

1 **TITLE IX—INCREASE IN PEN-**
2 **SION PLAN DIVERSIFICATION**
3 **AND PARTICIPATION AND**
4 **OTHER PENSION PROVISIONS**

5 **SEC. 901. DEFINED CONTRIBUTION PLANS REQUIRED TO**
6 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**
7 **VEST THEIR PLAN ASSETS.**

8 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

9 (1) QUALIFICATION REQUIREMENT.—Section
10 401(a) of the Internal Revenue Code of 1986 (relat-
11 ing to qualified pension, profit-sharing, and stock
12 bonus plans) is amended by inserting after para-
13 graph (34) the following new paragraph:

14 “(35) DIVERSIFICATION REQUIREMENTS FOR
15 CERTAIN DEFINED CONTRIBUTION PLANS.—

16 “(A) IN GENERAL.—A trust which is part
17 of an applicable defined contribution plan shall
18 not be treated as a qualified trust unless the
19 plan meets the diversification requirements of
20 subparagraphs (B), (C), and (D).

21 “(B) EMPLOYEE CONTRIBUTIONS AND
22 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
23 SECURITIES.—In the case of the portion of an
24 applicable individual’s account attributable to
25 employee contributions and elective deferrals

1 which is invested in employer securities, a plan
2 meets the requirements of this subparagraph if
3 the applicable individual may elect to direct the
4 plan to divest any such securities and to rein-
5 vest an equivalent amount in other investment
6 options meeting the requirements of subpara-
7 graph (D).

8 “(C) EMPLOYER CONTRIBUTIONS IN-
9 VESTED IN EMPLOYER SECURITIES.—In the
10 case of the portion of the account attributable
11 to employer contributions other than elective
12 deferrals which is invested in employer securi-
13 ties, a plan meets the requirements of this sub-
14 paragraph if each applicable individual who—

15 “(i) is a participant who has com-
16 pleted at least 3 years of service, or

17 “(ii) is a beneficiary of a participant
18 described in clause (i) or of a deceased
19 participant,

20 may elect to direct the plan to divest any such
21 securities and to reinvest an equivalent amount
22 in other investment options meeting the re-
23 quirements of subparagraph (D).

24 “(D) INVESTMENT OPTIONS.—

1 “(i) IN GENERAL.—The requirements
2 of this subparagraph are met if the plan
3 offers not less than 3 investment options,
4 other than employer securities, to which an
5 applicable individual may direct the pro-
6 ceeds from the divestment of employer se-
7 curities pursuant to this paragraph, each
8 of which is diversified and has materially
9 different risk and return characteristics.

10 “(ii) TREATMENT OF CERTAIN RE-
11 STRICTIONS AND CONDITIONS.—

12 “(I) TIME FOR MAKING INVEST-
13 MENT CHOICES.—A plan shall not be
14 treated as failing to meet the require-
15 ments of this subparagraph merely be-
16 cause the plan limits the time for di-
17 vestment and reinvestment to peri-
18 odic, reasonable opportunities occur-
19 ring no less frequently than quarterly.

20 “(II) CERTAIN RESTRICTIONS
21 AND CONDITIONS NOT ALLOWED.—

22 Except as provided in regulations, a
23 plan shall not meet the requirements
24 of this subparagraph if the plan im-
25 poses restrictions or conditions with

1 respect to the investment of employer
2 securities which are not imposed on
3 the investment of other assets of the
4 plan. This subclause shall not apply to
5 any restrictions or conditions imposed
6 by reason of the application of securi-
7 ties laws.

8 “(E) APPLICABLE DEFINED CONTRIBU-
9 TION PLAN.—For purposes of this paragraph—

10 “(i) IN GENERAL.—The term ‘applica-
11 ble defined contribution plan’ means any
12 defined contribution plan which holds any
13 publicly traded employer securities.

14 “(ii) EXCEPTION FOR CERTAIN
15 ESOPS.—Such term does not include an
16 employee stock ownership plan if—

17 “(I) there are no contributions to
18 such plan (or earnings thereunder)
19 which are held within such plan and
20 are subject to subsection (k) or (m),
21 and

22 “(II) such plan is a separate plan
23 for purposes of section 414(l) with re-
24 spect to any other defined benefit plan
25 or defined contribution plan main-

1 tained by the same employer or em-
2 ployers.

3 “(iii) EXCEPTION FOR ONE PARTICI-
4 PANT PLANS.—Such term does not include
5 a one-participant retirement plan.

6 “(iv) ONE-PARTICIPANT RETIREMENT
7 PLAN.—For purposes of clause (iii), the
8 term ‘one-participant retirement plan’
9 means a retirement plan that—

10 “(I) on the first day of the plan
11 year covered only one individual (or
12 the individual and the individual’s
13 spouse) and the individual owned 100
14 percent of the plan sponsor (whether
15 or not incorporated), or covered only
16 one or more partners (or partners and
17 their spouses) in the plan sponsor,

18 “(II) meets the minimum cov-
19 erage requirements of section 410(b)
20 without being combined with any
21 other plan of the business that covers
22 the employees of the business,

23 “(III) does not provide benefits
24 to anyone except the individual (and

1 the individual's spouse) or the part-
2 ners (and their spouses),

3 “(IV) does not cover a business
4 that is a member of an affiliated serv-
5 ice group, a controlled group of cor-
6 porations, or a group of businesses
7 under common control, and

8 “(V) does not cover a business
9 that uses the services of leased em-
10 ployees (within the meaning of section
11 414(n)).

12 For purposes of this clause, the term ‘part-
13 ner’ includes a 2-percent shareholder (as
14 defined in section 1372(b)) of an S cor-
15 poration.

16 “(F) CERTAIN PLANS TREATED AS HOLD-
17 ING PUBLICLY TRADED EMPLOYER SECURI-
18 TIES.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in regulations or in clause (ii), a plan
21 holding employer securities which are not
22 publicly traded employer securities shall be
23 treated as holding publicly traded employer
24 securities if any employer corporation, or
25 any member of a controlled group of cor-

1 porations which includes such employer
2 corporation, has issued a class of stock
3 which is a publicly traded employer secu-
4 rity.

5 “(ii) EXCEPTION FOR CERTAIN CON-
6 TROLLED GROUPS WITH PUBLICLY TRAD-
7 ED SECURITIES.—Clause (i) shall not
8 apply to a plan if—

9 “(I) no employer corporation, or
10 parent corporation of an employer
11 corporation, has issued any publicly
12 traded employer security, and

13 “(II) no employer corporation, or
14 parent corporation of an employer
15 corporation, has issued any special
16 class of stock which grants particular
17 rights to, or bears particular risks for,
18 the holder or issuer with respect to
19 any corporation described in clause (i)
20 which has issued any publicly traded
21 employer security.

22 “(iii) DEFINITIONS.—For purposes of
23 this subparagraph, the term—

24 “(I) ‘controlled group of corpora-
25 tions’ has the meaning given such

1 term by section 1563(a), except that
2 ‘50 percent’ shall be substituted for
3 ‘80 percent’ each place it appears,

4 “(II) ‘employer corporation’
5 means a corporation which is an em-
6 ployer maintaining the plan, and

7 “(III) ‘parent corporation’ has
8 the meaning given such term by sec-
9 tion 424(e).

10 “(G) OTHER DEFINITIONS.—For purposes
11 of this paragraph—

12 “(i) APPLICABLE INDIVIDUAL.—The
13 term ‘applicable individual’ means—

14 “(I) any participant in the plan,
15 and

16 “(II) any beneficiary who has an
17 account under the plan with respect to
18 which the beneficiary is entitled to ex-
19 ercise the rights of a participant.

20 “(ii) ELECTIVE DEFERRAL.—The
21 term ‘elective deferral’ means an employer
22 contribution described in section
23 402(g)(3)(A).

24 “(iii) EMPLOYER SECURITY.—The
25 term ‘employer security’ has the meaning

1 given such term by section 407(d)(1) of
2 the Employee Retirement Income Security
3 Act of 1974.

4 “(iv) EMPLOYEE STOCK OWNERSHIP
5 PLAN.—The term ‘employee stock owner-
6 ship plan’ has the meaning given such
7 term by section 4975(e)(7).

8 “(v) PUBLICLY TRADED EMPLOYER
9 SECURITIES.—The term ‘publicly traded
10 employer securities’ means employer secu-
11 rities which are readily tradable on an es-
12 tablished securities market.

13 “(vi) YEAR OF SERVICE.—The term
14 ‘year of service’ has the meaning given
15 such term by section 411(a)(5).

16 “(H) TRANSITION RULE FOR SECURITIES
17 ATTRIBUTABLE TO EMPLOYER CONTRIBU-
18 TIONS.—

19 “(i) RULES PHASED IN OVER 3
20 YEARS.—

21 “(I) IN GENERAL.—In the case
22 of the portion of an account to which
23 subparagraph (C) applies and which
24 consists of employer securities ac-
25 quired in a plan year beginning before

1 January 1, 2007, subparagraph (C)
2 shall only apply to the applicable per-
3 centage of such securities. This sub-
4 paragraph shall be applied separately
5 with respect to each class of securi-
6 ties.

7 “(II) EXCEPTION FOR CERTAIN
8 PARTICIPANTS AGED 55 OR OVER.—
9 Subclause (I) shall not apply to an
10 applicable individual who is a partici-
11 pant who has attained age 55 and
12 completed at least 3 years of service
13 before the first plan year beginning
14 after December 31, 2005.

15 “(ii) APPLICABLE PERCENTAGE.—For
16 purposes of clause (i), the applicable per-
17 centage shall be determined as follows:

“Plan year to which subparagraph (C) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.”.

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 401(a)(28)(B) of such Code
20 (relating to additional requirements relating to
21 employee stock ownership plans) is amended by
22 adding at the end the following new clause:

1 “(v) EXCEPTION.—This subparagraph
2 shall not apply to an applicable defined
3 contribution plan (as defined in paragraph
4 (35)(E)).”

5 (B) Section 409(h)(7) of such Code is
6 amended by inserting “or subparagraph (B) or
7 (C) of section 401(a)(35)” before the period at
8 the end.

9 (C) Section 4980(c)(3)(A) of such Code is
10 amended by striking “if—” and all that follows
11 and inserting “if the requirements of subpara-
12 graphs (B), (C), and (D) are met.”

13 (b) AMENDMENTS OF ERISA.—

14 (1) IN GENERAL.—Section 204 of the Employee
15 Retirement Income Security Act of 1974 (29 U.S.C.
16 1054) is amended by redesignating subsection (j) as
17 subsection (k) and by inserting after subsection (i)
18 the following new subsection:

19 “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN
20 INDIVIDUAL ACCOUNT PLANS.—

21 “(1) IN GENERAL.—An applicable individual ac-
22 count plan shall meet the diversification require-
23 ments of paragraphs (2), (3), and (4).

24 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
25 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-

1 TIES.—In the case of the portion of an applicable in-
2 dividual’s account attributable to employee contribu-
3 tions and elective deferrals which is invested in em-
4 ployer securities, a plan meets the requirements of
5 this paragraph if the applicable individual may elect
6 to direct the plan to divest any such securities and
7 to reinvest an equivalent amount in other investment
8 options meeting the requirements of paragraph (4).

9 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN
10 EMPLOYER SECURITIES.—In the case of the portion
11 of the account attributable to employer contributions
12 other than elective deferrals which is invested in em-
13 ployer securities, a plan meets the requirements of
14 this paragraph if each applicable individual who—

15 “(A) is a participant who has completed at
16 least 3 years of service, or

17 “(B) is a beneficiary of a participant de-
18 scribed in subparagraph (A) or of a deceased
19 participant,

20 may elect to direct the plan to divest any such secu-
21 rities and to reinvest an equivalent amount in other
22 investment options meeting the requirements of
23 paragraph (4).

24 “(4) INVESTMENT OPTIONS.—

1 “(A) IN GENERAL.—The requirements of
2 this paragraph are met if the plan offers not
3 less than 3 investment options, other than em-
4 ployer securities, to which an applicable indi-
5 vidual may direct the proceeds from the divest-
6 ment of employer securities pursuant to this
7 subsection, each of which is diversified and has
8 materially different risk and return characteris-
9 tics.

10 “(B) TREATMENT OF CERTAIN RESTRIC-
11 TIONS AND CONDITIONS.—

12 “(i) TIME FOR MAKING INVESTMENT
13 CHOICES.—A plan shall not be treated as
14 failing to meet the requirements of this
15 paragraph merely because the plan limits
16 the time for divestment and reinvestment
17 to periodic, reasonable opportunities occur-
18 ring no less frequently than quarterly.

19 “(ii) CERTAIN RESTRICTIONS AND
20 CONDITIONS NOT ALLOWED.—Except as
21 provided in regulations, a plan shall not
22 meet the requirements of this paragraph if
23 the plan imposes restrictions or conditions
24 with respect to the investment of employer
25 securities which are not imposed on the in-

1 vestment of other assets of the plan. This
2 subparagraph shall not apply to any re-
3 strictions or conditions imposed by reason
4 of the application of securities laws.

5 “(5) APPLICABLE INDIVIDUAL ACCOUNT
6 PLAN.—For purposes of this subsection—

7 “(A) IN GENERAL.—The term ‘applicable
8 individual account plan’ means any individual
9 account plan (as defined in section 3(34)) which
10 holds any publicly traded employer securities.

11 “(B) EXCEPTION FOR CERTAIN ESOPS.—
12 Such term does not include an employee stock
13 ownership plan if—

14 “(i) there are no contributions to such
15 plan (or earnings thereunder) which are
16 held within such plan and are subject to
17 subsection (k) or (m) of section 401 of the
18 Internal Revenue Code of 1986, and

19 “(ii) such plan is a separate plan (for
20 purposes of section 414(l) of such Code)
21 with respect to any other defined benefit
22 plan or individual account plan maintained
23 by the same employer or employers.

24 “(C) EXCEPTION FOR ONE PARTICIPANT
25 PLANS.—Such term shall not include a one-par-

1 participant retirement plan (as defined in section
2 101(i)(8)(B)).

3 “(D) CERTAIN PLANS TREATED AS HOLD-
4 ING PUBLICLY TRADED EMPLOYER SECURI-
5 TIES.—

6 “(i) IN GENERAL.—Except as pro-
7 vided in regulations or in clause (ii), a plan
8 holding employer securities which are not
9 publicly traded employer securities shall be
10 treated as holding publicly traded employer
11 securities if any employer corporation, or
12 any member of a controlled group of cor-
13 porations which includes such employer
14 corporation, has issued a class of stock
15 which is a publicly traded employer secu-
16 rity.

17 “(ii) EXCEPTION FOR CERTAIN CON-
18 TROLLED GROUPS WITH PUBLICLY TRAD-
19 ED SECURITIES.—Clause (i) shall not
20 apply to a plan if—

21 “(I) no employer corporation, or
22 parent corporation of an employer
23 corporation, has issued any publicly
24 traded employer security, and

1 “(II) no employer corporation, or
2 parent corporation of an employer
3 corporation, has issued any special
4 class of stock which grants particular
5 rights to, or bears particular risks for,
6 the holder or issuer with respect to
7 any corporation described in clause (i)
8 which has issued any publicly traded
9 employer security.

10 “(iii) DEFINITIONS.—For purposes of
11 this subparagraph, the term—

12 “(I) ‘controlled group of corpora-
13 tions’ has the meaning given such
14 term by section 1563(a) of the Inter-
15 nal Revenue Code of 1986, except
16 that ‘50 percent’ shall be substituted
17 for ‘80 percent’ each place it appears,

18 “(II) ‘employer corporation’
19 means a corporation which is an em-
20 ployer maintaining the plan, and

21 “(III) ‘parent corporation’ has
22 the meaning given such term by sec-
23 tion 424(e) of such Code.

24 “(6) OTHER DEFINITIONS.—For purposes of
25 this paragraph—

1 “(A) APPLICABLE INDIVIDUAL.—The term
2 ‘applicable individual’ means—

3 “(i) any participant in the plan, and

4 “(ii) any beneficiary who has an ac-
5 count under the plan with respect to which
6 the beneficiary is entitled to exercise the
7 rights of a participant.

8 “(B) ELECTIVE DEFERRAL.—The term
9 ‘elective deferral’ means an employer contribu-
10 tion described in section 402(g)(3)(A) of the In-
11 ternal Revenue Code of 1986.

12 “(C) EMPLOYER SECURITY.—The term
13 ‘employer security’ has the meaning given such
14 term by section 407(d)(1).

15 “(D) EMPLOYEE STOCK OWNERSHIP
16 PLAN.—The term ‘employee stock ownership
17 plan’ has the meaning given such term by sec-
18 tion 4975(e)(7) of such Code.

19 “(E) PUBLICLY TRADED EMPLOYER SECUR-
20 ITIES.—The term ‘publicly traded employer
21 securities’ means employer securities which are
22 readily tradable on an established securities
23 market.

1 “(F) YEAR OF SERVICE.—The term ‘year
2 of service’ has the meaning given such term by
3 section 203(b)(2).

4 “(7) TRANSITION RULE FOR SECURITIES AT-
5 TRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—

6 “(A) RULES PHASED IN OVER 3 YEARS.—

7 “(i) IN GENERAL.—In the case of the
8 portion of an account to which paragraph
9 (3) applies and which consists of employer
10 securities acquired in a plan year begin-
11 ning before January 1, 2007, paragraph
12 (3) shall only apply to the applicable per-
13 centage of such securities. This subpara-
14 graph shall be applied separately with re-
15 spect to each class of securities.

16 “(ii) EXCEPTION FOR CERTAIN PAR-
17 TICIPANTS AGED 55 OR OVER.—Clause (i)
18 shall not apply to an applicable individual
19 who is a participant who has attained age
20 55 and completed at least 3 years of serv-
21 ice before the first plan year beginning
22 after December 31, 2005.

23 “(B) APPLICABLE PERCENTAGE.—For
24 purposes of subparagraph (A), the applicable
25 percentage shall be determined as follows:

“Plan year to which paragraph (3) applies:	The applicable percentage is:
1st	33
2d	66
3d	100.”.

1 (2) CONFORMING AMENDMENT.—Section
2 407(b)(3) of such Act (29 U.S.C. 1107(b)(3)) is
3 amended by adding at the end the following:

4 “(D) For diversification requirements for quali-
5 fying employer securities held in certain individual
6 account plans, see section 204(j).”.

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graphs (2) and (3), the amendments made by this
10 section shall apply to plan years beginning after De-
11 cember 31, 2006.

12 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
13 GAINED AGREEMENTS.—In the case of a plan main-
14 tained pursuant to 1 or more collective bargaining
15 agreements between employee representatives and 1
16 or more employers ratified on or before the date of
17 the enactment of this Act, paragraph (1) shall be
18 applied to benefits pursuant to, and individuals cov-
19 ered by, any such agreement by substituting for
20 “December 31, 2006” the earlier of—

21 (A) the later of—

22 (i) December 31, 2007, or

1 (ii) the date on which the last of such
2 collective bargaining agreements termi-
3 nates (determined without regard to any
4 extension thereof after such date of enact-
5 ment), or

6 (B) December 31, 2008.

7 (3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-
8 CURITIES HELD IN AN ESOP.—

9 (A) IN GENERAL.—In the case of employer
10 securities to which this paragraph applies, the
11 amendments made by this section shall apply to
12 plan years beginning after the earlier of—

13 (i) December 31, 2007, or

14 (ii) the first date on which the fair
15 market value of such securities exceeds the
16 guaranteed minimum value described in
17 subparagraph (B)(ii).

18 (B) APPLICABLE SECURITIES.—This para-
19 graph shall apply to employer securities which
20 are attributable to employer contributions other
21 than elective deferrals, and which, on Sep-
22 tember 17, 2003—

23 (i) consist of preferred stock, and

24 (ii) are within an employee stock own-
25 ership plan (as defined in section

1 4975(e)(7) of the Internal Revenue Code
2 of 1986), the terms of which provide that
3 the value of the securities cannot be less
4 than the guaranteed minimum value speci-
5 fied by the plan on such date.

6 (C) COORDINATION WITH TRANSITION
7 RULE.—In applying section 401(a)(35)(H) of
8 the Internal Revenue Code of 1986 and section
9 204(j)(7) of the Employee Retirement Income
10 Security Act of 1974 (as added by this section)
11 to employer securities to which this paragraph
12 applies, the applicable percentage shall be de-
13 termined without regard to this paragraph.

14 **SEC. 902. INCREASING PARTICIPATION THROUGH AUTO-**
15 **MATIC CONTRIBUTION ARRANGEMENTS.**

16 (a) IN GENERAL.—Section 401(k) of the Internal
17 Revenue Code of 1986 (relating to cash or deferred ar-
18 rangement) is amended by adding at the end the following
19 new paragraph:

20 “(13) ALTERNATIVE METHOD FOR AUTOMATIC
21 CONTRIBUTION ARRANGEMENTS TO MEET NON-
22 DISCRIMINATION REQUIREMENTS.—

23 “(A) IN GENERAL.—A qualified automatic
24 contribution arrangement shall be treated as