

112TH CONGRESS
2D SESSION

H. R. 4050

To simplify and enhance qualified retirement plans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2012

Mr. NEAL 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 simplify and enhance qualified retirement plans, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CON-**
4 **TENTS.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Retirement Plan Simplification and Enhancement Act of
7 2012”.

8 (b) AMENDMENT OF 1986 CODE.—Except as other-
9 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
 2 to, or repeal of, a section or other provision, the reference
 3 shall be considered to be made to a section or other provi-
 4 sion of the Internal Revenue Code of 1986.

5 (c) TABLE OF CONTENTS.—The table of contents of
 6 this Act is as follows:

Sec. 1. Short title; reference; table of contents.

TITLE I—EXPANDING COVERAGE AND INCREASING RETIREMENT SAVINGS

Sec. 101. Modification of Automatic Enrollment Safe Harbor.

Sec. 102. Qualified cash or deferred arrangements must allow long-term employees working more than 500 but less than 1,000 hours per year to participate.

Sec. 103. Separate application of top heavy rules to defined contribution plans covering part-time employees.

TITLE II—ENCOURAGING SMALL BUSINESSES TO ENTER AND REMAIN IN THE EMPLOYER RETIREMENT PLAN SYSTEM

Sec. 201. Enhancement of credit for small employer pension plan startup costs.

Sec. 202. Eliminating barriers to use of multiple employer plans.

TITLE III—PRESERVATION OF INCOME

Sec. 301. Study of application of spousal consent rules to defined contribution plans.

Sec. 302. Administration of joint and survivor annuity requirements.

Sec. 303. Availability of distribution options.

Sec. 304. Rollover of insurance contracts to IRAs.

Sec. 305. Portability of lifetime income options.

TITLE IV—SIMPLIFICATION AND CLARIFICATION OF QUALIFIED RETIREMENT PLAN RULES

Sec. 401. Exception from required distributions where aggregate retirement savings do not exceed \$100,000.

Sec. 402. Alternative methods for electronic disclosure.

Sec. 403. Expansion of Employee Plans Compliance Resolution System.

Sec. 404. Use of forfeitures to fund safe harbor contributions.

Sec. 405. Substantial cessation of operations.

Sec. 406. Church plan clarification.

Sec. 407. Protecting older, longer service participants.

Sec. 408. Review and report to the Congress relating to reporting and disclosure requirements.

Sec. 409. Consolidation of defined contribution plan notices.

1 **TITLE I—EXPANDING COVERAGE**
2 **AND INCREASING RETIRE-**
3 **MENT SAVINGS**

4 **SEC. 101. MODIFICATION OF AUTOMATIC ENROLLMENT**
5 **SAFE HARBOR.**

6 (a) IN GENERAL.—

7 (1) REMOVAL OF 10 PERCENT CAP.—Clause
8 (iii) of section 401(k)(13)(C) is amended by striking
9 “, does not exceed 10 percent, and is at least” and
10 inserting “and is”.

11 (2) CONFORMING AMENDMENTS.—

12 (A) Subclause (I) of section
13 401(k)(13)(C)(iii) is amended by striking “3
14 percent” and inserting “at least 3 percent, but
15 not greater than 10 percent,”.

16 (B) Subclause (II) of section
17 401(k)(13)(C)(iii) is amended by striking “4
18 percent” and inserting “at least 4 percent”.

19 (C) Subclause (III) of section
20 401(k)(13)(C)(iii) is amended by striking “5
21 percent” and inserting “at least 5 percent”.

22 (D) Subclause (IV) of section
23 401(k)(13)(C)(iii) is amended by striking “6
24 percent” and inserting “at least 6 percent”.

1 (b) REGULATIONS.—Subparagraph (C) of section
2 401(k)(13) is amended by adding at the end thereof the
3 following new clause:

4 “(v) REGULATIONS.—

5 “(I) IN GENERAL.—The Sec-
6 retary may prescribe regulations that
7 increase the percentages referenced in
8 subclauses (I)–(IV) of clause (iii), ex-
9 cept that no percentage may be in-
10 creased by more than 8 percentage
11 points and each such percentage may
12 be increased by the same or different
13 amounts or not increased. In deter-
14 mining whether and how to exercise
15 this authority, the Secretary may con-
16 sider all relevant factors, including—

17 “(aa) the extent to which
18 such increases would directly re-
19 sult in more retirement savings
20 by participants in arrangements
21 described in this paragraph, re-
22 sulting in higher level of retire-
23 ment income for participants,

24 “(bb) the extent to which
25 such increases would result in

1 more retirement savings by rea-
2 son of communicating to employ-
3 ers and employees the importance
4 of saving more than the percent-
5 ages referenced in such sub-
6 clauses (without regard to this
7 clause),

8 “(cc) the extent to which in-
9 creases that are too large could
10 result in fewer employers adopt-
11 ing arrangements described in
12 this paragraph for any reason,
13 including the possible increase in
14 employer cost due to increased
15 matching contributions,

16 “(dd) the extent to which in-
17 creases that are too large could
18 result in more employees making
19 elections described in clause
20 (ii)(I), and

21 “(ee) the extent to which
22 any such increases would in-
23 crease administrative burdens
24 and complexity, and how the in-
25 creases can be structured to min-

1 imize such burdens and com-
2 plexity.

3 “(II) CLARIFICATIONS.—Any
4 such regulation shall clarify that—

5 “(aa) the percentages ref-
6 erenced in subclauses (I) through
7 (IV) of clause (iii) are minimums,

8 “(bb) with respect to an ar-
9 rangement, one or more of such
10 percentages may be set at higher
11 levels, except as provided in
12 clause (iii)(I), and

13 “(cc) there need not be a
14 uniform disparity between such
15 higher levels and the levels ref-
16 erenced in subclauses (I)–(IV) of
17 clause (iii).”.

18 (c) EFFECTIVE DATES.—

19 (1) SUBSECTION (a).—The amendments made
20 by subsection (a) shall apply to plan years beginning
21 after the date of the enactment of this Act.

22 (2) SUBSECTION (b).—Any regulations pre-
23 scribed pursuant to the amendment made by sub-
24 section (b) shall apply to arrangements first estab-
25 lished for plan years beginning at least six months

1 after publication of such regulations, or for such
2 later plan years determined under such regulations.

3 **SEC. 102. QUALIFIED CASH OR DEFERRED ARRANGEMENTS**
4 **MUST ALLOW LONG-TERM EMPLOYEES**
5 **WORKING MORE THAN 500 BUT LESS THAN**
6 **1,000 HOURS PER YEAR TO PARTICIPATE.**

7 (a) PARTICIPATION REQUIREMENT.—

8 (1) IN GENERAL.—Subparagraph (D) of section
9 401(k)(2) (defining qualified cash or deferred ar-
10 rangement) is amended to read as follows:

11 “(D) which does not require, as a condi-
12 tion of participation in the arrangement, that
13 an employee complete a period of service with
14 the employer (or employers) maintaining the
15 plan extending beyond the close of the earlier
16 of—

17 “(i) the period permitted under sec-
18 tion 410(a)(1) (determined without regard
19 to subparagraph (B)(i) thereof), or

20 “(ii) subject to the provisions of para-
21 graph (14), the first period of 3 consecu-
22 tive 12-month periods during each of which
23 the employee has at least 500 hours of
24 service.”.

1 (2) SPECIAL RULES.—Section 401(k) (relating
2 to cash or deferred arrangements), as amended by
3 section 902 of the Pension Protection Act of 2006,
4 is amended by adding at the end the following new
5 paragraph:

6 “(14) SPECIAL RULES FOR PARTICIPATION RE-
7 QUIREMENT FOR LONG-TERM, PART-TIME WORK-
8 ERS.—For purposes of paragraph (2)(D)(ii)—

9 “(A) AGE REQUIREMENT MUST BE MET.—

10 Paragraph (2)(D)(ii) shall not apply to an em-
11 ployee unless the employee has met the require-
12 ment of section 410(a)(1)(A)(i) by the close of
13 the last of the 12-month periods described in
14 such paragraph.

15 “(B) NONDISCRIMINATION AND TOP-
16 HEAVY RULES NOT TO APPLY.—

17 “(i) NONDISCRIMINATION RULES.—In
18 the case of employees who are eligible to
19 participate in the arrangement solely by
20 reason of paragraph (2)(D)(ii)—

21 “(I) notwithstanding subsection
22 (a)(4), an employer shall not be re-
23 quired to make nonelective or match-
24 ing contributions on behalf of such
25 employees even if such contributions

1 are made on behalf of other employees
2 eligible to participate in the arrange-
3 ment, and

4 “(II) an employer may elect to
5 exclude such employees from the ap-
6 plication of subsection (a)(4), para-
7 graph (3), subsection (m)(2), and sec-
8 tion 410(b).

9 “(ii) TOP-HEAVY RULES.—An em-
10 ployer may elect to exclude all employees
11 who are eligible to participate in a plan
12 maintained by the employer solely by rea-
13 son of paragraph (2)(D)(ii) from the appli-
14 cation of the vesting and benefit require-
15 ments under subsections (b) and (c) of sec-
16 tion 416.

17 “(iii) VESTING.—For purposes of de-
18 termining whether an employee described
19 in clause (i) has a nonforfeitable right to
20 employer contributions (other than con-
21 tributions described in paragraph
22 (3)(D)(i)) under the arrangement, each
23 12-month period for which the employee
24 has at least 500 hours of service shall be
25 treated as a year of service.

1 “(iv) EMPLOYEES WHO BECOME
2 FULL-TIME EMPLOYEES.—This subpara-
3 graph shall cease to apply to any employee
4 as of the first plan year beginning after
5 the plan year in which the employee meets
6 the requirements of section
7 410(a)(1)(A)(ii) without regard to para-
8 graph (2)(D)(ii).

9 “(C) EXCEPTION FOR EMPLOYEES UNDER
10 COLLECTIVELY BARGAINED PLANS, ETC.—Para-
11 graph (2)(D)(ii) shall not apply to employees
12 described in section 410(b)(3).

13 “(D) SPECIAL RULES.—

14 “(i) TIME OF PARTICIPATION.—The
15 rules of section 410(a)(4) shall apply to an
16 employee eligible to participate in an ar-
17 rangement solely by reason of paragraph
18 (2)(D)(ii).

19 “(ii) 12-MONTH PERIODS.—12-month
20 periods shall be determined in the same
21 manner as under the last sentence of sec-
22 tion 410(a)(3)(A).”.

23 (b) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to plan years beginning after De-
25 cember 31, 2012, except that, for purposes of section

1 401(k)(2)(D)(ii) of the Internal Revenue Code of 1986 (as
2 added by such amendments), 12-month periods beginning
3 before January 1, 2013, shall not be taken into account.

4 **SEC. 103. SEPARATE APPLICATION OF TOP HEAVY RULES**
5 **TO DEFINED CONTRIBUTION PLANS COV-**
6 **ERING PART-TIME EMPLOYEES.**

7 (a) IN GENERAL.—Paragraph (2) of section 416(c)
8 is amended by adding at the end the following:

9 “(C) SEPARATE APPLICATION TO EMPLOY-
10 EES NOT MEETING AGE AND SERVICE REQUIRE-
11 MENTS.—If employees not meeting the age or
12 service requirements of section 410(a)(1) (with-
13 out regard to subparagraph (B) thereof) are
14 covered under a plan of the employer which
15 meets the requirements of paragraphs (A) and
16 (B) separately with respect to such employees,
17 such employees may be excluded from consider-
18 ation in determining whether any plan of the
19 employer meets the requirements of subpara-
20 graphs (A) and (B).”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall apply to plan years beginning after
23 the date of the enactment of this Act.

1 **TITLE II—ENCOURAGING SMALL**
2 **BUSINESSES TO ENTER AND**
3 **REMAIN IN THE EMPLOYER**
4 **RETIREMENT PLAN SYSTEM**

5 **SEC. 201. ENHANCEMENT OF CREDIT FOR SMALL EM-**
6 **PLOYER PENSION PLAN STARTUP COSTS.**

7 (a) IN GENERAL.—Section 45E(b)(1) is amended by
8 striking “\$500” and inserting “\$1,500”.

9 (b) EFFECTIVE DATE.—The amendment made by
10 subsection (a) shall apply to taxable years beginning after
11 December 31, 2012.

12 **SEC. 202. ELIMINATING BARRIERS TO USE OF MULTIPLE**
13 **EMPLOYER PLANS.**

14 By December 31, 2012, the Secretaries of the Treas-
15 ury and Labor shall—

16 (1) prescribe administrative guidance estab-
17 lishing conditions under which an employer partici-
18 pating in a plan described in section 413(c) of the
19 Internal Revenue Code of 1986 shall not have any
20 liability under title I of the Employee Retirement In-
21 come Security Act of 1974 with respect to the acts
22 or omissions of one or more other participating em-
23 ployers, which regulations may require that the por-
24 tion of the plan attributable to such participating

1 employers be spun off to plans maintained by such
2 employers,

3 (2) prescribe administrative guidance estab-
4 lishing conditions under which a plan described in
5 section 413(c) of such Code may be treated as satis-
6 fying the qualification requirements of sections
7 401(a) and 413(c) of such Code despite the violation
8 of such requirements by one or more participating
9 employers, including requiring, if appropriate, that
10 the portion of the plan attributable to such partici-
11 pating employers be spun off to plans maintained by
12 such employers, and

13 (3) prescribe administrative guidance providing
14 simplified means by which plans described in section
15 413(c) of such Code may satisfy the requirements of
16 section 103 of the Employee Retirement Income Se-
17 curity Act of 1974.

18 **TITLE III—PRESERVATION OF** 19 **INCOME**

20 **SEC. 301. STUDY OF APPLICATION OF SPOUSAL CONSENT** 21 **RULES TO DEFINED CONTRIBUTION PLANS.**

22 (a) STUDY.—The Government Accountability Office
23 shall conduct a study of the feasibility and desirability of
24 extending the application of the requirements of section
25 205 of the Employee Retirement Income Security Act of

1 1974 and sections 401(a)(11) and 417 of the Internal
2 Revenue Code of 1986 (relating to spousal consent re-
3 quirements) to defined contribution plans to which such
4 requirements do not apply. Such study shall include con-
5 sideration of any modifications of such requirements that
6 are necessary to apply such requirements to such plans.

7 (b) REPORT.—Not later than 1 year after the date
8 of the enactment of this Act, the Government Account-
9 ability Office shall report the results of the study, together
10 with any recommendations for legislative changes, to the
11 Committees on Finance and Health, Education, Labor,
12 and Pensions of the Senate and the Committees on Ways
13 and Means and Education and the Workforce of the
14 House of Representatives.

15 **SEC. 302. ADMINISTRATION OF JOINT AND SURVIVOR AN-**
16 **NNUITY REQUIREMENTS.**

17 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
18 INCOME SECURITY ACT OF 1974.—

19 (1) IN GENERAL.—Section 402(c) of the Em-
20 ployee Retirement Income Security Act of 1974 (29
21 U.S.C. 1102(c)) is amended—

22 (A) in paragraph (2) by striking “or” at
23 the end,

24 (B) in paragraph (3) by striking the period
25 at the end and inserting “; or”, and

1 (C) by adding at the end the following new
2 paragraph:

3 “(4) that a named fiduciary, or a fiduciary des-
4 igned by a named fiduciary pursuant to a plan
5 procedure described in section 405(e), may appoint
6 an annuity administrator or administrators with re-
7 sponsibility for administration of an individual ac-
8 count plan in accordance with the requirements of
9 section 205 and payment of any annuity required
10 thereunder.”.

11 (2) Section 405 of such Act (29 U.S.C. 1105)
12 is amended by adding at the end the following new
13 subsection:

14 “(e) ANNUITY ADMINISTRATOR.—If an annuity ad-
15 ministrator or administrators have been appointed under
16 section 402(c)(4) and such entity acknowledges in writing
17 that they are the annuity administrator, then neither the
18 named fiduciary nor any appointing fiduciary shall be lia-
19 ble for any act or omission of the annuity administrator
20 except to the extent that—

21 “(1) the fiduciary violated section 404(a)(1)—

22 “(A) with respect to such allocation or des-
23 ignation, or

24 “(B) in continuing the allocation or des-
25 ignation,

1 “(2) the fiduciary would otherwise be liable in
2 accordance with subsection (a), or

3 “(3) the fiduciary is neither an insurance com-
4 pany nor approved to be an annuity administrator
5 by the Secretary.”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 subsection (a) shall apply as of the date of enactment of
8 this Act.

9 **SEC. 303. AVAILABILITY OF DISTRIBUTION OPTIONS.**

10 (a) LIFETIME INCOME INVESTMENTS.—By the date
11 that is one year after the date of enactment of this Act,
12 the Secretary of the Treasury shall issue final regulations
13 under which it is clarified that any specified age or service
14 condition (or combination of age and service conditions)
15 with respect to a lifetime income investment (as defined
16 in section 401(a)(38)(B)(ii)) under a defined contribution
17 plan shall be disregarded in determining whether such life-
18 time income investment is currently available to an em-
19 ployee for purposes of Treasury Regulation section
20 1.401(a)(4)–4(b) (or any successor provision).

21 (b) ENFORCEMENT.—As of the date of enactment of
22 this Act, the Secretary of the Treasury shall administer
23 and enforce the law in accordance with subsection (a) with
24 respect to plan years beginning before, on, or after the
25 date of enactment of this Act.

1 (c) EFFECTIVE DATE.—This section shall take effect
2 as of the date of enactment of this Act.

3 **SEC. 304. ROLLOVER OF INSURANCE CONTRACTS TO IRAS.**

4 (a) IN GENERAL.—Section 408(a)(3) is amended by
5 inserting “other than insurance contracts that were rolled
6 over to an IRA from a qualified retirement plan described
7 in clause (iii), (iv), or (vi) of section 402(c)(8)(b) provided
8 that such contracts provide only incidental death benefits
9 taking into account both the IRA and the qualified retire-
10 ment plan” after “contract”.

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall apply to years beginning after Decem-
13 ber 31, 2012.

14 **SEC. 305. PORTABILITY OF LIFETIME INCOME OPTIONS.**

15 (a) IN GENERAL.—Subsection (a) of section 401 of
16 the Internal Revenue Code of 1986 is amended by adding
17 at the end thereof the following new paragraph:

18 “(38) PORTABILITY OF LIFETIME INCOME.—

19 “(A) IN GENERAL.—A trust forming part
20 of a defined contribution plan shall not be
21 treated as failing to constitute a qualified trust
22 under this section solely by reason of allowing—

23 “(i) qualified distributions of a life-
24 time income investment, or

1 “(ii) distributions of a lifetime income
2 investment in the form of a qualified plan
3 distribution annuity contract,
4 on or after the date that is 90 days prior to the
5 date on which such lifetime income investment
6 is no longer authorized to be held as an invest-
7 ment option under the plan except as may oth-
8 erwise be provided by regulations.

9 “(B) DEFINITIONS.—For purposes of this
10 subsection—

11 “(i) the term ‘qualified distribution’
12 means a direct trustee-to-trustee transfer
13 to an eligible retirement plan (as defined
14 in section 402(c)(8)(B)), as described in
15 section 401(a)(31)(A),

16 “(ii) the term ‘lifetime income invest-
17 ment’ means an investment option that is
18 designed to provide an employee with elec-
19 tion rights—

20 “(I) that are not uniformly avail-
21 able with respect to other investment
22 options under the plan, and

23 “(II) that are to a lifetime in-
24 come feature available through a con-
25 tract or other arrangement offered

1 under the plan or under another eligi-
2 ble retirement plan (as defined in sec-
3 tion 402(c)(8)(B)) through a direct
4 trustee-to-trustee transfer to such
5 other eligible retirement plan under
6 section 401(a)(31)(A),

7 “(iii) the term ‘lifetime income fea-
8 ture’ means—

9 “(I) a feature that guarantees a
10 minimum level of income annually (or
11 more frequently) for at least the re-
12 mainder of the life of the employee or
13 the joint lives of the employee and the
14 employee’s designated beneficiary, or

15 “(II) an annuity payable on be-
16 half of the employee under which pay-
17 ments are made in substantially equal
18 periodic payments (not less frequently
19 than annually) over the life of the em-
20 ployee or the joint lives of the em-
21 ployee and the employee’s designated
22 beneficiary, taking into account the
23 rules of clause (iii) of section
24 401(a)(9)(I), and

1 “(iv) the term ‘qualified plan distribu-
2 tion annuity contract’ means an annuity
3 contract purchased for a participant and
4 distributed to the participant by a plan de-
5 scribed in subparagraph (B) of section
6 402(c)(8) (without regard to clauses (i)
7 and (ii) thereof).”.

8 (b) CASH OR DEFERRED ARRANGEMENT.—Clause (i)
9 of section 401(k)(2)(B) of such Code is amended by strik-
10 ing “or” at the end of subclause (IV), by striking “and”
11 at the end of subclause (V) and inserting “or”, and by
12 adding at the end of clause (i) the following:

13 “(VI) with respect to amounts in-
14 vested in a lifetime income investment
15 (as defined in section
16 401(a)(38)(B)(ii)), the date that is 90
17 days prior to the date that such life-
18 time income investment may no longer
19 be held as an investment option under
20 the plan, provided that any distribu-
21 tion under this subclause must be in
22 the form of a qualified distribution (as
23 defined in section 401(a)(38)(B)(i))
24 or a qualified plan distribution annu-

1 ity contract (as defined in section
2 401(a)(38)(B)(iv)).”.

3 (c) SECTION 403(b) PLANS.—

4 (1) ANNUITY CONTRACTS.—Paragraph (11) of
5 section 403 of such Code is amended by striking
6 “or” at the end of subparagraph (B), by striking the
7 period at the end of subparagraph (C), and by in-
8 serting “, or”, and by adding at the end of para-
9 graph (11) the following:

10 “(D) with respect to amounts invested in a
11 lifetime income investment (as defined in sec-
12 tion 401(a)(38)(B)(ii)), the date that is 90 days
13 prior to the date that such lifetime income in-
14 vestment may no longer be held as an invest-
15 ment option under the plan, provided that any
16 distribution under this subparagraph must be
17 in the form of a qualified distribution (as de-
18 fined in section 401(a)(38)(B)(i)) or a qualified
19 plan distribution annuity contract (as defined in
20 section 401(a)(38)(B)(iv)).”.

21 (2) CUSTODIAL ACCOUNTS.—Clause (ii) of sec-
22 tion 403(b)(7)(A) of such Code is amended to read
23 as follows:

24 “(ii) under the custodial account, no
25 such amounts may be paid or made avail-

1 able to any distributee (unless such
2 amount is a distribution to which section
3 72(t)(2)(G) applies) before—

4 “(I) the employee dies,

5 “(II) the employee attains age
6 59½,

7 “(III) the employee has a sever-
8 ance from employment,

9 “(IV) the employee becomes dis-
10 abled (within the meaning of section
11 72(m)(7)),

12 “(V) in the case of contributions
13 made pursuant to a salary reduction
14 agreement (within the meaning of sec-
15 tion 3121(a)(5)(D)), the employee en-
16 counters financial hardship, or

17 “(VI) with respect to amounts in-
18 vested in a lifetime income investment
19 (as defined in section
20 401(a)(38)(B)(ii)), the date that is 90
21 days prior to the date that such life-
22 time income investment may no longer
23 be held as an investment option under
24 the plan, provided that any distribu-
25 tion under this subparagraph must be

1 in the form of a qualified distribution
2 (as defined in section
3 401(a)(38)(B)(i)) or a qualified plan
4 distribution annuity contract (as de-
5 fined in section 401(a)(38)(B)(iv)).”.

6 (d) ELIGIBLE DEFERRED COMPENSATION PLANS.—
7 Subparagraph (A) of section 457(d)(1) of such Code is
8 amended by striking “or” at the end of clause (ii), by in-
9 serting “or” at the end of clause (iii), and by adding at
10 the end of subparagraph (A) the following:

11 “(iv) with respect to amounts invested
12 in a lifetime income investment (as defined
13 in section 401(a)(38)(B)(ii)), the date that
14 is 90 days prior to the date that such life-
15 time income investment may no longer be
16 held as an investment option under the
17 plan, provided that any distribution under
18 this subparagraph must be in the form of
19 a qualified distribution (as defined in sec-
20 tion 401(a)(38)(B)(i)) or a qualified plan
21 distribution annuity contract (as defined in
22 section 401(a)(38)(B)(iv)).”.

23 (e) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to plan years beginning after De-
25 cember 31, 2012.

1 **TITLE IV—SIMPLIFICATION AND**
2 **CLARIFICATION OF QUALI-**
3 **FIED RETIREMENT PLAN**
4 **RULES**

5 **SEC. 401. EXCEPTION FROM REQUIRED DISTRIBUTIONS**
6 **WHERE AGGREGATE RETIREMENT SAVINGS**
7 **DO NOT EXCEED \$100,000.**

8 (a) IN GENERAL.—Section 401(a)(9) (relating to re-
9 quired distributions) is amended by adding at the end the
10 following new subparagraph:

11 “(J) EXCEPTION FROM REQUIRED MIN-
12 IMUM DISTRIBUTIONS DURING LIFE OF EM-
13 PLOYEE OR BENEFICIARY WHERE ASSETS DO
14 NOT EXCEED \$100,000.—

15 “(i) IN GENERAL.—If, as of a meas-
16 urement date, the aggregate balance to the
17 credit of an employee under all applicable
18 eligible retirement plans does not exceed
19 \$100,000, then the requirements of sub-
20 paragraph (A) shall not apply to the em-
21 ployee during any succeeding calendar
22 year. In addition, if, as of a measurement
23 date, the aggregate balance to the credit of
24 an employee under all applicable eligible
25 retirement plans does not exceed \$100,000,

1 then the requirements of subparagraph (B)
2 shall not apply during any succeeding cal-
3 endar year to the employee’s designated
4 beneficiary with respect to the designated
5 beneficiary’s interest in the balance to the
6 credit of the deceased employee.

7 “(ii) APPLICABLE ELIGIBLE RETIRE-
8 MENT PLAN.—For purposes of this sub-
9 paragraph, the term ‘applicable eligible re-
10 tirement plan’ means an eligible retirement
11 plan (as defined in section 402(c)(8)(B))
12 and any other plan, contract, or arrange-
13 ment to which the requirements of section
14 401(a)(9) apply.

15 “(iii) SPECIAL RULE FOR BENEFITS
16 PAID AS A LIFE ANNUITY FROM DEFINED
17 BENEFIT PLAN.—In determining the ag-
18 gregate balance under clause (i), there
19 shall not be taken into account the value of
20 any benefits under a defined benefit plan
21 that, on the measurement date, are being
22 paid as a life annuity.

23 “(iv) MEASUREMENT DATE.—

24 “(I) INITIAL MEASUREMENT
25 DATES.—The initial measurement

1 date for an individual is the last day
2 of the calendar year preceding the
3 earlier of—

4 “(aa) the calendar year in
5 which the employee attains age
6 70¹/₂, or

7 “(bb) the calendar year in
8 which the employee dies.

9 “(II) SUBSEQUENT MEASURE-
10 MENT DATES.—If, in a calendar year,
11 an individual who is exempted from
12 the requirements of this paragraph
13 pursuant to clause (i) receives con-
14 tributions, rollovers, or transfers of
15 amounts, or accrues additional bene-
16 fits under a defined benefit plan, that
17 were not previously taken into account
18 in applying this subparagraph, then
19 the last day of that calendar year
20 shall be a new measurement date and
21 a new determination shall be made as
22 to whether clause (i) applies.

23 “(v) DETERMINING VALUE OF DE-
24 FINED BENEFIT PLAN BENEFITS.—The
25 value of defined benefit plan benefits is de-

1 terminated in accordance with the applicable
2 interest rate and applicable mortality rate
3 assumptions under section 417(e), except
4 that the value shall be equal to the amount
5 of the single sum payment payable to the
6 extent available under the plan.

7 “(vi) PHASE-IN OF MINIMUM DIS-
8 TRIBUTION REQUIREMENTS.—For an indi-
9 vidual whose aggregate balance exceeds the
10 exemption level in clause (i) by less than
11 \$10,000, required minimum distribution
12 requirements will phase in based on the
13 ratio of—

14 “(I) the amount by which the ag-
15 gregate balance exceeds the exemption
16 level, to

17 “(II) \$10,000.

18 “(vii) COST OF LIVING ADJUST-
19 MENTS.—The Secretary shall adjust annu-
20 ally the \$100,000 amount specified in
21 clause (i) for increases in the cost-of-living
22 at the same time and in the same manner
23 as adjustments under section 415(d); ex-
24 cept that the base period shall be the cal-
25 endar quarter beginning July 1, 2012, and

1 any increase which is not a multiple of
2 \$5,000 shall be rounded to the next lowest
3 multiple of \$5,000.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to initial measurement dates occur-
6 ring on or after December 31, 2012.

7 **SEC. 402. ALTERNATIVE METHODS FOR ELECTRONIC DIS-**
8 **CLOSURE.**

9 (a) AMENDMENT TO EMPLOYEE RETIREMENT IN-
10 COME SECURITY ACT OF 1974.—Part 1 of subtitle B of
11 title I of the Employee Retirement Income Security Act
12 of 1974 is amended by adding at the end thereof the fol-
13 lowing new section:

14 **“SEC. 112. ELECTRONIC COMMUNICATION OF PENSION**
15 **PLAN INFORMATION.**

16 “(a) IN GENERAL.—In the case of any documents or
17 materials that are required under this title to be furnished
18 to a plan participant, beneficiary, or other individual with
19 respect to a pension plan, such documents or materials
20 shall be furnished in accordance with subsection (b) or (c).
21 This section shall apply to documents or materials that
22 are required to be furnished by operation of law or on indi-
23 vidual request and to documents or materials described
24 in paragraphs (2), (3), (4), and (5) of subsection (b). For
25 purposes of this section—

1 “(1) the term ‘documents or materials’ shall in-
2 clude, without limitation, reports, statements, no-
3 tices, notifications, and other information, and

4 “(2) the term ‘recipient’ shall mean all plan
5 participants, beneficiaries, and any other persons en-
6 titled to documents under this title or regulations
7 issued thereunder (including, but not limited to, ‘al-
8 ternate payees’ within the meaning of section
9 206(d)(3) and ‘qualified beneficiaries’ within the
10 meaning of section 607(3)).

11 “(b) WEBSITES.—Any documents or materials de-
12 scribed in subsection (a) may be furnished to a recipient
13 by posting it on one or more websites if—

14 “(1) ACCESS.—Access to such documents or
15 materials is available to such recipient on such
16 website or websites on either a timely or continuous
17 basis, as appropriate.

18 “(2) NOTIFICATION OF AVAILABILITY.—Such
19 recipient has been furnished notification of the avail-
20 ability of such documents or materials on such
21 website or websites and how such documents or ma-
22 terials can be accessed.

23 “(3) FREE PAPER COPY.—Such recipient has
24 been apprised of his ability to request and obtain,

1 free of charge, a paper copy of such documents or
2 materials.

3 “(4) TIMING AND FORM OF NOTIFICATIONS.—

4 The notifications described in paragraphs (2) and
5 (3) are—

6 “(A) written in a manner calculated to be
7 understood by the average plan participant,

8 “(B) except in the case of notifications de-
9 scribed in paragraph (5), furnished in advance
10 of the date that the document or materials are
11 required to be provided, and annually there-
12 after, and

13 “(C) furnished in a manner permitted
14 under subsection (c).

15 “(5) ADDITIONAL NOTIFICATIONS.—

16 “(A) In the case of documents or materials
17 described in subparagraph (B), the notifications
18 described in paragraphs (2) and (3) must be
19 provided within a reasonable period prior to the
20 applicable date described in subparagraph
21 (B)(ii).

22 “(B) Documents or materials are described
23 in this subparagraph if they are described in
24 subsection (a) and—

1 “(i) such documents or materials re-
2 late to an event or other occurrence that
3 was not scheduled at the time of any prior
4 notification,

5 “(ii) the documents or materials relate
6 to a date by which such recipient should be
7 aware of such event or occurrence, and

8 “(iii) the recipient would not have had
9 any reason to know that such date exists
10 and applies to him without the notification.

11 Documents or materials to which this require-
12 ment applies include, without limitation, notifi-
13 cations regarding a blackout period (as defined
14 in section 101(i)(7)) and notifications regarding
15 a change in the address of the website.

16 “(6) DEFINITION OF WEBSITE.—For purposes
17 of this section, the term ‘website’ shall include any
18 electronic application, site, or other accessible means
19 of storing and displaying data or information.

20 “(c) PAPER OR ELECTRONIC COMMUNICATION.—

21 “(1) USE OF PAPER OR ELECTRONIC COMMU-
22 NICATION.—Any documents or materials described
23 in subsection (a) may be furnished to a recipient in
24 the following manner described in subparagraph (A),
25 (B), (C), (D), or (E) of this paragraph, as deter-

1 mined by the entity furnishing the documents or ma-
2 terials:

3 “(A) Such documents or materials may be
4 furnished through the use of paper.

5 “(B) Such documents or materials may be
6 furnished electronically to a recipient who—

7 “(i) has the ability to effectively ac-
8 cess documents furnished in electronic
9 form at any location where the participant
10 is reasonably expected to perform his or
11 her duties as an employee, and

12 “(ii) with respect to whom access to
13 the employer’s or plan sponsor’s electronic
14 information is an integral part of those du-
15 ties.

16 “(C) Such documents or materials may be
17 furnished electronically to a recipient who has
18 affirmatively consented, in electronic or nonelec-
19 tronic form, to receiving documents or materials
20 through electronic media and has not with-
21 drawn such consent.

22 “(D) Such documents or materials may be
23 furnished electronically to a recipient who has
24 the effective ability to access the electronic me-
25 dium used and who has received notification

1 through the use of paper of his ability to re-
2 quest and obtain, free of charge, a paper copy
3 of such documents or materials.

4 “(E) Such documents or materials may be
5 furnished in any additional manner permitted
6 by the Secretary or the Secretary of the Treas-
7 ury, as applicable.

8 “(2) PROTECTIONS FOR RECIPIENTS.—Elec-
9 tronic communications described in paragraph (1)
10 (B), (C), or (D) shall only be permitted with respect
11 to a plan if appropriate and necessary measures
12 have been taken that are reasonably calculated to
13 ensure that the system for furnishing documents or
14 materials—

15 “(A) has safeguards to maximize the likeli-
16 hood of actual receipt of transmitted informa-
17 tion,

18 “(B) protects the confidentiality of a re-
19 cipient’s personal information,

20 “(C) is designed so that the electronically
21 delivered documents or materials are prepared
22 and furnished in a manner that is consistent
23 with the style, format, and content require-
24 ments applicable to the documents or materials,

1 “(D) if necessary, apprises each recipient
2 of the significance of the documents or mate-
3 rials,

4 “(E) apprises each recipient of the ability
5 to request and obtain a paper version of the
6 electronically furnished documents or materials,
7 and provides such paper version on request, and

8 “(F) to the extent required by identical
9 regulations prescribed by the Secretary and the
10 Secretary of the Treasury, facilitates the ability
11 of a recipient who is an employee to make the
12 request described in subparagraph (E) with re-
13 spect to documents or materials that are re-
14 quired to be furnished to such recipient after
15 his termination of employment.

16 “(3) NOTIFICATIONS REGARDING CONSENT.—
17 Electronic communications described in paragraph
18 (1)(C) shall only be permitted with respect to a plan
19 if recipients are provided with timely notifications
20 with respect to—

21 “(A) the effect of the consent,

22 “(B) hardware and software requirements,
23 and

24 “(C) changes in the hardware and software
25 requirements.”.

1 (b) AMENDMENT TO INTERNAL REVENUE CODE OF
2 1986.—Section 414 of the Internal Revenue Code of 1986
3 is amended by adding at the end thereof the following new
4 subsection:

5 “(y) ELECTRONIC COMMUNICATION OF RETIREMENT
6 PLAN INFORMATION.—

7 “(1) IN GENERAL.—In the case of any docu-
8 ments or materials that are required under this title
9 to be furnished to a plan participant, beneficiary, or
10 other individual with respect to a plan subject to
11 this subchapter or to section 457, such documents or
12 materials shall be furnished in accordance with para-
13 graph (2) or (3). This subsection shall apply to docu-
14 ments or materials that are required to be fur-
15 nished by operation of law or on individual request
16 and to documents or materials described in subpara-
17 graphs (B), (C), (D), and (E) of paragraph (2). For
18 purposes of this subsection—

19 “(A) the term ‘documents or materials’
20 shall include, without limitation, reports, state-
21 ments, notices, notifications, and other informa-
22 tion, and

23 “(B) the term ‘recipient’ shall mean all
24 plan participants, beneficiaries, and any other
25 persons entitled to documents under this sub-

1 chapter or section 457 or regulations issued
2 thereunder (including, but not limited to, ‘alter-
3 nate payees’ within the meaning of subsection
4 (p)(8) and ‘qualified beneficiaries’ within the
5 meaning of section 4980B(g)(1)).

6 “(2) WEBSITES.—Any documents or materials
7 described in subsection (a) may be furnished to a re-
8 cipient by posting it on one or more websites if—

9 “(A) ACCESS.—Access to such documents
10 or materials is available to such recipient on
11 such website or websites on either a timely or
12 continuous basis, as appropriate.

13 “(B) NOTIFICATION OF AVAILABILITY.—
14 Such recipient has been furnished notification
15 of the availability of such documents or mate-
16 rials on such website or websites and how such
17 documents or materials can be accessed.

18 “(C) FREE PAPER COPY.—Such recipient
19 has been apprised of his ability to request and
20 obtain, free of charge, a paper copy of such
21 documents or materials.

22 “(D) TIMING AND FORM OF NOTIFICA-
23 TIONS.—The notifications described in subpara-
24 graphs (B) and (C) are—

1 “(i) written in a manner calculated to
2 be understood by the average plan partici-
3 pant,

4 “(ii) except in the case of notifications
5 described in subparagraph (E), furnished
6 in advance of the date that the document
7 or materials are required to be provided,
8 and annually thereafter, and

9 “(iii) furnished in a manner permitted
10 under paragraph (3).

11 “(E) ADDITIONAL NOTIFICATIONS.—

12 “(i) In the case of documents or ma-
13 terials described in clause (ii), the notifica-
14 tions described in subparagraphs (B) and
15 (C) must be provided within a reasonable
16 period prior to the applicable date de-
17 scribed in clause (ii)(II).

18 “(ii) Documents or materials are de-
19 scribed in this subparagraph if they are de-
20 scribed in subsection (a) and—

21 “(I) such documents or materials
22 relate to an event or other occurrence
23 that was not scheduled at the time of
24 any prior notification,

1 “(II) the documents or materials
2 relate to a date by which such recipi-
3 ent should be aware of such event or
4 occurrence, and

5 “(III) the recipient would not
6 have had any reason to know that
7 such date exists and applies to him
8 without the notification.

9 Documents or materials to which this re-
10 quirement applies include, without limita-
11 tion, notifications regarding a change in
12 the address of the website.

13 “(F) DEFINITION OF WEBSITE.—For pur-
14 poses of this subsection, the term ‘website’ shall
15 include any electronic application, site, or other
16 accessible means of storing and displaying data
17 or information.

18 “(3) PAPER OR ELECTRONIC COMMUNICA-
19 TION.—

20 “(A) USE OF PAPER OR ELECTRONIC COM-
21 MUNICATION.—Any documents or materials de-
22 scribed in paragraph (1) may be furnished to a
23 recipient in the following manner described in
24 clause (i), (ii), (iii), (iv), or (v) of this para-

1 graph, as determined by the entity furnishing
2 the documents or materials:

3 “(i) Such documents or materials may
4 be furnished through the use of paper.

5 “(ii) Such documents or materials
6 may be furnished electronically to a recipi-
7 ent who—

8 “(I) has the ability to effectively
9 access documents furnished in elec-
10 tronic form at any location where the
11 participant is reasonably expected to
12 perform his or her duties as an em-
13 ployee, and

14 “(II) with respect to whom ac-
15 cess to the employer’s or plan spon-
16 sor’s electronic information is an inte-
17 gral part of those duties.

18 “(iii) Such documents or materials
19 may be furnished electronically to a recipi-
20 ent who has affirmatively consented, in
21 electronic or nonelectronic form, to receiv-
22 ing documents or materials through elec-
23 tronic media and has not withdrawn such
24 consent.

1 “(iv) Such documents or materials
2 may be furnished electronically to a recipi-
3 ent who has the effective ability to access
4 the electronic medium used and who has
5 received notification through the use of
6 paper of his ability to request and obtain,
7 free of charge, a paper copy of such docu-
8 ments or materials.

9 “(v) Such documents or materials
10 may be furnished in any additional manner
11 permitted by the Secretary or the Sec-
12 retary of the Treasury, as applicable.

13 “(B) PROTECTIONS FOR RECIPIENTS.—
14 Electronic communications described in sub-
15 paragraph (A) (ii), (iii), or (iv) shall only be
16 permitted with respect to a plan if appropriate
17 and necessary measures have been taken that
18 are reasonably calculated to ensure that the
19 system for furnishing documents or materials—

20 “(i) has safeguards to maximize the
21 likelihood of actual receipt of transmitted
22 information,

23 “(ii) protects the confidentiality of a
24 recipient’s personal information,

1 “(iii) is designed so that the electroni-
2 cally delivered documents or materials are
3 prepared and furnished in a manner that
4 is consistent with the style, format, and
5 content requirements applicable to the doc-
6 uments or materials,

7 “(iv) if necessary, apprises each re-
8 cipient of the significance of the documents
9 or materials,

10 “(v) apprises each recipient of the
11 ability to request and obtain a paper
12 version of the electronically furnished doc-
13 uments or materials, and provides such
14 paper version on request, and

15 “(vi) to the extent required by iden-
16 tical regulations prescribed by the Sec-
17 retary and the Secretary of Labor, facili-
18 tates the ability of a recipient who is an
19 employee to make the request described in
20 clause (v) with respect to documents or
21 materials that are required to be furnished
22 to such recipient after his termination of
23 employment.

24 “(C) NOTIFICATIONS REGARDING CON-
25 SENT.—Electronic communications described in

1 subparagraph (A)(iii) shall only be permitted
2 with respect to a plan if recipients are provided
3 with timely notifications with respect to—

4 “(i) the effect of the consent,

5 “(ii) hardware and software require-
6 ments, and

7 “(iii) changes in the hardware and
8 software requirements.”.

9 (c) ASSURING COORDINATION.—The Secretary of the
10 Treasury and the Secretary of Labor shall ensure, through
11 the execution of an interagency memorandum of under-
12 standing among such Secretaries, that—

13 (1) regulations, rulings, and interpretations
14 issued by such Secretaries relating to the same mat-
15 ter over which such Secretaries have responsibility
16 under section 112 of Employee Retirement Income
17 Security Act of 1974 and 414(y) of the Internal
18 Revenue Code of 1986 are administered so as to
19 have the same effect at all times; and

20 (2) coordination of policies relating to enforcing
21 the same requirements through such Secretaries in
22 order to have a coordinated enforcement strategy
23 that avoids duplication of enforcement efforts and
24 assigns priorities in enforcement.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply as of the date of enactment of this
3 Act.

4 **SEC. 403. EXPANSION OF EMPLOYEE PLANS COMPLIANCE**
5 **RESOLUTION SYSTEM.**

6 (a) IN GENERAL.—Not later than one year after the
7 date of the enactment of this Act, the Secretary of the
8 Treasury shall modify the Employee Plans Compliance
9 Resolution System (as described in Revenue Procedure
10 2008–50) to achieve the results specified in the succeeding
11 subsections of this section and to further facilitate correc-
12 tions and compliance in such other means as the Secretary
13 deems appropriate.

14 (b) LOAN ERROR.—

15 (1) In the case of plan loan errors for which
16 corrections are specified under the voluntary compli-
17 ance program, self-correction shall be made available
18 by methods applicable to such loans through the vol-
19 untary compliance program.

20 (2) The Secretary of Labor shall treat any loan
21 error corrected pursuant to paragraph (1) as meet-
22 ing the requirements of the Voluntary Fiduciary
23 Correction Program of the Department of Labor.

24 (c) 403(b) AND 457(b) PLAN CORRECTION.—The
25 Secretary of the Treasury shall update the Employee

1 Plans Compliance Resolution System to provide the same
2 type of comprehensive correction program that is available
3 under such system to retirement plans qualified under sec-
4 tion 401(a) of the Internal Revenue Code of 1986 to—

5 (1) plans maintained pursuant to section
6 403(b) of such Code, and

7 (2) plans maintained pursuant to section
8 457(b) of such Code by an employer described in
9 section 457(e)(1)(A) of such Code.

10 (d) EPCRS FOR IRAS.—The Secretary of the Treas-
11 ury shall expand the Employee Plans Compliance Resolu-
12 tion System to allow custodians of individual retirement
13 plans to address inadvertent errors for which the owner
14 of an individual retirement plan was not at fault, including
15 (but not limited to)—

16 (1) waivers of the excise tax that would other-
17 wise apply under section 4974 of the Internal Rev-
18 enue Code of 1986,

19 (2) under the self-correction component of the
20 Employee Plans Compliance Resolution System,
21 waivers of the 60-day deadline for a rollover where
22 the deadline is missed for reasons beyond the rea-
23 sonable control of the account owner, and

24 (3) rules permitting a nonspouse beneficiary to
25 return distributions to an inherited individual retire-

1 ment plan described in section 408(d)(3)(C) of the
2 Internal Revenue Code of 1986 in a case where, due
3 to an inadvertent error by a service provider, the
4 beneficiary had reason to believe that the distribu-
5 tion could be rolled over without inclusion in income
6 of any part of the distributed amount.

7 (e) **REQUIRED MINIMUM DISTRIBUTION CORREC-**
8 **TIONS.**—The Secretary of the Treasury shall expand the
9 Employee Plans Compliance Resolution System to allow
10 plans to which such system applies and custodians of indi-
11 vidual retirement plans to self-correct, without an excise
12 tax, any inadvertent errors pursuant to which a distribu-
13 tion is made no more than 180 days after it was required
14 to be made.

15 (f) **AUTOMATIC FEATURE ERROR CORRECTION.**—In
16 order to promote the adoption of automatic enrollment
17 and automatic escalation, the Secretary of the Treasury
18 shall modify the Employee Plans Compliance Resolution
19 System to establish specific correction methods for errors
20 in implementing automatic enrollment and automatic es-
21 calation features.

22 **SEC. 404. USE OF FORFEITURES TO FUND SAFE HARBOR**
23 **CONTRIBUTIONS.**

24 (a) **IN GENERAL.**—Section 401(k) is amended by
25 adding at the end the following new paragraph:

1 “(14) A matching contribution or nonelective
2 contribution described in paragraph (3)(D)(ii), sub-
3 paragraph (B) or (C) of paragraph (12), or para-
4 graph (13)(D) shall not fail to satisfy the definition
5 under such paragraph merely because the contribu-
6 tion is funded in whole or in part by forfeitures.”.

7 (b) EFFECTIVE DATE.—The amendment made by
8 subsection (a) shall apply to forfeitures allocated in ac-
9 cordance with section 401(k)(14) of the Internal Revenue
10 Code of 1986 (as amended by subsection (a)) before, on
11 or after the date of enactment of this Act.

12 **SEC. 405. SUBSTANTIAL CESSATION OF OPERATIONS.**

13 (a) IN GENERAL.—Subsection (e) of section 4062 of
14 the Employee Retirement Income Security Act of 1974 is
15 amended by striking “If an employer” and inserting “(1)
16 IN GENERAL.—If an employer”, and by adding at the end
17 thereof the following new paragraph:

18 “(2) SUBSTANTIAL CESSATION OF OPER-
19 ATIONS.—An employer shall not be treated as hav-
20 ing a cessation described in paragraph (1) unless—

21 “(A) all operations at a facility in a loca-
22 tion are ceased and—

23 “(i) such cessation is reasonably ex-
24 pected to be permanent,

1 “(ii) no portion of such operations is
2 moved to another facility at a different lo-
3 cation,

4 “(iii) no portion of such operations is
5 assumed or otherwise transferred to an-
6 other employer, and

7 “(iv) no other operations are reason-
8 ably expected to be maintained at such fa-
9 cility, and

10 “(B) as a result of the cessation described
11 in subparagraph (A), more than 20 percent of
12 the employees of the employer have a termi-
13 nation of employment that is reasonably ex-
14 pected to be permanent. For purposes of this
15 subparagraph, employees of the employer shall
16 include all employees treated as employed by a
17 single employer under sections 210(c) and
18 (d).”.

19 (b) DIRECTION TO THE CORPORATION.—The Pen-
20 sion Benefit Guaranty Corporation shall not take any en-
21 forcement, administrative, or other actions pursuant to
22 section 4062(e) of such Act that are inconsistent with sub-
23 paragraph (A) of section 4062(e)(2) of such Act, as
24 amended, without regard to whether such actions relate

1 to a cessation or other event that occurs before or after
2 the date of enactment of this Act.

3 (c) EFFECTIVE DATE.—Subsection (b) and the
4 amendment made by subsection (a) shall apply as of the
5 date of enactment of this Act.

6 **SEC. 406. CHURCH PLAN CLARIFICATION.**

7 (a) APPLICATION OF CONTROLLED GROUP RULES TO
8 CHURCH PLANS.—

9 (1) IN GENERAL.—Section 414(c) is amended—

10 (A) by striking “For purposes” and insert-
11 ing the following:

12 “(1) IN GENERAL.—For purposes”, and

13 (B) by adding at the end the following new
14 paragraph:

15 “(2) CHURCH PLANS.—

16 “(A) GENERAL RULE.—Except as provided
17 in subparagraphs (B) and (C) below, for pur-
18 poses of this subsection and subsection (m), an
19 organization that is otherwise eligible to partici-
20 pate in a church plan as defined in subsection
21 (e) shall not be aggregated with another such
22 organization and treated as a single employer
23 with such other organization unless—

24 “(i) one such organization provides di-
25 rectly or indirectly at least 80 percent of

1 the operating funds for the other organiza-
2 tion during the preceding tax year of the
3 recipient organization, and

4 “(ii) there is a degree of common
5 management or supervision between the or-
6 ganizations.

7 For purposes of this subparagraph, a degree of
8 common management or supervision exists only
9 if the organization providing the operating
10 funds is directly involved in the day-to-day op-
11 erations of the other organization.

12 “(B) NONQUALIFIED CHURCH-CON-
13 TROLLED ORGANIZATIONS.—Notwithstanding
14 the provisions of subparagraph (A), for pur-
15 poses of this subsection and subsection (m), an
16 organization that is a nonqualified church-con-
17 trolled organization shall be aggregated with
18 one or more other nonqualified church-con-
19 trolled organizations, or with an organization
20 that is not exempt from tax under section 501,
21 and treated as a single employer with such
22 other organizations, if at least 80 percent of the
23 directors or trustees of such organizations are
24 either representatives of, or directly or indi-
25 rectly controlled by, the first organization. For

1 purposes of this subparagraph, a ‘nonqualified
2 church controlled organization’ shall mean a
3 church-controlled organization described in sec-
4 tion 501(c)(3) that is not a qualified church-
5 controlled organization described in section
6 3121(w)(3)(B).

7 “(C) PERMISSIVE AGGREGATION AMONG
8 CHURCH-RELATED ORGANIZATIONS.—Organiza-
9 tions described in subparagraph (A) may elect
10 to be treated as under common control for pur-
11 poses of this subsection. Such election shall be
12 made by the church or convention or association
13 of churches with which such organizations are
14 associated within the meaning of section
15 414(e)(3)(D), or by an organization determined
16 by such church or convention or association of
17 churches to be the appropriate organization for
18 making such election.

19 “(D) PERMISSIVE DISAGGREGATION OF
20 CHURCH-RELATED ORGANIZATIONS.—For pur-
21 poses of subparagraph (A) above, in the case of
22 a church plan (as defined in section 414(e)),
23 any employer may permissively disaggregate
24 those entities that are not churches (as defined
25 in section 403(b)(12)(B)) separately from those

1 entities that are churches, even if such entities
2 maintain separate church plans.

3 “(E) ANTI-ABUSE RULE.—For purposes of
4 subparagraphs (A) and (B), the anti-abuse rule
5 in Treasury Regulation section 1.414(e)–5(f)
6 shall apply.”.

7 (2) EFFECTIVE DATE.—The amendments made
8 by this subsection shall apply to taxable years begin-
9 ning before, on, or after the date of the enactment
10 of this Act.

11 (b) APPLICATION OF CONTRIBUTION AND FUNDING
12 LIMITATIONS TO 403(b) GRANDFATHERED DEFINED
13 BENEFIT PLANS.—

14 (1) IN GENERAL.—Section 251(e)(5) of the Tax
15 Equity and Fiscal Responsibility Act of 1982 (Public
16 Law 97–248), is amended—

17 (A) by striking “403(b)(2)” and inserting
18 “403(b)”, and

19 (B) by inserting before the period at the
20 end the following: “, and shall be subject to the
21 applicable limitations of section 415(b) of such
22 Code as if it were a defined benefit plan under
23 section 401(a) of such Code and not the limita-
24 tions of section 415(c) of such Code (relating to
25 limitation for defined contribution plans).”.

1 (2) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply as if included in the
3 enactment of the Tax Equity and Fiscal Responsi-
4 bility Act of 1982.

5 (c) AUTOMATIC ENROLLMENT BY CHURCH PLANS.—

6 (1) IN GENERAL.—This subsection shall super-
7 sede any law of a State which would directly or indi-
8 rectly prohibit or restrict the inclusion in any church
9 plan (as defined in this subsection) of an automatic
10 contribution arrangement.

11 (2) DEFINITION OF AUTOMATIC CONTRIBUTION
12 ARRANGEMENT.—For purposes of this subsection,
13 the term “automatic contribution arrangement”
14 means an arrangement—

15 (A) under which a participant may elect to
16 have the plan sponsor make payments as con-
17 tributions under the plan on behalf of the par-
18 ticipant, or to the participant directly in cash,
19 and

20 (B) under which a participant is treated as
21 having elected to have the plan sponsor make
22 such contributions in an amount equal to a uni-
23 form percentage of compensation provided
24 under the plan until the participant specifically
25 elects not to have such contributions made (or

1 specifically elects to have such contributions
2 made at a different percentage).

3 (3) NOTICE REQUIREMENTS.—

4 (A) The plan administrator of an auto-
5 matic contribution arrangement shall, within a
6 reasonable period before such plan year, provide
7 to each participant to whom the arrangement
8 applies for such plan year notice of the partici-
9 pant's rights and obligations under the arrange-
10 ment which—

11 (i) is sufficiently accurate and com-
12 prehensive to apprise the participant of
13 such rights and obligations, and

14 (ii) is written in a manner calculated
15 to be understood by the average partici-
16 pant to whom the arrangement applies.

17 (B) A notice shall not be treated as meet-
18 ing the requirements of subparagraph (A) with
19 respect to a participant unless—

20 (i) the notice includes an explanation
21 of the participant's right under the ar-
22 rangement not to have elective contribu-
23 tions made on the participant's behalf (or
24 to elect to have such contributions made at
25 a different percentage),

1 (ii) the participant has a reasonable
2 period of time, after receipt of the notice
3 described in clause (i) and before the first
4 elective contribution is made, to make such
5 election, and

6 (iii) the notice explains how contribu-
7 tions made under the arrangement will be
8 invested in the absence of any investment
9 election by the participant.

10 (4) EFFECTIVE DATE.—This subsection shall
11 take effect on the date of the enactment of this Act.

12 (d) ALLOW CERTAIN PLAN TRANSFERS AND MERG-
13 ERS.—

14 (1) IN GENERAL.—Section 414 is amended by
15 adding at the end the following new subsection:

16 “(z) CERTAIN PLAN TRANSFERS AND MERGERS.—

17 “(1) IN GENERAL.—Under rules prescribed by
18 the Secretary, except as provided in paragraph (2),
19 no amount shall be includible in gross income by
20 reason of—

21 “(A) a transfer of all or a portion of the
22 account balance of a participant or beneficiary,
23 whether or not vested, from a plan described in
24 section 401(a) or an annuity contract described
25 in section 403(b), which is a church plan de-

1 scribed in section 414(e) to an annuity contract
2 described in section 403(b), if such plan and
3 annuity contract are both maintained by the
4 same church or convention or association of
5 churches,

6 “(B) a transfer of all or a portion of the
7 account balance of a participant or beneficiary,
8 whether or not vested, from an annuity contract
9 described in section 403(b) to a plan described
10 in section 401(a) or an annuity contract de-
11 scribed in section 403(b), which is a church
12 plan described in section 414(e), if such plan
13 and annuity contract are both maintained by
14 the same church or convention or association of
15 churches, or

16 “(C) a merger of a plan described in sec-
17 tion 401(a), or an annuity contract described in
18 section 403(b), which is a church plan described
19 in section 414(e) with an annuity contract de-
20 scribed in section 403(b), if such plan and an-
21 nuity contract are both maintained by the same
22 church or convention or association of churches.

23 “(2) LIMITATION.—Paragraph (1) shall not
24 apply to a transfer or merger unless the partici-
25 pant’s or beneficiary’s benefit immediately after the

1 transfer or merger is equal to or greater than the
2 participant's or beneficiary's benefit immediately be-
3 fore the transfer or merger.

4 “(3) QUALIFICATION.—A plan or annuity con-
5 tract shall not fail to be considered to be described
6 in sections 401(a) or 403(b) merely because such
7 plan or account engages in a transfer or merger de-
8 scribed in this subsection.

9 “(4) DEFINITIONS.—For purposes of this sub-
10 section:

11 “(A) CHURCH.—The term ‘church’ in-
12 cludes an organization described in subpara-
13 graph (A) or (B)(ii) of subsection (e)(3).

14 “(B) ANNUITY CONTRACT.—The term ‘an-
15 nuity contract’ includes a custodial account de-
16 scribed in section 403(b)(7) and a retirement
17 income account described in section
18 403(b)(9).”.

19 (2) EFFECTIVE DATE.—The amendment made
20 by this subsection shall apply to transfers or merg-
21 ers occurring after the date of the enactment of this
22 Act.

23 (e) INVESTMENTS BY CHURCH PLANS IN COLLEC-
24 TIVE TRUSTS.—

25 (1) IN GENERAL.—In the case of—

1 (A) a church plan (as defined in section
2 414(e) of the Internal Revenue Code 1986), in-
3 cluding a plan described in section 401(a) of
4 such Code and a retirement income account de-
5 scribed in section 403(b)(9) of such Code, and

6 (B) an organization described in section
7 414(e)(3)(A) of such Code the principal pur-
8 pose or function of which is the administration
9 of such a plan or account,

10 the assets of such plan, account, or organization (in-
11 cluding any assets otherwise permitted to be com-
12 mingled for investment purposes with the assets of
13 such a plan, account, or organization) may be in-
14 vested in a group trust otherwise described in Inter-
15 nal Revenue Service Revenue Ruling 81-100 (as
16 modified by Internal Revenue Service Revenue Rul-
17 ings 2004-67 and 2011-1), or any subsequent rev-
18 enue ruling that supersedes or modifies such revenue
19 ruling, without adversely affecting the tax status of
20 the group trust, such plan, account, or organization,
21 or any other plan or trust that invests in the group
22 trust.

23 (2) EFFECTIVE DATE.—This subsection shall
24 apply to investments made after the date of the en-
25 actment of this Act.

1 **SEC. 407. PROTECTING OLDER, LONGER SERVICE PARTICI-**
2 **PANTS.**

3 (a) IN GENERAL.—Paragraph (4) of section 401(a)
4 of the Internal Revenue Code of 1986 is amended to read
5 as follows:

6 “(4) NONDISCRIMINATION.—

7 “(A) IN GENERAL.—A trust shall not con-
8 stitute a qualified trust under this section un-
9 less the contributions or benefits provided under
10 the plan do not discriminate in favor of highly
11 compensated employees (within the meaning of
12 section 414(q)). For purposes of this para-
13 graph, there shall be excluded from consider-
14 ation employees described in section 410(b)(3)
15 (A) and (C).

16 “(B) PROTECTION OF OLDER, LONGER
17 SERVICE PARTICIPANTS IN DEFINED BENEFIT
18 PLANS.—

19 “(i)(I) A plan described in subclause
20 (ii) shall not fail to satisfy this paragraph
21 by reason of—

22 “(aa) the composition of the
23 closed class of participants described
24 in subclause (II), or

25 “(bb) the benefits, rights, or fea-
26 tures provided to such closed class.

1 “(II) A plan is described in this sub-
2 clause if—

3 “(aa) the plan provides benefits,
4 rights, or features to a closed class of
5 participants,

6 “(bb) such closed class and such
7 benefits, rights, and features satisfy
8 the requirements of subparagraph (A)
9 as of the date that the class was
10 closed, and

11 “(cc) after the date as of which
12 the class was closed, any plan amend-
13 ments that modify the closed class or
14 of the benefits, rights, and features
15 provided to such closed class satisfy
16 subparagraph (A).

17 “(ii)(I) A defined contribution plan
18 described in subclause (II) shall not fail to
19 satisfy this paragraph by reason of—

20 “(aa) the composition of the
21 closed class of participants described
22 in subclause (II), or

23 “(bb) the allocations, benefits,
24 rights, or features provided to such
25 closed class.

1 “(II) A defined contribution plan is
2 described in this subclause if—

3 “(aa) the plan provides make-
4 whole contributions to a closed class
5 of participants whose defined benefit
6 plan accruals have been reduced or
7 eliminated,

8 “(bb) the benefits, rights, and
9 features provided to such closed class
10 satisfy the requirements of subpara-
11 graph (A) as of the date that the class
12 of participants was closed, taking into
13 account only such closed class,

14 “(cc) such closed class of partici-
15 pants satisfies section 410(b)(2)(A)(i)
16 as of the date that the class of partici-
17 pants was closed, and

18 “(dd) after the date as of which
19 the class was closed, any plan amend-
20 ments that modify the closed class or
21 the allocations, benefits, rights, and
22 features provided to such closed class
23 satisfy section 401(a)(4).

24 “(C) MAKE-WHOLE CONTRIBUTIONS.—For
25 purposes of this paragraph, the term ‘make-

1 whole contributions’ means allocations for each
2 employee in the class that are reasonably cal-
3 culated, in a consistent manner, to replace some
4 or all of the retirement benefits that the em-
5 ployee would have received under the defined
6 benefit plan and any other plan or arrangement
7 if the employee had continued to benefit at the
8 same level under such defined benefit plan and
9 such other plan or arrangement.

10 “(D) RULES.—The Secretary may pre-
11 scribe rules designed to prevent abuse of the
12 plan designs otherwise permitted by reason of
13 subparagraph (B). Such rules shall be directed
14 towards abuses under which the defined benefit
15 plan was established within a specified period
16 prior to the date that—

17 “(i) the class of participants described
18 in paragraphs (1) and (2)(A) is closed, or

19 “(ii) the defined benefit plan accruals
20 have been reduced or eliminated, in the
21 case of the make-whole contributions de-
22 scribed in paragraph (2).”.

23 (b) PARTICIPATION REQUIREMENTS.—Paragraph
24 (26) of section 401(a) of the Internal Revenue Code of

1 1986 is amended by adding at the end the following new
2 subparagraph:

3 “(I) PROTECTED PARTICIPANTS.—A plan
4 described in this subparagraph shall be deemed
5 to satisfy the requirements of subparagraph
6 (A). A plan is described in this paragraph if—

7 “(i) the plan is amended to—

8 “(I) cease all benefit accruals, or

9 “(II) provide future benefit ac-
10 cruals only to a closed class of partici-
11 pants, and

12 “(ii) the plan satisfies subparagraph
13 (A) (without regard to this subparagraph)
14 as of the effective date of the amendment.

15 The Secretary may prescribe such rules as are
16 necessary or appropriate to fulfill the purposes
17 of this subparagraph, including prevention of
18 abuse of this subparagraph in the case of plans
19 established within a specific period prior to the
20 effective date of the amendment.”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall take effect on the date of the enactment
23 of this Act, without regard to whether any plan modifica-
24 tions referenced in such amendments are adopted or effec-
25 tive before, on, or after such date of enactment.

1 **SEC. 408. REVIEW AND REPORT TO THE CONGRESS RELAT-**
2 **ING TO REPORTING AND DISCLOSURE RE-**
3 **QUIREMENTS.**

4 (a) STUDY.—As soon as practicable after the date of
5 the enactment of this Act, the Secretary of Labor, the Sec-
6 retary of the Treasury, and the Pension Benefit Guaranty
7 Corporation shall review the reporting and disclosure re-
8 quirements of—

9 (1) title I of the Employee Retirement Income
10 Security Act of 1974 applicable to pension plans (as
11 defined in section 3(2) of such Act), and

12 (2) the Internal Revenue Code of 1986 applica-
13 ble to qualified retirement plans (as defined in sec-
14 tion 4974(c) of such Code without regard to para-
15 graphs (4) and (5) thereof).

16 (b) REPORT.—Not later than 18 months after the
17 date of the enactment of this Act, the Secretary of Labor,
18 the Secretary of the Treasury, and the Pension Benefit
19 Guaranty Corporation, jointly, shall make such rec-
20 ommendations as may be appropriate to the appropriate
21 committees of the Congress to consolidate, simplify, stand-
22 ardize, and improve the applicable reporting and disclo-
23 sure requirements so as to simplify reporting for plans ref-
24 erenced to in subsection (a) and ensure that needed under-
25 standable information is provided to participants and
26 beneficiaries of such plans.

1 **SEC. 409. CONSOLIDATION OF DEFINED CONTRIBUTION**
2 **PLAN NOTICES.**

3 (a) IN GENERAL.—

4 (1) Not later than 18 months after the date of
5 the enactment of this Act, the Secretary of Labor
6 and the Secretary of the Treasury shall adopt final
7 regulations providing that a plan may, but is not re-
8 quired to, consolidate two or more of the notices re-
9 quired under sections 404(c)(5)(B) and 514(e)(3) of
10 the Employee Retirement Income Security Act of
11 1974 (29 U.S.C. 1144(e)(3)), sections
12 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the
13 Internal Revenue Code of 1986, and section
14 2550.404a-5 of title 29, Code of Federal Regula-
15 tions (29 C.F.R. 2550.404a-5) into a single notice
16 or, to the extent provided by such regulations, con-
17 solidate such notices with the summary plan descrip-
18 tion or summary of material modifications described
19 in section 104(b) of the Employee Retirement In-
20 come Security Act of 1974 (29 U.S.C. 1024(b)), so
21 long as the combined notice, summary plan descrip-
22 tion or summary of material modifications includes
23 the required content, clearly identifies the issues ad-
24 dressed therein, and is provided at the time and with
25 the frequency required for each such notice.

1 (2) The Secretary of Labor and the Secretary
2 of the Treasury may include in such regulations
3 rules to ensure that, to the extent such notices are
4 consolidated with the summary plan description or
5 summary of material modifications, the presentation,
6 placement, or prominence of the information in such
7 notices shall not have the effect of failing to inform
8 participants and beneficiaries regarding the informa-
9 tion in such notices.

10 (b) PROVISION OF ANNUAL NOTICES WITHOUT RE-
11 GARD TO PLAN YEAR.—

12 (1) Clause (i) of section 404(c)(5)(B) of the
13 Employee Retirement Income Security Act of 1974
14 (29 U.S.C. 1104(c)(5)(B)) is amended—

15 (A) in subclause (I) by striking “within a
16 reasonable period of time before each plan
17 year,” and inserting “within a reasonable pe-
18 riod before the arrangement described in sub-
19 paragraph (A) applies to such participant or
20 beneficiary, and thereafter at least once within
21 any 12-month period (without regard to the
22 plan year) during which such arrangement ap-
23 plies,” and

24 (B) in subclause (II) by striking “and be-
25 fore the beginning of the plan year”.

1 (2) Subparagraph (A) of section 514(e)(3) of
2 the Employee Retirement Income Security Act of
3 1974 (29 U.S.C. 1144(e)(3)(A)) is amended by
4 striking “, within a reasonable period before such
5 plan year, provide to each participant to whom the
6 arrangement applies for such plan year” and insert-
7 ing “, within a reasonable period before the arrange-
8 ment applies to a participant or beneficiary, and
9 thereafter at least once within any 12-month period
10 (without regard to the plan year) during which such
11 arrangement applies, provide”.

12 (3) Clause (i) of section 401(k)(13)(E) of the
13 Internal Revenue Code of 1986 is amended by strik-
14 ing “, within a reasonable period before each plan
15 year, each employee eligible to participate in the ar-
16 rangement for such year receives” and inserting
17 “each employee eligible to participate in the arrange-
18 ment receives, within a reasonable period before the
19 employee becomes eligible, and thereafter within a
20 reasonable period before each plan year during
21 which such arrangement applies,”.

22 (4) Subparagraph (D) of section 401(k)(12) of
23 the Internal Revenue Code of 1986 is amended by
24 striking “, within a reasonable period before any
25 year, given written notice” and inserting “given

1 written notice, within a reasonable period before the
2 employee becomes eligible, and thereafter within a
3 reasonable period before each plan year during
4 which such arrangement applies.”.

5 (5) Subparagraph (A) of section 414(w)(4) of
6 the Internal Revenue Code of 1986 is amended by
7 striking “, within a reasonable period before each
8 plan year, give to each employee to whom an ar-
9 rangement described in paragraph (3) applies for
10 such plan year” and inserting “, within a reasonable
11 period before an arrangement described in para-
12 graph (3) applies to an employee, and thereafter at
13 least once within any 12-month period (without re-
14 gard to the plan year) during which such arrange-
15 ment applies, give to each such employee”.

○