

107TH CONGRESS
1ST SESSION

H. R. 3446

To amend the Internal Revenue Code of 1986 to improve the retirement security of American families.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2001

Mr. ANDREWS (for himself, Mr. GEORGE MILLER of California, Mr. KILDEE, Mr. OWENS, Mr. PAYNE, Mrs. MINK of Hawaii, Mr. SCOTT, Ms. WOOLSEY, Ms. RIVERS, Mr. HINOJOSA, Mr. TIERNEY, Mr. KIND, Ms. SANCHEZ, Mr. FORD, Mr. KUCINICH, Mr. HOLT, Ms. SOLIS, and Ms. MCCOLLUM) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to improve the retirement security of American families.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Retirement Enhancement Revenue Act of 2001”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is
7 as follows:

Sec. 1. Short title and table of contents.

Sec. 101. New qualification requirements for public employee pension plans.

TITLE II—PENSION IMPROVEMENTS

- Sec. 201. Automatic enrollment of all employees in 401(k) plans.
 Sec. 202. Improvements in simplified employee pensions.
 Sec. 203. Pension integration rules.
 Sec. 204. Increase to age 75 for beginning mandatory distributions.
 Sec. 205. Restrictions on exclusion of unionized employees from participation in 401(k) plans.
 Sec. 206. Removal of \$5,000 limit on plans subject to automatic rollover upon mandatory distribution.

TITLE III—TAX CREDITS TO PROMOTE PENSION COVERAGE

- Sec. 301. Refundable credit to certain individuals for elective deferrals and IRA contributions.
 Sec. 302. Credit for qualified pension plan contributions of small employers.
 Sec. 303. Notice.

TITLE IV—ADDITIONAL AMENDMENTS

- Sec. 401. Statutory exemption from prohibited transaction rules for emergent transactions.
 Sec. 402. Loans from retirement plans for health insurance and job training expenses.
 Sec. 403. Missing participants.
 Sec. 404. Income averaging of corrected civil service annuity benefit payments.
 Sec. 405. Prohibited transaction exemption for the provision of investment advice.

TITLE V—GENERAL PROVISIONS

- Sec. 501. General effective date.
 Sec. 502. Plan amendments.

1 **TITLE I—PUBLIC EMPLOYEE** 2 **PENSION PLANS**

3 **SEC. 101. NEW QUALIFICATION REQUIREMENTS FOR PUB-** 4 **LIC EMPLOYEE PENSION PLANS.**

5 (a) IN GENERAL.—Subsection (a) of section 401 of
 6 the Internal Revenue Code of 1986 (relating to require-
 7 ments for qualification) is amended by inserting after
 8 paragraph (34) the following new paragraph:

9 “(35) PUBLIC EMPLOYEE PENSION PLANS.—A
 10 trust forming a part of a public employee pension

1 plan (as defined in section 420C(a)(9)) shall not
 2 constitute a qualified trust under this section unless
 3 the requirements of subpart F of this part are met
 4 in connection with such plan.”

5 (b) REQUIREMENTS.—Part I of subchapter D of
 6 chapter 1 of such Code (relating to pension, profit-shar-
 7 ing, stock bonus plans, etc.) is amended by inserting after
 8 subpart E the following new subpart:

9 **“Subpart F—Public Employee Pension Plans**

“Sec. 420A. Reporting and disclosure requirements.

“Sec. 420B. Review by qualified review boards of changes in em-
 ployer contributions.

“Sec. 420C. Definitions and coverage.

10 **“SEC. 420A. REPORTING AND DISCLOSURE REQUIREMENTS.**

11 “(a) IN GENERAL.—A public employee pension plan
 12 does not meet the requirements of section 401(a)(35) un-
 13 less the terms of the plan include the requirements of this
 14 section.

15 “(b) REQUIRED DISCLOSURES.—The plan shall pro-
 16 vide that, within 210 days after the close of each plan
 17 year, the administrator of the plan shall furnish to each
 18 participant, and to each beneficiary receiving benefits
 19 under the plan—

20 “(1) a statement of the assets and liabilities of
 21 the plan aggregated by categories and valued at
 22 their current value, and the same data displayed in

1 comparative form for the end of the previous plan
2 year,

3 “(2) a statement of receipts and disbursements
4 during the preceding 12-month period aggregated by
5 general sources and applications,

6 “(3) a report containing—

7 “(A) a description of all investments and
8 assets of the plan, including their value,

9 “(B) the names and positions of all of the
10 trustees of the plan, and the time remaining be-
11 fore the expiration of their term,

12 “(C) a description of the method of trustee
13 selection,

14 “(D) a description of any changes in in-
15 vestment policy of the plan during the fiscal
16 year,

17 “(E) an evaluation of the long-term sol-
18 vency of the plan, including the number of par-
19 ticipants and beneficiaries and a summary of
20 their benefits, and a projection of the amount
21 of benefits expected to be paid for the fifth,
22 tenth, and fifteenth plan year following the date
23 of the publication of the report, and

1 “(F) the percentage which the current
2 value of the assets of the plan is of the current
3 liability under the plan, and

4 “(4) any other material as is necessary to fairly
5 summarize the latest annual report.

6 Such information shall be written and calculated to be un-
7 derstood by the average plan participant, and shall be suf-
8 ficiently accurate and comprehensive to reasonably apprise
9 such participants and beneficiaries of their rights and obli-
10 gations under the plan.

11 “(c) AVAILABILITY OF PLAN DOCUMENTS FOR EX-
12 AMINATION.—The plan shall provide that the adminis-
13 trator shall make copies of the plan description and the
14 latest annual report and the bargaining agreement, trust
15 agreement, contract, or other instruments under which the
16 plan was established or is operated available for examina-
17 tion by any plan participant or beneficiary in the principal
18 office of the administrator and in such other places as may
19 be necessary to make available all pertinent information
20 to all participants (including such places as the Secretary
21 may prescribe by regulations).

22 “(d) AVAILABILITY OF INFORMATION UPON RE-
23 QUEST.—The plan shall provide that the administrator
24 shall, upon written request of any participant or bene-
25 ficiary, furnish a copy of the latest annual report, any ter-

1 minal report, the bargaining agreement, trust agreement,
2 contract, or other instruments under which the plan is es-
3 tablished or operated. The administrator may make a rea-
4 sonable charge to cover the cost of furnishing such com-
5 plete copies. The Secretary may by regulation prescribe
6 the maximum amount which will constitute a reasonable
7 charge under the preceding sentence.

8 **“SEC. 420B. REVIEW BY QUALIFIED REVIEW BOARDS OF**
9 **CHANGES IN EMPLOYER CONTRIBUTIONS.**

10 “(a) IN GENERAL.—A public employee pension plan
11 does not meet the requirements of section 401(a)(35) un-
12 less, under the plan, changes in employer contributions are
13 subject to review by a qualified review board established
14 for the plan as provided in this section. For purposes of
15 this section, the term ‘qualified review board’ means a
16 board—

17 “(1) whose membership is determined under the
18 law of the principal State in accordance with sub-
19 section (b), and

20 “(2) whose powers are determined under the
21 law of the principal State in accordance with sub-
22 section (c).

23 “(b) MEMBERSHIP.—

24 “(1) IN GENERAL.—The membership of a quali-
25 fied review board established for a plan shall consist

1 of 3 members selected from among individuals who,
2 by means of their education and experience, have
3 demonstrated expertise in the area of pension fund
4 management, as follows:

5 “(A) one member is appointed by the Gov-
6 ernor of the State,

7 “(B) one member is selected by the partici-
8 pants in the plan, by means of an election held
9 in such form and manner as shall be prescribed
10 in regulations of the Secretary, and

11 “(C) one member is selected jointly by the
12 Governor and by a representative of partici-
13 pants in the plan (from a certified list of pen-
14 sion experts established in accordance with
15 paragraph (2)).

16 Each member of the board shall have 1 vote. Mem-
17 bers of the board shall serve for such equivalent
18 terms as shall be prescribed under the law of the
19 principal State.

20 “(2) CERTIFIED LIST OF EXPERTS.—The Gov-
21 ernor of the State shall, for purposes of paragraph
22 (1)(C), establish and maintain with respect to each
23 public employee pension plan (for which such State
24 is the principal State) a certified list of pension ex-
25 perts meeting the requirements for membership on

1 the qualified review board. Individuals may be in-
2 cluded on such list only by agreement between the
3 Governor of the State and a representative elected
4 by participants in the plan, entered into by means
5 of collective bargaining in such form and manner as
6 shall be prescribed in regulations of the Secretary.

7 “(c) POWERS.—The board shall be treated as a quali-
8 fied review board for purposes of this section with respect
9 to any public employee pension plan (for which such State
10 is the principal State) only if the powers of such board
11 under the law of the principal State include review by the
12 board, for approval or disapproval by the board, of any
13 change in the terms of such plan, as a necessary pre-
14 requisite for such change to take effect, if—

15 “(1) such change would have the effect of
16 changing levels of employer contributions to the
17 plan, and

18 “(2) such review is requested, in such form and
19 manner as shall be prescribed in regulations of the
20 Secretary, by—

21 “(A) at least one-third of the total number
22 of trustees of any trust fund forming a part of
23 the plan, or

1 “(B) the head of any employee organiza-
2 tion representing at least 20 percent of the
3 total number of active participants in the plan.
4 The board may be treated as a qualified review board for
5 purposes of this section only if, under the law of the prin-
6 cipal State, any such change submitted to such review by
7 the board may take effect only upon approval of the
8 change by the board.

9 **“SEC. 420C. DEFINITIONS AND COVERAGE.**

10 “(a) DEFINITIONS.—For purposes of this subpart—

11 “(1) ADMINISTRATOR.—The term ‘adminis-
12 trator’ means—

13 “(A) the board of trustees, retirement
14 board, or similar person with administrative re-
15 sponsibilities in connection with a plan, or any
16 other person specifically so designated in con-
17 nection with any requirement of this subpart by
18 the terms of the instrument or instruments
19 under which the plan is operated, including but
20 not limited to the law of any State or of any
21 political subdivision of any State, or

22 “(B) in any case in which there is no per-
23 son described in subparagraph (A) in connec-
24 tion with the plan, the plan sponsor.

1 “(2) BENEFICIARY.—The term ‘beneficiary’
2 means a person designated by a participant, or by
3 the terms of a public employee pension plan, who is
4 or may become entitled to a benefit thereunder.

5 “(3) CURRENT LIABILITY.—The term ‘current
6 liability’ has the meaning provided in section
7 302(d)(7) of the Employee Retirement Income Secu-
8 rity Act of 1974.

9 “(4) EMPLOYEE.—The term ‘employee’ means
10 any individual employed by an employer, employer
11 representative, or other person required to make em-
12 ployer contributions under the plan.

13 “(5) EMPLOYEE ORGANIZATION.—The term
14 ‘employee organization’ means any labor union or
15 any organization of any kind, or any agency or em-
16 ployee representation committee, association, group,
17 or plan, in which employees participate and which
18 exists for the purpose, in whole or in part, of dealing
19 with employers or employer representatives con-
20 cerning a public employee pension plan or other
21 matters incidental to employment relationships; or
22 any employees’ beneficiary association organized for
23 the purpose, in whole or in part, of establishing such
24 a plan.

1 “(6) EMPLOYER.—The term ‘employer’
2 means—

3 “(A) the government of any State or of
4 any political subdivision of a State,

5 “(B) any agency or instrumentality of a
6 government referred to in subparagraph (A), or

7 “(C) any agency or instrumentality of two
8 or more governments referred to in subpara-
9 graph (A).

10 “(7) EMPLOYER CONTRIBUTION.—The term
11 ‘employer contribution’ means any contribution to a
12 public employee pension plan other than a contribu-
13 tion made by a participant in the plan.

14 “(8) EMPLOYER REPRESENTATIVE.—The term
15 ‘employer representative’ means—

16 “(A) any group or association consisting,
17 in whole or in part, of employers acting, in con-
18 nection with a public employee pension plan, for
19 an employer, or

20 “(B) any person acting, in connection with
21 a public employee pension plan, indirectly in the
22 interest of an employer or of a group or asso-
23 ciation described in subparagraph (A).

24 “(9) PUBLIC EMPLOYEE PENSION PLAN.—The
25 terms ‘public employee pension plan’ and ‘plan’

1 mean any plan, fund, or program which was here-
2 tofore or is hereafter established or maintained, in
3 whole or in part, by an employer, an employer rep-
4 resentative, or an employee organization, or by a
5 combination thereof, to the extent that by its express
6 terms or as a result of surrounding circumstances
7 such plan, fund, or program—

8 “(A) provides retirement income to em-
9 ployees, or

10 “(B) results in a deferral of income by em-
11 ployees for periods extending to the termination
12 of covered employment or beyond,

13 regardless of the method of calculating the contribu-
14 tions made to the plan, the method of calculating
15 the benefits under the plan, or the method of distrib-
16 uting benefits from the plan.

17 “(10) PRINCIPAL STATE.—The term ‘principal
18 State’ means, for any plan year with respect to a
19 public employee pension plan, the State in which, as
20 of the beginning of such plan year, the largest per-
21 centage of the participants of the plan employed in
22 any single State is employed.

23 “(11) GOVERNOR.—The term ‘Governor’
24 means, in connection with a public employee pension

1 plan, the Governor (or equivalent official) of the
2 principal State.

3 “(12) PARTICIPANT.—The term ‘participant’
4 means any individual who is or may become eligible
5 to receive a benefit of any type from a public em-
6 ployee pension plan or whose beneficiaries may be el-
7 igible to receive any such benefit.

8 “(13) PERSON.—The term ‘person’ means a
9 State, a political subdivision of a State, any agency
10 or instrumentality of a State or a political subdivi-
11 sion of a State, an individual, a partnership, a joint
12 venture, a corporation, a mutual company, a joint-
13 stock company, a trust, an estate, an unincorporated
14 organization, an association, or an employee organi-
15 zation.

16 “(14) PLAN SPONSOR.—The term ‘plan spon-
17 sor’ means—

18 “(A) in the case of a plan established or
19 maintained solely for employees of a single em-
20 ployer, such employer,

21 “(B) in the case of a plan established or
22 maintained by an employee organization, the
23 employee organization, or

24 “(C) in the case of a plan established or
25 maintained by two or more employers or jointly

1 by one or more employers and one or more em-
2 ployee organizations, the association, com-
3 mittee, board of trustees, or other similar group
4 of representatives of the parties who establish
5 or maintain the plan.

6 “(15) PLAN YEAR.—The term ‘plan year’
7 means, with respect to a plan, the calendar, policy,
8 or fiscal year on which the records of the plan are
9 kept.

10 “(16) STATE.—The term ‘State’ means any
11 State of the United States, the District of Columbia,
12 the Commonwealth of Puerto Rico, the Virgin Is-
13 lands, American Samoa, and Guam.

14 “(b) COVERAGE.—

15 “(1) IN GENERAL.—Except as provided in para-
16 graph (2), this subpart shall apply to any public em-
17 ployee pension plan.

18 “(2) EXCEPTIONS FROM COVERAGE.—The pro-
19 visions of this subpart shall not apply to—

20 “(A) any employee benefit plan described
21 in section 4(a) of the Employee Retirement In-
22 come Security Act of 1974 (29 U.S.C.
23 1003(a)), which is not exempt under section
24 4(b)(1) of such Act (29 U.S.C. 1003(b)(1)),

1 “(B) any plan which is unfunded and is
2 maintained by an employer or employer rep-
3 resentative primarily for the purpose of pro-
4 viding deferred compensation for a select group
5 of management or highly compensated employ-
6 ees,

7 “(C) any arrangement which would be a
8 severance pay arrangement, as defined in regu-
9 lations of the Secretary of Labor under section
10 3(2)(B)(i) of the Employee Retirement Income
11 Security Act of 1974 (29 U.S.C.
12 1002(2)(B)(i)), if the employer were an em-
13 ployer within the meaning of section 3(5) of
14 such Act (29 U.S.C. 1002(5)),

15 “(D) any agreement to the extent it is a
16 coverage agreement entered into pursuant to
17 section 218 of the Social Security Act (42
18 U.S.C. 418),

19 “(E) any individual retirement account or
20 any individual retirement annuity within the
21 meaning of section 408, or a retirement bond
22 within the meaning of section 409,

23 “(F) any plan described in section 401(d),

1 “(G) any individual account plan con-
2 sisting of an annuity contract described in sec-
3 tion 403(b),

4 “(H) any eligible State deferred compensa-
5 tion plan, as defined in section 457(b), or

6 “(I) any plan maintained solely for the
7 purpose of complying with applicable workers’
8 compensation laws or disability insurance
9 laws.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to plan years begin-
12 ning on or after January 1, 2002.

13 **TITLE II—PENSION** 14 **IMPROVEMENTS**

15 **SEC. 201. AUTOMATIC ENROLLMENT OF ALL EMPLOYEES IN** 16 **401(k) PLANS.**

17 (a) IN GENERAL.—Subparagraph (A) of section
18 401(m)(11) of the Internal Revenue Code of 1986 (relat-
19 ing to additional alternative method of satisfying non-
20 discrimination tests) is amended by striking “and” at the
21 end of clause (ii), by striking the period at the end of
22 clause (iii) and inserting “, and”, and by inserting after
23 clause (iii) the following new clause:

24 “(iv) meets the requirements of sub-
25 paragraph (C).”.

1 (b) MINIMUM COVERAGE REQUIREMENTS.—Para-
2 graph (11) of section 401(m) of such Code is amended
3 by adding at the end the following new subparagraph:

4 “(C) MINIMUM COVERAGE REQUIRE-
5 MENTS.—The requirements of this subpara-
6 graph are met if—

7 “(i) the plan meets the requirements
8 of section 410(b), or

9 “(ii) the plan is offered to all eligible
10 employees.

11 For purposes of clause (ii) a plan shall be treat-
12 ed as offered to an eligible employee if, under
13 the plan, employer contributions are made on
14 the employee’s behalf under the plan, unless,
15 pursuant to an election by the employee, pay-
16 ments are made to the employee directly in cash
17 in lieu of such employer contributions.”.

18 **SEC. 202. IMPROVEMENTS IN SIMPLIFIED EMPLOYEE PEN-**
19 **SIONS.**

20 (a) PARTICIPATION REQUIREMENTS.—Paragraph (2)
21 of section 408(k) of the Internal Revenue Code of 1986
22 (relating to participation requirements) is amended—

23 (1) in subparagraph (A), by adding “and” at
24 the end, and

1 (2) by striking subparagraphs (B) and (C) and
2 inserting the following:

3 “(B) has completed at least 3 years of
4 service (as defined in section 411(a)(5)) for the
5 employer.”.

6 (b) NONDISCRIMINATION RULES.—Subparagraph
7 (C) of section 408(k)(3) of such Code (requiring contribu-
8 tion to bear uniform relationship to total compensation)
9 is amended—

10 (1) in the heading, by striking “MUST BEAR
11 UNIFORM RELATIONSHIP TO TOTAL COMPENSATION”
12 and inserting “MUST BE UNIFORM”, and

13 (2) by inserting after “unless contributions
14 thereto” the following: “are uniform for all employ-
15 ees maintaining a simplified employee pension or”.

16 (c) CONSENT TO PARTICIPATION NOT REQUIRED.—
17 Paragraph (2) of section 408(k) of such Code (relating
18 to participation requirements) is amended by adding at
19 the end the following new flush sentence: “An employer
20 may establish and maintain a simplified employee pension
21 for an employee without the employee’s consent.”.

22 (d) SEPARATE TREATMENT OF CONTRIBUTIONS TO
23 SIMPLIFIED EMPLOYEE PENSIONS.—Subsection (h) of
24 section 404 of such Code is amended by striking para-

1 graphs (2) and (3) and inserting the following new para-
2 graph:

3 “(2) LIMITATION BASED ON COMBINATION OF
4 PLANS INAPPLICABLE.—Contributions to a sim-
5 plified employee pension shall not be taken into ac-
6 count for purposes of subsection (a)(7).”.

7 (e) JOINT AND SURVIVOR ANNUITY REQUIRE-
8 MENTS.—Section 408(k) of such Code is amended—

9 (1) by redesignating paragraph (9) as para-
10 graph (10), and

11 (2) by inserting after paragraph (8) the fol-
12 lowing new paragraph:

13 “(9) JOINT AND SURVIVOR ANNUITY REQUIRE-
14 MENTS.—Requirements similar to the requirements
15 of section 401(a)(11) shall apply with respect to an-
16 nuities purchased with amounts distributed from
17 simplified employee pensions.”.

18 (f) ANNUAL REPORTING REQUIREMENTS FOR SIM-
19 PLIFIED EMPLOYEE PENSIONS.—Paragraph (1) of section
20 408(l) of such Code (relating to simplified employer re-
21 ports) is amended to read as follows:

22 “(1) IN GENERAL.—The Secretary shall require
23 by regulations that an employer who makes a con-
24 tribution on behalf of an employee to a simplified
25 employee pension shall provide simplified annual re-

1 ports. The reports required by this subsection shall
2 be filed in such manner, and information with re-
3 spect to such contributions shall be furnished to the
4 employee in such manner, as may be required by
5 regulations, except that such reports shall include
6 information sufficient to allow the employee to deter-
7 mine that the simplified employee pension is in com-
8 pliance with the requirements of this section.”.

9 (g) DEDUCTIBILITY OF CONTRIBUTIONS TO SIM-
10 PLIFIED EMPLOYEE PENSIONS IN CONNECTION WITH
11 DOMESTIC SERVICE.—

12 (1) IN GENERAL.—Section 404 of such Code
13 (relating to deductions for contributions of an em-
14 ployer to an employee’s trust or annuity plan and
15 compensation under a deferred-payment plan) is
16 amended by adding at the end the following new
17 subsection:

18 “(n) DEDUCTIBILITY OF CONTRIBUTIONS TO SIM-
19 PLIFIED EMPLOYEE PENSIONS IN CONNECTION WITH
20 DOMESTIC SERVICE.—

21 “(1) IN GENERAL.—Solely for purposes of sub-
22 section (a), contributions by an employer to a sim-
23 plified employee pension of an employee in connec-
24 tion with service constituting domestic service em-
25 ployment shall be treated as if such contributions

1 would otherwise be deductible under section 162 but
2 for subsection (a).

3 “(2) DOMESTIC SERVICE EMPLOYMENT.—For
4 purposes of paragraph (1), the term ‘domestic serv-
5 ice employment’ means domestic service in a private
6 home of the employer (within the meaning of the
7 last sentence of section 3510(c)) in any case in
8 which taxes are imposed by chapter 21 or 23 on re-
9 munerated paid for such service.”.

10 (2) EFFECTIVE DATE.—The amendment made
11 by this subsection shall apply to taxable years begin-
12 ning after December 31, 2001.

13 **SEC. 203. PENSION INTEGRATION RULES.**

14 (a) APPLICABILITY OF NEW INTEGRATION RULES
15 EXTENDED TO ALL EXISTING ACCRUED BENEFITS.—
16 Notwithstanding subsection (c)(1) of section 1111 of the
17 Tax Reform Act of 1986 (relating to effective date of ap-
18 plication of nondiscrimination rules to integrated plans)
19 (100 Stat. 2440), effective for plan years beginning after
20 the date of the enactment of this Act, the amendments
21 made by subsection (a) of such section 1111 shall also
22 apply to benefits attributable to plan years beginning on
23 or before December 31, 1988.

24 (b) INTEGRATION DISALLOWED FOR SIMPLIFIED
25 EMPLOYEE PENSIONS.—

1 (1) IN GENERAL.—Subparagraph (D) of section
2 408(k)(3) of the Internal Revenue Code of 1986 (re-
3 lating to permitted disparity under rules limiting
4 discrimination under simplified employee pensions)
5 is repealed.

6 (2) CONFORMING AMENDMENT.—Subparagraph
7 (C) of such section 408(k)(3) is amended by striking
8 “and except as provided in subparagraph (D),”.

9 (3) EFFECTIVE DATE.—The amendments made
10 by this subsection shall apply with respect to taxable
11 years beginning on or after January 1, 2002.

12 (c) EVENTUAL REPEAL OF INTEGRATION RULES.—
13 Effective for plan years beginning on or after January 1,
14 2003—

15 (1) subparagraphs (C) and (D) of section
16 401(a)(5) of the Internal Revenue Code of 1986 (re-
17 lating to pension integration exceptions under non-
18 discrimination requirements for qualification) are re-
19 pealed, and subparagraphs (E), (F), and (G) of such
20 section 401(a)(5) are redesignated as subparagraphs
21 (C), (D), and (E), respectively, and

22 (2) subsection (l) of section 401 of such Code
23 (relating to permitted disparity in plan contributions
24 or benefits) is repealed.

1 **SEC. 204. INCREASE TO AGE 75 FOR BEGINNING MANDA-**
 2 **TORY DISTRIBUTIONS.**

3 (a) **QUALIFIED PENSION PLANS.**—Subparagraph (C)
 4 of section 401(a)(9) of the Internal Revenue Code of 1986
 5 (relating to required distributions) is amended by striking
 6 “age 70½” each place it appears and inserting “the appli-
 7 cable age”.

8 (b) **APPLICABLE AGE.**—Subparagraph (C) of section
 9 401(a)(9) of such Code is amended by adding at the end
 10 the following new clause:

11 “(v) **APPLICABLE AGE.**—
 12 “(I) **IN GENERAL.**—For purposes
 13 of this clause, the term applicable age
 14 shall be determined in accordance
 15 with the following table:

“Calendar Year:	Applicable Age:
2002	71
2003	72
2004	73
2005	74
2006 and each calendar year thereafter	75.

16 “(II) **ELECTION TO USE AGE OF**
 17 **SPOUSE.**—For purposes of this sub-
 18 paragraph, an employee who files a
 19 joint return for a taxable year may
 20 elect to substitute the age of the em-
 21 ployee’s spouse for his age.”.

1 (c) INDIVIDUAL RETIREMENT ACCOUNTS.—Para-
2 graph (1) of section 219(d) of such Code is amended—

3 (1) by striking “age 70½” in the text and in-
4 serting “the applicable age (as defined in section
5 401(a)(9)(C)(v))”, and

6 (2) by striking “AGE 70½” in the heading and
7 inserting “THE APPLICABLE AGE”.

8 (d) ROTH IRA’S.—Paragraph (4) of section 408A(c)
9 of such Code is amended—

10 (1) by striking “age 70½” in the text and in-
11 serting “the applicable age (as defined in section
12 401(a)(9)(C)(v))”, and

13 (2) by striking “AGE 70½” in the heading and
14 inserting “THE APPLICABLE AGE”.

15 **SEC. 205. RESTRICTIONS ON EXCLUSION OF UNIONIZED**
16 **EMPLOYEES FROM PARTICIPATION IN 401(k)**
17 **PLANS.**

18 Paragraph (4) of section 401(k) of the Internal Rev-
19 enue Code of 1986 (relating to other requirements) is
20 amended by adding at the end the following new subpara-
21 graph:

22 “(D) BENEFITS SUBJECT OF BAR-
23 GAINING.—A cash or deferred arrangement of
24 any employer shall not be treated as a qualified

1 cash or deferred arrangement if any employee
2 of such employer—

3 “(i) who is described in section
4 410(b)(3)(A), and

5 “(ii) who is not eligible to benefit
6 under the arrangement,

7 is not otherwise covered under an employee
8 pension benefit plan (as defined in section
9 3(2)(A) of the Employee Retirement Income
10 Security Act of 1974) which is maintained for
11 employees of such employer pursuant to an
12 agreement which the Secretary of Labor finds
13 to be a collective bargaining agreement between
14 employee representatives and one or more em-
15 ployers and which is qualified under section
16 401(a).”.

17 **SEC. 206. REMOVAL OF \$5,000 LIMIT ON PLANS SUBJECT TO**
18 **AUTOMATIC ROLLOVER UPON MANDATORY**
19 **DISTRIBUTION.**

20 Section 401(a)(31)(B) of the Internal Revenue Code
21 of 1986 (relating to certain mandatory distributions) is
22 amended—

23 (1) in clause (i), by striking “In case of a trust
24 which is part of an eligible plan, such trust” and in-
25 serting “A trust”,

1 (2) in clause (i)(I), by striking “in excess of
2 \$1,000”, and

3 (3) by striking clause (ii) and inserting the fol-
4 lowing new clause:

5 “(ii) DISTRIBUTION DESCRIBED.—A
6 distribution from a plan is described in
7 this clause if such distribution is an imme-
8 diate distribution of the entire nonforfeit-
9 able accrued benefit of the participant and
10 is in excess of \$1,000.”.

11 **TITLE III—TAX CREDITS TO**
12 **PROMOTE PENSION COVERAGE**

13 **SEC. 301. REFUNDABLE CREDIT TO CERTAIN INDIVIDUALS**
14 **FOR ELECTIVE DEFERRALS AND IRA CON-**
15 **TRIBUTIONS.**

16 (a) IN GENERAL.—Subpart C of part IV of sub-
17 chapter A of chapter 1 of the Internal Revenue Code of
18 1986 (relating to refundable credits) is amended by redес-
19 ignating section 35 as section 36 and by inserting after
20 section 34 the following new section:

21 **“SEC. 35. ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS**
22 **BY CERTAIN INDIVIDUALS.**

23 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
24 gible individual, there shall be allowed as a credit against
25 the tax imposed by this subtitle for the taxable year an

1 amount equal to the applicable percentage of so much of
 2 the qualified retirement savings contributions of the eligi-
 3 ble individual for the taxable year as do not exceed \$2,000.

4 “(b) APPLICABLE PERCENTAGE.—For purposes of
 5 this section, the applicable percentage is the percentage
 6 determined in accordance with the following table:

Adjusted Gross Income						Applica- ble per- centage
Joint return		Head of a household		All other cases		
Over	Not over	Over	Not over	Over	Not over	
\$0	\$25,000	\$0	\$18,750	\$0	\$12,500	50
25,000	35,000	18,750	26,250	12,500	17,500	45
35,000	45,000	26,250	33,750	17,500	22,500	35
45,000	55,000	33,750	41,250	22,500	27,500	25
55,000	75,000	41,250	56,250	27,500	37,500	15
75,000		56,250		37,500		0

7 “(c) ELIGIBLE INDIVIDUAL.—For purposes of this
 8 section—

9 “(1) IN GENERAL.—The term ‘eligible indi-
 10 vidual’ means any individual if—

11 “(A) such individual has attained the age
 12 of 18 as of the close of the taxable year, and

13 “(B) the compensation (as defined in sec-
 14 tion 219(f)(1)) includible in the gross income of
 15 the individual (or, in the case of a joint return,
 16 of the taxpayer) for such taxable year is at least
 17 \$5,000.

1 “(2) DEPENDENTS AND FULL-TIME STUDENTS
2 NOT ELIGIBLE.—The term ‘eligible individual’ shall
3 not include—

4 “(A) any individual with respect to whom
5 a deduction under section 151 is allowable to
6 another taxpayer for a taxable year beginning
7 in the calendar year in which such individual’s
8 taxable year begins, and

9 “(B) any individual who is a student (as
10 defined in section 151(c)(4)).

11 “(3) INDIVIDUALS RECEIVING CERTAIN RETIRE-
12 MENT DISTRIBUTIONS NOT ELIGIBLE.—

13 “(A) IN GENERAL.—The term ‘eligible in-
14 dividual’ shall not include, with respect to a
15 taxable year, any individual who received during
16 the testing period—

17 “(i) any distribution from a qualified
18 retirement plan (as defined in section
19 4974(c)), or from an eligible deferred com-
20 pensation plan (as defined in section
21 457(b)), which is includible in gross in-
22 come, or

23 “(ii) any distribution from a Roth
24 IRA which is not a qualified rollover con-

1 tribution (as defined in section 408A(e)) to
2 a Roth IRA.

3 “(B) TESTING PERIOD.—For purposes of
4 subparagraph (A), the testing period, with re-
5 spect to a taxable year, is the period which
6 includes—

7 “ (i) such taxable year,

8 “ (ii) the preceding taxable year, and

9 “ (iii) the period after such taxable
10 year and before the due date (without ex-
11 tensions) for filing the return of tax for
12 such taxable year.

13 “(C) EXCEPTED DISTRIBUTIONS.—There
14 shall not be taken into account under subpara-
15 graph (A)—

16 “ (i) any distribution referred to in
17 section 72(p), 401(k)(8), 401(m)(6),
18 402(g)(2), 404(k), or 408(d)(4),

19 “ (ii) any distribution to which section
20 408A(d)(3) applies, and

21 “ (iii) any distribution before January
22 1, 2002.

23 “(D) TREATMENT OF DISTRIBUTIONS RE-
24 CEIVED BY SPOUSE OF INDIVIDUAL.—For pur-
25 poses of determining whether an individual is

1 an eligible individual for any taxable year, any
2 distribution received by the spouse of such indi-
3 vidual shall be treated as received by such indi-
4 vidual if such individual and spouse file a joint
5 return for such taxable year and for the taxable
6 year during which the spouse receives the dis-
7 tribution.

8 “(d) QUALIFIED RETIREMENT SAVINGS CONTRIBU-
9 TIONS.—For purposes of this section, the term ‘qualified
10 retirement savings contributions’ means the sum of—

11 “(1) the amount of the qualified retirement
12 contributions (as defined in section 219(e)) made by
13 the eligible individual,

14 “(2) the amount of—

15 “(A) any elective deferrals (as defined in
16 section 402(g)(3)) of such individual, and

17 “(B) any elective deferral of compensation
18 by such individual under an eligible deferred
19 compensation plan (as defined in section
20 457(b)) of an eligible employer described in sec-
21 tion 457(e)(1)(A), and

22 “(3) the amount of voluntary employee con-
23 tributions by such individual to any qualified retire-
24 ment plan (as defined in section 4974(c)).

1 “(e) ADJUSTED GROSS INCOME.—For purposes of
2 this section, adjusted gross income shall be determined
3 without regard to sections 911, 931, and 933.

4 “(f) INVESTMENT IN THE CONTRACT.—Notwith-
5 standing any other provision of law, a qualified retirement
6 savings contribution shall not fail to be included in deter-
7 mining the investment in the contract for purposes of sec-
8 tion 72 by reason of the credit under this section.

9 “(g) TRANSITIONAL RULES.—In the case of taxable
10 years beginning before January 1, 2008—

11 “(1) CONTRIBUTION LIMIT.—Subsection (a)
12 shall be applied by substituting for ‘\$2,000’—

13 “(A) \$600 in the case of taxable years be-
14 ginning in 2002, 2003, or 2004, and

15 “(B) \$1,000 in the case of taxable years
16 beginning in 2005, 2006, or 2007.

17 “(2) APPLICABLE PERCENTAGE.—The applica-
18 ble percentage shall be determined under the fol-
19 lowing table (in lieu of the table in subsection (b)):

Adjusted Gross Income						Applica- ble per- centage
Joint return		Head of a household		All other cases		
Over	Not over	Over	Not over	Over	Not over	
\$0	\$20,000	\$0	\$15,000	\$0	\$10,000	50
20,000	25,000	15,000	18,750	10,000	12,500	45
25,000	30,000	18,750	22,500	12,500	15,000	35
30,000	35,000	22,500	26,250	15,000	17,500	25
35,000	40,000	26,250	30,000	17,500	20,000	15
40,000		30,000		20,000		0.”

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (2) of section 1324(b) of title
3 31, United States Code, is amended by inserting be-
4 fore the period “, or from section 35 of such Code”.

5 (2) The table of sections for subpart C of part
6 IV of subchapter A of chapter 1 of such Code is
7 amended by striking the last item and inserting the
8 following new items:

“Sec. 35. Elective deferrals and IRA contributions by certain indi-
viduals.

“Sec. 36. Overpayments of tax.”

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2001.

12 **SEC. 302. CREDIT FOR QUALIFIED PENSION PLAN CON-**
13 **TRIBUTIONS OF SMALL EMPLOYERS.**

14 (a) IN GENERAL.—Subpart D of part IV of sub-
15 chapter A of chapter 1 of the Internal Revenue Code of
16 1986 (relating to business related credits) is amended by
17 adding at the end the following new section:

18 **“SEC. 45G. SMALL EMPLOYER PENSION PLAN CONTRIBU-**
19 **TIONS.**

20 “(a) GENERAL RULE.—For purposes of section 38,
21 in the case of an eligible employer, the small employer pen-
22 sion plan contribution credit determined under this section
23 for any taxable year is an amount equal to 50 percent
24 of the amount which would (but for subsection (f)(1)) be

1 allowed as a deduction under section 404 for such taxable
2 year for qualified employer contributions made to any
3 qualified retirement plan on behalf of any nonhighly com-
4 pensated employee.

5 “(b) CREDIT LIMITED TO 3 Years.—The credit allow-
6 able by this section shall be allowed only with respect to
7 the period of 3 taxable years beginning with the taxable
8 year in which the qualified retirement plan becomes effec-
9 tive.

10 “(c) QUALIFIED EMPLOYER CONTRIBUTION.—For
11 purposes of this section—

12 “(1) DEFINED CONTRIBUTION PLANS.—In the
13 case of a defined contribution plan, the term ‘quali-
14 fied employer contribution’ means the amount of
15 nonelective and matching contributions to the plan
16 made by the employer on behalf of any nonhighly
17 compensated employee to the extent such amount
18 does not exceed 3 percent of such employee’s com-
19 pensation from the employer for the year.

20 “(2) DEFINED BENEFIT PLANS.—In the case of
21 a defined benefit plan, the term ‘qualified employer
22 contribution’ means the amount of employer con-
23 tributions to the plan made on behalf of any non-
24 highly compensated employee to the extent that the
25 accrued benefit of such employee derived from such

1 contributions for the year do not exceed the equiva-
2 lent (as determined under regulations prescribed by
3 the Secretary and without regard to contributions
4 and benefits under the Social Security Act) of 3 per-
5 cent of such employee's compensation from the em-
6 ployer for the year.

7 “(d) QUALIFIED RETIREMENT PLAN.—

8 “(1) IN GENERAL.—The term ‘qualified retire-
9 ment plan’ means any plan described in section
10 401(a) which includes a trust exempt from tax
11 under section 501(a) if the plan meets—

12 “(A) the contribution requirements of
13 paragraph (2),

14 “(B) the vesting requirements of para-
15 graph (3), and

16 “(C) the distributions requirements of
17 paragraph (4).

18 “(2) CONTRIBUTION REQUIREMENTS.—

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

21 “(i) the employer is required to make
22 nonelective contributions of at least 1 per-
23 cent of compensation (or the equivalent
24 thereof in the case of a defined benefit
25 plan) for each nonhighly compensated em-

1 ployee who is eligible to participate in the
2 plan, and

3 “(ii) except in the case of a defined
4 benefit plan, allocations of nonelective em-
5 ployer contributions are either in equal dol-
6 lar amounts for all employees covered by
7 the plan or bear a uniform relationship to
8 the total compensation, or the basic or reg-
9 ular rate of compensation, of the employ-
10 ees covered by the plan.

11 “(B) COMPENSATION LIMITATION.—The
12 compensation taken into account under sub-
13 paragraph (A) for any year shall not exceed the
14 limitation in effect for such year under section
15 401(a)(17).

16 “(3) VESTING REQUIREMENTS.—The require-
17 ments of this paragraph are met if the plan satisfies
18 the requirements of subparagraph (A) or (B).

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

1 “(B) 5-YEAR GRADED VESTING.—A plan
 2 satisfies the requirements of this subparagraph
 3 if an employee has a nonforfeitable right to a
 4 percentage of the employee’s accrued benefit de-
 5 rived from employer contributions determined
 6 under the following table:

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

7 “(4) DISTRIBUTION REQUIREMENTS.—

8 “(A) IN GENERAL.—Except as provided in
 9 subparagraph (B), the requirements of this
 10 paragraph are met if, under the plan—

11 “(i) in the case of a profit-sharing or
 12 stock bonus plan, amounts are distribut-
 13 able only as provided in section
 14 401(k)(2)(B), and

15 “(ii) in the case of a pension plan,
 16 amounts are distributable subject to the
 17 limitations applicable to other distributions
 18 from the plan.

19 “(B) DISTRIBUTIONS WITHIN 5 YEARS
 20 AFTER SEPARATION, ETC.—In no event shall a
 21 plan meet the requirements of this paragraph
 22 unless, under the plan, amounts distributed—

1 “(i) after separation from service or
2 severance from employment, and

3 “(ii) within 5 years after the date of
4 the earliest employer contribution to the
5 plan,

6 may be distributed only in a direct trustee-to-
7 trustee transfer to a plan having the same dis-
8 tribution restrictions as the distributing plan.

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

11 “(1) ELIGIBLE EMPLOYER.—The term ‘eligible
12 employer’ has the meaning given such term by sec-
13 tion 408(p)(2)(C)(i).

14 “(2) NONHIGHLY COMPENSATED EMPLOY-
15 EES.—The term ‘highly compensated employee’ has
16 the meaning given such term by section 414(q) (de-
17 termined without regard to section 414(q)(1)(B)(ii)).

18 “(f) SPECIAL RULES.—

19 “(1) DISALLOWANCE OF DEDUCTION.—No de-
20 duction shall be allowed for that portion of the quali-
21 fied employer contributions paid or incurred for the
22 taxable year which is equal to the credit determined
23 under subsection (a).

24 “(2) ELECTION NOT TO CLAIM CREDIT.—This
25 section shall not apply to a taxpayer for any taxable

1 year if such taxpayer elects to have this section not
2 apply for such taxable year.

3 “(g) RECAPTURE OF CREDIT ON FORFEITED CON-
4 TRIBUTIONS.—If any accrued benefit which is forfeitable
5 by reason of subsection (d)(3) is forfeited, the employer’s
6 tax imposed by this chapter for the taxable year in which
7 the forfeiture occurs shall be increased by 35 percent of
8 the employer contributions from which such benefit is de-
9 rived to the extent such contributions were taken into ac-
10 count in determining the credit under this section.

11 “(h) REGULATIONS.—The Secretary shall prescribe
12 such regulations as may be appropriate to carry out the
13 purposes of this section, including regulations to prevent
14 the abuse of the purposes of this section through the use
15 of multiple plans.

16 “(i) TERMINATION.—This section shall not apply to
17 any plan established after December 31, 2009.”.

18 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
19 NESS CREDIT.—Section 38(b) of such Code (defining cur-
20 rent year business credit) is amended by striking “plus”
21 at the end of paragraph (13), by striking the period at
22 the end of paragraph (14) and inserting “, plus”, and by
23 adding at the end the following new paragraph:

24 “(16) in the case of an eligible employer (as de-
25 fined in section 45G(e)), the small employer pension

1 plan contribution credit determined under section
2 45G(a).”

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 39(d) of such Code is amended by
5 adding at the end the following new paragraph:

6 “(11) NO CARRYBACK OF SMALL EMPLOYER
7 PENSION PLAN CONTRIBUTION CREDIT BEFORE JAN-
8 UARY 1, 2002.—No portion of the unused business
9 credit for any taxable year which is attributable to
10 the small employer pension plan contribution credit
11 determined under section 45G may be carried back
12 to a taxable year beginning before January 1,
13 2002.”

14 (2) Subsection (c) of section 196 of such Code
15 is amended by striking “and” at the end of para-
16 graph (9), by striking the period at the end of para-
17 graph (10) and inserting “, and”, and by adding at
18 the end the following new paragraph:

19 “(11) the small employer pension plan contribu-
20 tion credit determined under section 45G(a).”

21 (3) The table of sections for subpart D of part
22 IV of subchapter A of chapter 1 of such Code is
23 amended by adding at the end the following new
24 item:

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

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to contributions paid or incurred
3 in taxable years beginning after December 31, 2001.

4 **SEC. 303. NOTICE.**

5 The Secretary of the Treasury shall establish an on-
6 going program, in coordination with employers, under
7 which the Secretary shall ensure that employees and other
8 affected individuals remain fully and effectively notified of
9 the availability of tax credits under sections 35, 45E, and
10 45G of the Internal Revenue Code of 1986.

11 **TITLE IV—ADDITIONAL**
12 **AMENDMENTS**

13 **SEC. 401. STATUTORY EXEMPTION FROM PROHIBITED**
14 **TRANSACTION RULES FOR EMERGENT**
15 **TRANSACTIONS.**

16 (a) IN GENERAL.—Section 4975 of the Internal Rev-
17 enue Code of 1986 (relating to tax on prohibited trans-
18 actions) is amended—

19 (1) by redesignating subsections (h) and (i) as
20 subsections (i) and (j), respectively, and

21 (2) by inserting after subsection (g) the fol-
22 lowing new subsection:

23 “(h) STATUTORY EXEMPTION FROM PROHIBITED
24 TRANSACTION RULES FOR EMERGENT TRANSACTIONS.—

1 “(1) IN GENERAL.—Pursuant to regulations
2 issued by the Secretary of Labor, a transaction be-
3 tween a plan and an eligible person constituting the
4 purchase or sale of a financial product which is in
5 violation of a restriction imposed by subsection
6 (c)(1) may be exempted under section 408(a) of the
7 Employee Retirement Income Security Act of 1974
8 from treatment as a violation of such restriction if—

9 “(A) prior to engaging in the transaction,
10 the plan acquires from the eligible person a
11 qualifying guarantee, consisting of a letter of
12 credit or other form of written guarantee,
13 issued by a bank or similar financial institution
14 (other than the eligible person requesting the
15 exemption or an affiliate) regulated and super-
16 vised by, and subject to periodic examination
17 by, an agency of a State or of the Federal Gov-
18 ernment, in a stated amount equal, as of the
19 close of business on the day preceding the
20 transaction, to not less than 100 percent of the
21 amount of plan assets involved in the trans-
22 action, plus interest on that amount at a rate
23 determined by the parties to the transaction, or
24 in the absence of such determination, an inter-

1 est rate equal to the underpayment rate defined
2 in section 6621(a)(2),

3 “(B) the eligible person receives in such
4 transaction not more than reasonable com-
5 pensation,

6 “(C) such transaction is expressly ap-
7 proved by an independent fiduciary who has in-
8 vestment authority with respect to the plan as-
9 sets involved in the transaction,

10 “(D) within 60 days after the transaction,
11 the eligible person submits to the Secretary an
12 application for an exemption under subsection
13 (a) from such restriction,

14 “(E) immediately after the acquisition of
15 the financial product—

16 “(i) the fair market value of such fi-
17 nancial product does not exceed 1 percent
18 of the fair market value of the assets of
19 the plan, and

20 “(ii) the aggregate fair market value
21 of all outstanding financial products ac-
22 quired by the plan from the eligible person
23 pursuant to this subsection does not exceed
24 5 percent of the fair market value of the
25 assets of the plan,

1 “(F) the Secretary determines not to grant
2 the exemption, and

3 “(G) the transaction is reversed within 60
4 days after the date of the Secretary’s deter-
5 mination.

6 “(2) For purposes of this subsection—

7 “(A) a guarantee referred to in paragraph
8 (1) is ‘qualifying’ if such guarantee is irrev-
9 ocable and, under the terms of the guarantee—

10 “(i) if the Secretary grants the ex-
11 emption, the guarantee may expire without
12 any payments made to the plan, and

13 “(ii) if the Secretary determines not
14 to grant the exemption, the plan has the
15 unconditional right to apply the amounts
16 under the guarantee to any losses suffered
17 and to the payment of interest determined
18 under paragraph (1), and

19 “(B) the term ‘eligible person’ means a
20 person that—

21 “(i) consists of—

22 “(I) a bank as defined in section
23 202(a)(2) of the Investment Advisers
24 Act of 1940,

1 “(II) an investment adviser reg-
2 istered under the Investment Advisers
3 Act of 1940,

4 “(III) an insurance company
5 which is qualified to do business in
6 more than one State, or

7 “(IV) a broker-dealer registered
8 under the Securities Exchange Act of
9 1934,

10 “(ii) has shareholders’ or partners’ eq-
11 uity in excess of \$1,000,000, and

12 “(iii) is not described in section 411
13 of the Employee Retirement Income Secu-
14 rity Act of 1974.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 this section shall apply with respect to transactions occur-
17 ring after December 31, 2001.

18 **SEC. 402. LOANS FROM RETIREMENT PLANS FOR HEALTH**
19 **INSURANCE AND JOB TRAINING EXPENSES.**

20 (a) QUALIFICATION REQUIREMENT FOR PENSION
21 PLANS.—Paragraph (13) of section 401(a) of the Internal
22 Revenue Code of 1986 (relating to assignment and alien-
23 ation) is amended by adding at the end the following new
24 subparagraph:

1 “(E) LOANS FROM RETIREMENT PLANS
2 FOR HEALTH INSURANCE AND JOB TRAINING
3 EXPENSES.—Notwithstanding subparagraph
4 (A), a trust shall not constitute a qualified
5 trust under this section unless the plan of
6 which such trust is a part provides that a par-
7 ticipant or beneficiary who is involuntarily sepa-
8 rated from employment may, on the date of
9 such separation, obtain a loan from the plan
10 the proceeds of which are to be used within 6
11 months after the date of such loan—

12 “(i) for payments for insurance which
13 constitutes medical care for the taxpayer
14 and the taxpayer’s spouse and dependents,
15 or

16 “(ii) for job training expenses.”.

17 (b) PROHIBITED TRANSACTION EXEMPTION.—Sec-
18 tion 4975(d) of such Code (relating to exemptions from
19 tax on prohibited transactions) is amended by striking
20 “or” at the end of paragraph (14), by striking the period
21 at the end of paragraph (15) and inserting “; or”, and
22 by inserting after paragraph (15) the following new para-
23 graph:

24 “(16) any loan—

1 “(A) from an individual retirement plan
2 for the payment of health insurance premiums
3 or job training expenses that is a qualified loan
4 (as defined in section 408 of the Employee Re-
5 tirement Income Security Act of 1974), or

6 “(B) made by the plan to a disqualified
7 person who is a participant or beneficiary of the
8 plan if such loan—

9 “(i) is for the payment of health in-
10 surance premiums or job training ex-
11 penses, and

12 “(ii) meets the requirements of sec-
13 tion 401(a)(13)(E).”.

14 (c) **EFFECTIVE DATE.**—The amendments made by
15 this section shall apply to loans made after the effective
16 date specified in section 501.

17 **SEC. 403. MISSING PARTICIPANTS.**

18 (a) **IN GENERAL.**—Section 401(a)(34) of the Internal
19 Revenue Code of 1986 (relating to benefits of missing par-
20 ticipants on plan termination) is amended by striking
21 “title IV” and inserting “section 4050”.

22 (b) **EFFECTIVE DATE.**—The amendment made by
23 this section shall apply to distributions made after 1 year
24 after the date of the enactment of this Act.

1 **SEC. 404. INCOME AVERAGING OF CORRECTED CIVIL SERV-**
2 **ICE ANNUITY BENEFIT PAYMENTS.**

3 (a) IN GENERAL.—Part I of subchapter Q of chapter
4 1 of the Internal Revenue Code of 1986 (relating to in-
5 come averaging) is amended by inserting after section
6 1301 the following new section:

7 **“SEC. 1302. AVERAGING OF CORRECTED CIVIL SERVICE AN-**
8 **NUITY BENEFIT PAYMENTS.**

9 “(a) IN GENERAL.—Unless the taxpayer elects not
10 to have this section apply for a taxable year, any corrected
11 civil service annuity benefit payment includable in gross
12 income for such taxable year (without regard to this sec-
13 tion) shall be so included ratably over the 5-taxable year
14 period beginning with such taxable year.

15 “(b) CORRECTED CIVIL SERVICE ANNUITY BENEFIT
16 PAYMENT.—For purposes of subsection (a), the term ‘cor-
17 rected civil service annuity benefit payment’ means with
18 respect to an individual the sum of—

19 “(1) the lump sum payment awarded by reason
20 of a court order, or decision of the Merit Systems
21 Protection Board, under which the individual is enti-
22 tled to receive an amount equal to all or any part
23 of an annuity not paid to the individual as a result
24 of an erroneous application or interpretation of sub-
25 chapter III of chapter 83 or chapter 84 of title 5,

1 United States Code, or any other provision of law
2 (or any rule or regulation relating thereto), plus

3 “(2) interest on the amount described in para-
4 graph (1) awarded under section 7704 of title 5,
5 United States Code.

6 “(c) ANNUITY.—For purposes of subsection (b), the
7 term ‘annuity’ has the meaning given to such term by sec-
8 tion 7704(c) of title 5, United States Code.

9 “(d) FINALITY OF ELECTION.—An election under
10 subsection (a) with respect to a corrected civil service an-
11 nuity benefit payment for a taxable year may not be
12 changed after the due date of the return for such taxable
13 year.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for part I of subchapter Q of chapter 1 of such Code is
16 amended by inserting after the item relating to section
17 1301 the following new item:

“Sec. 1302. Averaging of corrected civil service annuity benefit
payments.”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to payments received after Decem-
20 ber 31, 2001.

21 **SEC. 405. PROHIBITED TRANSACTION EXEMPTION FOR THE**
22 **PROVISION OF INVESTMENT ADVICE.**

23 (a) PROHIBITED TRANSACTION EXEMPTION.—Sub-
24 section (d) of section 4975 of the Internal Revenue Code

1 of 1986 (relating to exemptions from tax on prohibited
2 transactions) is amended—

3 (1) in paragraph (14), by striking “or” at the
4 end,

5 (2) in paragraph (15), by striking the period at
6 the end and inserting “; or”, and

7 (3) by adding at the end the following new
8 paragraph:

9 “(16) any transaction described in subsection
10 (f)(7)(A) in connection with the provision of invest-
11 ment advice described in subsection (e)(3)(B), in
12 any case in which—

13 “(A) the plan provides for individual ac-
14 counts and permits a participant or beneficiary
15 to exercise control over assets in his or her ac-
16 count,

17 “(B) the advice is qualified investment ad-
18 vice provided to a participant or beneficiary of
19 the plan by a fiduciary adviser in connection
20 with any sale, acquisition, or holding of a secu-
21 rity or other property for purposes of invest-
22 ment of plan assets, and

23 “(C) the requirements of subsection
24 (f)(7)(B) are met in connection with each in-
25 stance of the provision of the advice.”.

1 (b) TRANSACTIONS ALLOWED AND RELATED RE-
2 QUIREMENTS.—Subsection (f) of such section 4975 (relat-
3 ing to other definitions and special rules) is amended by
4 adding at the end the following new paragraph:

5 “(7) INVESTMENT ADVICE PROVIDED BY FIDU-
6 CIARY ADVISERS.—

7 “(A) ALLOWABLE TRANSACTIONS.—The
8 transactions referred to in subsection (d)(16),
9 in connection with the provision of investment
10 advice by a fiduciary adviser, are the following:

11 “(i) the provision of the advice to the
12 participant or beneficiary,

13 “(ii) the sale, acquisition, or holding
14 of a security or other property (including
15 any lending of money or other extension of
16 credit associated with the sale, acquisition,
17 or holding of a security or other property)
18 pursuant to the advice, and

19 “(iii) the direct or indirect receipt of
20 fees or other compensation by the fiduciary
21 adviser or an affiliate thereof (or any em-
22 ployee, agent, or registered representative
23 of the fiduciary adviser or affiliate) in con-
24 nection with the provision of the advice.

1 “(B) REQUIREMENTS FOR EXEMPTION
2 FROM PROHIBITED TRANSACTIONS WITH RE-
3 SPECT TO PROVISION OF INVESTMENT AD-
4 VICE.—The requirements of this subparagraph
5 (referred to in subsection (d)(16)(C)) are met
6 in connection with the provision of qualified in-
7 vestment advice provided to a participant or
8 beneficiary of an employee benefit plan by a fi-
9 duciary adviser with respect to the plan in con-
10 nection with any sale, acquisition, or holding of
11 a security or other property for purposes of in-
12 vestment of amounts held by the plan, if the re-
13 quirements of the following clauses are met:

14 “(i) WRITTEN DISCLOSURES.—At a
15 time contemporaneous with the provision
16 of the advice in connection with the sale,
17 acquisition, or holding of the security or
18 other property, the fiduciary adviser shall
19 provide to the recipient of the advice a
20 clear and conspicuous notification, written
21 in a manner to be reasonably understood
22 by the average plan participant pursuant
23 to regulations which shall be prescribed by
24 the Secretary (including mathematical ex-
25 amples), of the following:

1 “(I) INTERESTS HELD BY THE
2 FIDUCIARY ADVISER.—Any interest of
3 the fiduciary adviser in, or any affili-
4 ation or contractual relationship of
5 the fiduciary adviser (or affiliates
6 thereof) with any third party having
7 an interest in, the security or other
8 property.

9 “(II) RELATED FEES OR COM-
10 PENSATION IN CONNECTION WITH
11 THE PROVISION OF THE ADVICE.—All
12 fees or other compensation relating to
13 the advice (including fees or other
14 compensation itemized with respect to
15 each security or other property with
16 respect to which the advice is pro-
17 vided) that the fiduciary adviser (or
18 any affiliate thereof) is to receive (in-
19 cluding compensation provided by any
20 third party) in connection with the
21 provision of the advice or in connec-
22 tion with the sale, acquisition, or hold-
23 ing of the security or other property.

24 “(III) ONGOING FEES OR COM-
25 PENSATION IN CONNECTION WITH

1 THE SECURITY OR PROPERTY IN-
2 VOLVED.—All fees or other compensa-
3 tion that the fiduciary adviser (or any
4 affiliate thereof) is to receive, on an
5 ongoing basis, in connection with any
6 security or other property with respect
7 to which the fiduciary adviser gives
8 the advice.

9 “(IV) APPLICABLE LIMITATIONS
10 ON SCOPE OF ADVICE.—Any limita-
11 tion placed (in accordance with the re-
12 quirements of this subsection) on the
13 scope of the advice to be provided by
14 the fiduciary adviser with respect to
15 the sale, acquisition, or holding of the
16 security or other property.

17 “(V) TYPES OF SERVICES GEN-
18 ERALLY OFFERED.—The types of
19 services offered by the fiduciary ad-
20 viser in connection with the provision
21 of qualified investment advice by the
22 fiduciary adviser.

23 “(VI) FIDUCIARY STATUS OF
24 THE FIDUCIARY ADVISER.—That the

1 fiduciary advisor is a fiduciary of the
2 plan.

3 “(ii) DISCLOSURE BY FIDUCIARY AD-
4 VISER IN ACCORDANCE WITH APPLICABLE
5 SECURITIES LAWS.—The fiduciary adviser
6 shall provide appropriate disclosure, in
7 connection with the sale, acquisition, or
8 holding of the security or other property,
9 in accordance with all applicable securities
10 laws.

11 “(iii) TRANSACTION OCCURRING SOLE-
12 LY AT DIRECTION OF RECIPIENT OF AD-
13 VICE.—The sale, acquisition, or holding of
14 the security or other property shall occur
15 solely at the direction of the recipient of
16 the advice.

17 “(iv) REASONABLE COMPENSATION.—
18 The compensation received by the fiduciary
19 adviser and affiliates thereof in connection
20 with the sale, acquisition, or holding of the
21 security or other property shall be reason-
22 able.

23 “(v) ARM’S LENGTH TRANSACTION.—
24 The terms of the sale, acquisition, or hold-
25 ing of the security or other property shall

1 be at least as favorable to the plan as an
2 arm's length transaction would be.

3 “(C) CONTINUED AVAILABILITY OF INFOR-
4 MATION FOR AT LEAST 1 YEAR.—The require-
5 ments of subparagraph (B)(i) shall be deemed
6 not to have been met in connection with the ini-
7 tial or any subsequent provision of advice de-
8 scribed in subparagraph (B) if, at any time
9 during the 1-year period following the provision
10 of the advice, the fiduciary adviser fails to
11 maintain the information described in sub-
12 clauses (I) through (IV) of subparagraph (B)(i)
13 in currently accurate form or to make the infor-
14 mation available, upon request and without
15 charge, to the recipient of the advice.

16 “(D) EVIDENCE OF COMPLIANCE MAIN-
17 TAINED FOR AT LEAST 6 YEARS.—A fiduciary
18 adviser referred to in subparagraph (B) who
19 has provided advice referred to in such subpara-
20 graph shall, for a period of not less than 6
21 years after the provision of the advice, maintain
22 any records necessary for determining whether
23 the requirements of the preceding provisions of
24 this paragraph and of subsection (d)(16) have
25 been met. A transaction prohibited under sub-

1 section (c)(1) shall not be considered to have
2 occurred solely because the records are lost or
3 destroyed prior to the end of the 6-year period
4 due to circumstances beyond the control of the
5 fiduciary adviser.

6 “(E) MODEL DISCLOSURE FORMS.—The
7 Secretary shall prescribe regulations setting
8 forth model disclosure forms to assist fiduciary
9 advisers in complying with the disclosure re-
10 quirements of under this paragraph.

11 “(F) ANNUAL REVIEWS BY THE SEC-
12 RETARY.—The Secretary shall conduct annual
13 reviews of randomly selected fiduciary advisers
14 providing qualified investment advice to partici-
15 pants and beneficiaries. In the case of each re-
16 view, the Secretary shall review the following:

17 “(i) COMPLIANCE BY ADVICE COM-
18 PUTER MODELS WITH GENERALLY ACCEPT-
19 ED INVESTMENT MANAGEMENT PRIN-
20 CIPLES.—The extent to which advice com-
21 puter models employed by the fiduciary ad-
22 viser comply with generally accepted in-
23 vestment management principles.

24 “(ii) COMPLIANCE WITH DISCLOSURE
25 REQUIREMENTS.—The extent to which dis-

1 closures provided by the fiduciary adviser
2 have complied with the requirements of
3 this subsection.

4 “(iii) EXTENT OF VIOLATIONS.—The
5 extent to which any violations of fiduciary
6 duties have occurred in connection with the
7 provision of the advice.

8 “(iv) EXTENT OF REPORTED COM-
9 PLAINS.—The extent to which complaints
10 to relevant agencies have been made in
11 connection with the provision of the advice.

12 Any proprietary information obtained by the
13 Secretary shall be treated as confidential.

14 “(G) DUTY OF CONFLICTED FIDUCIARY
15 ADVISER TO PROVIDE FOR ALTERNATIVE INDE-
16 PENDENT ADVICE.—

17 “(i) IN GENERAL.—In connection with
18 any qualified investment advice provided
19 by a fiduciary adviser to a participant or
20 beneficiary regarding any security or other
21 property, if the fiduciary adviser—

22 “(I) has an interest in the secu-
23 rity or other property, or

24 “(II) has an affiliation or con-
25 tractual relationship with any third

1 party that has an interest in the secu-
2 rity or other property,
3 the requirements of subparagraph (B)
4 shall be treated as not met in connection
5 with the advice unless the fiduciary adviser
6 has arranged, as an alternative to the ad-
7 vice that would otherwise be provided by
8 the fiduciary advisor, for qualified invest-
9 ment advice with respect to the security or
10 other property provided by at least one al-
11 ternative investment adviser meeting the
12 requirements of clause (ii).

13 “(ii) INDEPENDENCE AND QUALIFICA-
14 TIONS OF ALTERNATIVE INVESTMENT AD-
15 VISER.—Any alternative investment adviser
16 whose qualified investment advice is ar-
17 ranged for by a fiduciary adviser pursuant
18 to clause (i)—

19 “(I) shall have no material inter-
20 est in, and no material affiliation or
21 contractual relationship with any third
22 party having a material interest in,
23 the security or other property with re-
24 spect to which the investment adviser
25 is providing the advice, and

1 “(II) shall meet the requirements
2 of a fiduciary adviser under subpara-
3 graph (H)(i), except that an alter-
4 native investment adviser may not be
5 a fiduciary of the plan other than in
6 connection with the provision of the
7 advice.

8 “(iii) SCOPE AND FEES OF ALTER-
9 NATIVE INVESTMENT ADVICE.—Any quali-
10 fied investment advice provided pursuant
11 to this subparagraph by an alternative in-
12 vestment adviser shall be of the same type
13 and scope, and provided under the same
14 terms and conditions (including no addi-
15 tional charge to the participant or bene-
16 ficiary), as apply with respect to the quali-
17 fied investment advice to be provided by
18 the fiduciary adviser.

19 “(H) FIDUCIARY ADVISER DEFINED.—For
20 purposes of this paragraph and subsection
21 (d)(16)—

22 “(i) IN GENERAL.—The term ‘fidu-
23 ciary adviser’ means, with respect to a
24 plan, a person who—

1 “(I) is a fiduciary of the plan by
2 reason of the provision of qualified in-
3 vestment advice by such person to a
4 participant or beneficiary,

5 “(II) meets the qualifications of
6 clause (ii), and

7 “(III) meets the additional re-
8 quirements of clause (iii).

9 “(ii) QUALIFICATIONS.—A person
10 meets the qualifications of this clause if
11 such person—

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

16 “(II) if not registered as an in-
17 vestment adviser under such Act by
18 reason of section 203A(a)(1) of such
19 Act (15 U.S.C. 80b-3a(a)(1)), is reg-
20 istered under the laws of the State in
21 which the fiduciary maintains its prin-
22 cipal office and place of business, and,
23 at the time the fiduciary last filed the
24 registration form most recently filed
25 by the fiduciary with such State in

1 order to maintain the fiduciary's reg-
2 istration under the laws of such State,
3 also filed a copy of such form with the
4 Secretary,

5 “(III) is registered as a broker or
6 dealer under the Securities Exchange
7 Act of 1934 (15 U.S.C. 78a et seq.),

8 “(IV) is a bank or similar finan-
9 cial institution referred to in sub-
10 section (d)(4),

11 “(V) is an insurance company
12 qualified to do business under the
13 laws of a State, or

14 “(VI) is any other comparable
15 entity which satisfies such criteria as
16 the Secretary determines appropriate.

17 “(iii) ADDITIONAL REQUIREMENTS
18 WITH RESPECT TO CERTAIN EMPLOYEES
19 OR OTHER AGENTS OF CERTAIN ADVIS-
20 ERS.—A person meets the additional re-
21 quirements of this clause if every indi-
22 vidual who is employed (or otherwise com-
23 pensated) by such person and whose scope
24 of duties includes the provision of qualified

1 investment advice on behalf of such person
2 to any participant or beneficiary is—

3 “(I) a registered representative of
4 such person,

5 “(II) an individual described in
6 subclause (I), (II), or (III) of clause
7 (ii), or

8 “(III) such other comparable
9 qualified individual as may be des-
10 ignated in regulations of the Sec-
11 retary.

12 “(I) ADDITIONAL DEFINITIONS.—For pur-
13 poses of this paragraph and subsection
14 (d)(16)—

15 “(i) QUALIFIED INVESTMENT AD-
16 VICE.—The term ‘qualified investment ad-
17 vice’ means, in connection with a partici-
18 pant or beneficiary, investment advice re-
19 ferred to in subsection (e)(3)(B) which—

20 “(I) consists of an individualized
21 recommendation to the participant or
22 beneficiary with respect to the pur-
23 chase, sale, or retention of securities
24 or other property for the individual
25 account of the participant or bene-

1 ficiary, in accordance with generally
2 accepted investment management
3 principles, and

4 “(II) takes into account all in-
5 vestment options under the plan.

6 “(ii) AFFILIATE.—The term ‘affiliate’
7 of another entity means an affiliated per-
8 son of such entity (as defined in section
9 2(a)(3) of the Investment Company Act of
10 1940 (15 U.S.C. 80a-2(a)(3))).

11 “(iii) REGISTERED REPRESENTA-
12 TIVE.—The term ‘registered representa-
13 tive’ of another entity means a person de-
14 scribed in section 3(a)(18) of the Securi-
15 ties Exchange Act of 1934 (15 U.S.C.
16 78c(a)(18)) (substituting such entity for
17 the broker or dealer referred to in such
18 section) or a person described in section
19 202(a)(17) of the Investment Advisers Act
20 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-
21 stituting such entity for the investment ad-
22 viser referred to in such section).”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply with respect to advice referred to

1 in section 4975(e)(3)(B) of the Internal Revenue Code of
2 1986 provided on or after January 1, 2002.

3 **TITLE V—GENERAL PROVISIONS**

4 **SEC. 501. GENERAL EFFECTIVE DATE.**

5 (a) IN GENERAL.—Except as otherwise provided in
6 this Act, and subject to subsection (b), the amendments
7 made by this Act shall apply with respect to plan years
8 beginning on or after January 1, 2002.

9 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
10 PLANS.—In the case of a plan maintained pursuant to 1
11 or more collective bargaining agreements between em-
12 ployee representatives and 1 or more employers ratified
13 on or before the date of the enactment of this Act, sub-
14 section (a) shall be applied to benefits pursuant to, and
15 individuals covered by, any such agreement by substituting
16 for “January 1, 2002” the date of the commencement of
17 the first plan year beginning on or after the earlier of—

18 (1) the later of—

19 (A) January 1, 2003, or

20 (B) the date on which the last of such col-
21 lective bargaining agreements terminates (de-
22 termined without regard to any extension there-
23 of after the date of the enactment of this Act),

24 or

25 (2) January 1, 2004.

1 **SEC. 502. PLAN AMENDMENTS.**

2 If any amendment made by this Act requires an
3 amendment to any plan, such plan amendment shall not
4 be required to be made before the first plan year beginning
5 on or after January 1, 2004, if—

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

11 (2) such plan amendment applies retroactively
12 to the period after such amendment made by this
13 Act takes effect and such first plan year.

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