

109TH CONGRESS  
1ST SESSION

# H. R. 1161

To amend the Internal Revenue Code of 1986 to provide for employer retirement savings accounts, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2005

Mr. SAM JOHNSON of Texas (for himself and Mr. ENGLISH of Pennsylvania) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for employer retirement savings accounts, and for other purposes.

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

3 **SECTION 1. EMPLOYER RETIREMENT SAVINGS ACCOUNTS.**

4 (a) IN GENERAL.—Subpart A of part 1 of subchapter  
5 D of chapter 1 of the Internal Revenue Code of 1986 is  
6 amended by inserting after section 401 the following new  
7 section:

1 **“SEC. 401A. EMPLOYER RETIREMENT SAVINGS ACCOUNTS.**

2       “(a) IN GENERAL.—A defined contribution plan shall  
3 not fail to meet the requirements of section 401(a) merely  
4 because the plan includes an employer retirement savings  
5 account arrangement.

6       “(b) EMPLOYER RETIREMENT SAVINGS ACCOUNT  
7 ARRANGEMENT.—An employer retirement savings account  
8 arrangement is any arrangement which is part of a plan  
9 which meets the requirements of section 401(a)—

10           “(1) under which a covered employee may elect  
11 to have the employer make payments as contribu-  
12 tions to a trust under the plan on behalf of the em-  
13 ployee, or to the employee directly in cash,

14           “(2) under which amounts held by the trust  
15 which are attributable to employer contributions  
16 made pursuant to the employee’s election—

17           “(A) may not be distributable to partici-  
18 pants or other beneficiaries earlier than—

19           “(i) severance from employment,  
20 death, or disability,

21           “(ii) an event described in subsection  
22 (g),

23           “(iii) the attainment of age 59½, or

24           “(iv) upon hardship of the employee,

25           and

1           “(B) will not be distributable merely by  
2           reason of the completion of a stated period of  
3           participation or the lapse of a fixed number of  
4           years,

5           “(3) which provides that an employee’s right to  
6           the employee’s accrued benefit derived from em-  
7           ployer contributions made to the trust pursuant to  
8           the employee’s election is nonforfeitable, and

9           “(4) which does not require, as a condition of  
10          participation in the arrangement, that an employee  
11          complete a period of service with the employer (or  
12          employers) maintaining the plan extending beyond  
13          the period permitted under section 410(a)(1) (deter-  
14          mined without regard to subparagraph (B)(i) there-  
15          of).

16          “(c) APPLICATION OF NONDISCRIMINATION STAND-  
17          ARDS.—

18                 “(1) CONTRIBUTION PERCENTAGE REQUIRE-  
19          MENT.—An arrangement shall not be treated as an  
20          employer retirement savings account arrangement  
21          for any plan year unless—

22                         “(A) the contribution percentage for eligi-  
23                         ble highly compensated employees for the plan  
24                         year does not exceed 200 percent of such per-

1           centage for all other eligible employees for the  
2           preceding plan year, or

3           “(B) the contribution percentage of non-  
4           highly compensated employees for the preceding  
5           plan year exceeded 6 percent.

6           “(2) ALTERNATIVE METHODS OF MEETING  
7           NONDISCRIMINATION REQUIREMENTS.—

8           “(A) IN GENERAL.—An arrangement shall  
9           be treated as meeting the requirements of para-  
10          graph (1)(A) if such arrangement—

11           “(i) meets the contribution require-  
12          ments of subparagraph (B), and

13           “(ii) meets the notice requirements of  
14          subparagraph (D).

15          “(B) CONTRIBUTION REQUIREMENT.—The  
16          requirements of this subparagraph are met if,  
17          under the arrangement, the employer is re-  
18          quired to make contributions to a defined con-  
19          tribution plan on behalf of each eligible em-  
20          ployee who is not a highly compensated em-  
21          ployee in an amount equal to at least 3 percent  
22          of the employee’s compensation. For purposes  
23          of this subparagraph, elective deferrals and em-  
24          ployee contributions shall not be taken into ac-

1 count in determining the amount of contribu-  
2 tions the employer makes to the plan.

3 “(C) SPECIAL RULES FOR MATCHING CON-  
4 TRIBUTIONS.—

5 “(i) IN GENERAL.—If an employer  
6 takes matching contributions into account  
7 for purposes of subparagraph (B), the re-  
8 quirements of such subparagraph shall be  
9 treated as met only if the matching con-  
10 tributions on behalf of each employee who  
11 is not a highly compensated employee are  
12 equal to 50 percent of the elective deferrals  
13 of the employee to the extent that such  
14 elective deferrals do not exceed 6 percent  
15 of the employee’s compensation.

16 “(ii) ALTERNATIVE PLAN DESIGNS.—  
17 If the rate of any matching contribution  
18 with respect to any rate of elective deferral  
19 is not equal to the percentage required  
20 under clause (i), an arrangement shall not  
21 be treated as failing to meet the require-  
22 ments of clause (i) if—

23 “(I) the rate of an employer’s  
24 matching contribution does not in-

1                   crease as an employee’s rate of elec-  
2                   tive contributions increases, and

3                   “(II) the aggregate amount of  
4                   matching contributions at such rate of  
5                   elective contribution is at least equal  
6                   to the aggregate amount of matching  
7                   contributions which would be made if  
8                   matching contributions were made on  
9                   the basis of the percentages described  
10                  in clause (i).

11                  “(iii) RATE FOR HIGHLY COM-  
12                  PENSATED EMPLOYEES.—The require-  
13                  ments of this subparagraph are not met if,  
14                  under the arrangement, the rate of match-  
15                  ing contribution with respect to any elec-  
16                  tive deferral of a highly compensated em-  
17                  ployee at any rate of elective deferral is  
18                  greater than that with respect to an em-  
19                  ployee who is not a highly compensated  
20                  employee.

21                  “(D) NOTICE REQUIREMENT.—An ar-  
22                  rangement meets the requirements of this sub-  
23                  paragraph if, under the arrangement, each em-  
24                  ployee eligible to participate is, within a reason-  
25                  able period before any year, given written notice

1 of the employee's rights and obligations under  
2 the arrangement which—

3 “(i) is sufficiently accurate and com-  
4 prehensive to apprise the employee of such  
5 rights and obligations, and

6 “(ii) is written in a manner calculated  
7 to be understood by the average employee  
8 eligible to participate.

9 “(E) OTHER REQUIREMENTS.—

10 “(i) WITHDRAWAL AND VESTING RE-  
11 STRICTIONS.—An arrangement shall not be  
12 treated as meeting the requirements of  
13 subparagraph (B) unless the requirements  
14 of paragraphs (2) and (3) of subsection (b)  
15 are met with respect to all employer con-  
16 tributions (including matching contribu-  
17 tions) taken into account in determining  
18 whether the requirements of subparagraph  
19 (B) are met.

20 “(ii) SOCIAL SECURITY AND SIMILAR  
21 CONTRIBUTIONS NOT TAKEN INTO AC-  
22 COUNT.—An arrangement shall not be  
23 treated as meeting the requirements of  
24 subparagraph (B) unless such require-  
25 ments are met without regard to section

1                   401(l), and, for purposes of section 401(l),  
2                   employer contributions under subpara-  
3                   graph (B) shall not be taken into account.

4                   “(F) OTHER PLANS.—An arrangement  
5                   shall be treated as meeting the requirements of  
6                   subparagraph (B) if any other plan maintained  
7                   by the employer meets such requirements with  
8                   respect to employees eligible under the arrange-  
9                   ment.

10                  “(3) CONTRIBUTION PERCENTAGE.—For pur-  
11                  poses of paragraph (1), the contribution percentage  
12                  for an eligible employee for a specified group of em-  
13                  ployees for a plan year shall be the average of the  
14                  ratios (calculated separately for each employee in  
15                  such group) of—

16                         “(A) the sum of the elective deferrals,  
17                         matching contributions, employee contributions,  
18                         and qualified nonelective contributions paid  
19                         under the plan on behalf of each such employee  
20                         for such plan year, to

21                         “(B) the employee’s compensation for such  
22                         plan year.

23                  “(4) SPECIAL RULES.—For purposes of this  
24                  subsection—

1           “(A) MULTIPLE ARRANGEMENTS.—If 2 or  
2 more plans which include employer retirement  
3 savings account arrangements are considered as  
4 1 plan for purposes of section 401(a)(4) or  
5 410(b), all such arrangements included in such  
6 plans shall be treated as 1 arrangement.

7           “(B) EMPLOYEES IN MORE THAN 1 AR-  
8 RANGEMENT.—If any highly compensated em-  
9 ployee is a participant under 2 or more em-  
10 ployer retirement savings account arrangements  
11 of the employer, for purposes of determining  
12 the contribution percentage with respect to such  
13 employee, all such arrangements shall be treat-  
14 ed as 1 arrangement.

15           “(C) USE OF CURRENT YEAR.—An em-  
16 ployer may elect to apply paragraph (1) (A) or  
17 (B) by using the plan year rather than the pre-  
18 ceding plan year. An employer may change such  
19 an election only with the consent of the Sec-  
20 retary.

21           “(D) 1ST PLAN YEAR.—In the case of the  
22 first plan year of any plan (other than a suc-  
23 cessor plan), the amount taken into account as  
24 the contribution percentage of nonhighly com-

1            compensated employees for the preceding plan year  
2            shall be—

3                    “(i) 3 percent, or

4                    “(ii) if the employer makes an election  
5                    under this clause, the contribution percent-  
6                    age of nonhighly compensated employees  
7                    determined for such first plan year.

8                    “(E) SPECIAL RULE FOR EARLY PARTICI-  
9                    PATION.—If an employer elects to apply section  
10                    410(b)(4)(B) in determining whether an em-  
11                    ployer retirement savings account arrangement  
12                    meets the requirements of section 410(b)(1),  
13                    the employer may, in determining whether the  
14                    arrangement meets the requirements of this  
15                    subsection, exclude from consideration all eligi-  
16                    ble employees (other than highly compensated  
17                    employees) who have not met the minimum age  
18                    and service requirements of section  
19                    410(a)(1)(A).

20                    “(5) EXCEPTIONS.—

21                    “(A) GOVERNMENTAL PLANS.—A govern-  
22                    mental plan (within the meaning of section  
23                    414(d)) maintained by a State or local govern-  
24                    ment or political subdivision thereof (or agency

1 or instrumentality thereof) shall be treated as  
2 meeting the requirements of this subsection.

3 “(B) TAX EXEMPT PLANS.—

4 “(i) IN GENERAL.—A plan not de-  
5 scribed in subparagraph (A) which is  
6 maintained by an organization described in  
7 section 501(c)(3) shall be treated as meet-  
8 ing the requirements of this subsection for  
9 any plan year if the plan provides that all  
10 employees of such organization may elect  
11 to have the employer make contributions of  
12 more than \$200 pursuant to a salary re-  
13 duction agreement if any employee of the  
14 organization may elect to have the organi-  
15 zation make contributions pursuant to  
16 such agreement.

17 “(ii) EXCEPTION.—Clause (i) shall  
18 not apply to any plan if under the plan—

19 “(I) matching contributions may  
20 be made on behalf of any employee, or

21 “(II) an employee may make con-  
22 tributions other than elective defer-  
23 rals.

1           “(iii) EXCLUSION.—For purposes of  
2           clause (i), there may be excluded any em-  
3           ployee who is—

4                   “(I) a participant in another em-  
5                   ployer retirement savings account ar-  
6                   rangement of the organization,

7                   “(II) a nonresident alien de-  
8                   scribed in section 410(b)(3)(C), or

9                   “(III) subject to the conditions  
10                  applicable under section 410(b)(4), a  
11                  student performing services described  
12                  in section 3121(b)(10) or an employee  
13                  who normally works less than 20  
14                  hours per week.

15           “(6) COORDINATION WITH SUBSECTION  
16           (a)(4).—A cash or deferred arrangement shall be  
17           treated as meeting the requirements of subsection  
18           (a)(4) with respect to contributions if the require-  
19           ments of paragraph (1) are met.

20           “(d) OTHER REQUIREMENTS.—For purposes of this  
21           section—

22                   “(1) BENEFITS (OTHER THAN MATCHING CON-  
23                   TRIBUTIONS) MUST NOT BE CONTINGENT ON ELEC-  
24                   TION TO DEFER.—An employer retirement savings  
25                   account arrangement of any employer shall not be

1 treated as such an arrangement if any other benefit  
2 is conditioned (directly or indirectly) on the em-  
3 ployee electing to have the employer make or not  
4 make contributions under the arrangement in lieu of  
5 receiving cash. The preceding sentence shall not  
6 apply to any matching contribution made by reason  
7 of such an election.

8 “(2) COORDINATION WITH OTHER PLANS.—Any  
9 employer contribution made pursuant to an employ-  
10 ee’s election under an employer retirement savings  
11 account arrangement shall not be taken into account  
12 for purposes of determining whether any other plan  
13 meets the requirements of section 401(a) or 410(b).  
14 This paragraph shall not apply for purposes of de-  
15 termining whether a plan meets the average benefit  
16 requirement of section 410(b)(2)(A)(ii).

17 “(e) DEFINITIONS.—For purposes of this section—

18 “(1) ELIGIBLE EMPLOYEE.—The term ‘eligible  
19 employee’ means any employee who is eligible to  
20 benefit under the employer retirement savings ac-  
21 count arrangement.

22 “(2) HIGHLY COMPENSATED EMPLOYEE.—For  
23 purposes of this subsection, the term ‘highly com-  
24 pensated employee’ has the meaning given such term  
25 by section 414(q).

1           “(3) MATCHING CONTRIBUTION.—The term  
2           ‘matching contribution’ means—

3                   “(A) any employer contribution made to a  
4                   defined contribution plan on behalf of an em-  
5                   ployee on account of an employee contribution  
6                   made by such employee, and

7                   “(B) any employer contribution made to a  
8                   defined contribution plan on behalf of an em-  
9                   ployee on account of an employee’s elective de-  
10                  ferral.

11           “(4) ELECTIVE DEFERRAL.—The term ‘elective  
12           deferral’ means any employer contribution described  
13           in section 402(g)(3).

14           “(5) QUALIFIED NONELECTIVE CONTRIBU-  
15           TIONS.—The term ‘qualified nonelective contribu-  
16           tion’ means any employer contribution (other than a  
17           matching contribution) with respect to which—

18                   “(A) the employee may not elect to have  
19                   the contribution paid to the employee in cash  
20                   instead of being contributed to the plan, and

21                   “(B) the requirements of paragraphs (2)  
22                   and (3) of subsection (b) are met.

23           “(6) COMPENSATION.—The term ‘compensa-  
24           tion’ has the meaning given such term by section  
25           414(s).

1       “(f) ARRANGEMENT NOT DISQUALIFIED IF EXCESS  
2 CONTRIBUTIONS DISTRIBUTED.—

3           “(1) IN GENERAL.—An employer retirement  
4 savings account arrangement shall not be treated as  
5 failing to meet the requirements of subsection  
6 (c)(1)(A) for any plan year if, before the close of the  
7 following plan year—

8           “(A) the amount of the excess contribu-  
9 tions for such plan year (and any income allo-  
10 cable to such contributions) is distributed, or

11           “(B) to the extent provided in regulations,  
12 the employee elects to treat the amount of the  
13 excess contributions as an amount distributed  
14 to the employee and then contributed by the  
15 employee to the plan.

16 Any distribution of excess contributions (and in-  
17 come) may be made without regard to any other pro-  
18 vision of law.

19           “(2) EXCESS CONTRIBUTIONS.—For purposes  
20 of paragraph (1), the term ‘excess contributions’  
21 means, with respect to any plan year, the excess  
22 of—

23           “(A) the aggregate amount of employer  
24 contributions actually paid over to the trust on

1           behalf of highly compensated employees for  
2           such plan year, over

3           “(B) the maximum amount of such con-  
4           tributions permitted under the limitations of  
5           subsection (c)(1)(A) (determined by reducing  
6           contributions made on behalf of highly com-  
7           pensated employees in order of the contribution  
8           percentages beginning with the highest of such  
9           percentages).

10          “(3) METHOD OF DISTRIBUTING EXCESS CON-  
11          TRIBUTIONS.—Any distribution of the excess con-  
12          tributions for any plan year shall be made to highly  
13          compensated employees on the basis of the amount  
14          of contributions by, or on behalf of, each of such em-  
15          ployees.

16          “(4) ADDITIONAL TAX UNDER SECTION 72(t)  
17          NOT TO APPLY.—No tax shall be imposed under sec-  
18          tion 72(t) on any amount required to be distributed  
19          under this subsection.

20          “(5) TREATMENT OF MATCHING CONTRIBU-  
21          TIONS FORFEITED BY REASON OF EXCESS DEFER-  
22          RAL OR CONTRIBUTION.—For purposes of subsection  
23          (b)(3), a matching contribution shall not be treated  
24          as forfeitable merely because such contribution is  
25          forfeitable if the contribution to which the matching

1 contribution relates is treated as an excess contribu-  
2 tion under paragraph (2) or an excess deferral under  
3 section 402(g)(2)(A).

4 “(6) CROSS REFERENCE.—For excise tax on  
5 certain excess contributions, see section 4979.

6 “(g) DISTRIBUTIONS UPON TERMINATION OF  
7 PLAN.—

8 “(1) IN GENERAL.—An event described in this  
9 subsection is the termination of the plan without es-  
10 tablishment or maintenance of another defined con-  
11 tribution plan (other than an employee stock owner-  
12 ship plan as defined in section 4975(e)(7)).

13 “(2) DISTRIBUTIONS MUST BE LUMP SUM DIS-  
14 TRIBUTIONS.—

15 “(A) IN GENERAL.—A termination shall  
16 not be treated as described in paragraph (1)  
17 with respect to any employee unless the em-  
18 ployee receives a lump sum distribution by rea-  
19 son of the termination.

20 “(B) LUMP-SUM DISTRIBUTION.—For pur-  
21 poses of this paragraph, the term ‘lump-sum  
22 distribution’ has the meaning given such term  
23 by section 402(e)(4)(D) (without regard to sub-  
24 clauses (I), (II), (III), and (IV) of clause (i)

1           thereof). Such term includes a distribution of  
2           an annuity contract from—

3                   “(i) a trust which forms a part of a  
4                   plan described in section 401(a) and which  
5                   is exempt from tax under section 501(a),  
6                   or

7                   “(ii) an annuity plan described in sec-  
8                   tion 403(a).

9           “(h) SPECIAL RULES FOR SMALL EMPLOYERS.—

10                   “(1) IN GENERAL.—An arrangement main-  
11                   tained by an eligible employer shall not fail to meet  
12                   the requirements of this section merely because con-  
13                   tributions under the arrangement on behalf of any  
14                   employee are made to an individual retirement plan  
15                   (as defined under section 7701(a)(37)) established  
16                   on behalf of the employee.

17                   “(2) ELIGIBLE EMPLOYER.—For purposes of  
18                   paragraph (1), the term ‘eligible employer’ means,  
19                   with respect to any year, an employer which had no  
20                   more than 10 employees who received at least  
21                   \$5,000 of compensation from the employer for the  
22                   preceding year. An eligible employer who establishes  
23                   and maintains an arrangement under this subsection  
24                   for 1 or more years and who fails to be an eligible  
25                   employer for any subsequent year shall be treated as

1 an eligible employer for the 2 years following the  
2 last year the employer was an eligible employer. If  
3 such failure is due to any acquisition, disposition, or  
4 similar transaction involving an eligible employer,  
5 the preceding sentence shall not apply.

6 “(i) REGULATIONS.—The Secretary shall prescribe  
7 such regulations as may be necessary to carry out the pur-  
8 poses of this section, including regulations permitting ap-  
9 propriate aggregation of plans and contributions.

10 “(j) TRANSITION RULES.—

11 “(1) DEEMED ERSAS.—Any arrangement  
12 which, as of December 31, 2005—

13 “(A) is part of a plan meeting the require-  
14 ments of section 401(a), and

15 “(B) is—

16 “(i) a qualified cash or deferred ar-  
17 rangement (as defined in section  
18 401(k)(2)), or

19 “(ii) subject to the requirements of  
20 section 401(m),

21 shall be treated as an employer retirement savings  
22 account arrangement and subject to the require-  
23 ments of this title applicable to such an arrangement  
24 for plan years beginning after December 31, 2005.

25 “(2) ELECTABLE ERSAS.—

1           “(A) IN GENERAL.—If an employer makes  
2 an election under this paragraph with respect to  
3 any applicable arrangement, such arrangement  
4 shall be treated as an employer retirement sav-  
5 ings account arrangement and subject to the re-  
6 quirements of this title applicable to such an  
7 arrangement for plan years beginning after De-  
8 cember 31, 2005.

9           “(B) APPLICABLE ARRANGEMENT.—For  
10 purposes of subparagraph (A), the term ‘appli-  
11 cable arrangement’ means an arrangement  
12 which, as of December 31, 2005, is—

13           “(i) an arrangement under which  
14 amounts are contributed by an individual’s  
15 employer for an annuity contract described  
16 in section 403(b),

17           “(ii) an eligible deferred compensation  
18 plan (within the meaning of section  
19 457(b)) maintained by an eligible employer  
20 described in section 457(e)(1)(A),

21           “(iii) a simplified employee pension  
22 (within the meaning of section 408(k)) for  
23 which an election is in effect under para-  
24 graph (6) thereof, or

1                   “(iv) a simple retirement account  
2                   (within the meaning of section 408(p)).”

3           (b) ELECTIVE DEFERRALS.—Section 402 of such  
4 Code is amended—

5           (1) in subsection (e)(3), by inserting “, an em-  
6           ployer retirement savings account arrangement (as  
7           defined in section 401A(b)),” after “section  
8           401(k)(2))”, and

9           (2) in subsection (g)(3)(A), by inserting “, or  
10           an employer retirement savings account arrangement  
11           (as defined in section 401A(b)),” before “to the ex-  
12           tent”.

13           (c) TERMINATION OF CONTRIBUTIONS TO OTHER  
14 PLANS.—

15           (1) 401(k) PLANS.—Section 401(k) of such  
16 Code is amended by adding at the end the following  
17 new paragraph:

18           “(13) TERMINATION.—This subsection shall not  
19           apply to any plan year beginning after December 31,  
20           2005.”.

21           (2) 403(b) ANNUITY CONTRACTS.—Section  
22           403(b) of such Code is amended by adding at the  
23           end the following new paragraph:

24           “(14) TERMINATION.—No elective deferral (as  
25           defined in section 402(g)(3)) may be contributed

1 under this subsection by an employer, and no  
2 amount may be transferred under an eligible roll-  
3 over, for an annuity contract after December 31,  
4 2006.”.

5 (3) GOVERNMENTAL 457 PLANS.—Section 457  
6 of such Code is amended by adding at the end the  
7 following new subsection:

8 “(h) TERMINATION.—No amount may be deferred  
9 under this subsection under a plan maintained by an eligi-  
10 ble employer described in subsection (e)(1)(A), and no  
11 amount may be transferred under an eligible rollover to  
12 an eligible deferred compensation plan maintained by such  
13 an employer, after December 31, 2006.”.

14 (4) SARSEPS.—Subparagraph (H) of section  
15 408(k)(6) of such Code is amended by adding at the  
16 end the following new sentence: “No amount may be  
17 contributed under this paragraph to a simplified em-  
18 ployee pension by an employer, and no amount may  
19 be transferred to a simplified employee pension  
20 maintained under this paragraph under an eligible  
21 rollover, after December 31, 2006.”.

22 (5) SIMPLE IRAS.—Section 408(p) of such Code  
23 is amended by adding at the end the following new  
24 paragraph:

1           “(11) TERMINATION.—No amount may be con-  
2 tributed under this paragraph to a simple retirement  
3 account after December 31, 2006.”.

4 (d) OTHER CONFORMING CHANGES.—

5           (1) Section 401 of such Code is amended by  
6 striking subsection (m).

7           (2) Section 7701(j) of such Code (relating to  
8 tax treatment of Federal Thrift Savings Fund) is  
9 amended—

10           (A) in paragraph (1)(C), by striking “sec-  
11 tion 401(k)(4)(B)” and inserting “section  
12 401A(d)(1)”, and

13           (B) in paragraph (2), by striking “section  
14 401(k)” and inserting “section 401A”.

15           (3) The Secretary of the Treasury shall, not  
16 later than 90 days after the date of the enactment  
17 of this Act, submit such technical and other con-  
18 forming changes as are necessary to carry out the  
19 amendments made by this section.

20 (e) CLERICAL AMENDMENT.—The table of sections  
21 for subpart A of part 1 of subchapter D of chapter 1 of  
22 such Code is amended by inserting after the item relating  
23 to section 401 the following new item:

“Sec. 401A. Employer Retirement Savings Accounts.”.

1 (f) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to years beginning after December  
3 31, 2005.

4 (g) PROVISIONS RELATING TO PLAN AMEND-  
5 MENTS.—

6 (1) IN GENERAL.—If this subsection applies to  
7 any plan or contract amendment—

8 (A) such plan or contract shall be treated  
9 as being operated in accordance with the terms  
10 of the plan during the period described in para-  
11 graph (2)(C)(i), and

12 (B) except as provided by the Secretary of  
13 the Treasury, such plan shall not fail to meet  
14 the requirements of section 401A of the Inter-  
15 nal Revenue Code of 1986 by reason of such  
16 amendment.

17 (2) AMENDMENTS TO WHICH SECTION AP-  
18 PLIES.—

19 (A) IN GENERAL.—This subsection shall  
20 apply to any amendment to any plan or annuity  
21 contract which is made—

22 (i) pursuant to any amendment made  
23 by this section, or pursuant to any regula-  
24 tion issued by the Secretary of the Treas-

1           ury or the Secretary of Labor under this  
2           section, and

3                   (ii) on or before the last day of the  
4           first plan year beginning on or after Janu-  
5           ary 1, 2007.

6           (B) GOVERNMENTAL PLAN.—In the case  
7           of a governmental plan (as defined in section  
8           414(d) of the Internal Revenue Code of 1986),  
9           subparagraph (A) shall be applied by sub-  
10          stituting “2009” for “2007”.

11          (C) CONDITIONS.—This subsection shall  
12          not apply to any amendment unless—

13                   (i) during the period—

14                           (I) beginning on the date the leg-  
15                           islative or regulatory amendment de-  
16                           scribed in subparagraph (A)(i) takes  
17                           effect (or in the case of a plan or con-  
18                           tract amendment not required by such  
19                           legislative or regulatory amendment,  
20                           the effective date specified by the  
21                           plan), and

22                           (II) ending on the date described  
23                           in subparagraph (A)(ii) (or, if earlier,  
24                           the date the plan or contract amend-  
25                           ment is adopted), the plan or contract

1 is operated as if such plan or contract  
2 amendment were in effect; and  
3 (ii) such plan or contract amendment  
4 applies retroactively for such period.

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