

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

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

“(x) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

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

“(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

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

“(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

“(ii) which consists of a defined benefit plan and an applicable defined contribution plan,

“(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable defined contribution plan to the extent necessary for the separate application of this title under paragraph (1), and

“(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

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

“(B) BENEFIT REQUIREMENTS.—

“(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant’s final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

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

“(II) 20 percent.

“(iii) SPECIAL RULE FOR APPLICABLE DEFINED BENEFIT PLANS.—If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 411(a)(13)(B) which meets the interest credit requirements of section 411(b)(5)(B)(i), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives a pay credit for the year which is not less than the percentage of compensation determined in accordance 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.

“(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

“(C) CONTRIBUTION REQUIREMENTS.—

“(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable defined contribution plan forming part of an eligible combined plan are met if—

“(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

“(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

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

“(ii) NONELECTIVE CONTRIBUTIONS.—An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

“(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

“(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit under the plan derived from employer contributions, and “(ii) in the case of an applicable defined contribution plan forming part of eligible combined plan—

“(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

“(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 411 shall apply to the extent not inconsistent with this subparagraph.

“(E) UNIFORM PROVISION OF CONTRIBUTIONS AND BENEFITS.—In the case of a defined benefit plan or applicable defined contribution plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

“(F) REQUIREMENTS MUST BE MET WITHOUT TAKING INTO ACCOUNT SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS AND BENEFITS OR OTHER PLANS.—

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

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

“(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(l), and

“(II) the requirements of sections 401(a)(4) and 410(b) are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(l).

“(iii) OTHER PLANS AND ARRANGEMENTS.—The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) without being combined with any other plan.

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

“(A) IN GENERAL.—A qualified cash or deferred arrangement which is included in an applicable defined contribution plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) if the requirements of paragraph (2)(C) are met with respect to such arrangement.

“(B) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A).

“(4) SATISFACTION OF TOP-HEAVY RULES.—A defined benefit plan and applicable defined contribution plan forming part of an eligible combined plan for any plan year shall be treated as meeting the requirements of section 416 for the plan year.

“(5) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

“(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

“(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee’s compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

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

“(B) NOTICE REQUIREMENTS.—

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

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

“(I) receives a notice explaining the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf or to have the contributions made at a different rate, and

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

“(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee’s rights and obligations under the arrangement. The requirements of clauses (i) and (ii) of section 401(k)(12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

“(6) COORDINATION WITH OTHER REQUIREMENTS.—

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

“(B) REPORTING.—An eligible combined plan shall be treated as a single plan for purposes of sections 6058 and 6059.

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

“(A) IN GENERAL.—The term ‘applicable defined contribution plan’ means a defined contribution plan which includes a qualified cash or deferred arrangement.

“(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.— The term ‘qualified cash or deferred arrangement’ has the meaning given such term by section 401(k)(2).”.

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

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

“(e) SPECIAL RULES FOR ELIGIBLE COMBINED DEFINED BENEFIT PLANS AND QUALIFIED CASH OR DEFERRED ARRANGEMENTS.—

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

“(2) ELIGIBLE COMBINED PLAN.—For purposes of this subsection—

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

“(i) which is maintained by an employer which, at the time the plan is established, is a small employer,

“(ii) which consists of a defined benefit plan and an applicable individual account plan each of which qualifies under section 401(a) of the Internal Revenue Code of 1986,

“(iii) the assets of which are held in a single trust forming part of the plan and are clearly identified and allocated to the defined benefit plan and the applicable individual account plan to the extent necessary for the separate application of this Act under paragraph (1), and

“(iv) with respect to which the benefit, contribution, vesting, and nondiscrimination requirements of subparagraphs (B), (C), (D), (E), and (F) are met.

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

“(B) BENEFIT REQUIREMENTS.—

“(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit

plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant's final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

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

“(II) 20 percent.

“(iii) SPECIAL RULE FOR APPLICABLE DEFINED BENEFIT PLANS.—If the defined benefit plan under clause (i) is an applicable defined benefit plan as defined in section 203(f)(3)(B) which meets the interest credit requirements of section 204(b)(5)(B)(i), the plan shall be treated as meeting the requirements of clause (i) with respect to any plan year if each participant receives pay credit for the year which is not less than the percentage of compensation determined in accordance 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.

“(iv) YEARS OF SERVICE.—For purposes of this subparagraph, years of service shall be determined under the rules of paragraphs (1), (2), and (3) of section 203(b), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

“(C) CONTRIBUTION REQUIREMENTS.—

“(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable individual account plan forming part of an eligible combined plan are met if—

“(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

“(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

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

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

“(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

“(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit under the plan derived from employer contributions, and

“(ii) in the case of an applicable individual account plan forming part of eligible combined plan—

“(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan

by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

“(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 203 shall apply to the extent not inconsistent with this subparagraph.

“(E) UNIFORM PROVISION OF CONTRIBUTIONS AND BENEFITS.—In the case of a defined benefit plan or applicable individual account plan forming part of an eligible combined plan, the requirements of this subparagraph are met if all contributions and benefits under each such plan, and all rights and features under each such plan, must be provided uniformly to all participants.

“(F) REQUIREMENTS MUST BE MET WITHOUT TAKING INTO ACCOUNT SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS AND BENEFITS OR OTHER PLANS.—

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

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

“(I) the requirements of subparagraphs (B) and (C) are met without regard to section 401(l) of the Internal Revenue Code of 1986, and

“(II) the requirements of sections 401(a)(4) and 410(b) of the Internal Revenue Code of 1986 are met with respect to both the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan without regard to section 401(l) of the Internal Revenue Code of 1986.

“(iii) OTHER PLANS AND ARRANGEMENTS.—The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan.

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

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

“(B) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) of such Code to any matching contribution with respect to a contribution to which paragraph (2)(C) applies, the contribution requirement of paragraph (2)(C) and the notice requirements of paragraph (5)(B) shall be substituted for the requirements otherwise applicable under clauses (i) and (ii) of section 401(m)(11)(A) of such Code.

“(4) AUTOMATIC CONTRIBUTION ARRANGEMENT.—For purposes of this subsection—

“(A) IN GENERAL.—A qualified cash or deferred arrangement shall be treated as an automatic contribution arrangement if the arrangement—

“(i) provides that each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to 4 percent of the employee’s compensation unless the employee specifically elects not to have such contributions made or to have such contributions made at a different rate, and

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

“(B) NOTICE REQUIREMENTS.—

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

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

“(I) receives a notice explaining the employee’s right under the arrangement to elect not to have elective contributions made on the employee’s behalf or to have the contributions made at a different rate, and

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

“(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee’s rights and obligations under the arrangement. The requirements of this subparagraph shall not be treated as met unless the requirements of clauses (i) and (ii) of section 401(k)(12)(D) of the Internal Revenue Code of 1986 are met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

“(5) COORDINATION WITH OTHER REQUIREMENTS.—

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

“(B) REPORTING.—An eligible combined plan shall be treated as a single plan for purposes of section 103.

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

“(A) IN GENERAL.—The term ‘applicable individual account plan’ means an individual account plan which includes a qualified cash or deferred arrangement.

“(B) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—
The term ‘qualified cash or deferred arrangement’ has the meaning
given such term by section 401(k)(2) of the Internal Revenue Code
of 1986.”.

(2) CONFORMING CHANGES.—

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

“SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPECIAL RULES.”.

(B) The table of contents in section 1 of such Act is amended by striking the item
relating to section 210 and inserting the following new item:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years
beginning after December 31, 2009.