

105TH CONGRESS
1ST SESSION

H. R. 83

To enhance and protect retirement savings.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. SCHUMER introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enhance and protect retirement savings.

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. SHORT TITLE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Comprehensive Pension and Retirement Security Act of
6 1997”.

7 (b) TABLE OF CONTENTS.—

Sec. 1. Short title.

TITLE I—RESTRICTIONS ON LOANS FROM QUALIFIED RETIREMENT PLANS

Sec. 101. Qualified employer plans prohibited from making loans through credit cards and other intermediaries.

- Sec. 102. Loans from qualified employer plans treated as distributions unless used to purchase a first home, to pay higher education or financially devastating medical expenses, or during periods of unemployment.

TITLE II—PROMOTION OF AVAILABILITY OF PRIVATE PENSIONS
UPON RETIREMENT

- Sec. 201. Availability of defined contribution plan option for participants in defined benefit plans.
- Sec. 202. Timely investment of plan contributions.
- Sec. 203. Increase in penalty for early distributions from pension plans.

TITLE III—HEALTH COVERAGE FOR RETIRED WORKERS

- Sec. 301. Advance notice of material reductions in covered services under group health plans.
- Sec. 302. Continuation of coverage for persons 55 and older until eligible for Medicare.
- Sec. 303. Protections under the Medicare program for retired workers who lose retiree health benefits.

TITLE IV—APPLICATION OF CERTAIN PROHIBITED
TRANSACTIONS RULES FOR 401(K) PLANS

- Sec. 401. Certain prohibited transactions applied to 401(k) plans.

TITLE V—RETIREMENT SAVINGS AND SECURITY

- Sec. 500. Amendment of ERISA.

Subtitle A—Expanded Pension Coverage and Simplification

- Sec. 501. Elimination of requirement for plan descriptions and the filing requirement for summary plan descriptions and descriptions of material modifications to a plan; technical corrections.
- Sec. 502. Conforming amendment relating to investments in qualified State prepaid tuition programs.

Subtitle B—Portability

- Sec. 511. Missing participants.
- Sec. 512. Elimination of special vesting rule for multiemployer plans.
- Sec. 513. Treatment of loans during military service.

Subtitle C—Enhanced Security

CHAPTER 1—GENERAL PROVISIONS

- Sec. 521. Multiemployer plan benefits guaranteed.
- Sec. 522. Reversion report.
- Sec. 523. Full funding limitation for multiemployer plans.
- Sec. 524. Prohibited transactions.
- Sec. 525. Substantial owner benefits.

CHAPTER 2—ERISA ENFORCEMENT

- Sec. 531. Short title.
- Sec. 532. Repeal of limited scope audit.

- Sec. 533. Reporting and enforcement requirements for employee benefit plans.
 Sec. 534. Additional requirements for qualified public accountants.
 Sec. 535. Clarification of fiduciary penalties.

TITLE VI—EXPANDED INDIVIDUAL RETIREMENT ACCOUNTS TO
 INCREASE COVERAGE AND PORTABILITY

Subtitle A—Retirement Savings Incentives

- Sec. 601. Increase in income limitations.
 Sec. 602. Inflation adjustment for deductible amount and income limitations.
 Sec. 603. Coordination of IRA deduction limit with elective deferral limit.
 Sec. 604. Establishment of nondeductible tax-free individual retirement accounts.

Subtitle B—Distributions and Investments

- Sec. 611. Distributions from IRAs may be used without additional tax to purchase first homes, to pay higher education or financially devastating medical expenses, or by the unemployed.
 Sec. 612. Contributions must be held at least 5 years in certain cases.
 Sec. 613. Investments in qualified State prepaid tuition programs.

1 **TITLE I—RESTRICTIONS ON**
 2 **LOANS FROM QUALIFIED RE-**
 3 **TIREMENT PLANS**

4 **SEC. 101. QUALIFIED EMPLOYER PLANS PROHIBITED FROM**
 5 **MAKING LOANS THROUGH CREDIT CARDS**
 6 **AND OTHER INTERMEDIARIES.**

7 (a) IN GENERAL.—Subsection (a) of section 401 of
 8 the Internal Revenue Code of 1986 is amended by adding
 9 at the end the following new paragraph:

10 “(35) PROHIBITION OF LOANS THROUGH CRED-
 11 IT CARDS AND OTHER INTERMEDIARIES.—A trust
 12 shall not constitute a qualified trust under this sec-
 13 tion if the plan makes any loan to any beneficiary
 14 under the plan through the use of any credit card
 15 or any other intermediary.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to plan years beginning after
3 the date of the enactment of this Act.

4 **SEC. 102. LOANS FROM QUALIFIED EMPLOYER PLANS**
5 **TREATED AS DISTRIBUTIONS UNLESS USED**
6 **TO PURCHASE A FIRST HOME, TO PAY HIGH-**
7 **ER EDUCATION OR FINANCIALLY DEVASTAT-**
8 **ING MEDICAL EXPENSES, OR DURING PERI-**
9 **ODS OF UNEMPLOYMENT.**

10 (a) IN GENERAL.—Subsection (p) of section 72 of the
11 Internal Revenue Code of 1986 (relating to loans treated
12 as distributions) is amended by redesignating paragraphs
13 (3), (4), and (5) as paragraphs (4), (5), and (6), respec-
14 tively, and by inserting after paragraph (2) the following
15 new paragraph:

16 “(3) EXCEPTION ONLY TO APPLY TO CERTAIN
17 LOANS.—Paragraph (2) shall apply to any loan only
18 if such loan is—

19 “(A) a qualified first-time homebuyer loan
20 (as defined in paragraph (7)),

21 “(B) a qualified higher education loan (as
22 defined in paragraph (8)),

23 “(C) a qualified medical expense loan (as
24 defined in paragraph (9)), or

1 “(D) a qualified unemployment loan (as
2 defined in paragraph (10)).”.

3 (b) DEFINITIONS.—Subsection (p) of section 72 of
4 such Code is amended by adding at the end the following
5 new paragraphs:

6 “(7) QUALIFIED FIRST-TIME HOMEBUYER
7 LOAN.—

8 “(A) IN GENERAL.—For purposes of para-
9 graph (3), the term ‘qualified first-time home-
10 buyer loan’ means any loan received by an indi-
11 vidual to the extent the amount of the loan is
12 used within a reasonable period to pay qualified
13 acquisition costs with respect to a principal res-
14 idence of a first-time homebuyer who is such in-
15 dividual, the spouse of such individual, or any
16 child, grandchild, or ancestor of such individual
17 or the individual’s spouse.

18 “(B) QUALIFIED ACQUISITION COSTS.—
19 For purposes of this paragraph, the term
20 ‘qualified acquisition costs’ means the costs of
21 acquiring, constructing, or reconstructing a res-
22 idence. Such term includes any usual or reason-
23 able settlement, financing, or other closing
24 costs.

1 “(C) FIRST-TIME HOMEBUYER; OTHER
2 DEFINITIONS.—For purposes of this para-
3 graph—

4 “(i) FIRST-TIME HOMEBUYER.—The
5 term ‘first-time homebuyer’ means any in-
6 dividual if—

7 “(I) such individual (and if mar-
8 ried, such individual’s spouse) had no
9 present ownership interest in a prin-
10 cipal residence during the 2-year pe-
11 riod ending on the date of acquisition
12 of the principal residence to which
13 this paragraph applies, and

14 “(II) subsection (h) or (k) of sec-
15 tion 1034 did not suspend the run-
16 ning of any period of time specified in
17 section 1034 with respect to such in-
18 dividual on the day before the date
19 the loan is received.

20 “(ii) PRINCIPAL RESIDENCE.—The
21 term ‘principal residence’ has the same
22 meaning as when used in section 1034.

23 “(iii) DATE OF ACQUISITION.—The
24 term ‘date of acquisition’ means the date—

1 “(I) on which a binding contract
2 to acquire the principal residence to
3 which subparagraph (A) applies is en-
4 tered into, or

5 “(II) on which construction or re-
6 construction of such a principal resi-
7 dence is commenced.

8 “(8) QUALIFIED HIGHER EDUCATION LOAN.—
9 For purposes of paragraph (3)—

10 “(A) IN GENERAL.—The term ‘qualified
11 higher education loan’ means any loan received
12 by an individual to the extent the amount of the
13 loan is used within a reasonable period to pay
14 expenses for tuition, fees, books, supplies, and
15 equipment required for the enrollment or at-
16 tendance of—

17 “(i) the individual,

18 “(ii) the individual’s spouse, or

19 “(iii) any child (as defined in section
20 151(c)(3)), grandchild, or ancestor of the
21 individual or the individual’s spouse,
22 at an eligible educational institution (as defined
23 in section 135(c)(3)).

24 “(B) COORDINATION WITH SAVINGS BOND
25 PROVISIONS.—The amount of qualified higher

1 education expenses for any taxable year shall be
2 reduced by any amount excludable from gross
3 income under section 135.

4 “(9) QUALIFIED MEDICAL EXPENSE LOAN.—
5 The term ‘qualified medical expense loan’ means any
6 loan received by an individual to the extent the
7 amount of the loan does not exceed the amount al-
8 lowable as a deduction under section 213 to the indi-
9 vidual for amounts paid during the taxable year for
10 medical care (determined without regard to whether
11 the taxpayer itemizes deductions for such taxable
12 year).

13 “(10) QUALIFIED UNEMPLOYMENT LOAN.—The
14 term ‘qualified unemployment loan’ means any loan
15 to an individual after separation from employment,
16 if—

17 “(A) such individual has received unem-
18 ployment compensation for 12 consecutive
19 weeks under any Federal or State unemploy-
20 ment compensation law by reason of such sepa-
21 ration, and

22 “(B) such loan is received during any tax-
23 able year during which such unemployment
24 compensation is paid or the succeeding taxable
25 year.

1 To the extent provided in regulations, a self-em-
2 ployed individual shall be treated as meeting the re-
3 quirements of subparagraph (A) if, under Federal or
4 State law, the individual would have received unem-
5 ployment compensation but for the fact the individ-
6 ual was self-employed.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to loans made after the date of
9 the enactment of this Act.

10 **TITLE II—PROMOTION OF AVAIL-**
11 **ABILITY OF PRIVATE PEN-**
12 **SIONS UPON RETIREMENT**

13 **SEC. 201. AVAILABILITY OF DEFINED CONTRIBUTION PLAN**
14 **OPTION FOR PARTICIPANTS IN DEFINED**
15 **BENEFIT PLANS.**

16 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
17 INCOME SECURITY ACT OF 1974.—Section 206 of the
18 Employee Retirement Income Security Act of 1974 (29
19 U.S.C. 1056) is amended by adding at the end the follow-
20 ing new subsection:

21 “(g) AVAILABILITY OF DEFINED CONTRIBUTION
22 PLAN OPTION FOR PARTICIPANTS IN DEFINED BENEFIT
23 PLANS.—

1 “(1) IN GENERAL.—Each defined benefit plan
2 to which an employer makes contributions shall pro-
3 vide (in such form and manner as may be provided
4 in regulations prescribed jointly by the Secretary
5 and the Secretary of the Treasury) for an oppor-
6 tunity for each participant employed by such em-
7 ployer to elect, in lieu of coverage under the defined
8 benefit plan and before any election made by the em-
9 ployer under such plan pursuant to subsection (c),
10 coverage under a defined contribution plan main-
11 tained in whole or in part by the participant’s em-
12 ployer. An employer making contributions to a de-
13 fined benefit plan shall maintain for his employees
14 a defined contribution plan to the extent necessary
15 to provide for coverage under such defined contribu-
16 tion plan pursuant to elections under this sub-
17 section.

18 “(2) REQUIRED LEVEL OF CONTRIBUTIONS.—
19 The requirements of paragraph (1) shall not be
20 treated as met unless the defined contribution plan
21 with respect to which an election is made under
22 paragraph (1) provides for contributions (other than
23 employee contributions (if any)) at least equivalent

1 to the contributions (other than employee contribu-
2 tions (if any)) provided for under the terms of the
3 defined benefit plan.

4 “(3) REQUIRED ELECTION PERIOD.—The re-
5 quirements of paragraph (1) shall not be treated as
6 met unless the defined benefit plan provides that an
7 election under paragraph (1) may be made at any
8 time during the 90-day period beginning with the
9 later of—

10 “(A) the commencement of the first plan
11 year to which this subsection applies, or

12 “(B) the commencement of the employee’s
13 service under the plan.”.

14 (b) AMENDMENTS TO THE INTERNAL REVENUE
15 CODE OF 1986.—Subsection (a) of section 401 of the In-
16 ternal Revenue Code of 1986 (relating to requirements for
17 qualification) is amended by inserting after paragraph
18 (34) the following new paragraph:

19 “(35) AVAILABILITY OF DEFINED CONTRIBU-
20 TION PLAN OPTION FOR PARTICIPANTS IN DEFINED
21 BENEFIT PLANS.—

22 “(A) IN GENERAL.—A trust forming a
23 part of a defined benefit plan to which an em-
24 ployer makes contributions shall not constitute
25 a qualified trust under this section unless—

1 “(i) the plan provides (in such form
2 and manner as may be provided in regula-
3 tions prescribed jointly by the Secretary
4 and the Secretary of Labor) for an oppor-
5 tunity for each participant employed by
6 such employer to elect, in lieu of coverage
7 under the defined benefit plan and before
8 any election made by the employer under
9 such plan pursuant to section 417, cov-
10 erage under a defined contribution plan
11 maintained in whole or in part by the par-
12 ticipant’s employer, and

13 “(ii) the defined benefit plan provides
14 that each employer making contributions
15 to the plan maintains for his employees a
16 defined contribution plan to the extent nec-
17 essary to provide for coverage under such
18 defined contribution plan pursuant to elec-
19 tions under this paragraph.

20 “(B) REQUIRED LEVEL OF CONTRIBU-
21 TIONS.—The requirements of subparagraph (A)
22 shall not be treated as met unless the defined
23 contribution plan with respect to which an elec-
24 tion is made under subparagraph (A) provides

1 for contributions (other than employee contribu-
2 tions (if any)) at least equivalent to the con-
3 tributions (other than employee contributions
4 (if any)) provided for under the terms of the
5 defined benefit plan.

6 “(C) REQUIRED ELECTION PERIOD.—The
7 requirements of subparagraph (A) shall not be
8 treated as met unless the defined benefit plan
9 provides that an election under subparagraph
10 (A) may be made at any time during the 90-
11 day period beginning with the later of—

12 “(i) the commencement of the first
13 plan year to which this paragraph applies,
14 or

15 “(ii) the commencement of the em-
16 ployee’s service under the plan.”.

17 (c) EFFECTIVE DATES.—

18 (1) GENERAL RULE.—The amendments made
19 by this section shall apply to plan years beginning
20 after December 31, 1997.

21 (2) SPECIAL RULE FOR COLLECTIVE BARGAIN-
22 ING AGREEMENTS.—In the case of a defined benefit
23 plan maintained pursuant to one or more collective
24 bargaining agreements between employee organiza-
25 tions and one or more employers ratified before the

1 date of the enactment of this Act, the amendments
2 made by this section shall not apply to plan years
3 beginning before the later of—

4 (A) the date on which the last of the col-
5 lective bargaining agreements relating to the
6 plan terminates (determined without regard to
7 any extension thereof agreed to after the date
8 of the enactment of this Act), or

9 (B) January 1, 1999.

10 For purposes of subparagraph (A), any plan amend-
11 ment made pursuant to a collective bargaining
12 agreement relating to the plan which amends the
13 plan solely to conform to any requirement added by
14 this section shall not be treated as a termination of
15 such collective bargaining agreement.

16 **SEC. 202. TIMELY INVESTMENT OF PLAN CONTRIBUTIONS.**

17 (a) IN GENERAL.—Section 404 of the Employee Re-
18 tirement Income Security Act of 1974 (29 U.S.C. 1104)
19 is amended by adding at the end the following new sub-
20 section:

21 “(e) Any failure, by a person who is a fiduciary with
22 respect to a pension plan and who has discretionary au-
23 thority respecting investment of amounts contributed to
24 the plan, to ensure that amounts contributed to the plan
25 are invested, in accordance with the terms of the plan and

1 this title, before 15 days after the calendar month in which
 2 such amounts are received by the plan, shall be treated
 3 as a breach of fiduciary duties under the plan.”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 subsection (a) shall apply with respect to plan years begin-
 6 ning on December 31, 1997.

7 **SEC. 203. INCREASE IN PENALTY FOR EARLY DISTRIBUTIONS FROM PENSION PLANS.**

8
 9 (a) IN GENERAL.—Paragraph (1) of section 72(t) of
 10 the Internal Revenue Code of 1986 (relating to imposition
 11 of additional tax) is amended by striking “10 percent” and
 12 all that follows and inserting “100 percent of the portion
 13 of such distribution which would (but for the following
 14 sentence) be includible in gross income. A distribution on
 15 which tax is imposed by the preceding sentence shall not
 16 be includible in gross income.”

17 (b) EFFECTIVE DATE.—The amendment made by
 18 subsection (a) shall apply to distributions after December
 19 31, 1997.

20 **TITLE III—HEALTH COVERAGE**
 21 **FOR RETIRED WORKERS**

22 **SEC. 301. ADVANCE NOTICE OF MATERIAL REDUCTIONS IN**
 23 **COVERED SERVICES UNDER GROUP HEALTH**
 24 **PLANS.**

25 (a) ADVANCE NOTICE.—

1 (1) IN GENERAL.—Section 104(b)(1) of the
2 Employee Retirement Income Security Act of 1974
3 (as amended by section 101(c)(1)(B) of the Health
4 Insurance Portability and Accountability Act of
5 1996 (Public Law 104–191)) is amended—

6 (A) by redesignating subparagraphs (A)
7 and (B) as clauses (i) and (ii), respectively;

8 (B) by striking “(1) The administrator”
9 and inserting “(1)(A) The administrator”;

10 (C) by striking “The administrator” the
11 second place it appears and inserting the follow-
12 ing:

13 “(B) The administrator”;

14 (D) by striking “If there is a modification”
15 and inserting the following:

16 “(C) If there is a modification”; and

17 (E) by adding at the end the following new
18 subparagraph:

19 “(D) Notwithstanding subparagraph (C), a modifica-
20 tion or change described in section 102(a)(1) in covered
21 services or benefits provided in the case of a group health
22 plan (as defined in section 706(a)(1)) relating to retiree
23 health benefits, a summary description of such modifica-
24 tion or change shall be furnished to participants and bene-
25 ficiaries not later than 180 days before the effective date

1 of the modification or change. In any case in which an
2 individual first becomes a participant under a group
3 health plan during any such 180-day period with respect
4 to such a modification or change or (in the case of any
5 other beneficiary under the plan) first receives benefits
6 under the plan during such 180-day period, the require-
7 ments of the preceding sentence may be met by providing
8 the summary description of such modification or change
9 not later than the date on which such individual first be-
10 comes a participant or such other beneficiary first receives
11 benefits under the plan.”.

12 (2) DETERMINATION BY SECRETARY.—Section
13 104 of the Employee Retirement Income Security
14 Act of 1974 (29 U.S.C. 1024) is further amended by
15 redesignating subsection (d) as subsection (e) and by
16 inserting after subsection (c) the following new sub-
17 section:

18 “(d) A change or modification in covered services or
19 benefits provided in the case of a group health plan relat-
20 ing to retiree health benefits that is subject to the require-
21 ments of subsection (b)(1)(D) may not take effect until
22 after the Secretary determines that such change or modi-
23 fication does not violate the plan, including collective bar-
24 gaining agreements.”.

1 (3) ADVANCE NOTICE TO SECRETARY.—Section
2 104(a)(1)(D) of the Employee Retirement Income
3 Security Act of 1974 (29 U.S.C. 1024(a)(1)(D)) is
4 amended by inserting before the period the follow-
5 ing: “, or in the case of any such modifications and
6 changes in covered services or benefits provided in
7 the case of a group health plan relating to retiree
8 health benefits, not later than 180 days before the
9 effective date of such modification or change.”.

10 (4) CIVIL PENALTY.—Section 502(c)(1) of such
11 Act (29 U.S.C. 1132(c)(1)) is amended by striking
12 “or section 101(e)(1)” and inserting “, section
13 101(e)(1), or section 104(b)(1)(D)”.

14 (b) ENFORCEMENT.—

15 (1) REQUIREMENTS.—Section 4980B of the In-
16 ternal Revenue Code of 1986 is amended by redesignig-
17 nating subsection (g) as subsection (h) and by in-
18 serting after subsection (f) the following new sub-
19 section:

20 “(g) NOTICE OF CHANGE OR MODIFICATION IN
21 HEALTH BENEFITS.—

22 “(1) IN GENERAL.—A group health plan meets
23 the requirements of this subsection if—

24 “(A) the plan sponsor complies with sec-
25 tion 104(b)(1)(D) of the Employee Retirement

1 Income Security Act of 1974 (relating to pro-
2 viding advance notice of modification or change
3 in retiree health benefits provided under a
4 group health plan); and

5 “(B) such modification or change in retiree
6 health benefits in a group health plan takes ef-
7 fect after the Secretary of Labor makes the de-
8 termination required by section 104(d) of such
9 Act that such change or modification does not
10 violate the plan, including collective bargaining
11 agreements.

12 “(2) NONCOMPLIANCE PERIOD.—For the pur-
13 poses of subsection (b), the noncompliance period
14 with respect to this subsection shall be determined
15 without regard to paragraph (2)(B)(ii) of subsection
16 (b).”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) Subsection (a) of section 4980B of
19 such Code is amended by striking “subsection
20 (f)” and inserting “subsections (f) and (g)”.

21 (B) Clause (iv)(II) of section
22 4980B(f)(2)(B) of such Code is amended by
23 striking “subsection (g)(1)(D)” and inserting
24 “subsection (h)(1)(D)”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to plan years ending
3 after January 1, 1997.

4 **SEC. 302. CONTINUATION OF COVERAGE FOR PERSONS 55**
5 **AND OLDER UNTIL ELIGIBLE FOR MEDICARE.**

6 (a) IN GENERAL.—Section 4980B(f)(2) of the Inter-
7 nal Revenue Code of 1986 is amended by adding at the
8 end the following:

9 “(F) COVERAGE FOR PERSONS 55 AND
10 OLDER UNTIL ELIGIBLE FOR MEDICARE.—In
11 the case of a covered employee who has attained
12 the age of 55 before a qualifying event de-
13 scribed in paragraph (3)(B)—

14 “(i) in no event shall the period of
15 continued coverage under subparagraph
16 (B)(i) with respect to such event end be-
17 fore the applicable date under subpara-
18 graph (B)(iv), and

19 “(ii) the premium requirements for
20 any period of continuation of coverage sole-
21 ly by reason of clause (i) shall be deter-
22 mined by substituting ‘110 percent’ for
23 ‘102 percent’ in subparagraph (C)(i), un-
24 less the last sentence of subparagraph (C)
25 otherwise applies.”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to plan years ending
 3 after January 1, 1997.

4 **SEC. 303. PROTECTIONS UNDER THE MEDICARE PROGRAM**
 5 **FOR RETIRED WORKERS WHO LOSE RETIREE**
 6 **HEALTH BENEFITS.**

7 (a) NO PREMIUM PENALTY FOR LATE ENROLL-
 8 MENT.—The second sentence of section 1839(b) of the So-
 9 cial Security Act (42 U.S.C. 1395r(b)) is amended by in-
 10 serting “and not pursuant to a special enrollment period
 11 under section 1837(i)(4)” after “section 1837”.

12 (b) SPECIAL MEDICARE ENROLLMENT PERIOD.—

13 (1) IN GENERAL.—Section 1837(i) of such Act
 14 (42 U.S.C. 1395p(i)) is amended by adding at the
 15 end the following new paragraph:

16 “(4)(A) In the case of an individual who—

17 “(i) at the time the individual first satisfies
 18 paragraph (1) or (2) of section 1836—

19 “(I) is enrolled in a group health plan de-
 20 scribed in section 1862(b)(1)(A)(v) by reason of
 21 the individual’s (or the individual’s spouse’s)
 22 current employment or otherwise, and

23 “(II) has elected not to enroll (or to be
 24 deemed enrolled) under this section during the
 25 individual’s initial enrollment period; and

1 “(ii) whose continuous enrollment under such
2 group health plan is involuntarily terminated at a
3 time when the enrollment under the plan is not by
4 reason of the individual’s (or the individual’s
5 spouse’s) current employment,
6 there shall be a special enrollment period described in sub-
7 paragraph (B).

8 “(B) The special enrollment period referred to in sub-
9 paragraph (A) is the 6-month period beginning on the date
10 of the enrollment termination described in subparagraph
11 (A)(ii).”.

12 (2) COVERAGE PERIOD.—Section 1838(e) of
13 such Act (42 U.S.C. 1395q(e)) is amended—

14 (A) by inserting “or 1837(i)(4)(B)” after
15 “1837(i)(3)” the first place it appears, and

16 (B) by inserting “or specified in section
17 1837(i)(4)(A)(i)” after “1837(i)(3)” the second
18 place it appears”.

19 (c) PROVIDING FOR MEDIGAP OPEN ENROLLMENT
20 PERIOD.—Section 1882(s)(2)(A) of such Act (42 U.S.C.
21 1395ss(s)(2)(A)) is amended—

22 (1) by inserting “(i)” after “during”, and

23 (2) by inserting before the period at the end the
24 following: “or (ii) in the case of an individual who
25 enrolls in part B pursuant to a special enrollment

1 period provided under section 1837(i)(4), the 6-
2 month period beginning with the first month as of
3 the first day of which the individual is enrolled
4 under part B pursuant to such enrollment”.

5 (d) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Subject to paragraph (2),
7 the amendments made by this section shall take ef-
8 fect on the date of the enactment of this Act and
9 apply to involuntary terminations of coverage under
10 a group health plan occurring on or after January
11 1, 1997.

12 (2) TRANSITION.—In the case of an involuntary
13 termination of coverage under a group health plan
14 that occurred during the period beginning on Janu-
15 ary 1, 1997, and ending on the date of the enact-
16 ment of this Act, the special enrollment period under
17 section 1837(i)(4)(B) of the Social Security Act (as
18 amended by subsection (b)) is deemed to begin as of
19 the date of the enactment of this Act.

1 **TITLE IV—APPLICATION OF CER-**
2 **TAIN PROHIBITED TRANS-**
3 **ACTIONS RULES FOR 401(k)**
4 **PLANS**

5 **SEC. 401. CERTAIN PROHIBITED TRANSACTIONS APPLIED**
6 **TO 401(k) PLANS.**

7 (a) IN GENERAL.—Paragraph (3) of section 407(d)
8 of the Employee Retirement Income Security Act of 1974
9 (29 U.S.C. 1107(d)) is amended by adding at the end the
10 following new sentence: “Such term also excludes an indi-
11 vidual account plan that includes a qualified cash or de-
12 ferred arrangement described in section 401(k) of the In-
13 ternal Revenue Code of 1986, if such plan, together with
14 all other individual account plans maintained by the em-
15 ployer, owns more than 10 percent of the assets owned
16 by all pension plans maintained by the employer. For pur-
17 poses of the preceding sentence, the assets of such plan
18 subject to participant control (within the meaning of sec-
19 tion 404(c)) shall not be taken into account.”.

20 (b) EFFECTIVE DATE; TRANSITION RULE.—

21 (1) EFFECTIVE DATE.—Except as provided in
22 paragraph (2), the amendment made by this section
23 shall apply to plans on and after the date of the en-
24 actment of this Act.

1 (2) TRANSITION RULE FOR PLANS HOLDING
2 EXCESS SECURITIES OR PROPERTY.—In the case of
3 a plan which on the date of the enactment of this
4 Act has holdings of employer securities and employer
5 real property (as defined in section 407(d) of the
6 Employee Retirement Income Security Act of 1974
7 (29 U.S.C. 1107(d)) in excess of the amount speci-
8 fied in such section 407, the amendment made by
9 this section shall apply to any acquisition of such se-
10 curities and property on or after such date of enact-
11 ment, but shall not apply to the specific holdings
12 which constitute such excess during the period of
13 such excess.

14 **TITLE V—RETIREMENT SAVINGS**
15 **AND SECURITY**

16 **SEC. 500. AMENDMENT OF ERISA.**

17 Except as otherwise expressly provided, whenever in
18 this title an amendment or repeal is expressed in terms
19 of an amendment to, or repeal of, a section or other provi-
20 sion, the reference shall be considered to be made to a
21 section or other provision of the Employee Retirement In-
22 come Security Act of 1974.

1 **Subtitle A—Expanded Pension**
2 **Coverage and Simplification**

3 **SEC. 501. ELIMINATION OF REQUIREMENT FOR PLAN DE-**
4 **SCRIPTIONS AND THE FILING REQUIREMENT**
5 **FOR SUMMARY PLAN DESCRIPTIONS AND DE-**
6 **SCRIPTIONS OF MATERIAL MODIFICATIONS**
7 **TO A PLAN; TECHNICAL CORRECTIONS.**

8 (a) **FILING REQUIREMENTS.**—Section 101(b) (29
9 U.S.C. 1021(b)) is amended by striking paragraphs (1),
10 (2), and (3) and by redesignating paragraphs (4) and (5)
11 as paragraphs (1) and (2), respectively.

12 (b) **PLAN DESCRIPTION.**—

13 (1) **IN GENERAL.**—Section 102(a) (29 U.S.C.
14 1022(a)) is amended—

15 (A) by striking paragraph (2), and

16 (B) by striking “(a)(1)” and inserting
17 “(a)”.

18 (2) **CONFORMING AMENDMENTS.**—

19 (A) Section 102(b) (29 U.S.C. 1022(b)) is
20 amended by striking “The plan description and
21 summary plan description shall contain” and
22 inserting “The summary plan description shall
23 contain”.

24 (B) The heading for section 102 is amend-
25 ed by striking “PLAN DESCRIPTION AND”.

1 (c) FURNISHING OF REPORTS.—

2 (1) IN GENERAL.—Section 104(a)(1) (29
3 U.S.C. 1024(a)(1)) is amended to read as follows:

4 “SEC. 104. (a)(1) The administrator of any employee
5 benefit plan subject to this part shall file with the Sec-
6 retary the annual report for a plan year within 210 days
7 after the close of such year (or within such time as may
8 be required by regulations promulgated by the Secretary
9 in order to reduce duplicative filing). The Secretary shall
10 make copies of such annual reports available for inspection
11 in the public document room of the Department of
12 Labor.”

13 (2) SECRETARY MAY REQUEST DOCUMENTS.—

14 (A) IN GENERAL.—Section 104(a) (29
15 U.S.C. 1024(a)) is amended by adding at the
16 end the following new paragraph:

17 “(6) The administrator of any employee benefit plan
18 subject to this part shall furnish to the Secretary, upon
19 request, any documents relating to the employee benefit
20 plan, including but not limited to, the latest summary plan
21 description (including any summaries of plan changes not
22 contained in the summary plan description), and the bar-
23 gaining agreement, trust agreement, contract, or other in-
24 strument under which the plan is established or oper-
25 ated.”.

1 (B) PENALTY.—Section 502(c) (29 U.S.C.
2 1132(c)) is amended by adding at the end the
3 following new paragraph:

4 “(5) If, within 30 days of a request by the Secretary
5 to a plan administrator for documents under section
6 104(a)(6), the plan administrator fails to furnish the ma-
7 terial requested to the Secretary, the Secretary may assess
8 a civil penalty against the plan administrator of up to
9 \$100 a day from the date of such failure (but in no event
10 in excess of \$1,000 per request). No penalty shall be im-
11 posed under this paragraph for any failure resulting from
12 matters reasonably beyond the control of the plan admin-
13 istrator.”.

14 (d) CONFORMING AMENDMENTS.—

15 (1) Section 104(b)(1) (29 U.S.C. 1024(b)(1)) is
16 amended by striking “section 102(a)(1)” each place
17 it appears and inserting “section 102(a)”.

18 (2) Section 104(b)(2) (29 U.S.C. 1024(b)(2)) is
19 amended by striking “the plan description and” and
20 inserting “the latest updated summary plan descrip-
21 tion and”.

22 (3) Section 104(b)(4) (29 U.S.C. 1024(b)(4)) is
23 amended by striking “plan description”.

24 (4) Section 106(a) (29 U.S.C. 1026(a)) is
25 amended by striking “descriptions,”.

1 (5) Section 107 (29 U.S.C. 1027) is amended
2 by striking “description or”.

3 (6) Paragraph (2)(B) of section 108 (29 U.S.C.
4 1028) is amended to read as follows: “(B) after pub-
5 lishing or filing the annual reports,”.

6 (7) Section 502(a)(6) (29 U.S.C. 1132(a)(6)) is
7 amended by striking “subsection (c)(2) or (i) or (l)”
8 and inserting “paragraph (2), (4), or (5) of sub-
9 section (c) or subsection (i) or (l)”.

10 (e) TECHNICAL CORRECTIONS TO ERISA.—

11 (1) Section 502(c)(1) (29 U.S.C. 1132(c)(1)) is
12 amended by adding at the end the following new
13 sentence: “For purposes of this paragraph, each vio-
14 lation described in subparagraph (A) with respect to
15 any single participant, and each violation described
16 in subparagraph (B) with respect to any single par-
17 ticipant or beneficiary, shall be treated as a separate
18 violation.”

19 (2) Section 502(c) (29 U.S.C. 1132(c)) is
20 amended—

21 (A) by striking the last two sentences of
22 paragraph (4), and

23 (B) by adding at the end the following new
24 paragraph:

1 “(5) The Secretary and the Secretary of Health and
 2 Human Services shall maintain such ongoing consultation
 3 as may be necessary and appropriate to coordinate en-
 4 forcement under this subsection with enforcement under
 5 section 1144(c)(9) of the Social Security Act.”.

6 (f) EFFECTIVE DATE.—The provisions of this section
 7 shall take effect on the date of the enactment of this Act.

8 **SEC. 502. CONFORMING AMENDMENT RELATING TO IN-**
 9 **VESTMENTS IN QUALIFIED STATE PREPAID**
 10 **TUITION PROGRAMS.**

11 (a) IN GENERAL.—Subsection (b) of section 408 is
 12 amended by adding at the end the following new para-
 13 graph:

14 “(14) any purchase of a qualified State prepaid
 15 tuition program instrument to which section 408(q)
 16 of the Internal Revenue Code of 1986 applies.”.

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall apply to taxable years beginning after
 19 December 31, 1996.

20 **Subtitle B—Portability**

21 **SEC. 511. MISSING PARTICIPANTS.**

22 (a) IN GENERAL.—Section 4050 (29 U.S.C. 1350)
 23 is amended by redesignating subsection (c) as subsection
 24 (e) and by inserting after subsection (b) the following new
 25 subsections:

1 “(c) MULTIEmployer PLANS.—The corporation
2 shall prescribe rules similar to the rules in subsection (a)
3 for multiemployer plans covered by this title that termi-
4 nate under section 4041A.

5 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

6 “(1) TRANSFER TO CORPORATION.—The plan
7 administrator of a plan described in paragraph (4)
8 may elect to transfer a missing participant’s benefits
9 to the corporation upon termination of the plan.

10 “(2) INFORMATION TO THE CORPORATION.—To
11 the extent provided in regulations, the plan adminis-
12 trator of a plan described in paragraph (4) shall,
13 upon termination of the plan, provide the corpora-
14 tion information with respect to benefits of a miss-
15 ing participant if the plan transfers such benefits—

16 “(A) to the corporation, or

17 “(B) to an entity other than the corpora-
18 tion or a plan described in paragraph (4)(B)(ii).

19 “(3) PAYMENT BY THE CORPORATION.—If ben-
20 efits of a missing participant were transferred to the
21 corporation under paragraph (1), the corporation
22 shall, upon location of the participant or beneficiary,
23 pay to the participant or beneficiary the amount
24 transferred (or the appropriate survivor benefit) ei-
25 ther—

1 “(A) in a single sum (plus interest), or

2 “(B) in such other form as is specified in
3 regulations of the corporation.

4 “(4) PLANS DESCRIBED.—A plan is described
5 in this paragraph if—

6 “(A) the plan is a pension plan (within the
7 meaning of section 3(2))—

8 “(i) to which the provisions of this
9 section do not apply (without regard to
10 this subsection), and

11 “(ii) which is not a plan described in
12 paragraphs (2) through (11) of section
13 4021(b), and

14 “(B) at the time the assets are to be dis-
15 tributed upon termination, the plan—

16 “(i) has missing participants, and

17 “(ii) has not provided for the transfer
18 of assets to pay the benefits of all missing
19 participants to another pension plan (with-
20 in the meaning of section 3(2)).

21 “(5) CERTAIN PROVISIONS NOT TO APPLY.—
22 Subsections (a)(1) and (a)(3) shall not apply to a
23 plan described in paragraph (4).”.

24 (b) CONFORMING AMENDMENTS.—Section 206(f)
25 (29 U.S.C. 1056(f)) is amended—

1 (1) by striking “title IV” and inserting “section
2 4050”, and

3 (2) by striking “the plan shall provide that”.

4 (c) **EFFECTIVE DATE.**—The amendments made by
5 this section shall apply to distributions made after final
6 regulations implementing subsections (c) and (d) of sec-
7 tion 4050 of the Employee Retirement Income Security
8 Act of 1974 (as added by subsection (a)), respectively, are
9 prescribed.

10 **SEC. 512. ELIMINATION OF SPECIAL VESTING RULE FOR**
11 **MULTIEMPLOYER PLANS.**

12 (a) **IN GENERAL.**—Paragraph (2) of section 203(a)
13 (29 U.S.C. 1053(a)) is amended—

14 (1) by striking “subparagraph (A), (B), or (C)”
15 and inserting “subparagraph (A) or (B)”; and

16 (2) by striking subparagraph (C).

17 (b) **EFFECTIVE DATE.**—The amendments made by
18 this section shall apply to plan years beginning on or after
19 the earlier of—

20 (1) the later of—

21 (A) January 1, 1997, or

22 (B) the date on which the last of the col-
23 lective bargaining agreements pursuant to

1 which the plan is maintained terminates (deter-
2 mined without regard to any extension thereof
3 after the date of the enactment of this Act), or
4 (2) January 1, 1999.

5 Such amendments shall not apply to any individual who
6 does not have more than 1 hour of service under the plan
7 on or after the 1st day of the 1st plan year to which such
8 amendments apply.

9 **SEC. 513. TREATMENT OF LOANS DURING MILITARY**
10 **SERVICE.**

11 (a) IN GENERAL.—Section 408(b)(1) (29 U.S.C.
12 1148(b)) is amended by adding at the end the following
13 new sentence: “A loan made by a plan shall not fail to
14 meet the requirements of the preceding sentence by reason
15 of a loan repayment suspension described under section
16 414(u)(4) of the Internal Revenue Code of 1986.”.

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall be effective as of December 12, 1994.

19 **Subtitle C—Enhanced Security**

20 **CHAPTER 1—GENERAL PROVISIONS**

21 **SEC. 521. MULTIEMPLOYER PLAN BENEFITS GUARANTEED.**

22 (a) IN GENERAL.—Section 4022A(c) (29 U.S.C.
23 1322a(c)) is amended—

24 (1) by striking “\$5” each place it appears in
25 paragraph (1) and inserting “\$11”,

1 (2) by striking “\$15” in paragraph (1) and in-
2 serting “\$33”, and

3 (3) by striking paragraphs (2), (5), and (6) and
4 by redesignating paragraphs (3) and (4) as para-
5 graphs (2) and (3), respectively.

6 (b) **EFFECTIVE DATE.**—The amendments made by
7 this section shall apply to any multiemployer plan that has
8 not received financial assistance (within the meaning of
9 section 4261 of the Employee Retirement Income Security
10 Act of 1974) within the 1-year period ending on the date
11 of the enactment of this Act.

12 **SEC. 522. REVERSION REPORT.**

13 (a) **IN GENERAL.**—Section 4008 (29 U.S.C. 1308)
14 is amended by adding at the end the following new sub-
15 section:

16 “(b) **REVERSION REPORT.**—As soon as practicable
17 after the close of each fiscal year, the Secretary of Labor
18 (acting in the Secretary’s capacity as chairman of the cor-
19 poration’s board) shall transmit to the President and the
20 Congress a report providing information on plans from
21 which residual assets were distributed to employers pursu-
22 ant to section 4044(d).”

23 (b) **CONFORMING AMENDMENT.**—Section 4008 (29
24 U.S.C. 1308) is amended by striking “SEC. 4008.” and
25 inserting “SEC. 4008. (a) **ANNUAL REPORT.**—”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to fiscal years beginning after Sep-
3 tember 30, 1997.

4 **SEC. 523. FULL FUNDING LIMITATION FOR MULTIEM-**
5 **PLOYER PLANS.**

6 (a) FULL-FUNDING LIMITATION.—Section
7 302(c)(7)(C) (29 U.S.C. 1082(c)(7)(C)) is amended—

8 (1) by inserting “or in the case of a multiem-
9 ployer plan,” after “paragraph (6)(B),” and

10 (2) by inserting “AND MULTIEMPLOYER PLANS”
11 after “PARAGRAPH (6)(B)” in the heading thereof.

12 (b) VALUATION.—Section 302(c)(9) (29 U.S.C.
13 1082(c)(9)) is amended—

14 (1) by inserting “(3 years in the case of a mul-
15 tiemployer plan)” after “year”, and

16 (2) by striking “ANNUAL VALUATION” in the
17 heading and inserting “VALUATION”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to plan years beginning after De-
20 cember 31, 1996.

21 **SEC. 524. PROHIBITED TRANSACTIONS.**

22 (a) IN GENERAL.—Section 502(i) (29 U.S.C.
23 1132(i)) is amended by striking “5 percent” and inserting
24 “10 percent”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to prohibited transactions occur-
3 ring after the date of enactment of this Act.

4 **SEC. 525. SUBSTANTIAL OWNER BENEFITS.**

5 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
6 Subparagraphs (B) and (C) of section 4022(b)(5) (29
7 U.S.C. 1322(b)(5)) are amended to read as follows:

8 “(B) For purposes of this title, the term ‘majority
9 owner’ has the same meaning as substantial owner under
10 subparagraph (A), except that subparagraph (A) shall be
11 applied by substituting ‘50 percent or more’ for ‘more
12 than 10 percent’ each place it appears.

13 “(C) In the case of a participant who is a majority
14 owner, the amount of benefits guaranteed under this sec-
15 tion shall not exceed the product of—

16 “(i) a fraction (not to exceed 1) the numerator
17 of which is the number of years from the later of the
18 effective date or the adoption date of the plan to the
19 termination date, and the denominator of which is
20 30, and

21 “(ii) the amount of the majority owner’s month-
22 ly benefits guaranteed under subsection (a) (as lim-
23 ited by paragraph (3) of this subsection).”.

24 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

1 (1) Section 4044(a)(4)(B) (29 U.S.C.
2 1344(a)(4)(B)) is amended by striking “section
3 4022(b)(5)” and inserting “section 4022(b)(5)(C)”.

4 (2) Section 4044(b) (29 U.S.C. 1344(b)) is
5 amended—

6 (A) by striking “(5)” in paragraph (2) and
7 inserting “(4), (5),” and

8 (B) by redesignating paragraphs (3)
9 through (6) as paragraphs (4) through (7), re-
10 spectively, and by inserting after paragraph (2)
11 the following new paragraph:

12 “(3) If assets available for allocation under
13 paragraph (4) of subsection (a) are insufficient to
14 satisfy in full the benefits of all individuals who are
15 described in that paragraph, the assets shall be allo-
16 cated first to benefits described in subparagraph (A)
17 of that paragraph. Any remaining assets shall then
18 be allocated to subparagraph (B). If assets allocated
19 to subparagraph (B) are insufficient to satisfy in full
20 the benefits in that subparagraph, the assets shall
21 be allocated pro rata among individuals on the basis
22 of the present value (as of the termination date) of
23 their respective benefits described in that subpara-
24 graph.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to plan terminations—

3 (1) under section 4041(c) of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C.
5 1341(c)) with respect to which notices of intent to
6 terminate are provided under section 4041(a)(2) of
7 such Act (29 U.S.C. 1341(a)(2)) on or after the
8 date of the enactment of this Act, or

9 (2) under section 4042 of such Act (29 U.S.C.
10 1342) with respect to which proceedings are insti-
11 tuted by the corporation on or after such date.

12 **CHAPTER 2—ERISA ENFORCEMENT**

13 **SEC. 531. SHORT TITLE.**

14 This chapter may be cited as the “Pension Audit Im-
15 provement Act of 1997”.

16 **SEC. 532. REPEAL OF LIMITED SCOPE AUDIT.**

17 (a) IN GENERAL.—Section 103(a)(3) (29 U.S.C.
18 1023(a)(3)) is amended by striking subparagraph (C) and
19 by redesignating subparagraph (D) as subparagraph (C).

20 (b) CONFORMING AMENDMENTS.—

21 (1) Section 103(a)(3)(A) (29 U.S.C.
22 1023(a)(3)(A)) is amended by striking “Except as
23 provided in subparagraph (C), the” and inserting
24 “The”.

1 (2) Section 104(a)(5)(A) (29 U.S.C.
2 1024(a)(5)(A)) is amended by striking “section
3 103(a)(3)(D)” and inserting “section 103(a)(3)(C)”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to opinions required
6 under section 103(a)(3)(A) of the Employee Retirement
7 Income Security Act of 1974 for plan years beginning on
8 or after January 1 of the calendar year following the date
9 of the enactment of this Act.

10 **SEC. 533. REPORTING AND ENFORCEMENT REQUIREMENTS**

11 **FOR EMPLOYEE BENEFIT PLANS.**

12 (a) IN GENERAL.—Part 1 of subtitle B of title I (29
13 U.S.C. 1021 et seq.) is amended—

14 (1) by redesignating section 111 as section 112,
15 and

16 (2) by inserting after section 110 the following
17 new section:

18 “DIRECT REPORTING OF CERTAIN EVENTS

19 “SEC. 111. (a) REQUIRED NOTIFICATIONS.—

20 “(1) NOTIFICATIONS BY PLAN ADMINIS-
21 TRATOR.—The administrator of an employee benefit
22 plan shall, within 5 business days after the adminis-
23 trator determines that there is evidence (or after the
24 administrator is notified under paragraph (2)) that
25 an irregularity may have occurred with respect to
26 the plan—

1 “(A) notify the Secretary of the irregular-
2 ity in writing; and

3 “(B) furnish a copy of such notification to
4 the accountant who is currently engaged under
5 section 103(a)(3)(A).

6 “(2) NOTIFICATIONS BY ACCOUNTANT.—

7 “(A) IN GENERAL.—An accountant en-
8 gaged by the administrator of an employee ben-
9 efit plan under section 103(a)(3)(A) shall, with-
10 in 5 business days after the accountant in con-
11 nection with such engagement determines that
12 there is evidence that an irregularity may have
13 occurred with respect to the plan—

14 “(i) notify the plan administrator of
15 the irregularity in writing, or

16 “(ii) if the accountant determines that
17 there is evidence that the irregularity may
18 have involved an individual who is the plan
19 administrator or who is a senior official of
20 the plan administrator, notify the Sec-
21 retary of the irregularity in writing.

22 “(B) NOTIFICATION UPON FAILURE OF
23 PLAN ADMINISTRATOR TO NOTIFY.—If an ac-
24 countant who has provided notification to the
25 plan administrator pursuant to subparagraph

1 (A)(i) does not receive a copy of the administra-
2 tor's notification to the Secretary required
3 under paragraph (1)(B) within the 5-business
4 day period specified therein, the accountant
5 shall furnish to the Secretary a copy of the ac-
6 countant's notification made to the plan admin-
7 istrator on the next business day following such
8 period.

9 “(3) IRREGULARITY DEFINED.—

10 “(A) For purposes of this subsection, the
11 term ‘irregularity’ means—

12 “(i) a theft, embezzlement, or a viola-
13 tion of section 664 of title 18, United
14 States Code (relating to theft or embezzle-
15 ment from an employee benefit plan);

16 “(ii) an extortion or a violation of sec-
17 tion 1951 of such title 18 (relating to in-
18 terference with commerce by threats or vi-
19 olence);

20 “(iii) a bribery, a kickback, or a viola-
21 tion of section 1954 of such title 18 (relat-
22 ing to offer, acceptance, or solicitation to
23 influence operations of an employee benefit
24 plan);

1 “(iv) a violation of section 1027 of
2 such title 18 (relating to false statements
3 and concealment of facts in relation to em-
4 ployer benefit plan records); or

5 “(v) a violation of section 411, 501, or
6 511 of this title (relating to criminal viola-
7 tions).

8 “(B) The term ‘irregularity’ shall not in-
9 clude any act or omission described in this
10 paragraph involving less than \$1,000 unless
11 there is reason to believe that the act or omis-
12 sion may bear on the integrity of plan manage-
13 ment.

14 “(b) NOTIFICATION UPON TERMINATION OF EN-
15 GAGEMENT OF ACCOUNTANT.—

16 “(1) NOTIFICATION BY PLAN ADMINIS-
17 TRATOR.—Within 5 business days after the termi-
18 nation of an engagement for auditing services under
19 section 103(a)(3)(A) with respect to an employee
20 benefit plan, the administrator of such plan shall—

21 “(A) notify the Secretary in writing of
22 such termination, giving the reasons for such
23 termination, and

1 “(B) furnish the accountant whose engage-
2 ment was terminated with a copy of the notifi-
3 cation sent to the Secretary.

4 “(2) NOTIFICATION BY ACCOUNTANT.—If the
5 accountant referred to in paragraph (1)(B) has not
6 received a copy of the administrator’s notification to
7 the Secretary as required under paragraph (1)(B),
8 or if the accountant disagrees with the reasons given
9 in the notification of termination of the engagement
10 for auditing services, the accountant shall notify the
11 Secretary in writing of the termination, giving the
12 reasons for the termination, within 10 business days
13 after the termination of the engagement.

14 “(c) DETERMINATION OF PERIODS REQUIRED FOR
15 NOTIFICATION.—In determining whether a notification re-
16 quired under this section with respect to any act or omis-
17 sion has been made within the required number of busi-
18 ness days—

19 “(1) the day on which such act or omission be-
20 gins shall not be included; and

21 “(2) Saturdays, Sundays, and legal holidays
22 shall not be included.

1 For purposes of this subsection, the term ‘legal holiday’
2 means any Federal legal holiday and any other day ap-
3 pointed as a holiday by the State in which the person re-
4 sponsible for making the notification principally conducts
5 his business.

6 “(d) IMMUNITY FOR GOOD FAITH NOTIFICATION.—
7 Except as provided in this Act, no accountant or plan ad-
8 ministrator shall be liable to any person for any finding,
9 conclusion, or statement made in any notification made
10 pursuant to subsection (a)(2) or (b)(2), or pursuant to any
11 regulations issued thereunder, if such finding, conclusion,
12 or statement is made in good faith.”

13 (b) CIVIL PENALTY.—

14 (1) IN GENERAL.—Section 502(c) (29 U.S.C.
15 1132(c)), as amended by section 2002, is amended
16 by redesignating paragraph (6) as paragraph (7)
17 and by inserting after paragraph (5) the following
18 new paragraph:

19 “(6)(A) The Secretary may assess a civil penalty of
20 up to \$100,000 against any administrator who fails to
21 provide the Secretary with any notification as required
22 under section 111.

23 “(B) The Secretary may assess a civil penalty of up
24 to \$100,000 against any accountant who knowingly and

1 willfully fails to provide the Secretary with any notification
2 as required under section 111.”.

3 (2) CONFORMING AMENDMENT.—Section
4 502(a)(6) (29 U.S.C. 1132(a)(6)), as amended by
5 section 2002, is amended by striking “or (5)” and
6 inserting “(5), or (6)”.

7 (c) CLERICAL AMENDMENTS.—

8 (1) Section 514(d) (29 U.S.C. 1144(d)) is
9 amended by striking “111” and inserting “112”.

10 (2) The table of contents in section 1 is amend-
11 ed by striking the item relating to section 111 and
12 inserting the following new items:

“Sec. 111. Direct reporting of certain events.
“Sec. 112. Repeal and effective date.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply with respect to any irregularity or
15 termination of engagement described in such amendments
16 only if the 5-day period described in such amendments in
17 connection with such irregularity or termination com-
18 mences at least 90 days after the date of the enactment
19 of this Act.

20 **SEC. 534. ADDITIONAL REQUIREMENTS FOR QUALIFIED**
21 **PUBLIC ACCOUNTANTS.**

22 (a) IN GENERAL.—Section 103(a)(3)(C) (29 U.S.C.
23 1023(a)(3)(C)), as redesignated by section 2032, is
24 amended—

1 (1) by inserting “(i)” after “(C)”;

2 (2) by inserting “, with respect to any engage-
3 ment of an accountant under subparagraph (A)”
4 after “means”;

5 (3) by redesignating clauses (i), (ii), and (iii) as
6 subclauses (I), (II), and (III), respectively;

7 (4) by striking the period at the end of sub-
8 clause (III) (as so redesignated) and inserting a
9 comma;

10 (5) by adding after subclause (III) (as so redesi-
11 gnated), and flush with clause (i), the following:

12 “but only if such person meets the requirements of clauses
13 (ii) and (iii) with respect to such engagement.”; and

14 (6) by adding at the end the following new
15 clauses:

16 “(ii) A person meets the requirements of this clause
17 with respect to an engagement of such person as an ac-
18 countant under subparagraph (A) if such person—

19 “(I) has in operation an appropriate internal
20 quality control system;

21 “(II) has undergone a qualified external quality
22 control review of the person’s accounting and audit-
23 ing practices, including such practices relevant to
24 employee benefit plans (if any), during the 3-year
25 period immediately preceding such engagement; and

1 “(III) has completed, within the 2-year period
2 immediately preceding such engagement, at least 80
3 hours of continuing education or training which con-
4 tributes to the accountant’s professional proficiency,
5 at least 20 hours of which have been completed dur-
6 ing the 1-year period immediately preceding the en-
7 gagement, and at least 16 hours of which relate to
8 employee benefit plan matters.

9 “(iii) A person meets the requirements of this clause
10 with respect to an engagement of such person as an ac-
11 countant under subparagraph (A) if such person meets
12 such additional requirements and qualifications of regula-
13 tions which the Secretary deems necessary to ensure the
14 quality of plan audits.

15 “(iv) For purposes of clause (ii)(II), an external qual-
16 ity control review shall be treated as qualified with respect
17 to a person referred to in clause (ii) if—

18 “(I) such review is performed in accordance
19 with the requirements of external quality control re-
20 view programs of recognized auditing standard-set-
21 ting bodies, as determined under regulations of the
22 Secretary, and

23 “(II) in the case of any such person who has,
24 during the peer review period, conducted one or
25 more previous audits of employee benefit plans, such

1 review includes the review of an appropriate number
2 (determined as provided in such regulations, but in
3 no case less than one) of plan audits in relation to
4 the scale of such person's auditing practice.

5 The Secretary shall issue the regulations under subclause
6 (I) no later than December 31, 1997.”.

7 (b) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graph (2), the amendments made by this section
10 shall apply with respect to plan years beginning on
11 or after the date which is 3 years after the date of
12 the enactment of this Act.

13 (2) RESTRICTIONS ON CONDUCTING EXAMINA-
14 TIONS.—Clause (iii) of section 103(a)(3)(C) of the
15 Employee Retirement Income Security Act of 1974
16 (as added by subsection (a)(6)) shall take effect on
17 the date of enactment of this Act.

18 **SEC. 535. CLARIFICATION OF FIDUCIARY PENALTIES.**

19 (a) MODIFICATION OF PROHIBITION OF ASSIGNMENT
20 OR ALIENATION.—

21 (1) AMENDMENT TO ERISA.—Section 206(d)
22 (29 U.S.C. 1056(d)) is amended by adding at the
23 end the following new paragraphs:

24 “(4) Paragraph (1) shall not apply to any offset of
25 a participant's accrued benefit in an employee pension

1 benefit plan against an amount that the participant is or-
2 dered or required to pay to the plan if—

3 “(A) the order or requirement to pay arises—

4 “(i) under a judgment of conviction for a
5 crime involving such plan,

6 “(ii) under a civil judgment (including a
7 consent order or decree) entered by a court in
8 an action brought in connection with a violation
9 (or alleged violation) of part 4 of this subtitle,
10 or

11 “(iii) pursuant to a settlement agreement
12 between the Secretary and the participant, or a
13 settlement agreement between the Pension Ben-
14 efit Guaranty Corporation and the participant,
15 in connection with a violation (or alleged viola-
16 tion) of part 4 of this subtitle,

17 “(B) the judgment, order, decree, or settlement
18 agreement expressly provides for the offset of all or
19 part of the amount ordered or required to be paid
20 to the plan against the participant’s accrued benefit
21 in the plan, and

22 “(C) if the participant has a spouse at the time
23 at which the offset is to be made—

1 “(i) such spouse has consented in writing
2 to such offset and such consent is witnessed by
3 a notary public or representative of the plan,

4 “(ii) such spouse is ordered or required in
5 such judgment, order, decree, or settlement to
6 pay an amount to the plan in connection with
7 a violation of part 4 of this title, or

8 “(iii) in such judgment, order, decree, or
9 settlement, such spouse retains the right to re-
10 ceive the value of the survivor annuity under a
11 qualified joint and survivor annuity provided
12 pursuant to section 205(a)(1) and under a
13 qualified preretirement survivor annuity pro-
14 vided pursuant to section 205(a)(2), determined
15 in accordance with paragraph (5).

16 “(5)(A) The value of the survivor annuity described
17 in paragraph (4)(C)(iii) shall be determined as if—

18 “(i) the participant terminated employment on
19 the date of the offset,

20 “(ii) there was no offset,

21 “(iii) the plan permitted retirement only on or
22 after normal retirement age,

23 “(iv) the plan provided only the minimum-re-
24 quired qualified joint and survivor annuity, and

1 “(v) the amount of the qualified preretirement
2 survivor annuity under the plan is equal to the
3 amount of the survivor annuity payable under the
4 minimum-required qualified joint and survivor annu-
5 ity.

6 “(B) For purposes of this paragraph, the term ‘mini-
7 mum-required qualified joint and survivor annuity’ means
8 the qualified joint and survivor annuity which is the actu-
9 arial equivalent of a single annuity for the life of the par-
10 ticipant and under which the survivor annuity is 50 per-
11 cent of the amount of the annuity which is payable during
12 the joint lives of the participant and the spouse.”.

13 (2) EFFECTIVE DATE.—The amendment made
14 by this subsection shall apply to judgments, orders,
15 and decrees issued, and settlement agreements en-
16 tered into, on or after the date of enactment of this
17 Act.

18 (b) CIVIL PENALTIES FOR BREACH OF FIDUCIARY
19 RESPONSIBILITY.—

20 (1) IMPOSITION AND AMOUNT OF PENALTY
21 MADE DISCRETIONARY.—Section 502(l)(1) (29
22 U.S.C. 1132(l)(1)) is amended—

23 (A) by striking “shall” and inserting
24 “may”, and

1 (B) by striking “equal to” and inserting
2 “not greater than”.

3 (2) APPLICABLE RECOVERY AMOUNT.—Section
4 502(l)(2) (29 U.S.C. 1132(l)(2)) is amended to read
5 as follows:

6 “(2) For purposes of paragraph (1), the term ‘appli-
7 cable recovery amount’ means any amount which is recov-
8 ered from (or on behalf of) any fiduciary or other person
9 with respect to a breach or violation described in para-
10 graph (1) on or after the 30th day following receipt by
11 such fiduciary or other person of written notice from the
12 Secretary of the violation, whether paid voluntarily or by
13 order of a court in a judicial proceeding instituted by the
14 Secretary under subsection (a)(2) or (a)(5). The Secretary
15 may, in the Secretary’s sole discretion, extend the 30-day
16 period described in the preceding sentence.”.

17 (3) OTHER RULES.—Section 502(l) (29 U.S.C.
18 1132(l)) is amended by adding at the end the follow-
19 ing new paragraphs:

20 “(5) A person shall be jointly and severally liable for
21 the penalty described in paragraph (1) to the same extent
22 that such person is jointly and severally liable for the ap-
23 plicable recovery amount on which the penalty is based.

1 “(6) No penalty shall be assessed under this sub-
2 section unless the person against whom the penalty is as-
3 sessed is given notice and opportunity for a hearing with
4 respect to the violation and applicable recovery amount.”.

5 (4) EFFECTIVE DATES.—

6 (A) IN GENERAL.—The amendments made
7 by this subsection shall apply to any breach of
8 fiduciary responsibility or other violation of part
9 4 of subtitle B of title I of the Employee Re-
10 tirement Income Security Act of 1974 occurring
11 on or after the date of enactment of this Act.

12 (B) TRANSITION RULE.—In applying the
13 amendment made by paragraph (2) (relating to
14 applicable recovery amount), a breach or other
15 violation occurring before the date of the enact-
16 ment of this Act which continues after the
17 180th day after such date (and which may have
18 been discontinued at any time during its exist-
19 ence) shall be treated as having occurred after
20 such date of enactment.

1 **TITLE VI—EXPANDED INDIVID-**
2 **UAL RETIREMENT ACCOUNTS**
3 **TO INCREASE COVERAGE AND**
4 **PORTABILITY**

5 **Subtitle A—Retirement Savings**
6 **Incentives**

7 **SEC. 601. INCREASE IN INCOME LIMITATIONS.**

8 (a) IN GENERAL.—Subparagraph (B) of section
9 219(g)(3) is amended—

10 (1) by striking “\$40,000” in clause (i) and in-
11 sserting “\$80,000 (\$70,000 in the case of taxable
12 years beginning in 1997, 1998, or 1999)”, and

13 (2) by striking “\$25,000” in clause (ii) and in-
14 sserting “\$50,000 (\$45,000 in the case of taxable
15 years beginning in 1997, 1998, or 1999)”.

16 (b) PHASEOUT OF LIMITATIONS.—Clause (ii) of sec-
17 tion 219(g)(2)(A) is amended by striking “\$10,000” and
18 inserting “an amount equal to 10 times the dollar amount
19 applicable for the taxable year under subsection
20 (b)(1)(A)”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31, 1996.

1 **SEC. 602. INFLATION ADJUSTMENT FOR DEDUCTIBLE**
2 **AMOUNT AND INCOME LIMITATIONS.**

3 (a) IN GENERAL.—Section 219 is amended by redese-
4 ignating subsection (h) as subsection (i) and by inserting
5 after subsection (g) the following new subsection:

6 “(h) COST-OF-LIVING ADJUSTMENTS.—

7 “(1) DEDUCTIBLE AMOUNTS.—In the case of
8 any taxable year beginning in a calendar year after
9 1997, the \$2,000 amounts under subsections
10 (b)(1)(A) and (c)(2) shall be increased by an amount
11 equal to—

12 “(A) such dollar amount, multiplied by

13 “(B) the cost-of-living adjustment deter-
14 mined under section 1(f)(3) for the calendar
15 year in which the taxable year begins, deter-
16 mined by substituting ‘calendar year 1996’ for
17 ‘calendar year 1992’ in subparagraph (B)
18 thereof.

19 “(2) APPLICABLE DOLLAR AMOUNT.—In the
20 case of any taxable year beginning in a calendar
21 year after 1999, the applicable dollar amounts under
22 subsection (g)(3)(B) shall be increased by an
23 amount equal to—

24 “(A) such dollar amount, multiplied by

25 “(B) the cost-of-living adjustment deter-
26 mined under section 1(f)(3) for the calendar

1 year in which the taxable year begins, deter-
2 mined by substituting ‘calendar year 1998’ for
3 ‘calendar year 1992’ in subparagraph (B)
4 thereof.

5 “(3) ROUNDING RULES.—

6 “(A) DEDUCTION AMOUNTS.—If any
7 amount after adjustment under paragraph (1)
8 is not a multiple of \$500, such amount shall be
9 rounded to the next lowest multiple of \$500.

10 “(B) APPLICABLE DOLLAR AMOUNTS.—If
11 any amount after adjustment under paragraph
12 (2) is not a multiple of \$5,000, such amount
13 shall be rounded to the next lowest multiple of
14 \$5,000.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Clause (i) of section 219(c)(2)(A) is amend-
17 ed to read as follows:

18 “(i) the sum of \$250 and the dollar
19 amount in effect for the taxable year under
20 subsection (b)(1)(A), or”.

21 (2) Section 408(a)(1) is amended by striking
22 “in excess of \$2,000 on behalf of any individual”
23 and inserting “on behalf of any individual in excess
24 of the amount in effect for such taxable year under
25 section 219(b)(1)(A)”.

1 “(B) the elective deferrals (as defined in
2 section 402(g)(3)) of such individual for such
3 taxable year.”.

4 (b) CONFORMING AMENDMENT.—Section 219(e) is
5 amended by adding at the end the following new para-
6 graph:

7 “(3) CROSS REFERENCE.—

**“For reduction in paragraph (2) amount, see sub-
section (b)(4).”.**

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 1996.

11 **SEC. 604. ESTABLISHMENT OF NONDEDUCTIBLE TAX-FREE**
12 **INDIVIDUAL RETIREMENT ACCOUNTS.**

13 (a) IN GENERAL.—Subpart A of part I of subchapter
14 D of chapter 1 (relating to pension, profit-sharing, stock
15 bonus plans, etc.) is amended by inserting after section
16 408 the following new section:

17 **“SEC. 408A. SPECIAL INDIVIDUAL RETIREMENT ACCOUNTS.**

18 “(a) GENERAL RULE.—Except as provided in this
19 chapter, a special individual retirement account shall be
20 treated for purposes of this title in the same manner as
21 an individual retirement plan.

22 “(b) SPECIAL INDIVIDUAL RETIREMENT AC-
23 COUNT.—For purposes of this title, the term ‘special indi-
24 vidual retirement account’ means an individual retirement

1 plan which is designated at the time of establishment of
2 the plan as a special individual retirement account.

3 “(c) TREATMENT OF CONTRIBUTIONS.—

4 “(1) NO DEDUCTION ALLOWED.—No deduction
5 shall be allowed under section 219 for a contribution
6 to a special individual retirement account.

7 “(2) CONTRIBUTION LIMIT.—The aggregate
8 amount of contributions for any taxable year to all
9 special individual retirement accounts maintained for
10 the benefit of an individual shall not exceed the ex-
11 cess (if any) of—

12 “(A) the maximum amount allowable as a
13 deduction under section 219 with respect to
14 such individual for such taxable year, over

15 “(B) the aggregate amount of contribu-
16 tions for such taxable year to all individual re-
17 tirement plans (other than special individual re-
18 tirement accounts) maintained for the benefit of
19 the individual.

20 “(3) SPECIAL RULES FOR QUALIFIED TRANS-
21 FERS.—

22 “(A) IN GENERAL.—No rollover contribu-
23 tion may be made to a special individual retire-
24 ment account unless it is a qualified transfer.

1 “(B) LIMIT NOT TO APPLY.—The limita-
2 tion under paragraph (2) shall not apply to a
3 qualified transfer to a special individual retire-
4 ment account.

5 “(d) TAX TREATMENT OF DISTRIBUTIONS.—

6 “(1) IN GENERAL.—Except as provided in this
7 subsection, any amount paid or distributed out of a
8 special individual retirement account shall not be in-
9 cluded in the gross income of the distributee.

10 “(2) EXCEPTION FOR EARNINGS ON CONTRIBU-
11 TIONS HELD LESS THAN 5 YEARS.—

12 “(A) IN GENERAL.—Any amount distrib-
13 uted out of a special individual retirement ac-
14 count which consists of earnings allocable to
15 contributions made to the account during the 5-
16 year period ending on the day before such dis-
17 tribution shall be included in the gross income
18 of the distributee for the taxable year in which
19 the distribution occurs.

20 “(B) ORDERING RULE.—

21 “(i) FIRST-IN, FIRST-OUT RULE.—
22 Distributions from a special individual re-
23 tirement account shall be treated as having
24 been made—

1 “(I) first from the earliest con-
2 tribution (and earnings allocable
3 thereto) remaining in the account at
4 the time of the distribution, and

5 “(II) then from other contribu-
6 tions (and earnings allocable thereto)
7 in the order in which made.

8 “(ii) ALLOCATIONS BETWEEN CON-
9 TRIBUTIONS AND EARNINGS.—Any portion
10 of a distribution allocated to a contribution
11 (and earnings allocable thereto) shall be
12 treated as allocated first to the earnings
13 and then to the contribution.

14 “(iii) ALLOCATION OF EARNINGS.—
15 Earnings shall be allocated to a contribu-
16 tion in such manner as the Secretary may
17 prescribe.

18 “(iv) AGGREGATIONS OF CONTRIBU-
19 TIONS.—Except as provided by the Sec-
20 retary, for purposes of this subpara-
21 graph—

22 “(I) all contributions made dur-
23 ing the same taxable year may be
24 treated as 1 contribution, and

1 “(II) all contributions made be-
2 fore the first day of the 5-year period
3 ending on the day before any distribu-
4 tion may be treated as 1 contribution.

5 “(C) CROSS REFERENCE.—

**“For additional tax for early withdrawal, see sec-
tion 72(t).**

6 “(3) QUALIFIED TRANSFER.—

7 “(A) IN GENERAL.—Paragraph (2) shall
8 not apply to any distribution which is trans-
9 ferred in a qualified transfer to another special
10 individual retirement account.

11 “(B) CONTRIBUTION PERIOD.—For pur-
12 poses of paragraph (2), the special individual
13 retirement account to which any contributions
14 are transferred shall be treated as having held
15 such contributions during any period such con-
16 tributions were held (or are treated as held
17 under this subparagraph) by the special individ-
18 ual retirement account from which transferred.

19 “(4) SPECIAL RULES RELATING TO CERTAIN
20 TRANSFERS.—

21 “(A) IN GENERAL.—Notwithstanding any
22 other provision of law, in the case of a qualified

1 transfer to a special individual retirement ac-
2 count from an individual retirement plan which
3 is not a special individual retirement account—

4 “(i) there shall be included in gross
5 income any amount which, but for the
6 qualified transfer, would be includible in
7 gross income, but

8 “(ii) section 72(t) shall not apply to
9 such amount.

10 “(B) TIME FOR INCLUSION.—In the case
11 of any qualified transfer which occurs before
12 January 1, 1998, any amount includible in
13 gross income under subparagraph (A) with re-
14 spect to such contribution shall be includible
15 ratably over the 4-taxable year period beginning
16 in the taxable year in which the amount was
17 paid or distributed out of the individual retire-
18 ment plan. The amount of such qualified trans-
19 fer taken into account for purposes of section
20 4980A(c) shall be taken into account ratably
21 over such period.

22 “(C) ADDITIONAL REPORTING.—A trustee
23 of an individual retirement plan shall include
24 such additional information in any report re-
25 quired under section 408(i) as the Secretary

1 may require to insure that amounts described
2 in subparagraph (B) are included in gross in-
3 come for the appropriate taxable year.

4 “(e) QUALIFIED TRANSFER.—For purposes of this
5 section—

6 “(1) IN GENERAL.—The term ‘qualified trans-
7 fer’ means a transfer to a special individual retire-
8 ment account from another such account or from an
9 individual retirement plan but only if such transfer
10 meets the requirements of section 408(d)(3).

11 “(2) LIMITATION.—

12 “(A) IN GENERAL.—A transfer otherwise
13 described in paragraph (1) shall not be treated
14 as a qualified transfer if the taxpayer’s adjusted
15 gross income for the taxable year of the trans-
16 fer exceeds the sum of—

17 “(i) the applicable dollar amount, plus

18 “(ii) the dollar amount applicable for
19 the taxable year under section
20 219(g)(2)(A)(ii).

21 This subparagraph shall not apply to a transfer
22 from a special individual retirement account to
23 another special individual retirement account.

1 “(B) TRANSITION RULE.—In the case of a
2 transfer before January 1, 1999, the dollar lim-
3 itation under subparagraph (A) shall be
4 \$100,000 in the case of a married individual fil-
5 ing a joint return, zero in the case of a married
6 individual filing a separate return, and \$70,000
7 in any other case.

8 “(3) DEFINITIONS.—For purposes of this sub-
9 section, the terms ‘adjusted gross income’ and ‘ap-
10 plicable dollar amount’ have the meanings given
11 such terms by section 219(g)(3), except that ad-
12 justed gross income shall be determined by taking
13 into account the deduction under section 219 and
14 not taking into account any transfer to which para-
15 graph (2) applies.”.

16 (b) ADDITIONAL TAX ON EARLY DISTRIBUTIONS.—
17 Section 72(t) is amended by adding at the end the follow-
18 ing new paragraph:

19 “(6) RULES RELATING TO SPECIAL INDIVIDUAL
20 RETIREMENT ACCOUNTS.—In the case of a special
21 individual retirement account under section 408A—

22 “(A) this subsection shall only apply to
23 distributions out of such account which consist
24 of earnings allocable to contributions made to

1 the account during the 5-year period ending on
2 the day before such distribution, and

3 “(B) paragraph (2)(A)(i) shall not apply to
4 any distribution described in subparagraph
5 (A).”.

6 (c) EXCESS CONTRIBUTIONS.—Section 4973(b) is
7 amended—

8 (1) by inserting “, or a qualified transfer de-
9 scribed in section 408A(e)” after “408(d)(3)” in
10 paragraph (1)(A), and

11 (2) by adding at the end the following new sen-
12 tence: “For purposes of paragraphs (1)(B) and
13 (2)(C), the amount allowable as a deduction under
14 section 219 shall be computed without regard to sec-
15 tion 408A.”

16 (d) REPORTING.—Section 408(i) is amended by strik-
17 ing “under regulations” and “in such regulations” each
18 place such terms appear.

19 (e) CONFORMING AMENDMENT.—The table of sec-
20 tions for subpart A of part I of subchapter D of chapter
21 1 is amended by inserting after the item relating to section
22 408 the following new item:

“Sec. 408A. Special individual retirement accounts.”.

23 (f) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 1996.

1 **Subtitle B—Distributions and**
2 **Investments**

3 **SEC. 611. DISTRIBUTIONS FROM IRAS MAY BE USED WITH-**
4 **OUT ADDITIONAL TAX TO PURCHASE FIRST**
5 **HOMES, TO PAY HIGHER EDUCATION OR FI-**
6 **NANCIALLY DEVASTATING MEDICAL EX-**
7 **PENSES, OR BY THE UNEMPLOYED.**

8 (a) **IN GENERAL.**—Paragraph (2) of section 72(t)
9 (relating to exceptions to 10-percent additional tax on
10 early distributions from qualified retirement plans) is
11 amended by adding at the end the following new subpara-
12 graph:

13 “(D) DISTRIBUTIONS FROM CERTAIN
14 PLANS FOR FIRST HOME PURCHASES OR EDU-
15 CATIONAL EXPENSES.—Distributions to an in-
16 dividual from an individual retirement plan—

17 “(i) which are qualified first-time
18 homebuyer distributions (as defined in
19 paragraph (7)); or

20 “(ii) to the extent such distributions
21 do not exceed the qualified higher edu-
22 cation expenses (as defined in paragraph
23 (8)) of the taxpayer for the taxable year.”.

24 (b) **FINANCIALLY DEVASTATING MEDICAL EX-**
25 **PENSES.**—

1 (1) IN GENERAL.—Section 72(t)(3)(A) is
2 amended by striking “(B),”.

3 (2) CERTAIN LINEAL DESCENDANTS AND AN-
4 CESTORS TREATED AS DEPENDENTS AND LONG-
5 TERM CARE SERVICES TREATED AS MEDICAL
6 CARE.—Subparagraph (B) of section 72(t)(2) is
7 amended by striking “medical care” and all that fol-
8 lows and inserting “medical care determined—

9 “(i) without regard to whether the
10 employee itemizes deductions for such tax-
11 able year, and

12 “(ii) in the case of an individual re-
13 tirement plan—

14 “(I) by treating such employee’s
15 dependents as including all children,
16 grandchildren, and ancestors of the
17 employee or such employee’s spouse
18 and

19 “(II) by treating qualified long-
20 term care services (as defined in para-
21 graph (9)) as medical care for pur-
22 poses of this subparagraph.”.

23 (3) CONFORMING AMENDMENT.—Subparagraph
24 (B) of section 72(t)(2) is amended by striking “or
25 (C)” and inserting “, (C), or (D)”.

1 (c) DEFINITIONS.—Section 72(t), as amended by this
2 Act, is amended by adding at the end the following new
3 paragraphs:

4 “(7) QUALIFIED FIRST-TIME HOMEBUYER DIS-
5 TRIBUTIONS.—For purposes of paragraph
6 (2)(D)(i)—

7 “(A) IN GENERAL.—The term ‘qualified
8 first-time homebuyer distribution’ means any
9 payment or distribution received by an individ-
10 ual to the extent such payment or distribution
11 is used by the individual before the close of the
12 60th day after the day on which such payment
13 or distribution is received to pay qualified ac-
14 quisition costs with respect to a principal resi-
15 dence of a first-time homebuyer who is such in-
16 dividual or the spouse, child (as defined in sec-
17 tion 151(c)(3)), or grandchild of such individ-
18 ual.

19 “(B) QUALIFIED ACQUISITION COSTS.—
20 For purposes of this paragraph, the term
21 ‘qualified acquisition costs’ means the costs of
22 acquiring, constructing, or reconstructing a res-
23 idence. Such term includes any usual or reason-
24 able settlement, financing, or other closing
25 costs.

1 “(C) FIRST-TIME HOMEBUYER; OTHER
2 DEFINITIONS.—For purposes of this para-
3 graph—

4 “(i) FIRST-TIME HOMEBUYER.—The
5 term ‘first-time homebuyer’ means any in-
6 dividual if—

7 “(I) such individual (and if mar-
8 ried, such individual’s spouse) had no
9 present ownership interest in a prin-
10 cipal residence during the 3-year pe-
11 riod ending on the date of acquisition
12 of the principal residence to which
13 this paragraph applies, and

14 “(II) subsection (h) or (k) of sec-
15 tion 1034 did not suspend the run-
16 ning of any period of time specified in
17 section 1034 with respect to such in-
18 dividual on the day before the date
19 the distribution is applied pursuant to
20 subparagraph (A).

21 In the case of an individual described in
22 section 143(i)(1)(C) for any year, an own-
23 ership interest shall not include any inter-
24 est under a contract of deed described in
25 such section. An individual who loses an

1 ownership interest in a principal residence
2 incident to a divorce or legal separation is
3 deemed for purposes of this subparagraph
4 to have had no ownership interest in such
5 principal residence within the period re-
6 ferred to in subclause (II).

7 “(ii) PRINCIPAL RESIDENCE.—The
8 term ‘principal residence’ has the same
9 meaning as when used in section 1034.

10 “(iii) DATE OF ACQUISITION.—The
11 term ‘date of acquisition’ means the date—

12 “(I) on which a binding contract
13 to acquire the principal residence to
14 which subparagraph (A) applies is en-
15 tered into, or

16 “(II) on which construction or re-
17 construction of such a principal resi-
18 dence is commenced.

19 “(D) SPECIAL RULE WHERE DELAY IN AC-
20 QUISSION.—Any portion of any distribution
21 from any individual retirement plan which fails
22 to meet the requirements of subparagraph (A)
23 solely by reason of a delay or cancellation of the
24 purchase or construction of the residence may
25 be contributed to an individual retirement plan

1 as provided in section 408(d)(3)(A)(i) (deter-
2 mined by substituting ‘120 days’ for ‘60 days’
3 in such section), except that—

4 “(i) section 408(d)(3)(B) shall not be
5 applied to such portion, and

6 “(ii) such portion shall not be taken
7 into account in determining whether sec-
8 tion 408(d)(3)(B) applies to any other
9 amount.

10 “(8) QUALIFIED HIGHER EDUCATION EX-
11 PENSES.—For purposes of paragraph (2)(D)(ii)—

12 “(A) IN GENERAL.—The term ‘qualified
13 higher education expenses’ means tuition and
14 fees required for the enrollment or attendance
15 of—

16 “(i) the taxpayer,

17 “(ii) the taxpayer’s spouse,

18 “(iii) a dependent of the taxpayer
19 with respect to whom the taxpayer is al-
20 lowed a deduction under section 151, or

21 “(iv) the taxpayer’s child (as defined
22 in section 151(c)(3)) or grandchild,
23 as an eligible student at an institution of higher
24 education.

1 “(B) EXCEPTIONS.—The term ‘qualified
2 higher education expenses’ does not include—

3 “(i) expenses with respect to any
4 course or other education involving sports,
5 games, or hobbies, unless such expenses—

6 “(I) are part of a degree pro-
7 gram, or

8 “(II) are deductible under this
9 chapter without regard to this section;

10 or

11 “(ii) any student activity fees, athletic
12 fees, insurance expenses, or other expenses
13 unrelated to a student’s academic course of
14 instruction.

15 “(C) COORDINATION WITH SAVINGS BOND
16 PROVISIONS.—The amount of qualified higher
17 education expenses for any taxable year shall be
18 reduced by any amount excludable from gross
19 income under section 135.

20 “(D) ELIGIBLE STUDENT.—For purposes
21 of subparagraph (A), the term ‘eligible student’
22 means a student who—

23 “(i) meets the requirements of section
24 484(a)(1) of the Higher Education Act of
25 1965 (20 U.S.C. 1091(a)(1)), as in effect

1 on the date of the enactment of this sec-
2 tion, and

3 “(ii)(I) is carrying at least one-half
4 the normal full-time work load for the
5 course of study the student is pursuing, as
6 determined by the institution of higher
7 education, or

8 “(II) is enrolled in a course which en-
9 ables the student to improve the student’s
10 job skills or to acquire new job skills.

11 “(E) INSTITUTION OF HIGHER EDU-
12 CATION.—The term ‘institution of higher edu-
13 cation’ means an institution which—

14 “(i) is described in section 481 of the
15 Higher Education Act of 1965 (20 U.S.C.
16 1088), as in effect on the date of the en-
17 actment of this section, and

18 “(ii) is eligible to participate in pro-
19 grams under title IV of such Act.

20 “(9) QUALIFIED LONG-TERM CARE SERVICES.—
21 For purposes of paragraph (2)(B)—

22 “(A) IN GENERAL.—The term ‘qualified
23 long-term care services’ means necessary diag-
24 nostic, curing, mitigating, treating, preventive,
25 therapeutic, and rehabilitative services, and

1 maintenance and personal care services (wheth-
2 er performed in a residential or nonresidential
3 setting) which—

4 “(i) are required by an individual dur-
5 ing any period the individual is an inca-
6 pacitated individual (as defined in subpara-
7 graph (B)),

8 “(ii) have as their primary purpose—

9 “(I) the provision of needed as-
10 sistance with 1 or more activities of
11 daily living (as defined in subpara-
12 graph (C)), or

13 “(II) protection from threats to
14 health and safety due to severe cog-
15 nitive impairment, and

16 “(iii) are provided pursuant to a con-
17 tinuing plan of care prescribed by a li-
18 censed professional (as defined in subpara-
19 graph (D)).

20 “(B) INCAPACITATED INDIVIDUAL.—The
21 term ‘incapacitated individual’ means any indi-
22 vidual who—

23 “(i) is unable to perform, without sub-
24 stantial assistance from another individual
25 (including assistance involving cueing or

1 substantial supervision), at least 2 activi-
2 ties of daily living as defined in subpara-
3 graph (C), or

4 “(ii) has severe cognitive impairment
5 as defined by the Secretary in consultation
6 with the Secretary of Health and Human
7 Services.

8 Such term shall not include any individual oth-
9 erwise meeting the requirements of the preced-
10 ing sentence unless, within the preceding 12-
11 month period, a licensed professional has cer-
12 tified that such individual meets such require-
13 ments.

14 “(C) ACTIVITIES OF DAILY LIVING.—Each
15 of the following is an activity of daily living:

16 “(i) Eating.

17 “(ii) Toileting.

18 “(iii) Transferring.

19 “(iv) Bathing.

20 “(v) Dressing.

21 “(D) LICENSED PROFESSIONAL.—The
22 term ‘licensed professional’ means—

23 “(i) a physician or registered profes-
24 sional nurse, or

1 “(ii) any other individual who meets
2 such requirements as may be prescribed by
3 the Secretary after consultation with the
4 Secretary of Health and Human Services.

5 “(E) CERTAIN SERVICES NOT IN-
6 CLUDED.—The term ‘qualified long-term care
7 services’ shall not include any services provided
8 to an individual—

9 “(i) by a relative (directly or through
10 a partnership, corporation, or other entity)
11 unless the relative is a licensed professional
12 with respect to such services, or

13 “(ii) by a corporation or partnership
14 which is related (within the meaning of
15 section 267(b) or 707(b)) to the individual.

16 For purposes of this subparagraph, the term
17 ‘relative’ means an individual bearing a rela-
18 tionship to the individual which is described in
19 paragraphs (1) through (8) of section 152(a).”.

20 (d) DISTRIBUTIONS FOR CERTAIN UNEMPLOYED IN-
21 DIVIDUALS.—Paragraph (2) of section 72(t) is amended
22 by adding at the end the following new subparagraph:

23 “(E) DISTRIBUTIONS TO UNEMPLOYED IN-
24 DIVIDUALS.—A distribution from an individual

1 retirement plan to an individual after separa-
 2 tion from employment, if—

3 “(i) such individual has received un-
 4 employment compensation for 12 consecu-
 5 tive weeks under any Federal or State un-
 6 employment compensation law by reason of
 7 such separation, and

8 “(ii) such distributions are made dur-
 9 ing any taxable year during which such un-
 10 employment compensation is paid or the
 11 succeeding taxable year.”.

12 (e) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to payments and distributions after
 14 December 31, 1996.

15 **SEC. 612. CONTRIBUTIONS MUST BE HELD AT LEAST 5**
 16 **YEARS IN CERTAIN CASES.**

17 (a) IN GENERAL.—Section 72(t), as amended by this
 18 Act, is amended by adding at the end the following new
 19 paragraph:

20 “(10) CERTAIN CONTRIBUTIONS MUST BE HELD
 21 5 YEARS.—

22 “(A) IN GENERAL.—Paragraph (2)(A)(i)
 23 shall not apply to any amount distributed out
 24 of an individual retirement plan (other than a
 25 special individual retirement account) which is

1 allocable to contributions made to the plan dur-
2 ing the 5-year period ending on the date of
3 such distribution (and earnings on such con-
4 tributions).

5 “(B) ORDERING RULE.—For purposes of
6 this paragraph—

7 “(i) FIRST-IN, FIRST-OUT RULE.—
8 Distributions shall be treated as having
9 been made—

10 “(I) first from the earliest con-
11 tribution (and earnings allocable
12 thereto) remaining in the account at
13 the time of the distribution, and

14 “(II) then from other contribu-
15 tions (and earnings allocable thereto)
16 in the order in which made.

17 “(ii) ALLOCATION OF EARNINGS.—
18 Earnings shall be allocated to contribu-
19 tions in such manner as the Secretary may
20 prescribe.

21 “(iii) AGGREGATIONS OF CONTRIBU-
22 TIONS.—Except as provided by the Sec-
23 retary, for purposes of this subpara-
24 graph—

1 “(I) all contributions made dur-
2 ing the same taxable year may be
3 treated as 1 contribution, and

4 “(II) all contributions made be-
5 fore the first day of the 5-year period
6 ending on the day before any distribu-
7 tion may be treated as 1 contribution.

8 “(C) SPECIAL RULE FOR ROLLOVERS.—

9 “(i) PENSION PLANS.—Subparagraph
10 (A) shall not apply to distributions out of
11 an individual retirement plan which are al-
12 locable to rollover contributions to which
13 section 402(c), 403(a)(4), or 403(b)(8) ap-
14 plied.

15 “(ii) CONTRIBUTION PERIOD.—For
16 purposes of subparagraph (A), amounts
17 shall be treated as having been held by a
18 plan during any period such contributions
19 were held (or are treated as held under
20 this clause) by any individual retirement
21 plan from which transferred.

22 “(D) SPECIAL ACCOUNTS.—For rules ap-
23 plicable to special individual retirement ac-
24 counts under section 408A, see paragraph
25 (8).”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to contributions (and earnings allo-
3 cable thereto) which are made after December 31, 1996.

4 **SEC. 613. INVESTMENTS IN QUALIFIED STATE PREPAID**
5 **TUITION PROGRAMS.**

6 (a) IN GENERAL.—Section 408, as amended by sec-
7 tion 1101, is amended by redesignating subsection (q) as
8 subsection (r) and by inserting after subsection (p) the
9 following new subsection:

10 “(q) SPECIAL RULES FOR QUALIFIED STATE PRE-
11 PAID TUITION PROGRAM INSTRUMENTS.—

12 “(1) IN GENERAL.—In the case of a qualified
13 State prepaid tuition program instrument to which
14 this subsection applies—

15 “(A) the use of all or part of the assets of
16 an individual retirement plan to purchase such
17 an instrument shall be treated for purposes of
18 this section as for the exclusive benefit of the
19 individual for whom the plan was established or
20 the individual’s beneficiaries, and

21 “(B) to the extent such instrument is con-
22 verted into tuition and fees as provided in para-
23 graph (3)(B)(i), such individual (or such bene-
24 ficiaries) shall be treated—

1 “(i) for purposes of subsection (d) as
2 having received a distribution in an
3 amount equal to such tuition and fees (as
4 of the time of the conversion), and

5 “(ii) for purposes of section
6 72(t)(2)(D)(ii), as having incurred quali-
7 fied higher education expenses to the ex-
8 tent such tuition and fees otherwise con-
9 stitute such expenses.

10 “(2) INSTRUMENTS TO WHICH SUBSECTION AP-
11 PLIES.—To the extent provided by the Secretary,
12 this subsection shall apply to any qualified State
13 prepaid tuition program instrument if—

14 “(A) the instrument is purchased by the
15 individual retirement plan directly from the
16 State or an instrumentality thereof, and

17 “(B) the beneficiary designated under the
18 instrument is the taxpayer, the taxpayer’s
19 spouse, a dependent of the taxpayer with re-
20 spect to whom the taxpayer is allowed a deduc-
21 tion under section 151, or the taxpayer’s child
22 (as defined in section 151(c)(3)) or grandchild.

1 “(3) QUALIFIED STATE PREPAID TUITION PRO-
2 GRAM INSTRUMENT.—For purposes of this sub-
3 section, the term ‘qualified State prepaid tuition pro-
4 gram instrument’ means an instrument which—

5 “(A) is issued under a program established
6 and maintained by a State, and

7 “(B) which may only be—

8 “(i) converted into a percentage (de-
9 termined as of the time of purchase) of
10 tuition and fees which would constitute
11 qualified higher education expenses (within
12 the meaning of section 72(t)(8)) if the ben-
13 eficiary designated under the instrument
14 enrolls in or attends an institution of high-
15 er education specified in the instrument as
16 an eligible student, or

17 “(ii) redeemed for an amount not less
18 than the purchase price (less any reason-
19 able administrative fees) if the instrument
20 is not converted as provided in clause (i).

21 “(4) DEFINITIONS.—For purposes of this sub-
22 section, the terms ‘institution of higher education’
23 and ‘eligible student’ have the meanings given such
24 terms by section 72(t)(8).”.

1 (b) EXEMPTION FROM PROHIBITED TRANS-
2 ACTIONS.—Section 4975(d) is amended by striking “or”
3 at the end of paragraph (14), by striking the period at
4 the end of paragraph (15) and inserting “; or”, and by
5 inserting after paragraph (15) the following new para-
6 graph:

7 “(16) any purchase of a qualified State prepaid
8 tuition program instrument to which section 408(q)
9 applies.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to taxable years beginning after
12 December 31, 1996.

○