

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.

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

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 DISTRIBU-
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 gular 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:

“Years of service:	The nonforfeitable percentage is:
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 irement 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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