TITLE IX—INCREASE IN PENSION PLAN DIVERSIFICATION AND PARTICIPATION AND OTHER PENSION PROVISIONS

SEC. 901. DEFINED CONTRIBUTION PLANS REQUIRED TO PROVIDE EMPLOYEES WITH FREEDOM TO INVEST THEIR PLAN ASSETS.

(a) Amendments of Internal Revenue Code.—

(1) Qualification requirement.—Section 401(a) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by inserting after paragraph (34) the following new paragraph:

“(35) Diversification requirements for certain defined contribution plans.—

“(A) In general.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the diversification requirements of subparagraphs (B), (C), and (D).

“(B) Employee contributions and elective deferrals invested in employer securities.—In the case of the portion of an applicable individual’s account attributable to employee contributions and elective deferrals
which is invested in employer securities, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

“(C) Employer contributions invested in employer securities.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who—

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

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

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

“(D) Investment options.—
“(i) IN GENERAL.—The requirements of this subparagraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics.

“(ii) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

“(I) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this subparagraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

“(II) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—
Except as provided in regulations, a plan shall not meet the requirements of this subparagraph if the plan imposes restrictions or conditions with
respect to the investment of employer
securities which are not imposed on
the investment of other assets of the
plan. This subclause shall not apply to
any restrictions or conditions imposed
by reason of the application of securi-
ties laws.

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

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

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

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

“(II) such plan is a separate plan
for purposes of section 414(l) with re-
spect to any other defined benefit plan
or defined contribution plan main-
tained by the same employer or em-
ployers.

“(iii) Exception for one partici-
pant plans.—Such term does not include
a one-participant retirement plan.

“(iv) One-participant retirement
plan.—For purposes of clause (iii), the
term ‘one-participant retirement plan’
means a retirement plan that—

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

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

“(III) does not provide benefits
to anyone except the individual (and
the individual’s spouse) or the partners (and their spouses),

“(IV) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

“(V) does not cover a business that uses the services of leased employees (within the meaning of section 414(n)).

For purposes of this clause, the term ‘partner’ includes a 2-percent shareholder (as defined in section 1372(b)) of an S corporation.

“(F) Certain plans treated as holding publicly traded employer securities.—

“(i) In general.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of cor-
corporations which includes such employer
corporation, has issued a class of stock
which is a publicly traded employer secur-
ity.

“(ii) Exception for Certain Con-
trolled Groups with Publicly Traded
Securities.—Clause (i) shall not
apply to a plan if—

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

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

“(iii) Definitions.—For purposes of
this subparagraph, the term—

“(I) ‘controlled group of corpora-
tions’ has the meaning given such
term by section 1563(a), except that
‘50 percent’ shall be substituted for
‘80 percent’ each place it appears,

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

“(III) ‘parent corporation’ has
the meaning given such term by sec-

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

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

“(I) any participant in the plan,

and

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

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

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

“(iv) Employee stock ownership plan.—The term ‘employee stock ownership plan’ has the meaning given such term by section 4975(e)(7).

“(v) Publicly traded employer securities.—The term ‘publicly traded employer securities’ means employer securities which are readily tradable on an established securities market.

“(vi) Year of service.—The term ‘year of service’ has the meaning given such term by section 411(a)(5).

“(H) Transition rule for securities attributable to employer contributions.—

“(i) Rules phased in over 3 years.—

“(I) In general.—In the case of the portion of an account to which subparagraph (C) applies and which consists of employer securities acquired in a plan year beginning before
January 1, 2007, subparagraph (C) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

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

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be determined as follows:

<table>
<thead>
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<th>Plan year to which subparagraph (C) applies:</th>
<th>The applicable percentage is:</th>
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</thead>
<tbody>
<tr>
<td>1st ..........................................................</td>
<td>33</td>
</tr>
<tr>
<td>2d ............................................................</td>
<td>66</td>
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<tr>
<td>3d and following .......................................</td>
<td>100.</td>
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(2) CONFORMING AMENDMENTS.—

(A) Section 401(a)(28)(B) of such Code (relating to additional requirements relating to employee stock ownership plans) is amended by adding at the end the following new clause:
“(v) Exception.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(E)).”

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

(C) Section 4980(e)(3)(A) of such Code is amended by striking “if—” and all that follows and inserting “if the requirements of subparagraphs (B), (C), and (D) are met.”

(b) Amendments of ERISA.—

(1) In general.—Section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054) is amended by redesignating subsection (j) as subsection (k) and by inserting after subsection (i) the following new subsection:

“(j) Diversification Requirements for Certain Individual Account Plans.—

“(1) In general.—An applicable individual account plan shall meet the diversification requirements of paragraphs (2), (3), and (4).

“(2) Employee contributions and elective deferrals invested in employer securi-
ties.—In the case of the portion of an applicable individual’s account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

“(3) Employer contributions invested in employer securities.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual who—

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

“(B) is a beneficiary of a participant described in subparagraph (A) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of paragraph (4).

“(4) Investment options.—
“(A) In general.—The requirements of this paragraph are met if the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics.

“(B) Treatment of certain restrictions and conditions.—

“(i) Time for making investment choices.—A plan shall not be treated as failing to meet the requirements of this paragraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

“(ii) Certain restrictions and conditions not allowed.—Except as provided in regulations, a plan shall not meet the requirements of this paragraph if the plan imposes restrictions or conditions with respect to the investment of employer securities which are not imposed on the in-
vestment of other assets of the plan. This
subparagraph shall not apply to any re-
strictions or conditions imposed by reason
of the application of securities laws.

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

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

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

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

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

“(C) EXCEPTION FOR ONE PARTICIPANT
PLANS.—Such term shall not include a one-par-
participant retirement plan (as defined in section 101(i)(8)(B)).

“(D) CERTAIN PLANS TREATED AS HOLDING PUBLICLY TRADED EMPLOYER SECURITIES.—

“(i) IN GENERAL.—Except as provided in regulations or in clause (ii), a plan holding employer securities which are not publicly traded employer securities shall be treated as holding publicly traded employer securities if any employer corporation, or any member of a controlled group of corporations which includes such employer corporation, has issued a class of stock which is a publicly traded employer security.

“(ii) EXCEPTION FOR CERTAIN CONTROLLED GROUPS WITH PUBLICLY TRADED SECURITIES.—Clause (i) shall not apply to a plan if—

“(I) no employer corporation, or parent corporation of an employer corporation, has issued any publicly traded employer security, and
“(II) no employer corporation, or parent corporation of an employer corporation, has issued any special class of stock which grants particular rights to, or bears particular risks for, the holder or issuer with respect to any corporation described in clause (i) which has issued any publicly traded employer security.

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

“(I) ‘controlled group of corporations’ has the meaning given such term by section 1563(a) of the Internal Revenue Code of 1986, except that ‘50 percent’ shall be substituted for ‘80 percent’ each place it appears,

“(II) ‘employer corporation’ means a corporation which is an employer maintaining the plan, and

“(III) ‘parent corporation’ has the meaning given such term by section 424(e) of such Code.

“(6) OTHER DEFINITIONS.—For purposes of this paragraph—
“(A) APPLICABLE INDIVIDUAL.—The term ‘applicable individual’ means—

“(i) any participant in the plan, and

“(ii) any beneficiary who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of a participant.

“(B) ELECTIVE DEFERRAL.—The term ‘elective deferral’ means an employer contribution described in section 402(g)(3)(A) of the Internal Revenue Code of 1986.

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

“(D) EMPLOYEE STOCK OWNERSHIP PLAN.—The term ‘employee stock ownership plan’ has the meaning given such term by section 4975(e)(7) of such Code.

“(E) PUBLICLY TRADED EMPLOYER SECURITIES.—The term ‘publicly traded employer securities’ means employer securities which are readily tradable on an established securities market.
“(F) Year of service.—The term ‘year of service’ has the meaning given such term by section 203(b)(2).

“(7) Transition rule for securities attributable to employer contributions.—

“(A) Rules phased in over 3 years.—

“(i) In general.—In the case of the portion of an account to which paragraph (3) applies and which consists of employer securities acquired in a plan year beginning before January 1, 2007, paragraph (3) shall only apply to the applicable percentage of such securities. This subparagraph shall be applied separately with respect to each class of securities.

“(ii) Exception for certain participants aged 55 or over.—Clause (i) shall not apply to an applicable individual who is a participant who has attained age 55 and completed at least 3 years of service before the first plan year beginning after December 31, 2005.

“(B) Applicable percentage.—For purposes of subparagraph (A), the applicable percentage shall be determined as follows:
Plan year to which paragraph (3) applies: | The applicable percentage is:
--- | ---
1st | 33
2d | 66
3d | 100

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

“(D) For diversification requirements for qualifying employer securities held in certain individual account plans, see section 204(j).”.

(c) Effective Dates.—

(1) In General.—Except as provided in paragraphs (2) and (3), the amendments made by this section shall apply to plan years beginning after December 31, 2006.

(2) Special Rule for Collectively Bargained Agreements.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for “December 31, 2006” the earlier of—

(A) the later of—

(i) December 31, 2007, or
(ii) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2008.

(3) SPECIAL RULE FOR CERTAIN EMPLOYER SECURITIES HELD IN AN ESOP.—

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

(i) December 31, 2007, or

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

(B) APPLICABLE SECURITIES.—This paragraph shall apply to employer securities which are attributable to employer contributions other than elective deferrals, and which, on September 17, 2003—

(i) consist of preferred stock, and

(ii) are within an employee stock ownership plan (as defined in section
4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

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

SEC. 902. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.

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

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

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