

105TH CONGRESS
1ST SESSION

S. 889

To provide for pension reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 1997

Mr. GRAHAM (for himself, Mr. GRASSLEY, Mr. HATCH, Mrs. BOXER, and Mr. JEFFORDS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide for pension reform, and for other purposes.

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; TABLE OF CONTENTS; AMEND-**
4 **MENT OF 1986 CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Retirement Security for the 21st Century Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents; amendment of 1986 Code.

TITLE I—EXPANDING SMALL BUSINESS COVERAGE

Sec. 101. Matching contributions of self-employed individuals not treated as elective deferrals.

Sec. 102. Plan loans for subchapter S owners, partners, and sole proprietors.

- Sec. 103. Contributions to IRAs through payroll deductions.
- Sec. 104. SAFE annuities and trusts.
- Sec. 105. Modification of top-heavy rules.

TITLE II—ENHANCING FAIRNESS FOR WOMEN AND FAMILIES

- Sec. 201. Individual's participation in plan not treated as participation by spouse.
- Sec. 202. Elimination of percentage of salary limitation for elective deferrals of nonhighly compensated employees.
- Sec. 203. Make-up elective contributions for periods of maternity or paternity leave.
- Sec. 204. Faster vesting of certain employer matching contributions.
- Sec. 205. Deferred annuities for surviving spouses of Federal employees.
- Sec. 206. Clarification of tax treatment of division of section 457 plan benefits upon divorce.

TITLE III—INCREASING PORTABILITY FOR PARTICIPANTS

- Sec. 301. General rules for rollovers.
- Sec. 302. Plans not disqualified merely by accepting rollover contributions.
- Sec. 303. Treatment of transfers between defined contribution plans.
- Sec. 304. Rationalization of restrictions on distributions from 401(k) plans.

TITLE IV—STRENGTHENING PENSION SECURITY AND ENFORCEMENT

- Sec. 401. Repeal of 150 percent of current liability funding limit.
- Sec. 402. Missing participants.
- Sec. 403. Modification of prohibition of assignment or alienation.
- Sec. 404. Prohibited transactions.
- Sec. 405. Diversification in section 401(k) plan investments.
- Sec. 406. Periodic pension benefits statements.
- Sec. 407. Civil penalties for breach of fiduciary responsibility.
- Sec. 408. Modification of 10 percent tax for nondeductible contributions.
- Sec. 409. Qualified employer plans prohibited from making loans through credit cards and other revolving credit arrangements.

TITLE V—REDUCING REGULATORY BURDENS

- Sec. 501. Modifications to nondiscrimination and minimum participation rules with respect to governmental plans.
- Sec. 502. Intermediate sanctions for inadvertent failures.
- Sec. 503. Elimination of paperwork burdens on plans.
- Sec. 504. New technologies in retirement plans.
- Sec. 505. Increase in retirement plan cash-out amount.
- Sec. 506. Modification of timing of plan valuations.
- Sec. 507. Rules for substantial owners relating to plan terminations.
- Sec. 508. ESOP dividends may be reinvested without loss of dividend deduction.
- Sec. 509. Modification of 403(b) exclusion allowance to conform to 415 modifications.

1 (c) AMENDMENT OF 1986 CODE.—Except as other-
 2 wise expressly provided, whenever in this Act an amend-

1 ment or repeal is expressed in terms of an amendment
 2 to, or repeal of, a section or other provision, the reference
 3 shall be considered to be made to a section or other provi-
 4 sion of the Internal Revenue Code of 1986.

5 **TITLE I—EXPANDING SMALL** 6 **BUSINESS COVERAGE**

7 **SEC. 101. MATCHING CONTRIBUTIONS OF SELF-EMPLOYED** 8 **INDIVIDUALS NOT TREATED AS ELECTIVE** 9 **DEFERRALS.**

10 (a) IN GENERAL.—Section 402(g) (relating to limita-
 11 tion on exclusion for elective deferrals) is amended by add-
 12 ing at the end the following:

13 “(9) MATCHING CONTRIBUTIONS ON BEHALF
 14 OF SELF-EMPLOYED INDIVIDUALS NOT TREATED AS
 15 ELECTIVE DEFERRALS.—Any matching contribution
 16 described in section 401(m)(4)(A)) which is made on
 17 behalf of a self-employed individual (as defined in
 18 section 401(c)) shall not be treated as an elective de-
 19 ferral for purposes of this subsection.”.

20 (b) CONFORMING AMENDMENT FOR SIMPLE RETIRE-
 21 MENT ACCOUNTS.—Section 408(p) (relating to simple re-
 22 tirement accounts) is amended by adding at the end the
 23 following:

24 “(8) MATCHING CONTRIBUTIONS ON BEHALF
 25 OF SELF-EMPLOYED INDIVIDUALS NOT TREATED AS

1 ELECTIVE DEFERRALS.—Any matching contribution
 2 described in paragraph (2)(A)(iii) which is made on
 3 behalf of a self-employed individual (as defined in
 4 section 401(c)) shall not be treated as an elective de-
 5 ferral for purposes of this subsection.”.

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

9 **SEC. 102. PLAN LOANS FOR SUBCHAPTER S OWNERS, PART-**
 10 **NERS, AND SOLE PROPRIETORS.**

11 (a) AMENDMENT TO 1986 CODE.—Section 4975(d)
 12 (relating to exemptions) is amended by striking the last
 13 2 sentences.

14 (b) AMENDMENTS TO ERISA.—

15 (1) Section 408 of the Employee Retirement In-
 16 come Security Act of 1974 (29 U.S.C. 1108(d)) is
 17 amended—

18 (A) by striking subsection (d), and

19 (B) by redesignating subsections (e) and
 20 (f) as subsections (d) and (e), respectively.

21 (2) Section 407(b)(2)(B) of such Act (29
 22 U.S.C. 1107(b)(2)(B)) is amended by striking “sec-
 23 tion 408(e)” and inserting “section 408(d)”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall take effect on the date of enactment of
 3 this Act.

4 **SEC. 103. CONTRIBUTIONS TO IRAS THROUGH PAYROLL DE-**
 5 **DUCTIONS.**

6 (a) DEFINITIONS.—For purposes of this section:

7 (1) CONTRIBUTION CERTIFICATE.—The term
 8 “contribution certificate” means a certificate submit-
 9 ted by an eligible employee to the employee’s em-
 10 ployer which—

11 (A) identifies the employee by name, ad-
 12 dress, and social security number,

13 (B) includes a certification by the em-
 14 ployee that the employee is an eligible employee,

15 (C) identifies the individual retirement
 16 plan to which the employee wishes to make con-
 17 tributions through payroll deductions,

18 (D) identifies the amount of such contribu-
 19 tions, not to exceed the amount allowed under
 20 section 408 of the Internal Revenue Code of
 21 1986 to an individual retirement plan for such
 22 year.

23 (2) ELIGIBLE EMPLOYEE.—

24 (A) IN GENERAL.—The term “eligible em-
 25 ployee” means, with respect to any taxable

year, an employee whose employer does not sponsor a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986.

(B) EMPLOYEE.—The term “employee” does not include an employee as defined in section 401(c)(1) of such Code.

(3) INDIVIDUAL RETIREMENT PLANS.—The term “individual retirement plan” has the meaning given the term by section 7701(a)(37) of the Internal Revenue Code of 1986.

(4) SECRETARY.—The term “Secretary” means the Secretary of the Treasury.

(b) ESTABLISHMENT OF PAYROLL DEDUCTION SYSTEM.—An employer may establish a system under which eligible employees, through employer payroll deductions, may make contributions to individual retirement plans. An employer shall not incur any liability under title I of the Employee Retirement Income Security Act of 1974 in providing for such a system.

(c) CONTRIBUTIONS TO INDIVIDUAL RETIREMENT PLANS.—

(1) IN GENERAL.—The system established under subsection (b) shall provide that contributions

1 made to an individual retirement plan for any tax-
2 able year are—

3 (A) contributions through employer payroll
4 deductions, and

5 (B) if the employer so elects, additional
6 contributions by the employee which, when
7 added to contributions under subparagraph (A),
8 do not exceed the amount allowed under section
9 408 of the Internal Revenue Code of 1986 for
10 the taxable year.

11 (2) EMPLOYER PAYROLL DEDUCTIONS.—

12 (A) IN GENERAL.—The system established
13 under subsection (b) shall provide that an eligi-
14 ble employee may establish and maintain an in-
15 dividual retirement plan simply by—

16 (i) completing a contribution certifi-
17 cate, and

18 (ii) submitting such certificate to the
19 eligible employee's employer in the manner
20 provided under subparagraph (D).

21 (B) EASE OF ADMINISTRATION.—An eligi-
22 ble employee establishing and maintaining an
23 individual retirement plan under subparagraph
24 (A) may change the amount of an employer

1 payroll deduction in the same manner as under
 2 subparagraph (A).

3 (C) SIMPLIFIED FORMS.—

4 (i) CONTRIBUTION CERTIFICATE.—

5 The Secretary shall develop a model con-
 6 tribution certificate for purposes of this
 7 paragraph—

8 (I) which is written in a clear

9 and easily understandable manner,

10 and

11 (II) the completion of which by

12 an eligible employee will constitute the

13 establishment of an individual retire-

14 ment plan and the request for em-

15 ployer payroll deductions or changes

16 in such deductions.

17 (ii) AVAILABILITY.—The Secretary

18 shall make available to all eligible employ-

19 ees and employers the forms developed

20 under this subparagraph, and shall include

21 with such forms easy to understand ex-

22 planatory materials.

23 (D) USE OF CERTIFICATE.—Each em-

24 ployer electing to adopt a system under sub-

25 section (b) shall, upon receipt of a contribution

1 certificate from an eligible employee, deduct the
2 appropriate contribution as determined by such
3 certificate from the employee's wages in equal
4 amounts during the remaining payroll periods
5 for the taxable year and shall remit such
6 amounts for investment in the employee's indi-
7 vidual retirement plan not later than the close
8 of the 30-day period following the last day of
9 the month in which such payroll period occurs.

10 (E) FAILURE TO REMIT PAYROLL DEDUC-
11 TIONS.—For purposes of the Internal Revenue
12 Code of 1986, any amount which an employer
13 fails to remit on behalf of an eligible employee
14 pursuant to a contribution certificate of such
15 employee shall not be allowed as a deduction to
16 the employer under such Code.

17 (d) ADDITIONAL INFORMATION.—

18 (1) IN GENERAL.—The system established
19 under subsection (b) shall provide for the furnishing
20 of information to employees of the opportunity of es-
21 tablishing individual retirement plans and of trans-
22 ferring amounts to such plans.

23 (2) INVESTMENT INFORMATION.—The employer
24 shall also make available to employees information

1 on how to make informed investment decisions and
 2 how to achieve retirement objectives.

3 (3) INFORMATION NOT INVESTMENT ADVICE.—
 4 Information provided under this subsection shall not
 5 be treated as investment advice for purposes of any
 6 Federal or State law.

7 **SEC. 104. SAFE ANNUITIES AND TRUSTS.**

8 (a) IN GENERAL.—Subpart A of part I of subchapter
 9 D of chapter 1 (relating to deferred compensation, etc.)
 10 is amended by inserting after section 408 the following:

11 **“SEC. 408A. SAFE ANNUITIES AND TRUSTS.**

12 “(a) EMPLOYER ELIGIBILITY.—

13 “(1) IN GENERAL.—An employer may establish
 14 and maintain a SAFE annuity or a SAFE trust for
 15 any year only if—

16 “(A) the employer is an eligible employer
 17 (as defined in section 408(p)(2)(C)), and

18 “(B) the employer does not maintain (and
 19 no predecessor of the employer maintains) a
 20 qualified plan (other than a permissible plan)
 21 with respect to which contributions were made,
 22 or benefits were accrued, for service in any year
 23 in the period beginning with the year such an-
 24 nuity or trust became effective and ending with

1 the year for which the determination is being
2 made.

3 “(2) DEFINITIONS.—For purposes of paragraph
4 (1)—

5 “(A) QUALIFIED PLAN.—The term ‘quali-
6 fied plan’ has the meaning given such term by
7 section 408(p)(2)(D)(ii).

8 “(B) PERMISSIBLE PLAN.—The term ‘per-
9 missible plan’ means—

10 “(i) a plan under which only elective
11 deferrals described in section 402(g)(3),
12 deferred compensation described in section
13 457, or employer matching contributions
14 may be made, and

15 “(ii) any collectively bargained plan.

16 “(b) SAFE ANNUITY.—

17 “(1) IN GENERAL.—For purposes of this title,
18 the term ‘SAFE annuity’ means an individual retire-
19 ment annuity (as defined in section 408(b) without
20 regard to paragraph (2) thereof and without regard
21 to the limitation on aggregate annual premiums con-
22 tained in the flush language of section 408(b)) if—

23 “(A) such annuity meets the requirements
24 of paragraphs (2) through (6), and

1 “(B) the only contributions to such annu-
 2 ity (other than rollover contributions described
 3 in section 402A) are employer contributions.

4 Nothing in this section shall be construed as pre-
 5 venting an employer from using a group annuity
 6 contract which is divisible into individual retirement
 7 annuities for purposes of providing SAFE annuities.

8 “(2) PARTICIPATION REQUIREMENTS.—

9 “(A) IN GENERAL.—The requirements of
 10 this paragraph are met for any year only if all
 11 employees of the employer who—

12 “(i) received at least \$5,000 in com-
 13 pensation from the employer during any 2
 14 consecutive preceding years, and

15 “(ii) received at least \$5,000 in com-
 16 pensation during the year,
 17 are entitled to the benefit described in para-
 18 graph (5) for such year.

19 “(B) EXCLUDABLE EMPLOYEES.—An em-
 20 ployer may elect to exclude from the require-
 21 ments under subparagraph (A) employees de-
 22 scribed in section 410(b)(3).

23 “(3) VESTING.—The requirements of this para-
 24 graph are met if the employee’s rights to any bene-
 25 fits are nonforfeitable.

1 “(4) BENEFIT FORM.—

2 “(A) IN GENERAL.—The requirements of
3 this paragraph are met if the only form of bene-
4 fit is—

5 “(i) a benefit payable annually in the
6 form of a single life annuity with monthly
7 payments (with no ancillary benefits) be-
8 ginning at age 65, or

9 “(ii) any other form of benefit which
10 is the actuarial equivalent (based on the
11 assumptions specified in the SAFE annu-
12 ity) of the benefit described in clause (i).

13 “(B) DIRECT TRANSFERS AND ROLL-
14 OVERS.—A plan shall not fail to meet the re-
15 quirements of this paragraph by reason of per-
16 mitting, at the election of the employee, a trust-
17 ee-to-trustee transfer or a rollover contribution
18 described in section 402A.

19 “(5) AMOUNT OF ANNUAL ACCRUED BENE-
20 FIT.—

21 “(A) IN GENERAL.—The requirements of
22 this paragraph are met for any plan year if the
23 accrued benefit of each participant derived from
24 employer contributions for such year, when ex-
25 pressed as a benefit described in paragraph

1 (4)(A), equals the applicable percentage of the
 2 participant's compensation for such year.

3 “(B) APPLICABLE PERCENTAGE.—For
 4 purposes of this paragraph—

5 “(i) IN GENERAL.—The term ‘applica-
 6 ble percentage’ means 3 percent.

7 “(ii) ELECTION OF LOWER PERCENT-
 8 AGE.—An employer may elect to apply an
 9 applicable percentage of 1 percent, 2 per-
 10 cent or zero percent for any year for all
 11 employees eligible to participate in the plan
 12 for such year if the employer notifies the
 13 employees of such percentage within a rea-
 14 sonable period before the beginning of such
 15 year.

16 “(C) COMPENSATION LIMIT.—The com-
 17 pensation taken into account under this para-
 18 graph for any year shall not exceed the limita-
 19 tion in effect for such year under section
 20 401(a)(17).

21 “(D) CREDIT FOR SERVICE BEFORE PLAN
 22 ADOPTED.—

23 “(i) IN GENERAL.—An employer may
 24 elect to take into account a specified num-
 25 ber of years of service (not greater than

1 10) performed before the adoption of the
2 plan (each hereinafter referred to as a
3 ‘prior service year’) as service under the
4 plan if the same specified number of years
5 is available to all employees eligible to par-
6 ticipate in the plan for the first plan year.

7 “(ii) ACCRUAL OF PRIOR SERVICE
8 BENEFIT.—Such an election shall be effec-
9 tive for a prior service year only if the re-
10 quirements of this paragraph are met for
11 an eligible plan year (with respect to em-
12 ployees entitled to credit for such prior
13 service year) by doubling the applicable
14 percentage (if any) for such plan year. For
15 purposes of the preceding sentence, an eli-
16 gible plan year is a plan year in the period
17 of consecutive plan years (but not more
18 than the number specified under clause (i))
19 beginning with the first plan year that the
20 plan is in effect.

21 “(iii) ELECTION MAY NOT APPLY TO
22 CERTAIN PRIOR SERVICE YEARS.—This
23 subparagraph shall not apply with respect
24 to any prior service year of an employee
25 if—

1 “(I) for any part of such prior
2 service year such employee was an ac-
3 tive participant (within the meaning
4 of section 219(g)(5) under any de-
5 fined benefit plan of the employer (or
6 any predecessor thereof), or

7 “(II) such employee received dur-
8 ing such prior service year less than
9 \$5,000 in compensation from the em-
10 ployer.

11 “(6) FUNDING.—

12 “(A) IN GENERAL.—The requirements of
13 this paragraph are met only if the employer is
14 required to contribute to the annuity for each
15 plan year the amount necessary (determined in
16 accordance with subparagraph (B)) to fund the
17 accrued benefit for each participant entitled to
18 such benefit for such year.

19 “(B) ACTUARIAL ASSUMPTIONS.—In deter-
20 mining the amount required to be contributed
21 under subparagraph (A)—

22 “(i) the assumed interest rate shall be
23 5 percent per year,

24 “(ii) the assumed mortality shall be
25 determined under the applicable mortality

1 table (as defined in section 417(e)(3), as
2 modified by the Secretary so that it does
3 not include any assumption for preretire-
4 ment mortality),

5 “(iii) the assumed retirement age
6 shall be 65, and

7 “(iv) an assumption for reasonable ex-
8 penses shall be permitted consistent with
9 State law.

10 “(C) TIME WHEN CONTRIBUTIONS
11 DEEMED MADE.—For purposes of this para-
12 graph, an employer shall be deemed to have
13 made a contribution on the last day of the pre-
14 ceding taxable year if the payment is on ac-
15 count of such taxable year and is made not
16 later than the time prescribed by law for filing
17 the return for such taxable year (including ex-
18 tensions thereof).

19 “(D) PENALTY FOR FAILURE TO MAKE RE-
20 QUIRED CONTRIBUTION.—The taxes imposed by
21 section 4971 shall apply to a failure to make
22 the contribution required by this paragraph in
23 the same manner as if the amount of the failure
24 were an accumulated funding deficiency to
25 which such section applies.

1 “(7) DEFINITIONS AND SPECIAL RULE.—

2 “(A) DEFINITIONS.—The definitions in
3 section 408(p)(6) shall apply for purposes of
4 this subsection.

5 “(B) USE OF DESIGNATED FINANCIAL IN-
6 STITUTIONS.—A rule similar to the rule of sec-
7 tion 408(p)(7) (without regard to the last sen-
8 tence thereof) shall apply for purposes of this
9 subsection.

10 “(C) TREATMENT OF MATCHING CON-
11 TRIBUTIONS.—A rule similar to the rule of sec-
12 tion 408(p)(8) shall apply for purposes of this
13 subsection.

14 “(c) SAFE TRUST.—

15 “(1) IN GENERAL.—For purposes of this title,
16 the term ‘SAFE trust’ means a trust forming part
17 of a defined benefit plan if—

18 “(A) such trust meets the requirements of
19 section 401(a) as modified by subsection (d),

20 “(B) a participant’s benefits under the
21 plan are based solely on the balance of a sepa-
22 rate account in such plan of such participant,

23 “(C) such plan meets the requirements of
24 paragraphs (2) through (8), and

1 “(D) the only contributions to such trust
 2 (other than rollover contributions described in
 3 section 402A) are employer contributions.

4 “(2) PARTICIPATION REQUIREMENTS.—A plan
 5 meets the requirements of this paragraph for any
 6 year only if the requirements of subsection (b)(2)
 7 are met for such year.

8 “(3) VESTING.—A plan meets the requirements
 9 of this paragraph for any year only if the require-
 10 ments of subsection (b)(3) are met for such year.

11 “(4) BENEFIT FORM.—A plan meets the re-
 12 quirements of this paragraph only if the require-
 13 ments of subsection (b)(4) are met. For purposes of
 14 this subparagraph, a plan may satisfy the require-
 15 ments of subsection (b)(4) by purchasing an annuity
 16 contract which meets the requirements of subsection
 17 (b)(4).

18 “(5) AMOUNT OF ANNUAL ACCRUED BENE-
 19 FIT.—A plan meets the requirements of this para-
 20 graph for any year only if the requirements of sub-
 21 section (b)(5) are met for such year.

22 “(6) FUNDING.—

23 “(A) IN GENERAL.—A plan meets the re-
 24 quirements of this paragraph for any year only
 25 if—

1 “(i) the requirements of subsection
2 (b)(6) are met for such year, and

3 “(ii) in the case of a plan which has
4 an unfunded prior year liability as of the
5 close of such plan year, the plan requires
6 that the employer make an additional con-
7 tribution to such plan for such year equal
8 to the amount of such unfunded prior year
9 liability.

10 “(B) UNFUNDED PRIOR YEAR LIABIL-
11 ITY.—For purposes of this paragraph, the term
12 ‘unfunded prior year liability’ means, with re-
13 spect to any plan year, the excess (if any) of—

14 “(i) the aggregate of the accrued li-
15 abilities under the plan as of the close of
16 the prior plan year, over

17 “(ii) the value of the plan’s assets de-
18 termined under section 412(c)(2) as of the
19 close of the plan year (determined without
20 regard to any contributions for such plan
21 year).

22 Such accrued liabilities shall be determined
23 using the assumptions specified in subsection
24 (b)(6)(B).

1 “(C) CHANGES IN MORTALITY TABLE.—If
 2 the applicable mortality table under section
 3 417(e)(3) for any plan year is not the same as
 4 such table for the prior plan year, the Secretary
 5 shall prescribe regulations which phase in the
 6 effect of the changes over a reasonable period
 7 of plan years determined by the Secretary.

8 “(D) DISREGARD ASSUMPTIONS FOR EX-
 9 PENSES.—For purposes of this paragraph, the
 10 assumption specified in subsection (b)(6)(B)(iv)
 11 shall be disregarded.

12 “(7) SEPARATE ACCOUNTS FOR PARTICI-
 13 PANTS.—A plan meets the requirements of this
 14 paragraph for any year only if the plan provides—

15 “(A) for an individual account for each
 16 participant, and

17 “(B) for benefits based solely on—

18 “(i) the amount contributed to the
 19 participant’s account, and

20 “(ii) any income, expenses, gains and
 21 losses, and any forfeitures of accounts of
 22 other participants which may be allocated
 23 to such participant’s account.

24 “(8) TRUST MAY NOT HOLD SECURITIES WHICH
 25 ARE NOT READILY TRADABLE.—A plan meets the

1 requirements of this paragraph only if the plan pro-
 2 hibits the trust from holding directly or indirectly se-
 3 curities which are not readily tradable on an estab-
 4 lished securities market or otherwise. Nothing in
 5 this paragraph shall prohibit the trust from holding
 6 insurance company products regulated by State law.

7 “(9) DEFINITIONS AND SPECIAL RULE.—The
 8 definitions and special rule applicable under sub-
 9 section (b)(7) shall apply for purposes of this sub-
 10 section.

11 “(d) SPECIAL RULES FOR SAFE ANNUITIES AND
 12 TRUSTS.—

13 “(1) CERTAIN REQUIREMENTS TREATED AS
 14 MET.—For purposes of section 401(a), a SAFE an-
 15 nuity and a SAFE trust shall be treated as meeting
 16 the requirements of the following provisions:

17 “(A) Section 401(a)(4) (relating to non-
 18 discrimination rules).

19 “(B) Section 401(a)(26) (relating to mini-
 20 mum participation).

21 “(C) Section 410 (relating to minimum
 22 participation and coverage requirements).

23 “(D) Section 411(b) (relating to accrued
 24 benefit requirements).

1 “(E) Paragraphs (6) and (7) of section
2 412(c) (relating to full funding limitation).

3 “(F) Section 415 (relating to limitations
4 on benefits and contributions under qualified
5 plans).

6 “(G) Section 416 (relating to special rules
7 for top-heavy plans).

8 “(2) CONTRIBUTIONS NOT TAKEN INTO AC-
9 COUNT IN APPLYING LIMITS TO OTHER PLANS.—
10 Contributions to a SAFE annuity or a SAFE trust
11 shall not be taken into account in applying sections
12 404 and 415 to other plans maintained by the em-
13 ployer.

14 “(3) COORDINATION WITH MAXIMUM LIMITA-
15 TION UNDER SUBSECTION (a).—In the case of any
16 SAFE annuity or SAFE trust, subsections (a)(1)
17 and (b) of section 408 shall be applied by substitut-
18 ing ‘the dollar amount in effect under section
19 408A(b)(5)(C)’ for ‘\$,2000’.”.

20 (b) DEDUCTION LIMITS NOT TO APPLY TO EM-
21 PLOYER CONTRIBUTIONS.—

22 (1) IN GENERAL.—Section 404 (relating to de-
23 ductions for contributions of an employer to pension,
24 etc., plans) is amended by adding at the end the fol-
25 lowing:

1 “(n) SPECIAL RULES FOR SAFE ANNUITIES AND
2 TRUSTS.—

3 “(1) IN GENERAL.—Employer contributions to
4 a SAFE annuity or SAFE trust shall be treated as
5 if they are made to a plan subject to the require-
6 ments of this section.

7 “(2) TIMING.—

8 “(A) DEDUCTION.—Contributions de-
9 scribed in paragraph (1) shall be deductible in
10 the taxable year of the employer with or within
11 which the calendar year for which the contribu-
12 tions were made ends.

13 “(B) CONTRIBUTIONS AFTER END OF
14 YEAR.—For purposes of this subsection, con-
15 tributions shall be treated as made for a taxable
16 year if they are made on account of the taxable
17 year and are made not later than the time pre-
18 scribed by law for filing the return for the tax-
19 able year (including extensions thereof).”.

20 (2) COORDINATION WITH DEDUCTION UNDER
21 SECTION 219.—

22 (A) Section 219(b) (relating to maximum
23 amount of deduction) is amended by adding at
24 the end the following:

1 “(5) SPECIAL RULE FOR SAFE ANNUITIES.—

2 This section shall not apply with respect to any
3 amount contributed to a SAFE annuity established
4 under section 408A(b).”.

5 (B) Section 219(g)(5)(A) (defining active
6 participant) is amended by striking “or” at the
7 end of clause (v) and by adding at the end the
8 following:

9 “(vii) any SAFE annuity (within the
10 meaning of section 408A), or”.

11 (c) CONTRIBUTIONS AND DISTRIBUTIONS.—Section
12 402 (relating to taxability of beneficiary of employees’
13 trust) is amended by adding at the end the following:

14 “(1) TREATMENT OF SAFE ANNUITIES.—Rules simi-
15 lar to the rules of paragraphs (1) and (3) of subsection
16 (h) shall apply to contributions and distributions with re-
17 spect to a SAFE annuities under section 408A.”.

18 (d) INCREASED PENALTY ON EARLY WITHDRAW-
19 ALS.—Section 72(t) (relating to additional tax on early
20 distributions) is amended by adding at the end the follow-
21 ing:

22 “(7) SPECIAL RULES FOR SAFE ANNUITIES AND
23 TRUSTS.—In the case of any amount received from
24 a SAFE annuity or a SAFE trust (within the mean-

1 ing of section 408A), paragraph (1) shall be applied
 2 by substituting ‘20 percent’ for ‘10 percent’.”.

3 (e) SIMPLIFIED EMPLOYER REPORTS.—

4 (1) SAFE ANNUITIES.—Section 408(l) (relating
 5 to simplified employer reports) is amended by add-
 6 ing at the end the following:

7 “(3) SAFE ANNUITIES.—

8 “(A) SIMPLIFIED REPORT.—The employer
 9 maintaining any SAFE annuity (within the
 10 meaning of section 408A) shall file a simplified
 11 annual return with the Secretary containing
 12 only the information described in subparagraph
 13 (B).

14 “(B) CONTENTS.—The return required by
 15 subparagraph (A) shall set forth—

16 “(i) the name and address of the em-
 17 ployer,

18 “(ii) the date the plan was adopted,

19 “(iii) the number of employees of the
 20 employer,

21 “(iv) the number of such employees
 22 who are eligible to participate in the plan,

23 “(v) the total amount contributed by
 24 the employer to each such annuity for such

1 year and the minimum amount required
 2 under section 408A to be so contributed,

3 “(vi) the percentage elected under sec-
 4 tion 408A(b)(5)(B), and

5 “(vii) the number of employees which
 6 respect to whom contributions are required
 7 to be made for such year under section
 8 408A(b)(5)(D).

9 “(C) REPORTING BY ISSUER OF SAFE AN-
 10 NNUITY.—

11 “(i) IN GENERAL.—The issuer of each
 12 SAFE annuity shall provide to the owner
 13 of the annuity for each year a statement
 14 setting forth as of the close of such year—

15 “(I) the benefits guaranteed at
 16 age 65 under the annuity, and

17 “(II) the cash surrender value of
 18 the annuity.

19 “(ii) SUMMARY DESCRIPTION.—The
 20 issuer of any SAFE annuity shall provide
 21 to the employer maintaining the annuity
 22 for each year a description containing the
 23 following information:

24 “(I) The name and address of
 25 the employer and the issuer.

1 “(II) The requirements for eligi-
2 bility for participation.

3 “(III) The benefits provided with
4 respect to the annuity.

5 “(IV) The procedures for, and ef-
6 fects of, withdrawals (including roll-
7 overs) from the annuity.

8 “(D) TIME AND MANNER OF REPORT-
9 ING.—Any return, report, or statement required
10 under this paragraph shall be made in such
11 form and at such time as the Secretary shall
12 prescribe.”.

13 (2) SAFE TRUSTS.—Section 6059 (relating to
14 actuarial reports) is amended by redesignating sub-
15 sections (c) and (d) as subsections (d) and (e), re-
16 spectively, and by inserting after subsection (b) the
17 following:

18 “(c) SAFE TRUSTS.—In the case of a SAFE Trust
19 (within the meaning of section 408A), the Secretary shall
20 require a simplified actuarial report which contains infor-
21 mation similar to the information required in section
22 408(l)(3)(B).”.

23 (f) CONFORMING AMENDMENTS.—

24 (1) Section 280G(b)(6) is amended by striking
25 “or” at the end of subparagraph (C), by striking the

1 period at the end of subparagraph (D) and inserting
 2 “, or” and by adding after subparagraph (D) the
 3 following:

4 “(E) a SAFE annuity described in section
 5 408A.”.

6 (2) Subsections (b), (c), (m)(4)(B), and
 7 (n)(3)(B) of section 414 are each amended by in-
 8 serting “408A,” after “408(p),”.

9 (3) Section 4972(d)(1)(A) is amended by strik-
 10 ing “and” at the end of clause (iii), by striking the
 11 period at the end of clause (iv) and inserting “,
 12 and”, and by adding after clause (iv) the following:

13 “(v) any SAFE annuity (within the
 14 meaning of section 408A).”.

15 (4) The table of sections for subpart A of part
 16 I of subchapter D of chapter 1 is amended by insert-
 17 ing after the item relating to section 408 the follow-
 18 ing:

“Sec. 408A. SAFE annuities and trusts.”.

19 (g) MODIFICATIONS OF ERISA.—

20 (1) EXEMPTION FROM INSURANCE COV-
 21 ERAGE.—Subsection (b) of section 4021 of the Em-
 22 ployee Retirement Income Security Act of 1974 (29
 23 U.S.C. 1321) is amended by striking “or” at the end
 24 of paragraph (12), by striking the period at the end

1 of paragraph (13) and inserting “; or”, and by add-
 2 ing at the end the following:

3 “(14) which is established and maintained as
 4 part of a SAFE trust (as defined in section 408A
 5 of the Internal Revenue Code of 1986).”.

6 (2) REPORTING REQUIREMENTS.—Section 101
 7 of such Act (29 U.S.C. 1021) is amended by redes-
 8 ignating subsection (h) as subsection (i) and by in-
 9 serting after subsection (g) the following:

10 “(h) SAFE ANNUITIES.—

11 “(1) NO EMPLOYER REPORTS.—Except as pro-
 12 vided in this subsection, no report shall be required
 13 under this section by an employer maintaining a
 14 SAFE annuity under section 408A(b) of the Inter-
 15 nal Revenue Code of 1986.

16 “(2) SUMMARY DESCRIPTION.—The issuer of
 17 any SAFE annuity shall provide to the employer
 18 maintaining the annuity for each year a description
 19 containing the following information:

20 “(A) The name and address of the em-
 21 ployer and the issuer.

22 “(B) The requirements for eligibility for
 23 participation.

24 “(C) The benefits provided with respect to
 25 the annuity.

1 “(D) The procedures for, and effects of,
2 withdrawals (including rollovers) from the an-
3 nuity.

4 “(3) EMPLOYEE NOTIFICATION.—The employer
5 shall provide each employee eligible to participate in
6 the SAFE annuity with the description described in
7 paragraph (2) at the same time as the notification
8 required under section 408A(b)(5)(B) of the Inter-
9 nal Revenue Code of 1986.”.

10 (h) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to years beginning after December
12 31, 1997.

13 **SEC. 105. MODIFICATION OF TOP-HEAVY RULES.**

14 (a) REPEAL OF FAMILY AGGREGATION RULES.—
15 Section 416(i)(1)(B)(i)(I) (defining 5-percent owner) is
16 amended by inserting “(without regard to subsection
17 (a)(1) thereof)” after “section 318”.

18 (b) SIMPLIFICATION OF DEFINITION OF KEY EM-
19 PLOYEE.—

20 (1) IN GENERAL.—Section 416(i)(1)(A) (defin-
21 ing key employee) is amended—

22 (A) by striking clause (i) and inserting the
23 following:

1 “(i) an officer of the employer who is
 2 a highly compensated employee described
 3 in section 414(q)(1)(B),”,
 4 (B) by striking clause (ii),
 5 (C) by redesignating clauses (iii) and (iv)
 6 as clauses (ii) and (iii), respectively, and
 7 (D) by striking the second sentence in the
 8 matter following clause (iii), as redesignated by
 9 subparagraph (C).

10 (2) CONFORMING AMENDMENT.—Section
 11 416(i)(1)(B)(iii) is amended by striking “and sub-
 12 paragraph (A)(ii)”.

13 (c) EMPLOYEE ELECTIVE CONTRIBUTIONS TO PLAN
 14 NOT TAKEN INTO ACCOUNT.—

15 (1) DEFINITION OF TOP-HEAVY PLAN.—Section
 16 416(g)(4) (relating to other special rules) is amend-
 17 ed by adding at the end the following:

18 “(H) EMPLOYEE ELECTIVE CONTRIBU-
 19 TIONS TO PLAN NOT TAKEN INTO ACCOUNT.—
 20 At the election of the employer, any employee
 21 elective contribution described in section
 22 415(c)(3)(D) to a plan (and earnings allocable
 23 thereto) shall not be taken into account for pur-
 24 poses of determining whether a plan is a top-
 25 heavy plan (or whether any aggregation group

1 which includes such plan is a top-heavy
2 group).”.

3 (2) DEFINITION OF COMPENSATION.—Section
4 416(i)(1)(D) (defining compensation) is amended to
5 read as follows:

6 “(D) COMPENSATION.—

7 “(i) IN GENERAL.—For purposes of
8 this paragraph, except as provided in
9 clause (ii), the term ‘compensation’ has the
10 meaning given such term by section
11 414(q)(4).

12 “(ii) EMPLOYEE ELECTIVE CONTRIBU-
13 TIONS TO PLAN NOT TAKEN INTO AC-
14 COUNT.—At the election of the employer,
15 any employee elective contribution de-
16 scribed in section 415(c)(3)(D) to a plan
17 shall not be taken into account for pur-
18 poses of determining compensation.”.

19 (d) MATCHING CONTRIBUTIONS TAKEN INTO AC-
20 COUNT FOR MINIMUM CONTRIBUTION REQUIREMENTS.—
21 Section 416(c)(2)(A) (relating to defined contribution
22 plans) is amended by adding at the end the following:
23 “Employer matching contributions (as defined in section
24 401(m)(4)(A)) shall be taken into account for purposes
25 of this subparagraph.”.

1 (e) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to plan years beginning after De-
 3 cember 31, 1997.

4 **TITLE II—ENHANCING FAIRNESS** 5 **FOR WOMEN AND CHILDREN**

6 **SEC. 201. INDIVIDUAL’S PARTICIPATION IN PLAN NOT** 7 **TREATED AS PARTICIPATION BY SPOUSE.**

8 (a) IN GENERAL.—Section 219(g)(1) of the Internal
 9 Revenue Code of 1986 (relating to limitation on deduction
 10 for active participants in certain pension plans) is amend-
 11 ed by striking “or the individual’s spouse”.

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

15 **SEC. 202. ELIMINATION OF PERCENTAGE OF SALARY LIMI-** 16 **TATION FOR ELECTIVE DEFERRALS OF NON-** 17 **HIGHLY COMPENSATED EMPLOYEES.**

18 (a) IN GENERAL.—Section 415(c) (relating to limita-
 19 tion for defined contribution plans) is amended by adding
 20 at the end the following:

21 “(8) SPECIAL RULE FOR ELECTIVE DEFER-
 22 RALS.—In the case of any elective deferral (as de-
 23 fined in section 402(g)(3))—

24 “(A) the limitation of paragraph (1)(B)
 25 shall not apply to such deferral, and

1 “(B) such deferral shall not be taken into
 2 account in determining whether such limitation
 3 applies to any other annual addition.”.

4 (b) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to years beginning after December
 6 31, 1997.

7 **SEC. 203. MAKE-UP ELECTIVE CONTRIBUTIONS FOR PERI-**
 8 **ODS OF MATERNITY OR PATERNITY LEAVE.**

9 (a) IN GENERAL.—Section 414 (relating to defini-
 10 tions and special rules) is amended by adding at the end
 11 the following:

12 “(v) RIGHT TO MAKE CONTRIBUTIONS WITH RE-
 13 SPECT TO PERIODS OF MATERNITY AND PATERNITY
 14 LEAVE.—

15 “(1) IN GENERAL.—For purposes of this title—

16 “(A) a trust which forms part of a plan
 17 shall not constitute a qualified trust under sec-
 18 tion 401(a),

19 “(B) a plan shall not be treated as de-
 20 scribed in section 403(b),

21 “(C) a plan shall not be treated as an eligi-
 22 ble deferred compensation plan under section
 23 457, and

1 “(D) an arrangement shall not be treated
 2 as meeting the requirements of section 408 (k)
 3 or (p),
 4 unless such plan or arrangement permits partici-
 5 pants who were on eligible maternity or paternity
 6 leave to make additional elective deferrals under the
 7 plan or arrangement with respect to periods of such
 8 leave.

9 “(2) TREATMENT OF CONTRIBUTIONS.—

10 “(A) IN GENERAL.—In the case of any
 11 contribution to a plan under paragraph (1)
 12 (and any employer matching contribution with
 13 respect thereto)—

14 “(i) such contribution shall not, with
 15 respect to the year in which the contribu-
 16 tion is made—

17 “(I) be subject to any otherwise
 18 applicable limitation contained in sec-
 19 tion 402(g), 402(h), 403(b), 404(a),
 20 404(h), 408, 415, or 457, or

21 “(II) be taken into account in ap-
 22 plying such limitations to other con-
 23 tributions or benefits under such plan
 24 or any other such plan,

1 “(ii) such contribution may not exceed
 2 the lesser of—

3 “(I) the excess of the applicable
 4 limitation contained in section 402(g)
 5 over any other elective deferrals con-
 6 tributed with respect to the year to
 7 which the contribution relates, or

8 “(II) the excess of the applicable
 9 limitation contained in section 415(c)
 10 over any other contributions made
 11 with respect to such year,

12 “(iii) such contribution shall not be
 13 subject to the limitations referred to in
 14 clause (i) and not referred to in clause (ii)
 15 with respect to the year to which the con-
 16 tribution relates, and

17 “(iv) except as provided in subpara-
 18 graph (B)(i), such plan shall not be treated
 19 as failing to meet the requirements of sec-
 20 tion 401(a)(4), 401(a)(26), 401(k)(3),
 21 401(k)(11), 401(k)(12), 401(m),
 22 403(b)(12), 408(k), 408(p), 410(b), or 416
 23 by reason of the making of (or the right to
 24 make) such contribution.

“(B) MATCHING CONTRIBUTIONS.—Nothing in subparagraph (A) shall require an employer to make any matching contribution with respect to any additional elective deferrals under paragraph (1), but if the employer elects to make any such matching contribution—

“(i) the requirements of section 401(a)(4) shall be applied separately to all such matching contributions made during a year, and

“(ii) the amount of any such matching contribution may not exceed the maximum amount which would have been required had such deferral actually been made during the period of eligible maternity and paternity leave.

“(3) AMOUNT AND TIMING OF ELECTIVE DEFERRALS.—A plan shall not be treated as meeting the requirements of paragraph (1) unless the plan provides the following:

“(A) AMOUNT.—The amount of any elective deferral under paragraph (1) which any employee is permitted to make with respect to any period of eligible maternity and paternity leave shall not exceed the maximum amount of

the elective deferrals that the employee would have been permitted to make during such period in accordance with the limitations referred to in paragraph (2)(A)(i) if the individual—

“(i) had not been on eligible maternity and paternity leave during such period, and

“(ii) had received compensation in an amount determined under rules similar to the rules under subsection (u)(7).

Proper adjustment shall be made to the amount determined under the preceding sentence for any elective deferrals actually made during such period.

“(B) TIMING.—An employee may make an elective deferral to which paragraph (1) applies at any time during the 3-year period beginning on the date on which the eligible maternity or paternity leave ends. Any matching contribution with respect to any such elective deferral shall be made not later than the due date (including extensions) for the filing of the employer’s return for the taxable year in which such elective deferral is made.

1 “(4) ELIGIBLE MATERNITY AND PATERNITY
2 LEAVE.—For purposes of this subsection—

3 “(A) IN GENERAL.—The term ‘eligible ma-
4 ternity or paternity leave’ means any unpaid
5 absence of an individual from work for any pe-
6 riod—

7 “(i) by reason of the pregnancy of the
8 individual,

9 “(ii) by reason of the birth of a child
10 of the individual,

11 “(iii) by reason of the placement of a
12 child with the individual in connection with
13 the adoption of the child by the individual,
14 or

15 “(iv) for purposes of caring for such
16 child for a period beginning immediately
17 following such birth or placement.

18 “(B) LIMITATION.—Such period may
19 not—

20 “(i) be less than 2 weeks, nor

21 “(ii) more than 24 months with re-
22 spect to any child.

23 “(5) OTHER DEFINITIONS AND RULES.—For
24 purposes of this subsection—

1 “(A) ELECTIVE DEFERRAL.—The term
 2 ‘elective deferral’ has the meaning given such
 3 term by subsection (u)(2)(C). Such term shall
 4 also include any after-tax employee contribu-
 5 tions described in subsection (u)(2)(D).

6 “(B) PLAN.—The term ‘plan’ includes any
 7 arrangement under section 408 (k) or (p).

8 “(C) CERTAIN RETROACTIVE ADJUST-
 9 MENTS NOT REQUIRED.—For purposes of this
 10 subchapter and subchapter E, the rules of sub-
 11 section (u)(3) shall apply.

12 “(D) LOAN REPAYMENT SUSPENSIONS
 13 PERMITTED.—In the case of any plan or ar-
 14 rangement to which paragraph (1) applies, the
 15 rules of subsection (u)(4) shall apply to any
 16 loan repayment suspension during any period of
 17 eligible maternity and paternity leave.”.

18 (b) EFFECTIVE DATE.—The amendment made by
 19 this section shall apply to periods of eligible maternity and
 20 paternity leave beginning after December 31, 1997.

21 **SEC. 204. FASTER VESTING OF CERTAIN EMPLOYER**
 22 **MATCHING CONTRIBUTIONS.**

23 (a) AMENDMENTS TO 1986 CODE.—Section 411(a)
 24 (relating to minimum vesting standards) is amended—

1 (1) in paragraph (2), by striking “A plan” and
 2 inserting “Except as provided in paragraph (12), a
 3 plan”, and

4 (2) by adding at the end the following:

5 “(12) FASTER VESTING FOR MATCHING CON-
 6 TRIBUTION UNDER SECTION 401(k) PLANS.—

7 “(A) IN GENERAL.—In the case of match-
 8 ing contributions (as defined in section
 9 401(m)(4)(A)) under a qualified cash or de-
 10 ferred arrangement (as defined in section
 11 401(k)), paragraph (2) shall be applied—

12 “(i) by substituting ‘3 years’ for ‘5
 13 years’ in subparagraph (A), and

14 “(ii) by substituting the following
 15 table for the table contained in subpara-
 16 graph (B):

“Years of service:	The nonforfeitable percentage is:
1	20
2	40
3	60
4	80
5	100.

17 “(B) TREATMENT OF EMPLOYER MATCHING
 18 CONTRIBUTIONS.—For purposes of this para-
 19 graph—

20 “(i) matching contributions (as so de-
 21 fined) shall be taken into account regard-
 22 less of whether the matching contributions

1 are made to the same plan as the contribu-
 2 tions made under section 401(k), and

3 “(ii) matching contributions under
 4 any plan which are made with respect to
 5 after-tax employee contributions shall be
 6 taken into account if the employer’s limit
 7 on matching contributions with respect to
 8 such after-tax employee contributions is co-
 9 ordinated with the employer’s limit on
 10 matching contributions with respect to con-
 11 tributions under section 401(k).”.

12 (b) AMENDMENTS TO ERISA.—Section 203(a) of the
 13 Employee Retirement Income Security Act of 1974 (29
 14 U.S.C. 1053(a)) is amended—

15 (1) in paragraph (2), by striking “A plan” and
 16 inserting “Except as provided in paragraph (4), a
 17 plan”, and

18 (2) by adding at the end the following:

19 “(4) FASTER VESTING FOR MATCHING CON-
 20 TRIBUTION UNDER SECTION 401(k) PLANS.—

21 “(A) IN GENERAL.—In the case of match-
 22 ing contributions (as defined in section
 23 401(m)(4)(A) of the Internal Revenue Code of
 24 1986) under a qualified cash or deferred ar-

1 rangement (as defined in section 401(k) of such
2 Code), paragraph (2) shall be applied—

3 “(i) by substituting ‘3 years’ for ‘5
4 years’ in subparagraph (A), and

5 “(ii) by substituting the following
6 table for the table contained in subpara-
7 graph (B):

“Years of service:	The nonforfeitable percentage is:
1	20
2	40
3	60
4	80
5	100.

8 “(B) TREATMENT OF EMPLOYER MATCHING
9 CONTRIBUTIONS.—For purposes of this para-
10 graph—

11 “(i) matching contributions (as so de-
12 fined) shall be taken into account regard-
13 less of whether the matching contributions
14 are made to the same plan as the contribu-
15 tions made under section 401(k) of such
16 Code, and

17 “(ii) matching contributions under
18 any plan which are made with respect to
19 after-tax employee contributions shall be
20 taken into account if the employer’s limit
21 on matching contributions with respect to
22 such after-tax employee contributions is co-

1 ordinated with the employer's limit on
2 matching contributions with respect to con-
3 tributions under section 401(k) of such
4 Code.”.

5 (c) EFFECTIVE DATES.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 shall apply to contributions for plan years beginning
9 after December 31, 1997.

10 (2) COLLECTIVE BARGAINING AGREEMENTS.—

11 In the case of a plan maintained pursuant to 1 or
12 more collective bargaining agreements between em-
13 ployee representatives and 1 or more employers rati-
14 fied by the date of enactment of this Act, the
15 amendments made by this section shall not apply to
16 contributions on behalf of employees covered by any
17 such agreement for plan years beginning before the
18 earlier of—

19 (A) the later of—

20 (i) the date on which the last of such
21 collective bargaining agreements termi-
22 nates (determined without regard to any
23 extension thereof on or after such date of
24 enactment), or

25 (ii) January 1, 1998, or

(B) January 1, 2002.

**SEC. 205. DEFERRED ANNUITIES FOR SURVIVING SPOUSES
OF FEDERAL EMPLOYEES.**

(a) IN GENERAL.—Section 8341 of title 5, United States Code, is amended—

(1) in subsection (h)(1), by striking “section 8338(b) of this title” and inserting “section 8338(b), and a former spouse of a deceased former employee who separated from the service with title to a deferred annuity under section 8338 (if they were married to one another prior to the date of separation),”; and

(2) by adding at the end the following:

“(j)(1) If a former employee dies after having separated from the service with title to a deferred annuity under section 8338 but before having established a valid claim for annuity, and is survived by a spouse to whom married on the date of separation, the surviving spouse may elect to receive—

“(A) an annuity, commencing on what would have been the former employee’s 62d birthday, equal to 55 percent of the former employee’s deferred annuity;

“(B) an annuity, commencing on the day after the date of death of the former employee, such that,

1 to the extent practicable, the present value of the fu-
 2 ture payments of the annuity would be actuarially
 3 equivalent to the present value of the future pay-
 4 ments under subparagraph (A) as of the day after
 5 the former employee's death; or

6 “(C) the lump-sum credit, if the surviving
 7 spouse is the individual who would be entitled to the
 8 lump-sum credit and if such surviving spouse files
 9 application therefor.

10 “(2) An annuity under this subsection and the right
 11 thereto terminate on the last day of the month before the
 12 surviving spouse remarries before becoming 55 years of
 13 age, or dies.”.

14 (b) CORRESPONDING AMENDMENT FOR FERS.—
 15 Section 8445(a) of title 5, United States Code, is amend-
 16 ed—

17 (1) by striking “(or of a former employee or”
 18 and inserting “(or of a former”; and

19 (2) by striking “annuity)” and inserting “annu-
 20 ity, or of a former employee who dies after having
 21 separated from the service with title to a deferred
 22 annuity under section 8413 but before having estab-
 23 lished a valid claim for annuity (if such former
 24 spouse was married to such former employee prior
 25 to the date of separation))”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to surviving spouses
 3 and former spouses (whose marriage, in the case of the
 4 amendments made by subsection (a), terminated after
 5 May 6, 1985) of former employees who die after the date
 6 of the enactment of this Act.

7 **SEC. 206. CLARIFICATION OF TAX TREATMENT OF DIVISION**
 8 **OF SECTION 457 PLAN BENEFITS UPON DI-**
 9 **VORCE.**

10 (a) IN GENERAL.—Section 414(p)(11) (relating to
 11 application of rules to governmental and church plans) is
 12 amended—

13 (1) by inserting “or an eligible deferred com-
 14 pensation plan (within the meaning of section
 15 457(b))” after “subsection (e))”, and

16 (2) in the heading, by striking “GOVERN-
 17 MENTAL AND CHURCH PLANS” and inserting “CER-
 18 TAIN OTHER PLANS”.

19 (b) EFFECTIVE DATE.—The amendments made by
 20 this section shall apply to transfers after the date of enact-
 21 ment of this Act.

1 **TITLE III—INCREASING PORT-**
 2 **ABILITY FOR PARTICIPANTS**

3 **SEC. 301. GENERAL RULES FOR ROLLOVERS.**

4 (a) IN GENERAL.—Subpart A of part I of subchapter
 5 D of chapter 1 (relating to deferred compensation, etc.)
 6 is amended by inserting after section 402 the following:

7 **“SEC. 402A. RULES APPLICABLE TO ROLLOVERS.**

8 “(a) EXCLUSION FROM INCOME.—

9 “(1) IN GENERAL.—If—

10 “(A) any portion of the balance to the
 11 credit of an individual in an eligible retirement
 12 plan is paid to the individual in an eligible roll-
 13 over distribution,

14 “(B) the distributee transfers any portion
 15 of the property received in such distribution to
 16 an eligible retirement plan which permits such
 17 transfer (in this title, referred to as a ‘rollover
 18 contribution’), and

19 “(C) in the case of a distribution of prop-
 20 erty other than money, the amount so trans-
 21 ferred consists of the property distributed,
 22 then such distribution (to the extent so transferred)
 23 shall not be includible in gross income for the tax-
 24 able year in which paid.

1 “(2) DIRECT TRUSTEE-TO-TRUSTEE TRANS-
 2 FERS.—Any amount transferred in a direct trustee-
 3 to-trustee transfer from 1 eligible retirement plan to
 4 another (under rules similar to the rules in section
 5 401(a)(31)) shall not be includible in gross income
 6 for the taxable year of such transfer.

7 “(b) TRANSFER MUST BE MADE WITHIN 60 DAYS
 8 OF RECEIPT.—

9 “(1) IN GENERAL.—Except as provided in para-
 10 graph (2), subsection (a)(1) shall not apply to any
 11 transfer of a distribution made after the 60th day
 12 following the day on which the distributee received
 13 the property distributed.

14 “(2) HARDSHIP EXCEPTION.—The Secretary
 15 may waive the 60-day requirement under paragraph
 16 (1) under circumstances similar to the circumstances
 17 described in section 6654(e)(3).

18 “(c) SALES OF DISTRIBUTED PROPERTY.—For pur-
 19 poses of this section—

20 “(1) TRANSFER OF PROCEEDS FROM SALE OF
 21 DISTRIBUTED PROPERTY TREATED AS TRANSFER OF
 22 DISTRIBUTED PROPERTY.—The transfer of an
 23 amount equal to any portion of the proceeds from
 24 the sale of property received in the distribution shall

1 be treated as the transfer of property received in the
2 distribution.

3 “(2) PROCEEDS ATTRIBUTABLE TO INCREASE
4 IN VALUE.—The excess of fair market value of prop-
5 erty on sale over its fair market value on distribu-
6 tion shall be treated as property received in the dis-
7 tribution.

8 “(3) NONRECOGNITION OF GAIN OR LOSS.—No
9 gain or loss shall be recognized on any sale described
10 in paragraph (1) to the extent that an amount equal
11 to the proceeds is transferred pursuant to subsection
12 (a).

13 “(d) ROLLOVER WHERE SPOUSE RECEIVES DIS-
14 TRIBUTION AFTER DEATH OF INDIVIDUAL.—If any dis-
15 tribution attributable to an individual is paid to the spouse
16 of the individual after the individual’s death, the preceding
17 provisions of this section shall apply to such distribution
18 in the same manner as if the spouse were the individual;
19 except that a trust or plan described in clause (iii) or (iv)
20 of subsection (g)(1)(A) shall not be treated as an eligible
21 retirement plan with respect to such distribution.

22 “(e) WRITTEN EXPLANATION TO RECIPIENTS OF
23 DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREAT-
24 MENT.—The plan administrator of any eligible retirement
25 plan shall, within a reasonable period of time before mak-

1 ing an eligible rollover distribution from an eligible retire-
 2 ment plan, provide a written explanation to the recipient—

3 “(1) of the provisions under which the recipient
 4 may have the distribution directly transferred to an-
 5 other eligible retirement plan,

6 “(2) of the provision which requires the with-
 7 holding of tax on the distribution if it is not directly
 8 transferred to another eligible retirement plan,

9 “(3) of the provisions under which the distribu-
 10 tion will not be subject to tax if transferred to an
 11 eligible retirement plan within 60 days after the date
 12 on which the recipient received the distribution, and

13 “(4) if applicable, of the provisions of sub-
 14 sections (d) and (e) of section 402.

15 “(f) SPECIAL RULES.—

16 “(1) CAPITAL GAINS AND 10-YEAR AVERAGING
 17 ONLY APPLY TO QUALIFIED TRUSTS.—Notwithstand-
 18 ing any other provision of law, if any portion of any
 19 distribution from a qualified trust is attributable to
 20 any eligible rollover distribution to such qualified
 21 trust from an eligible retirement plan other than a
 22 qualified trust (and earnings allocable thereto), sub-
 23 sections (h)(3) and (h)(5) of section 1122 of the Tax
 24 Reform Act of 1986 shall not apply to that portion.

25 “(2) FROZEN DEPOSITS.—

1 “(A) IN GENERAL.—The 60-day period de-
2 scribed in subsection (b)(1) shall not—

3 “(i) include any period during which
4 the amount transferred to the individual is
5 a frozen deposit, or

6 “(ii) end earlier than 10 days after
7 such amount ceases to be a frozen deposit.

8 “(B) FROZEN DEPOSITS.—For purposes of
9 this paragraph, the term ‘frozen deposit’ means
10 any deposit which may not be withdrawn be-
11 cause of—

12 “(i) the bankruptcy or insolvency of
13 any financial institution, or

14 “(ii) any requirement imposed by the
15 State in which such institution is located
16 by reason of the bankruptcy or insolvency
17 (or threat thereof) of 1 or more financial
18 institutions in such State.

19 A deposit shall not be treated as a frozen de-
20 posit unless on at least 1 day during the 60-day
21 period described in subsection (b)(1) (without
22 regard to this paragraph) such deposit is de-
23 scribed in the preceding sentence.

24 “(g) DEFINITIONS.—For purposes of this section—

25 “(1) ELIGIBLE RETIREMENT PLAN.—

1 “(A) IN GENERAL.—The term ‘eligible re-
2 tirement plan’ means—

3 “(i) an individual retirement account
4 described in section 408(a),

5 “(ii) an individual retirement annuity
6 described in section 408(b) (other than an
7 endowment contract),

8 “(iii) a qualified trust,

9 “(iv) an annuity plan described in sec-
10 tion 403(a), and

11 “(v) an eligible deferred compensation
12 plan described in section 457(b).

13 “(B) QUALIFIED TRUST.—The term ‘quali-
14 fied trust’ means an employees’ trust described
15 in section 401(a) which is exempt from tax
16 under section 501(a).

17 “(C) TREATMENT OF INHERITED INDIVID-
18 UAL RETIREMENT ACCOUNT OR ANNUITY.—

19 “(i) IN GENERAL.—The term ‘individ-
20 ual retirement account’ or ‘individual re-
21 tirement annuity’ does not include an in-
22 herited individual retirement account or in-
23 herited individual retirement annuity, re-
24 spectively.

1 “(ii) INHERITED INDIVIDUAL RETIRE-
 2 MENT ACCOUNT OR ANNUITY.—An individ-
 3 ual retirement account or individual retire-
 4 ment annuity shall be treated as inherited
 5 if—

6 “(I) the individual for whose ben-
 7 efit the account or annuity is main-
 8 tained acquired such account by rea-
 9 son of the death of another individual,
 10 and

11 “(II) such individual was not the
 12 surviving spouse of such other individ-
 13 ual.

14 “(2) ELIGIBLE ROLLOVER DISTRIBUTION.—
 15 The term ‘eligible rollover distribution’ means any
 16 distribution to an individual of all or any portion of
 17 the balance to the credit of the individual in an eligi-
 18 ble retirement plan; except that such term shall not
 19 include—

20 “(A) any distribution which is 1 of a series
 21 of substantially equal periodic payments (not
 22 less frequently than annually) made—

23 “(i) for the life (or life expectancy) of
 24 the individual or the joint lives (or joint

1 life expectancies) of the individual and the
 2 individual's designated beneficiary, or

3 “(ii) for a specified period of 10 years
 4 or more,

5 “(B) any distribution to the extent such
 6 distribution is required under section 401(a)(9),
 7 403(b)(10), 408(a)(6), 408(b)(3), or 457(d)(2),
 8 and

9 “(C) any distribution received by an indi-
 10 vidual from an individual retirement account or
 11 individual retirement annuity if at any time
 12 during the 1-year period ending on the day of
 13 such receipt such individual received any other
 14 eligible rollover distribution from an individual
 15 retirement account or an individual retirement
 16 annuity which was not includible in the individ-
 17 ual's gross income because of the application of
 18 subsection (a).

19 “(h) REGULATIONS.—The Secretary shall prescribe
 20 such regulations as may be necessary or appropriate to
 21 carry out the purposes of this section, including regula-
 22 tions to provide rules for—

23 “(1) separate accounting,

24 “(2) determining the origin of any distribution,

25 and

1 “(3) allocating investment in the contract and
2 earnings to distributions.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 72(o)(4) is amended by striking
5 “sections 402(c), 403(a)(4), and 408(d)(3)” and in-
6 serting “section 402A”.

7 (2) Section 219(d)(2) is amended by striking
8 “section 402(c), 403(a)(4), 403(b)(8), or 408(d)(3)”
9 and inserting “section 402A”.

10 (3) Section 219(f)(6)(B)(ii) is amended by in-
11 serting “described in section 402A” after “rollover
12 contribution”.

13 (4) Section 401(a)(31) is amended—

14 (A) in subparagraph (B), by striking “sec-
15 tions 402(c) and 403(a)(4)” and inserting “sec-
16 tion 402A”,

17 (B) in subparagraph (C), by striking “sec-
18 tion 402(f)(2)(A)” and inserting “section
19 402A(g)(2)”, and

20 (C) in subparagraph (D), by striking “sec-
21 tion 402(c)(8)(B)” and all that follows and in-
22 serting “section 402A(g)(1)”.

23 (5) Subsections (c) and (f) of section 402 are
24 repealed.

1 (6) Section 402(e) is amended by striking para-
2 graph (6).

3 (7) Section 403(a)(4) is amended to read as fol-
4 lows:

5 “(4) ROLLOVER AMOUNTS.—For rules regard-
6 ing rollover amounts, see section 402A.”.

7 (8) Section 403(b)(1) is amended by striking
8 “paragraph (8) of this subsection or section
9 408(d)(3)(A)(iii)” and inserting “section 402A”.

10 (9) Section 403(b)(8) is amended to read as fol-
11 lows:

12 “(8) ROLLOVER AMOUNTS AND DIRECT TRUST-
13 EE-TO-TRUSTEE TRANSFERS.—For rules regarding
14 rollover amounts and direct trustee-to-trustee trans-
15 fers, see section 402A.”.

16 (10) Section 408(a)(1) is amended by striking
17 “subsection (d)(3), in section 402(c), 403(a)(4) or
18 403(b)(8)” and inserting “section 402A”.

19 (11) Section 408(d)(3) is amended to read as
20 follows:

21 “(3) ROLLOVER AMOUNTS AND DIRECT TRUST-
22 EE-TO-TRUSTEE TRANSFERS.—For rules regarding
23 rollover amounts and direct trustee-to-trustee trans-
24 fers, see section 402A.”.

1 (12) Section 408(d)(5)(A) is amended by in-
 2 serting “described in section 402A” after “rollover
 3 contributions”.

4 (13) Section 408(d)(5)(B) is amended by in-
 5 serting “described in section 402A” after “rollover
 6 contribution”.

7 (14) Section 414(b)(2) is amended—

8 (A) in subparagraph (A), by striking “(as
 9 defined in sections 402(c), 403(a)(4), and
 10 408(d)(3))” and inserting “described in section
 11 402A”, and

12 (B) in subparagraph (B), by striking “(as
 13 defined in sections 402(c), 403(a)(4), and
 14 408(d)(3))” and inserting “described in section
 15 402A”.

16 (15) Section 415(c)(2) is amended by striking
 17 “(as defined in sections 402(c), 403(a)(4),
 18 403(b)(8), and 408(d)(3))” and inserting “described
 19 in section 402A”.

20 (16) Section 416(g)(4)(A) is amended by insert-
 21 ing “described in section 402A” after “rollover con-
 22 tribution”.

23 (17) Section 457(b)(2) is amended by inserting
 24 “(other than rollover contributions described in sec-
 25 tion 402A)” after “taxable year”.

1 (18) Section 457(e) is amended by adding at
2 the end the following:

3 “(16) ROLLOVER AMOUNTS AND DIRECT
4 TRUSTEE-TO-TRUSTEE TRANSFERS.—For rules re-
5 garding rollover amounts and direct trustee-to-trust-
6 ee transfers, see section 402A.”.

7 (19) Section 3405(c) is amended—

8 (A) in paragraph (1), by inserting “de-
9 scribed in section 402A” after “eligible rollover
10 distribution”, and

11 (B) by striking paragraph 3.

12 (20) Section 4973(b)(1)(A) is amended by
13 striking “section 402(c), 403(a)(4), 403(b)(8), or
14 408(d)(3)” and inserting “section 402A”.

15 (21) Section 4973(c)(1) is amended by striking
16 “section 403(b)(8) or 408(d)(3)(A)(iii)” and insert-
17 ing “section 402A”.

18 (22) Section 4980A(c)(2)(D) is amended by in-
19 serting “described in section 402A” after “rollover
20 contribution”.

21 (23) Section 6058(d)(2)(A) is amended by in-
22 serting “described in section 402A” after “rollover
23 contributions”.

24 (24) Section 6652(i) is amended by striking
25 “section 402(f)” and inserting “section 402A(e)”.

1 **SEC. 302. PLANS NOT DISQUALIFIED MERELY BY ACCEPT-**
 2 **ING ROLLOVER CONTRIBUTIONS.**

3 (a) IN GENERAL.—Section 401(a) (relating to quali-
 4 fied pension, profit-sharing, and stock bonus plans) is
 5 amended by inserting after paragraph (34) the following:

6 “(35) PLANS NOT DISQUALIFIED MERELY BY
 7 ACCEPTING ROLLOVER CONTRIBUTIONS.—A trust
 8 which is part of a plan shall not fail to be a qualified
 9 trust under this section solely because the plan ac-
 10 cepts a contribution of an eligible rollover distribu-
 11 tion as described in section 402A from another plan
 12 without such a qualified trust if, at the time of the
 13 transfer, the trustee of the other plan provided no-
 14 tice of the other plan’s intention to have such a
 15 qualified trust.”.

16 (b) EFFECTIVE DATE.—The amendment made by
 17 this section shall apply to rollover contributions made
 18 after December 31, 1997.

19 **SEC. 303. TREATMENT OF TRANSFERS BETWEEN DEFINED**
 20 **CONTRIBUTION PLANS.**

21 (a) AMENDMENT TO 1986 CODE.—Section 411(d)(6)
 22 (relating to accrued benefit not to be decreased by amend-
 23 ment) is amended by adding at the end the following:

24 “(D) PLAN TRANSFERS.—A defined con-
 25 tribution plan (in this subparagraph referred to
 26 as the ‘transferee plan’) shall not be treated as

1 failing to meet the requirements of this para-
2 graph merely because the transferee plan does
3 not provide some or all of the forms of distribu-
4 tion previously available under another defined
5 contribution plan (in this subparagraph referred
6 to as the ‘transferor plan’) to the extent that—

7 “(i) the forms of distribution pre-
8 viously available under the transferor plan
9 applied to the account of a participant or
10 beneficiary under the transferor plan that
11 was transferred from the transferor plan to
12 the transferee plan pursuant to a direct
13 transfer rather than pursuant to a dis-
14 tribution from the transferor plan,

15 “(ii) the terms of both the transferor
16 plan and the transferee plan authorize the
17 transfer described in clause (i),

18 “(iii) the transfer described in clause
19 (i) was made pursuant to a voluntary elec-
20 tion by the participant or beneficiary
21 whose account was transferred to the
22 transferee plan,

23 “(iv) the election described in clause
24 (iii) was made after the participant or ben-

1 eficiary received a notice describing the
2 consequences of making the election,

3 “(v) if the transferor plan provides for
4 an annuity as the normal form of distribu-
5 tion under the plan in accordance with sec-
6 tion 417, the transfer is made with the
7 consent of the participant’s spouse (if
8 any), and such consent meets requirements
9 similar to the requirements imposed by
10 section 417(a)(2), and

11 “(vi) the transferee plan allows the
12 participant or beneficiary described in
13 clause (iii) to receive any distribution to
14 which the participant or beneficiary is enti-
15 tled under transferee plan in the form of
16 a single sum distribution.”.

17 (b) AMENDMENT TO ERISA.—Section 204(g) of the
18 Employee Retirement Income Security Act of 1974 (29
19 U.S.C. 1054(g)) is amended by adding at the end the fol-
20 lowing:

21 “(4) A defined contribution plan (in this paragraph
22 referred to as the ‘transferee plan’) shall not be treated
23 as failing to meet the requirements of this subsection
24 merely because the transferee plan does not provide some
25 or all of the forms of distribution previously available

1 under another defined contribution plan (in this para-
2 graph referred to as the ‘transferor plan’) to the extent
3 that—

4 “(A) the forms of distribution previously avail-
5 able under the transferor plan applied to the account
6 of a participant or beneficiary under the transferor
7 plan that was transferred from the transferor plan
8 to the transferee plan pursuant to a direct transfer
9 rather than pursuant to a distribution from the
10 transferor plan,

11 “(B) the terms of both the transferor plan and
12 the transferee plan authorize the transfer described
13 in subparagraph (A),

14 “(C) the transfer described in subparagraph
15 (A) was made pursuant to a voluntary election by
16 the participant or beneficiary whose account was
17 transferred to the transferee plan,

18 “(D) the election described in subparagraph (C)
19 was made after the participant or beneficiary re-
20 ceived a notice describing the consequences of mak-
21 ing the election,

22 “(E) if the transferor plan provides for an an-
23 nuity as the normal form of distribution under the
24 plan in accordance with section 205, the transfer is
25 made with the consent of the participant’s spouse (if

1 any), and such consent meets requirements similar
 2 to the requirements imposed by section 205(c)(2),
 3 and

4 “(F) the transferee plan allows the participant
 5 or beneficiary described in subparagraph (C) to re-
 6 ceive any distribution to which the participant or
 7 beneficiary is entitled under transferee plan in the
 8 form of a single sum distribution.”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to transfers after December 31,
 11 1997.

12 **SEC. 304. RATIONALIZATION OF RESTRICTIONS ON DIS-**
 13 **TRIBUTIONS FROM 401(k) PLANS.**

14 (a) MODIFICATION OF SAME DESK EXCEPTION.—
 15 Section 401(k)(2)(B)(i)(I) (relating to qualified cash or
 16 deferred arrangements) is amended by striking “separa-
 17 tion from service” and inserting “severance from employ-
 18 ment”.

19 (b) BUSINESS SALE REQUIREMENTS REPEALED.—

20 (1) IN GENERAL.—Section 401(k)(2)(B)(i)(II)
 21 (relating to qualified cash or deferred arrangements)
 22 is amended by striking “an event” and inserting “a
 23 plan termination”.

24 (2) CONFORMING AMENDMENTS.—Section
 25 401(k)(10) is amended—

1 (A) by striking subparagraph (A) and in-
 2 serting the following:

3 “(A) IN GENERAL.—A plan termination is
 4 described in this paragraph if the termination
 5 of the plan does not involve the establishment
 6 or maintenance of another defined contribution
 7 plan (other than an employee stock ownership
 8 plan as defined in section 4975(e)(7)).”,

9 (B) in subparagraph (B)—

10 (i) by striking “An event” and insert-
 11 ing “A termination”, and

12 (ii) by striking “the event” and insert-
 13 ing “the termination”,

14 (C) by striking subparagraph (C), and

15 (D) by striking “OR DISPOSITION OF AS-
 16 SETS OR SUBSIDIARY” in the heading.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to distributions after December 31,
 19 1997.

20 **TITLE IV—STRENGTHENING** 21 **PENSION SECURITY AND EN-** 22 **FORCEMENT**

23 **SEC. 401. REPEAL OF 150 PERCENT OF CURRENT LIABILITY** 24 **FUNDING LIMIT.**

25 (a) IN GENERAL.—

1 (1) CODE AMENDMENT.—Section 412(c)(7) (re-
 2 lating to full-funding limitation) is amended—

3 (A) by striking “150 percent” in subpara-
 4 graph (A)(i)(I) and inserting “in the case of
 5 plan years beginning before January 1, 2007,
 6 the applicable percentage”, and

7 (B) by adding at the end the following:

8 “(F) APPLICABLE PERCENTAGE.—For
 9 purposes of subparagraph (A)(i)(I), the applica-
 10 ble percentage shall be determined in accord-
 11 ance with the following table:

**“In the case of any plan year The applicable percentage is—
 beginning in—**

1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 or 2006	170.”.

12 (2) ERISA AMENDMENT.—Section 302(c)(7) of
 13 the Employee Retirement Income Security Act of
 14 1974 (29 U.S.C. 1082(c)(7)) is amended—

15 (A) by striking “150 percent” in subpara-
 16 graph (A)(i)(I) and inserting “in the case of
 17 plan years beginning before January 1, 2007,
 18 the applicable percentage”, and

19 (B) by adding at the end the following:

20 “(F) APPLICABLE PERCENTAGE.—For purposes
 21 of subparagraph (A)(i)(I), the applicable percentage

1 shall be determined in accordance with the following
 2 table:

**“In the case of any plan year The applicable percentage is—
 beginning in—**

1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 or 2006	170.”.

3 (b) SPECIAL AMORTIZATION RULE.—

4 (1) CODE AMENDMENT.—Section 412(b)(2) is
 5 amended by striking “and” at the end of subpara-
 6 graph (C), by striking the period at the end of sub-
 7 paragraph (D) and inserting “, and”, and by insert-
 8 ing after subparagraph (D) the following:

9 “(E) the amount necessary to amortize in
 10 equal annual installments (until fully amor-
 11 tized) over a period of 20 years the contribu-
 12 tions which would be required to be made under
 13 the plan but for the provisions of subsection
 14 (c)(7)(A)(i)(I).”.

15 (2) ERISA AMENDMENT.—Section 302(b)(2) of
 16 the Employee Retirement Income Security Act of
 17 1974 (29 U.S.C. 1082(b)(2)) is amended by striking
 18 “and” at the end of subparagraph (C), by striking
 19 the period at the end of subparagraph (D) and in-
 20 serting “, and”, and by inserting after subparagraph
 21 (D) the following:

1 “(E) the amount necessary to amortize in equal
 2 annual installments (until fully amortized) over a pe-
 3 riod of 20 years the contributions which would be re-
 4 quired to be made under the plan but for the provi-
 5 sions of subsection (c)(7)(A)(i)(I).”.

6 (3) CONFORMING AMENDMENTS.—

7 (A) Section 412(c)(7)(D) is amended by
 8 adding “and” at the end of clause (i), by strik-
 9 ing “, and” at the end of clause (ii) and insert-
 10 ing a period, and by striking clause (iii).

11 (B) Section 302(c)(7)(D) of the Employee
 12 Retirement Income Security Act of 1974 (29
 13 U.S.C. 1082(c)(7)(D)) is amended by adding
 14 “and” at the end of clause (i), by striking “,
 15 and” at the end of clause (ii) and inserting a
 16 period, and by striking clause (iii).

17 (3) EFFECTIVE DATES.—

18 (A) IN GENERAL.—The amendments made
 19 by this subsection shall apply to plan years be-
 20 ginning after December 31, 1998.

21 (B) SPECIAL RULE FOR 1999.—In the case
 22 of a plan’s first year beginning in 1999, there
 23 shall be added to the amount required to be
 24 amortized under section 412(b)(2)(E) of the In-
 25 ternal Revenue Code of 1986 and section

1 302(b)(2)(E) of the Employee Retirement In-
 2 come Security Act of 1974 (as added by para-
 3 graph (1)) over the 20-year period beginning
 4 with such year, the unamortized balance (as of
 5 the close of the preceding plan year) of any
 6 amount required to be amortized under section
 7 412(c)(7)(D)(iii) of such Code and section
 8 302(c)(7)(D)(iii) of such Act (as repealed by
 9 paragraph (2)) for plan years beginning before
 10 1999.

11 (c) MAXIMUM CONTRIBUTION DEDUCTION RULES
 12 MODIFIED AND APPLIED TO ALL DEFINED BENEFIT
 13 PLANS.—

14 (1) IN GENERAL.—Section 404(a)(1)(D) (relat-
 15 ing to special rule in case of certain plans) is amend-
 16 ed—

17 (A) by striking “which has more than 100
 18 participants for the plan year”,

19 (B) by striking “unfunded current liability
 20 determined under section 414(l)” and inserting
 21 “unfunded termination liability (determined
 22 under section 4041(b)(2)(A)(i)(II) of the Em-
 23 ployee Retirement Income Security Act of 1974
 24 as if the proposed termination date were the
 25 last day of the plan year)”, and

1 (C) by inserting after the first sentence the
 2 following: “For purposes of this subparagraph,
 3 in the case of a plan which has less than 100
 4 participants for the plan year, termination li-
 5 ability shall not include the liability attributable
 6 to benefit increases for highly compensated em-
 7 ployees (as defined in section 414(q)) brought
 8 about by plan amendment within the last 2
 9 years before the termination date.”.

10 (2) EFFECTIVE DATE.—The amendments made
 11 by this subsection shall apply to plan years begin-
 12 ning after the date of enactment of this Act.

13 **SEC. 402. MISSING PARTICIPANTS.**

14 (a) IN GENERAL.—Section 4050 of the Employee Re-
 15 tirement Income Security Act of 1974 (29 U.S.C. 1350)
 16 is amended by redesignating subsection (c) as subsection
 17 (e) and by inserting after subsection (b) the following:

18 “(c) MULTIEMPLOYER PLANS.—The corporation
 19 shall prescribe rules similar to the rules in subsection (a)
 20 for multiemployer plans covered by this title that termi-
 21 nate under section 4041A.

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

23 “(1) TRANSFER TO CORPORATION.—The plan
 24 administrator of a plan described in paragraph (4)

1 may elect to transfer a missing participant’s benefits
2 to the corporation upon termination of the plan.

3 “(2) INFORMATION TO THE CORPORATION.—To
4 the extent provided in regulations, the plan adminis-
5 trator of a plan described in paragraph (4) shall,
6 upon termination of the plan, provide the corpora-
7 tion information with respect to benefits of a miss-
8 ing participant if the plan transfers such benefits—

9 “(A) to the corporation, or

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

12 “(3) PAYMENT BY THE CORPORATION.—If ben-
13 efits of a missing participant were transferred to the
14 corporation under paragraph (1), the corporation
15 shall, upon location of the participant or beneficiary,
16 pay to the participant or beneficiary the amount
17 transferred (or the appropriate survivor benefit) ei-
18 ther—

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

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

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

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

1 “(i) to which the provisions of this
 2 section do not apply (without regard to
 3 this subsection), and

4 “(ii) which is not a plan described in
 5 paragraphs (2) through (11) of section
 6 4021(b), and

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

9 “(i) has missing participants, and

10 “(ii) has not provided for the transfer
 11 of assets to pay the benefits of all missing
 12 participants to another pension plan (with-
 13 in the meaning of section 3(2)).

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

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 206(f) of the Employee Retirement
 19 Income Security Act of 1974 (29 U.S.C. 1056(f)) is
 20 amended—

21 (A) by striking “title IV” and inserting
 22 “section 4050”, and

23 (B) by striking “the plan shall provide
 24 that”.

1 (2) Section 401(a)(34) (relating to benefits of
2 missing participants on plan termination) is amend-
3 ed by striking “title IV” and inserting “section
4 4050”.

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

11 **SEC. 403. MODIFICATION OF PROHIBITION OF ASSIGNMENT**
12 **OR ALIENATION.**

13 (a) AMENDMENT TO ERISA.—Section 206(d) of the
14 Employee Retirement Income Security Act of 1974 (29
15 U.S.C. 1056(d)) is amended by adding at the end the fol-
16 lowing:

17 “(4) Paragraph (1) shall not apply to any offset of
18 a participant’s accrued benefit in an employee pension
19 benefit plan against an amount that the participant is or-
20 dered or required to pay to the plan if—

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

22 “(i) under a judgment of conviction for a
23 crime involving such plan,

24 “(ii) under a civil judgment (including a
25 consent order or decree) entered by a court in

1 an action brought in connection with a violation
2 (or alleged violation) of part 4 of this subtitle,
3 or

4 “(iii) pursuant to a settlement agreement
5 between the Secretary and the participant, or a
6 settlement agreement between the Pension Ben-
7 efit Guaranty Corporation and the participant,
8 in connection with a violation (or alleged viola-
9 tion) of part 4 of this subtitle by a fiduciary or
10 any other person,

11 “(B) the judgment, order, decree, or settlement
12 agreement expressly provides for the offset of all or
13 part of the amount ordered or required to be paid
14 to the plan against the participant’s accrued benefit
15 in the plan, and

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

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

21 “(ii) such spouse is ordered or required in
22 such judgment, order, decree, or settlement to
23 pay an amount to the plan in connection with
24 a violation of part 4 of this subtitle, or

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

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

11 “(i) the participant terminated employment on
 12 the date of the offset,

13 “(ii) there was no offset,

14 “(iii) the plan permitted retirement only on or
 15 after normal retirement age,

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

18 “(v) the amount of the qualified preretirement
 19 survivor annuity under the plan is equal to the
 20 amount of the survivor annuity payable under the
 21 minimum-required qualified joint and survivor annu-
 22 ity.

23 “(B) For purposes of this paragraph, the term ‘mini-
 24 mum-required qualified joint and survivor annuity’ means
 25 the qualified joint and survivor annuity which is the actu-

1 arial equivalent of a single annuity for the life of the par-
 2 ticipant and under which the survivor annuity is 50 per-
 3 cent of the amount of the annuity which is payable during
 4 the joint lives of the participant and the spouse.”.

5 (b) AMENDMENT TO 1986 CODE.—Section
 6 401(a)(13) (relating to assignment and alienation) is
 7 made by adding at the end the following:

8 “(C) SPECIAL RULE FOR CERTAIN JUDG-
 9 MENTS AND SETTLEMENTS.—Subparagraph (A)
 10 shall not apply to any offset of a participant’s
 11 accrued benefit in an employee pension benefit
 12 plan against an amount that the participant is
 13 ordered or required to pay to the plan if—

14 “(i) the order or requirement to pay
 15 arises—

16 “(I) under a judgment of convic-
 17 tion for a crime involving such plan,

18 “(II) under a civil judgment (in-
 19 cluding a consent order or decree) en-
 20 tered by a court in an action brought
 21 in connection with a violation (or al-
 22 leged violation) of part 4 of subtitle B
 23 of title I of the Employee Retirement
 24 Income Security Act of 1974, or

1 “(III) pursuant to a settlement
2 agreement between the Secretary and
3 the participant, or a settlement agree-
4 ment between the Pension Benefit
5 Guaranty Corporation and the partici-
6 pant, in connection with a violation
7 (or alleged violation) of part 4 of such
8 subtitle by a fiduciary or any other
9 person,

10 “(ii) the judgment, order, decree, or
11 settlement agreement expressly provides
12 for the offset of all or part of the amount
13 ordered or required to be paid to the plan
14 against the participant’s accrued benefit in
15 the plan, and

16 “(iii) if the participant has a spouse
17 at the time at which the offset is to be
18 made—

19 “(I) such spouse has consented
20 in writing to such offset and such con-
21 sent is witnessed by a notary public or
22 representative of the plan,

23 “(II) such spouse is ordered or
24 required in such judgment, order, de-
25 cree, or settlement to pay an amount

1 to the plan in connection with a viola-
 2 tion of part 4 of such subtitle, or

3 “(III) in such judgment, order,
 4 decree, or settlement, such spouse re-
 5 tains the right to receive the value of
 6 the survivor annuity under a qualified
 7 joint and survivor annuity provided
 8 pursuant to section 401(a)(11)(A)(i)
 9 and under a qualified preretirement
 10 survivor annuity provided pursuant to
 11 section 401(a)(11)(A)(ii), determined
 12 in accordance with subparagraph (D).

13 “(D) VALUATION OF SURVIVOR ANNU-
 14 ITY.—

15 “(i) IN GENERAL.—The value of the
 16 survivor annuity described in subparagraph
 17 (C)(iii)(III) shall be determined as if—

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

20 “(II) there was no offset,

21 “(III) the plan permitted retire-
 22 ment only on or after normal retire-
 23 ment age,

1 “(IV) the plan provided only the
2 minimum-required qualified joint and
3 survivor annuity, and

4 “(V) the amount of the qualified
5 preretirement survivor annuity under
6 the plan is equal to the amount of the
7 survivor annuity payable under the
8 minimum-required qualified joint and
9 survivor annuity.

10 “(ii) DEFINITION.—For purposes of
11 this subparagraph, the term ‘minimum-re-
12 quired qualified joint and survivor annuity’
13 means the qualified joint and survivor an-
14 nuity which is the actuarial equivalent of a
15 single annuity for the life of the partici-
16 pant and under which the survivor annuity
17 is 50 percent of the amount of the annuity
18 which is payable during the joint lives of
19 the participant and the spouse.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to judgments, orders, and decrees
22 issued, and settlement agreements entered into, on or
23 after the date of the enactment of this Act.

1 **SEC. 404. PROHIBITED TRANSACTIONS.**

2 (a) IN GENERAL.—Section 502(i) of the Employee
3 Retirement Income Security Act of 1974 (29 U.S.C.
4 1132(i)) is amended by striking “5 percent” and inserting
5 “10 percent”.

6 (b) EFFECTIVE DATE.—The amendment made by
7 this section shall apply to prohibited transactions occur-
8 ring after the date of enactment of this Act.

9 **SEC. 405. DIVERSIFICATION IN SECTION 401(k) PLAN IN-**
10 **VESTMENTS.**

11 (a) LIMITATIONS ON INVESTMENT IN EMPLOYER SE-
12 CURITIES AND EMPLOYER REAL PROPERTY BY CASH OR
13 DEFERRED ARRANGEMENTS.—Section 407(d)(3) of the
14 Employee Retirement Income Security Act of 1974 (29
15 U.S.C. 1107(d)(3)) is amended by adding at the end the
16 following:

17 “(D)(i) The term ‘eligible individual account
18 plan’ does not include that portion of an individual
19 account plan that consists of elective deferrals (as
20 defined in section 402(g)(3) of the Internal Revenue
21 Code of 1986) pursuant to a qualified cash or de-
22 ferred arrangement as defined in section 401(k) of
23 the Internal Revenue Code of 1986 (and earnings al-
24 locable thereto), if such elective deferrals (or earn-
25 ings allocable thereto) are required to be invested in
26 qualifying employer securities or qualifying employer

1 real property or both pursuant to the documents and
 2 instruments governing the plan or at the direction of
 3 a person other than the participant on whose behalf
 4 such elective deferrals are made to the plan (or the
 5 participant's beneficiary).

6 “(ii) For purposes of subsection (a), such por-
 7 tion shall be treated as a separate plan.

8 “(iii) This subparagraph shall not apply to an
 9 individual account plan if the fair market value of
 10 the assets of all individual account plans maintained
 11 by the employer equals not more than 10 percent of
 12 the fair market value of the assets of all pension
 13 plans maintained by the employer.

14 “(iv) This subparagraph shall not apply to an
 15 individual account plan that is an employee stock
 16 ownership plan as defined in section 409(a) or
 17 4975(e)(7) of the Internal Revenue Code or that is
 18 a stock bonus plan.”.

19 (b) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by
 21 this section shall apply to employer securities and
 22 employer real property acquired after the beginning
 23 of the first plan year beginning after the 90th day
 24 after the date of enactment of this Act.

1 (2) SPECIAL RULE FOR CERTAIN ACQUISITION.
 2 TIONS.—Employer securities and employer real
 3 property acquired pursuant to a binding written con-
 4 tract to acquire such securities and real property in
 5 effect on the date of enactment of this Act and at
 6 all times thereafter, shall be treated as acquired im-
 7 mediately before such date.

8 **SEC. 406. PERIODIC PENSION BENEFITS STATEMENTS.**

9 (a) IN GENERAL.—Section 105(a) of the Employee
 10 Retirement Income Security Act of 1974 (29 U.S.C.
 11 1025(a)) is amended by striking “shall furnish to any plan
 12 participant or beneficiary who so requests in writing, a
 13 statement” and inserting “shall furnish to each plan par-
 14 ticipant at least once each year (3 years in the case of
 15 a defined benefit plan) or upon written request of a plan
 16 participant or beneficiary, a statement in written or elec-
 17 tronic form”.

18 (b) RULE FOR MULTIEMPLOYER PLANS.—Section
 19 105(d) of the Employee Retirement Income Security Act
 20 of 1974 (29 U.S.C. 1025(d)) is amended to read as fol-
 21 lows:

22 “(d) Upon written request of a plan participant or
 23 beneficiary, each administrator of a plan to which more
 24 than 1 unaffiliated employer is required to contribute shall

1 furnish a statement described in subsection (a) in written
2 or electronic form.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply to plan years beginning after the
5 earlier of—

6 (1) the date of issuance by the Secretary of
7 Labor of regulations providing guidance for simplify-
8 ing defined benefit plan calculations with respect to
9 the information required under section 105 of the
10 Employee Retirement Income Security Act of 1974
11 (29 U.S.C. 1025), or

12 (2) December 31, 1997.

13 **SEC. 407. CIVIL PENALTIES FOR BREACH OF FIDUCIARY**
14 **RESPONSIBILITY.**

15 (a) IMPOSITION AND AMOUNT OF PENALTY MADE
16 DISCRETIONARY.—Section 502(l)(1) of the Employee Re-
17 tirement Income Security Act of 1974 (29 U.S.C.
18 1132(l)(1)) is amended—

19 (1) by striking “shall” and inserting “may”,
20 and

21 (2) by striking “equal to” and inserting “not
22 greater than”.

23 (b) APPLICABLE RECOVERY AMOUNT.—Section
24 502(l)(2) of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1132(l)(2)) is amended to read
2 as follows:

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

14 (c) OTHER RULES.—Section 502(l) of the Employee
15 Retirement Income Security Act of 1974 (29 U.S.C.
16 1132(l)) is amended by adding at the end the following:

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

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

25 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
 2 this section shall apply to any breach of fiduciary re-
 3 sponsibility or other violation of part 4 of subtitle B
 4 of title I of the Employee Retirement Income Secu-
 5 rity Act of 1974 occurring on or after the date of
 6 enactment of this Act.

7 (2) TRANSITION RULE.—In applying the
 8 amendment made by subsection (b) (relating to ap-
 9 plicable recovery amount), a breach or other viola-
 10 tion occurring before the date of enactment of this
 11 Act which continues after the 180th day after such
 12 date (and which may have been discontinued at any
 13 time during its existence) shall be treated as having
 14 occurred after such date of enactment.

15 **SEC. 408. MODIFICATION OF 10 PERCENT TAX FOR NON-**
 16 **DEDUCTIBLE CONTRIBUTIONS.**

17 (a) IN GENERAL.—Section 4972(c)(6)(B) (relating
 18 to exceptions) is amended to read as follows:

19 “(B) so much of the contributions to 1 or
 20 more defined contribution plans which are not
 21 deductible when contributed solely because of
 22 section 404(a)(7) as does not exceed the greater
 23 of—

24 “(i) the amount of contributions not
 25 in excess of 6 percent of compensation

1 (within the meaning of section 404(a))
 2 paid or accrued (during the taxable year
 3 for which the contributions were made) to
 4 beneficiaries under the plans, or

5 “(ii) the sum of—

6 “(I) the amount of contributions
 7 described in section 401(m)(4)(A),
 8 plus

9 “(II) the amount of contributions
 10 described in section 402(g)(3)(A).”.

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

14 **SEC. 409. QUALIFIED EMPLOYER PLANS PROHIBITED FROM**
 15 **MAKING LOANS THROUGH CREDIT CARDS**
 16 **AND OTHER REVOLVING CREDIT ARRANGE-**
 17 **MENTS.**

18 (a) IN GENERAL.—Section 401(a) (relating to quali-
 19 fied pension, profit-sharing, and stock bonus plans), as
 20 amended by section 302, is amended by inserting after
 21 paragraph (35) the following:

22 “(36) PROHIBITION OF LOANS THROUGH CRED-
 23 IT CARDS AND OTHER INTERMEDIARIES.—A trust
 24 shall not constitute a qualified trust under this sec-
 25 tion if the plan makes any loan to any beneficiary

1 under the plan through the use of any credit or
 2 debit card, any line of credit, or any other revolving
 3 credit arrangement.”.

4 (b) EFFECTIVE DATE.—The amendment made by
 5 this section shall apply to plan years beginning after the
 6 date of enactment of this Act.

7 **TITLE V—REDUCING** 8 **REGULATORY BURDENS**

9 **SEC. 501. MODIFICATIONS TO NONDISCRIMINATION AND** 10 **MINIMUM PARTICIPATION RULES WITH RE-** 11 **SPECT TO GOVERNMENTAL PLANS.**

12 (a) GENERAL NONDISCRIMINATION AND PARTICIPA-
 13 TION RULES.—

14 (1) NONDISCRIMINATION REQUIREMENTS.—
 15 Section 401(a)(5) (relating to qualified pension,
 16 profit-sharing, and stock bonus plans) is amended by
 17 adding at the end the following:

18 “(G) GOVERNMENTAL PLANS.—Para-
 19 graphs (3) and (4) shall not apply to a govern-
 20 mental plan (within the meaning of section
 21 414(d)).”.

22 (2) ADDITIONAL PARTICIPATION REQUIRE-
 23 MENTS.—Section 401(a)(26)(H) (relating to addi-
 24 tional participation requirements) is amended to
 25 read as follows:

1 “(H) EXCEPTION FOR GOVERNMENTAL
2 PLANS.—This paragraph shall not apply to a
3 governmental plan (within the meaning of sec-
4 tion 414(d)).”.

5 (3) MINIMUM PARTICIPATION STANDARDS.—
6 Section 410(c)(2) (relating to application of partici-
7 pation standards to certain plans) is amended to
8 read as follows:

9 “(2) A plan described in paragraph (1) shall be
10 treated as meeting the requirements of this section
11 for purposes of section 401(a), except that in the
12 case of a plan described in subparagraph (B), (C),
13 or (D) of paragraph (1), this paragraph shall only
14 apply if such plan meets the requirements of section
15 401(a)(3) (as in effect on September 1, 1974).”.

16 (b) PARTICIPATION STANDARDS FOR QUALIFIED
17 CASH OR DEFERRED ARRANGEMENTS.—Section
18 401(k)(3) (relating to application of participation and dis-
19 crimination standards) is amended by adding at the end
20 the following:

21 “(G) The requirements of subparagraph
22 (A)(i) and (C) shall not apply to a govern-
23 mental plan (within the meaning of section
24 414(d)).”.

1 (c) NONDISCRIMINATION RULES FOR SECTION
 2 403(b) PLANS.—Section 403(b)(12) (relating to non-
 3 discrimination requirements) is amended by adding at the
 4 end the following:

5 “(C) GOVERNMENTAL PLANS.—For pur-
 6 poses of paragraph (1)(D), the requirements of
 7 subparagraph (A)(i) shall not apply to a gov-
 8 ernmental plan (within the meaning of section
 9 414(d)).”.

10 (d) EFFECTIVE DATE.—

11 (1) IN GENERAL.—The amendments made by
 12 this section shall apply to taxable years beginning on
 13 or after the date of enactment of this Act.

14 (2) TREATMENT FOR YEARS BEGINNING BE-
 15 FORE DATE OF ENACTMENT.—A governmental plan
 16 (within the meaning of section 414(d) of the Inter-
 17 nal Revenue Code of 1986) shall be treated as satis-
 18 fying the requirements of sections 401(a)(3),
 19 401(a)(4), 401(a)(26), 401(k), 401(m), 403
 20 (b)(1)(D) and (b)(12), and 410 of such Code for all
 21 taxable years beginning before the date of enactment
 22 of this Act.

1 **SEC. 502. INTERMEDIATE SANCTIONS FOR INADVERTENT**
2 **FAILURES.**

3 (a) IN GENERAL.—Section 401(a) (relating to quali-
4 fied pension, profit-sharing, and stock bonus plans), as
5 amended by section 409, is amended by inserting after
6 paragraph (36) the following:

7 “(37) PROTECTION FROM DISQUALIFICATION
8 UPON TIMELY CORRECTION OR PAYMENT OF FINE.—
9 A trust shall not fail to constitute a qualified trust
10 under this section if the plan of which such trust is
11 a part has made good faith efforts to meet the re-
12 quirements of this section, has inadvertently failed
13 to satisfy 1 or more of such requirements, and ei-
14 ther—

15 “(A) substantially corrects such failure be-
16 fore the date the plan becomes subject to a plan
17 examination for the applicable year (as deter-
18 mined under rules prescribed by the Secretary),
19 or

20 “(B) substantially corrects such failure on
21 or after such date.

22 If the plan satisfies the requirement under subpara-
23 graph (B), the Secretary may require the sponsoring
24 employer to make a payment to the Secretary in an
25 amount that does not exceed an amount that bears

1 a reasonable relationship to the severity of the plan's
 2 failure to satisfy the requirements of this section.”.

3 (b) INCOME INCLUSION FOR DISQUALIFICATION NOT
 4 APPLICABLE TO NONHIGHLY COMPENSATED EMPLOY-
 5 EES.—Section 402(b) (relating to taxability of beneficiary
 6 of nonexempt trust) is amended by striking paragraph (4)
 7 and inserting the following:

8 “(4) INCOME INCLUSION FOR DISQUALIFICA-
 9 TION NOT APPLICABLE TO NONHIGHLY COM-
 10 PENSATED EMPLOYEES.—Paragraphs (1) and (2)
 11 shall not apply to employees who are not highly com-
 12 pensated employees.

13 “(5) FAILURE TO MEET REQUIREMENTS OF
 14 SECTION 401(a)(26) OR 410(b).—If 1 of the reasons a
 15 trust is not exempt from tax under section 501(a)
 16 is the failure of the plan to meet the requirements
 17 of section 401(a)(26) or 410(b), then a highly com-
 18 pensated employee shall, in lieu of the amount deter-
 19 mined under paragraph (1) or (2), include in gross
 20 income for the taxable year with or within which the
 21 taxable year of the trust ends an amount equal to
 22 the vested accrued benefit of such employee (other
 23 than the employee's investment in the contract) as
 24 of the close of such taxable year of the trust.

1 “(6) HIGHLY COMPENSATED EMPLOYEE.—For
 2 purposes of this subsection, the term ‘highly com-
 3 pensated employee’ has the meaning given such term
 4 by section 414(q).”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall take effect on the date of enactment of
 7 this Act.

8 **SEC. 503. ELIMINATION OF PAPERWORK BURDENS ON**
 9 **PLANS.**

10 (a) ELIMINATION OF UNNECESSARY FILING RE-
 11 QUIREMENTS.—Section 101(b) of the Employee Retire-
 12 ment Income Security Act of 1974 (29 U.S.C. 1021(b))
 13 is amended by striking paragraphs (1), (2), and (3) and
 14 by redesignating paragraphs (4) and (5) as paragraphs
 15 (1) and (2), respectively.

16 (b) ELIMINATION OF PLAN DESCRIPTION.—

17 (1) IN GENERAL.—Section 102(a) of the Em-
 18 ployee Retirement Income Security Act of 1974 (29
 19 U.S.C. 1022(a)) is amended—

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

21 (B) by striking “(a)(1)” and inserting
 22 “(a)”.

23 (2) CONFORMING AMENDMENTS.—

24 (A) Section 102(b) of such Act (29 U.S.C.
 25 1022(b)) is amended by striking “The plan de-

1 scription and summary plan description shall
 2 contain” and inserting “The summary plan de-
 3 scription shall contain”.

4 (B) The heading for section 102 of such
 5 Act is amended by striking “PLAN DESCRIPTION
 6 AND”.

7 (c) FURNISHING OF REPORTS.—

8 (1) IN GENERAL.—Section 104(a)(1) of the
 9 Employee Retirement Income Security Act of 1974
 10 (29 U.S.C. 1024(a)(1)) is amended to read as fol-
 11 lows:

12 “SEC. 104. (a)(1) The administrator of any employee
 13 benefit plan subject to this part shall file with the Sec-
 14 retary the annual report for a plan year within 210 days
 15 after the close of such year (or within such time as may
 16 be required by regulations promulgated by the Secretary
 17 in order to reduce duplicative filing). The Secretary shall
 18 make copies of such annual reports available for inspection
 19 in the public document room of the Department of
 20 Labor.”.

21 (2) SECRETARY MAY REQUEST DOCUMENTS.—

22 (A) IN GENERAL.—Section 104(a) of such
 23 Act (29 U.S.C. 1024(a)) is amended by adding
 24 at the end the following:

1 “(6) The administrator of any employee benefit plan
 2 subject to this part shall furnish to the Secretary, upon
 3 request, any documents relating to the employee benefit
 4 plan, including but not limited to, the latest summary plan
 5 description (including any summaries of plan changes not
 6 contained in the summary plan description), and the bar-
 7 gaining agreement, trust agreement, contract, or other in-
 8 strument under which the plan is established or oper-
 9 ated.”.

10 (B) PENALTY.—Section 502(c) of such Act
 11 (29 U.S.C. 1132(c)) is amended by redesignat-
 12 ing paragraph (6) as paragraph (7) and by in-
 13 serting after paragraph (5) the following:

14 “(6) If, within 30 days of a request by the Secretary
 15 to a plan administrator for documents under section
 16 104(a)(6), the plan administrator fails to furnish the ma-
 17 terial requested to the Secretary, the Secretary may assess
 18 a civil penalty against the plan administrator of up to
 19 \$100 a day from the date of such failure (but in no event
 20 in excess of \$1,000 per request). No penalty shall be im-
 21 posed under this paragraph for any failure resulting from
 22 matters reasonably beyond the control of the plan admin-
 23 istrator.”.

24 (d) CONFORMING AMENDMENTS.—

1 (1) Section 104(b)(1) of the Employee Retirement
 2 Income Security Act of 1974 (29 U.S.C.
 3 1024(b)(1)) is amended by striking “section
 4 102(a)(1)” each place it appears and inserting “sec-
 5 tion 102(a)”.

6 (2) Section 104(b)(2) of such Act (29 U.S.C.
 7 1024(b)(2)) is amended by striking “the plan de-
 8 scription and” and inserting “the latest updated
 9 summary plan description and”.

10 (3) Section 104(b)(4) of such Act (29 U.S.C.
 11 1024(b)(4)) is amended by striking “plan descrip-
 12 tion”.

13 (4) Section 106(a) of such Act (29 U.S.C.
 14 1026(a)) is amended by striking “descriptions,”.

15 (5) Section 107 of such Act (29 U.S.C. 1027)
 16 is amended by striking “description or”.

17 (6) Paragraph (2)(B) of section 108 of such
 18 Act (29 U.S.C. 1028) is amended to read as follows:
 19 “(B) after publishing or filing the annual reports,”.

20 (7) Section 502(a)(6) of such Act (29 U.S.C.
 21 1132(a)(6)) is amended by striking “or (5)” and in-
 22 serting “(5), or (6)”.

23 (e) TECHNICAL CORRECTION.—Section 1144(c) of
 24 the Social Security Act (42 U.S.C. 1320b–14(c)) is

1 amended by redesignating paragraph (9) as paragraph
2 (8).

3 **SEC. 504. NEW TECHNOLOGIES IN RETIREMENT PLANS.**

4 (a) IN GENERAL.—Not later than July 1, 1998, the
5 Secretary of the Treasury and the Secretary of Labor shall
6 issue coordinated guidance which is designed to—

7 (1) modify notice, election, consent, record-
8 keeping, and other operational and time require-
9 ments applicable to retirement plans in order to per-
10 mit the use of new technologies by plan sponsors
11 and administrators while maintaining the protection
12 of the rights of participants and beneficiaries, and

13 (2) clarify the extent to which State laws re-
14 quiring paper transactions with respect to retirement
15 plans are preempted and the extent to which writing
16 requirements under the Internal Revenue Code of
17 1986 shall be interpreted to permit paperless trans-
18 actions.

19 (b) APPLICABILITY OF FINAL REGULATIONS.—With
20 respect to the guidance regarding new technologies de-
21 scribed in subsection (a), plan sponsors and administra-
22 tors may operate retirement plans in accordance with a
23 reasonable, good faith interpretation of the law until the
24 first plan year beginning at least 6 months after the issu-
25 ance of final regulations applicable to such guidance.

1 **SEC. 505. INCREASE IN RETIREMENT PLAN CASH-OUT**
 2 **AMOUNT.**

3 (a) AMENDMENTS TO 1986 CODE.—

4 (1) IN GENERAL.—Section 411(a)(11) (relating
 5 to restrictions on certain mandatory distributions) is
 6 amended—

7 (A) in subparagraph (A), by striking
 8 “\$3,500” and inserting “\$5,000”, and

9 (B) by adding at the end the following:

10 “(D) INFLATION ADJUSTMENT.—In the
 11 case of any plan year beginning in a calendar
 12 year after 1997, the Secretary shall adjust an-
 13 nually the \$5,000 amount contained in subpara-
 14 graph (A) for increases in the cost-of-living at
 15 the same time and in the same manner as ad-
 16 justments under section 415(d); except that the
 17 base period shall be the calendar quarter ending
 18 September 30, 1996, and any increase which is
 19 not a multiple of \$500 shall be rounded to the
 20 next lowest multiple of \$500.”.

21 (2) CONFORMING AMENDMENTS.—

22 (A) Section 411(a)(7) is amended by strik-
 23 ing “\$3,500” and inserting “the amount in ef-
 24 fect for the plan year under paragraph
 25 (11)(A)”.

26 (B) Section 417(e)(1) is amended—

1 (i) by striking “\$3,500” and inserting
 2 “the amount in effect for the plan year
 3 under section 411(a)(11)(A)”, and

4 (ii) in the heading, by striking
 5 “\$3,500” and inserting “APPLICABLE
 6 AMOUNT”.

7 (C) Section 417(e)(2) is amended—

8 (i) in subparagraph (A), by striking
 9 “\$3,500” and inserting “the amount in ef-
 10 fect for the plan year under section
 11 411(a)(11)(A)”, and

12 (ii) in the heading, by striking
 13 “\$3,500” and inserting “APPLICABLE
 14 AMOUNT”.

15 (D) Section 457(e)(9)(A) is amended—

16 (i) in clause (i), by striking “\$3,500”
 17 and inserting “the amount in effect for the
 18 plan year under section 411(a)(11)(A)”,
 19 and

20 (ii) in the heading, by striking
 21 “\$3,500” and inserting “APPLICABLE
 22 AMOUNT”.

23 (b) AMENDMENTS TO ERISA.—

1 (1) IN GENERAL.—Section 203(e) of the Em-
 2 ployee Retirement Income Security Act of 1974 (29
 3 U.S.C. 1053(e)) is amended—

4 (A) in paragraph (1), by striking “\$3,500”
 5 and inserting “\$5,000”, and

6 (B) by adding at the end the following:

7 “(4) INFLATION ADJUSTMENT.—In the case of
 8 any plan year beginning in a calendar year after
 9 1997, the Secretary shall adjust annually the \$5,000
 10 amount contained in paragraph (1) for increases in
 11 the cost-of-living at the same time and in the same
 12 manner as adjustments under section 415(d) of the
 13 Internal Revenue Code of 1986; except that the base
 14 period shall be the calendar quarter ending Septem-
 15 ber 30, 1996, and any increase which is not a mul-
 16 tiple of \$500 shall be rounded to the next lowest
 17 multiple of \$500.”.

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 204(d)(1) of such Act (29
 20 U.S.C. 1054(d)(1)) is amended by striking
 21 “\$3,500” and inserting “the amount in effect
 22 for the plan year under section 203(e)(1)”.

23 (B) Section 205(g)(1) of such Act (29
 24 U.S.C. 1055(g)(1)) is amended by striking

1 “\$3,500” and inserting “the amount in effect
2 for the plan year under section 203(e)(1)”.

3 (C) Section 205(g)(2) of such Act (29
4 U.S.C. 1055(g)(2)) is amended by striking
5 “\$3,500” and inserting “the amount in effect
6 for the plan year under section 203(e)(1)”.

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

10 **SEC. 506. MODIFICATION OF TIMING OF PLAN VALUATIONS.**

11 (a) IN GENERAL.—Section 412(c)(9) (relating to an-
12 nual valuation) is amended—

13 (1) by striking “For purposes” and inserting
14 the following:

15 “(A) IN GENERAL.—For purposes”, and

16 (2) by adding at the end the following:

17 “(B) ELECTION TO USE PRIOR YEAR
18 VALUATION.—

19 “(i) IN GENERAL.—If, for any plan
20 year—

21 “(I) an election is in effect under
22 this subparagraph with respect to a
23 plan, and

24 “(II) the assets of the plan are
25 not less than 125 percent of the

1 plan’s current liability (as defined in
 2 paragraph (7)(B)), determined as of
 3 the valuation date for the preceding
 4 plan year,

5 then this section shall be applied using the
 6 information available as of such valuation
 7 date.

8 “(ii) ADJUSTMENTS.—Information
 9 under clause (i) shall, in accordance with
 10 regulations, be actuarially adjusted to re-
 11 flect significant differences in participants.

12 “(iii) ELECTION.—An election under
 13 this subparagraph, once made, shall be ir-
 14 revocable without the consent of the Sec-
 15 retary.”.

16 (b) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to plan years beginning on or after
 18 the date of enactment of this Act.

19 **SEC. 507. RULES FOR SUBSTANTIAL OWNERS RELATING TO**
 20 **PLAN TERMINATIONS.**

21 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
 22 Section 4022(b)(5) of the Employee Retirement Income
 23 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended
 24 to read as follows:

1 “(5)(A) For purposes of this paragraph, the term
 2 ‘majority owner’ means an individual who, at any time
 3 during the 60-month period ending on the date the deter-
 4 mination is being made—

5 “(i) owns the entire interest in an unincor-
 6 porated trade or business,

7 “(ii) in the case of a partnership, is a partner
 8 who owns, directly or indirectly, 50 percent or more
 9 of either the capital interest or the profits interest
 10 in such partnership, or

11 “(iii) in the case of a corporation, owns, directly
 12 or indirectly, 50 percent or more in value of either
 13 the voting stock of that corporation or all the stock
 14 of that corporation.

15 For purposes of clause (iii), the constructive ownership
 16 rules of section 1563(e) of the Internal Revenue Code of
 17 1986 shall apply (determined without regard to section
 18 1563(e)(3)(C)).

19 “(B) In the case of a participant who is a majority
 20 owner, the amount of benefits guaranteed under this sec-
 21 tion shall not exceed the product of—

22 “(i) a fraction (not to exceed 1) the numerator
 23 of which is the number of years from the later of the
 24 effective date or the adoption date of the plan to the

1 termination date, and the denominator of which is
 2 30, and

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

6 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

7 (1) Section 4044(a)(4)(B) of the Employee Re-
 8 tirement Income Security Act of 1974 (29 U.S.C.
 9 1344(a)(4)(B)) is amended by striking “section
 10 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

11 (2) Section 4044(b) of such Act (29 U.S.C.
 12 1344(b)) is amended—

13 (A) by striking “(5)” in paragraph (2) and
 14 inserting “(4), (5),”, and

15 (B) by redesignating paragraphs (3)
 16 through (6) as paragraphs (4) through (7), re-
 17 spectively, and by inserting after paragraph (2)
 18 the following:

19 “(3) If assets available for allocation under
 20 paragraph (4) of subsection (a) are insufficient to
 21 satisfy in full the benefits of all individuals who are
 22 described in that paragraph, the assets shall be allo-
 23 cated first to benefits described in subparagraph (A)
 24 of that paragraph. Any remaining assets shall then
 25 be allocated to subparagraph (B) of that paragraph.

1 If assets allocated to such subparagraph (B) are in-
 2 sufficient to satisfy in full the benefits in that sub-
 3 paragraph, the assets shall be allocated pro rata
 4 among individuals on the basis of the present value
 5 (as of the termination date) of their respective bene-
 6 fits described in that subparagraph.”.

7 (c) CONFORMING AMENDMENTS.—

8 (1) Section 4021 of the Employee Retirement
 9 Income Security Act of 1974 (29 U.S.C. 1321) is
 10 amended—

11 (A) in subsection (b)(9), by striking “as
 12 defined in section 4022(b)(6)”, and

13 (B) by adding at the end the following:

14 “(d) For purposes of subsection (b)(9), the term ‘sub-
 15 stantial owner’ means an individual who, at any time dur-
 16 ing the 60-month period ending on the date the determina-
 17 tion is being made—

18 “(1) owns the entire interest in an unincor-
 19 porated trade or business,

20 “(2) in the case of a partnership, is a partner
 21 who owns, directly or indirectly, more than 10 per-
 22 cent of either the capital interest or the profits inter-
 23 est in such partnership, or

24 “(3) in the case of a corporation, owns, directly
 25 or indirectly, more than 10 percent in value of either

1 the voting stock of that corporation or all the stock
2 of that corporation.

3 For purposes of paragraph (3), the constructive ownership
4 rules of section 1563(e) of the Internal Revenue Code of
5 1986 shall apply (determined without regard to section
6 1563(e)(3)(C)).”.

7 (2) Section 4043(c)(7) of such Act (29 U.S.C.
8 1343(c)(7)) is amended by striking “section
9 4022(b)(6)” and inserting “section 4021(d)”.

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall apply to plan terminations—

14 (A) under section 4041(c) of the Employee
15 Retirement Income Security Act of 1974 (29
16 U.S.C. 1341(c)) with respect to which notices
17 of intent to terminate are provided under sec-
18 tion 4041(a)(2) of such Act (29 U.S.C.
19 1341(a)(2)) on or after the date of enactment
20 of this Act, or

21 (B) under section 4042 of such Act (29
22 U.S.C. 1342) with respect to which proceedings
23 are instituted by the corporation on or after
24 such date.

1 (2) CONFORMING AMENDMENTS.—The amend-
 2 ments made by subsection (c) shall take effect on
 3 the date of enactment of this Act.

4 **SEC. 508. ESOP DIVIDENDS MAY BE REINVESTED WITHOUT**
 5 **LOSS OF DIVIDEND DEDUCTION.**

6 (a) IN GENERAL.—Section 404(k)(2)(A) (defining
 7 applicable dividends) is amended by striking “or” at the
 8 end of clause (ii), by redesignating clause (iii) as clause
 9 (iv), and by inserting after clause (ii) the following new
 10 clause:

11 “(iii) is, at the election of such par-
 12 ticipants or their beneficiaries—

13 “(I) payable as provided in clause
 14 (i) or (ii), or

15 “(II) paid to the plan and rein-
 16 vested in qualifying employer securi-
 17 ties, or”.

18 (b) EFFECTIVE DATE.—The amendments made by
 19 this section shall apply to taxable years beginning after
 20 December 31, 1997.

21 **SEC. 509. MODIFICATION OF 403(b) EXCLUSION ALLOWANCE**
 22 **TO CONFORM TO 415 MODIFICATIONS.**

23 (a) DEFINITION OF COMPENSATION.—

1 (1) IN GENERAL.—Section 403(b)(3) (defining
2 includible compensation) is amended by adding at
3 the end the following: “Such term includes—

4 “(A) any elective deferral (as defined in
5 section 402(g)(3)), and

6 “(B) any amount which is contributed or
7 deferred by the employer at the election of the
8 employee and which is not includible in the
9 gross income of the employee by reason of sec-
10 tion 125 or 457.

11 (2) EFFECTIVE DATE.—The amendment made
12 by this subsection shall apply to years beginning
13 after December 31, 1997.

14 (b) REPEAL OF RULES IN SECTION 415(e).—The
15 Secretary of the Treasury shall modify the regulations re-
16 garding the exclusion allowance under section 403(b)(2)
17 of the Internal Revenue Code of 1986 to reflect the
18 amendment made by section 1452(a) of the Small Busi-
19 ness Job Protection Act of 1996. Such modification shall
20 take effect for limitation years beginning after December
21 31, 1999.

○