

107TH CONGRESS  
1ST SESSION

# H. R. 3488

To amend the Internal Revenue Code of 1986 to expand pension benefits to those without retirement plans and provide additional protections to those who participate in the current system.

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 13, 2001

Mr. COYNE (for himself, Mr. RANGEL, and Mr. MATSUI) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to expand pension benefits to those without retirement plans and provide additional protections to those who participate in the current system.

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, ETC.**

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

1           (b) AMENDMENT OF 1986 CODE.—Except as other-  
 2 wise expressly provided, whenever in this Act an amend-  
 3 ment or repeal is expressed in terms of an amendment  
 4 to, or repeal of, a section or other provision, the reference  
 5 shall be considered to be made to a section or other provi-  
 6 sion of the Internal Revenue Code of 1986.

7           (c) TABLE OF CONTENTS.—

Sec. 1. Short title, etc.

TITLE I—REFUNDABLE CREDIT TO CERTAIN INDIVIDUALS FOR  
 ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS

Sec. 101. Refundable credit to certain individuals for elective deferrals and IRA  
 contributions.

TITLE II—EXPANSION OF COVERAGE TO LOW-WAGE WORKERS

Sec. 201. Exclusion for payroll deduction contributions to individual retirement  
 accounts.

TITLE III—IMPROVEMENT OF PENSION COVERAGE FOR WOMEN

Sec. 301. Modifications of joint and survivor annuity requirements.

Sec. 302. Spousal consent required for distributions from section 401(k) plans.

Sec. 303. Full vesting upon death or disability.

Sec. 304. Predetermination protection for potential qualified domestic relations  
 order alternate payee.

Sec. 305. Promotion of pension plan participation by women and other under-  
 represented groups.

Sec. 306. Periods of family and medical leave treated as hours of service for  
 pension participation and vesting.

TITLE IV—INCENTIVES FOR SMALL BUSINESSES TO OFFER  
 PENSION BENEFITS

Sec. 401. Credit for qualified pension plan contributions of small employers.

Sec. 402. Secure money annuity or retirement (SMART) trusts.

Sec. 403. Definition of highly compensated employees.

1 **TITLE I—REFUNDABLE CREDIT**  
 2 **TO CERTAIN INDIVIDUALS**  
 3 **FOR ELECTIVE DEFERRALS**  
 4 **AND IRA CONTRIBUTIONS**

5 **SEC. 101. REFUNDABLE CREDIT TO CERTAIN INDIVIDUALS**  
 6 **FOR ELECTIVE DEFERRALS AND IRA CON-**  
 7 **TRIBUTIONS.**

8 (a) IN GENERAL.—Subpart C of part IV of sub-  
 9 chapter A of chapter 1 (relating to refundable credits) is  
 10 amended by redesignating section 35 as section 36 and  
 11 by inserting after section 34 the following new section:

12 **“SEC. 35. ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS**  
 13 **BY CERTAIN INDIVIDUALS.**

14 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-  
 15 gible individual, there shall be allowed as a credit against  
 16 the tax imposed by this subtitle for the taxable year an  
 17 amount equal to the applicable percentage of so much of  
 18 the qualified retirement savings contributions of the eligi-  
 19 ble individual for the taxable year as do not exceed the  
 20 deductible amount (as defined in section 219(b)).

21 “(b) APPLICABLE PERCENTAGE.—For purposes of  
 22 this section, the applicable percentage is the percentage  
 23 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	
	\$30,000		\$22,500		\$15,000	50

Adjusted Gross Income						Applicable percentage
Joint return		Head of a household		All other cases		
Over	Not over	Over	Not over	Over	Not over	
30,000	32,500	22,500	24,375	15,000	16,250	20
32,500	50,000	24,375	37,500	16,250	25,000	10
50,000		37,500		25,000		0

1       “(c) ELIGIBLE INDIVIDUAL.—For purposes of this  
2 section—

3               “(1) IN GENERAL.—The term ‘eligible indi-  
4 vidual’ means any individual who has attained the  
5 age of 18 as of the close of the taxable year.

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

9                       “(A) any individual with respect to whom  
10 a deduction under section 151 is allowable to  
11 another taxpayer for a taxable year beginning  
12 in the calendar year in which such individual’s  
13 taxable year begins, and

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

16       “(d) QUALIFIED RETIREMENT SAVINGS CONTRIBU-  
17 TIONS.—

18               “(1) IN GENERAL.—For purposes of this sec-  
19 tion, the term ‘qualified retirement savings contribu-  
20 tions’ means the sum of—

1           “(A) the amount of the qualified retire-  
2           ment contributions (as defined in section  
3           219(e)) made by the eligible individual,

4           “(B) the amount of—

5                   “(i) any elective deferrals (as defined  
6                   in section 402(g)(3)) of such individual,  
7                   and

8                   “(ii) any elective deferral of com-  
9                   pensation by such individual under an eli-  
10                  gible deferred compensation plan (as de-  
11                  fined in section 457(b)) of an eligible em-  
12                  ployer described in section 457(e)(1)(A),  
13                  and

14           “(C) the amount of voluntary employee  
15           contributions by such individual to any qualified  
16           retirement plan (as defined in section 4974(c)).

17           “(2) ADJUSTMENT FOR CERTAIN DISTRIBUTIONS.—  
18           TIONS.—

19           “(A) IN GENERAL.—The amount of quali-  
20           fied retirement savings contributions of an indi-  
21           vidual otherwise taken into account under sub-  
22           section (a) for a taxable year shall be reduced  
23           (but not below zero) by the sum of—

24                   “(i) any distribution from a qualified  
25                   retirement plan (as defined in section

1           4974(c)), or from an eligible deferred com-  
2           pensation plan (as defined in section  
3           457(b)), received by the individual during  
4           the testing period which is includible in  
5           gross income, and

6           “(ii) any distribution in such taxable  
7           year from a Roth IRA received by the indi-  
8           vidual during the testing period which is  
9           not a qualified rollover contribution (as de-  
10          fined in section 408A(e)) to a Roth IRA.

11          “(B) TESTING PERIOD.—For purposes of  
12          subparagraph (A), the testing period, with re-  
13          spect to a taxable year, is the period which  
14          includes—

15               “(i) such taxable year,

16               “(ii) the 2 preceding taxable years,

17               and

18               “(iii) the period after such taxable  
19               year and before the due date (including ex-  
20               tensions) for filing the return of tax for  
21               such taxable year.

22          “(C) EXCEPTED DISTRIBUTIONS.—There  
23          shall not be taken into account under subpara-  
24          graph (A)—

1           “(i) any distribution referred to in  
2           section 72(p), 401(k)(8), 401(m)(6),  
3           402(g)(2), 404(k), or 408(d)(4),

4           “(ii) any distribution to which section  
5           408A(d)(3) applies, and

6           “(iii) any distribution before January  
7           1, 2002.

8           “(D) TREATMENT OF DISTRIBUTIONS RE-  
9           CEIVED BY SPOUSE OF INDIVIDUAL.—For pur-  
10          poses of determining whether an individual is  
11          an eligible individual for any taxable year, any  
12          distribution received by the spouse of such indi-  
13          vidual shall be treated as received by such indi-  
14          vidual if such individual and spouse file a joint  
15          return for such taxable year and for the taxable  
16          year during which the spouse receives the dis-  
17          tribution.

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

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

1 (b) CONFORMING AMENDMENTS.—

2 (1) Subpart A of part IV of subchapter A of  
3 chapter 1 is amended by striking section 25B and  
4 the table of sections for such subpart is amended by  
5 striking the item relating to section 25B.

6 (2) Paragraph (2) of section 1324(b) of title  
7 31, United States Code, is amended by inserting be-  
8 fore the period “, or from section 35 of such Code”.

9 (3) The table of sections for subpart C of part  
10 IV of subchapter A of chapter 1 is amended by  
11 striking the last item and inserting the following  
12 new items:

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

“Sec. 36. Overpayments of tax.”

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

16 **TITLE II—EXPANSION OF COV-**  
17 **ERAGE TO LOW-WAGE WORK-**  
18 **ERS**

19 **SEC. 201. EXCLUSION FOR PAYROLL DEDUCTION CON-**  
20 **TRIBUTIONS TO INDIVIDUAL RETIREMENT**  
21 **ACCOUNTS.**

22 (a) IN GENERAL.—Section 408 (relating to individual  
23 retirement accounts) is amended by redesignating sub-

1 section (r) as subsection (s) and by inserting after sub-  
2 section (q) the following new subsection:

3 “(r) QUALIFIED PAYROLL DEDUCTION ARRANGE-  
4 MENT FOR IRA CONTRIBUTIONS.—

5 “(1) IN GENERAL.—For purposes of this title,  
6 the term ‘qualified payroll deduction arrangement’  
7 means a written arrangement of an employer under  
8 which—

9 “(A) an employee eligible to participate in  
10 the arrangement may elect to have the employer  
11 make payments—

12 “(i) to the employee directly in cash,  
13 or

14 “(ii) as elective employer contributions  
15 to an individual retirement plan (as de-  
16 fined in section 7701(a)(37)), other than  
17 an individual retirement plan described in  
18 section 408(k), 408(p), or 408A(b), on be-  
19 half of the employee for the taxable year in  
20 which the payments otherwise would have  
21 been made to the employee directly in  
22 cash,

23 “(B) the amount which the employee may  
24 elect under subparagraph (A) for any year may

1 not exceed the deductible amount for such year  
2 (as defined in section 219(b)),

3 “(C) no other contributions may be made  
4 other than contributions described in subpara-  
5 graph (A),

6 “(D) the employee’s rights to any contribu-  
7 tions made to an individual retirement plan are  
8 nonforfeitable (for this purpose, rules similar to  
9 the rules of subsection (k)(4) shall apply), and

10 “(E) the employer makes the elective em-  
11 ployer contributions under subparagraph (A)  
12 not later than the close of the 30-day period  
13 following the last day of the month with respect  
14 to which the contributions are to be made.

15 “(2) ELECTION NOT TO HAVE SUBSECTION  
16 APPLY.—An employer that maintains an arrange-  
17 ment otherwise described in paragraph (1) may elect  
18 to have contributions treated as though they were  
19 not made under such an arrangement. If an em-  
20 ployer does not make an election described in the  
21 preceding sentence, an employee may elect, before  
22 any contributions are made for the calendar year, to  
23 have contributions on behalf of the employee treated  
24 as though they were not made under an arrange-  
25 ment described in paragraph (1). An employer shall

1 be deemed to have made an election under this para-  
2 graph for a year if the employer maintained a quali-  
3 fied plan with respect to which contributions were  
4 made or benefits were accrued for such year. For  
5 purposes of the preceding sentence, the term ‘quali-  
6 fied plan’ means a plan, contract, pension, or trust  
7 described in subparagraph (A) or (B) of section  
8 219(g)(5).”.

9 (b) TAX TREATMENT OF EMPLOYER CONTRIBUTIONS  
10 MADE UNDER A QUALIFIED PAYROLL DEDUCTION AR-  
11 RANGEMENT.—

12 (1) COORDINATION WITH DEDUCTION UNDER  
13 SECTION 219.—

14 (A) Section 219(b) (relating to maximum  
15 amount of deduction) is amended by adding at  
16 the end the following new paragraph:

17 “(6) SPECIAL RULE FOR CONTRIBUTIONS  
18 UNDER A QUALIFIED PAYROLL DEDUCTION AR-  
19 RANGEMENT.—This section shall not apply with re-  
20 spect to any amount contributed under a qualified  
21 payroll deduction arrangement described in section  
22 408(r)(1) (for which an election has not been made  
23 under section 408(r)(2)).”.

1 (B) Section 219(g)(1) (relating to the limi-  
2 tation on deduction for active participants) is  
3 amended to read as follows:

4 “(1) IN GENERAL.—If (for any part of any plan  
5 year ending with or within a taxable year) an indi-  
6 vidual is an active participant, each of the dollar  
7 limitations contained in subsections (b)(1)(A) and  
8 (c)(1)(A) for such taxable year shall be reduced (but  
9 not below zero) by the sum of—

10 “(A) the amount determined under para-  
11 graph (2), and

12 “(B) the amount contributed for the tax-  
13 able year under a qualified payroll deduction ar-  
14 rangement described in section 408(r)(1) (for  
15 which an election has not been made under sec-  
16 tion 408(r)(2)).”.

17 (2) DEDUCTIBILITY OF EMPLOYER CONTRIBU-  
18 TIONS.—Section 404 (relating to deductions for con-  
19 tributions of an employer to pension, etc., plans) is  
20 amended by adding at the end the following new  
21 subsection:

22 “(o) SPECIAL RULES FOR CONTRIBUTIONS UNDER  
23 A QUALIFIED PAYROLL DEDUCTION ARRANGEMENT.—  
24 Rules similar to the rules of subsection (m) shall apply  
25 to employer contributions made under a qualified payroll

1 deduction arrangement described in section 408(r)(1) (for  
2 which an election has not been made under section  
3 408(r)(2)).”.

4 (3) CONTRIBUTIONS AND DISTRIBUTIONS.—

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

8 “(1) TREATMENT OF CONTRIBUTIONS AND DIS-  
9 TRIBUTIONS UNDER A QUALIFIED PAYROLL DEDUCTION  
10 ARRANGEMENT.—Rules similar to the rules of paragraphs  
11 (1) and (3) of subsection (h) shall apply to contributions  
12 and distributions made with respect to an individual re-  
13 tirement plan under a qualified payroll deduction arrange-  
14 ment described in section 408(r)(1) (for which an election  
15 has not been made under section 408(r)(2)), except that  
16 contributions made by an employer on behalf of an em-  
17 ployee for a taxable year shall be excluded from income  
18 only to the extent such contributions would have been de-  
19 ductible for such taxable year under section 219, if such  
20 section applied, without regard to section 219(g)(1)(B).  
21 Contributions that are not excluded from income under  
22 the preceding sentence shall be treated as designated non-  
23 deductible contributions under section 408(o).”.

24 (c) EXEMPTION FROM WITHHOLDING.—Subsection  
25 (a) of section 3401 (defining wages) is amended by strik-

1 ing “or” at the end of paragraph (20), by striking the  
2 period at the end of paragraph (21) and inserting “; or”,  
3 and by inserting after paragraph (21) the following new  
4 paragraph:

5           “(22) for any payment made for the benefit of  
6           the employee to an individual retirement plan if the  
7           amount of such payment was deducted and withheld  
8           under section 408(r).”.

9           (d) EXCLUSION SHOWN ON W-2.—Subsection (a) of  
10 section 6051 (relating to receipts for employees) is amend-  
11 ed by striking “and” at the end of paragraph (10), by  
12 striking the period at the end of paragraph (11) and in-  
13 serting “, and”, and by inserting after paragraph (11) the  
14 following new paragraph:

15           “(12) the total amount deducted and withheld  
16           pursuant to section 408(r).”.

17           (e) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to remuneration paid after Decem-  
19 ber 31, 2001.

20 **TITLE III—IMPROVEMENT OF**  
21 **PENSION COVERAGE FOR**  
22 **WOMEN**

23 **SEC. 301. MODIFICATIONS OF JOINT AND SURVIVOR ANNU-**  
24 **ITY REQUIREMENTS.**

25           (a) AMENDMENTS TO ERISA.—

1 (1) AMOUNT OF ANNUITY.—

2 (A) IN GENERAL.—Paragraph (1) of sec-  
3 tion 205(a) of the Employee Retirement Income  
4 Security Act of 1974 (29 U.S.C. 1055(a)) is  
5 amended by inserting “or, at the election of the  
6 participant, shall be provided in the form of a  
7 qualified joint and  $\frac{3}{4}$  survivor annuity” after  
8 “survivor annuity,”.

9 (B) DEFINITION.—Subsection (d) of sec-  
10 tion 205 of such Act (29 U.S.C. 1055) is  
11 amended—

12 (i) by redesignating paragraphs (1)  
13 and (2) as subparagraphs (A) and (B), re-  
14 spectively,

15 (ii) by inserting “(1)” after “(d)”,  
16 and

17 (iii) by adding at the end the fol-  
18 lowing new paragraph:

19 “(2) For purposes of this section, the term “qualified  
20 joint and  $\frac{3}{4}$  survivor annuity” means an annuity—

21 “(A) for the participant while both the partici-  
22 pant and the spouse are alive with a survivor annu-  
23 ity for the life of surviving individual (either the par-  
24 ticipant or the spouse) equal to 75 percent of the  
25 amount of the annuity which is payable to the par-

1 participant while both the participant and the spouse  
2 are alive,

3 “(B) which is the actuarial equivalent of a sin-  
4 gle annuity for the life of the participant, and

5 “(C) which, for all other purposes of this Act,  
6 is treated as a qualified joint and survivor annuity.”.

7 (2) ILLUSTRATION REQUIREMENT.—Clause (i)  
8 of section 205(c)(3)(A) of such Act (29 U.S.C.  
9 1055(c)(3)(A)) is amended to read as follows:

10 “(i) the terms and conditions of each qualified  
11 joint and survivor annuity and qualified joint and  $\frac{3}{4}$   
12 survivor annuity offered, accompanied by an illustra-  
13 tion of the benefits under each such annuity for the  
14 particular participant and spouse and an acknowl-  
15 edgement form to be signed by the participant and  
16 the spouse that they have read and considered the  
17 illustration before any form of retirement benefit is  
18 chosen,”.

19 (b) AMENDMENTS TO INTERNAL REVENUE CODE.—

20 (1) AMOUNT OF ANNUITY.—

21 (A) IN GENERAL.—Clause (i) of section  
22 401(a)(11)(A) (relating to requirement of joint  
23 and survivor annuity and preretirement survivor  
24 annuity) is amended by inserting “or, at the  
25 election of the participant, shall be provided in

1 the form of a qualified joint and  $\frac{3}{4}$  survivor an-  
2 nuity” after “survivor annuity,”.

3 (B) DEFINITION.—Section 417 (relating to  
4 definitions and special rules for purposes of  
5 minimum survivor annuity requirements) is  
6 amended by redesignating subsection (f) as sub-  
7 section (g) and by inserting after subsection (e)  
8 the following new subsection:

9 “(f) DEFINITION OF QUALIFIED JOINT AND  $\frac{3}{4}$  SUR-  
10 VIVOR ANNUITY.—For purposes of this section and section  
11 401(a)(11), the term “qualified joint and  $\frac{3}{4}$  survivor an-  
12 nuity” means an annuity—

13 “(1) for the participant while both the partici-  
14 pant and the spouse are alive with a survivor annu-  
15 ity for the life of surviving individual (either the par-  
16 ticipant or the spouse) equal to 75 percent of the  
17 amount of the annuity which is payable to the par-  
18 ticipant while both the participant and the spouse  
19 are alive,

20 “(2) which is the actuarial equivalent of a sin-  
21 gle annuity for the life of the participant, and

22 “(3) which, for all other purposes of this title,  
23 is treated as a qualified joint and survivor annuity.”.

24 (2) ILLUSTRATION REQUIREMENT.—Clause (i)  
25 of section 417(a)(3)(A) (relating to explanation of

1 joint and survivor annuity) is amended to read as  
2 follows:

3 “(i) the terms and conditions of each  
4 qualified joint and survivor annuity and  
5 qualified joint and  $\frac{3}{4}$  survivor annuity of-  
6 fered, accompanied by an illustration of  
7 the benefits under each such annuity for  
8 the particular participant and spouse and  
9 an acknowledgement form to be signed by  
10 the participant and the spouse that they  
11 have read and considered the illustration  
12 before any form of retirement benefit is  
13 chosen.”.

14 (c) EFFECTIVE DATES.—

15 (1) IN GENERAL.—The amendments made by  
16 this section shall apply to plan years beginning after  
17 December 31, 2001.

18 (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
19 GAINED PLANS.—In the case of a plan maintained  
20 pursuant to 1 or more collective bargaining agree-  
21 ments between employee representatives and 1 or  
22 more employers ratified on or before the date of en-  
23 actment of this Act, the amendments made by this  
24 section shall apply to the first plan year beginning  
25 on or after the earlier of—

1 (A) the later of—

2 (i) January 1, 2004, or

3 (ii) the date on which the last of such  
4 collective bargaining agreements termi-  
5 nates (determined without regard to any  
6 extension thereof after the date of enact-  
7 ment of this Act).

8 (3) PLAN AMENDMENTS.—If any amendment  
9 made by this section requires an amendment to any  
10 plan, such plan amendment shall not be required to  
11 be made before the first plan year beginning on or  
12 after January 1, 2004, if—

13 (A) during the period after such amend-  
14 ment made by this section takes effect and be-  
15 fore such first plan year, the plan is operated  
16 in accordance with the requirements of such  
17 amendment made by this section, and

18 (B) such plan amendment applies retro-  
19 actively to the period after such amendment  
20 made by this section takes effect and such first  
21 plan year.

22 A plan shall not be treated as failing to provide defi-  
23 nitely determinable benefits or contributions, or to  
24 be operated in accordance with the provisions of the

1 plan, merely because it operates in accordance with  
2 this paragraph.

3 **SEC. 302. SPOUSAL CONSENT REQUIRED FOR DISTRIBUTIONS FROM SECTION 401(k) PLANS.**  
4

5 (a) IN GENERAL.—Paragraph (2) of section 401(k)  
6 (defining qualified cash or deferred arrangement) is  
7 amended by striking “and” at the end of subparagraph  
8 (C), by striking the period at the end of subparagraph (D)  
9 and inserting “, and”, and by adding at the end the fol-  
10 lowing new subparagraph:

11 “(E) which provides that a distribution of  
12 not more than 10 percent of the balance in an  
13 arrangement may be made in any taxable year  
14 unless—

15 “(i) the spouse of the employee (if  
16 any) consents in writing (during the 90-  
17 day period ending on the date of the dis-  
18 tribution) to such distribution, and

19 “(ii) requirements comparable to the  
20 requirements of section 417(a)(2) are met  
21 with respect to such consent.

22 For purposes of the preceding sentence, an em-  
23 ployer may ask for spousal consent but is not  
24 required to verify marital status.”

1 (b) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to distributions in plan years be-  
3 ginning after December 31, 2000.

4 **SEC. 303. FULL VESTING UPON DEATH OR DISABILITY.**

5 (a) IN GENERAL.—Paragraph (2) of section 411(a)  
6 (relating to employer contributions) is amended—

7 (1) in the matter preceding subparagraph (A),  
8 by inserting “and (C)” after “or (B)”, and

9 (2) by adding at the end the following new sub-  
10 paragraph:

11 “(C) FULL VESTING UPON DEATH OR DIS-  
12 ABILITY.—A plan satisfies the requirements of  
13 this paragraph if an employee has a nonforfeit-  
14 able right to 100 percent of the employee’s ac-  
15 crued benefit derived from employer contribu-  
16 tions in the case that the participant dies or be-  
17 comes disabled (as defined by section 72(m)(7))  
18 before the earlier of the employee—

19 “(i) attaining normal retirement age  
20 (as defined in paragraph (8)), or

21 “(ii) having a nonforfeitable right to  
22 100 percent of the employee’s accrued ben-  
23 efit derived from employer contributions.”.

1 (b) AMENDMENT OF ERISA.—Paragraph (2) of sec-  
2 tion 203(a) of the Employee Retirement Income Security  
3 Act of 1974 (29 U.S.C. 1053(a)) is amended—

4 (1) in the matter preceding subparagraph (A),  
5 by inserting “and (C)” after “or (B)”, and

6 (2) by adding at the end the following new sub-  
7 paragraph:

8 “(C) A plan satisfies the requirements of  
9 this paragraph if an employee has a nonforfeit-  
10 able right to 100 percent of the employee’s ac-  
11 crued benefit derived from employer contribu-  
12 tions in the case that the participant dies or be-  
13 comes disabled (as defined by section 72(m)(7))  
14 before the earlier of the employee—

15 “(i) attaining normal retirement age  
16 (as defined in section 3(24)), or

17 “(ii) having a nonforfeitable right to  
18 100 percent of the employee’s accrued ben-  
19 efit derived from employer contributions.”.

20 (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to years beginning after December  
22 31, 2001.

1 **SEC. 304. PREDETERMINATION PROTECTION FOR POTEN-**  
2 **TIAL QUALIFIED DOMESTIC RELATIONS**  
3 **ORDER ALTERNATE PAYEE.**

4 (a) IN GENERAL.—Paragraph (6) of section 414(p)  
5 (relating to plan procedures with respect to orders) is  
6 amended by adding at the end the following new subpara-  
7 graph:

8 “(C) HOLD ON CERTAIN PLAN ACTIVITY  
9 AFTER NOTICE OF PREPARATION OF ORDER.—  
10 A plan administrator may not make any dis-  
11 tribution or loan, or accept any investment di-  
12 rection, with respect to a participant’s benefit  
13 under the plan during the 90-day period begin-  
14 ning on the date of the receipt by the plan ad-  
15 ministrator of written notice from either the  
16 participant or an alternate payee that a domes-  
17 tic relations order affecting the participant’s  
18 benefits under the plan is being prepared. The  
19 Secretary may prescribe such exceptions as the  
20 Secretary determines necessary or appropriate  
21 to achieve the purposes of the preceding sen-  
22 tence, including a shorter period.”.

23 (b) EFFECTIVE DATE.—The amendment made by  
24 this section shall apply to notices received after December  
25 31, 2001.

1 **SEC. 305. STUDY ON PENSION PLAN PARTICIPATION BY**  
2 **WOMEN AND OTHER UNDERREPRESENTED**  
3 **GROUPS.**

4 The Secretary of Labor shall conduct a study on the  
5 participation in pension plans by women and by other  
6 groups determined by the Secretary by reference to the  
7 most recent census to be underrepresented in their partici-  
8 pation in pension plans. The study shall assess participa-  
9 tion by income level and type of pension plan. Not later  
10 than one year after the date of the enactment of this Act,  
11 the Secretary shall submit the results of such study, to-  
12 gether with such recommendations as the Secretary deter-  
13 mines appropriate to increase participation in pension  
14 plans by women and such groups, to the Committee on  
15 Ways and Means of the House of Representatives and the  
16 Committee on Finance of the Senate.

17 **SEC. 306. PERIODS OF FAMILY AND MEDICAL LEAVE**  
18 **TREATED AS HOURS OF SERVICE FOR PEN-**  
19 **SION PARTICIPATION AND VESTING.**

20 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

21 (1) PARTICIPATION.—

22 (A) IN GENERAL.—Paragraph (3) of sec-  
23 tion 410(a) (relating to minimum participation  
24 standards) is amended by adding at the end the  
25 following new subparagraph:

1                   “(E) FAMILY AND MEDICAL LEAVE TREAT-  
2                   ED AS SERVICE.—

3                   “(i) IN GENERAL.—For purposes of  
4                   this subsection, in the case of an individual  
5                   who is absent from work on leave required  
6                   to be given to such individual under the  
7                   Family and Medical Leave Act of 1993,  
8                   the plan shall treat as hours of service—

9                   “(I) the hours of service which  
10                  otherwise would normally have been  
11                  credited to such individual but for  
12                  such absence, or

13                  “(II) in any case in which the  
14                  plan is unable to determine the hours  
15                  described in subclause (I), 8 hours of  
16                  service per day of absence.

17                  “(ii) YEAR TO WHICH HOURS ARE  
18                  CREDITED.—The hours described in clause  
19                  (i) shall be treated as hours of service as  
20                  provided in this subparagraph—

21                  “(I) only in the year in which the  
22                  absence from work begins, if section  
23                  411(a)(5)(E)(ii)(I) requires hours to  
24                  be credited to the year in which the  
25                  absence from work begins, or

1                   “(II) in any other case, in the  
2                   immediately following year.”

3                   (B) COORDINATION WITH TREATMENT OF  
4                   MATERNITY AND PATERNITY ABSENCES UNDER  
5                   BREAK IN SERVICE RULES.—Subparagraph (E)  
6                   of section 410(a)(5) is amended—

7                   (i) by inserting “NOT UNDER FAMILY  
8                   AND MEDICAL LEAVE ACT OF 1993” after  
9                   “ABSENCES” in the heading, and

10                  (ii) by adding at the end of clause (i)  
11                  the following new sentence: “The preceding  
12                  sentence shall apply to an absence from  
13                  work only if no part of such absence is re-  
14                  quired to be given under the Family and  
15                  Medical Leave Act of 1993.”

16                  (2) VESTING.—

17                  (A) IN GENERAL.—Paragraph (5) of sec-  
18                  tion 411(a) (relating to minimum vesting stand-  
19                  ards) is amended by adding at the end the fol-  
20                  lowing new subparagraph:

21                  “(E) FAMILY AND MEDICAL LEAVE TREAT-  
22                  ED AS SERVICE.—

23                  “(i) IN GENERAL.—For purposes of  
24                  this subsection, in the case of an individual  
25                  who is absent from work on leave required

1 to be given to such individual under the  
2 Family and Medical Leave Act of 1993,  
3 the plan shall treat as hours of service—

4 “(I) the hours of service which  
5 otherwise would normally have been  
6 credited to such individual but for  
7 such absence, or

8 “(II) in any case in which the  
9 plan is unable to determine the hours  
10 described in subclause (I), 8 hours of  
11 service per day of absence.

12 “(ii) YEAR TO WHICH HOURS ARE  
13 CREDITED.—The hours described in clause  
14 (i) shall be treated as hours of service as  
15 provided in this subparagraph—

16 “(I) only in the year in which the  
17 absence from work begins, if the par-  
18 ticipant’s rights in his accrued benefit  
19 derived from employer contributions  
20 are to any extent not nonforfeitable  
21 and the participant would have a year  
22 of service solely because the period of  
23 absence is treated as hours of service  
24 as provided in clause (i); or

1                   “(II) in any other case, in the  
2                   immediately following year.”

3                   (B) COORDINATION WITH TREATMENT OF  
4                   MATERNITY AND PATERNITY ABSENCES UNDER  
5                   BREAK IN SERVICE RULES.—Subparagraph (E)  
6                   of section 411(a)(6) is amended—

7                   (i) by inserting “NOT UNDER FAMILY  
8                   AND MEDICAL LEAVE ACT OF 1993” after  
9                   “ABSENCES” in the heading, and

10                  (ii) by adding at the end of clause (i)  
11                  the following new sentence: “The preceding  
12                  sentence shall apply to an absence from  
13                  work only if no part of such absence is re-  
14                  quired to be given under the Family and  
15                  Medical Leave Act of 1993.”

16                  (C) ACCRUED BENEFITS.—Subparagraph  
17                  (A) of section 411(b)(4) is amended by insert-  
18                  ing the following before the end thereof: “or  
19                  which is included in a period of service required  
20                  to be taken into account under subsection  
21                  (a)(5)(E)”.

22                  (b) AMENDMENTS OF ERISA.—

23                  (1) PARTICIPATION.—

24                  (A) IN GENERAL.—Paragraph (3) of sec-  
25                  tion 202(a) of the Employee Retirement Income

1 Security Act of 1974 (relating to minimum par-  
2 ticipation standards) is amended by adding at  
3 the end the following new subparagraph:

4 “(E)(i) For purposes of this subsection, in the case  
5 of an individual who is absent from work on leave required  
6 to be given to such individual under the Family and Med-  
7 ical Leave Act of 1993, the plan shall treat as hours of  
8 service—

9 “(I) the hours of service which otherwise would  
10 normally have been credited to such individual but  
11 for such absence, or

12 “(II) in any case in which the plan is unable to  
13 determine the hours described in subclause (I), 8  
14 hours of service per day of absence.

15 “(ii) The hours described in clause (i) shall be treated  
16 as hours of service as provided in this subparagraph—

17 “(I) only in the year in which the absence from  
18 work begins, if section 203(b)(2)(E)(ii)(I) requires  
19 hours to be credited to the year in which the absence  
20 from work begins, or

21 “(II) in any other case, in the immediately fol-  
22 lowing year.”

23 (B) COORDINATION WITH TREATMENT OF  
24 MATERNITY AND PATERNITY ABSENCES UNDER  
25 BREAK IN SERVICE RULES.—Subparagraph (A)

1 of section 202(b)(5) of such Act is amended by  
2 adding at the end of clause (i) the following  
3 new sentence: “The preceding sentence shall  
4 apply to an absence from work only if no part  
5 of such absence is required to be given under  
6 the Family and Medical Leave Act of 1993.”

7 (2) VESTING.—

8 (A) IN GENERAL.—Paragraph (2) of sec-  
9 tion 203(b) of such Act (relating to minimum  
10 vesting standards) is amended by adding at the  
11 end the following new subparagraph:

12 “(E)(i) For purposes of this subsection, in the case  
13 of an individual who is absent from work on leave required  
14 to be given to such individual under the Family and Med-  
15 ical Leave Act of 1993, the plan shall treat as hours of  
16 service—

17 “(I) the hours of service which otherwise would  
18 normally have been credited to such individual but  
19 for such absence, or

20 “(II) in any case in which the plan is unable to  
21 determine the hours described in subclause (I), 8  
22 hours of service per day of absence.

23 “(ii) The hours described in clause (i) shall be treated  
24 as hours of service as provided in this subparagraph—

1           “(I) only in the year in which the absence from  
2 work begins, if the participant’s rights in his ac-  
3 crued benefit derived from employer contributions  
4 are to any extent not nonforfeitable and the partici-  
5 pant would have a year of service solely because the  
6 period of absence is treated as hours of service as  
7 provided in clause (i); or

8           “(II) in any other case, in the immediately fol-  
9 lowing year.”

10                   (B) COORDINATION WITH TREATMENT OF  
11 MATERNITY AND PATERNITY ABSENCES UNDER  
12 BREAK IN SERVICE RULES.—Clause (i) of sec-  
13 tion 203(b)(3)(E) of such Act is amended by  
14 adding at the end of clause (i) the following  
15 new sentence: “The preceding sentence shall  
16 apply to an absence from work only if no part  
17 of such absence is required to be given under  
18 the Family and Medical Leave Act of 1993.”

19                   (C) ACCRUED BENEFITS.—Subparagraph  
20 (A) of section 204(b)(4) of such Act is amended  
21 by inserting the following before the end there-  
22 of: “or which is included in a period of service  
23 required to be taken into account under  
24 203(b)(2)(E)”.

25           (c) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as provided in para-  
2 graph (2), the amendments made by this section  
3 shall apply to plan years beginning after December  
4 31, 2001.

5           (2) APPLICATION TO CURRENT EMPLOYEES.—  
6 The amendments made by this section shall not  
7 apply to any employee who does not have at least 1  
8 hour of service in any plan year beginning after De-  
9 cember 31, 2001.

10 **TITLE IV—INCENTIVES FOR**  
11 **SMALL BUSINESSES TO**  
12 **OFFER PENSION BENEFITS**

13 **SEC. 401. CREDIT FOR QUALIFIED PENSION PLAN CON-**  
14 **TRIBUTIONS OF SMALL EMPLOYERS.**

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

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

21           “(a) GENERAL RULE.—For purposes of section 38,  
22 in the case of an eligible employer, the small employer pen-  
23 sion plan contribution credit determined under this section  
24 for any taxable year is an amount equal to 50 percent  
25 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 of 3 percent of such employee's compensation  
3 from the employer for the year. For purposes of the  
4 preceding sentence, compensation shall be as deter-  
5 mined under regulations prescribed by the Secretary  
6 and without regard to permitted disparity rules of  
7 section 401(l) and to contributions and benefits  
8 under the Social Security Act.

9 “(d) QUALIFIED RETIREMENT PLAN.—

10 “(1) IN GENERAL.—The term ‘qualified retire-  
11 ment plan’ means any plan described in section  
12 401(a) which includes a trust exempt from tax  
13 under section 501(a) if the plan meets—

14 “(A) the contribution requirements of  
15 paragraph (2),

16 “(B) the vesting requirements of para-  
17 graph (3), and

18 “(C) the distributions requirements of  
19 paragraph (4).

20 “(2) CONTRIBUTION REQUIREMENTS.—

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

23 “(i) the employer is required to make  
24 nonelective contributions of at least 1 per-  
25 cent of compensation (or the equivalent

1           thereof in the case of a defined benefit  
2           plan) for each nonhighly compensated em-  
3           ployee who is eligible to participate in the  
4           plan, and

5           “(ii) except as provided in subpara-  
6           graph (B)(i), allocations of nonelective em-  
7           ployer contributions are either—

8                   “(I) in equal dollar amounts for  
9                   all employees covered by the plan, or

10                   “(II) bear a uniform relationship  
11                   to the total compensation (within the  
12                   meaning of section 414(s) and deter-  
13                   mined without regard to section  
14                   401(l)) of the employees covered by  
15                   the plan.

16           “(B) SPECIAL RULES FOR DEFINED BEN-  
17           EFIT PLANS.—For purposes of subparagraph  
18           (A)—

19                   “(i) NONELECTIVE EMPLOYER CON-  
20                   TRIBUTIONS.—In the case of a defined  
21                   benefit plan, the requirements of subpara-  
22                   graph (A)(ii) shall be treated as met if al-  
23                   locations of nonelective employer contribu-  
24                   tions are equivalent to that required by  
25                   subclause (I) or (II) of subparagraph

1 (A)(ii), as determined under regulations  
2 prescribed by the Secretary.

3 “(ii) COMPENSATION.—For purposes  
4 of subparagraph (A), in the case of defined  
5 benefit plan, compensation shall be as de-  
6 termined under regulations prescribed by  
7 the Secretary and without regard to per-  
8 mitted disparity rules of section 401(l) and  
9 to contributions and benefits under the So-  
10 cial Security Act.

11 “(C) 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) 6-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:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 .....	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). For purposes of the preceding  
14                   sentence, all employers treated as a single employer  
15                   under subsection (b), (c), (m) or (o)) shall be treated  
16                   as a single employer.

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

21           “(f) SPECIAL RULES.—

22                   “(1) DISALLOWANCE OF DEDUCTION.—No de-  
23                   duction shall be allowed for that portion of the quali-  
24                   fied employer contributions paid or incurred for the

1 taxable year which is equal to the credit determined  
2 under subsection (a).

3 “(2) ELECTION NOT TO CLAIM CREDIT.—This  
4 section shall not apply to a taxpayer for any taxable  
5 year if such taxpayer elects to have this section not  
6 apply for such taxable year.

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

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

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

22 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-  
23 NESS CREDIT.—Section 38(b) (defining current year busi-  
24 ness credit) is amended by striking “plus” at the end of  
25 paragraph (14), by striking the period at the end of para-

1 graph (15) and inserting “, plus”, and by adding at the  
2 end the following new paragraph:

3 “(16) in the case of an eligible employer (as de-  
4 fined in section 45G(e)), the small employer pension  
5 plan contribution credit determined under section  
6 45G(a).”

7 (c) CONFORMING AMENDMENTS.—

8 (1) Section 39(d) is amended by adding at the  
9 end the following new paragraph:

10 “(11) NO CARRYBACK OF SMALL EMPLOYER  
11 PENSION PLAN CONTRIBUTION CREDIT BEFORE JAN-  
12 UARY 1, 2002.—No portion of the unused business  
13 credit for any taxable year which is attributable to  
14 the small employer pension plan contribution credit  
15 determined under section 45G may be carried back  
16 to a taxable year beginning before January 1,  
17 2002.”

18 (2) Subsection (c) of section 196 is amended by  
19 striking “and” at the end of paragraph (9), by strik-  
20 ing the period at the end of paragraph (10) and in-  
21 sserting “, and”, and by adding at the end the fol-  
22 lowing new paragraph:

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



1           the year for which the determination is being  
2           made.

3           The period described in subparagraph (B) shall in-  
4           clude the period of 5 years before the year such  
5           trust or annuity became effective with respect to  
6           qualified plans which are defined benefit plans or  
7           money purchase pension plans.

8           “(2) DEFINITIONS.—For purposes of paragraph  
9           (1)—

10                   “(A) QUALIFIED PLAN.—The term ‘quali-  
11                   fied plan’ has the meaning given such term by  
12                   section 408(p)(2)(D)(ii).

13                   “(B) PERMISSIBLE PLAN.—The term ‘per-  
14                   missible plan’ means—

15                           “(i) a SIMPLE plan described in sec-  
16                           tion 408(p),

17                           “(ii) a SIMPLE 401(k) plan de-  
18                           scribed in section 401(k)(11),

19                           “(iii) an eligible deferred compensa-  
20                           tion plan described in section 457(b),

21                           “(iv) a collectively bargained plan but  
22                           only if the employees eligible to participate  
23                           in such plan are not also entitled to a ben-  
24                           efit described in subsection (b)(5) or  
25                           (c)(5), or

1                   “(v) a plan under which there may be  
2                   made only—

3                   “(I) elective deferrals described  
4                   in section 402(g)(3), and

5                   “(II) employer matching con-  
6                   tributions not in excess of the  
7                   amounts described in subclauses (I)  
8                   and (II) of section 401(k)(12)(B)(i).

9                   “(b) SMART ANNUITY.—

10                   “(1) IN GENERAL.—For purposes of this title,  
11                   the term ‘SMART annuity’ means an individual re-  
12                   tirement annuity (as defined in section 408(b) with-  
13                   out regard to paragraph (2) thereof and without re-  
14                   gard to the limitation on aggregate annual pre-  
15                   miums contained in the flush language of section  
16                   408(b)) if—

17                   “(A) such annuity meets the requirements  
18                   of paragraphs (2) through (7), and

19                   “(B) the only contributions to such annu-  
20                   ity are nonelective employer contributions.

21                   Nothing in this section shall be construed as pre-  
22                   venting an employer from using a group annuity  
23                   contract which is divisible into individual retirement  
24                   annuities for purposes of providing SMART annu-  
25                   ities.

1           “(2) PARTICIPATION REQUIREMENTS.—

2                   “(A) IN GENERAL.—The requirements of  
3 this paragraph are met for any year only if all  
4 employees of the employer who—

5                           “(i) received at least \$5,000 in com-  
6 pensation from the employer during any 2  
7 consecutive preceding years, and

8                           “(ii) received at least \$5,000 in com-  
9 pensation during the year,

10 are entitled to the benefit described in para-  
11 graph (5) for such year.

12                   “(B) EXCLUDABLE EMPLOYEES.—An em-  
13 ployer may elect to exclude from the require-  
14 ments under subparagraph (A) employees de-  
15 scribed in subparagraph (A) or (C) of section  
16 410(b)(3).

17           “(3) VESTING.—The requirements of this para-  
18 graph are met if the employee’s rights to any bene-  
19 fits under the annuity are nonforfeitable.

20                   “(4) BENEFIT FORM.—The requirements of  
21 this paragraph are met if the accrued benefit may  
22 be paid only in the form of—

23                           “(A) a benefit payable annually in the  
24 form of a single life annuity with monthly pay-

1           ments (with no ancillary benefits) beginning at  
2           age 65, or

3           “(B) any other form of benefit which is the  
4           actuarial equivalent (based on the assumptions  
5           specified in the SMART annuity) of the benefit  
6           described in subparagraph (A).

7           “(5) AMOUNT OF ANNUAL ACCRUED BEN-  
8           EFIT.—

9           “(A) IN GENERAL.—The requirements of  
10          this paragraph are met for any plan year if the  
11          accrued benefit of each participant derived from  
12          employer contributions for such year, when ex-  
13          pressed as a benefit described in paragraph  
14          (4)(A), equals the applicable percentage of the  
15          participant’s compensation for such year.

16          “(B) APPLICABLE PERCENTAGE.—For  
17          purposes of this paragraph—

18                 “(i) IN GENERAL.—The term ‘applica-  
19                 ble percentage’ means 2 percent.

20                 “(ii) ELECTION OF DIFFERENT PER-  
21                 CENTAGE.—Except as provided by para-  
22                 graph (8), an employer may elect to apply  
23                 an applicable percentage of 1 percent for  
24                 any year for all employees eligible to par-  
25                 ticipate in the plan for such year, if the

1 employer notifies the employees of such  
2 percentage within a reasonable period be-  
3 fore the beginning of such year. An em-  
4 ployer may also elect to apply an applicable  
5 percentage of 3 percent for any of the first  
6 5 years that the plan is effective for all  
7 employees eligible to participate in the plan  
8 for such year, if the employer so notifies  
9 the employees.

10 “(C) COMPENSATION LIMIT.—

11 “(i) IN GENERAL.—The compensation  
12 taken into account under this paragraph  
13 for any year shall not exceed \$100,000.

14 “(ii) COST-OF-LIVING ADJUSTMENT.—  
15 The Secretary shall adjust annually the  
16 \$100,000 amount in clause (i) for in-  
17 creases in the cost-of-living at the same  
18 time and in the same manner as adjust-  
19 ments under section 415(d), and any in-  
20 crease which is not a multiple of \$5,000  
21 shall be rounded to the next lowest mul-  
22 tiple of \$5,000.

23 “(D) CREDIT FOR SERVICE BEFORE PLAN

24 ADOPTED.—

1           “(i) IN GENERAL.—An employer may  
2           elect to take into account a specified num-  
3           ber of years of service (not greater than  
4           10) performed before the adoption of the  
5           plan (each hereinafter referred to as a  
6           ‘prior service year’) as service under the  
7           plan if the same specified number of years  
8           is available to all employees eligible to par-  
9           ticipate in the plan for the first plan year.

10           “(ii) ACCRUAL OF PRIOR SERVICE  
11           BENEFIT.—Such an election shall be effec-  
12           tive for a prior service year only if the re-  
13           quirements of this paragraph are met for  
14           an eligible plan year (with respect to em-  
15           ployees entitled to credit for such prior  
16           service year) by doubling the applicable  
17           percentage (if any) for such plan year. For  
18           purposes of the preceding sentence, an eli-  
19           gible plan year is a plan year in the period  
20           of consecutive plan years (but not more  
21           than the number specified under clause (i))  
22           beginning with the first plan year that the  
23           plan is in effect.

24           “(iii) ELECTION MAY NOT APPLY TO  
25           CERTAIN PRIOR SERVICE YEARS.—This

1           subparagraph shall not apply with respect  
2           to any prior service year of an employee  
3           if—

4                   “(I) for any part of such prior  
5                   service year such employee was an ac-  
6                   tive participant (within the meaning  
7                   of section 219(g)(5)) under any de-  
8                   fined benefit plan of the employer (or  
9                   any predecessor thereof), or

10                   “(II) such employee received dur-  
11                   ing such prior service year less than  
12                   \$5,000 in compensation from the em-  
13                   ployer.

14           “(6) FUNDING.—

15                   “(A) IN GENERAL.—The requirements of  
16                   this paragraph are met only if the employer is  
17                   required to contribute to the annuity for each  
18                   plan year the amount necessary to purchase a  
19                   SMART annuity in the amount of the benefit  
20                   accrued for such year for each participant enti-  
21                   tled to such benefit. Such contribution must be  
22                   made no later than 8½ months after the end  
23                   of the plan year.

24                   “(B) PENALTY FOR FAILURE TO MAKE RE-  
25                   QUIRED CONTRIBUTION.—The taxes imposed by

1 section 4971 shall apply to a failure to make  
2 the contribution required by this paragraph in  
3 the same manner as if the amount of the failure  
4 were an accumulated funding deficiency to  
5 which such section applies.

6 “(7) LIMITATION ON DISTRIBUTIONS.—

7 “(A) IN GENERAL.—The requirements of  
8 this paragraph are met only if distributions  
9 may be paid only when the employee attains  
10 age 65, has a severance from employment, dies,  
11 or becomes disabled (within the meaning of sec-  
12 tion 72(m)(7)).

13 “(B) LIMITATION ON DISTRIBUTIONS ON  
14 SEPARATION FROM SERVICE OF EMPLOYEES  
15 WHO HAVE NOT ATTAINED AGE 65.—Subpara-  
16 graph (A) shall apply to a distribution on sepa-  
17 ration of service of an employee who has not at-  
18 tained age 65 only if—

19 “(i) the aggregate cash value of an  
20 employee’s SMART annuity does not ex-  
21 ceed the dollar limit in effect under section  
22 411(a)(11)(A), or

23 “(ii) the distribution is a direct trust-  
24 ee-to-trustee transfer of the entire balance  
25 to the credit of the employee to a SMART

1 trust described in subsection (c), a  
2 SMART rollover plan, or a SMART annu-  
3 ity for the benefit of such employee.

4 “(8) JOINT AND SURVIVOR ANNUITY RULES AP-  
5 PPLICABLE.—The requirements of this paragraph are  
6 met only if the annuity satisfies section 401(a)(11).

7 “(9) DEFINITIONS AND SPECIAL RULE.—

8 “(A) DEFINITIONS.—The definitions in  
9 section 408(p)(6) shall apply for purposes of  
10 this subsection.

11 “(B) USE OF DESIGNATED FINANCIAL IN-  
12 STITUTIONS.—A rule similar to the rule of sec-  
13 tion 408(p)(7) (without regard to the last sen-  
14 tence thereof) shall apply for purposes of this  
15 subsection.

16 “(C) SMART ROLLOVER PLAN.—For pur-  
17 poses of this section, the term ‘SMART rollover  
18 plan’ means an individual retirement plan for  
19 the benefit of the employee to which a rollover  
20 was made from a SMART Annuity, SMART  
21 trust, or another SMART Rollover plan.

22 “(c) SMART TRUST.—

23 “(1) IN GENERAL.—For purposes of this title,  
24 the term ‘SMART trust’ means a trust forming part  
25 of a defined benefit plan if—

1           “(A) such trust meets the requirements of  
2 section 401(a) as modified by subsection (d),

3           “(B) such plan meets the requirements of  
4 paragraphs (2) through (8), and

5           “(C) the only contributions to such trust  
6 are employer contributions.

7           “(2) PARTICIPATION REQUIREMENTS.—A plan  
8 meets the requirements of this paragraph for any  
9 year only if the requirements of subsection (b)(2)  
10 are met for such year.

11           “(3) VESTING.—A plan meets the requirements  
12 of this paragraph for any year only if the require-  
13 ments of subsection (b)(3) are met for such year.

14           “(4) BENEFIT FORM.—

15           “(A) IN GENERAL.—Except as provided in  
16 subparagraph (B), a plan meets the require-  
17 ments of this paragraph only if the trustee dis-  
18 tributes a SMART annuity that satisfies sub-  
19 section (b)(4) where the annual benefit de-  
20 scribed in subsection (b)(4)(A) is no less than  
21 the accrued benefit determined under para-  
22 graph (5).

23           “(B) DIRECT TRANSFERS TO INDIVIDUAL  
24 RETIREMENT PLAN OR SMART ANNUITY.—A  
25 plan shall not fail to meet the requirements of

1           this paragraph by reason of permitting, as an  
2           optional form of benefit, the distribution of the  
3           entire balance to the credit of the employee. If  
4           the employee is under age 65, such distribution  
5           must be in the form of a direct trustee-to-trust-  
6           ee transfer to a SMART annuity, another  
7           SMART trust, or a SMART rollover plan (or,  
8           in the case of a distribution that does not ex-  
9           ceed the dollar limit in effect under section  
10          411(a)(11)(A), any other individual retirement  
11          plan).

12          “(5) AMOUNT OF ANNUAL ACCRUED BEN-  
13          EFIT.—A plan meets the requirements of this para-  
14          graph for any year only if the requirements of sub-  
15          section (b)(5) are met for such year.

16          “(6) FUNDING.—

17                  “(A) IN GENERAL.—A plan meets the re-  
18                  quirements of this paragraph for any year only  
19                  if—

20                          “(i) the requirements of subparagraph  
21                          (A) of subsection (b)(6) are met for such  
22                          year,

23                          “(ii) in the case of a plan which has  
24                          an unfunded annuity amount with respect  
25                          to the account of any participant, the plan

1 requires that the employer make an addi-  
2 tional contribution to such plan (at the  
3 time the annuity contract to which such  
4 amount relates is purchased) equal to the  
5 unfunded annuity amount, and

6 “(iii) in the case of a plan which has  
7 an unfunded prior year liability with re-  
8 spect to the account of any participant as  
9 of the close of such plan year, the plan re-  
10 quires that the employer make an addi-  
11 tional contribution to such plan for such  
12 year equal to the amount of such unfunded  
13 prior year liability no later than 8½  
14 months following the end of the plan year.

15 “(B) UNFUNDED ANNUITY AMOUNT.—For  
16 purposes of this paragraph, the term ‘unfunded  
17 annuity amount’ means, with respect to the ac-  
18 count of any participant for whom an annuity  
19 is being purchased, the excess (if any) of—

20 “(i) the amount necessary to purchase  
21 an annuity contract which meets the re-  
22 quirements of subsection (b)(4) in the  
23 amount of the participant’s accrued benefit  
24 determined under paragraph (5), over

1                   “(ii) the balance in such account at  
2                   the time such contract is purchased.

3                   “(C) UNFUNDED PRIOR YEAR LIABIL-  
4                   ITY.—For purposes of this paragraph, the term  
5                   ‘unfunded prior year liability’ means, with re-  
6                   spect to any plan year, the excess (if any) of—

7                   “(i) the aggregate present value of the  
8                   participants’ accrued benefits under the  
9                   plan as of the close of the prior plan year,  
10                  over

11                  “(ii) the value of the plan’s assets de-  
12                  termined under section 412(c)(2) as of the  
13                  close of the plan year (determined without  
14                  regard to any contributions for such plan  
15                  year).

16                  Such present value shall be determined using  
17                  the assumptions specified in subparagraph (D).

18                  “(D) ACTUARIAL ASSUMPTIONS.—In deter-  
19                  mining the amount required to be contributed  
20                  under subparagraph (A)—

21                  “(i) the assumed interest rate shall be  
22                  5 percent per year,

23                  “(ii) the assumed mortality shall be  
24                  determined under the applicable mortality  
25                  table (as defined in section 417(e)(3), as

1 modified by the Secretary so that it does  
2 not include any assumption for preretire-  
3 ment mortality), and

4 “(iii) the assumed retirement age  
5 shall be 65.

6 “(E) CHANGES IN MORTALITY TABLE.—If  
7 the applicable mortality table under section  
8 417(e)(3) for any plan year is not the same as  
9 such table for the prior plan year, the Secretary  
10 shall prescribe regulations which phase in the  
11 effect of the changes over a reasonable period  
12 of plan years determined by the Secretary.

13 “(F) PENALTY FOR FAILURE TO MAKE RE-  
14 QUIRED CONTRIBUTION.—The taxes imposed by  
15 section 4971 shall apply to a failure to make  
16 the contribution required by this paragraph in  
17 the same manner as if the amount of the failure  
18 were an accumulated funding deficiency to  
19 which such section applies.

20 “(7) SEPARATE ACCOUNTS FOR PARTICI-  
21 PANTS.—A plan meets the requirements of this  
22 paragraph for any year only if the plan provides—

23 “(A) for an individual account for each  
24 participant, and

25 “(B) for benefits based solely on—

1                   “(i) the amount contributed to the  
2                   participant’s account,

3                   “(ii) any income, expenses, gains and  
4                   losses, and any forfeitures of accounts of  
5                   other participants which may be allocated  
6                   to such participant’s account, and

7                   “(iii) the amount of any unfunded an-  
8                   nuity amount with respect to the partici-  
9                   pant.

10                   “(8) TRUST MAY NOT HOLD SECURITIES WHICH  
11                   ARE NOT READILY TRADABLE.—A plan meets the  
12                   requirements of this paragraph only if the plan pro-  
13                   hibits the trust from holding directly or indirectly se-  
14                   curities which are not readily tradable on an estab-  
15                   lished securities market. Nothing in this paragraph  
16                   shall prohibit the trust from holding insurance com-  
17                   pany products regulated by State law.

18                   “(9) DEFINITIONS.—The definitions applicable  
19                   under subsection (b)(8) shall apply for purposes of  
20                   this subsection.

21                   “(d) SPECIAL RULES FOR SMART ANNUITIES AND  
22 TRUSTS.—For purposes of section 401(a), a SMART an-  
23 nuity and a SMART trust shall be treated as meeting the  
24 requirements of the following provisions:

1           “(1) Section 401(a)(4) (relating to non-  
2 discrimination rules).

3           “(2) Section 401(a)(26) (relating to minimum  
4 participation).

5           “(3) Section 410 (relating to minimum partici-  
6 pation and coverage requirements).

7           “(4) Section 411(b) (relating to accrued benefit  
8 requirements).

9           “(5) Section 416 (relating to special rules for  
10 top-heavy plans).”

11       (b) DEDUCTION RULES.—

12           (1) IN GENERAL.—Section 404 (as amended by  
13 section 201) is further amended by adding at the  
14 end the following new subsection:

15       “(p) SPECIAL RULES FOR SMART ANNUITIES AND  
16 TRUSTS.—

17           “(1) IN GENERAL.—Employer contributions to  
18 a SMART annuity shall be treated as if they are  
19 made to a plan described in paragraph (1) of sub-  
20 section (a).

21           “(2) DEDUCTIBLE LIMIT.—For purposes of sec-  
22 tion 404(a)(1)(A)(i), the amount necessary to satisfy  
23 the minimum funding requirement of section  
24 408B(b)(6) or (c)(6) shall be treated as the amount

1 necessary to satisfy the minimum funding require-  
2 ment of section 412.”

3 (2) COORDINATION WITH DEDUCTION UNDER  
4 SECTION 219.—

5 (A) Section 219(b) (as amended by section  
6 201) is further amended by adding at the end  
7 the following new paragraph:

8 “(7) SPECIAL RULE FOR SMART ANNUITIES.—  
9 This section shall not apply with respect to any  
10 amount contributed to a SMART annuity estab-  
11 lished under section 408B(b).”

12 (B) Section 219(g)(5)(A) (defining active  
13 participant) is amended by striking “or” at the  
14 end of clause (v) and by adding at the end the  
15 following new clause:

16 “(vii) any SMART trust or SMART  
17 annuity (within the meaning of section  
18 408B), or”.

19 (c) CONTRIBUTIONS AND DISTRIBUTIONS.—

20 (1) Section 402 (as amended by section 201) is  
21 amended by adding at the end the following new  
22 subsection:

23 “(m) TREATMENT OF SMART ANNUITIES.—Rules  
24 similar to the rules of paragraphs (1) and (3) of sub-

1 section (h) shall apply to contributions and distributions  
2 with respect to SMART annuities under section 408B.”

3 (2) Section 408(d)(3) is amended by adding at  
4 the end the following new subparagraph:

5 “(H) SMART ANNUITIES.—This para-  
6 graph shall not apply to any amount paid or  
7 distributed out of a SMART annuity (as de-  
8 fined in section 408B) unless it is paid in a  
9 trustee-to-trustee transfer into a SMART roll-  
10 over plan.”

11 (3)(A) Section 412(h) is amended by striking  
12 “or” at the end of paragraph (5), by striking the pe-  
13 riod at the end of paragraph (6) and inserting “,  
14 or”, and by inserting after paragraph (6) the fol-  
15 lowing new paragraph:

16 “(7) any plan providing for the purchase of any  
17 SMART annuity or any SMART trust.”

18 (B) Section 301(a) of Employee Retirement In-  
19 come Security Act of 1974 (29 U.S.C. 1081) is  
20 amended by striking “or” at the end of paragraph  
21 (9), by striking the period at the end of paragraph  
22 (10) and inserting “; or”, and by adding at the end  
23 the following new paragraph:

1           “(11) any plan providing for the purchase of  
2           any SMART annuity or any SMART trust (as such  
3           terms are defined in section 408B of such Code).”

4           (4) Section 415(b) is amended by adding at the  
5           end the following new paragraph:

6           “(12) TREATMENT OF SMART ANNUITIES AND  
7           TRUSTS.—A SMART annuity and a SMART trust  
8           shall be treated as meeting the requirements of this  
9           section, but distributions from such an annuity or  
10          trust shall be taken into account in determining  
11          whether any other plan satisfies the requirements of  
12          this section.”

13          (d) INCREASED PENALTY ON EARLY WITH-  
14          DRAWALS.—Section 72(t) (relating to additional tax on  
15          early distributions) is amended by adding at the end the  
16          following new paragraph:

17          “(9) SPECIAL RULES FOR SMART ANNUITIES  
18          AND TRUSTS.—In the case of any amount received  
19          from a SMART annuity, a SMART trust, or a  
20          SMART rollover plan (within the meaning of section  
21          408B), paragraph (1) shall be applied by sub-  
22          stituting ‘20 percent’ for ‘10 percent’ and paragraph  
23          (2) shall be applied by substituting ‘age 65’ for ‘age  
24          59½’.”

25          (e) SIMPLIFIED EMPLOYER REPORTS.—

1           (1) SMART ANNUITIES.—Section 408(l) (relat-  
2           ing to simplified employer reports) is amended by  
3           adding at the end the following new paragraph:

4           “(3) SMART ANNUITIES.—

5           “(A) SIMPLIFIED REPORT.—The employer  
6           maintaining any SMART annuity (within the  
7           meaning of section 408B) shall file a simplified  
8           annual return with the Secretary containing  
9           only the information described in subparagraph  
10          (B).

11          “(B) CONTENTS.—The return required by  
12          subparagraph (A) shall set forth—

13                 “(i) the name and address of the em-  
14                 ployer,

15                 “(ii) the date the plan was adopted,

16                 “(iii) the number of employees of the  
17                 employer,

18                 “(iv) the number of such employees  
19                 who are eligible to participate in the plan,

20                 “(v) the total amount contributed by  
21                 the employer to each such annuity for such  
22                 year and the minimum amount required  
23                 under section 408B to be so contributed,

24                 “(vi) the percentage elected under sec-  
25                 tion 408B(b)(5)(B),

1 “(vii) the name of the issuer,

2 “(viii) the employer identification  
3 number,

4 “(ix) the name of the plan, and

5 “(x) the date of the contribution.

6 “(C) REPORTING BY ISSUER OF SMART AN-  
7 NUITY.—

8 “(i) IN GENERAL.—The issuer of each  
9 SMART annuity shall provide to the owner  
10 of the annuity for each year a statement  
11 setting forth as of the close of such year—

12 “(I) the benefits guaranteed at  
13 age 65 under the annuity, and

14 “(II) the cash surrender value of  
15 the annuity.

16 “(ii) SUMMARY DESCRIPTION.—The  
17 issuer of any SMART annuity shall pro-  
18 vide to the employer maintaining the annu-  
19 ity for each year a description containing  
20 the following information:

21 “(I) The name and address of  
22 the employer and the issuer.

23 “(II) The requirements for eligi-  
24 bility for participation.

1                   “(III) The benefits provided with  
2                   respect to the annuity.

3                   “(IV) The procedures for, and ef-  
4                   fects of, withdrawals (including roll-  
5                   overs) from the annuity.

6                   “(D) TIME AND MANNER OF REPORT-  
7                   ING.—Any return, report, or statement required  
8                   under this paragraph shall be made in such  
9                   form and at such time as the Secretary shall  
10                  prescribe.”

11                  (2) SMART TRUSTS.—Section 6059 (relating  
12                  to actuarial reports) is amended by redesignating  
13                  subsections (c) and (d) as subsections (d) and (e),  
14                  respectively, and by inserting after subsection (b)  
15                  the following new subsection:

16                  “(c) SMART TRUSTS.—In the case of a SMART  
17                  trust (within the meaning of section 408B), the Secretary  
18                  shall require a simplified actuarial report which  
19                  contains—

20                         “(1) information similar to the information re-  
21                         quired in section 408(l)(3)(B),

22                         “(2) the fair market value of the assets of the  
23                         trust,

24                         “(3) the amounts distributed directly to partici-  
25                         pants,

1           “(4) the amounts transferred to SMART roll-  
2 over plans, and

3           “(5) the present value of the annual accrued  
4 benefits under the plan to which the trust relates.”

5 (f) CONFORMING AMENDMENTS.—

6           (1) Section 280G(b)(6) is amended by striking  
7 “or” at the end of subparagraph (C), by striking the  
8 period at the end of subparagraph (D) and inserting  
9 “, or” and by adding after subparagraph (D) the  
10 following new subparagraph:

11                   “(E) a SMART annuity described in sec-  
12 tion 408B.”

13           (2) Subsections (b), (c), (m)(4)(B), and  
14 (n)(3)(B) of section 414 are each amended by in-  
15 serting “408B,” after “408(p),”.

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

21                   “(v) any SMART annuity (within the  
22 meaning of section 408B).”

23 (g) REPORTING REQUIREMENTS UNDER ERISA.—

24 Section 101 of the Employee Retirement Income Security  
25 Act of 1974 (29 U.S.C. 1021) is amended by redesignig-

1 nating subsection (h) as subsection (i) and by inserting  
2 after subsection (g) the following new subsection:

3 “(h) SMART ANNUITIES.—

4 “(1) NO EMPLOYER REPORTS.—Except as pro-  
5 vided in this subsection, no report shall be required  
6 under this section by an employer maintaining a  
7 SMART annuity under section 408B(b) of the Inter-  
8 nal Revenue Code of 1986.

9 “(2) SUMMARY DESCRIPTION.—The issuer of  
10 any SMART annuity shall provide to the employer  
11 maintaining the annuity for each year a description  
12 containing the following information:

13 “(A) The name and address of the em-  
14 ployer and the issuer.

15 “(B) The requirements for eligibility for  
16 participation.

17 “(C) The benefits provided with respect to  
18 the annuity.

19 “(D) The procedures for, and effects of,  
20 withdrawals (including rollovers) from the an-  
21 nuity.”

22 “(3) EMPLOYEE NOTIFICATION.—The employer  
23 shall provide each employee eligible to participate in  
24 the SMART annuity with the description described  
25 in paragraph (2) at the same time as the notifica-

1       tion required under section 408B(b)(5)(B) of the In-  
2       ternal Revenue Code of 1986.”

3       (h) \$5 PER PARTICIPANT PBGC PREMIUM.—Sub-  
4       paragraph (A) of section 4006(a)(3) of the Employee Re-  
5       tirement Income Security Act of 1974 (29 U.S.C. 1306)  
6       is amended—

7               (1) by inserting “not described in clause (iv)”  
8       after “in the case of a single-employer plan” in  
9       clause (i),

10              (2) by striking the period at the end of clause  
11       (iii) and inserting “; and”, and

12              (3) by inserting after clause (iii) the following  
13       new clause:

14              “(iv) in the case of a single-employer plan de-  
15       scribed in section 408B(c) of the Internal Revenue  
16       Code of 1986, an amount equal to \$5 for each par-  
17       ticipant.”.

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

                  “Sec. 408B. SMART plans.”

22       (j) EFFECTIVE DATE.—The amendments made by  
23       this section shall apply to years beginning after December  
24       31, 2001.

1 **SEC. 403. DEFINITION OF HIGHLY COMPENSATED EMPLOY-**  
2 **EES.**

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

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

8 (b) CONFORMING AMENDMENTS.—

9 (1)(A) Subsection (q) of section 414 is amended  
10 by striking paragraphs (3), (5), and (7) and by re-  
11 designating paragraphs (4), (6), (8), and (9) as  
12 paragraphs (3) through (6), respectively.

13 (B) Sections 129(d)(8)(B), 401(a)(5)(D)(ii),  
14 408(k)(2)(C), and 416(i)(1)(D) are each amended  
15 by striking “section 414(q)(4)” and inserting “sec-  
16 tion 414(q)(3)”.

17 (C) Section 416(i)(1)(A) is amended by striking  
18 “section 414(q)(5)” and inserting “section  
19 414(r)(9)”.

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

22 “(9) EXCLUDED EMPLOYEES.—For purposes of  
23 paragraph (2)(A), the following employees shall be  
24 excluded:

25 “(A) Employees who have not completed 6  
26 months of service.

1           “(B) Employees who normally work less  
2 than 17½ hours per week.

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

5           “(D) Employees who have not attained the  
6 age of 18.

7           “(E) Except to the extent provided in reg-  
8 ulations, employees who are included in a unit  
9 of employees covered by an agreement which  
10 the Secretary of Labor finds to be a collective  
11 bargaining agreement between employee rep-  
12 resentatives and the employer.”.

13           (B) Subparagraph (A) of section 414(r)(2) is  
14 amended by striking “subsection (q)(5)” and insert-  
15 ing “paragraph (9)”.

16           (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to years beginning after December  
18 31, 2001.

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