

104TH CONGRESS
2D SESSION

S. 1821

To amend the Internal Revenue Code of 1986 to provide for retirement savings and security.

IN THE SENATE OF THE UNITED STATES

MAY 23, 1996

Mr. DASCHLE (by request) (for himself, Mr. BRYAN, Mr. DODD, Mr. KENNEDY, Mr. LEAHY, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. ROCKEFELLER, and Mr. SIMON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide for retirement savings and security.

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

3 **TITLE I—SHORT TITLE; TABLE**
4 **OF CONTENTS**

5 **SEC. 100. SHORT TITLE; TABLE OF CONTENTS.**

6 (a) SHORT TITLE.—This Act may be cited as the
7 “Retirement Savings and Security Act”.

8 (b) TABLE OF CONTENTS.—

TITLE I—SHORT TITLE; TABLE OF CONTENTS

Sec. 100. Short title; table of contents.

TITLE II—REVENUE PROVISIONS

Sec. 1100. Amendment of 1986 Code.

Subtitle A—Expanded Pension Coverage and Simplification

CHAPTER 1—THE NEST AND OTHER COVERAGE EXPANSION

- Sec. 1101. Establishment of national employee savings trusts for employees of small employers.
- Sec. 1102. Tax-exempt organizations eligible under section 401(k).
- Sec. 1103. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.
- Sec. 1104. Repeal of family aggregation.
- Sec. 1105. Definition of highly compensated employees.
- Sec. 1106. Repeal of limitation in case of defined benefit plan and defined contribution plan for same employee.
- Sec. 1107. Contributions on behalf of disabled employees.
- Sec. 1108. Plans covering self-employed individuals.
- Sec. 1109. Trust requirement for deferred compensation plans of State and local governments.

CHAPTER 2—SIMPLIFICATION AND COST SAVINGS

- Sec. 1201. Treatment of governmental and multiemployer plans under section 415 and treatment of excess benefit plans.
- Sec. 1202. Definition of compensation for section 415 purposes.
- Sec. 1203. Assumptions for adjusting certain benefits of defined benefit plans for early retirees.
- Sec. 1204. Treatment of deferred compensation plans of State and local governments and tax-exempt organizations.
- Sec. 1205. No required distributions for active employees.
- Sec. 1206. Simplified method for taxing annuity distributions under certain employer plans.
- Sec. 1207. Repeal of 5-year income averaging for lump-sum distributions.
- Sec. 1208. Elimination of half-year requirements.
- Sec. 1209. Distributions under rural cooperative plans.
- Sec. 1210. Modification of additional participation requirements.
- Sec. 1211. Uniform retirement age.
- Sec. 1212. Treatment of leased employees.
- Sec. 1213. Full funding limitation for multiemployer plans.
- Sec. 1214. Elimination of partial termination rules for multiemployer plans.
- Sec. 1215. Elective deferrals under section 403(b).
- Sec. 1216. Uniform penalty provisions to apply to certain pension reporting requirements.
- Sec. 1217. Tax on prohibited transactions.
- Sec. 1218. Date for adoption of plan amendments.

Subtitle B—Expanded Individual Retirement Accounts to Increase Coverage and Portability

CHAPTER 1—RETIREMENT SAVINGS INCENTIVES

SUBCHAPTER A—IRA DEDUCTION

- Sec. 1301. Increase in income limitations.

- Sec. 1302. Inflation adjustment for deductible amount and income limitations.
 Sec. 1303. Coordination of IRA deduction limit with elective deferral limit.

SUBCHAPTER B—NONDEDUCTIBLE TAX-FREE IRAS

- Sec. 1311. Establishment of nondeductible tax-free individual retirement accounts.

CHAPTER 2—DISTRIBUTIONS AND INVESTMENTS

- Sec. 1321. Distributions from IRAs may be used without additional tax to purchase first homes, to pay higher education or financially devastating medical expenses, or by the unemployed.
 Sec. 1322. Contributions must be held at least 5 years in certain cases.
 Sec. 1323. Investments in qualified State prepaid tuition programs.

CHAPTER 3—TERMINATION OF CERTAIN PROVISIONS

- Sec. 1331. Termination of certain provisions

Subtitle C—Other Expansions of Pension Portability

- Sec. 1401. Alternative nondiscrimination rules for certain plans that provide for early participation.
 Sec. 1402. Treatment of certain veterans' reemployment rights.
 Sec. 1403. Elimination of special vesting rule for multiemployer plans.

Subtitle D—Conforming Amendments

- Sec. 1501. Conforming amendment relating to missing participants.
 Sec. 1502. Conforming amendments relating to ERISA enforcement.

1 **TITLE II—REVENUE PROVISIONS**

2 **SEC. 1100. AMENDMENT OF 1986 CODE.**

3 Except as otherwise expressly provided, whenever in
 4 this title an amendment or repeal is expressed in terms
 5 of an amendment to, or repeal of, a section or other provi-
 6 sion, the reference shall be considered to be made to a
 7 section or other provision of the Internal Revenue Code
 8 of 1986.

1 **Subtitle A—Expanded Pension**
 2 **Coverage and Simplification**
 3 **CHAPTER 1—THE NEST AND OTHER**
 4 **COVERAGE EXPANSION**

5 **SEC. 1101. ESTABLISHMENT OF NATIONAL EMPLOYEE SAV-**
 6 **INGS TRUSTS FOR EMPLOYEES OF SMALL EM-**
 7 **PLOYERS.**

8 (a) IN GENERAL.—Section 408 (relating to individual
 9 retirement accounts) is amended by redesignating sub-
 10 section (p) as subsection (q) and by inserting after sub-
 11 section (o) the following new subsection:

12 “(p) NESTs.—

13 “(1) IN GENERAL.—For purposes of this title,
 14 the term ‘NEST’ means an individual retirement ac-
 15 count or annuity established under a written plan of
 16 an eligible employer—

17 “(A) which meets the requirements of
 18 paragraphs (4), (5), (6), (7), and (8), and

19 “(B) under which contributions are made
 20 to NESTs solely in accordance with a qualified
 21 formula.

22 “(2) QUALIFIED FORMULA.—For purposes of
 23 this subsection—

1 “(A) IN GENERAL.—The term ‘qualified
2 formula’ means a contribution formula which
3 meets the requirements for—

4 “(i) a 3-percent formula under sub-
5 paragraph (B), or

6 “(ii) a matching-contribution formula
7 under subparagraph (C).

8 “(B) 3-PERCENT FORMULA.—

9 “(i) NONELECTIVE CONTRIBUTIONS.—The requirements of the 3-percent
10 formula are met if, pursuant to the terms
11 of the plan, the employer makes nonelec-
12 tive contributions of 3 percent of com-
13 pensation for each eligible employee who
14 has at least \$5,000 of compensation from
15 the employer for the year.

16 “(ii) ELECTIVE CONTRIBUTIONS.—A
17 plan shall not fail to meet the require-
18 ments of this subparagraph merely be-
19 cause, pursuant to the terms of the plan,
20 an eligible employee may elect to have the
21 employer make payments—

22 “(I) as elective contributions to
23 the NEST on behalf of the employee,
24 or
25

1 “(II) to the employee directly in
2 cash.

3 “(C) MATCHING-CONTRIBUTION FOR-
4 MULA.—The requirements of the matching-con-
5 tribution formula are met if, pursuant to the
6 terms of the plan—

7 “(i) the employer makes nonelective
8 contributions of 1 percent of compensation
9 for each eligible employee who has at least
10 \$5,000 of compensation from the employer
11 for the year,

12 “(ii) an eligible employee may elect to
13 have the employer make payments—

14 “(I) as elective contributions to
15 the NEST on behalf of the employee,
16 or

17 “(II) to the employee directly in
18 cash, and

19 “(iii) the employer makes matching
20 contributions on behalf of each eligible em-
21 ployee in an amount equal to—

22 “(I) 100 percent of the elective
23 contributions of the employee to the
24 extent such elective contributions do

1 not exceed 3 percent of the employee's
2 compensation, and

3 “(II) a uniform percentage
4 (which is at least 50 percent but not
5 more than 100 percent) of the elective
6 contributions of the employee to the
7 extent that such elective contributions
8 exceed 3 percent but do not exceed 5
9 percent of the employee's compensa-
10 tion.

11 “(D) DISCRETIONARY CONTRIBUTIONS.—A
12 plan shall not be treated as failing to meet the
13 requirements of this paragraph merely because,
14 pursuant to the terms of the plan, an employer
15 makes nonelective contributions under subpara-
16 graph (B)(i) or (C)(i) in excess of 3 percent or
17 1 percent of compensation, respectively, but
18 only if all such contributions bear a uniform re-
19 lationship to the compensation of each eligible
20 employee and do not exceed 5 percent of com-
21 pensation for any eligible employee.

22 “(E) LIMITATION ON ELECTIVE CONTRIBU-
23 TIONS.—Elective contributions to a NEST
24 under subparagraph (B)(ii) or (C)(ii) shall not
25 be treated as made pursuant to a qualified for-

1 mula if such contributions on behalf of any em-
2 ployee for a year exceed the greater of \$5,000
3 or one-half of the limitation applicable for the
4 year to elective deferrals under section 402(g).

5 “(F) COMPENSATION LIMIT.—Contribu-
6 tions to a NEST shall not be treated as made
7 pursuant to a qualified formula if the annual
8 compensation taken into account for any em-
9 ployee under the formula exceeds the limitation
10 imposed by section 401(a)(17).

11 “(G) LOWER COMPENSATION THRESHOLD
12 PERMITTED.—A plan shall not be treated as
13 failing to meet the requirements of this para-
14 graph merely because, pursuant to the terms of
15 the plan, an employer makes nonelective con-
16 tributions under subparagraph (B)(i) or (C)(i)
17 to each eligible employee who has compensation
18 from the employer for the year in excess of a
19 uniform compensation threshold which is less
20 than \$5,000.

21 “(H) For purposes of this paragraph—

22 “(i) IN GENERAL.—The term ‘com-
23 pensation’ has the meaning given such
24 term by section 414(q)(3).

1 “(ii) SELF-EMPLOYED INDIVID-
2 UALS.—Notwithstanding clause (i), in the
3 case of an employee within the meaning of
4 section 401(c)(1), compensation under sec-
5 tion 414(q)(3) shall be determined without
6 regard to paragraph (2)(A) (v) and (vi) of
7 section 401(c).

8 “(3) DEFINITIONS.—For purposes of this sub-
9 section—

10 “(A) ELIGIBLE EMPLOYER.—

11 “(i) IN GENERAL.—The term ‘eligible
12 employer’ means, with respect to any year,
13 an employer which had no more than 100
14 employees who received at least \$5,000 of
15 compensation from the employer for the
16 preceding year.

17 “(ii) 2-YEAR GRACE PERIOD.—An eli-
18 gible employer who establishes and main-
19 tains a plan under this subsection for 1 or
20 more years and who fails to be an eligible
21 employer for any subsequent year shall be
22 treated as an eligible employer for the 2
23 years following the last year the employer
24 was an eligible employer. If such failure is
25 due to any acquisition, disposition, or simi-

1 lar transaction involving an eligible em-
2 ployer, the preceding sentence shall apply
3 only in accordance with rules similar to the
4 rules of section 410(b)(6)(C)(i).

5 “(B) EMPLOYEE.—The term ‘employee’ in-
6 cludes an employee as defined in section
7 401(c)(1).

8 “(C) ELIGIBLE EMPLOYEE.—

9 “(i) IN GENERAL.—The term ‘eligible
10 employee’ means, with respect to any year,
11 any employee who, prior to such year—

12 “(I) completed 2 consecutive
13 years of service with the employer,
14 and

15 “(II) attained 21 years of age.

16 A plan may provide a uniform shorter pe-
17 riod of service or lower age to apply in lieu
18 of those under the preceding sentence.

19 “(ii) EXCLUDABLE EMPLOYEES.—An
20 employer may elect not to treat employees
21 described in section 410(b)(3) as eligible
22 employees.

23 “(iii) YEAR OF SERVICE.—For pur-
24 poses of this paragraph, an employee shall
25 be treated as completing a year of service

1 for each year for which the employee re-
2 ceives at least \$5,000 of compensation
3 from the employer.

4 “(D) COMPENSATION.—For purposes of
5 this paragraph, the term ‘compensation’ means
6 wages within the meaning of section 3401(a)
7 and all other payments of compensation to an
8 employee by the employer with respect to which
9 the employer is required to furnish the em-
10 ployee a written statement under sections
11 6041(d), 6051(a)(3), and 6052. In the case of
12 an employee (within the meaning of section
13 401(c)(1)), such term means earned income
14 within the meaning of section 401(c)(2).

15 “(E) YEAR.—The term ‘year’ means the
16 calendar year.

17 “(4) VESTING REQUIREMENTS.—A plan meets
18 the requirements of this paragraph only if the em-
19 ployee’s rights to the employee’s account balance
20 under the NEST are nonforfeitable. Except as pro-
21 vided in paragraph (5), the rules of subsection
22 (k)(4) shall apply for purposes of this paragraph.

23 “(5) TWO-YEAR HOLDING PERIOD.—A plan
24 meets the requirements of this paragraph only if the
25 plan, and each NEST under the plan, prohibits the

1 withdrawal of contributions made for a year (and
2 any earnings allocable thereto) during the 2-year pe-
3 riod beginning on the first day of such year.

4 “(6) TIME CONTRIBUTIONS REQUIRED TO BE
5 MADE.—

6 “(A) ELECTIVE CONTRIBUTIONS.—A plan
7 meets the requirements of this paragraph only
8 if, under the terms of the plan, the employer
9 must make all elective contributions to a NEST
10 not later than the date on which such contribu-
11 tions would otherwise be required to be made
12 under title I of the Employee Retirement In-
13 come Security Act of 1974 if such contributions
14 were elective contributions under a qualified
15 cash or deferred arrangement under section
16 401(k).

17 “(B) NONELECTIVE AND MATCHING CON-
18 TRIBUTIONS.—

19 “(i) IN GENERAL.—A plan meets the
20 requirements of this paragraph only if,
21 under the terms of the plan, the employer
22 must make all nonelective and matching
23 contributions not later than the close of
24 the 45-day period following the last day of

1 the calendar quarter for which the con-
2 tributions are to be made.

3 “(ii) COMPENSATION EXCEPTION.—If
4 an employer does not make nonelective
5 contributions to a NEST for employees
6 whose compensation from the employer for
7 the year is less than the threshold amount
8 of \$5,000 (or such lower amount permitted
9 under paragraph (2)(G)), then clause (i)
10 shall apply with respect to nonelective con-
11 tributions only for employees who received
12 at least the threshold amount of compensa-
13 tion as of the end of the applicable quar-
14 ter. In the case of an employee who
15 reaches the threshold amount in a calendar
16 quarter other than the first calendar quar-
17 ter, the employer shall make nonelective
18 contributions for that calendar quarter and
19 all preceding calendar quarters not later
20 than the date prescribed for that quarter.

21 “(C) CONTRIBUTIONS AFTER YEAR-END.—

22 For purposes of this subsection, a contribution
23 on account of a year which is made within 45
24 days (or within a period prescribed by the Sec-
25 retary) after the close of the year shall be

1 deemed to have been made on the last day of
2 such year.

3 “(7) EMPLOYEE ELECTIONS.—A plan meets the
4 requirements of this paragraph only if, under the
5 terms of the plan—

6 “(A) an employee may elect to terminate
7 elective contributions (described in subpara-
8 graphs (B)(ii) and (C)(ii) of paragraph (2)) at
9 any time during the year, except that, if the
10 employer so elects, the employee may not
11 resume participation until the first day of the
12 next year (or such earlier time as provided by
13 the plan), and

14 “(B) each employee eligible to partici-
15 pate—

16 “(i) may elect, during the 60-day pe-
17 riod before the beginning of any year, to
18 make elective contributions, or to modify
19 the amount of elective contributions, for
20 such year, and

21 “(ii) may elect, within 30 days of be-
22 coming eligible to participate in the plan,
23 to make elective contributions for the year.

24 “(8) OTHER PLANS OF THE EMPLOYER.—

1 “(A) PROHIBITION ON OTHER PLANS WITH
2 ELECTIVE OR MATCHING CONTRIBUTIONS.—A
3 plan shall not meet the requirements of this
4 paragraph for a year if the employer maintain-
5 ing the plan maintains—

6 “(i) a plan providing for elective de-
7 ferrals described in section 402(g)(3), or

8 “(ii) any plan described in section
9 401(a) which provides for matching con-
10 tributions (within the meaning of section
11 401(m)(4)(A)).

12 For purposes of this subparagraph, an employer
13 shall not be treated as maintaining a plan for
14 a year if, under the plan, no contributions or
15 benefit accruals may occur for such year.

16 “(B) COORDINATION WITH OTHER
17 PLANS.—

18 “(i) OTHER PLANS DISREGARDED.—If
19 an employer maintaining a plan to which
20 this subsection applies also maintains 1 or
21 more plans described in section 401(a),
22 403(a), or 408(k) (other than a plan de-
23 scribed in subparagraph (A)), the deter-
24 mination of whether such plan satisfies the

1 requirements of this subsection shall be
2 made without regard to such other plans.

3 “(ii) NEST DISREGARDED.—Except
4 as provided in sections 404(m) and
5 415(a)(2), a plan to which this subsection
6 applies shall not be taken into account in
7 applying this title to any other plan de-
8 scribed in clause (i).

9 “(9) EMPLOYER OPTIONS.—

10 “(A) USE OF DESIGNATED FINANCIAL IN-
11 STITUTION.—A plan shall not be treated as fail-
12 ing to satisfy the requirements of this sub-
13 section or any other provision of this title mere-
14 ly because the employer makes all contributions
15 to the individual retirement accounts or annu-
16 ities of a designated trustee or issuer. The pre-
17 ceeding sentence shall not apply unless each
18 NEST plan participant is notified in writing
19 (either separately or as part of the notice under
20 subsection (l)(2)(C)) that the participant’s bal-
21 ance may be transferred without cost or penalty
22 to another individual account or annuity in ac-
23 cordance with section 408(d)(3)(G).

24 “(B) SUSPENSION OF PLAN.—Except as
25 provided by the Secretary, a plan shall not be

1 treated as failing to meet the requirements of
2 this subsection if, under the plan, the employer
3 may suspend all elective, matching, and non-
4 elective contributions under the plan after noti-
5 fying eligible employees of such suspension in
6 writing at least 30 days in advance. Such sus-
7 pension shall apply to contributions with re-
8 spect to compensation earned after the effective
9 date of the suspension. Only 1 suspension
10 under this subparagraph may take effect during
11 any year.

12 “(10) MODEL FORM TO BE PROVIDED.—The
13 Secretary shall issue a model form that may be used
14 by an eligible employer to establish a plan that satis-
15 fies all requirements of this subsection.”

16 (b) TAX TREATMENT OF NESTS.—

17 (1) DEDUCTIBILITY OF CONTRIBUTIONS.—

18 (A) Section 219(b) (relating to maximum
19 amount of deduction) is amended by adding at
20 the end the following new paragraph:

21 “(4) SPECIAL RULE FOR NESTS.—This section
22 shall not apply with respect to any amount contrib-
23 uted to a NEST established under section 408(p).”

24 (B) Section 219(g)(5)(A) (defining active
25 participant) is amended by striking “or” at the

1 end of clause (iv) and by adding at the end the
2 following new clause:

3 “(vi) any NEST (with the meaning of
4 section 408(p)), or”.

5 (C) Section 404 (relating to deductions for
6 contributions of an employer) is amended by
7 adding at the end the following new subsection:

8 “(m) SPECIAL RULES FOR NESTS.—

9 “(1) IN GENERAL.—Employer contributions to
10 a NEST (within the meaning of section 408(p))
11 shall be treated as if they are made to a plan subject
12 to the requirements of this section. Employer deduc-
13 tions for such contributions shall be subject to the
14 following limitations:

15 “(A) Contributions made for a calendar
16 year are deductible for the taxable year of the
17 employer with or within which the calendar year
18 ends.

19 “(B) Contributions shall be treated for
20 purposes of this subsection as if they were
21 made for a calendar year if such contributions
22 are made on account of such calendar year and
23 are made not later than the time prescribed in
24 section 408(p)(6).

1 “(C) The amount deductible in a taxable
2 year for a NEST shall not exceed the amount
3 contributed pursuant to a qualified formula
4 (within the meaning of section 408(p)(2)), and
5 shall be deductible without regard to the
6 amount contributed under any other plan sub-
7 ject to this section.

8 “(2) EFFECT ON STOCK BONUS AND PROFIT-
9 SHARING TRUST.—For any taxable year for which
10 the employer has a deduction under paragraph (1),
11 the otherwise applicable limitations in subsection
12 (a)(3)(A) with respect to a stock bonus or profit-
13 sharing trust maintained by the same employer shall
14 be reduced by the amount of the allowable deduction
15 under paragraph (1).

16 “(3) COORDINATION WITH SUBSECTION
17 (a)(7).—For purposes of applying the limitation of
18 subsection (a)(7) with respect to a plan to which this
19 section applies (other than a plan to which section
20 408(p) applies), a plan to which section 408(p) ap-
21 plies shall be treated as if it were a separate stock
22 bonus or profit-sharing trust of the employer main-
23 taining the plan.

24 “(4) COORDINATION WITH SUBSECTION (h).—
25 For any taxable year for which the employer has a

1 deduction under paragraph (1), the otherwise appli-
2 cable limitations in subsection (h) with respect to a
3 simplified employee pension maintained by the same
4 employer shall be reduced by the amount of the de-
5 duction allowable under paragraph (1).”

6 (2) CONTRIBUTIONS AND DISTRIBUTIONS.—

7 (A) Section 402 (relating to taxability of
8 beneficiary of employees’ trust) is amended by
9 adding at the end the following new subsection:

10 “(k) TREATMENT OF NESTS.—The rules of para-
11 graphs (1) and (3) of subsection (h) shall apply to con-
12 tributions and distributions with respect to a NEST under
13 section 408(p).”

14 (B) Section 408(d)(3) is amended by add-
15 ing at the end the following new subparagraph:

16 “(G) NESTS.—This paragraph shall apply
17 to an amount distributed to an individual with
18 respect to a NEST only to the extent such
19 amount is paid directly to an individual retire-
20 ment account or annuity for the benefit of such
21 individual in a direct transfer and, if applicable,
22 such amount continues to be subject to the 2-
23 year holding period described in subsection
24 (p)(5).”

1 (C) Clause (i) of section 457(c)(2)(B) is
2 amended by striking “section 402(h)(1)(B)”
3 and inserting “section 402 (h)(1)(B) or (k)”.

4 (c) REPORTING REQUIREMENTS.—

5 (1) IN GENERAL.—

6 (A) SUMMARY DESCRIPTIONS AND EM-
7 PLOYEE NOTIFICATION.—Section 408(l) is
8 amended by adding at the end the following
9 new paragraph:

10 “(2) NESTs.—

11 “(A) NO EMPLOYER REPORTS.—Except as
12 provided in this paragraph, no report shall be
13 required under this section by an employer
14 maintaining a NEST under subsection (p).

15 “(B) SUMMARY DESCRIPTION.—The trust-
16 ee or issuer of any individual retirement ac-
17 count or annuity under a NEST described in
18 subsection (p) shall prepare, and provide to the
19 employer maintaining the arrangement, each
20 year a description containing the following in-
21 formation:

22 “(i) The name and address of the em-
23 ployer and the trustee or issuer.

24 “(ii) The requirements for eligibility
25 for participation.

1 “(iii) The benefits provided with re-
2 spect to the NEST.

3 “(iv) The time and method of making
4 elections with respect to the NEST.

5 “(v) The procedures for, and effects
6 of, distributions (including rollovers) from
7 the arrangement.

8 “(C) EMPLOYEE NOTIFICATION.—The em-
9 ployer shall notify each employee immediately
10 before the period for which an election de-
11 scribed in subsection (p)(7)(B) may be made of
12 the employee’s opportunity to make such elec-
13 tion. Such notice shall include a copy of the de-
14 scription described in subparagraph (B) and
15 shall indicate whether matching contributions
16 will be made with respect to the employee’s
17 elective contributions, and the level of employer
18 matching and nonelective contributions which
19 will be made, for the year for which the election
20 may be made.”

21 (B) CONFORMING AMENDMENT.—Section
22 408(l) is amended by striking “an employer”
23 and inserting—

24 “(1) IN GENERAL.—An employer”.

1 (2) TRUSTEE AND ISSUER REPORTS.—Section
2 408(i) (relating to reports of trustees or issuers) is
3 amended by adding at the end thereof the following
4 new flush sentence:

5 “In the case of an individual retirement account or annu-
6 ity maintained in connection with a NEST described in
7 subsection (p), only 1 report under this subsection shall
8 be required to be submitted each calendar year to the Sec-
9 retary (at the time provided under paragraph (2)) but, in
10 addition to the report under this subsection, there shall
11 be furnished, within 30 days after each calendar quarter,
12 to the individual on whose behalf the account is main-
13 tained a statement with respect to the account balance as
14 of the close of, and the account activity during, such cal-
15 endar quarter.”

16 (3) PENALTIES FOR FAILURE TO REPORT.—
17 Section 6693 is amended by redesignating sub-
18 section (c) as subsection (d) and by inserting after
19 subsection (b) the following new subsection:

20 “(c) PENALTIES RELATING TO NESTS.—

21 “(1) EMPLOYER PENALTIES.—An employer who
22 fails to provide 1 or more notices required by section
23 408(l)(2)(C) shall pay a penalty of \$50 for each day
24 on which such failures continue.

1 “(2) TRUSTEE PENALTIES.—A trustee who
2 fails—

3 “(A) to provide 1 or more statements re-
4 quired by the last sentence of section 408(i)
5 shall pay a penalty of \$50 for each day on
6 which such failures continue, or

7 “(B) to provide 1 or more summary de-
8 scriptions required by section 408(l)(2)(B) shall
9 pay a penalty of \$50 for each day on which
10 such failures continue.

11 “(3) REASONABLE CAUSE EXCEPTION.—No
12 penalty shall be imposed under this subsection with
13 respect to any failure which the taxpayer shows was
14 due to reasonable cause.”

15 (d) CONFORMING AMENDMENTS.—

16 (1) Section 280G(b)(6) is amended by striking
17 the “or” at the end of subparagraph (B), by striking
18 the period at the end of subparagraph (C) and in-
19 sserting “, or”, and by adding after subparagraph
20 (C) the following new subparagraph:

21 “(D) a NEST described in section
22 408(p).”

23 (2) Section 402(g)(3) is amended by striking
24 “and” at the end of subparagraph (B), by striking
25 the period at the end of subparagraph (C) and in-

1 serting “, and”, and by adding after subparagraph
2 (C) the following new subparagraph:

3 “(D) any elective contribution under sec-
4 tion 408(p)(2)(B)(ii) or (C)(ii).”

5 (3) Subsections (b), (c), (m)(4)(B), and
6 (n)(3)(B) of section 414 are each amended by in-
7 serting “408(p),” after “408(k),”.

8 (4) Section 415(a)(2) is amended by adding at
9 the end the following new flush sentence:

10 “A plan described in section 408(p) shall not be subject
11 to this section, except that if an employer that maintains
12 such plan also maintains 1 or more plans, annuities, or
13 accounts subject to this section, such plan shall be taken
14 into account in determining whether any such other plans,
15 annuities, or accounts satisfy the requirements of this sec-
16 tion.”

17 (5) Section 4972(d)(1)(A) is amended by strik-
18 ing “and” at the end of clause (ii), by striking the
19 period at the end of clause (iii) and inserting “,
20 and”, and by adding after clause (iii) the following
21 new clause:

22 “(iv) any NEST (within the meaning
23 of section 408(p)).”

24 (6)(A) Paragraph (5) of section 3121(a) is
25 amended by striking “or” at the end of subpara-

1 graph (F), by inserting “or” at the end of subpara-
2 graph (G), and by adding at the end the following
3 new subparagraph:

4 “(H) under a plan to which section 408(p)
5 applies, other than any elective contributions
6 under subparagraphs (B)(ii) and (C)(ii) of sec-
7 tion 408(p)(2),”.

8 (B) Section 209(a)(4) of the Social Security
9 Act is amended by inserting “, or (J) under a plan
10 to which section 408(p) of such Code applies, other
11 than any elective contributions under subparagraphs
12 (B)(ii) and (C)(ii) of section 408(p)(2) of such
13 Code” before the semicolon at the end thereof.

14 (C) Paragraph (5) of section 3306(b) is amend-
15 ed by striking “or” at the end of subparagraph (F),
16 by inserting “or” at the end of subparagraph (G),
17 and by adding at the end the following new subpara-
18 graph:

19 “(H) under a plan to which section 408(p)
20 applies, other than any elective contributions
21 under subparagraphs (B)(ii) and (C)(ii) of sec-
22 tion 408(p)(2),”.

23 (D) Paragraph (12) of section 3401(a) is
24 amended by adding the following new subparagraph:

1 “(D) under or to a NEST described in sec-
2 tion 408(p); or”.

3 (e) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to years beginning after December
5 31, 1996.

6 **SEC. 1102. TAX-EXEMPT ORGANIZATIONS ELIGIBLE UNDER**
7 **SECTION 401(k).**

8 (a) IN GENERAL.—Subparagraph (B) of section
9 401(k)(4) is amended to read as follows:

10 “(B) ELIGIBILITY OF STATE AND LOCAL
11 GOVERNMENTS AND TAX-EXEMPT ORGANIZA-
12 TIONS.—

13 “(i) TAX-EXEMPTS ELIGIBLE.—Ex-
14 cept as provided in clause (ii), any organi-
15 zation exempt from tax under this subtitle
16 may include a qualified cash or deferred
17 arrangement as part of a plan maintained
18 by it.

19 “(ii) GOVERNMENTS INELIGIBLE.—A
20 cash or deferred arrangement shall not be
21 treated as a qualified cash or deferred ar-
22 rangement if it is part of a plan main-
23 tained by a State or local government or
24 political subdivision thereof, or any agency
25 or instrumentality thereof. This clause

1 shall not apply to a rural cooperative plan
2 or to a plan of an employer described in
3 clause (iii).

4 “(iii) TREATMENT OF INDIAN TRIBAL
5 GOVERNMENTS.—An employer which is an
6 Indian tribal government (as defined in
7 section 7701(a)(40)), a subdivision of an
8 Indian tribal government (determined in
9 accordance with section 7871(d)), or an
10 agency or instrumentality of an Indian
11 tribal government or subdivision thereof
12 may include a qualified cash or deferred
13 arrangement as part of a plan maintained
14 by it.”

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to plan years beginning after De-
17 cember 31, 1996, but shall not apply to any cash or de-
18 ferred arrangement to which clause (i) of section
19 1116(f)(2)(B) of the Tax Reform Act of 1986 applies.

20 **SEC. 1103. NONDISCRIMINATION RULES FOR QUALIFIED**
21 **CASH OR DEFERRED ARRANGEMENTS AND**
22 **MATCHING CONTRIBUTIONS.**

23 (a) ALTERNATIVE METHODS OF SATISFYING SEC-
24 TION 401(k) NONDISCRIMINATION TESTS.—Section
25 401(k) (relating to cash or deferred arrangements) is

1 amended by adding at the end the following new para-
 2 graph:

3 “(11) ALTERNATIVE METHODS OF MEETING
 4 NONDISCRIMINATION REQUIREMENTS.—

5 “(A) IN GENERAL.—A cash or deferred ar-
 6 rangement shall be treated as meeting the re-
 7 quirements of paragraph (3)(A)(ii) if such ar-
 8 rangement—

9 “(i) meets the contribution require-
 10 ments of subparagraph (B) or (C), and

11 “(ii) meets the notice requirements of
 12 subparagraph (D).

13 “(B) NONELECTIVE AND MATCHING CON-
 14 TRIBUTIONS.—

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

18 “(ii) NONELECTIVE CONTRIBUTIONS.—The requirements of this clause
 19 are met if, under the arrangement, the em-
 20 ployer is required, without regard to
 21 whether the employee makes an elective
 22 contribution or employee contribution, to
 23 make a contribution to a defined contribu-
 24 tion plan on behalf of each employee who
 25

1 is not a highly compensated employee and
2 who is eligible to participate in the ar-
3 rangement in an amount equal to at least
4 1 percent of the employee's compensation.

5 “(iii) MATCHING CONTRIBUTIONS.—

6 The requirements of this clause are met if,
7 under the arrangement, the employer
8 makes matching contributions on behalf of
9 each employee who is not a highly com-
10 pensated employee in an amount equal
11 to—

12 “(I) 100 percent of the elective
13 contributions of the employee to the
14 extent such elective contributions do
15 not exceed 3 percent of the employee's
16 compensation, and

17 “(II) 50 percent of the elective
18 contributions of the employee to the
19 extent that such elective contributions
20 exceed 3 percent but do not exceed 5
21 percent of the employee's compensa-
22 tion.

23 “(iv) RATE FOR HIGHLY COM-
24 PENSATED EMPLOYEES.—The require-
25 ments of clause (iii) are not met if, under

1 the arrangement, the rate of matching con-
2 tribution with respect to any rate of elec-
3 tive contribution of a highly compensated
4 employee is greater than that with respect
5 to an employee who is not a highly com-
6 pensated employee. For purposes of this
7 clause, to the extent provided in regula-
8 tions, the last sentences of paragraph
9 (3)(A) and subsection (m)(2)(B) shall not
10 apply.

11 “(v) ALTERNATIVE PLAN DESIGNS.—

12 If the rate of matching contribution with
13 respect to any rate of elective contribution
14 is not equal to the percentage required
15 under clause (iii), an arrangement shall
16 not be treated as failing to meet the re-
17 quirements of clause (iii) if—

18 “(I) the rate of an employer’s
19 matching contribution does not in-
20 crease as an employee’s rate of elec-
21 tive contribution increase, and

22 “(II) the aggregate amount of
23 matching contributions at such rate of
24 elective contribution is at least equal
25 to the aggregate amount of matching

1 contributions which would be made if
2 matching contributions were made on
3 the basis of the percentages described
4 in clause (iii).

5 “(C) NONELECTIVE CONTRIBUTIONS.—

6 The requirements of this subparagraph are met
7 if, under the arrangement, the employer is re-
8 quired, without regard to whether the employee
9 makes an elective contribution or employee con-
10 tribution, to make a contribution to a defined
11 contribution plan on behalf of each employee
12 who is not a highly compensated employee and
13 who is eligible to participate in the arrangement
14 in an amount equal to at least 3 percent of the
15 employee’s compensation.

16 “(D) NOTICE REQUIREMENT.—An ar-

17 rangement meets the requirements of this para-
18 graph if, under the arrangement, each employee
19 eligible to participate is, within a reasonable pe-
20 riod before any year, given written notice of the
21 employee’s rights and obligations under the ar-
22 rangement which—

23 “(i) is sufficiently accurate and com-
24 prehensive to reasonably apprise the em-
25 ployee of such rights and obligations, and

1 “(ii) is written in a manner calculated
2 to be understood by the average employee
3 eligible to participate.

4 “(E) OTHER REQUIREMENTS.—

5 “(i) WITHDRAWAL AND VESTING RE-
6 STRICTIONS.—An arrangement shall not be
7 treated as meeting the requirements of
8 subparagraph (B) or (C) of this paragraph
9 unless the requirements of subparagraphs
10 (B) and (C) of paragraph (2) are met with
11 respect to all employer contributions (in-
12 cluding matching contributions) taken into
13 account in determining whether the re-
14 quirements of subparagraphs (B) and (C)
15 of this paragraph are met.

16 “(ii) SOCIAL SECURITY AND SIMILAR
17 CONTRIBUTIONS NOT TAKEN INTO AC-
18 COUNT.—An arrangement shall not be
19 treated as meeting the requirements of
20 subparagraph (B) or (C) unless such re-
21 quirements are met without regard to sub-
22 section (l), and, for purposes of subsection
23 (l), employer contributions under subpara-
24 graph (B) or (C) shall not be taken into
25 account.

1 “(F) OTHER PLANS.—An arrangement
 2 shall be treated as meeting the requirements
 3 under subparagraph (A)(i) if any other plan
 4 maintained by the employer meets such require-
 5 ments with respect to employees eligible under
 6 the arrangement.”

7 (b) ALTERNATIVE METHODS OF SATISFYING SEC-
 8 TION 401(m) NONDISCRIMINATION TESTS.—Section
 9 401(m) (relating to nondiscrimination test for matching
 10 contributions and employee contributions) is amended by
 11 redesignating paragraph (10) as paragraph (11) and by
 12 adding after paragraph (9) the following new paragraph:

13 “(10) ALTERNATIVE METHOD OF SATISFYING
 14 TESTS.—

15 “(A) IN GENERAL.—A defined contribution
 16 plan shall be treated as meeting the require-
 17 ments of paragraph (2) with respect to match-
 18 ing contributions if the plan—

19 “(i) meets the contribution require-
 20 ments of subparagraph (B) or (C) of sub-
 21 section (k)(11),

22 “(ii) meets the notice requirements of
 23 subsection (k)(11)(D), and

24 “(iii) meets the requirements of sub-
 25 paragraphs (B) and (C).

1 “(B) LIMITATION ON MATCHING CON-
2 TRIBUTIONS.—The requirements of this sub-
3 paragraph are met if—

4 “(i) matching contributions on behalf
5 of any employee may not be made with re-
6 spect to an employee’s contributions or
7 elective deferrals in excess of 6 percent of
8 the employee’s compensation,

9 “(ii) the rate of an employer’s match-
10 ing contribution does not increase as the
11 rate of an employee’s contributions or elec-
12 tive deferrals increase, and

13 “(iii) the matching contribution with
14 respect to any highly compensated em-
15 ployee at any rate of an employee contribu-
16 tion or rate of elective deferral is not
17 greater than that with respect to an em-
18 ployee who is not a highly compensated
19 employee.

20 To the extent provided in regulations, the last
21 sentences of paragraph (2)(B) and subsection
22 (k)(3)(A) shall not apply for purposes of clause
23 (iii).

24 “(C) TEST MUST BE MET SEPARATELY.—

25 If this paragraph applies to any matching con-

1 tributions, such contributions shall not be taken
2 into account in determining whether employee
3 contributions satisfy the requirements of this
4 subsection.”

5 (c) YEAR FOR COMPUTING NONHIGHLY COM-
6 PENSATED EMPLOYEE PERCENTAGE.—

7 (1) CASH OR DEFERRED ARRANGEMENTS.—

8 Clause (ii) of section 401(k)(3)(A) is amended—

9 (A) by striking “such year” and inserting
10 “the plan year”,

11 (B) by striking “for such plan year” and
12 inserting “for the preceding plan year”, and

13 (C) by adding at the end the following new
14 sentence: “An arrangement may apply this
15 clause by using the plan year rather than the
16 preceding plan year if the employer so elects,
17 except that if such an election is made, it may
18 not be changed except as provided by the Sec-
19 retary.”

20 (2) MATCHING AND EMPLOYEE CONTRIBU-
21 TIONS.—Section 401(m)(2)(A) is amended—

22 (A) by inserting “for such plan year” after
23 “highly compensated employees”,

1 (B) by inserting “for the preceding plan
2 year” after “eligible employees” each place it
3 appears in clause (i) and clause (ii), and

4 (C) by adding at the end the following
5 flush sentence: “This subparagraph may be ap-
6 plied by using the plan year rather than the
7 preceding plan year if the employer so elects,
8 except that if such an election is made, it may
9 not be changed except as provided the Sec-
10 retary.”

11 (d) SPECIAL RULE FOR DETERMINING AVERAGE DE-
12 FERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—

13 (1) Paragraph (3) of section 401(k) is amended
14 by adding at the end the following new subpara-
15 graph:

16 “(E) For purposes of this paragraph, in
17 the case of the first plan year of any plan, the
18 amount taken into account as the actual defer-
19 ral percentage of nonhighly compensated em-
20 ployees for the preceding plan year shall be—

21 “(i) 3 percent, or

22 “(ii) the actual deferral percentage of
23 nonhighly compensated employees deter-
24 mined for such first plan year in the case
25 of—

1 “(I) an employer who elects to
2 have this clause apply, or

3 “(II) except to the extent pro-
4 vided by the Secretary, a successor
5 plan.”

6 (2) Paragraph (3) of section 401(m) is amend-
7 ed by adding at the end the following: “Rules similar
8 to the rules of subsection (k)(3)(E) shall apply for
9 purposes of this subsection.”

10 (e) DISTRIBUTION OF EXCESS CONTRIBUTIONS AND
11 EXCESS AGGREGATE CONTRIBUTIONS.—

12 (1) Subparagraph (C) of section 401(k)(8) (re-
13 lating to arrangement not disqualified if excess con-
14 tributions distributed) is amended by striking “on
15 the basis of the respective portions of the excess con-
16 tributions attributable to each of such employees”
17 and inserting “on the basis of the amount of con-
18 tributions by, or on behalf of, each of such employ-
19 ees”.

20 (2) Subparagraph (C) of section 401(m)(6) (re-
21 lating to method of distributing excess aggregate
22 contributions) is amended by striking “on the basis
23 of the respective portions of such amounts attrib-
24 utable to each of such employees” and inserting “on

1 the basis of the amount of contributions on behalf
2 of, or by, each such employee”.

3 (f) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to plan years beginning after
6 December 31, 1998.

7 (2) SUBSECTIONS (c), (d), AND (e).—The
8 amendments made by subsections (c), (d), and (e)
9 shall apply to plan years beginning after December
10 31, 1996.

11 **SEC. 1104. REPEAL OF FAMILY AGGREGATION.**

12 (a) REPEAL OF FAMILY AGGREGATION RULES.—

13 (1) IN GENERAL.—Paragraph (6) of section
14 414(q) is hereby repealed.

15 (2) COMPENSATION LIMIT.—Paragraph (17)(A)
16 of section 401(a) is amended by striking the last
17 sentence.

18 (3) DEDUCTION.—Subsection (1) of section 404
19 is amended by striking the last sentence.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to years beginning after December
22 31, 1996.

1 **SEC. 1105. DEFINITION OF HIGHLY COMPENSATED EM-**
2 **PLOYEES.**

3 (a) IN GENERAL.—Paragraph (1) of section 414(q)
4 (defining highly compensated employee) is amended to
5 read as follows:

6 “(1) IN GENERAL.—The term ‘highly com-
7 pensated employee’ means any employee who—

8 “(A) was a 5-percent owner at any time
9 during the year or the preceding year, or

10 “(B) for the preceding year had compensa-
11 tion from the employer in excess of \$80,000.

12 The Secretary shall adjust the \$80,000 amount
13 under subparagraph (B) at the same time and in the
14 same manner as under section 415(d), except that
15 the base period shall be the calendar quarter ending
16 September 30, 1996.”

17 (b) CONFORMING AMENDMENTS.—

18 (1)(A) Subsection (q) of section 414 is amended
19 by striking paragraphs (2), (4), (5), (8), (10), and
20 (12) and by redesignating paragraphs (3), (7), (9),
21 and (11) as paragraphs (2) through (5), respec-
22 tively.

23 (B) Sections 129(d)(8)(B), 401(a)(5)(D)(ii),
24 408(k)(2)(C), and 416(i)(1)(D) are each amended
25 by striking “section 414(q)(7)” and inserting “sec-
26 tion 414(q)(3)”.

1 (C) Section 416(i)(1)(A) is amended by striking
2 “section 414(q)(8)” and inserting “section
3 414(r)(9)”.

4 (2)(A) Section 414(r) is amended by adding at
5 the end the following new paragraph:

6 “(9) EXCLUDED EMPLOYEES.—For purposes of
7 paragraph (2)(A), the following employees shall be
8 excluded:

9 “(A) Employees who have not completed 6
10 months of service.

11 “(B) Employees who normally work less
12 than 17½ hours per week.

13 “(C) Employees who normally work not
14 more than 6 months during any year.

15 “(D) Employees who have not attained the
16 age of 21.

17 “(E) Except to the extent provided in reg-
18 ulations, employees who are included in a unit
19 of employees covered by an agreement which
20 the Secretary of Labor finds to be a collective
21 bargaining agreement between employee rep-
22 resentatives and the employer.”

23 (B) Subparagraph (A) of section 414(r)(2) is
24 amended by striking “subsection (q)(8)” and insert-
25 ing “paragraph (9)”.

1 (3) Section 1114(c)(4) of the Tax Reform Act
2 of 1986 is amended by adding at the end the follow-
3 ing new sentence: “Any reference in this paragraph
4 to section 414(q) shall be treated as a reference to
5 such section as in effect on the day before the date
6 of the enactment of the Retirement Savings and Se-
7 curity Act.”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to years beginning after December
10 31, 1996, except that in determining whether an employee
11 is a highly compensated employee for years beginning in
12 1997, such amendments shall be treated as having been
13 in effect for years beginning in 1996.

14 **SEC. 1106. REPEAL OF LIMITATION IN CASE OF DEFINED**
15 **BENEFIT PLAN AND DEFINED CONTRIBUTION**
16 **PLAN FOR SAME EMPLOYEE.**

17 (a) IN GENERAL.—Section 415(e) is repealed.

18 (b) CONFORMING AMENDMENTS.—

19 (1) Paragraph (1) of section 415(a) is amend-
20 ed—

21 (A) by adding “or” at the end of subpara-
22 graph (A),

23 (B) by striking “, or” at the end of sub-
24 paragraph (B) and inserting a period, and

25 (C) by striking subparagraph (C).

1 (2) Subparagraph (B) of section 415(b)(5) is
2 amended by striking “and subsection (e)”.

3 (3) Paragraph (1) of section 415(f) is amended
4 by striking “subsections (b), (c), and (e)” and in-
5 serting “subsections (b) and (c)”.

6 (4) Subsection (g) of section 415 is amended by
7 striking “subsections (e) and (f)” in the last sen-
8 tence and inserting “subsection (f)”.

9 (5) Clause (i) of section 415(k)(2)(A) is amend-
10 ed to read as follows:

11 “(i) any contribution made directly by
12 an employee under such an arrangement
13 shall not be treated as an annual addition
14 for purposes of subsection (c), and”.

15 (6) Clause (ii) of section 415(k)(2)(A) is
16 amended by striking “subsections (c) and (e)” and
17 inserting “subsection (c)”.

18 (7) Section 416 is amended by striking sub-
19 section (h).

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to years beginning after December
22 31, 1998.

1 **SEC. 1107. CONTRIBUTIONS ON BEHALF OF DISABLED EM-**
 2 **PLOYEES.**

3 (a) ALL DISABLED PARTICIPANTS RECEIVING CON-
 4 TRIBUTIONS.—Section 415(c)(3)(C) is amended by adding
 5 at the end the following: “If a defined contribution plan
 6 provides for the continuation of contributions on behalf
 7 of all participants described in clause (i) for a fixed or
 8 determinable period, this subparagraph shall be applied
 9 without regard to clauses (ii) and (iii).”

10 (b) EFFECTIVE DATE.—The amendment made by
 11 this section shall apply to years beginning after December
 12 31, 1996.

13 **SEC. 1108. PLANS COVERING SELF-EMPLOYED INDIVID-**
 14 **UALS.**

15 (a) AGGREGATION RULES.—Section 401(d) (relating
 16 to additional requirements for qualification of trusts and
 17 plans benefiting owner-employees) is amended to read as
 18 follows:

19 “(d) CONTRIBUTION LIMIT ON OWNER-EMPLOY-
 20 EES.—A trust forming part of a pension or profit-sharing
 21 plan which provides contributions or benefits for employ-
 22 ees some or all of whom are owner-employees shall con-
 23 stitute a qualified trust under this section only if, in addi-
 24 tion to meeting the requirements of subsection (a), the
 25 plan provides that contributions on behalf of any owner-
 26 employee may be made only with respect to the earned

1 income of such owner-employee which is derived from the
 2 trade or business with respect to which such plan is estab-
 3 lished.”

4 (b) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to plan years beginning after De-
 6 cember 31, 1996.

7 **SEC. 1109. TRUST REQUIREMENT FOR DEFERRED COM-**
 8 **PENSATION PLANS OF STATE AND LOCAL**
 9 **GOVERNMENTS.**

10 (a) IN GENERAL.—Section 457 is amended by adding
 11 at the end the following new subsection:

12 “(g) GOVERNMENTAL PLANS MUST MAINTAIN SET-
 13 SIDES FOR EXCLUSIVE BENEFIT OF PARTICIPANTS.—

14 “(1) IN GENERAL.—A plan maintained by an
 15 eligible employer described in subsection (e)(1)(A)
 16 shall not be treated as an eligible deferred com-
 17 pensation plan unless all amounts, property and
 18 rights, and income of the plan described in subpara-
 19 graphs (A), (B), and (C) of subsection (b)(6) are
 20 held in trust for the exclusive benefit of participants
 21 and their beneficiaries.

22 “(2) TAXABILITY OF TRUSTS AND PARTICI-
 23 PANTS.—For purposes of this title—

1 “(A) a trust described in paragraph (1)
2 shall be treated as an organization exempt from
3 taxation under section 501(a), and

4 “(B) notwithstanding any other provision
5 of this title, amounts in the trust shall be in-
6 cludible in the gross income of participants and
7 beneficiaries only to the extent, and at the time,
8 provided in this section.

9 “(3) CUSTODIAL ACCOUNT AND CONTRACTS.—
10 For purposes of this subsection, custodial accounts
11 and contracts described in section 401(f) shall be
12 treated as trusts under rules similar to the rules
13 under section 401(f).”

14 (b) CONFORMING AMENDMENT.—Paragraph (6) of
15 section 457(b) is amended by inserting “except as pro-
16 vided in subsection (g),” before “which provides that”.

17 (c) EFFECTIVE DATES.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), the amendments made by this section
20 shall apply to amounts, property and rights, and in-
21 come described in subparagraphs (A), (B), and (C)
22 of section 457(b)(6) of the Internal Revenue Code of
23 1986 held by a plan on and after the date of the en-
24 actment of this Act.

1 (2) **TRANSITION RULE.**—In the case of
 2 amounts, property and rights, and income described
 3 in paragraph (1) under a plan before the last day
 4 of the first calendar quarter beginning after the
 5 close of the first regular session (beginning after the
 6 date of the enactment of this Act) of the State legis-
 7 lature of the State in which the governmental entity
 8 maintaining the plan is located, a trust need not be
 9 established by reason of the amendments made by
 10 this section before such last day. For purposes of
 11 the preceding sentence, in the case of a State that
 12 has a 2-year legislative session, each year of such
 13 session shall be deemed to be a separate regular ses-
 14 sion of the State legislature.

15 **CHAPTER 2—SIMPLIFICATION AND COST**
 16 **SAVINGS**

17 **SEC. 1201. TREATMENT OF GOVERNMENTAL AND MULTIEM-**
 18 **PLOYER PLANS UNDER SECTION 415 AND**
 19 **TREATMENT OF EXCESS BENEFIT PLANS.**

20 (a) **COMPENSATION LIMIT.**—Subsection (b) of sec-
 21 tion 415 is amended by adding immediately after para-
 22 graph (10) the following new paragraph:

23 “(11) **SPECIAL LIMITATION RULE FOR GOVERN-**
 24 **MENTAL AND MULTIEmployer PLANS.**—In the case
 25 of a governmental plan (as defined in section

1 414(d)) or a multiemployer plan (as defined in sec-
2 tion 414(f)), subparagraph (B) of paragraph (1)
3 shall not apply.”

4 (b) TREATMENT OF CERTAIN EXCESS BENEFIT
5 PLANS.—

6 (1) IN GENERAL.—Section 415 is amended by
7 adding at the end the following new subsection:

8 “(m) TREATMENT OF QUALIFIED GOVERNMENTAL
9 EXCESS BENEFIT ARRANGEMENTS.—

10 “(1) GOVERNMENTAL PLAN NOT AFFECTED.—

11 In determining whether a governmental plan (as de-
12 fined in section 414(d)) meets the requirements of
13 this section, benefits provided under a qualified gov-
14 ernmental excess benefit arrangement shall not be
15 taken into account. Income accruing to a govern-
16 mental plan (or to a trust that is maintained solely
17 for the purpose of providing benefits under a quali-
18 fied governmental excess benefit arrangement) in re-
19 spect of a qualified governmental excess benefit ar-
20 rangement shall constitute income derived from the
21 exercise of an essential governmental function upon
22 which such governmental plan (or trust) shall be ex-
23 empt from tax under section 115.

24 “(2) TAXATION OF PARTICIPANT.—For pur-
25 poses of this chapter—

1 “(A) the taxable year or years for which
2 amounts in respect of a qualified governmental
3 excess benefit arrangement are includible in
4 gross income by a participant, and

5 “(B) the treatment of such amounts when
6 so includible by the participant,
7 shall be determined as if such qualified govern-
8 mental excess benefit arrangement were treated as a
9 plan for the deferral of compensation which is main-
10 tained by a corporation not exempt from tax under
11 this chapter and which does not meet the require-
12 ments for qualification under section 401.

13 “(3) QUALIFIED GOVERNMENTAL EXCESS BEN-
14 EFIT ARRANGEMENT.—For purposes of this sub-
15 section, the term ‘qualified governmental excess ben-
16 efit arrangement’ means a portion of a governmental
17 plan if—

18 “(A) such portion is maintained solely for
19 the purpose of providing to participants in the
20 plan that part of the participant’s annual bene-
21 fit otherwise payable under the terms of the
22 plan that exceeds the limitations on benefits im-
23 posed by this section,

1 “(B) under such portion no election is pro-
2 vided at any time to the participant (directly or
3 indirectly) to defer compensation, and

4 “(C) benefits described in subparagraph
5 (A) are not paid from a trust forming a part
6 of such governmental plan unless such trust is
7 maintained solely for the purpose of providing
8 such benefits.”

9 (2) RULES RELATING TO EXCESS BENEFIT AR-
10 RANGEMENT.—

11 (A) APPLICATION OF SECTION 457.—Sub-
12 section (e) of section 457 is amended by adding
13 at the end the following new paragraph:

14 “(14) TREATMENT OF EXCESS BENEFIT AR-
15 RANGEMENTS.—

16 “(A) IN GENERAL.—Subsections (b)(2)
17 and (c)(1) shall not apply to any excess benefit
18 arrangement and benefits provided under such
19 an arrangement shall not be taken into account
20 in determining whether any other plan is an eli-
21 gible deferred compensation plan.

22 “(B) EXCESS BENEFIT ARRANGEMENT DE-
23 FINED.—For purposes of this section, the term
24 ‘excess benefit arrangement’ means a plan
25 which is maintained by an eligible employer

1 solely for purposes of providing benefits for cer-
2 tain employees in excess of the limits on con-
3 tributions and benefits imposed by section 415.
4 Such term includes a qualified governmental ex-
5 cess benefit arrangement (as defined in section
6 415(m)(3)).”

7 (B) CONFORMING AMENDMENT.—Para-
8 graph (2) of section 457(f) is amended by strik-
9 ing “and” at the end of subparagraph (C), by
10 striking the period at the end of subparagraph
11 (D) and inserting “, and”, and by inserting im-
12 mediately thereafter the following new subpara-
13 graph:

14 “(E) an excess benefit arrangement (as de-
15 fined in subsection (e)(14)(B)).”

16 (c) EXEMPTION FOR SURVIVOR AND DISABILITY
17 BENEFITS.—Paragraph (2) of section 415(b) is amended
18 by adding at the end the following new subparagraph:

19 “(I) EXEMPTION FOR SURVIVOR AND DIS-
20 ABILITY BENEFITS PROVIDED UNDER GOVERN-
21 MENTAL AND MULTIEMPLOYER PLANS.—Sub-
22 paragraph (C) of this paragraph and paragraph
23 (5) shall not apply to—

24 “(i) income received from a govern-
25 mental plan (as defined in section 414(d))

1 or a multiemployer plan (as defined in sec-
 2 tion 414(f)) as a pension, annuity, or simi-
 3 lar allowance as the result of the recipient
 4 becoming disabled by reason of personal
 5 injuries or sickness, or

6 “(ii) amounts received from a govern-
 7 mental or multiemployer plan by the bene-
 8 ficiaries, survivors, or the estate of an em-
 9 ployee as the result of the death of the em-
 10 ployee.”

11 (d) REVOCATION OF GRANDFATHER ELECTION.—

12 (1) IN GENERAL.—Subparagraph (C) of section
 13 415(b)(10) is amended by adding at the end the fol-
 14 lowing new clause:

15 “(ii) REVOCATION OF ELECTION.—An
 16 election under clause (i) may be revoked
 17 not later than the last day of the third
 18 plan year beginning after the date of the
 19 enactment of this clause. The revocation
 20 shall apply to all plan years to which the
 21 election applied and to all subsequent plan
 22 years. Any amount paid by a plan in a tax-
 23 able year ending after the revocation shall
 24 be includible in income in such taxable
 25 year under the rules of this chapter in ef-

1 fect for such taxable year, except that, for
2 purposes of applying the limitations im-
3 posed by this section, any portion of such
4 amount which is attributable to any tax-
5 able year during which the election was in
6 effect shall be treated as received in such
7 taxable year.”

8 (2) CONFORMING AMENDMENT.—Subparagraph
9 (C) of section 415(b)(10) is amended by striking
10 “‘This’” and inserting:

11 “(i) IN GENERAL.—This”.

12 (e) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendments made by
14 subsections (a), (b), and (c) shall apply to years be-
15 ginning after December 31, 1996.

16 (2) SPECIAL RULES FOR GOVERNMENTAL
17 PLANS.—

18 (A) IN GENERAL.—In the case of a govern-
19 mental plan, the amendments made by sub-
20 sections (a), (b), and (c) shall apply to years
21 beginning after December 31, 1995.

22 (B) REVOCATIONS.—The amendments
23 made by subsection (d) shall apply with respect
24 to revocations adopted after the date of the en-
25 actment of this Act.

1 (C) TREATMENT FOR YEARS BEGINNING
2 BEFORE JANUARY 1, 1996.—Nothing in the
3 amendments made by this section shall be con-
4 strued to imply that a governmental plan (as
5 defined in section 414(d) of the Internal Reve-
6 nue Code of 1986) fails to satisfy the require-
7 ments of section 415 of such Code for any year
8 beginning before January 1, 1996.

9 **SEC. 1202. DEFINITION OF COMPENSATION FOR SECTION**
10 **415 PURPOSES.**

11 (a) GENERAL RULE.—Section 415(c)(3) (defining
12 participant’s compensation) is amended by adding at the
13 end the following new subparagraph:

14 “(D) CERTAIN DEFERRALS INCLUDED.—
15 The term ‘participant’s compensation’ shall in-
16 clude—

17 “(i) any elective deferral (as defined
18 in section 402(g)(3)),

19 “(ii) any amount which is contributed
20 by the employer at the election of the em-
21 ployee and which is not includible in the
22 gross income of the employee pursuant to
23 section 125, and

24 “(iii) any amount which is deferred at
25 the election of the employee and which is

1 not includible in the gross income of the
2 employee pursuant to section 457.”

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 414(q)(3), as redesignated by sec-
5 tion 1105, is amended to read as follows:

6 “(3) COMPENSATION.—For purposes of this
7 subsection, the term ‘compensation’ has the meaning
8 given such term by section 415(c)(3).”

9 (2) Section 414(s)(2) is amended by inserting
10 “not” after “elect” in the text and heading thereof.

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to years beginning after December
13 31, 1996.

14 **SEC. 1203. ASSUMPTIONS FOR ADJUSTING CERTAIN BENE-**
15 **FITS OF DEFINED BENEFIT PLANS FOR**
16 **EARLY RETIREES.**

17 (a) IN GENERAL.—Subparagraph (E) of section
18 415(b)(2) (relating to limitation on certain assumptions)
19 is amended—

20 (1) by striking “Except as provided in clause
21 (ii), for purposes of adjusting any benefit or limita-
22 tion under subparagraph (B) or (C),” in clause (i)
23 and inserting “For purposes of adjusting any limita-
24 tion under subparagraph (C) and, except as provided

1 in clause (ii), for purposes of adjusting any benefit
2 under subparagraph (B),”, and

3 (2) by striking “For purposes of adjusting the
4 benefit or limitation of any form of benefit subject
5 to section 417(e)(3),” in clause (ii) and inserting
6 “For purposes of adjusting any benefit under sub-
7 paragraph (B) for any form of benefit subject to sec-
8 tion 417(e)(3),”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect as if included in the provisions
11 of section 767 of the Uruguay Round Agreements Act.

12 **SEC. 1204. TREATMENT OF DEFERRED COMPENSATION**
13 **PLANS OF STATE AND LOCAL GOVERNMENTS**
14 **AND TAX-EXEMPT ORGANIZATIONS.**

15 (a) SPECIAL RULES FOR PLAN DISTRIBUTIONS.—
16 Paragraph (9) of section 457(e) (relating to other defini-
17 tions and special rules) is amended to read as follows:

18 “(9) BENEFITS NOT TREATED AS MADE AVAIL-
19 ABLE BY REASON OF CERTAIN ELECTIONS, ETC.—

20 “(A) TOTAL AMOUNT PAYABLE IS \$3,500
21 OR LESS.—The total amount payable to a par-
22 ticipant under the plan shall not be treated as
23 made available merely because the participant
24 may elect to receive such amount (or the plan

1 may distribute such amount without the partici-
2 pant's consent) if—

3 “(i) such amount does not exceed
4 \$3,500, and

5 “(ii) such amount may be distributed
6 only if—

7 “(I) no amount has been deferred
8 under the plan with respect to such
9 participant during the 2-year period
10 ending on the date of the distribution,
11 and

12 “(II) there has been no prior dis-
13 tribution under the plan to such par-
14 ticipant to which this subparagraph
15 applied.

16 A plan shall not be treated as failing to meet
17 the distribution requirements of subsection (d)
18 by reason of a distribution to which this sub-
19 paragraph applies.

20 “(B) ELECTION TO DEFER COMMENCE-
21 MENT OF DISTRIBUTIONS.—The total amount
22 payable to a participant under the plan shall
23 not be treated as made available merely because
24 the participant may elect to defer commence-
25 ment of distributions under the plan if—

1 “(i) such election is made after
2 amounts may be available under the plan
3 in accordance with subsection (d)(1)(A)
4 and before commencement of such dis-
5 tributions, and

6 “(ii) the participant may make only 1
7 such election.”

8 (b) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DE-
9 FERRAL AMOUNT.—Subsection (e) of section 457, as
10 amended by section 1201(b)(2) (relating to governmental
11 plans), is amended by adding at the end the following new
12 paragraph:

13 “(15) COST-OF-LIVING ADJUSTMENT OF MAXI-
14 MUM DEFERRAL AMOUNT.—The Secretary shall ad-
15 just the \$7,500 amount specified in subsections
16 (b)(2) and (c)(1) at the same time and in the same
17 manner as under section 415(d), except that the
18 base period shall be the calendar quarter ending
19 September 30, 1994, and any increase under this
20 paragraph which is not a multiple of \$500 shall be
21 rounded to the next lowest multiple of \$500.”

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to taxable years beginning after
24 December 31, 1996.

1 **SEC. 1205. NO REQUIRED DISTRIBUTIONS FOR ACTIVE EM-**
2 **PLOYEES.**

3 (a) IN GENERAL.—Section 401(a)(9)(C) (defining re-
4 quired beginning date) is amended to read as follows:

5 “(C) REQUIRED BEGINNING DATE.—For
6 purposes of this paragraph—

7 “(i) IN GENERAL.—The term ‘re-
8 quired beginning date’ means April 1 of
9 the calendar year following the later of—

10 “(I) the calendar year in which
11 the employee attains age 70½, or

12 “(II) the calendar year in which
13 the employee retires.

14 “(ii) EXCEPTION.—Subclause (II) of
15 clause (i) shall not apply—

16 “(I) except as provided in section
17 409(d), in the case of an employee
18 who is a 5-percent owner (as defined
19 in section 416) with respect to the
20 plan year ending in the calendar year
21 in which the employee attains age
22 70½, or

23 “(II) for purposes of section 408
24 (a)(6) or (b)(3).

25 “(iii) ACTUARIAL ADJUSTMENT.—In
26 the case of an employee to whom clause

1 (i)(II) applies who retires in a calendar
2 year after the calendar year in which the
3 employee attains age 70½, the employee's
4 accrued benefit shall be actuarially in-
5 creased to take into account the period
6 after age 70½ in which the employee was
7 not receiving any benefits under the plan.

8 “(iv) EXCEPTION FOR GOVERN-
9 MENTAL AND CHURCH PLANS.—Clauses
10 (ii) and (iii) shall not apply in the case of
11 a governmental plan or church plan. For
12 purposes of this clause, the term ‘church
13 plan’ means a plan maintained by a church
14 for church employees, and the term
15 ‘church’ means any church (as defined in
16 section 3121(w)(3)(A)) or qualified church-
17 controlled organization (as defined in sec-
18 tion 3121(w)(3)(B)).”

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall apply to years beginning after Decem-
21 ber 31, 1996.

1 **SEC. 1206. SIMPLIFIED METHOD FOR TAXING ANNUITY DIS-**
2 **TRIBUTIONS UNDER CERTAIN EMPLOYER**
3 **PLANS.**

4 (a) GENERAL RULE.—Subsection (d) of section 72
5 (relating to annuities; certain proceeds of endowment and
6 life insurance contracts) is amended to read as follows:

7 “(d) SPECIAL RULES FOR QUALIFIED EMPLOYER
8 RETIREMENT PLANS.—

9 “(1) SIMPLIFIED METHOD OF TAXING ANNUITY
10 PAYMENTS.—

11 “(A) IN GENERAL.—In the case of any
12 amount received as an annuity under a quali-
13 fied employer retirement plan—

14 “(i) subsection (b) shall not apply,
15 and

16 “(ii) the investment in the contract
17 shall be recovered as provided in this para-
18 graph.

19 “(B) METHOD OF RECOVERING INVEST-
20 MENT IN CONTRACT.—

21 “(i) IN GENERAL.—Gross income
22 shall not include so much of any monthly
23 annuity payment under a qualified em-
24 ployer retirement plan as does not exceed
25 the amount obtained by dividing—

1 “(I) the investment in the con-
2 tract (as of the annuity starting date),
3 by

4 “(II) the number of anticipated
5 payments determined under the table
6 contained in clause (iii) (or, in the
7 case of a contract to which subsection
8 (c)(3)(B) applies, the number of
9 monthly annuity payments under such
10 contract).

11 “(ii) CERTAIN RULES MADE APPLICA-
12 BLE.—Rules similar to the rules of para-
13 graphs (2) and (3) of subsection (b) shall
14 apply for purposes of this paragraph.

15 “(iii) NUMBER OF ANTICIPATED PAY-
16 MENTS.—

“If the age of the primary annuitant on the annuity starting date is:	The number of anticipated payments is:
Not more than 55	360
More than 55 but not more than 60 ...	310
More than 60 but not more than 65 ...	260
More than 65 but not more than 70 ...	210
More than 70	160.

17 “(C) ADJUSTMENT FOR REFUND FEATURE
18 NOT APPLICABLE.—For purposes of this para-
19 graph, investment in the contract shall be de-

1 terminated under subsection (c)(1) without re-
2 gard to subsection (c)(2).

3 “(D) SPECIAL RULE WHERE LUMP SUM
4 PAID IN CONNECTION WITH COMMENCEMENT
5 OF ANNUITY PAYMENTS.—If, in connection with
6 the commencement of annuity payments under
7 any qualified employer retirement plan, the tax-
8 payer receives a lump sum payment—

9 “(i) such payment shall be taxable
10 under subsection (e) as if received before
11 the annuity starting date, and

12 “(ii) the investment in the contract
13 for purposes of this paragraph shall be de-
14 termined as if such payment had been so
15 received.

16 “(E) EXCEPTION.—This paragraph shall
17 not apply in any case where the primary annu-
18 itant has attained age 75 on the annuity start-
19 ing date unless there are fewer than 5 years of
20 guaranteed payments under the annuity.

21 “(F) ADJUSTMENT WHERE ANNUITY PAY-
22 MENTS NOT ON MONTHLY BASIS.—In any case
23 where the annuity payments are not made on a
24 monthly basis, appropriate adjustments in the
25 application of this paragraph shall be made to

1 take into account the period on the basis of
2 which such payments are made.

3 “(G) QUALIFIED EMPLOYER RETIREMENT
4 PLAN.—For purposes of this paragraph, the
5 term ‘qualified employer retirement plan’ means
6 any plan or contract described in paragraph
7 (1), (2), or (3) of section 4974(c).

8 “(2) TREATMENT OF EMPLOYEE CONTRIBU-
9 TIONS UNDER DEFINED CONTRIBUTION PLANS.—
10 For purposes of this section, employee contributions
11 (and any income allocable thereto) under a defined
12 contribution plan may be treated as a separate con-
13 tract.”

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply in cases where the annuity starting
16 date is after December 31, 1996.

17 **SEC. 1207. REPEAL OF 5-YEAR INCOME AVERAGING FOR**
18 **LUMP-SUM DISTRIBUTIONS.**

19 (a) IN GENERAL.—Subsection (d) of section 402 (re-
20 lating to taxability of beneficiary of employees’ trust) is
21 amended to read as follows:

22 “(d) TAXABILITY OF BENEFICIARY OF CERTAIN
23 FOREIGN SITUS TRUSTS.—For purposes of subsections
24 (a), (b), and (c), a stock bonus, pension, or profit-sharing
25 trust which would qualify for exemption from tax under

1 section 501(a) except for the fact that it is a trust created
2 or organized outside the United States shall be treated
3 as if it were a trust exempt from tax under section
4 501(a).”

5 (b) CONFORMING AMENDMENTS.—

6 (1) Subparagraph (D) of section 402(e)(4) (re-
7 lating to other rules applicable to exempt trusts) is
8 amended to read as follows:

9 “(D) LUMP-SUM DISTRIBUTION.—For pur-
10 poses of this paragraph—

11 “(i) IN GENERAL.—The term ‘lump
12 sum distribution’ means the distribution or
13 payment within one taxable year of the re-
14 cipient of the balance to the credit of an
15 employee which becomes payable to the re-
16 cipient—

17 “(I) on account of the employee’s
18 death,

19 “(II) after the employee attains
20 age 59½,

21 “(III) on account of the employ-
22 ee’s separation from service, or

23 “(IV) after the employee has be-
24 come disabled (within the meaning of
25 section 72(m)(7)),

1 from a trust which forms a part of a plan
2 described in section 401(a) and which is
3 exempt from tax under section 501 or from
4 a plan described in section 403(a). Sub-
5 clause (III) of this clause shall be applied
6 only with respect to an individual who is
7 an employee without regard to section
8 401(c)(1), and subclause (IV) shall be ap-
9 plied only with respect to an employee
10 within the meaning of section 401(c)(1).
11 For purposes of this clause, a distribution
12 to two or more trusts shall be treated as
13 a distribution to one recipient. For pur-
14 poses of this paragraph, the balance to the
15 credit of the employee does not include the
16 accumulated deductible employee contribu-
17 tions under the plan (within the meaning
18 of section 72(o)(5)).

19 “(ii) AGGREGATION OF CERTAIN
20 TRUSTS AND PLANS.—For purposes of de-
21 termining the balance to the credit of an
22 employee under clause (i)—

23 “(I) all trusts which are part of
24 a plan shall be treated as a single
25 trust, all pension plans maintained by

1 the employer shall be treated as a sin-
2 gle plan, all profit-sharing plans main-
3 tained by the employer shall be treat-
4 ed as a single plan, and all stock
5 bonus plans maintained by the em-
6 ployer shall be treated as a single
7 plan, and

8 “(II) trusts which are not quali-
9 fied trusts under section 401(a) and
10 annuity contracts which do not satisfy
11 the requirements of section 404(a)(2)
12 shall not be taken into account.

13 “(iii) COMMUNITY PROPERTY LAWS.—
14 The provisions of this paragraph shall be
15 applied without regard to community prop-
16 erty laws.

17 “(iv) AMOUNTS SUBJECT TO PEN-
18 ALTY.—This paragraph shall not apply to
19 amounts described in subparagraph (A) of
20 section 72(m)(5) to the extent that section
21 72(m)(5) applies to such amounts.

22 “(v) BALANCE TO CREDIT OF EM-
23 PLOYEE NOT TO INCLUDE AMOUNTS PAY-
24 ABLE UNDER QUALIFIED DOMESTIC RELA-
25 TIONS ORDER.—For purposes of this para-

1 graph, the balance to the credit of an em-
2 ployee shall not include any amount pay-
3 able to an alternate payee under a quali-
4 fied domestic relations order (within the
5 meaning of section 414(p)).

6 “(vi) TRANSFERS TO COST-OF-LIVING
7 ARRANGEMENT NOT TREATED AS DIS-
8 TRIBUTION.—For purposes of this para-
9 graph, the balance to the credit of an em-
10 ployee under a defined contribution plan
11 shall not include any amount transferred
12 from such defined contribution plan to a
13 qualified cost-of-living arrangement (within
14 the meaning of section 415(k)(2)) under a
15 defined benefit plan.

16 “(vii) LUMP-SUM DISTRIBUTIONS OF
17 ALTERNATE PAYEES.—If any distribution
18 or payment of the balance to the credit of
19 an employee would be treated as a lump-
20 sum distribution, then, for purposes of this
21 paragraph, the payment under a qualified
22 domestic relations order (within the mean-
23 ing of section 414(p)) of the balance to the
24 credit of an alternate payee who is the
25 spouse or former spouse of the employee

1 shall be treated as a lump-sum distribu-
2 tion. For purposes of this clause, the bal-
3 ance to the credit of the alternate payee
4 shall not include any amount payable to
5 the employee.”

6 (2) Section 402(c) (relating to rules applicable
7 to rollovers from exempt trusts) is amended by strik-
8 ing paragraph (10).

9 (3) Paragraph (1) of section 55(c) (defining
10 regular tax) is amended by striking “shall not in-
11 clude any tax imposed by section 402(d) and”.

12 (4) Paragraph (8) of section 62(a) (relating to
13 certain portion of lump-sum distributions from pen-
14 sion plans taxed under section 402(d)) is hereby re-
15 pealed.

16 (5) Section 401(a)(28)(B) (relating to coordina-
17 tion with distribution rules) is amended by striking
18 clause (v).

19 (6) Subparagraph (B)(ii) of section 401(k)(10)
20 (relating to distributions that must be lump-sum dis-
21 tributions) is amended to read as follows:

22 “(ii) LUMP-SUM DISTRIBUTION.—For
23 purposes of this subparagraph, the term
24 ‘lump-sum distribution’ has the meaning
25 given such term by section 402(e)(4)(D),

1 without regard to subclauses (I), (II),
2 (III), and (IV) of clause (i) thereof.”

3 (7) Section 406(c) (relating to termination of
4 status as deemed employee not to be treated as sep-
5 aration from service for purposes of limitation of
6 tax) is hereby repealed.

7 (8) Section 407(c) (relating to termination of
8 status as deemed employee not to be treated as sep-
9 aration from service for purposes of limitation of
10 tax) is hereby repealed.

11 (9) Section 691(c) (relating to deduction for es-
12 tate tax) is amended by striking paragraph (5).

13 (10) Paragraph (1) of section 871(b) (relating
14 to imposition of tax) is amended by striking “section
15 1, 55, or 402(d)(1)” and inserting “section 1 or
16 55”.

17 (11) Subsection (b) of section 877 (relating to
18 alternative tax) is amended by striking “section 1,
19 55, or 402(d)(1)” and inserting “section 1 or 55”.

20 (12) Section 4980A(c)(4) is amended—

21 (A) by striking “to which an election under
22 section 402(d)(4)(B) applies” and inserting
23 “(as defined in section 402(e)(4)(D)) with re-
24 spect to which the individual elects to have this
25 paragraph apply”,

1 (B) by adding at the end the following new
2 flush sentence:

3 “An individual may elect to have this paragraph
4 apply to only one lump-sum distribution.”, and

5 (C) by striking the heading and inserting:

6 “(4) SPECIAL ONE-TIME ELECTION.—”.

7 (13) Section 402(e) is amended by striking
8 paragraph (5).

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by
11 this section shall apply to taxable years beginning
12 after December 31, 1998.

13 (2) RETENTION OF CERTAIN TRANSITION
14 RULES.—Notwithstanding any other provision of
15 this section, the amendments made by this section
16 shall not apply to any distribution for which the tax-
17 payer elects the benefits of section 1122 (h)(3) or
18 (h)(5) of the Tax Reform Act of 1986. For purposes
19 of the preceding sentence, the rules of sections
20 402(c)(10) and 402(d) of the Internal Revenue Code
21 of 1986 (as in effect before the amendments made
22 by this Act) shall apply.

1 **SEC. 1208. ELIMINATION OF HALF-YEAR REQUIREMENTS.**

2 (a) IN GENERAL.—Each of the following provisions
3 are amended by striking “age 59½” and inserting “age
4 59”:

- 5 (1) Section 72(q)(2)(A).
- 6 (2) Section 72(q)(3)(B)(i).
- 7 (3) Section 72(q)(3)(B)(ii).
- 8 (4) Section 72(t)(2)(A)(i).
- 9 (5) Section 72(t)(4)(A)(ii)(I).
- 10 (6) Section 72(t)(4)(A)(ii)(II).
- 11 (7) Section 72(v)(2)(A).
- 12 (8) Section 401(k)(2)(B)(i)(III).
- 13 (9) Section 403(b)(7)(A)(ii).
- 14 (10) Section 403(b)(11)(A).
- 15 (11) The heading for section 403(b)(11).
- 16 (12) Section 4978(d)(1)(B).

17 (b) OTHER PROVISIONS.—Each of the following pro-
18 visions are amended by striking “age 70½” each place
19 it appears and inserting “age 70”:

- 20 (1) Section 219(d)(1).
- 21 (2) The heading for section 219(d)(1).
- 22 (3) Section 401(a)(9)(B)(iv)(I).
- 23 (4) Section 401(a)(9)(C).
- 24 (5) Section 408(b).
- 25 (6) Section 457(d)(1)(A).

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to years beginning after December
3 31, 1996.

4 **SEC. 1209. DISTRIBUTIONS UNDER RURAL COOPERATIVE**
5 **PLANS.**

6 (a) DISTRIBUTIONS FOR HARDSHIP OR AFTER A
7 CERTAIN AGE.—Section 401(k)(7) is amended by adding
8 at the end the following new subparagraph:

9 “(C) SPECIAL RULE FOR CERTAIN DIS-
10 TRIBUTIONS.—A rural cooperative plan which
11 includes a qualified cash or deferred arrange-
12 ment shall not be treated as violating the re-
13 quirements of section 401(a) or of paragraph
14 (2) merely because, under the plan, distribu-
15 tions may be made by reason of hardship or the
16 attainment of age 59½. For purposes of this
17 section, the term ‘hardship distribution’ means
18 a distribution described in paragraph
19 (2)(B)(i)(IV) (without regard to the limitation
20 of its application to profit-sharing or stock
21 bonus plans).”

22 (b) EFFECTIVE DATE.—The amendment made by
23 subsection (a) shall apply to distributions after the date
24 of the enactment of this Act.

1 **SEC. 1210. MODIFICATION OF ADDITIONAL PARTICIPATION**
 2 **REQUIREMENTS.**

3 (a) **GENERAL RULE.**—Section 401(a)(26)(A) (relat-
 4 ing to additional participation requirements) is amended
 5 to read as follows:

6 “(A) **IN GENERAL.**—In the case of a trust
 7 which is a part of a defined benefit plan, such
 8 trust shall not constitute a qualified trust under
 9 this subsection unless, on each day of the plan
 10 year, such plan benefits at least the lesser of—

11 “(i) 50 employees of the employer, or

12 “(ii) the greater of—

13 “(I) 40 percent of all employees
 14 of the employer, or

15 “(II) 2 employees (or if there is
 16 only 1 employee, such employee).”

17 (b) **EFFECTIVE DATE.**—The amendment made by
 18 this section shall apply to plan years beginning after De-
 19 cember 31, 1996.

20 **SEC. 1211. UNIFORM RETIREMENT AGE.**

21 (a) **DISCRIMINATION TESTING.**—Paragraph (5) of
 22 section 401(a) (relating to special rules relating to non-
 23 discrimination requirements) is amended by adding at the
 24 end the following new subparagraph:

1 “(F) SOCIAL SECURITY RETIREMENT
2 AGE.—For purposes of testing for discrimina-
3 tion under paragraph (4)—

4 “(i) the social security retirement age
5 (as defined in section 415(b)(8)) shall be
6 treated as a uniform retirement age, and

7 “(ii) subsidized early retirement bene-
8 fits and joint and survivor annuities shall
9 not be treated as being unavailable to em-
10 ployees on the same terms merely because
11 such benefits or annuities are based in
12 whole or in part on an employee’s social
13 security retirement age (as so defined).”

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to plan years beginning after De-
16 cember 31, 1996.

17 **SEC. 1212. TREATMENT OF LEASED EMPLOYEES.**

18 (a) GENERAL RULE.—Subparagraph (C) of section
19 414(n)(2) (defining leased employee) is amended to read
20 as follows:

21 “(C) such services are performed under
22 significant direction or control by the recipi-
23 ent.”

24 (b) EFFECTIVE DATE.—The amendment made by
25 subsection (a) shall apply to years beginning after Decem-

ber 31, 1996, but shall not apply to any relationship deter-
 mined under an Internal Revenue Service ruling issued be-
 fore the date of the enactment of this Act pursuant to
 section 414(n)(2)(C) of the Internal Revenue Code of
 1986 (as in effect on the day before such date) not to
 involve a leased employee.

SEC. 1213. FULL FUNDING LIMITATION FOR MULTIEMPLOYER PLANS.

(a) FULL-FUNDING LIMITATION.—Section 412(c)(7)(C) (relating to full-funding limitation) is amended—

(1) by inserting “or in the case of a multiemployer plan,” after “paragraph (6)(B),” and

(2) by inserting “AND MULTIEMPLOYER PLANS” after “PARAGRAPH (6)(B)” in the heading thereof.

(b) VALUATION.—Section 412(c)(9) is amended—

(1) by inserting “(3 years in the case of a multiemployer plan)” after “year”, and

(2) by striking “ANNUAL VALUATION” in the heading and inserting “VALUATION”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 1996.

1 **SEC. 1214. ELIMINATION OF PARTIAL TERMINATION RULES**
2 **FOR MULTIEMPLOYER PLANS.**

3 (a) PARTIAL TERMINATION RULES FOR MULTIEM-
4 PLOYER PLANS.—Section 411(d)(3) is amended by adding
5 at the end the following new sentence: “This paragraph
6 shall not apply in the case of a partial termination of a
7 multiemployer plan.”

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to partial terminations beginning
10 after December 31, 1996.

11 **SEC. 1215. ELECTIVE DEFERRALS UNDER SECTION 403(b).**

12 (a) IN GENERAL.—Subparagraph (E) of section
13 403(b)(1) is amended to read as follows:

14 “(E) in the case of a contract purchased
15 under a salary reduction agreement, the con-
16 tract meets the requirements of section
17 401(a)(30),”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to years beginning after December
20 31, 1996.

21 **SEC. 1216. UNIFORM PENALTY PROVISIONS TO APPLY TO**
22 **CERTAIN PENSION REPORTING REQUIRE-**
23 **MENTS.**

24 (a) PENALTIES.—

25 (1) STATEMENTS.—Paragraph (1) of section
26 6724(d) is amended by striking “and” at the end of

1 subparagraph (A), by striking the period at the end
2 of subparagraph (B) and inserting “, and”, and by
3 inserting after subparagraph (B) the following new
4 subparagraph:

5 “(C) any statement required to be made to
6 the Secretary under—

7 “(i) section 408(i) (relating to reports
8 with respect to individual retirement ac-
9 counts or annuities), or

10 “(ii) section 6047(d) (relating to re-
11 ports by employers, plan administrators,
12 etc.).”

13 (2) REPORTS.—Paragraph (2) of section
14 6724(d) is amended by striking “or” at the end of
15 subparagraph (S), by striking the period at the end
16 of subparagraph (T) and inserting a comma, and by
17 inserting after subparagraph (T) the following new
18 subparagraphs:

19 “(U) section 408(i) (relating to reports
20 with respect to individual retirement plans) to
21 any person other than the Secretary, or

22 “(V) section 6047(d) (relating to reports
23 by plan administrators) to any person other
24 than the Secretary.”

25 (3) PENALTIES.—

1 (A) Section 6721(e)(2)(A) is amended by
2 striking “or 6050L” and inserting “6050L, or
3 408(i)”.

4 (B) Section 6722(e)(1)(A) is amended by
5 striking “or 6050L(c)” and inserting
6 “6050L(c), or 408(i)”.

7 (b) MODIFICATION OF REPORTABLE DESIGNATED
8 DISTRIBUTIONS.—

9 (1) SECTION 408.—Subsection (i) of section 408
10 (relating to individual retirement account reports) is
11 amended by inserting “aggregating \$10 or more in
12 any calendar year” after “distributions”.

13 (2) SECTION 6047.—Paragraph (1) of section
14 6047(d) (relating to reports by employers, plan ad-
15 ministrators, etc.) is amended by adding at the end
16 the following new sentence: “No return or report
17 may be required under the preceding sentence with
18 respect to distributions to any person during any
19 year unless such distributions aggregate \$10 or
20 more.”

21 (c) CONFORMING AMENDMENTS.—

1 (1) Paragraph (1) of section 6047(f) is amend-
2 ed to read as follows:

“(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722.”

3 (2) Subsection (e) of section 6652 is amended
4 by adding at the end the following new sentence:
5 “‘This subsection shall not apply to any return or
6 statement which is an information return described
7 in section 6724(d)(1)(C)(ii) or a payee statement de-
8 scribed in section 6724(d)(2)(V).’”

9 (3) Subsection (a) of section 6693 is amended
10 by adding at the end the following new sentence:
11 “‘This subsection shall not apply to any report which
12 is an information return described in section
13 6724(d)(1)(C)(i) or a payee statement described in
14 section 6724(d)(2)(U).’”

15 (d) **EFFECTIVE DATE.**—The amendments made by
16 this section shall apply to returns, reports, and other
17 statements the due date for which (determined without re-
18 gard to extensions) is after December 31, 1996.

19 **SEC. 1217. TAX ON PROHIBITED TRANSACTIONS.**

20 (a) **IN GENERAL.**—Section 4975(a) is amended by
21 striking “5 percent” and inserting “10 percent”.

22 (b) **EFFECTIVE DATE.**—The amendment made by
23 this section shall apply to prohibited transactions occur-
24 ring after the date of the enactment of this Act.

1 **SEC. 1218. DATE FOR ADOPTION OF PLAN AMENDMENTS.**

2 (a) IN GENERAL.—If any amendment made by this
3 subtitle requires an amendment to any plan, such plan
4 amendment shall not be required to be made before the
5 last day of the first plan year beginning on or after Janu-
6 ary 1, 1998, if—

7 (1) during the period after such amendment
8 takes effect and before the last day of such first
9 plan year, the plan is operated in accordance with
10 the requirements of such amendment, and

11 (2) such plan amendment applies retroactively
12 to such period.

13 (b) GOVERNMENTAL PLANS.—In the case of a gov-
14 ernmental plan (as defined in section 414(d) of the Inter-
15 nal Revenue Code of 1986), subsection (a) shall be applied
16 by substituting for “January 1, 1998” the later of—

17 (1) January 1, 1999, or

18 (2) the date which is 90 days after the opening
19 of the first legislative session beginning after Janu-
20 ary 1, 1999, of the governing body with authority to
21 amend the plan, but only if such governing body
22 does not meet continuously.

1 **Subtitle B—Expanded Individual**
2 **Retirement Accounts to In-**
3 **crease Coverage and Portability**

4 **CHAPTER 1—RETIREMENT SAVINGS**

5 **INCENTIVES**

6 **Subchapter A—IRA Deduction**

7 **SEC. 1301. INCREASE IN INCOME LIMITATIONS.**

8 (a) IN GENERAL.—Subparagraph (B) of section
9 219(g)(3) is amended—

10 (1) by striking “\$40,000” in clause (i) and in-
11 sserting “\$80,000 (\$70,000 in the case of taxable
12 years beginning in 1996, 1997, or 1998)”, and

13 (2) by striking “\$25,000” in clause (ii) and in-
14 sserting “\$50,000 (\$45,000 in the case of taxable
15 years beginning in 1996, 1997, or 1998)”.

16 (b) PHASEOUT OF LIMITATIONS.—Clause (ii) of sec-
17 tion 219(g)(2)(A) is amended by striking “\$10,000” and
18 inserting “an amount equal to 10 times the dollar amount
19 applicable for the taxable year under subsection
20 (b)(1)(A)”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 1995.

1 **SEC. 1302. INFLATION ADJUSTMENT FOR DEDUCTIBLE**
2 **AMOUNT AND INCOME LIMITATIONS.**

3 (a) IN GENERAL.—Section 219 is amended by redес-
4 ignating subsection (h) as subsection (i) and by inserting
5 after subsection (g) the following new subsection:

6 “(h) COST-OF-LIVING ADJUSTMENTS.—

7 “(1) DEDUCTIBLE AMOUNTS.—In the case of
8 any taxable year beginning in a calendar year after
9 1996, the \$2,000 amounts under subsections
10 (b)(1)(A) and (c)(2) shall be increased by an amount
11 equal to—

12 “(A) such dollar amount, multiplied by

13 “(B) the cost-of-living adjustment deter-
14 mined under section 1(f)(3) for the calendar
15 year in which the taxable year begins, deter-
16 mined by substituting ‘calendar year 1995’ for
17 ‘calendar year 1992’ in subparagraph (B)
18 thereof.

19 “(2) APPLICABLE DOLLAR AMOUNT.—In the
20 case of any taxable year beginning in a calendar
21 year after 1999, the applicable dollar amounts under
22 subsection (g)(3)(B) shall be increased by an
23 amount equal to—

24 “(A) such dollar amount, multiplied by

25 “(B) the cost-of-living adjustment deter-
26 mined under section 1(f)(3) for the calendar

1 year in which the taxable year begins, deter-
2 mined by substituting ‘calendar year 1998’ for
3 ‘calendar year 1992’ in subparagraph (B)
4 thereof.

5 “(3) ROUNDING RULES.—

6 “(A) DEDUCTION AMOUNTS.—If any
7 amount after adjustment under paragraph (1)
8 is not a multiple of \$500, such amount shall be
9 rounded to the next lowest multiple of \$500.

10 “(B) APPLICABLE DOLLAR AMOUNTS.—If
11 any amount after adjustment under paragraph
12 (2) is not a multiple of \$5,000, such amount
13 shall be rounded to the next lowest multiple of
14 \$5,000.”

15 (b) CONFORMING AMENDMENTS.—

16 (1) Clause (i) of section 219(c)(2)(A) is amend-
17 ed to read as follows:

18 “(i) the sum of \$250 and the dollar
19 amount in effect for the taxable year under
20 subsection (b)(1)(A), or”.

21 (2) Section 408(a)(1) is amended by striking
22 “in excess of \$2,000 on behalf of any individual”
23 and inserting “on behalf of any individual in excess
24 of the amount in effect for such taxable year under
25 section 219(b)(1)(A)”.

1 “(B) the elective deferrals (as defined in
2 section 402(g)(3)) of such individual for such
3 taxable year.”

4 (b) CONFORMING AMENDMENT.—Section 219(e) is
5 amended by adding at the end the following new para-
6 graph:

7 “(3) CROSS REFERENCE.—

**“For reduction in paragraph (2) amount, see sub-
section (b)(4).”**

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 1995.

11 **Subchapter B—Nondeductible Tax-Free IRAs**

12 **SEC. 1311. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE** 13 **INDIVIDUAL RETIREMENT ACCOUNTS.**

14 (a) IN GENERAL.—Subpart A of part I of subchapter
15 D of chapter 1 (relating to pension, profit-sharing, stock
16 bonus plans, etc.) is amended by inserting after section
17 408 the following new section:

18 **“SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.**

19 “(a) GENERAL RULE.—Except as provided in this
20 chapter, a special individual retirement account shall be
21 treated for purposes of this title in the same manner as
22 an individual retirement plan.

23 “(b) SPECIAL INDIVIDUAL RETIREMENT AC-
24 COUNT.—For purposes of this title, the term ‘special indi-

1 individual retirement account' means an individual retirement
2 plan which is designated at the time of establishment of
3 the plan as a special individual retirement account.

4 “(c) TREATMENT OF CONTRIBUTIONS.—

5 “(1) NO DEDUCTION ALLOWED.—No deduction
6 shall be allowed under section 219 for a contribution
7 to a special individual retirement account.

8 “(2) CONTRIBUTION LIMIT.—The aggregate
9 amount of contributions for any taxable year to all
10 special individual retirement accounts maintained for
11 the benefit of an individual shall not exceed the ex-
12 cess (if any) of—

13 “(A) the maximum amount allowable as a
14 deduction under section 219 with respect to
15 such individual for such taxable year, over

16 “(B) the aggregate amount of contribu-
17 tions for such taxable year to all individual re-
18 tirement plans (other than special individual re-
19 tirement accounts) maintained for the benefit of
20 the individual.

21 “(3) SPECIAL RULES FOR QUALIFIED TRANS-
22 FERS.—

23 “(A) IN GENERAL.—No rollover contribu-
24 tion may be made to a special individual retire-
25 ment account unless it is a qualified transfer.

1 “(B) LIMIT NOT TO APPLY.—The limita-
2 tion under paragraph (2) shall not apply to a
3 qualified transfer to a special individual retire-
4 ment account.

5 “(d) TAX TREATMENT OF DISTRIBUTIONS.—

6 “(1) IN GENERAL.—Except as provided in this
7 subsection, any amount paid or distributed out of a
8 special individual retirement account shall not be in-
9 cluded in the gross income of the distributee.

10 “(2) EXCEPTION FOR EARNINGS ON CONTRIBU-
11 TIONS HELD LESS THAN 5 YEARS.—

12 “(A) IN GENERAL.—Any amount distrib-
13 uted out of a special individual retirement ac-
14 count which consists of earnings allocable to
15 contributions made to the account during the 5-
16 year period ending on the day before such dis-
17 tribution shall be included in the gross income
18 of the distributee for the taxable year in which
19 the distribution occurs.

20 “(B) ORDERING RULE.—

21 “(i) FIRST-IN, FIRST-OUT RULE.—
22 Distributions from a special individual re-
23 tirement account shall be treated as having
24 been made—

1 “(I) first from the earliest con-
2 tribution (and earnings allocable
3 thereto) remaining in the account at
4 the time of the distribution, and

5 “(II) then from other contribu-
6 tions (and earnings allocable thereto)
7 in the order in which made.

8 “(ii) ALLOCATIONS BETWEEN CON-
9 TRIBUTIONS AND EARNINGS.—Any portion
10 of a distribution allocated to a contribution
11 (and earnings allocable thereto) shall be
12 treated as allocated first to the earnings
13 and then to the contribution.

14 “(iii) ALLOCATION OF EARNINGS.—
15 Earnings shall be allocated to a contribu-
16 tion in such manner as the Secretary may
17 prescribe.

18 “(iv) AGGREGATIONS OF CONTRIBU-
19 TIONS.—Except as provided by the Sec-
20 retary, for purposes of this subpara-
21 graph—

22 “(I) all contributions made dur-
23 ing the same taxable year may be
24 treated as 1 contribution, and

1 “(II) all contributions made be-
2 fore the first day of the 5-year period
3 ending on the day before any distribu-
4 tion may be treated as 1 contribution.

5 “(C) CROSS REFERENCE.—

**“For additional tax for early withdrawal, see sec-
tion 72(t).**

6 “(3) QUALIFIED TRANSFER.—

7 “(A) IN GENERAL.—Paragraph (2) shall
8 not apply to any distribution which is trans-
9 ferred in a qualified transfer to another special
10 individual retirement account.

11 “(B) CONTRIBUTION PERIOD.—For pur-
12 poses of paragraph (2), the special individual
13 retirement account to which any contributions
14 are transferred shall be treated as having held
15 such contributions during any period such con-
16 tributions were held (or are treated as held
17 under this subparagraph) by the special individ-
18 ual retirement account from which transferred.

19 “(4) SPECIAL RULES RELATING TO CERTAIN
20 TRANSFERS.—

21 “(A) IN GENERAL.—Notwithstanding any
22 other provision of law, in the case of a qualified
23 transfer to a special individual retirement ac-

1 count from an individual retirement plan which
2 is not a special individual retirement account—

3 “(i) there shall be included in gross
4 income any amount which, but for the
5 qualified transfer, would be includible in
6 gross income, but

7 “(ii) section 72(t) shall not apply to
8 such amount.

9 “(B) TIME FOR INCLUSION.—In the case
10 of any qualified transfer which occurs before
11 January 1, 1998, any amount includible in
12 gross income under subparagraph (A) with re-
13 spect to such contribution shall be includible
14 ratably over the 4-taxable year period beginning
15 in the taxable year in which the amount was
16 paid or distributed out of the individual retire-
17 ment plan. The amount of such qualified trans-
18 fer taken into account for purposes of section
19 4980A(c) shall be taken into account ratably
20 over such period.

21 “(C) ADDITIONAL REPORTING.—A trustee
22 of an individual retirement plan shall include
23 such additional information in any report re-
24 quired under section 408(i) as the Secretary
25 may require to insure that amounts described

1 in subparagraph (B) are included in gross in-
2 come for the appropriate taxable year.

3 “(e) QUALIFIED TRANSFER.—For purposes of this
4 section—

5 “(1) IN GENERAL.—The term ‘qualified trans-
6 fer’ means a transfer to a special individual retire-
7 ment account from another such account or from an
8 individual retirement plan but only if such transfer
9 meets the requirements of section 408(d)(3).

10 “(2) LIMITATION.—

11 “(A) IN GENERAL.—A transfer otherwise
12 described in paragraph (1) shall not be treated
13 as a qualified transfer if the taxpayer’s adjusted
14 gross income for the taxable year of the trans-
15 fer exceeds the sum of—

16 “(i) the applicable dollar amount, plus

17 “(ii) the dollar amount applicable for
18 the taxable year under section
19 219(g)(2)(A)(ii).

20 This subparagraph shall not apply to a transfer
21 from a special individual retirement account to
22 another special individual retirement account.

23 “(B) TRANSITION RULE.—In the case of a
24 transfer before January 1, 1999, the dollar lim-
25 itation under subparagraph (A) shall be

1 \$100,000 in the case of a married individual fil-
2 ing a joint return, zero in the case of a married
3 individual filing a separate return, and \$70,000
4 in any other case.

5 “(3) DEFINITIONS.—For purposes of this sub-
6 section, the terms ‘adjusted gross income’ and ‘ap-
7 plicable dollar amount’ have the meanings given
8 such terms by section 219(g)(3), except that ad-
9 justed gross income shall be determined by taking
10 into account the deduction under section 219 and
11 not taking into account any transfer to which para-
12 graph (2) applies.”

13 (b) ADDITIONAL TAX ON EARLY DISTRIBUTIONS.—
14 Section 72(t) is amended by adding at the end the follow-
15 ing new paragraph:

16 “(6) RULES RELATING TO SPECIAL INDIVIDUAL
17 RETIREMENT ACCOUNTS.—In the case of a special
18 individual retirement account under section 408A—

19 “(A) this subsection shall only apply to
20 distributions out of such account which consist
21 of earnings allocable to contributions made to
22 the account during the 5-year period ending on
23 the day before such distribution, and

1 “(B) paragraph (2)(A)(i) shall not apply to
2 any distribution described in subparagraph
3 (A).”

4 (c) EXCESS CONTRIBUTIONS.—Section 4973(b) is
5 amended—

6 (1) by inserting “, or a qualified transfer de-
7 scribed in section 408A(e)” after “408(d)(3)” in
8 paragraph (1)(A), and

9 (2) by adding at the end the following new sen-
10 tence: “For purposes of paragraphs (1)(B) and
11 (2)(C), the amount allowable as a deduction under
12 section 219 shall be computed without regard to sec-
13 tion 408A.”

14 (d) REPORTING.—Section 408(i) is amended by strik-
15 ing “under regulations” and “in such regulations” each
16 place such terms appear.

17 (e) CONFORMING AMENDMENT.—The table of sec-
18 tions for subpart A of part I of subchapter D of chapter
19 1 is amended by inserting after the item relating to section
20 408 the following new item:

 “Sec. 408A. Special individual retirement accounts.”

21 (f) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 1995.

1 **CHAPTER 2—DISTRIBUTIONS AND**
2 **INVESTMENTS**

3 **SEC. 1321. DISTRIBUTIONS FROM IRAS MAY BE USED WITH-**
4 **OUT ADDITIONAL TAX TO PURCHASE FIRST**
5 **HOMES, TO PAY HIGHER EDUCATION OR FI-**
6 **NANCIALLY DEVASTATING MEDICAL EX-**
7 **PENSES, OR BY THE UNEMPLOYED.**

8 (a) IN GENERAL.—Paragraph (2) of section 72(t)
9 (relating to exceptions to 10-percent additional tax on
10 early distributions from qualified retirement plans) is
11 amended by adding at the end the following new subpara-
12 graph:

13 “(D) DISTRIBUTIONS FROM CERTAIN
14 PLANS FOR FIRST HOME PURCHASES OR EDU-
15 CATIONAL EXPENSES.—Distributions to an in-
16 dividual from an individual retirement plan—

17 “(i) which are qualified first-time
18 homebuyer distributions (as defined in
19 paragraph (7)); or

20 “(ii) to the extent such distributions
21 do not exceed the qualified higher edu-
22 cation expenses (as defined in paragraph
23 (8)) of the taxpayer for the taxable year.”

24 (b) FINANCIALLY DEVASTATING MEDICAL EX-
25 PENSES.—

1 (1) IN GENERAL.—Section 72(t)(3)(A) is
2 amended by striking “(B),”.

3 (2) CERTAIN LINEAL DESCENDANTS AND AN-
4 CESTORS TREATED AS DEPENDENTS AND LONG-
5 TERM CARE SERVICES TREATED AS MEDICAL
6 CARE.—Subparagraph (B) of section 72(t)(2) is
7 amended by striking “medical care” and all that fol-
8 lows and inserting “medical care determined—

9 “(i) without regard to whether the
10 employee itemizes deductions for such tax-
11 able year, and

12 “(ii) in the case of an individual re-
13 tirement plan—

14 “(I) by treating such employee’s
15 dependents as including all children,
16 grandchildren, and ancestors of the
17 employee or such employee’s spouse
18 and

19 “(II) by treating qualified long-
20 term care services (as defined in para-
21 graph (9)) as medical care for pur-
22 poses of this subparagraph.”

23 (3) CONFORMING AMENDMENT.—Subparagraph
24 (B) of section 72(t)(2) is amended by striking “or
25 (C)” and inserting “, (C), or (D)”.

1 (c) DEFINITIONS.—Section 72(t), as amended by this
2 Act, is amended by adding at the end the following new
3 paragraphs:

4 “(7) QUALIFIED FIRST-TIME HOMEBUYER DIS-
5 TRIBUTIONS.—For purposes of paragraph
6 (2)(D)(i)—

7 “(A) IN GENERAL.—The term ‘qualified
8 first-time homebuyer distribution’ means any
9 payment or distribution received by an individ-
10 ual to the extent such payment or distribution
11 is used by the individual before the close of the
12 60th day after the day on which such payment
13 or distribution is received to pay qualified ac-
14 quisition costs with respect to a principal resi-
15 dence of a first-time homebuyer who is such in-
16 dividual or the spouse, child (as defined in sec-
17 tion 151(c)(3)), or grandchild of such individ-
18 ual.

19 “(B) QUALIFIED ACQUISITION COSTS.—
20 For purposes of this paragraph, the term
21 ‘qualified acquisition costs’ means the costs of
22 acquiring, constructing, or reconstructing a res-
23 idence. Such term includes any usual or reason-
24 able settlement, financing, or other closing
25 costs.

1 “(C) FIRST-TIME HOMEBUYER; OTHER
2 DEFINITIONS.—For purposes of this para-
3 graph—

4 “(i) FIRST-TIME HOMEBUYER.—The
5 term ‘first-time homebuyer’ means any in-
6 dividual if—

7 “(I) such individual (and if mar-
8 ried, such individual’s spouse) had no
9 present ownership interest in a prin-
10 cipal residence during the 3-year pe-
11 riod ending on the date of acquisition
12 of the principal residence to which
13 this paragraph applies, and

14 “(II) subsection (h) or (k) of sec-
15 tion 1034 did not suspend the run-
16 ning of any period of time specified in
17 section 1034 with respect to such in-
18 dividual on the day before the date
19 the distribution is applied pursuant to
20 subparagraph (A).

21 In the case of an individual described in
22 section 143(i)(1)(C) for any year, an own-
23 ership interest shall not include any inter-
24 est under a contract of deed described in
25 such section. An individual who loses an

1 ownership interest in a principal residence
2 incident to a divorce or legal separation is
3 deemed for purposes of this subparagraph
4 to have had no ownership interest in such
5 principal residence within the period re-
6 ferred to in subclause (II).

7 “(ii) PRINCIPAL RESIDENCE.—The
8 term ‘principal residence’ has the same
9 meaning as when used in section 1034.

10 “(iii) DATE OF ACQUISITION.—The
11 term ‘date of acquisition’ means the date—

12 “(I) on which a binding contract
13 to acquire the principal residence to
14 which subparagraph (A) applies is en-
15 tered into, or

16 “(II) on which construction or re-
17 construction of such a principal resi-
18 dence is commenced.

19 “(D) SPECIAL RULE WHERE DELAY IN AC-
20 QUISSION.—Any portion of any distribution
21 from any individual retirement plan which fails
22 to meet the requirements of subparagraph (A)
23 solely by reason of a delay or cancellation of the
24 purchase or construction of the residence may
25 be contributed to an individual retirement plan

1 as provided in section 408(d)(3)(A)(i) (deter-
2 mined by substituting ‘120 days’ for ‘60 days’
3 in such section), except that—

4 “(i) section 408(d)(3)(B) shall not be
5 applied to such portion, and

6 “(ii) such portion shall not be taken
7 into account in determining whether sec-
8 tion 408(d)(3)(B) applies to any other
9 amount.

10 “(8) QUALIFIED HIGHER EDUCATION EX-
11 PENSES.—For purposes of paragraph (2)(D)(ii)—

12 “(A) IN GENERAL.—The term ‘qualified
13 higher education expenses’ means tuition and
14 fees required for the enrollment or attendance
15 of—

16 “(i) the taxpayer,

17 “(ii) the taxpayer’s spouse,

18 “(iii) a dependent of the taxpayer
19 with respect to whom the taxpayer is al-
20 lowed a deduction under section 151, or

21 “(iv) the taxpayer’s child (as defined
22 in section 151(c)(3)) or grandchild,

23 as an eligible student at an institution of higher
24 education.

1 “(B) EXCEPTIONS.—The term ‘qualified
2 higher education expenses’ does not include—

3 “(i) expenses with respect to any
4 course or other education involving sports,
5 games, or hobbies, unless such expenses—

6 “(I) are part of a degree pro-
7 gram, or

8 “(II) are deductible under this
9 chapter without regard to this section;
10 or

11 “(ii) any student activity fees, athletic
12 fees, insurance expenses, or other expenses
13 unrelated to a student’s academic course of
14 instruction.

15 “(C) COORDINATION WITH SAVINGS BOND
16 PROVISIONS.—The amount of qualified higher
17 education expenses for any taxable year shall be
18 reduced by any amount excludable from gross
19 income under section 135.

20 “(D) ELIGIBLE STUDENT.—For purposes
21 of subparagraph (A), the term ‘eligible student’
22 means a student who—

23 “(i) meets the requirements of section
24 484(a)(1) of the Higher Education Act of
25 1965 (20 U.S.C. 1091(a)(1)), as in effect

1 on the date of the enactment of this sec-
 2 tion, and

3 “(ii)(I) is carrying at least one-half
 4 the normal full-time work load for the
 5 course of study the student is pursuing, as
 6 determined by the institution of higher
 7 education, or

8 “(II) is enrolled in a course which en-
 9 ables the student to improve the student’s
 10 job skills or to acquire new job skills.

11 “(E) INSTITUTION OF HIGHER EDU-
 12 CATION.—The term ‘institution of higher edu-
 13 cation’ means an institution which—

14 “(i) is described in section 481 of the
 15 Higher Education Act of 1965 (20 U.S.C.
 16 1088), as in effect on the date of the en-
 17 actment of this section, and

18 “(ii) is eligible to participate in pro-
 19 grams under title IV of such Act.

20 “(9) QUALIFIED LONG-TERM CARE SERVICES.—
 21 For purposes of paragraph (2)(B)—

22 “(A) IN GENERAL.—The term ‘qualified
 23 long-term care services’ means necessary diag-
 24 nostic, curing, mitigating, treating, preventive,
 25 therapeutic, and rehabilitative services, and

1 maintenance and personal care services (wheth-
2 er performed in a residential or nonresidential
3 setting) which—

4 “(i) are required by an individual dur-
5 ing any period the individual is an inca-
6 pacitated individual (as defined in subpara-
7 graph (B)),

8 “(ii) have as their primary purpose—

9 “(I) the provision of needed as-
10 sistance with 1 or more activities of
11 daily living (as defined in subpara-
12 graph (C)), or

13 “(II) protection from threats to
14 health and safety due to severe cog-
15 nitive impairment, and

16 “(iii) are provided pursuant to a con-
17 tinuing plan of care prescribed by a li-
18 censed professional (as defined in subpara-
19 graph (D)).

20 “(B) INCAPACITATED INDIVIDUAL.—The
21 term ‘incapacitated individual’ means any indi-
22 vidual who—

23 “(i) is unable to perform, without sub-
24 stantial assistance from another individual
25 (including assistance involving cueing or

1 substantial supervision), at least 2 activi-
 2 ties of daily living as defined in subpara-
 3 graph (C), or

4 “(ii) has severe cognitive impairment
 5 as defined by the Secretary in consultation
 6 with the Secretary of Health and Human
 7 Services.

8 Such term shall not include any individual oth-
 9 erwise meeting the requirements of the preced-
 10 ing sentence unless, within the preceding 12-
 11 month period, a licensed professional has cer-
 12 tified that such individual meets such require-
 13 ments.

14 “(C) ACTIVITIES OF DAILY LIVING.—Each
 15 of the following is an activity of daily living:

16 “(i) Eating.

17 “(ii) Toileting.

18 “(iii) Transferring.

19 “(iv) Bathing.

20 “(v) Dressing.

21 “(D) LICENSED PROFESSIONAL.—The
 22 term ‘licensed professional’ means—

23 “(i) a physician or registered profes-
 24 sional nurse, or

1 “(ii) any other individual who meets
2 such requirements as may be prescribed by
3 the Secretary after consultation with the
4 Secretary of Health and Human Services.

5 “(E) CERTAIN SERVICES NOT IN-
6 CLUDED.—The term ‘qualified long-term care
7 services’ shall not include any services provided
8 to an individual—

9 “(i) by a relative (directly or through
10 a partnership, corporation, or other entity)
11 unless the relative is a licensed professional
12 with respect to such services, or

13 “(ii) by a corporation or partnership
14 which is related (within the meaning of
15 section 267(b) or 707(b)) to the individual.

16 For purposes of this subparagraph, the term
17 ‘relative’ means an individual bearing a rela-
18 tionship to the individual which is described in
19 paragraphs (1) through (8) of section 152(a).”

20 (d) DISTRIBUTIONS FOR CERTAIN UNEMPLOYED IN-
21 DIVIDUALS.—Paragraph (2) of section 72(t) is amended
22 by adding at the end the following new subparagraph:

23 “(E) DISTRIBUTIONS TO UNEMPLOYED IN-
24 DIVIDUALS.—A distribution from an individual

1 retirement plan to an individual after separa-
 2 tion from employment, if—

3 “(i) such individual has received un-
 4 employment compensation for 12 consecu-
 5 tive weeks under any Federal or State un-
 6 employment compensation law by reason of
 7 such separation, and

8 “(ii) such distributions are made dur-
 9 ing any taxable year during which such un-
 10 employment compensation is paid or the
 11 succeeding taxable year.”

12 (e) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to payments and distributions after
 14 December 31, 1995.

15 **SEC. 1322. CONTRIBUTIONS MUST BE HELD AT LEAST 5**
 16 **YEARS IN CERTAIN CASES.**

17 (a) IN GENERAL.—Section 72(t), as amended by this
 18 Act, is amended by adding at the end the following new
 19 paragraph:

20 “(10) CERTAIN CONTRIBUTIONS MUST BE HELD
 21 5 YEARS.—

22 “(A) IN GENERAL.—Paragraph (2)(A)(i)
 23 shall not apply to any amount distributed out
 24 of an individual retirement plan (other than a
 25 special individual retirement account) which is

1 allocable to contributions made to the plan dur-
2 ing the 5-year period ending on the date of
3 such distribution (and earnings on such con-
4 tributions).

5 “(B) ORDERING RULE.—For purposes of
6 this paragraph—

7 “(i) FIRST-IN, FIRST-OUT RULE.—
8 Distributions shall be treated as having
9 been made—

10 “(I) first from the earliest con-
11 tribution (and earnings allocable
12 thereto) remaining in the account at
13 the time of the distribution, and

14 “(II) then from other contribu-
15 tions (and earnings allocable thereto)
16 in the order in which made.

17 “(ii) ALLOCATION OF EARNINGS.—
18 Earnings shall be allocated to contribu-
19 tions in such manner as the Secretary may
20 prescribe.

21 “(iii) AGGREGATIONS OF CONTRIBU-
22 TIONS.—Except as provided by the Sec-
23 retary, for purposes of this subpara-
24 graph—

1 “(I) all contributions made dur-
2 ing the same taxable year may be
3 treated as 1 contribution, and

4 “(II) all contributions made be-
5 fore the first day of the 5-year period
6 ending on the day before any distribu-
7 tion may be treated as 1 contribution.

8 “(C) SPECIAL RULE FOR ROLLOVERS.—

9 “(i) PENSION PLANS.—Subparagraph
10 (A) shall not apply to distributions out of
11 an individual retirement plan which are al-
12 locable to rollover contributions to which
13 section 402(c), 403(a)(4), or 403(b)(8) ap-
14 plied.

15 “(ii) CONTRIBUTION PERIOD.—For
16 purposes of subparagraph (A), amounts
17 shall be treated as having been held by a
18 plan during any period such contributions
19 were held (or are treated as held under
20 this clause) by any individual retirement
21 plan from which transferred.

22 “(D) SPECIAL ACCOUNTS.—For rules ap-
23 plicable to special individual retirement ac-
24 counts under section 408A, see paragraph (8).”

1 (b) EFFECTIVE DATE.—The amendment made by
 2 this section shall apply to contributions (and earnings allo-
 3 cable thereto) which are made after December 31, 1995.

4 **SEC. 1323. INVESTMENTS IN QUALIFIED STATE PREPAID**
 5 **TUITION PROGRAMS.**

6 (a) IN GENERAL.—Section 408, as amended by sec-
 7 tion 1101, is amended by redesignating subsection (q) as
 8 subsection (r) and by inserting after subsection (p) the
 9 following new subsection:

10 “(q) SPECIAL RULES FOR QUALIFIED STATE PRE-
 11 PAID TUITION PROGRAM INSTRUMENTS.—

12 “(1) IN GENERAL.—In the case of a qualified
 13 State prepaid tuition program instrument to which
 14 this subsection applies—

15 “(A) the use of all or part of the assets of
 16 an individual retirement plan to purchase such
 17 an instrument shall be treated for purposes of
 18 this section as for the exclusive benefit of the
 19 individual for whom the plan was established or
 20 the individual’s beneficiaries, and

21 “(B) to the extent such instrument is con-
 22 verted into tuition and fees as provided in para-
 23 graph (3)(B)(i), such individual (or such bene-
 24 ficiaries) shall be treated—

1 “(i) for purposes of subsection (d) as
2 having received a distribution in an
3 amount equal to such tuition and fees (as
4 of the time of the conversion), and

5 “(ii) for purposes of section
6 72(t)(2)(D)(ii), as having incurred quali-
7 fied higher education expenses to the ex-
8 tent such tuition and fees otherwise con-
9 stitute such expenses.

10 “(2) INSTRUMENTS TO WHICH SUBSECTION AP-
11 PLIES.—To the extent provided by the Secretary,
12 this subsection shall apply to any qualified State
13 prepaid tuition program instrument if—

14 “(A) the instrument is purchased by the
15 individual retirement plan directly from the
16 State or an instrumentality thereof, and

17 “(B) the beneficiary designated under the
18 instrument is the taxpayer, the taxpayer’s
19 spouse, a dependent of the taxpayer with re-
20 spect to whom the taxpayer is allowed a deduc-
21 tion under section 151, or the taxpayer’s child
22 (as defined in section 151(c)(3)) or grandchild.

23 “(3) QUALIFIED STATE PREPAID TUITION PRO-
24 GRAM INSTRUMENT.—For purposes of this sub-

1 section, the term ‘qualified State prepaid tuition pro-
2 gram instrument’ means an instrument which—

3 “(A) is issued under a program established
4 and maintained by a State, and

5 “(B) which may only be—

6 “(i) converted into a percentage (de-
7 termined as of the time of purchase) of
8 tuition and fees which would constitute
9 qualified higher education expenses (within
10 the meaning of section 72(t)(8)) if the ben-
11 efiary designated under the instrument
12 enrolls in or attends an institution of high-
13 er education specified in the instrument as
14 an eligible student, or

15 “(ii) redeemed for an amount not less
16 than the purchase price (less any reason-
17 able administrative fees) if the instrument
18 is not converted as provided in clause (i).

19 “(4) DEFINITIONS.—For purposes of this sub-
20 section, the terms ‘institution of higher education’
21 and ‘eligible student’ have the meanings given such
22 terms by section 72(t)(8).”

23 (b) EXEMPTION FROM PROHIBITED TRANS-
24 ACTIONS.—Section 4975(d) is amended by striking “or”
25 at the end of paragraph (14), by striking the period at

1 the end of paragraph (15) and inserting “; or”, and by
 2 inserting after paragraph (15) the following new para-
 3 graph:

4 “(16) any purchase of a qualified State prepaid
 5 tuition program instrument to which section 408(q)
 6 applies.”

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to taxable years beginning after
 9 December 31, 1995.

10 **CHAPTER 3—TERMINATION OF CERTAIN**
 11 **PROVISIONS**

12 **SEC. 1331. TERMINATION OF CERTAIN PROVISIONS.**

13 (a) TERMINATION OF INFLATION ADJUSTMENT FOR
 14 IRA LIMITATIONS.—The dollar amounts applicable under
 15 section 219 of the Internal Revenue Code of 1986 shall
 16 be determined without regard to subsection (h) of such
 17 section in the case of taxable years beginning after Decem-
 18 ber 31, 2000.

19 (b) TERMINATION OF CONTRIBUTIONS TO SPECIAL
 20 INDIVIDUAL RETIREMENT ACCOUNTS.—No contribution
 21 may be made after December 31, 2000, to any special in-
 22 dividual retirement account (within the meaning of section
 23 408A of such Code).

24 (c) TERMINATION OF TRANSFERS TO SPECIAL INDI-
 25 VIDUAL RETIREMENT ACCOUNTS FROM REGULAR INDI-

1 INDIVIDUAL RETIREMENT ACCOUNTS.—For purposes of sec-
2 tion 408A of such Code, the term “qualified transfer”
3 shall not include any transfer after December 31, 2000,
4 to a special individual retirement account from any ac-
5 count other than a special individual retirement account.

6 (d) APPLICATION OF EARLY WITHDRAWAL TAX.—
7 The amendments made by the following provisions shall
8 not apply to any distribution after December 31, 2000:

9 (1) Section 1311(b) (relating to exception for
10 distributions from special individual retirement ac-
11 counts allocable to contributions held at least 5
12 years).

13 (2) Section 1321 (relating to distributions from
14 IRAs may be used without additional tax to pur-
15 chase first homes, to pay higher education or finan-
16 cially devastating medical expenses, or by the unem-
17 ployed).

18 (3) Section 1322 (relating to exception for dis-
19 tributions allocable to contributions held at least 5
20 years).

21 (e) TERMINATION OF INCREASES IN CERTAIN LIMI-
22 TATIONS.—The amendments made by the following provi-
23 sions shall not apply to any taxable year beginning after
24 December 31, 2000:

1 (1) Section 1301 (relating to increase in income
2 limitations for individual retirement plans).

3 (2) Section 1303 (relating to coordination of
4 IRA deduction limit with elective deferral limit).

5 **Subtitle C—Other Expansions of**
6 **Pension Portability**

7 **SEC. 1401. ALTERNATIVE NONDISCRIMINATION RULES FOR**
8 **CERTAIN PLANS THAT PROVIDE FOR EARLY**
9 **PARTICIPATION.**

10 (a) CASH OR DEFERRED ARRANGEMENTS.—Para-
11 graph (3) of section 401(k) (relating to application of par-
12 ticipation and discrimination standards), as amended by
13 section 1103(d), is amended by adding at the end the fol-
14 lowing new subparagraph:

15 “(F) SPECIAL RULE FOR EARLY PARTICI-
16 PATION.—If an employer elects to apply section
17 410(b)(4)(B) in determining whether a cash or
18 deferred arrangement meets the requirements
19 of subparagraph (A)(i), the employer may, in
20 determining whether the arrangement meets the
21 requirements of subparagraph (A)(ii), exclude
22 from consideration all eligible employees (other
23 than highly compensated employees) who have
24 not met the minimum age and service require-
25 ments of section 410(a)(1)(A).”

1 (b) MATCHING CONTRIBUTIONS.—Paragraph (5) of
 2 section 401(m) (relating to employees taken into consider-
 3 ation) is amended by adding at the end the following new
 4 subparagraph:

5 “(C) SPECIAL RULE FOR EARLY PARTICI-
 6 PATION.—If an employer elects to apply section
 7 410(b)(4)(B) in determining whether a plan
 8 meets the requirements of section 410(b), the
 9 employer may, in determining whether the plan
 10 meets the requirements of paragraph (2), ex-
 11 clude from consideration all eligible employees
 12 (other than highly compensated employees) who
 13 have not met the minimum age and service re-
 14 quirements of section 410(a)(1)(A).”

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to plan years beginning after De-
 17 cember 31, 1996.

18 **SEC. 1402. TREATMENT OF CERTAIN VETERANS’ REEM-**
 19 **PLOYMENT RIGHTS.**

20 (a) IN GENERAL.—Section 414 is amended by adding
 21 at the end the following new subsection:

22 “(u) SPECIAL RULES RELATING TO VETERANS’ RE-
 23 EMPLOYMENT RIGHTS UNDER USSERA.—

24 “(1) TREATMENT OF CERTAIN CONTRIBUTIONS
 25 MADE PURSUANT TO VETERANS’ REEMPLOYMENT

1 RIGHTS UNDER USERRA.—If any contribution is
2 made by an employer or an employee under an indi-
3 vidual account plan with respect to an employee, or
4 by an employee to a defined benefit plan that pro-
5 vides for employee contributions, and such contribu-
6 tion is required by reason of such employee’s rights
7 under chapter 43 of title 38, United States Code, re-
8 sulting from qualified military service, then—

9 “(A) such contribution shall not be subject
10 to any otherwise applicable limitation contained
11 in section 402(g), 402(h), 403(b), 404(a),
12 404(h), 408, 415, or 457, and shall not be
13 taken into account in applying such limitations
14 to other contributions or benefits under such
15 plan or any other plan, with respect to the year
16 in which the contribution is made,

17 “(B) such contribution shall be subject to
18 the limitations referred to in subparagraph (A)
19 with respect to the year to which the contribu-
20 tion relates (in accordance with rules prescribed
21 by the Secretary), and

22 “(C) such plan shall not be treated as fail-
23 ing to meet the requirements of section
24 401(a)(4), 401(a)(26), 401(k)(3), 401(k)(11),
25 401(m), 403(b)(12), 408(k)(3), 408(k)(6),

1 408(p), 410(b), or 416 by reason of the making
2 of (or the right to make) such contribution.

3 For purposes of the preceding sentence, any elective
4 deferral or employee contribution made under para-
5 graph (2) shall be treated as required by reason of
6 the employee’s rights under such chapter 43.

7 “(2) REEMPLOYMENT RIGHTS UNDER USERRA
8 WITH RESPECT TO ELECTIVE DEFERRALS.—

9 “(A) IN GENERAL.—For purposes of this
10 subchapter and section 457, if an employee is
11 entitled to the benefits of chapter 43 of title 38,
12 United States Code, with respect to any plan
13 which provides for elective deferrals, the em-
14 ployer sponsoring the plan shall be treated as
15 meeting the requirements of such chapter 43
16 with respect to such elective deferrals only if
17 such employer—

18 “(i) permits such employee to make
19 additional elective deferrals under such
20 plan (in the amount determined under sub-
21 paragraph (B) or such lesser amount as is
22 elected by the employee) during the period
23 which begins on the date of the reemploy-
24 ment of such employee with such employer
25 and has the same length as the lesser of—

1 “(I) the product of 3 and the pe-
2 riod of qualified military service which
3 resulted in such rights, and

4 “(II) 5 years, and

5 “(ii) makes a matching contribution
6 with respect to any additional elective de-
7 ferral made pursuant to clause (i) which
8 would have been required had such defer-
9 ral actually been made during the period of
10 such qualified military service.

11 “(B) AMOUNT OF MAKEUP REQUIRED.—

12 The amount determined under this subpara-
13 graph with respect to any plan is the maximum
14 amount of the elective deferrals that the indi-
15 vidual would have been permitted to make
16 under the plan in accordance with the limita-
17 tions referred to in paragraph (1)(A) during the
18 period of qualified military service if the indi-
19 vidual had continued to be employed by the em-
20 ployer during such period and received com-
21 pensation as determined under paragraph (7).
22 Proper adjustment shall be made to the amount
23 determined under the preceding sentence for
24 any elective deferrals actually made during the
25 period of such qualified military service.

1 “(C) ELECTIVE DEFERRAL.—For purposes
2 of this paragraph, the term ‘elective deferral’
3 has the meaning given such term by section
4 402(g)(3); except that such term shall include
5 any deferral of compensation under an eligible
6 deferred compensation plan (as defined in sec-
7 tion 457(b)).

8 “(D) AFTER-TAX EMPLOYEE CONTRIBU-
9 TIONS.—References in subparagraphs (A) and
10 (B) to elective deferrals shall be treated as in-
11 cluding references to employee contributions.

12 “(3) CERTAIN RETROACTIVE ADJUSTMENTS
13 NOT REQUIRED.—For purposes of this subchapter
14 and subchapter E, no provision of chapter 43 of title
15 38, United States Code, shall be construed as re-
16 quiring—

17 “(A) any crediting of earnings to an em-
18 ployee with respect to any contribution before
19 such contribution is actually made, or

20 “(B) any allocation of any forfeiture with
21 respect to the period of qualified military serv-
22 ice.

23 “(4) LOAN REPAYMENT SUSPENSIONS PER-
24 MITTED.—If any plan suspends the obligation to
25 repay any loan made to an employee from such plan

1 for any part of any period during which such em-
2 ployee is performing service in the uniformed serv-
3 ices (as defined in chapter 43 of title 38, United
4 States Code), whether or not qualified military serv-
5 ice, such suspension shall not be taken into account
6 for purposes of section 72(p) or 401(a).

7 “(5) QUALIFIED MILITARY SERVICE.—For pur-
8 poses of this subsection, the term ‘qualified military
9 service’ means any service in the uniformed services
10 (as defined in chapter 43 of title 38, United States
11 Code) by any individual if such individual is entitled
12 to reemployment rights under such chapter with re-
13 spect to such service.

14 “(6) INDIVIDUAL ACCOUNT PLAN.—For pur-
15 poses of this subsection, the term ‘individual account
16 plan’ means any defined contribution plan (including
17 any tax-sheltered annuity plan under section 403(b),
18 any simplified employee pension under section
19 408(k), and any NEST under section 408(p)) and
20 any eligible deferred compensation plan (as defined
21 in section 457(b)).

22 “(7) COMPENSATION.—For purposes of sections
23 403(b)(3), 415(c)(3), and 457(e)(5), an employee
24 who is in qualified military service shall be treated

1 as receiving compensation from the employer during
2 such period of qualified military service equal to—

3 “(A) the compensation the employee would
4 have received during such period if the em-
5 ployee were not in qualified military service, de-
6 termined based on the rate of pay the employee
7 would have received from the employer but for
8 absence during the period of qualified military
9 service, or

10 “(B) if the compensation the employee
11 would have received during such period was not
12 reasonably certain, the employee’s average com-
13 pensation from the employer during the 12-
14 month period immediately preceding the quali-
15 fied military service (or, if shorter, the period of
16 employment immediately preceding the qualified
17 military service).

18 “(8) USERRA REQUIREMENTS FOR QUALIFIED
19 RETIREMENT PLANS.—For purposes of this sub-
20 chapter and section 457, an employer sponsoring a
21 retirement plan shall be treated as meeting the re-
22 quirements of chapter 43 of title 38, United States
23 Code, only if each of the following requirements is
24 met:

1 “(A) An individual reemployed under such
2 chapter is treated with respect to such plan as
3 not having incurred a break in service with the
4 employer maintaining the plan by reason of
5 such individual’s period of qualified military
6 service.

7 “(B) Each period of qualified military
8 service served by an individual is, upon reem-
9 ployment under such chapter, deemed with re-
10 spect to such plan to constitute service with the
11 employer maintaining the plan for the purpose
12 of determining the nonforfeitability of the indi-
13 vidual’s accrued benefits under such plan and
14 for the purpose of determining the accrual of
15 benefits under such plan.

16 “(C) An individual reemployed under such
17 chapter is entitled to accrued benefits that are
18 contingent on the making of, or derived from,
19 employee contributions or elective deferrals only
20 to the extent the individual makes payment to
21 the plan with respect to such contributions or
22 deferrals. No such payment may exceed the
23 amount the individual would have been per-
24 mitted or required to contribute had the indi-
25 vidual remained continuously employed by the

1 employer throughout the period of qualified
2 military service. Any payment to such plan shall
3 be made during the period beginning with the
4 date of reemployment and whose duration is 3
5 times the period of the qualified military service
6 (but not greater than 5 years).

7 “(9) PLANS NOT SUBJECT TO TITLE 38.—This
8 subsection shall not apply to any retirement plan to
9 which chapter 43 of title 38, United States Code,
10 does not apply.

11 “(10) REFERENCES.—For purposes of this sec-
12 tion, any reference to chapter 43 of title 38, United
13 States Code, shall be treated as a reference to such
14 chapter as in effect on December 12, 1994 (without
15 regard to any subsequent amendment).”

16 (b) COORDINATION WITH PROHIBITED TRANS-
17 ACTION RULES.—Section 4975(d) is amended by adding
18 at the end the following new sentence: “A loan made by
19 a plan shall not fail to meet the requirements of paragraph
20 (1) by reason of a loan repayment suspension described
21 under section 414(u)(4).”

22 (c) EFFECTIVE DATE.—The amendments made by
23 this section shall be effective as of December 12, 1994.

1 **SEC. 1403. ELIMINATION OF SPECIAL VESTING RULE FOR**
2 **MULTIEMPLOYER PLANS.**

3 (a) **IN GENERAL.**—Paragraph (2) of section 411(a)
4 (relating to minimum vesting standards) is amended—

5 (1) by striking “subparagraph (A), (B), or (C)”

6 and inserting “subparagraph (A) or (B)”; and

7 (2) by striking subparagraph (C).

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 this section shall apply to plan years beginning on or after
10 the earlier of—

11 (1) the later of—

12 (A) January 1, 1997, or

13 (B) the date on which the last of the col-
14 lective bargaining agreements pursuant to
15 which the plan is maintained terminates (deter-
16 mined without regard to any extension thereof
17 after the date of the enactment of this Act), or

18 (2) January 1, 1999.

19 Such amendments shall not apply to any individual who
20 does not have more than 1 hour of service under the plan
21 on or after the 1st day of the 1st plan year to which such
22 amendments apply.

1 **Subtitle D—Conforming**
2 **Amendments**

3 **SEC. 1501. CONFORMING AMENDMENT RELATING TO MISS-**
4 **ING PARTICIPANTS.**

5 Section 401(a)(34) is amended by striking “title IV”
6 and inserting “section 4050”.

7 **SEC. 1502. CONFORMING AMENDMENTS RELATING TO**
8 **ERISA ENFORCEMENT.**

9 (a) **SPECIAL RULE FOR CERTAIN JUDGMENTS AND**
10 **SETTLEMENTS.**—Section 401(a)(13) is amended by add-
11 ing at the end the following new subparagraphs:

12 “(C) **SPECIAL RULE FOR CERTAIN JUDG-**
13 **MENTS AND SETTLEMENTS.**—Subparagraph (A)
14 shall not apply to any offset of a participant’s
15 accrued benefit in a plan against an amount
16 that the participant is ordered or required to
17 pay to the plan if—

18 “(i) the order or requirement to pay
19 arises—

20 “(I) under a judgment of convic-
21 tion for a crime involving such plan,

22 “(II) under a civil judgment (in-
23 cluding a consent order or decree) en-
24 tered by a court in an action brought
25 in connection with a violation (or al-

1 leged violation) of part 4 of subtitle B
2 of title I of the Employee Retirement
3 Income Security Act of 1974, or

4 “(III) pursuant to a settlement
5 agreement between the Secretary of
6 Labor and the participant, or a settle-
7 ment agreement between the Pension
8 Benefit Guaranty Corporation and the
9 participant, in connection with a viola-
10 tion (or alleged violation) of part 4 of
11 subtitle B of title I of such Act,

12 “(ii) the judgment, order, decree, or
13 settlement agreement expressly provides
14 for the offset of all or part of the amount
15 ordered or required to be paid to the plan
16 against the participant’s accrued benefit in
17 the plan, and

18 “(iii) if the participant has a spouse
19 at the time at which the offset is to be
20 made—

21 “(I) such spouse has consented
22 in writing to such offset and such con-
23 sent is witnessed by a notary public or
24 representative of the plan,

1 “(II) such spouse is ordered or
2 required to pay in such judgment,
3 order, decree, or settlement an
4 amount to the plan in connection with
5 a violation of part 4 of this title, or

6 “(III) in such judgment, order,
7 decree, or settlement, such spouse re-
8 tains the right to receive the value of
9 the survivor annuity under a qualified
10 joint and survivor annuity provided
11 pursuant to paragraph (11)(A)(i) and
12 under a qualified preretirement survi-
13 vor annuity provided pursuant to
14 paragraph 11(A)(ii), determined in
15 accordance with subparagraph (D).

16 “(D) DETERMINATION OF VALUE OF SUR-
17 VIVOR ANNUITY IN CONNECTION WITH OFF-
18 SET.—The value of the survivor annuity de-
19 scribed in subparagraph (C)(iii)(III) shall be
20 determined as if—

21 “(i) the participant terminated em-
22 ployment on the date of the offset,

23 “(ii) there was no offset,

24 “(iii) the plan permitted retirement
25 only on or after normal retirement age,

1 “(iv) the plan provided only the mini-
2 mum-required qualified joint and survivor
3 annuity, and

4 “(v) the amount of the qualified pre-
5 retirement survivor annuity under the plan
6 is equal to the amount of the survivor an-
7 nuity payable under the minimum-required
8 qualified joint and survivor annuity.

9 For purposes of this subparagraph, the term
10 ‘minimum-required qualified joint and survivor
11 annuity’ means the qualified joint and survivor
12 annuity which is the actuarial equivalent of a
13 single annuity for the life of the participant and
14 under which the survivor annuity is 50 percent
15 of the amount of the annuity which is payable
16 during the joint lives of the participant and the
17 spouse.

18 “(E) WAIVER OF CERTAIN DISTRIBUTION
19 REQUIREMENTS.—With respect to the require-
20 ments of subsections (a) and (k) of section 401,
21 section 403(b), and section 409(d), a plan shall
22 not be treated as failing to meet such require-
23 ments solely by reason of an offset under sub-
24 paragraph (C).”

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to judgments, orders, and de-
3 crees issued, and settlement agreements entered into, on
4 or after the date of enactment of this Act.

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