

1 **SEC. 903. TREATMENT OF ELIGIBLE COMBINED DEFINED**
2 **BENEFIT PLANS AND QUALIFIED CASH OR**
3 **DEFERRED ARRANGEMENTS.**

4 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—
5 Section 414 of the Internal Revenue Code of 1986, as
6 amended by this Act, is amended by adding at the end
7 the following new subsection:

8 “(x) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
9 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
10 FERRED ARRANGEMENTS.—

11 “(1) GENERAL RULE.—Except as provided in
12 this subsection, the requirements of this title shall
13 be applied to any defined benefit plan or applicable
14 defined contribution plan which are part of an eligi-
15 ble combined plan in the same manner as if each
16 such plan were not a part of the eligible combined
17 plan.

18 “(2) ELIGIBLE COMBINED PLAN.—For pur-
19 poses of this subsection—

20 “(A) IN GENERAL.—The term ‘eligible
21 combined plan’ means a plan—

22 “(i) which is maintained by an em-
23 ployer which, at the time the plan is estab-
24 lished, is a small employer,

1 “(ii) which consists of a defined ben-
2 efit plan and an applicable defined con-
3 tribution plan,

4 “(iii) the assets of which are held in
5 a single trust forming part of the plan and
6 are clearly identified and allocated to the
7 defined benefit plan and the applicable de-
8 fined contribution plan to the extent nec-
9 essary for the separate application of this
10 title under paragraph (1), and

11 “(iv) with respect to which the ben-
12 efit, contribution, vesting, and non-
13 discrimination requirements of subpara-
14 graphs (B), (C), (D), (E), and (F) are
15 met.

16 For purposes of this subparagraph, the term
17 ‘small employer’ has the meaning given such
18 term by section 4980D(d)(2), except that such
19 section shall be applied by substituting ‘500’ for
20 ‘50’ each place it appears.

21 “(B) BENEFIT REQUIREMENTS.—

22 “(i) IN GENERAL.—The benefit re-
23 quirements of this subparagraph are met
24 with respect to the defined benefit plan
25 forming part of the eligible combined plan

1 if the accrued benefit of each participant
2 derived from employer contributions, when
3 expressed as an annual retirement benefit,
4 is not less than the applicable percentage
5 of the participant's final average pay. For
6 purposes of this clause, final average pay
7 shall be determined using the period of
8 consecutive years (not exceeding 5) during
9 which the participant had the greatest ag-
10 gregate compensation from the employer.

11 “(ii) APPLICABLE PERCENTAGE.—For
12 purposes of clause (i), the applicable per-
13 centage is the lesser of—

14 “(I) 1 percent multiplied by the
15 number of years of service with the
16 employer, or

17 “(II) 20 percent.

18 “(iii) SPECIAL RULE FOR APPLICABLE
19 DEFINED BENEFIT PLANS.—If the defined
20 benefit plan under clause (i) is an applica-
21 ble defined benefit plan as defined in sec-
22 tion 411(a)(13)(B) which meets the inter-
23 est credit requirements of section
24 411(b)(5)(B)(i), the plan shall be treated
25 as meeting the requirements of clause (i)

1 with respect to any plan year if each par-
 2 ticipant receives a pay credit for the year
 3 which is not less than the percentage of
 4 compensation determined in accordance
 5 with the following table:

“If the participant’s age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

6 “(iv) YEARS OF SERVICE.—For pur-
 7 poses of this subparagraph, years of serv-
 8 ice shall be determined under the rules of
 9 paragraphs (4), (5), and (6) of section
 10 411(a), except that the plan may not dis-
 11 regard any year of service because of a
 12 participant making, or failing to make, any
 13 elective deferral with respect to the quali-
 14 fied cash or deferred arrangement to which
 15 subparagraph (C) applies.

16 “(C) CONTRIBUTION REQUIREMENTS.—

17 “(i) IN GENERAL.—The contribution
 18 requirements of this subparagraph with re-
 19 spect to any applicable defined contribu-
 20 tion plan forming part of an eligible com-
 21 bined plan are met if—

1 “(I) the qualified cash or de-
2 ferred arrangement included in such
3 plan constitutes an automatic con-
4 tribution arrangement, and

5 “(II) the employer is required to
6 make matching contributions on be-
7 half of each employee eligible to par-
8 ticipate in the arrangement in an
9 amount equal to 50 percent of the
10 elective contributions of the employee
11 to the extent such elective contribu-
12 tions do not exceed 4 percent of com-
13 pensation.

14 Rules similar to the rules of clauses (ii)
15 and (iii) of section 401(k)(12)(B) shall
16 apply for purposes of this clause.

17 “(ii) NONELECTIVE CONTRIBU-
18 TIONS.—An applicable defined contribution
19 plan shall not be treated as failing to meet
20 the requirements of clause (i) because the
21 employer makes nonelective contributions
22 under the plan but such contributions shall
23 not be taken into account in determining
24 whether the requirements of clause (i)(II)
25 are met.

1 “(D) VESTING REQUIREMENTS.—The vest-
2 ing requirements of this subparagraph are met
3 if—

4 “(i) in the case of a defined benefit
5 plan forming part of an eligible combined
6 plan an employee who has completed at
7 least 3 years of service has a nonforfeitable
8 right to 100 percent of the employee’s ac-
9 crued benefit under the plan derived from
10 employer contributions, and

11 “(ii) in the case of an applicable de-
12 fined contribution plan forming part of eli-
13 gible combined plan—

14 “(I) an employee has a non-
15 forfeitable right to any matching con-
16 tribution made under the qualified
17 cash or deferred arrangement included
18 in such plan by an employer with re-
19 spect to any elective contribution, in-
20 cluding matching contributions in ex-
21 cess of the contributions required
22 under subparagraph (C)(i)(II), and

23 “(II) an employee who has com-
24 pleted at least 3 years of service has
25 a nonforfeitable right to 100 percent

1 of the employee's accrued benefit de-
2 rived under the arrangement from
3 nonelective contributions of the em-
4 ployer.

5 For purposes of this subparagraph, the
6 rules of section 411 shall apply to the ex-
7 tent not inconsistent with this subpara-
8 graph.

9 “(E) UNIFORM PROVISION OF CONTRIBU-
10 TIONS AND BENEFITS.—In the case of a defined
11 benefit plan or applicable defined contribution
12 plan forming part of an eligible combined plan,
13 the requirements of this subparagraph are met
14 if all contributions and benefits under each
15 such plan, and all rights and features under
16 each such plan, must be provided uniformly to
17 all participants.

18 “(F) REQUIREMENTS MUST BE MET WITH-
19 OUT TAKING INTO ACCOUNT SOCIAL SECURITY
20 AND SIMILAR CONTRIBUTIONS AND BENEFITS
21 OR OTHER PLANS.—

22 “(i) IN GENERAL.—The requirements
23 of this subparagraph are met if the re-
24 quirements of clauses (ii) and (iii) are met.

1 “(ii) SOCIAL SECURITY AND SIMILAR
2 CONTRIBUTIONS.—The requirements of
3 this clause are met if—

4 “(I) the requirements of subpara-
5 graphs (B) and (C) are met without
6 regard to section 401(l), and

7 “(II) the requirements of sections
8 401(a)(4) and 410(b) are met with re-
9 spect to both the applicable defined
10 contribution plan and defined benefit
11 plan forming part of an eligible com-
12 bined plan without regard to section
13 401(l).

14 “(iii) OTHER PLANS AND ARRANGE-
15 MENTS.—The requirements of this clause
16 are met if the applicable defined contribu-
17 tion plan and defined benefit plan forming
18 part of an eligible combined plan meet the
19 requirements of sections 401(a)(4) and
20 410(b) without being combined with any
21 other plan.

22 “(3) NONDISCRIMINATION REQUIREMENTS FOR
23 QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

24 “(A) IN GENERAL.—A qualified cash or
25 deferred arrangement which is included in an

1 applicable defined contribution plan forming
2 part of an eligible combined plan shall be treat-
3 ed as meeting the requirements of section
4 401(k)(3)(A)(ii) if the requirements of para-
5 graph (2)(C) are met with respect to such ar-
6 rangement.

7 “(B) MATCHING CONTRIBUTIONS.—In ap-
8 plying section 401(m)(11) to any matching con-
9 tribution with respect to a contribution to which
10 paragraph (2)(C) applies, the contribution re-
11 quirement of paragraph (2)(C) and the notice
12 requirements of paragraph (5)(B) shall be sub-
13 stituted for the requirements otherwise applica-
14 ble under clauses (i) and (ii) of section
15 401(m)(11)(A).

16 “(4) SATISFACTION OF TOP-HEAVY RULES.—A
17 defined benefit plan and applicable defined contribu-
18 tion plan forming part of an eligible combined plan
19 for any plan year shall be treated as meeting the re-
20 quirements of section 416 for the plan year.

21 “(5) AUTOMATIC CONTRIBUTION ARRANGE-
22 MENT.—For purposes of this subsection—

23 “(A) IN GENERAL.—A qualified cash or
24 deferred arrangement shall be treated as an

1 automatic contribution arrangement if the ar-
2 rangement—

3 “(i) provides that each employee eligi-
4 ble to participate in the arrangement is
5 treated as having elected to have the em-
6 ployer make elective contributions in an
7 amount equal to 4 percent of the employ-
8 ee’s compensation unless the employee spe-
9 cifically elects not to have such contribu-
10 tions made or to have such contributions
11 made at a different rate, and

12 “(ii) meets the notice requirements
13 under subparagraph (B).

14 “(B) NOTICE REQUIREMENTS.—

15 “(i) IN GENERAL.—The requirements
16 of this subparagraph are met if the re-
17 quirements of clauses (ii) and (iii) are met.

18 “(ii) REASONABLE PERIOD TO MAKE
19 ELECTION.—The requirements of this
20 clause are met if each employee to whom
21 subparagraph (A)(i) applies—

22 “(I) receives a notice explaining
23 the employee’s right under the ar-
24 rangement to elect not to have elective
25 contributions made on the employee’s

1 behalf or to have the contributions
2 made at a different rate, and

3 “(II) has a reasonable period of
4 time after receipt of such notice and
5 before the first elective contribution is
6 made to make such election.

7 “(iii) ANNUAL NOTICE OF RIGHTS
8 AND OBLIGATIONS.—The requirements of
9 this clause are met if each employee eligi-
10 ble to participate in the arrangement is,
11 within a reasonable period before any year,
12 given notice of the employee’s rights and
13 obligations under the arrangement.

14 The requirements of clauses (i) and (ii) of sec-
15 tion 401(k)(12)(D) shall be met with respect to
16 the notices described in clauses (ii) and (iii) of
17 this subparagraph.

18 “(6) COORDINATION WITH OTHER REQUIRE-
19 MENTS.—

20 “(A) TREATMENT OF SEPARATE PLANS.—
21 Section 414(k) shall not apply to an eligible
22 combined plan.

23 “(B) REPORTING.—An eligible combined
24 plan shall be treated as a single plan for pur-
25 poses of sections 6058 and 6059.

1 “(7) APPLICABLE DEFINED CONTRIBUTION
2 PLAN.—For purposes of this subsection—

3 “(A) IN GENERAL.—The term ‘applicable
4 defined contribution plan’ means a defined con-
5 tribution plan which includes a qualified cash or
6 deferred arrangement.

7 “(B) QUALIFIED CASH OR DEFERRED AR-
8 RANGEMENT.—The term ‘qualified cash or de-
9 ferred arrangement’ has the meaning given
10 such term by section 401(k)(2).”.

11 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
12 INCOME SECURITY ACT OF 1974.—

13 (1) IN GENERAL.—Section 210 of the Employee
14 Retirement Income Security Act of 1974 is amended
15 by adding at the end the following new subsection:

16 “(e) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
17 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
18 FERRED ARRANGEMENTS.—

19 “(1) GENERAL RULE.—Except as provided in
20 this subsection, this Act shall be applied to any de-
21 fined benefit plan or applicable individual account
22 plan which are part of an eligible combined plan in
23 the same manner as if each such plan were not a
24 part of the eligible combined plan.

1 “(2) ELIGIBLE COMBINED PLAN.—For pur-
2 poses of this subsection—

3 “(A) IN GENERAL.—The term ‘eligible
4 combined plan’ means a plan—

5 “(i) which is maintained by an em-
6 ployer which, at the time the plan is estab-
7 lished, is a small employer,

8 “(ii) which consists of a defined ben-
9 efit plan and an applicable individual ac-
10 count plan each of which qualifies under
11 section 401(a) of the Internal Revenue
12 Code of 1986,

13 “(iii) the assets of which are held in
14 a single trust forming part of the plan and
15 are clearly identified and allocated to the
16 defined benefit plan and the applicable in-
17 dividual account plan to the extent nec-
18 essary for the separate application of this
19 Act under paragraph (1), and

20 “(iv) with respect to which the ben-
21 efit, contribution, vesting, and non-
22 discrimination requirements of subpara-
23 graphs (B), (C), (D), (E), and (F) are
24 met.

1 For purposes of this subparagraph, the term
2 ‘small employer’ has the meaning given such
3 term by section 4980D(d)(2) of the Internal
4 Revenue Code of 1986, except that such section
5 shall be applied by substituting ‘500’ for ‘50’
6 each place it appears.

7 “(B) BENEFIT REQUIREMENTS.—

8 “(i) IN GENERAL.—The benefit re-
9 quirements of this subparagraph are met
10 with respect to the defined benefit plan
11 forming part of the eligible combined plan
12 if the accrued benefit of each participant
13 derived from employer contributions, when
14 expressed as an annual retirement benefit,
15 is not less than the applicable percentage
16 of the participant’s final average pay. For
17 purposes of this clause, final average pay
18 shall be determined using the period of
19 consecutive years (not exceeding 5) during
20 which the participant had the greatest ag-
21 gregate compensation from the employer.

22 “(ii) APPLICABLE PERCENTAGE.—For
23 purposes of clause (i), the applicable per-
24 centage is the lesser of—

1 “(I) 1 percent multiplied by the
2 number of years of service with the
3 employer, or

4 “(II) 20 percent.

5 “(iii) SPECIAL RULE FOR APPLICABLE
6 DEFINED BENEFIT PLANS.—If the defined
7 benefit plan under clause (i) is an applica-
8 ble defined benefit plan as defined in sec-
9 tion 203(f)(3)(B) which meets the interest
10 credit requirements of section
11 204(b)(5)(B)(i), the plan shall be treated
12 as meeting the requirements of clause (i)
13 with respect to any plan year if each par-
14 ticipant receives pay credit for the year
15 which is not less than the percentage of
16 compensation determined in accordance
17 with the following table:

“If the participant’s age as of the beginning of the year is—	The percentage is—
30 or less	2
Over 30 but less than 40	4
40 or over but less than 50	6
50 or over	8.

18 “(iv) YEARS OF SERVICE.—For pur-
19 poses of this subparagraph, years of serv-
20 ice shall be determined under the rules of
21 paragraphs (1), (2), and (3) of section
22 203(b), except that the plan may not dis-

1 regard any year of service because of a
2 participant making, or failing to make, any
3 elective deferral with respect to the quali-
4 fied cash or deferred arrangement to which
5 subparagraph (C) applies.

6 “(C) CONTRIBUTION REQUIREMENTS.—

7 “(i) IN GENERAL.—The contribution
8 requirements of this subparagraph with re-
9 spect to any applicable individual account
10 plan forming part of an eligible combined
11 plan are met if—

12 “(I) the qualified cash or de-
13 ferred arrangement included in such
14 plan constitutes an automatic con-
15 tribution arrangement, and

16 “(II) the employer is required to
17 make matching contributions on be-
18 half of each employee eligible to par-
19 ticipate in the arrangement in an
20 amount equal to 50 percent of the
21 elective contributions of the employee
22 to the extent such elective contribu-
23 tions do not exceed 4 percent of com-
24 pensation.

1 Rules similar to the rules of clauses (ii)
2 and (iii) of section 401(k)(12)(B) of the
3 Internal Revenue Code of 1986 shall apply
4 for purposes of this clause.

5 “(ii) NONELECTIVE CONTRIBUTIONS.—An applicable individual account
6 TIONS.—An applicable individual account
7 plan shall not be treated as failing to meet
8 the requirements of clause (i) because the
9 employer makes nonelective contributions
10 under the plan but such contributions shall
11 not be taken into account in determining
12 whether the requirements of clause (i)(II)
13 are met.

14 “(D) VESTING REQUIREMENTS.—The vest-
15 ing requirements of this subparagraph are met
16 if—

17 “(i) in the case of a defined benefit
18 plan forming part of an eligible combined
19 plan an employee who has completed at
20 least 3 years of service has a nonforfeitable
21 right to 100 percent of the employee’s ac-
22 crued benefit under the plan derived from
23 employer contributions, and

1 “(ii) in the case of an applicable indi-
2 vidual account plan forming part of eligible
3 combined plan—

4 “(I) an employee has a non-
5 forfeitable right to any matching con-
6 tribution made under the qualified
7 cash or deferred arrangement included
8 in such plan by an employer with re-
9 spect to any elective contribution, in-
10 cluding matching contributions in ex-
11 cess of the contributions required
12 under subparagraph (C)(i)(II), and

13 “(II) an employee who has com-
14 pleted at least 3 years of service has
15 a nonforfeitable right to 100 percent
16 of the employee’s accrued benefit de-
17 rived under the arrangement from
18 nonelective contributions of the em-
19 ployer.

20 For purposes of this subparagraph, the
21 rules of section 203 shall apply to the ex-
22 tent not inconsistent with this subpara-
23 graph.

24 “(E) UNIFORM PROVISION OF CONTRIBU-
25 TIONS AND BENEFITS.—In the case of a defined

1 benefit plan or applicable individual account
2 plan forming part of an eligible combined plan,
3 the requirements of this subparagraph are met
4 if all contributions and benefits under each
5 such plan, and all rights and features under
6 each such plan, must be provided uniformly to
7 all participants.

8 “(F) REQUIREMENTS MUST BE MET WITH-
9 OUT TAKING INTO ACCOUNT SOCIAL SECURITY
10 AND SIMILAR CONTRIBUTIONS AND BENEFITS
11 OR OTHER PLANS.—

12 “(i) IN GENERAL.—The requirements
13 of this subparagraph are met if the re-
14 quirements of clauses (ii) and (iii) are met.

15 “(ii) SOCIAL SECURITY AND SIMILAR
16 CONTRIBUTIONS.—The requirements of
17 this clause are met if—

18 “(I) the requirements of subpara-
19 graphs (B) and (C) are met without
20 regard to section 401(l) of the Inter-
21 nal Revenue Code of 1986, and

22 “(II) the requirements of sections
23 401(a)(4) and 410(b) of the Internal
24 Revenue Code of 1986 are met with
25 respect to both the applicable defined

1 contribution plan and defined benefit
2 plan forming part of an eligible com-
3 bined plan without regard to section
4 401(l) of the Internal Revenue Code
5 of 1986.

6 “(iii) OTHER PLANS AND ARRANGE-
7 MENTS.—The requirements of this clause
8 are met if the applicable defined contribu-
9 tion plan and defined benefit plan forming
10 part of an eligible combined plan meet the
11 requirements of sections 401(a)(4) and
12 410(b) of the Internal Revenue Code of
13 1986 without being combined with any
14 other plan.

15 “(3) NONDISCRIMINATION REQUIREMENTS FOR
16 QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

17 “(A) IN GENERAL.—A qualified cash or
18 deferred arrangement which is included in an
19 applicable individual account plan forming part
20 of an eligible combined plan shall be treated as
21 meeting the requirements of section
22 401(k)(3)(A)(ii) of the Internal Revenue Code
23 of 1986 if the requirements of paragraph (2)
24 are met with respect to such arrangement.

1 “(B) MATCHING CONTRIBUTIONS.—In ap-
2 plying section 401(m)(11) of such Code to any
3 matching contribution with respect to a con-
4 tribution to which paragraph (2)(C) applies, the
5 contribution requirement of paragraph (2)(C)
6 and the notice requirements of paragraph
7 (5)(B) shall be substituted for the requirements
8 otherwise applicable under clauses (i) and (ii) of
9 section 401(m)(11)(A) of such Code.

10 “(4) AUTOMATIC CONTRIBUTION ARRANGE-
11 MENT.—For purposes of this subsection—

12 “(A) IN GENERAL.—A qualified cash or
13 deferred arrangement shall be treated as an
14 automatic contribution arrangement if the ar-
15 rangement—

16 “(i) provides that each employee eligi-
17 ble to participate in the arrangement is
18 treated as having elected to have the em-
19 ployer make elective contributions in an
20 amount equal to 4 percent of the employ-
21 ee’s compensation unless the employee spe-
22 cifically elects not to have such contribu-
23 tions made or to have such contributions
24 made at a different rate, and

1 “(ii) meets the notice requirements
2 under subparagraph (B).

3 “(B) NOTICE REQUIREMENTS.—

4 “(i) IN GENERAL.—The requirements
5 of this subparagraph are met if the re-
6 quirements of clauses (ii) and (iii) are met.

7 “(ii) REASONABLE PERIOD TO MAKE
8 ELECTION.—The requirements of this
9 clause are met if each employee to whom
10 subparagraph (A)(i) applies—

11 “(I) receives a notice explaining
12 the employee’s right under the ar-
13 rangement to elect not to have elective
14 contributions made on the employee’s
15 behalf or to have the contributions
16 made at a different rate, and

17 “(II) has a reasonable period of
18 time after receipt of such notice and
19 before the first elective contribution is
20 made to make such election.

21 “(iii) ANNUAL NOTICE OF RIGHTS
22 AND OBLIGATIONS.—The requirements of
23 this clause are met if each employee eligi-
24 ble to participate in the arrangement is,
25 within a reasonable period before any year,

1 given notice of the employee’s rights and
2 obligations under the arrangement.

3 The requirements of this subparagraph shall
4 not be treated as met unless the requirements
5 of clauses (i) and (ii) of section 401(k)(12)(D)
6 of the Internal Revenue Code of 1986 are met
7 with respect to the notices described in clauses
8 (ii) and (iii) of this subparagraph.

9 “(5) COORDINATION WITH OTHER REQUIRE-
10 MENTS.—

11 “(A) TREATMENT OF SEPARATE PLANS.—
12 The except clause in section 3(35) shall not
13 apply to an eligible combined plan.

14 “(B) REPORTING.—An eligible combined
15 plan shall be treated as a single plan for pur-
16 poses of section 103.

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

19 “(A) IN GENERAL.—The term ‘applicable
20 individual account plan’ means an individual ac-
21 count plan which includes a qualified cash or
22 deferred arrangement.

23 “(B) QUALIFIED CASH OR DEFERRED AR-
24 RANGEMENT.—The term ‘qualified cash or de-
25 ferred arrangement’ has the meaning given

1 such term by section 401(k)(2) of the Internal
2 Revenue Code of 1986.”.

3 (2) CONFORMING CHANGES.—

4 (A) The heading for section 210 of such
5 Act is amended to read as follows:

6 **“SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPE-**
7 **CIAL RULES.”.**

8 (B) The table of contents in section 1 of
9 such Act is amended by striking the item relat-
10 ing to section 210 and inserting the following
11 new item:

“Sec. 210. Multiple employer plans and other special rules.”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to plan years beginning after De-
14 cember 31, 2009.

15 **SEC. 904. FASTER VESTING OF EMPLOYER NONELECTIVE**
16 **CONTRIBUTIONS.**

17 (a) AMENDMENTS TO THE INTERNAL REVENUE
18 CODE OF 1986.—

19 (1) IN GENERAL.—Paragraph (2) of section
20 411(a) of the Internal Revenue Code of 1986 (relat-
21 ing to employer contributions) is amended to read as
22 follows:

23 “(2) EMPLOYER CONTRIBUTIONS.—

24 “(A) DEFINED BENEFIT PLANS.—