) with respect to which proceedings  
16   are instituted by the corporation after such  
17   date.

18          (2) CONFORMING AMENDMENTS.—The amend-  
19   ments made by subsection (c) shall take effect on  
20   January 1, 2004.

21   **SEC. 1210. QUALIFIED GROUP LEGAL SERVICES PLANS.**

22          (a) IN GENERAL.—Subsection (e) of section 120 of  
23   the Internal Revenue Code of 1986 is amended to read  
24   as follows:

1       “(e) APPLICATION OF SECTION.—This section and  
2 section 501(c)(20) shall apply to taxable years begin-  
3 ning—

4               “(1) after December 31, 1976, and before July  
5       1, 1992, and

6               “(2) after December 31, 2003, and before Jan-  
7       uary 1, 2009.”.

8       (b) INCREASE IN MAXIMUM EXCLUSION.—The last  
9 sentence of section 120(a) of such Code is amended by  
10 striking “\$70” and inserting “\$150”.

11       (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to taxable years beginning after  
13 December 31, 2003.

14 **SEC. 1211. STUDIES.**

15       (a) MODEL SMALL EMPLOYER GROUP PLANS  
16 STUDY.—As soon as practicable after the date of the en-  
17 actment of this Act, the Secretary of Labor, in consulta-  
18 tion with the Secretary of the Treasury, shall conduct a  
19 study to determine—

20               (1) the most appropriate form or forms of—

21                       (A) employee pension benefit plans which  
22       would—

23                               (i) be simple in form and easily main-  
24       tained by multiple small employers, and

1                   (ii) provide for ready portability of  
2                   benefits for all participants and bene-  
3                   ficiaries,

4                   (B) alternative arrangements providing  
5                   comparable benefits which may be established  
6                   by employee or employer associations, and

7                   (C) alternative arrangements providing  
8                   comparable benefits to which employees may  
9                   contribute in a manner independent of employer  
10                  sponsorship, and

11                (2) appropriate methods and strategies for  
12                making pension plan coverage described in para-  
13                graph (1) more widely available to American work-  
14                ers.

15               (b) MATTERS TO BE CONSIDERED.—In conducting  
16               the study under subsection (a), the Secretary of Labor  
17               shall consider the adequacy and availability of existing em-  
18               ployee pension benefit plans and the extent to which exist-  
19               ing models may be modified to be more accessible to both  
20               employees and employers.

21               (c) REPORT.—Not later than 18 months after the  
22               date of the enactment of this Act, the Secretary of Labor  
23               shall report the results of the study under subsection (a),  
24               together with the Secretary's recommendations, to the  
25               Committee on Education and the Workforce and the Com-

1 mittee on Ways and Means of the House of Representa-  
 2 tives and the Committee on Health, Education, Labor,  
 3 and Pensions and the Committee on Finance of the Sen-  
 4 ate. Such recommendations shall include one or more  
 5 model plans described in subsection (a)(1)(A) and model  
 6 alternative arrangements described in subsections  
 7 (a)(1)(B) and (a)(1)(C) which may serve as the basis for  
 8 appropriate administrative or legislative action.

9 (d) STUDY ON EFFECT OF LEGISLATION.—Not later  
 10 than 5 years after the date of the enactment of this Act,  
 11 the Secretary of Labor shall submit to the Committee on  
 12 Education and the Workforce of the House of Representa-  
 13 tives and the Committee on Health, Education, Labor,  
 14 and Pensions of the Senate a report on the effect of the  
 15 provisions of this Act and title VI of the Economic Growth  
 16 and Tax Relief Reconciliation Act of 2001 on pension plan  
 17 coverage, including any change in—

- 18 (1) the extent of pension plan coverage for low
- 19 and middle-income workers,
- 20 (2) the levels of pension plan benefits generally,
- 21 (3) the quality of pension plan coverage gen-
- 22 erally,
- 23 (4) workers' access to and participation in pen-
- 24 sion plans, and
- 25 (5) retirement security.

# **TITLE XIII—STOCK OPTIONS**

## **SEC. 1301. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES.**

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) (relating to definition of wages) is amended by striking “or” at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting “; or”, and by inserting after paragraph (21) the following new paragraph:

“(22) remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

“(B) any disposition by the individual of such stock.”.

(B) Section 209(a) of the Social Security Act is amended by striking “or” at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting “; or”, and

1 by inserting after paragraph (18) the following  
2 new paragraph:

3 “(19) Remuneration on account of—

4 “(A) a transfer of a share of stock to any  
5 individual pursuant to an exercise of an incen-  
6 tive stock option (as defined in section 422(b)  
7 of the Internal Revenue Code of 1986) or under  
8 an employee stock purchase plan (as defined in  
9 section 423(b) of such Code), or

10 “(B) any disposition by the individual of  
11 such stock.”.

12 (2) RAILROAD RETIREMENT TAXES.—Sub-  
13 section (e) of section 3231 is amended by adding at  
14 the end the following new paragraph:

15 “(11) QUALIFIED STOCK OPTIONS.—The term  
16 ‘compensation’ shall not include any remuneration  
17 on account of—

18 “(A) a transfer of a share of stock to any  
19 individual pursuant to an exercise of an incen-  
20 tive stock option (as defined in section 422(b))  
21 or under an employee stock purchase plan (as  
22 defined in section 423(b)), or

23 “(B) any disposition by the individual of  
24 such stock.”.

1           (3) UNEMPLOYMENT TAXES.—Section 3306(b)  
2           (relating to definition of wages) is amended by strik-  
3           ing “or” at the end of paragraph (16), by striking  
4           the period at the end of paragraph (17) and insert-  
5           ing “; or”, and by inserting after paragraph (17) the  
6           following new paragraph:

7           “(18) remuneration on account of—

8           “(A) a transfer of a share of stock to any  
9           individual pursuant to an exercise of an incen-  
10          tive stock option (as defined in section 422(b))  
11          or under an employee stock purchase plan (as  
12          defined in section 423(b)), or

13          “(B) any disposition by the individual of  
14          such stock.”.

15          (b) WAGE WITHHOLDING NOT REQUIRED ON DIS-  
16          QUALIFYING DISPOSITIONS.—Section 421(b) (relating to  
17          effect of disqualifying dispositions) is amended by adding  
18          at the end the following new sentence: “No amount shall  
19          be required to be deducted and withheld under chapter  
20          24 with respect to any increase in income attributable to  
21          a disposition described in the preceding sentence.”.

22          (c) WAGE WITHHOLDING NOT REQUIRED ON COM-  
23          PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-  
24          CENT AND 100 PERCENT OF VALUE OF STOCK.—Section  
25          423(c) (relating to special rule where option price is be-



1 tween 85 percent and 100 percent of value of stock) is  
 2 amended by adding at the end the following new sentence:  
 3 “No amount shall be required to be deducted and withheld  
 4 under chapter 24 with respect to any amount treated as  
 5 compensation under this subsection.”.

6 (d) EFFECTIVE DATE.—The amendments made by  
 7 this section shall apply to stock acquired pursuant to op-  
 8 tions exercised after the date of the enactment of this Act.

## 9 **TITLE XIV—OTHER ELEMENTS** 10 **OF RETIREMENT SECURITY**

### 11 **SEC. 1401. EMPLOYEE PRE-TAX PAYMENTS FOR RETIREE** 12 **HEALTH.**

13 (a) IN GENERAL.—Section 106 (relating to contribu-  
 14 tions by employer to accident and health plans) is amend-  
 15 ed by adding at the end the following new subsection:

16 “(d) EMPLOYER-PROVIDED COVERAGE OF FORMER  
 17 EMPLOYEES.—

18 “(1) IN GENERAL.—Coverage under an accident  
 19 or health plan maintained by an employer which is  
 20 provided to a former employee of the employer shall  
 21 be treated as employer-provided coverage under an  
 22 accident or health plan for purposes of subsection  
 23 (a) to the extent such coverage is paid for by the  
 24 former employee pursuant to a qualified election. No  
 25 amount shall be included in the gross income of any

former employee solely because the former employee may make the choice described in paragraph (3).

“(2) APPLICABLE LIMITATION.—

“(A) IN GENERAL.—In the case of taxable years beginning before January 1, 2010, the amount of benefits under an eligible retirement plan (as defined in clauses (iii), (iv), (v), and (vi) of section 402(c)(8)(B)) of an employer which may be excluded from the gross income of an individual by reason of paragraph (1) shall not exceed the applicable limitation.

“(B) APPLICABLE LIMITATION.—For purposes of subparagraph (A), the applicable limitation shall be determined in accordance with the following table:

<b>“For taxable years beginning in:</b>	<b>The applicable limitation is:</b>
2004 and 2005 .....	\$500
2006 and 2007 .....	\$1,000
2008 and 2009 .....	\$2,000.

“(3) QUALIFIED ELECTION.—For purposes of paragraph (1), a qualified election is an election made by the former employee to have benefits otherwise payable to the former employee under an eligible retirement plan (as defined in clauses (iii), (iv), (v), and (vi) of section 402(c)(8)(B)) (or under an annuity contract distributed by such a plan) used to pay for coverage described in paragraph (1).

1           “(4) SPECIAL RULES.—For purposes of this  
2 subsection—

3           “(A) all eligible retirement plans of an em-  
4 ployer shall be treated as a single plan, and

5           “(B) with respect to an eligible retirement  
6 plan of an employer, a beneficiary or alternate  
7 payee (as defined in section 414(p)(8)) of a  
8 former employee shall be treated in the same  
9 manner as the former employee.

10          “(5) TREATMENT AS DISTRIBUTION.—For pur-  
11 poses of this title, any payment under this sub-  
12 section from an eligible retirement plan for coverage  
13 under an accident or health plan on behalf of a  
14 former employee shall be treated as a distribution  
15 from the eligible retirement plan to the former em-  
16 ployee, except to the extent that such treatment is  
17 inconsistent with this subsection. Such a payment  
18 shall be treated as a permissible distribution from  
19 the eligible retirement plan to the former employee  
20 to the same extent that a cash distribution to the  
21 former employee would be permissible.”.

22          (b) CONFORMING AMENDMENT.—The portion of sub-  
23 section (h) of section 401 that precedes section 401(h)(1)  
24 is amended by striking “but only if” and inserting “but

1 only if provided pursuant to a qualified election described  
2 in section 106(d) or if”.

3 (c) EFFECTIVE DATE.—The amendments made by  
4 this section shall apply to amounts paid for coverage under  
5 an accident health plan in years beginning after December  
6 31, 2003.

7 **SEC. 1402. ENCOURAGING EMPLOYERS TO MAINTAIN RE-**  
8 **TIREE HEALTH PLANS.**

9 (a) IN GENERAL.—The first sentence of subsection  
10 (h) of section 401 (relating to medical, etc., benefits for  
11 retired employees and their spouses and dependents) is  
12 amended by striking “pension or annuity plan” and insert-  
13 ing “pension, annuity, profit-sharing, or stock bonus  
14 plan”.

15 (b) PHASE-IN OF PERMISSIBLE CONTRIBUTIONS  
16 FROM PROFIT-SHARING AND STOCK BONUS PLANS.—  
17 Subsection (h) of section 401 (relating to medical, etc.,  
18 benefits for retired employees and their spouses and de-  
19 pendents) is amended by adding at the end the following  
20 new sentence: “For purposes of the preceding sentence,  
21 in the case of contributions to a profit-sharing or stock  
22 bonus plan for plan years before plan years beginning in  
23 2010, the ‘applicable percentage’ shall be substituted for  
24 ‘25 percent’, and the term ‘applicable percentage’ means  
25 5 percent for plan years beginning in 2004 and 2005, 10

1 percent for plan years beginning in 2006 and 2007, and  
 2 20 percent for plan years beginning in 2008 and 2009.”.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to years beginning after December  
 5 31, 2003.

## 6 **TITLE XV—REDUCING** 7 **REGULATORY BURDENS**

### 8 **SEC. 1501. PROVISIONS RELATING TO PLAN AMENDMENTS.**

9 (a) IN GENERAL.—If this section applies to any plan  
 10 or contract amendment—

11 (1) such plan or contract shall be treated as  
 12 being operated in accordance with the terms of the  
 13 plan during the period described in subsection

14 (b)(2)(A), and

15 (2) except as provided by the Secretary of the  
 16 Treasury, such plan shall not fail to meet the re-  
 17 quirements of section 411(d)(6) of the Internal Rev-  
 18 enue Code of 1986 and section 204(g) of the Em-  
 19 ployee Retirement Income Security Act of 1974 by  
 20 reason of such amendment.

21 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

22 (1) IN GENERAL.—This section shall apply to  
 23 any amendment to any plan or annuity contract  
 24 which is made—

1 (A) pursuant to any amendment made by  
2 this Act or title VI of the Economic Growth and  
3 Tax Relief Reconciliation Act of 2001, or pur-  
4 suant to any regulation issued by the Secretary  
5 of the Treasury or the Secretary of Labor  
6 under this Act or such title VI, and

7 (B) on or before the last day of the first  
8 plan year beginning on or after January 1,  
9 2006.

10 In the case of a governmental plan (as defined in  
11 section 414(d) of the Internal Revenue Code of  
12 1986), this paragraph shall be applied by sub-  
13 stituting “2008” for “2006”.

14 (2) CONDITIONS.—This section shall not apply  
15 to any amendment unless—

16 (A) during the period—

17 (i) beginning on the date the legisla-  
18 tive or regulatory amendment described in  
19 paragraph (1)(A) takes effect (or in the  
20 case of a plan or contract amendment not  
21 required by such legislative or regulatory  
22 amendment, the effective date specified by  
23 the plan), and

24 (ii) ending on the date described in  
25 paragraph (1)(B) (or, if earlier, the date

1                   the plan or contract amendment is adopt-  
2                   ed),  
3                   the plan or contract is operated as if such plan  
4                   or contract amendment were in effect; and  
5                   (B) such plan or contract amendment ap-  
6                   plies retroactively for such period.

7   **TITLE XVI—SOCIAL SECURITY**  
8       **AND MEDICARE HELD HARM-**  
9       **LESS**

10 **SEC. 1601. PROTECTION OF SOCIAL SECURITY AND MEDI-**  
11 **CARE.**

12       The amounts transferred to any trust fund under the  
13 Social Security Act shall be determined as if this Act had  
14 not been enacted.

○