

109TH CONGRESS
2D SESSION

S. 3715

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide for the treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements.

IN THE SENATE OF THE UNITED STATES

JULY 24, 2006

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide for the treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements.

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. TREATMENT OF ELIGIBLE COMBINED DEFINED**
4 **BENEFIT PLANS AND QUALIFIED CASH OR**
5 **DEFERRED ARRANGEMENTS.**

6 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—
7 Section 414 of the Internal Revenue Code of 1986 is

1 amended by adding at the end the following new sub-
 2 section:

3 “(w) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
 4 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
 5 FERRED ARRANGEMENTS.—

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

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

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

17 “(i) which is maintained by an em-
 18 ployer which, at the time the plan is estab-
 19 lished, is a small employer,

20 “(ii) which consists of a defined ben-
 21 efit plan and an applicable defined con-
 22 tribution plan,

23 “(iii) the assets of which are held in
 24 a single trust forming part of the plan and
 25 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 non-discrimination 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 CASH BALANCE PLANS.—If the defined benefit plan under clause (i) is a qualified cash balance plan (within the meaning of section 411(b)(5)), 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 (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 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

1 elective contributions of the employee
 2 to the extent such elective contribu-
 3 tions do not exceed 4 percent of com-
 4 pensation.

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

8 “(ii) NONELECTIVE CONTRIBU-
 9 TIONS.—An applicable defined contribution
 10 plan shall not be treated as failing to meet
 11 the requirements of clause (i) because the
 12 employer makes nonelective contributions
 13 under the plan but such contributions shall
 14 not be taken into account in determining
 15 whether the requirements of clause (i)(II)
 16 are met.

17 “(D) VESTING REQUIREMENTS.—The vest-
 18 ing requirements of this subparagraph are met
 19 if—

20 “(i) in the case of a defined benefit
 21 plan forming part of an eligible combined
 22 plan an employee who has completed at
 23 least 3 years of service has a nonforfeitable
 24 right to 100 percent of the employee’s ac-

1 accrued benefit under the plan derived from
2 employer contributions, and

3 “(ii) in the case of an applicable de-
4 fined contribution plan forming part of eli-
5 gible combined plan—

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

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

22 For purposes of this subparagraph, the
23 rules of section 411 shall apply to the ex-
24 tent not inconsistent with this subpara-
25 graph.

“(E) UNIFORM PROVISION OF 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 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

1 plan forming part of an eligible com-
 2 bined plan without regard to section
 3 401(l).

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

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

14 “(A) IN GENERAL.—A qualified cash or
 15 deferred arrangement which is included in an
 16 applicable defined contribution plan forming
 17 part of an eligible combined plan shall be treat-
 18 ed as meeting the requirements of section
 19 401(k)(3)(A)(ii) if the requirements of para-
 20 graph (2)(C) are met with respect to such ar-
 21 rangement.

22 “(B) MATCHING CONTRIBUTIONS.—In ap-
 23 plying section 401(m)(11) to any matching con-
 24 tribution with respect to a contribution to which
 25 paragraph (2)(C) applies, the contribution re-

1 requirement of paragraph (2)(C) and the notice
 2 requirements of paragraph (5)(B) shall be sub-
 3 stituted for the requirements otherwise applica-
 4 ble under clauses (i) and (ii) of section
 5 401(m)(11)(A).

6 “(4) SATISFACTION OF TOP-HEAVY RULES.—A
 7 defined benefit plan and applicable defined contribu-
 8 tion plan forming part of an eligible combined plan
 9 for any plan year shall be treated as meeting the re-
 10 quirements of section 416 for the plan year.

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

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

17 “(i) provides that each employee eligi-
 18 ble to participate in the arrangement is
 19 treated as having elected to have the em-
 20 ployer make elective contributions in an
 21 amount equal to 4 percent of the employ-
 22 ee’s compensation unless the employee spe-
 23 cifically elects not to have such contribu-
 24 tions made or to have such contributions
 25 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 clauses (i) and (ii) of sec-
4 tion 401(k)(12)(D) shall be met with respect to
5 the notices described in clauses (ii) and (iii) of
6 this subparagraph.

7 “(6) COORDINATION WITH OTHER REQUIRE-
8 MENTS.—

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

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

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

17 “(A) IN GENERAL.—The term ‘applicable
18 defined contribution plan’ means a defined con-
19 tribution plan which includes a qualified cash or
20 deferred arrangement.

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

25 (b) AMENDMENTS OF ERISA.—

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

4 “(e) SPECIAL RULES FOR ELIGIBLE COMBINED DE-
 5 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-
 6 FERRED ARRANGEMENTS.—

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

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

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

17 “(i) which, at the time the plan is es-
 18 tablished, is maintained by a small em-
 19 ployer,

20 “(ii) which consists of a defined ben-
 21 efit plan and an applicable individual ac-
 22 count plan each of which qualifies under
 23 section 401(a) of the Internal Revenue
 24 Code of 1986,

1 “(iii) the assets of which are held in
 2 a single trust forming part of the plan and
 3 are clearly identified and allocated to the
 4 defined benefit plan and the applicable in-
 5 dividual account plan to the extent nec-
 6 essary for the separate application of this
 7 Act under paragraph (1), and

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

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

18 “(B) BENEFIT REQUIREMENTS.—

19 “(i) IN GENERAL.—The benefit re-
 20 quirements of this subparagraph are met
 21 with respect to the defined benefit plan
 22 forming part of the eligible combined plan
 23 if the accrued benefit of each participant
 24 derived from employer contributions, when
 25 expressed as an annual retirement benefit,

1 is not less than the applicable percentage
 2 of the participant's final average pay. For
 3 purposes of this clause, final average pay
 4 shall be determined using the period of
 5 consecutive years (not exceeding 5) during
 6 which the participant had the greatest ag-
 7 gregate compensation from the employer.

8 “(ii) APPLICABLE PERCENTAGE.—For
 9 purposes of clause (i), the applicable per-
 10 centage is the lesser of—

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

14 “(II) 20 percent.

15 “(iii) SPECIAL RULE FOR CASH BAL-
 16 ANCE PLANS.—If the defined benefit plan
 17 under clause (i) is a qualified cash balance
 18 plan (within the meaning of section
 19 204(b)(5)), the plan shall be treated as
 20 meeting the requirements of clause (i) with
 21 respect to any plan year if each participant
 22 receives pay credit for the year which is
 23 not less than the percentage of compensa-
 24 tion determined in accordance with the fol-
 25 lowing 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.

1 “(iv) YEARS OF SERVICE.—For pur-
2 poses of this subparagraph, years of serv-
3 ice shall be determined under the rules of
4 paragraphs (1), (2), and (3) of section
5 203(b), except that the plan may not dis-
6 regard any year of service because of a
7 participant making, or failing to make, any
8 elective deferral with respect to the quali-
9 fied cash or deferred arrangement to which
10 subparagraph (C) applies.

11 “(C) CONTRIBUTION REQUIREMENTS.—

12 “(i) IN GENERAL.—The contribution
13 requirements of this subparagraph with re-
14 spect to any applicable individual account
15 plan forming part of eligible combined plan
16 are met if—

17 “(I) the qualified cash or de-
18 ferred arrangement included in such
19 plan constitutes an automatic con-
20 tribution arrangement, and

21 “(II) the employer is required to
22 make matching contributions on be-

1 half of each employee eligible to par-
 2 ticipate in the arrangement in an
 3 amount equal to 50 percent of the
 4 elective contributions of the employee
 5 to the extent such elective contribu-
 6 tions do not exceed 4 percent of com-
 7 pensation.

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

12 “(ii) NONELECTIVE CONTRIBU-
 13 TIONS.—An applicable individual account
 14 plan shall not be treated as failing to meet
 15 the requirements of clause (i) because the
 16 employer makes nonelective contributions
 17 under the plan but such contributions shall
 18 not be taken into account in determining
 19 whether the requirements of clause (i)(II)
 20 are met.

21 “(D) VESTING REQUIREMENTS.—The vest-
 22 ing requirements of this subparagraph are met
 23 if—

24 “(i) in the case of a defined benefit
 25 plan forming part of an eligible combined

1 plan an employee who has completed at
2 least 3 years of service has a nonforfeitable
3 right to 100 percent of the employee's ac-
4 crued benefit under the plan derived from
5 employer contributions, and

6 “(ii) in the case of an applicable indi-
7 vidual account plan forming part of eligible
8 combined plan—

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

18 “(II) an employee who has com-
19 pleted at least 3 years of service has
20 a nonforfeitable right to 100 percent
21 of the employee's accrued benefit de-
22 rived under the arrangement from
23 nonelective contributions of the em-
24 ployer.

1 For purposes of this subparagraph, the
2 rules of section 203 shall apply to the ex-
3 tent not inconsistent with this subpara-
4 graph.

5 “(E) UNIFORM PROVISION OF BENE-
6 FITS.—In the case of a defined benefit plan or
7 applicable individual account plan forming part
8 of an eligible combined plan, the requirements
9 of this subparagraph are met if all benefits
10 under each such plan, and all rights and fea-
11 tures under each such plan, must be provided
12 uniformly to all participants.

13 “(F) REQUIREMENTS MUST BE MET WITH-
14 OUT TAKING INTO ACCOUNT SOCIAL SECURITY
15 AND SIMILAR CONTRIBUTIONS AND BENEFITS
16 OR OTHER PLANS.—

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

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

23 “(I) the requirements of subpara-
24 graphs (B) and (C) are met without

1 regard to section 401(l) of the Inter-
2 nal Revenue Code of 1986, and

3 “(II) the requirements of sections
4 401(a)(4) and 410(b) of the Internal
5 Revenue Code of 1986 are met with
6 respect to both the applicable defined
7 contribution plan and defined benefit
8 plan forming part of an eligible com-
9 bined plan without regard to section
10 401(l) of the Internal Revenue Code
11 of 1986.

12 “(iii) OTHER PLANS AND ARRANGE-
13 MENTS.—The requirements of this clause
14 are met if the applicable defined contribu-
15 tion plan and defined benefit plan forming
16 part of an eligible combined plan meet the
17 requirements of sections 401(a)(4) and
18 410(b) of the Internal Revenue Code of
19 1986 without being combined with any
20 other plan.

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

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

1 ee's compensation unless the employee spe-
 2 cifically elects not to have such contribu-
 3 tions made or to have such contributions
 4 made at a different rate, and

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

7 “(B) NOTICE REQUIREMENTS.—

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

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

15 “(I) receives a notice explaining
 16 the employee's right under the ar-
 17 rangement to elect not to have elective
 18 contributions made on the employee's
 19 behalf or to have the contributions
 20 made at a different rate, and

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

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

8 The requirements of clauses (i) and (ii) of sec-
 9 tion 401(k)(12)(D) of the Internal Revenue
 10 Code of 1986 shall be met with respect to the
 11 notices described in clauses (ii) and (iii) of this
 12 subparagraph.

13 “(5) COORDINATION WITH OTHER REQUIRE-
 14 MENTS.—

15 “(A) TREATMENT OF SEPARATE PLANS.—
 16 Section 414(k) of the Internal Revenue Code of
 17 1986 shall not apply to an eligible combined
 18 plan.

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

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

24 “(A) IN GENERAL.—The term ‘applicable
 25 individual account plan’ means an individual ac-

1 count plan which includes a qualified cash or
2 deferred arrangement.

3 “(B) QUALIFIED CASH OR DEFERRED AR-
4 RANGEMENT.—The term ‘qualified cash or de-
5 ferred arrangement’ has the meaning given
6 such term by section 401(k)(2) of the Internal
7 Revenue Code of 1986.”.

8 (2) CONFORMING CHANGES.—

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

11 **“SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPE-**
12 **CIAL RULES.”.**

13 (B) The table of contents in section 1 of
14 such Act is amended by striking the item relat-
15 ing to section 210 and inserting the following
16 new item:

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

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to plan years beginning after De-
19 cember 31, 2008.

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