

JUNE 6, 2005

A BILL

To amend the Internal Revenue Code of 1986 to increase retirement savings and security, to facilitate the provision of guaranteed retirement income for life, and to make the retirement plan rules simpler and more equitable.

SECTION 1. SHORT TITLE. This Act may be cited on the “Retirement Savings and Security Act of 2005”.

TITLE I – INCREASING RETIREMENT SAVINGS AND SECURITY

SEC. 101. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.

(a) IN GENERAL.-Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

“(13) NONDISCRIMINATION REQUIREMENTS FOR AUTOMATIC CONTRIBUTION TRUSTS.

“(A) IN GENERAL.-A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement constitutes an automatic contribution trust.

“(B) AUTOMATIC CONTRIBUTION TRUST.-

“(i) For purposes of this paragraph, the term 'automatic contribution trust' means an arrangement-

“(I) except as otherwise provided in this clause, under which each employee eligible to participate in the arrangement is treated in a consistent manner as having elected to have the employer make elective contributions in an amount equal to at least the applicable percentage of the employee’s compensation, and

“(II) which meets the requirements of subparagraphs (C), (D), and (E).

“Subclause (I) of this clause shall not apply to any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the first date on which the arrangement is an automatic contribution trust. The election treated as having been made under subclause (I) shall cease to apply to compensation paid after the effective date of an affirmative election by the employee not to have contributions made under subclause (I) or to make elective contributions at a specified level.

"(ii) For purposes of this subparagraph, with respect to an employee, the term "applicable percentage" means the percentage determined under this clause.

"(I) For the period beginning on the first date that the election described in clause (i)(I) is in effect with respect to the employee and ending on the day before the first day described in subclause (II), the applicable percentage shall be 3 percent.

"(II) In the case of the second plan year beginning after the first date described in subclause (I) and all subsequent plan years, the applicable percentage with respect to the employee shall be equal to the sum of the applicable percentage for the employee as of the close of the preceding year plus 1 percentage point. The employer sponsoring the plan (or the plan administrator on behalf of the employer) may elect to provide that in lieu of any increase in the applicable percentage required under the preceding sentence, a 1 percentage point increase in the applicable percentage shall occur, under rules prescribed by the Secretary, after each annual increase in an employee's compensation that occurs on or after the first day of the second plan year beginning after the first date described in subclause (I). Notwithstanding the foregoing, the applicable percentage shall not exceed 10 percent.

"(C) MATCHING OR NONELECTIVE CONTRIBUTIONS.-

(i) IN GENERAL.-The requirements of this subparagraph are met if, under the arrangement, the employer-

"(I) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 6 percent of compensation, or

"(II) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee's compensation.

"The rules of clauses (ii) and (iii) of paragraph (12)(B) shall apply for purposes of subclause (I). The rules of clause (ii) of paragraph (12)(E) shall apply for purposes of subclauses (I) and (II).

"(ii) OTHER PLANS.- An arrangement shall be treated as meeting the requirements under clause (i) if any other plan maintained by the employer meets such requirements with respect to employees eligible under the arrangement.

"(D) VESTING.-The requirements of this subparagraph are met if an employee who has

completed at least 2 years of service (within the meaning of section 411(a)) has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions taken into account in determining whether the requirements of subparagraph (C) are met.

"(E) NOTICE REQUIREMENTS.-

"(i) IN GENERAL.-The requirements of this subparagraph are met if the requirements of clauses (ii) and (iii) are met.

"(ii) REASONABLE PERIOD TO MAKE ELECTION.- The requirements of this clause are met if each employee to whom subparagraph (B)(i) applies-

"(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf and how contributions made under the arrangement will be invested in the absence of any investment election by the employee, and

"(II) has a reasonable period of time after receipt of such notice and before the first elective contribution is made to make either such election.

"(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.-The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year (or, if the increase in the applicable percentage occurs after an annual increase in an employee's compensation, before such increase), given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of paragraph (12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph."

(b) MATCHING CONTRIBUTIONS.-Section 401(m) of such Code (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

"(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION TRUSTS.-

"(A) IN GENERAL.-A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan-

"(i) meets the contribution requirements of subparagraphs (B)(i) and (C) of subsection (k)(13),

"(ii) meets the vesting and notice requirements of subparagraphs (D) and (E) of subsection (k)(13), and

"(iv) meets the requirements of paragraph (II)(B)(ii) and (iii).

"(B) MATCHING CONTRIBUTIONS.-An annuity contract under section 403(b) shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if such contract meets requirements similar to the requirements under subparagraph (A).".

(c) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.-

(1) ELECTIVE CONTRIBUTION RULE.-Clause (i) of section 416(g)(4)(H) of such Code is amended by inserting "or 401(k)(13)" after "section 401(k)(12)".

(2) MATCHING CONTRIBUTION RULE.-Clause (ii) of section 416(g)(4)(H) of such Code is amended by inserting "or 401(m)(12)" after "section 401(m)(11)".

(d) DEFINITION OF COMPENSATION.-

(1) BASE PAY OR RATE OF PAY.- The Secretary of the Treasury shall, by no later than December 31, 2006, modify Treasury Regulation section 1.414(s)-1(d)(3) to facilitate the use of the safe harbors in sections 401(k)(12), 401(k)(13), 401(m)(11), and 401(m)(12) of the Internal Revenue Code of 1986, and in Treasury Regulation section 1.401(a)(4)-3(b) by plans that use base pay or rate of pay in determining contributions or benefits. Such facilitation shall include increased flexibility in satisfying section 414(s) of such Code in situations where the amount of overtime compensation payable in a year can vary significantly.

(2) APPLICATION OF REQUIREMENTS TO SEPARATE PAYROLL PERIODS.-Not later than December 31, 2005, the Secretary of the Treasury shall issue rules under subparagraphs (B)(i) and (C)(i) of section 401(k)(13) of such Code and under clause (i) of section 401(m)(12)(A) of such Code that, effective for plan years beginning after December 31, 2005, permit such requirements to be applied separately to separate payroll periods based on rules similar to the rules described in Treasury Regulation sections 1.401(k)-3(c)(5)(ii) and 1.401(m)-3(d)(4).

(e) SECTION 403(b) CONTRACTS.-Paragraph (11) of section 401(m) of such Code is amended by adding at the end the following:

"(C) SECTION 403(b) CONTRACTS.-An annuity contract under section 403(b) shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if such contract meets requirements similar to the requirements under subparagraph (A).".

(f) INVESTMENTS AND PREEMPTION.-

(1) CONTROL DEEMED TO HAVE BEEN EXERCISED WITH RESPECT TO AMOUNT OF AUTOMATIC CONTRIBUTIONS.-Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the

end the following new paragraphs:

"(4)(A) A participant or beneficiary in an individual account plan shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account with respect to the contributions made under an automatic contribution arrangement.

"(B) For purposes this paragraph, the term 'automatic contribution arrangement' means an arrangement-

"(i) which meets the requirements of subparagraph (C),

"(ii) under which a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash,

"(iii) under which the participant is treated as having elected to have the employer make such contributions in an amount equal to a specified percentage of compensation provided under the plan until the participant affirmatively elects not to have such contributions made (or affirmatively elects to have such contributions made at a different percentage), and

"(iv) under which contributions described in clause (iii) are invested in accordance with regulations prescribed by the Secretary, which regulations shall provide for the investment of the contributions in one or more investment options that include a range of asset classes and that –

(I) vary the emphasis and exposure among the asset classes as the participant approaches a target retirement date with the expectation that the participant will take distributions on or near such target retirement date, including model portfolios, life-cycle funds, retirement target date funds, and other similar investment options, or

(II) are approved in regulations prescribed by the Secretary.

"(C)(i) The administrator of an individual account plan shall, within a reasonable period before each plan year and before the first contribution made on the participant's behalf under subparagraph (B), give to each participant to whom an automatic contribution arrangement applies for such plan year notice of the participant's rights and obligations under the arrangement which-

"(I) is sufficiently accurate and comprehensive to apprise the participant of such rights and obligations, and

"(II) is written in a manner calculated to be understood by the average participant to whom the arrangement applies.

"(ii) A notice shall not be treated as meeting the requirements of clause (i) with respect to an employee unless-

"(I) the notice includes a notice explaining the participant's right under the arrangement to elect not to have elective contributions made on the participant's behalf (or to elect to have such contributions made at a different percentage),

"(II) the notice explains how contributions made under the arrangement will be invested in the absence of any investment election by the participant or beneficiary, and

"(III) the participant or beneficiary has a reasonable period of time after receipt of the notice described in subclauses (I) and (II) and before the first elective contribution is made to make either such election.

"(5)(A) A participant or beneficiary in an individual account plan (including a plan that is not designed to meet the requirements of this subsection) who does not make an investment election with respect to contributions described in subparagraph (B) shall, for purposes of paragraph (1), be treated as exercising control over the assets in the account with respect to such contributions.

"(B) Contributions are described in this subparagraph (B) if-

"(i) such contributions are not described in paragraph (4),

"(ii) the administrator of the plan satisfies rules similar to the rules of paragraph (4)(C) (except that the notice shall relate to the participant's or beneficiary's right to make a different investment election), and

"(iii) such contributions are invested pursuant to the regulations under paragraph (4)(B)(iv).".

(2) PREEMPTION OF CONFLICTING STATE REGULATION.-Section 514(b) of such Act (29 U.S.C. 1144(b)) is amended-

(A) by redesignating paragraph (9) as paragraph (10); and

(B) by inserting after paragraph (8) the following new paragraph:

" (9) Notwithstanding any other provision of this section, any law of a State which would directly or indirectly prohibit or restrict the inclusion in any plan of an automatic contribution arrangement (as defined in section 404(c)(4)(B)) shall be superseded. The Secretary may prescribe regulations which would establish minimum standards that such arrangements would be required to satisfy in order for this paragraph to apply."

(g) CORRECTIVE DISTRIBUTIONS.-

(1) IN GENERAL.- Section 414 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(w) AUTOMATIC CONTRIBUTION ARRANGEMENTS.-

"(1) IN GENERAL.-For purposes of this title, the amount of any corrective distribution from a plan shall be treated as if such amount had never been held in such plan and shall be treated as a payment of compensation from the employer maintaining the plan to the employee receiving such distribution.

"(2) CORRECTIVE DISTRIBUTION.-For purposes of this subsection, the term 'corrective distribution' means a distribution from an applicable employer plan of all amounts attributable to an erroneous automatic contribution.

"(3) ERRONEOUS AUTOMATIC CONTRIBUTION.-For purposes of this subsection, the term 'erroneous automatic contribution' means an elective contribution made on behalf of an employee under any applicable employer plan pursuant to a plan provision treating the employee as having elected to have the employer make such elective contribution until the employee affirmatively elects not to have such contribution made or affirmatively elects to make contributions at a specified level, if the following requirements are satisfied-

"(A) within the applicable period, the employee notifies the plan administrator that the employee elects to have the elective contribution treated as an erroneous automatic contribution, and

"(B) the sum of the elective contributions that are treated as erroneous automatic contributions with respect to an employee does not exceed \$500.

"(4) APPLICABLE EMPLOYER PLAN.-For purposes of this subsection, the term 'applicable employer plan' has the meaning described in subsection (v)(6)(A).

"(5) APPLICABLE PERIOD.-For purposes of this subsection, with respect to an employee, the term 'applicable period' means the three month period that begins on the first date that an amount is withheld from compensation payable to the employee in order to make a plan contribution pursuant to a plan provision described in paragraph (3)."

(2) VESTING CONFORMING AMENDMENTS.-

(A) INTERNAL REVENUE CODE OF 1986.-

(i) IN GENERAL.- Subparagraph (G) of section 411(a)(3) of the Internal Revenue Code of 1986 is amended by adding after "402(g)(2)(A)," the following: "an erroneous automatic contribution under section 414(w),".

(ii) **HEADING.**- The heading of subparagraph (G) of section 411(a)(3) of such Code is amended by adding before the period the following: “or erroneous automatic contribution”.

(iii) **SECTION 401(k)** – Subparagraph (E) of section 401(k)(8) of such Code is amended by adding after “402(g)(2)(A),” the following: “an erroneous automatic contribution under section 414(w),”.

(iv) **HEADING.**- The heading of subparagraph (E) of section 401(k)(8) of such Code is amended by adding before the period the following: “or erroneous automatic contribution”.

(B) **EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.**- Subparagraph (F) of section 203(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(F)) is amended by inserting after “402(g)(2)(A) of such Code,” the following: “an erroneous automatic contribution under section 414(w) of such Code,”.

(h) **SENSE OF THE CONGRESS.**-It is the sense of the Congress that automatic contribution arrangements and automatic contribution increase arrangements are a powerful means of increasing savings and retirement security. It is further the sense of the Congress that implementation of such arrangements should be considered broadly by employers, including employers that are not subject to the Employee Retirement Income Security Act of 1974, and to the extent that there are remaining obstacles preventing employers from adopting such arrangements, there should be a public dialogue regarding ways to address such obstacles.

(i) **EFFECTIVE DATE.**-

(1) **IN GENERAL.**-Except as provided by paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2005.

(2) **SECTION 403(b) CONTRACTS.**-The amendments made by subsection (e) shall apply to years beginning after December 31, 1998.

(3) **REGULATIONS.**-Final regulations under section 404(c)(4)(B)(iv) of the Employee Retirement Income Security Act of 1974 shall be issued no later than 6 months after the date of enactment of this Act.

SEC. 102. EXTENSION AND EXPANSION OF SAVER'S CREDIT.

(a) **EXTENSION.**-Subsection (h) of section 25B of the Internal Revenue Code of 1986 (relating to termination) is amended by striking “2006” and inserting “2010”.

(b) **EXPANSION.**-The table contained in subsection (b) of section 25B of such Code (relating to applicable percentage) is amended to read as follows:

Adjusted Gross Income

Joint return		Head of Household		All other cases		Applicable percentage
Over	Not over	Over	Not over	Over	Not over	
	\$30,000		\$22,500		\$15,000	50
30,000	40,000	22,500	30,000	15,000	20,000	20
40,000	50,000	30,000	37,500	20,000	25,000	10
50,000		37,500		25,000		0

(c) ADJUSTMENT FOR INFLATION.-Section 25B (as amended by subsection (b)) of such Code is further amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) ADJUSTMENT FOR INFLATION.-

"(1) IN GENERAL.-In the case of any taxable year beginning after December 31, 2008, each dollar amount in the table contained in subsection (b) in the columns under the heading 'All other cases' shall be increased by an amount equal to-

"(A) such dollar amount, multiplied by

"(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 2007' for 'calendar year 1992' in subparagraph (B) thereof.

If any increase under the preceding sentence is not a multiple of \$1,000, such increase shall be rounded to the nearest multiple of \$1,000.

"(2) ADJUSTMENT OF AMOUNTS RELATING TO JOINT RETURN AND HEAD OF HOUSEHOLD.-In the case of any taxable year beginning after December 31, 2008-

"(A) there shall be substituted for each dollar amount in the table contained in subsection (b) in the columns under the heading 'Joint return' a dollar amount equal to twice the corresponding dollar amount in such table in the columns under the heading 'All other cases' (as increased under paragraph (1)), and

"(B) there shall be substituted for each dollar amount in the table contained in subsection (b) in the columns under the heading 'Head of household' a dollar amount equal to 1½ times the corresponding dollar amount in such table in the columns under the heading 'All other cases' (as increased under paragraph (1))."

(d) EFFECTIVE DATE.-The amendments made by this section shall apply to taxable years beginning after December 31, 2006.

SEC. 103. DISPOSITION OF UNUSED HEALTH BENEFITS IN FLEXIBLE SPENDING ARRANGEMENTS.

(a) IN GENERAL- Section 125 of the Internal Revenue Code of 1986 (relating to cafeteria plans) is amended by redesignating subsections (h) and (i) as subsections (i) and (j), respectively, and by inserting after subsection (g) the following:

`(h) CONTRIBUTIONS OF CERTAIN UNUSED HEALTH BENEFITS-

`(1) IN GENERAL- For purposes of this title, a plan or other arrangement shall not fail to be treated as a cafeteria plan solely because qualified benefits under such plan include a health flexible spending arrangement under which not more than \$500 of unused health benefits may be contributed on behalf of an employee to a qualified retirement plan (as defined in section 4974(c)) or an eligible deferred compensation plan (as defined in section 457(b)) maintained by an eligible employer described in section 457(e)(1)(A)).

`(2) CONTRIBUTION OF UNUSED HEALTH BENEFITS ON BEHALF OF EMPLOYEE- For purposes of this title, contributions on behalf of an employee described in paragraph (1) shall be treated as elective contributions made pursuant to a choice by the employee between such contributions and compensation which would otherwise be includible in the gross income of the employee. Contributions described in paragraph (1) shall be excluded from the gross income of the employee, or included in the gross income of the employee and allowed as a deduction by the employee, to the extent that elective contributions would be treated in that manner under this title.

`(3) HEALTH FLEXIBLE SPENDING ARRANGEMENT- For purposes of this subsection, the term 'health flexible spending arrangement' means a flexible spending arrangement (as defined in section 106(c)) that is a qualified benefit and only permits reimbursement for expenses for medical care (as defined in section 213(d)(1) (without regard to subparagraphs (C) and (D) thereof).

`(4) UNUSED HEALTH BENEFITS- For purposes of this subsection, with respect to an employee, the term 'unused health benefits' means the excess of—

`(A) the maximum amount of reimbursement allowable to the employee with respect to a plan year under a health flexible spending arrangement, taking into account any election by the employee, over

`(B) the actual amount of reimbursement with respect to such year under such arrangement.'.

(b) SPECIAL RULES.- The Secretary of the Treasury shall prescribe such rules as are appropriate to carry out the purposes of this section, which rules shall facilitate the contributions

permitted under this section. Such rules may permit elections by plan sponsors with respect to the year to which the contributions relate and may provide for special treatment for purposes of applying the requirements applicable to such contributions.

(c) EFFECTIVE DATE.-

(1) IN GENERAL.- The amendment made by subsection (a) shall apply to years beginning after December 31, 2005.

(2) SPECIAL RULES.- Section (b) shall take effect as of the date of enactment of this Act.

SEC. 104. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.

(a) IN GENERAL.-Paragraph (3) of section 219(f) of the Internal Revenue Code of 1986 is amended to read as follows:

“(3) TIME WHEN CONTRIBUTIONS MADE.-

“(A) IN GENERAL.-Except as provided in subparagraph (B), for purposes of this subsection, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof) .

“(B) DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.-

“(i) IN GENERAL.-To the extent provided in rules prescribed by the Secretary, a tax refund owed to a taxpayer and paid directly to an individual retirement plan shall be deemed a contribution made by the taxpayer-

“(I) on the last day of the taxable year to which such refund relates, and

“(II) on account of the taxable year to which such refund relates.

“(ii) LIMITATION. -This subparagraph (B) shall not apply to a tax refund unless such refund is shown on a return filed not later than the time prescribed by law for filing the return for the taxable year to which such refund relates (not including extensions thereof).

“(iii) DIRECT PAYMENT.-For purposes of this subparagraph, a tax

refund is paid directly to an individual retirement plan if it is paid in the form of a direct transfer from the Secretary to the trustee or issuer of the individual retirement plan.

“(iv) TAX REFUND.-For purposes of this subparagraph, the term 'tax refund' means a refund of an internal revenue tax or credit.”.

(b) REGULATIONS.-

(1) IN GENERAL.-Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall issue rules which permit a taxpayer-

(A) to elect to have all or any portion of a tax refund owed to the taxpayer paid directly to an individual retirement plan,

(B) to specify the individual retirement plan to which such tax refund is to be paid (and the investment option in which such tax refund is to be invested), and

(C) to the extent provided in rules prescribed by the Secretary, to specify the taxable year on account of which such payment is made,

except that the Secretary may require that the amount subject to such an election exceed a dollar threshold determined by the Secretary as necessary or appropriate to ensure the administrability of such elections.

(2) INFORMATION.-The Secretary may require that the taxpayer provide, and agree to the disclosure of, any information necessary to pay the tax refund to the individual retirement plan specified by the taxpayer.

(3) SPECIAL RULE.-The Secretary may provide that if, for any reason, the trustee or issuer does not accept payment of a tax refund, the tax refund shall instead be paid as if the taxpayer had not elected a direct payment to an individual retirement plan.

(c) CONFORMING AMENDMENTS.-

(1) Paragraph (3) of section 408(o) of the Internal Revenue Code of 1986 is amended by striking “rule” and inserting “rules”.

(2) Paragraph (7) of section 408A(c) of such Code is amended by striking “rule” and inserting “rules” .

(d) EFFECTIVE DATE.-The amendments made by this section shall be effective for tax returns filed after final rules implementing the amendments made by this section are prescribed.

TITLE II – FACILITATING GUARANTEED INCOME FOR LIFE

SEC. 201. EXCLUSION OF CERTAIN QUALIFIED ANNUITY PAYMENTS.

(a) IN GENERAL.-

(1) QUALIFIED PLANS-Subsection (e) of section 402 (relating to exempt trusts) is amended by adding at the end the following new paragraph:

"(7) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS.-

"(A) IN GENERAL.-In the case of a lifetime annuity payment to a qualified distributee from a qualified trust (within the meaning of subsection (c)(8)(A)) maintained in connection with a defined contribution plan, gross income shall not include 10 percent of the amount otherwise includible in gross income (determined without regard to this paragraph). For purposes of this paragraph, payments from an annuity contract distributed by such a qualified trust shall be treated as payments from the qualified trust.

"(B) LIMITATION.-

“(i) IN GENERAL.-With respect to any qualified distributee, subparagraph (A) shall not apply to any lifetime annuity payment to the extent that the portion of such payment includible in gross income, when added to the portion of all previous and simultaneous lifetime annuity payments that was included in gross income and that was paid to such qualified distributee during the taxable year, exceeds 50 percent of the applicable amount for such year under section 415(c)(1)(A). For purposes of the preceding sentence, the portion of lifetime annuity payments includible in gross income shall be determined without regard to subparagraph (A).

"(ii) AGGREGATION RULE.-For purposes of this subparagraph, all lifetime annuity payments received by a qualified distributee shall be taken into account to the extent that such payments are subject to this paragraph or to rules similar to the rules of this paragraph (other than sections 72(b)(5) and 101(d)(4)).

"(C) DEFINITIONS.-For purposes of this paragraph

"(i) LIFETIME ANNUITY PAYMENT.-

"(I) IN GENERAL.-Except as provided in this clause, the term 'lifetime annuity payment' means a distribution from an annuity contract which is a part of a series of substantially equal periodic payments (made not less frequently than annually) made

over the life of the qualified distributee or the joint lives of the qualified distributee and the qualified distributee's designated beneficiary. For purposes of this paragraph, the term "annuity contract" means a commercial annuity (as defined in section 3405(e)(6)), other than an endowment or life insurance contract.

"(II) CERTAIN FLUCTUATING PAYMENTS.-Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments merely because the amount of the periodic payments may vary in accordance with investment experience, reallocations among investment options, actuarial gains or losses, cost of living indices, a constant percentage (not less than zero) applied not less frequently than annually, or similar fluctuating criteria.

"(III) CERTAIN CHANGES IN THE MODE OF PAYMENT.-Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments merely because the period between each such payment is lengthened or shortened, but only if at all times such period is not longer than one year.

"(IV) PERMITTED REDUCTIONS.-Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments merely because, in the case of an annuity payable over the lives of the qualified distributee and the qualified distributee's designated beneficiary, the amounts paid after the death of the qualified distributee or the qualified distributee's designated beneficiary are less than the amounts payable during their joint lives.

"(V) CERTAIN CONTRACT BENEFITS.-The availability of a commutation benefit or other feature permitting acceleration of annuity payments (or a modification of the period during which such a benefit is available), a minimum period of payments certain, or a minimum amount to be paid in any event shall not affect the treatment of a distribution as a lifetime annuity payment.

"(VI) TRUST PAYMENTS.-In the case of lifetime annuity payments being made to a qualified trust, payments by the qualified trust to a qualified distributee of the entire amount received by the qualified trust with respect to the qualified distributee shall constitute lifetime annuity payments if such payments are made within a reasonable period after receipt by the qualified trust.

"(VII) QUALIFIED DOMESTIC RELATIONS ORDERS.-Annuity payments shall not fail to be treated as a series of substantially

equal periodic payments merely because the payments are reduced on account of a qualified domestic relations order (within the meaning of section 414(p)) that becomes effective after the commencement of the annuity payments.

"(ii) QUALIFIED DISTRIBUTE. -The term 'qualified distributee' means the employee, the surviving spouse of the employee, and an alternate payee who is the spouse or former spouse of the employee.

"(D) RECAPTURE TAX.

"(i) IN GENERAL. -If-

"(I) an amount is not includible in gross income by reason of subparagraph (A), and

"(II) the series of payments of which such payment is a part is subsequently modified (other than by reason of death or disability) so that some or all future payments are not lifetime annuity payments, the qualified distributee's gross income for the first taxable year in which such modification occurs shall be increased by an amount, determined under rules prescribed by the Secretary, equal to the amount which (but for subparagraph (A)) would have been includible in the qualified distributee's gross income if the modification had been in effect at all times, plus interest for the deferral period at the underpayment rate established under section 6621.

"(ii) DEFERRAL PERIOD. -For purposes of this subparagraph, the term 'deferral period' means the period beginning with the taxable year in which (without regard to subparagraph (A)) the payment would have been includible in gross income and ending with the taxable year in which the modification described in clause (i)(II) occurs.

"(E) INVESTMENT IN THE CONTRACT. - For purposes of section 72, the investment in the contract shall be determined without regard to this paragraph."

(2) SECTION 403(a) PLANS. -Paragraph (4) of section 403(a) (relating to qualified annuity plans) is amended by adding at the end the following new subparagraph:

"(C) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS. -Rules similar to the rules of section 402(e)(7) shall apply to distributions under any annuity contract to which this subsection applies."

(3) SECTION 403(b) PLANS.-Section 403(b) (relating to purchased annuities) is amended by adding at the end the following new paragraph:

"(14) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS.-Rules similar to the rules of section 402(e)(7) shall apply to distributions under any annuity contract or custodial account to which this subsection applies."

(4) IRAs.-Section 408(d) (relating to tax treatment of distributions) is amended by adding at the end the following new paragraph:

"(8) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS.-Rules similar to the rules of section 402(e)(7) shall apply to distributions out of an individual retirement plan."

(5) SECTION 457 PLANS.-Section 457(e) (relating to special rules for deferred compensation plans) is amended by adding at the end the following new paragraph:

"(18) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS.-Rules similar to the rules of section 402(e)(7) shall apply to distributions from an eligible deferred compensation plan of an eligible employer described in subsection (e)(1)(A)."

(b) EFFECTIVE DATE.-The amendments made by this section shall apply to distributions made after December 31, 2005.

SEC. 202. EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.

(a) LIFETIME ANNUITY PAYMENTS UNDER ANNUITY CONTRACTS.-Section 72(b) of the Internal Revenue Code of 1986 (relating to exclusion ratio) is amended by adding at the end the following new paragraph:

“(5) EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.-

“(A) IN GENERAL.- In the case of lifetime annuity payments received under one or more annuity contracts in any taxable year, gross income shall not include 50 percent of the portion of lifetime annuity payments otherwise includible (without regard to this paragraph) in gross income under this section. For purposes of the preceding sentence, the amount excludable from gross income in any taxable year shall not exceed \$20,000.

“(B) COST-OF-LIVING ADJUSTMENT.- In the case of taxable years beginning after December 31, 2006, the \$20,000 amount in subparagraph

(A) shall be increased by an amount equal to—

`(i) such dollar amount, multiplied by

`(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting `calendar year 2005' for `calendar year 1992' in subparagraph (B) thereof.

If any amount as increased under the preceding sentence is not a multiple of \$500, such amount shall be rounded to the next lower multiple of \$500.

`(C) APPLICATION OF PARAGRAPH.- Subparagraph (A) shall not apply to—

`(i) any amount received under an eligible deferred compensation plan (as defined in section 457(b)) or under a qualified retirement plan (as defined in section 4974(c)),

`(ii) any amount paid under an annuity contract that is received by the beneficiary under the contract—

`(I) after the death of the annuitant in the case of payments described in subsection (c)(5)(A)(ii)(III), unless the beneficiary is the surviving spouse of the annuitant, or

`(II) after the death of the annuitant and joint annuitant in the case of payments described in subsection (c)(5)(A)(ii)(IV), unless the beneficiary is the surviving spouse of the last to die of the annuitant and the joint annuitant, or

`(iii) any annuity contract that is a qualified funding asset (as defined in section 130(d)), but without regard to whether there is a qualified assignment.

`(D) INVESTMENT IN THE CONTRACT.- For purposes of this section, the investment in the contract shall be determined without regard to this paragraph.'.

(b) DEFINITIONS.- Subsection (c) of section 72 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

`(5) LIFETIME ANNUITY PAYMENT.-

`(A) IN GENERAL- For purposes of subsection (b)(5), the term `lifetime annuity payment' means any amount received as an annuity under any portion of an annuity contract, but only if—

`(i) the only person (or persons in the case of payments described in subclause (II) or (IV) of clause (ii)) legally entitled (by operation of the contract, a trust, or other legally enforceable means) to receive such amount during the life of the annuitant or joint annuitant is such annuitant or joint annuitant, and

`(ii) such amount is part of a series of substantially equal periodic payments made not less frequently than annually over—

`(I) the life of the annuitant,

`(II) the lives of the annuitant and a joint annuitant, but only if the annuitant is the spouse of the joint annuitant as of the annuity starting date or the difference in age between the annuitant and joint annuitant is 15 years or less,

`(III) the life of the annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, or

`(IV) the lives of the annuitant and a joint annuitant with a minimum period of payments or with a minimum amount that must be paid in any event, but only if the annuitant is the spouse of the joint annuitant as of the annuity starting date or the difference in age between the annuitant and joint annuitant is 15 years or less.

`(iii) EXCEPTIONS.- For purposes of clause (ii), annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments—

`(I) because the amount of the periodic payments may vary in accordance with investment experience, reallocations among investment options, actuarial gains or losses, cost of living indices, a constant percentage applied not less frequently than annually, or similar fluctuating criteria,

`(II) due to the existence of, or modification of the duration of, a provision in the contract permitting a lump sum withdrawal after the annuity starting date, or

`(III) because the period between each such payment is lengthened or shortened, but only if at all times such period is no longer than one calendar year.

`(B) ANNUITY CONTRACT.- For purposes of subparagraph (A) and subsections (b)(5) and (x), the term `annuity contract' means a commercial annuity (as defined by section 3405(e)(6)), other than an endowment or life insurance contract.

`(C) MINIMUM PERIOD OF PAYMENTS.- For purposes of subparagraph (A), the term `minimum period of payments' means a guaranteed term of payments that does not exceed the greater of 10 years or—

`(i) the life expectancy of the annuitant as of the annuity starting date, in the case of lifetime annuity payments described in subparagraph (A)(ii)(III), or

`(ii) the life expectancy of the annuitant and joint annuitant as of the annuity starting date, in the case of lifetime annuity payments described in subparagraph (A)(ii)(IV).

For purposes of this subparagraph, life expectancy shall be computed with reference to the tables prescribed by the Secretary under paragraph (3). For purposes of subsection (x)(1)(C)(ii), the permissible minimum period of payments shall be determined as of the annuity starting date and reduced by one for each subsequent year.

`(D) MINIMUM AMOUNT THAT MUST BE PAID IN ANY EVENT.- For purposes of subparagraph (A), the term `minimum amount that must be paid in any event' means an amount payable to the designated beneficiary under an annuity contract that is in the nature of a refund and does not exceed the greater of the amount applied to produce the lifetime annuity payments under the contract or the amount, if any, available for withdrawal under the contract on the date of death.'.

(c) RECAPTURE TAX FOR LIFETIME ANNUITY PAYMENTS.- Section 72 of such Code is amended by redesignating subsection (x) as subsection (y) and by inserting after subsection (x) the following new subsection:

`(x) RECAPTURE TAX FOR MODIFICATIONS TO OR REDUCTIONS IN LIFETIME ANNUITY PAYMENTS.-

`(1) IN GENERAL.- If any amount received under an annuity contract is excluded from income by reason of subsection (b)(5) (relating to lifetime annuity payments), and—

`(A) the series of payments under such contract is subsequently modified so any future payments are not lifetime annuity payments,

`(B) after the date of receipt of the first lifetime annuity payment under the contract an annuitant receives a lump sum and thereafter is to receive annuity payments in a reduced amount under the contract, or

`(C) after the date of receipt of the first lifetime annuity payment under the contract the dollar amount of any subsequent annuity payment is reduced and a lump sum is not paid in connection with the reduction, unless such reduction is—

`(i) due to an event described in subsection (c)(5)(A)(iii), or

`(ii) due to the addition of, or increase in, a minimum period of payments within the meaning of subsection (c)(5)(C) or a minimum amount that must be paid in any event (within the meaning of subsection (c)(5)(D)),

then gross income for the first taxable year in which such modification or reduction occurs shall be increased by the recapture amount.

`(2) RECAPTURE AMOUNT.-

`(A) IN GENERAL.- For purposes of this subsection, the recapture amount shall be the amount, determined under rules prescribed by the Secretary, equal to the amount that (but for subsection (b)(5)) would have been includible in the taxpayer's gross income if the modification or reduction described in paragraph (1) had been in effect at all times, plus interest for the deferral period at the underpayment rate established by section 6621.

`(B) DEFERRAL PERIOD.- For purposes of this subsection, the term 'deferral period' means the period beginning with the taxable year in which (without regard to subsection (b)(5)) the payment would have been includible in gross income and ending with the taxable year in which the modification described in paragraph (1) occurs.

`(3) EXCEPTIONS TO RECAPTURE TAX.- Paragraph (1) shall not apply in the case of any modification or reduction that occurs because an annuitant—

`(A) dies or becomes disabled (within the meaning of subsection (m)(7)),

`(B) becomes a chronically ill individual within the meaning of section 7702B(c)(2), or

`(C) encounters hardship.'.

(d) LIFETIME DISTRIBUTIONS OF LIFE INSURANCE DEATH BENEFITS.-

(1) IN GENERAL.- Section 101(d) of such Code (relating to payment of life insurance proceeds at a date later than death) is amended by adding at the end the following new paragraph:

`(4) EXCLUSION FOR LIFETIME ANNUITY PAYMENTS.-

`(A) IN GENERAL.- In the case of amounts to which this subsection applies, gross income shall not include the lesser of—

`(i) 50 percent of the portion of lifetime annuity payments otherwise includible in gross income under this section (determined without regard to this paragraph), or

`(ii) the amount in effect under section 72(b)(5).

`(B) RULES OF SECTION 72(b)(5) TO APPLY.- For purposes of this paragraph, rules similar to the rules of section 72(b)(5) and section 72(x) shall apply, substituting the term `beneficiary of the life insurance contract' for the term `annuitant' wherever it appears, and substituting the term `life insurance contract' for the term `annuity contract' wherever it appears.'.

(2) CONFORMING AMENDMENT.- Section 101(d)(1) of such Code is amended by inserting `or paragraph (4)' after `to the extent not excluded by the preceding sentence'.

(e) EFFECTIVE DATE.-

(1) IN GENERAL.- The amendments made by this section shall apply to amounts received in calendar years beginning after the date of the enactment of this Act.

(2) SPECIAL RULE FOR EXISTING CONTRACTS.- In the case of a contract in force on the date of the enactment of this Act that does not satisfy the requirements of section 72(c)(5)(A) of the Internal Revenue Code of 1986 (as added by this section), or requirements similar to such section 72(c)(5)(A) in the case of a life insurance contract, any modification to such contract (including a change in ownership) or to the payments thereunder that is made to satisfy the requirements of such section (or similar requirements) shall not result in the

recognition of any gain or loss, any amount being included in gross income, or any addition to tax that otherwise might result from such modification, but only if the modification is completed prior to the date that is 2 years after the date of the enactment of this Act.

SEC. 203. FACILITATION UNDER FIDUCIARY RULES OF CERTAIN ROLLOVERS AND ANNUITY DISTRIBUTIONS.

(a) IN GENERAL.-Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.1104(c)), as amended by this Act, is amended by adding at the end the following new paragraph:

"(6)(A) In the case of an individual account plan which makes a transfer under section 401(a)(31)(A) of the Internal Revenue Code of 1986 to an individual retirement plan (as defined in section 7701(a)(37) of such Code) in connection with a participant or beneficiary or makes a distribution to a participant or beneficiary of an annuity contract described in subparagraph (B), the participant or beneficiary shall, for purposes of paragraph (1), be treated as exercising control over the transfer or distribution if-

"(i) the participant or beneficiary elected such transfer or distribution, and

"(ii) except as otherwise provided by the Secretary, in connection with such election, the participant or beneficiary was given an opportunity to designate any other individual retirement plan (in the case of a transfer) or any other annuity contract described in subparagraph (B) (in the case of a distribution).

"(B) An annuity contract is described in this subparagraph if it provides, either on an immediate or deferred basis, a series of substantially equal periodic payments (not less frequently than annually) for the life of the participant or beneficiary or the joint lives of the participant or beneficiary and such individual's designated beneficiary. Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments merely because the amount of the periodic payments may vary in accordance with investment experience, reallocations among investment options, actuarial gains or losses, cost of living indices, a constant percentage (not less than zero) applied not less frequently than annually, or similar fluctuating criteria. Annuity payments shall not fail to be treated as part of a series of substantially equal periodic payments merely because the period between each such payment is lengthened or shortened, but only if at all times such period is not longer than one year. The availability of a commutation benefit or other feature permitting acceleration of annuity payments (or a modification of the period during which such a benefit is available), a minimum period of payments certain, or a minimum amount to be paid in any event shall not affect the treatment of an annuity contract as an annuity contract described in this subparagraph.

"(C) Under regulations prescribed by the Secretary, this paragraph shall apply without regard to whether the particular individual retirement plan receiving the transfer or the particular annuity contract being distributed is specifically identified by the individual account plan as available to the participant or beneficiary.

"(D) Notwithstanding the preceding provisions of this paragraph, paragraph (1)(B) shall not apply with respect to liability under section 406 in connection with the specific identification of any individual retirement plan or annuity contract as being available to the participant or beneficiary."

(b) EFFECTIVE DATE AND RELATED RULES.

(1) EFFECTIVE DATE.-The amendment made by this section shall take effect on the date of the enactment of this Act.

(2) ISSUANCE OF FINAL REGULATIONS.-Final regulations under section 404(c)(6) of the Employee Retirement Income Security Act of 1974 (added by this section) shall be issued no later than 1 year after the date of the enactment of this Act.

SEC. 204. CLARIFICATION OF TREATMENT OF DISTRIBUTIONS OF ANNUITY CONTRACTS.

(a) IN GENERAL.- Clause (i) of section 402(e)(4)(D) is amended by adding after "section 401(c)(1)." the following: "A distribution of an annuity contract from a trust or annuity plan referred to in the first sentence of this clause may be treated as a part of a lump sum distribution."

(b) EFFECTIVE DATE.- The amendment made by this section shall take effect as if included in section 1401(b)(1) of the Small Business Job Protection Act of 1996.

TITLE III – SIMPLIFICATION AND EQUITY

SEC. 301. CLARIFICATION OF TREATMENT OF INDIAN TRIBAL GOVERNMENTS.

(a) DEFINITION OF GOVERNMENTAL PLAN.-

(1) AMENDMENT TO INTERNAL REVENUE CODE OF 1986.- Section 414(d) of the Internal Revenue Code of 1986 (definition of governmental plan) is amended by adding at the end the following: 'The term `governmental plan' includes a plan established or maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40)), a subdivision of an Indian tribal government (determined in accordance with section 7871(d)), an agency or instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law which is wholly owned or controlled by any of the foregoing.'

(2) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.- Section 3(32) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(32)) is amended by adding at the end the following: 'The term `governmental plan' includes a plan established or maintained for its employees by an

Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality (or subdivision) of an Indian tribal government, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.'

**(b) EXTENSION TO ALL GOVERNMENTAL PLANS OF CURRENT
MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES
APPLICABLE TO STATE AND LOCAL PLANS.-**

(1) IN GENERAL.-

(1) Subparagraph (G) of section 401(a)(5) and subparagraph (G) of section 401(a)(26) of such Code are each amended by striking 'section 414(d))' and all that follows and inserting 'section 414(d)).'.

(2) Subparagraph (G) of section 401(k)(3) of such Code and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 (Public Law 105-34; 111 Stat. 1063) are each amended by striking 'maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)'.

(2) CONFORMING AMENDMENTS.-

(1) The heading of subparagraph (G) of section 401(a)(5) of such Code is amended by striking 'STATE AND LOCAL GOVERNMENTAL' and inserting 'GOVERNMENTAL'.

(2) The heading of subparagraph (G) of section 401(a)(26) of such Code is amended by striking 'EXCEPTION FOR STATE AND LOCAL' and inserting 'EXCEPTION FOR'.

(3) Section 401(k)(3)(G) of such Code is amended by inserting 'GOVERNMENTAL PLANS.- ' after '(G)'.

**(c) CLARIFICATION THAT TRIBAL GOVERNMENTS ARE SUBJECT TO THE
SAME PLAN RULES AND REGULATIONS APPLIED TO STATE AND OTHER LOCAL
GOVERNMENTS, THEIR POLICE AND FIREFIGHTERS.-**

(1) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.-

(A) POLICE AND FIREFIGHTERS.- Subparagraph (H) of section 415(b)(2) of such Code (defining participant) is amended—

(i) in clause (i), by striking 'State or political subdivision' and inserting 'State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision'; and

(ii) in clause (ii)(I), by striking 'State or political subdivision' each place it appears and inserting 'State, Indian tribal government (as so defined), or any political subdivision'.

(B) STATE AND LOCAL GOVERNMENT PLANS.-

(i) IN GENERAL.- Subparagraph (A) of section 415(b)(10) of such Code (relating to limitation to equal accrued benefit) is amended—

(I) by inserting ', Indian tribal government (as defined in section 7701(a)(40)),' after 'State';

(II) by inserting 'any' before 'political subdivision'; and

(III) by inserting 'any of' before 'the foregoing'.

(ii) CONFORMING AMENDMENT.- The heading of paragraph (10) of section 415(b) of such Code is amended by striking 'SPECIAL RULE FOR STATE AND' and inserting 'SPECIAL RULE FOR STATE, INDIAN TRIBAL, AND'.

(C) GOVERNMENT PICK UP CONTRIBUTIONS.- Paragraph (2) of section 414(h) of such Code (relating to designation by units of government) is amended by striking 'State or political subdivision' and inserting 'State, Indian tribal government (as defined in section 7701(a)(40)), or any political subdivision'.

(2) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.- Section 4021(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321(b)) is amended—

(1) in paragraph (12), by striking 'or' at the end;

(2) in paragraph (13), by striking 'plan.' and inserting 'plan; or'; and

(3) by adding at the end the following:

'(14) established and maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section 7871(d) of such Code), an agency or instrumentality of an Indian

tribal government or subdivision thereof, or an entity established under Federal, State, or tribal law that is wholly owned or controlled by any of the foregoing.'.

(d) EFFECTIVE DATE.-The amendments made by this section shall apply to any year beginning before, on, or after the date of the enactment of this Act.

SEC. 302. EXCESS CONTRIBUTIONS.

(a) EXPANSION OF CORRECTIVE DISTRIBUTION PERIOD.—Subsection (f) of section 4979 of the Internal Revenue Code of 1986 is amended—

(1) in paragraph (1) by striking “2½ months” and inserting “6 months”, and

(2) in the heading by striking “2½ MONTHS” and inserting “6 MONTHS”.

(b) YEAR OF INCLUSION.-Paragraph (2) of section 4979(f) of such Code is amended to read as follows:

“(2) YEAR OF INCLUSION.-Any amount distributed as provided in paragraph (1) shall be treated as earned and received by the recipient in his taxable year in which such distributions were made.”.

(c) SIMPLIFICATION OF ALLOCABLE EARNINGS. —

(1) SECTION 4979.-Subsection (f) of section 4979 of such Code is amended—

(A) in paragraph (1) by adding “through the end of the plan year for which the contribution was made” after “thereto”, and

(B) in clause (2)(B) by adding “through the end of the plan year for which the contributions were made” after “thereto”.

(2) SECTION 401(k) AND 401(m).-

(A) Clause (i) of section 401(k)(8)(A) is amended by adding “through the end of such year” after “such contributions”.

(B) Subparagraph (A) of section 401(m)(6) of such Code is amended by adding “through the end of such year” after “to such contributions”.

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

SEC. 303. FIDUCIARY RELIEF IN CONNECTION WITH CHANGE IN INVESTMENT OPTIONS.

(a) IN GENERAL.- Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(1)), as amended by this Act, is amended by adding at the end the following new paragraph:

(7) In the case of a change in the investment options under a plan, a participant or beneficiary shall be deemed to have exercised control over the assets in his or her account, if , after reasonable notice of the change in investment options is given to such participant or beneficiary, assets in the account of the participant or beneficiary are transferred-

(A) to plan investment options in accordance with the affirmative election of the participant or beneficiary which otherwise meets the conditions of this subsection; or

(B) in the absence of such an election and in the case in which fiduciary relief was provided under this subsection for the prior investment options,

(i) to plan investment options with reasonably comparable risk and return characteristics, and

(ii) in accordance with procedures set forth in such notice.

(b) EFFECTIVE DATE.- The amendment made by this section shall take effect as of the date of enactment of this Act.