106TH CONGRESS 1st Session } HOUSE OF REPRESENTATIVES { REPT. 106–331 Part 1

COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT

SEPTEMBER 24, 1999.—Ordered to be printed

Mr. GOODLING, from the Committee on Education and the Workforce, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1102]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 1102) to provide for pension reform, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Comprehensive Retirement Security and Pension Reform Act".

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

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

TITLE I—EXPANDING COVERAGE

Sec. 101. Restoration of limits formerly in effect.
Sec. 102. Plan loans for subchapter S owners, partners, and sole proprietors.
Sec. 103. Salary reduction only simple plans.
Sec. 104. Modification of top-heavy rules.
Sec. 105. Elective deferrals not taken into account for purposes of limits.
Sec. 106. Repeal of coordination requirements for deferred compensation plans of State and local governments and tax-exempt organizations.

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Sec. 107. Elimination of user fee for requests to IRS regarding pension plans.
Sec. 108. Alternative method of meeting nondiscrimination requirements for automatic contribution trust.
Sec. 109. Deduction limits.
Sec. 110. Option to treat elective deferrals as after-tax contributions.
Sec. 111. Credit for pension plan startup costs of small employers.

TITLE II—ENHANCING FAIRNESS FOR WOMEN AND CHILDREN

Sec. 201. Additional salary reduction catch-up contributions.
Sec. 202. Equitable treatment for contributions of employees to defined contribution plans.
Sec. 203. Faster vesting of certain employer matching contributions.
Sec. 204. Deferred annuities for surviving spouses of Federal employees.
Sec. 205. Simplify and update the minimum distribution rules.
Sec. 206. Clarification of tax treatment of division of section 457 plan benefits upon divorce.
Sec. 207. Percentage limitations on contributions.
Sec. 208. Eligible rollover distributions.
Sec. 209. Immediate participation in the Thrift Savings Plan.

TITLE III—INCREASING PORTABILITY FOR PARTICIPANTS

Sec. 301. Rollovers allowed among various types of plans.
Sec. 302. Rollovers of IRAs into workplace retirement plans.
Sec. 303. Rollovers of after-tax contributions.
Sec. 304. Treatment of forms of distribution.
Sec. 305. Rationalization of restrictions on distributions.
Sec. 306. Purchase of service credit in governmental defined benefit plans.
Sec. 307. Employers may disregard rollovers for purposes of cash-out amounts.

TITLE IV—STRENGTHENING PENSION SECURITY AND ENFORCEMENT

Sec. 401. Repeal of 150 percent of current liability funding limit.
Sec. 402. Penalty tax relief for sound pension funding.

TITLE V—REDUCING REGULATORY BURDENS

Sec. 501. Intermediate sanctions for inadvertent failures.
Sec. 502. Repeal of the multiple use test.
Sec. 503. Safety valve from mechanical rules.
Sec. 504. Reform of the line of business rules.
Sec. 505. Coverage test flexibility.
Sec. 506. Increase in retirement plan cash-out amount.
Sec. 507. Modification of timing of plan valuations.
Sec. 508. Section 457 inapplicable to certain mirror plans.
Sec. 509. ESOP dividends may be reinvested without loss of dividend deduction.
Sec. 510. Modification of 403(b) exclusion allowance to conform to 415 modification.
Sec. 511. Treatment of multiemployer plans under section 415.
Sec. 512. Elimination of partial termination rules for multiemployer plans.
Sec. 513. Notice and consent period regarding distributions.
Sec. 514. Conforming amendments relating to election to receive taxable cash compensation in lieu of nontaxable parking benefits.
Sec. 515. Extension to international organizations of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
Sec. 516. Employees of tax-exempt entities.
Sec. 517. Permissive aggregation of collective bargaining units.
Sec. 518. Repeal of transition rule relating to certain highly compensated employees.
Sec. 519. Clarification of treatment of employer-provided retirement advice.
Sec. 520. Provisions relating to plan amendments.
Sec. 521. Reporting simplification.
Sec. 522. Model plans for small businesses.

TITLE VI—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

SUBTITLE A—EXPANDING COVERAGE AND INCREASING PORTABILITY

Sec. 601. Plan loans for subchapter S owners, partners, and sole proprietors.
Sec. 602. Reduced PBGC premium for new plans of small employers.
Sec. 603. Reduction of additional PBGC premium for new and small plans.
Sec. 604. Faster vesting of certain employer matching contributions.
Sec. 605. Treatment of forms of distribution.
Sec. 606. Employers may disregard rollovers for purposes of cash-out amounts.

SUBTITLE B—STRENGTHENING PENSION SECURITY AND ENFORCEMENT

Sec. 611. Repeal of 150 percent of current liability funding limit.
Sec. 612. Missing participants.
Sec. 613. Periodic pension benefits statements.
Sec. 614. Civil penalties for breach of fiduciary responsibility.
Sec. 615. Protection of investment of employee contributions to 401(k) plans.
Sec. 616. Notice of significant reduction in benefit accruals.
Sec. 617. Technical corrections to Saver Act.
Sec. 618. Conforming amendments relating to transfer of excess defined benefit plan assets for retiree health benefits.
Sec. 619. Model spousal consent language and qualified domestic relations order.
Sec. 620. Elimination of ERISA double jeopardy.

SUBTITLE C—REDUCING REGULATORY BURDENS

Sec. 621. Modification of timing of plan valuations.
Sec. 622. Substantial owner benefits in terminated plans.
Sec. 623. Notice and consent period regarding distributions.
Sec. 624. Annual report dissemination.
Sec. 625. Excess benefit plans.
Sec. 626. Benefit suspension notice.

Sec. 627. Provisions relating to plan amendments.
Sec. 628. Simplified annual filing requirement for plans with fewer than 25 employees.

TITLE I—EXPANDING COVERAGE

SEC. 101. RESTORATION OF LIMITS FORMERLY IN EFFECT.

(a) DEFINED BENEFIT PLANS.—

(1) DOLLAR LIMIT.—(A) Subparagraph (A) of section 415(b)(1) (relating to limitation for defined benefit plans) is amended by striking "$90,000" and inserting "$180,000".

(B) Subparagraphs (C) and (D) of section 415(b)(2) are each amended by striking "$90,000" each place it appears in the headings and the text and inserting "$180,000".

(C) Paragraph (7) of section 415(b) (relating to benefits under certain collectively bargained plans) is amended by striking "the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000'" and inserting "one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$180,000'".

(2) LIMIT REDUCED WHEN BENEFIT BEGINS BEFORE AGE 62.—Subparagraph (C) of section 415(b)(2) is amended by striking "the social security retirement age" each place it appears in the heading and text and inserting "age 62".

(3) LIMIT INCREASED WHEN BENEFIT BEGINS AFTER AGE 65.—Subparagraph (D) of section 415(b)(2) is amended by striking "the social security retirement age" each place it appears in the heading and text and inserting "age 65".

(4) MULTIEMPLOYER PLANS AND PLANS MAINTAINED BY GOVERNMENTS AND TAX EXEMPT ORGANIZATIONS.—Subparagraph (F) of section 415(b)(2) is amended to read as follows:

"(F) MULTIEMPLOYER PLANS AND PLANS MAINTAINED BY GOVERNMENTS AND TAX EXEMPT ORGANIZATIONS.—

"(i) IN GENERAL.—In the case of a governmental plan (within the meaning of section 414(d)), a plan maintained by an organization (other than a governmental unit) exempt from tax under this subtitle, a multiemployer plan (as defined in section 414(f)), or a qualified merchant marine plan, subparagraph (C) shall be applied as if the last sentence thereof read as follows: 'The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below (i) $130,000 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the equivalent of the $130,000 limitation for age 55.'

"(ii) DEFINITIONS.—For purposes of this subparagraph—

"(I) QUALIFIED MERCHANT MARINE PLAN.—The term 'qualified merchant marine plan' means a plan in existence on January 1, 1986, the participants in which are merchant marine officers holding licenses issued by the Secretary of Transportation under title 46, United States Code.

"(II) EXEMPT ORGANIZATION PLAN COVERING 50 PERCENT OF ITS EMPLOYEES.—A plan shall be treated as a plan maintained by an organization (other than a governmental unit) exempt from tax under this subtitle if at least 50 percent of the employees benefiting under the plan are employees of an organization (other than a governmental unit) exempt from tax under this subtitle. If less than 50 percent of the employees benefiting under a plan are employees of an organization (other than a governmental unit) exempt from tax under this subtitle, the plan shall be treated as a plan maintained by an organization (other than a governmental unit) exempt from tax under this subtitle only with respect to employees of such an organization.".

(5) COST-OF-LIVING ADJUSTMENTS.—Subsection (d) of section 415 (related to cost-of-living adjustments) is amended—

(A) in paragraph (1)(A) by striking "$90,000" and inserting "$180,000", and

(B) in paragraph (3)(A)—

(i) by striking "$90,000" in the heading and inserting "$180,000", and

(ii) by striking "October 1, 1986" and inserting "July 1, 1999".

(b) DEFINED CONTRIBUTION PLANS.—

(1) DOLLAR LIMIT.—Subparagraph (A) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking "$30,000" and inserting "$45,000".

(2) COST-OF-LIVING ADJUSTMENTS.—Subsection (d) of section 415 (related to cost-of-living adjustments) is amended—

(A) in paragraph (1)(C) by striking "$30,000" and inserting "$45,000", and

(B) in paragraph (3)(D)—

(i) by striking "$30,000" in the heading and inserting "$45,000", and

(ii) by striking "October 1, 1993" and inserting "July 1, 1999".

(c) QUALIFIED TRUSTS.—

(1) COMPENSATION LIMIT.—Sections 401(a)(17), 404(l), 408(k), and 505(b)(7) are each amended by striking "$150,000" each place it appears and inserting "$235,000".

(2) BASE PERIOD AND ROUNDING OF COST-OF-LIVING ADJUSTMENT.—Subparagraph (B) of section 401(a)(17) is amended—

(A) by striking "October 1, 1993" and inserting "July 1, 1999", and

(B) by striking "$10,000" both places it appears and inserting "$5,000".

(d) ELECTIVE DEFERRALS.—

(1) IN GENERAL.—Paragraphs (1) and (5) of section 402(g) (relating to limitation on exclusion for elective deferrals) are each amended by striking "$7,000" and inserting "$15,000".

(2) CONFORMING AMENDMENTS.—

(A) Section 402(g) (relating to limitation on exclusion for elective deferrals), as amended by paragraph (1), is further amended by striking paragraph (4) and redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), and (8), respectively.

(B) Clause (iii) of section 501(c)(18)(D) is amended by striking "(other than paragraph (4) thereof)".

(e) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—Section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations) is amended—

(1) in subsections (b)(2)(A), (c)(1), and (e)(15) by striking "$7,500" each place it appears and inserting "$15,000",

(2) in subsection (b)(3)(A) by striking "$15,000" and inserting "$30,000", and

(3) in subsection (e)(15)—

(A) by inserting "and the $30,000 amount specified in subsection (b)(3)(A)" after "(c)(1)", and

(B) by striking "September 30, 1994" and inserting "September 30, 1999".

(f) SIMPLE RETIREMENT ACCOUNTS.—

(1) LIMITATION.—Sections 408(p)(2)(A)(ii), 408(p)(2)(E), 401(k)(11)(B)(i)(I), and 401(k)(11)(E) are each amended by striking "$6,000" and inserting "$10,000".

(2) BASE PERIOD FOR COST-OF-LIVING ADJUSTMENT.—Subparagraph (E) of section 408(p)(2) is amended by striking "September 30, 1996" and inserting "September 30, 1999".

(g) COST-OF-LIVING ADJUSTMENTS.—

(1) PLANS MAINTAINED BY GOVERNMENTS AND TAX EXEMPT ORGANIZATIONS.—Paragraph (1) of section 415(d) (as amended by subsection (b)) is amended by striking "and" at the end of subparagraph (B), by redesignating subparagraph (C) as subparagraph (D), and by inserting after subparagraph (B) the following new subparagraph:

"(C) the $130,000 amount in subsection (b)(2)(F), and".

(2) BASE PERIOD.—Paragraph (3) of section 415(d) (as amended by subsection (b)) is further amended by redesignating subparagraph (D) as subparagraph (E) and by inserting after subparagraph (C) the following new subparagraph:

"(D) $130,000 AMOUNT.—The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning July 1, 1999.".

(3) ROUNDING RULE RELATING TO DEFINED BENEFIT PLANS AND DEFINED CONTRIBUTION PLANS.—Paragraph (4) of section 415(d) is amended to read as follows:

"(4) ROUNDING.—

"(A) $180,000 AMOUNT.—Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

"(B) $130,000 AND $45,000 AMOUNTS.—Any increase under subparagraph (C) or (D) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.".

(4) CONFORMING AMENDMENT.—Subparagraph (D) of section 415(d)(3) (as amended by paragraph (2)) is amended by striking "paragraph (1)(C)" and inserting "paragraph (1)(D)".

(h) INCREASE IN AMOUNT OF DEDUCTIBLE IRA CONTRIBUTIONS.—

(1) INCREASE IN MAXIMUM AMOUNT OF DEDUCTION.—Subparagraph (A) of section 219(b)(1) (relating to maximum amount of deduction) is amended by striking "$2,000" and inserting "$5,000".

(2) CONFORMING AMENDMENTS.—

(A) Subsections (a)(1), (b)(2), (j), and (p)(8) of section 408 are each amended by striking "$2,000" each place it appears and inserting "$5,000".

(B) Clause (i) of section 408(o)(2)(B) is amended by inserting "the lesser of $2,000, or" after "means".

(C) Paragraph (2) of section 408A(c) is amended by inserting "the lesser of $2,000, or" after "shall not exceed".

(D) Subparagraph (B) of section 4973(b)(1) is amended by inserting "(or in the case of a nondeductible individual retirement plan, the amount allowable as a contribution under section 408(o))" after "contributions,".

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to years beginning after December 31, 1999.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified by the date of enactment of this Act, the amendments made by this section shall not apply to contributions or benefits pursuant to any such agreement for years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

(ii) January 1, 2000, or

(B) January 1, 2004.

SEC. 102. PLAN LOANS FOR SUBCHAPTER S OWNERS, PARTNERS, AND SOLE PROPRIETORS.

(a) AMENDMENT TO 1986 CODE.—Subsection (f) of section 4975 (relating to other definitions and special rules) is amended by striking paragraph (6).

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the date of enactment of this Act.

SEC. 103. SALARY REDUCTION ONLY SIMPLE PLANS.

(a) SIMPLE RETIREMENT ACCOUNTS.—

(1) IN GENERAL.—Paragraph (2) of section 408(p) (as amended by section 101(f)) is further amended—

(A) by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively; and

(B) by inserting after subparagraph (B) the following:

"(C) EMPLOYER MAY ELECT SALARY REDUCTION ONLY ARRANGEMENT.—

"(i) IN GENERAL.—An employer shall be treated as meeting the requirements of subparagraph (A)(iii) for any year if, in lieu of the contributions described in such subparagraph, the employer elects to limit the amount which an employee may elect under subparagraph (A)(i) to a total of $5,000 for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C).

"(ii) EXCEPTION.—This subparagraph shall not apply to an employer if such employer (or any predecessor employer) maintained another qualified plan (as defined in subparagraph (D)(ii)) with respect to which contributions were made, or benefits were accrued, for service during the year in which the arrangement described in clause (i) became effective or either of the 2 preceding years. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in the arrangement described in clause (i), then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.".

(2) SPECIAL RULE FOR ACQUISITIONS, DISPOSITIONS, AND SIMILAR TRANSACTIONS.—Subparagraph (B) of section 408(p)(10) is amended by striking "and" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting "; and", and by inserting after clause (iii) the following:

"(iv) the requirement under paragraph (2)(C) that the employer not have maintained another qualified plan described therein.".

(3) COST-OF-LIVING ADJUSTMENT.—Subparagraph (F) of section 408(p)(2) (as so redesignated) is amended by inserting "and the $5,000 amount under subparagraph (C)" after "subparagraph (A)(ii)".

(4) COORDINATION WITH MAXIMUM LIMITATION.—Paragraph (8) of section 408(p) (relating to coordination with maximum limitation under subsection (a)) is amended by striking "paragraph (2)(A)(ii) of this subsection" and inserting "subparagraph (A)(ii) or (C) of paragraph (2) of this subsection, whichever is applicable,".

(5) CONFORMING AMENDMENT.—Clause (ii) of section 408(p)(10)(B) is amended by striking "paragraph (2)(D)" and inserting "paragraph (2)(E)".

(b) ADOPTION OF SIMPLE PLAN TO MEET NONDISCRIMINATION TESTS.—

(1) SIMPLE PLAN.—Subparagraph (B) of section 401(k)(11) is amended by redesignating clause (iii) as clause (iv) and by inserting after clause (ii) the following new clause:

"(iii) EMPLOYER MAY ELECT SALARY REDUCTION ONLY ARRANGEMENT.—

"(I) IN GENERAL.—An employer shall be treated as meeting the requirements of clause (i)(II) for any year if, in lieu of the contributions described in such clause, the employer elects to limit the amount which an employee may elect under clause (i) to a total of $5,000 for the year. If an employer makes an election under this clause for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under clause (iv)(II).

"(II) EXCEPTION.—This clause shall not apply to an employer if such employer (or any predecessor employer) maintained another qualified plan (as defined in section 408(p)(2)(D)(ii)) with respect to which contributions were made, or benefits were accrued, for service during the year in which the arrangement described in subclause (I) became effective or either of the 2 preceding years. This subclause shall not apply if such contributions or benefits were solely on behalf of employees who are not eligible to participate in the arrangement described in subclause (I).".

(2) COST-OF-LIVING ADJUSTMENT.—Subparagraph (E) of section 401(k)(11) is amended by inserting "and the $5,000 amount under subparagraph (B)(iii)" after "subparagraph (B)(i)(I)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

SEC. 104. MODIFICATION OF TOP-HEAVY RULES.

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

(b) SIMPLIFICATION OF DEFINITION OF KEY EMPLOYEE.—

(1) IN GENERAL.—Section 416(i)(1)(A) (defining key employee) is amended—

(A) by striking "or any of the 4 preceding plan years" in the matter preceding clause (i),

(B) by striking clause (i) and inserting the following:

"(i) an officer of the employer who has compensation from the employer of more than $150,000,",

(C) by striking clause (ii) and redesignating clauses (iii) and (iv) as clauses (ii) and (iii), respectively, and

(D) by striking the second sentence in the matter following clause (iii), as redesignated by subparagraph (C).

(2) CONFORMING AMENDMENT.—Section 416(i)(1)(B)(iii) is amended by striking "and subparagraph (A)(ii)".

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

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

"(H) EMPLOYEE ELECTIVE CONTRIBUTIONS TO PLAN NOT TAKEN INTO ACCOUNT.—At the election of the employer, any employee elective contribution described in section 415(c)(3)(D) to a plan (and earnings allocable thereto) shall not be taken into account for purposes of determining whether a plan is a top-heavy plan (or whether any aggregation group which includes such plan is a top-heavy group).".

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

"(D) COMPENSATION.—

"(i) IN GENERAL.—For purposes of this paragraph, except as provided in clause (ii), the term 'compensation' has the meaning given such term by section 414(q)(4).

"(ii) EMPLOYEE ELECTIVE CONTRIBUTIONS TO PLAN NOT TAKEN INTO ACCOUNT.—At the election of the employer, any employee elective contribution described in section 415(c)(3)(D) to a plan shall not be taken into account for purposes of determining compensation.".

(d) MATCHING CONTRIBUTIONS TAKEN INTO ACCOUNT FOR MINIMUM CONTRIBUTION REQUIREMENTS.—Section 416(c)(2)(A) (relating to defined contribution plans) is amended by adding at the end the following: "Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph.".

(e) REQUIREMENTS FOR QUALIFICATIONS.—Clause (ii) of section 401(a)(10)(B) (relating to requirements for qualifications for top-heavy plans) is amended by adding at the end the following new flush sentence:

"The preceding sentence shall not apply to a plan if the plan is not top-heavy and if it is not reasonable to expect that the plan will become top-heavy.".

(f) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—Section 416(g) is amended—

(1) in paragraph (3)—

(A) by striking "LAST 5 YEARS" in the heading and inserting "LAST YEAR BEFORE DETERMINATION DATE", and

(B) in the matter following subparagraph (B), by striking "5-year period" and inserting "1-year period", and

(2) in paragraph (4)(E)—

(A) by striking "LAST 5 YEARS" in the heading and inserting "LAST YEAR BEFORE DETERMINATION DATE", and

(B) by striking "5-year period" and inserting "1-year period".

(g) DEFINITION OF TOP-HEAVY PLANS.—

(1) EXCLUSION OF CERTAIN PLANS FROM DEFINITION OF TOP-HEAVY PLAN.—Paragraph (4) of section 416(d) (relating to other special rules for top-heavy plans) is amended by adding at the end the following new subparagraphs:

"(H) CASH OR DEFERRED ARRANGEMENTS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—The term 'top-heavy plan' shall not include a cash or deferred arrangement to the extent that such arrangement meets the requirements of section 401(k)(12). This subparagraph shall also apply to contributions that are not required to satisfy the requirements of section 401(k)(12) but are consistent with the purposes of such section, as permitted under regulations which the Secretary shall prescribe. Nothing in this subparagraph shall preclude an employer from taking into account contributions made under the cash or deferred arrangement when determining whether any plan of such employer satisfies the requirements of this section.

"(I) DEFINED CONTRIBUTION PLANS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—The term 'top-heavy plan' shall not include a defined contribution plan to the extent that such plan meets the requirements of section 401(m)(11). This subparagraph shall also apply to contributions that are not required to satisfy the requirements of section 401(m)(11) but are consistent with the purposes of such section, as permitted under regulations which the Secretary shall prescribe. Nothing in this subparagraph shall preclude an employer from taking into account contributions made under the defined contribution plan when determining whether any plan of such employer satisfies the requirements of this section.".

(2) AGGREGATION GROUP NOT REQUIRED TO INCLUDE CERTAIN PLANS.—Clause (i) of section 416(g)(2)(A) of such Code (relating to required aggregation) is amended by adding at the end the following new flush sentence:

"Such term shall not include a plan or arrangement described in subparagraph (H) or (I) of paragraph (4).".

(h) ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT.—Clause (i) of section 416(c)(2)(B) (relating to special rule where maximum contribution less than 3 percent) is amended by inserting "(other than elective deferrals (as defined in section 402(g)(3))" after "contributions".

(i) FROZEN PLAN EXEMPT FROM MINIMUM BENEFIT REQUIREMENT.—Subparagraph (C) of section 416(c)(1) (relating to defined benefit plans) is amended—

(1) in clause (i) by striking "clause (ii)" and inserting "clause (ii) or (iii)", and

(2) by adding at the end the following:

"(iii) For purposes of determining an employee's years of service with the employer, any service with the employer shall be disregarded to the extent that such service occurs during a plan year when no employee or former employee benefits under the plan within the meaning of section 410(b).".

(j) ALTERNATIVE 60 PERCENT.—Subsection (g) of section 416 (relating to top heavy plan defined) is amended by adding at the end the following:

"(5) ALTERNATIVE 60 PERCENT TEST.—

"(A) IN GENERAL.—For any plan year, an employer may elect for this paragraph to apply to all plans maintained by such employer. If this paragraph applies to a plan, the term 'top-heavy plan' shall have the meaning set forth in subparagraph (B) and the term 'top-heavy group' shall have the meaning set forth in subparagraph (C).

"(B) TOP-HEAVY PLAN DEFINED.—In the case of any plan to which this paragraph applies, the term 'top-heavy plan' means, with respect to any plan year—

"(i) any defined benefit plan if, for the plan year ending on the determination date, the present value of the accruals for key employees exceeds 60 percent of the present value of the accruals for all employees, and

"(ii) any defined contribution plan if, for the plan year ending on the determination date, the annual additions for key employees exceed 60 percent of the annual additions for all employees.

"(C) TOP-HEAVY GROUP.—In the case of any plan to which this paragraph applies, the term 'top-heavy group' means any aggregation group if—

"(i) the sum, for the plan year ending on the determination date, of—

"(I) the present value of the accruals for key employees under all defined benefit plans included in such group, and

"(II) the aggregate of the annual additions of key employees under all defined contribution plans included in such group,

"(ii) exceeds 60 percent of a similar sum determined for all employees.

"(D) ANNUAL ADDITION.—For purposes of this paragraph, the term 'annual addition' shall have the same meaning as when used in section 415(c)(2) (without regard to section 415(l) or section 419A(d)(2)).

"(E) CERTAIN RULES NOT TO APPLY.—Paragraphs (3) and (4) (other than subparagraphs (B), (C), (D), (E), and (G) of paragraph (4)) shall not apply for purposes of this paragraph.".

(k) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 416(g)(1) is amended by striking "subparagraph (B)" and inserting "subparagraph (B) and paragraph (5)".

(2) Subparagraph (B) of section 416(g)(2) is amended by striking "The term" and inserting "Except as provided in paragraph (5), the term".

(3) Subparagraph (A) of section 415(b)(5) is amended by adding at the end the following: "An employee shall not be credited with a year of participation in a defined benefit plan for any year in which such employee does not benefit under the plan within the meaning of section 410(b).".

(l) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

SEC. 105. ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF LIMITS.

(a) IN GENERAL.—Section 404 is amended by adding at the end the following new subsection:

"(n) ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF LIMITS.—Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitations described in this section (other than subsection (a)), and such elective deferrals shall not be taken into account in applying such limitations to any other contributions.".

(b) CONFORMING AMENDMENTS.—Paragraph (3) of section 4972(c) is amended to read as follows:

"(3) CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

"(A) any elective deferral (as defined in section 402(g)(3)), or

"(B) any contribution for such taxable year which is distributed to the employer in a distribution described in section 4980(c)(2)(B)(ii) if such distribution is made on or before the last day on which a contribution may be made for such taxable year under section 404(a)(6).".

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1999.

SEC. 106. REPEAL OF COORDINATION REQUIREMENTS FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations) is amended to read as follows:

"(c) LIMITATION.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed $15,000 (as modified by any adjustment provided under subsection (b)(3)).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 1999.

SEC. 107. ELIMINATION OF USER FEE FOR REQUESTS TO IRS REGARDING PENSION PLANS.

(a) ELIMINATION OF CERTAIN USER FEES.—The Secretary of the Treasury or the Secretary's delegate shall not require payment of user fees under the program established under section 10511 of the Revenue Act of 1987 for requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters or similar requests with respect to the qualified status of a pension benefit plan maintained solely by one or more eligible employers or any trust which is part of the plan.

(b) PENSION BENEFIT PLAN.—For purposes of this section, the term 'pension benefit plan' means a pension, profit-sharing, stock bonus, annuity, or employee stock ownership plan.

(c) ELIGIBLE EMPLOYER.—For purposes of this section, the term "eligible employer" has the same meaning given such term in section 408(p)(2)(C)(i)(I) of the Internal Revenue Code of 1986. The determination of whether an employer is an eligible employer under this section shall be made as of the date of the request described in subsection (a).

(d) EFFECTIVE DATE.—The provisions of this section shall apply with respect to requests made after December 31, 1999.

SEC. 108. ALTERNATIVE METHOD OF MEETING NONDISCRIMINATION REQUIREMENTS FOR AUTOMATIC CONTRIBUTION TRUST.

(a) IN GENERAL.—Section 401(k) (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

"(13) NONDISCRIMINATION REQUIREMENTS FOR AUTOMATIC CONTRIBUTION TRUSTS.—

"(A) IN GENERAL.—A cash or deferred arrangement shall be treated as meeting the requirements of paragraph (3)(A)(ii) if such arrangement constitutes an automatic contribution trust.

"(B) AUTOMATIC CONTRIBUTION TRUST.—For purposes of this paragraph, the term 'automatic contribution trust' means an arrangement—

"(i) under which each employee eligible to participate in the arrangement is treated as having elected to have the employer make elective contributions in an amount equal to the uniform percentage (not less than 3 percent) of compensation provided under the arrangement until the employee specifically elects not to have such contributions made, and

"(ii) which meets the other requirements of this paragraph.

Clause (i) of this subparagraph shall not apply to any employee who was eligible to participate in the arrangement (or a predecessor arrangement) immediately before the first date on which the arrangement is an automatic contribution trust. The election treated as having been made under clause (i) shall cease to apply to compensation paid after the specific election by the employee.

"(C) PARTICIPATION.—

"(i) Except as provided in clause (ii), an arrangement meets the requirements of this subparagraph for any year if, during the plan year or the preceding plan year, elective contributions are made on behalf of at least 70 percent of employees other than highly compensated employees eligible to participate in the arrangement.

"(ii) An arrangement (other than a successor arrangement) shall be treated as meeting the requirements of this subparagraph with respect to the first plan year in which the arrangement is effective.

"(D) MATCHING OR NONELECTIVE CONTRIBUTIONS.—The requirements of this subparagraph are met if, under the arrangement, the employer—

"(i) makes matching contributions on behalf of each employee who is not a highly compensated employee in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 5 percent of compensation, or

"(ii) is required, without regard to whether the employee makes an elective contribution or employee contribution, to make a contribution to a defined contribution plan on behalf of each employee who is not a highly compensated employee and who is eligible to participate in the arrangement in an amount equal to at least 2 percent of the employee's compensation.

The rules of clauses (ii), (iii), and (iv) of paragraph (12)(B) shall apply for purposes of clause (i).

"(E) VESTING.—The requirements of this subparagraph are met if the requirements of subparagraph (C) of paragraph (2) are met with respect to all employer contributions (including matching contributions) taken into account in determining whether the requirements of subparagraph (B) or (C) are met.

"(F) NOTICE REQUIREMENTS.—

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

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

"(I) receives a notice explaining the employee's right under the arrangement to elect not to have elective contributions made on the employee's behalf, and

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

"(iii) ANNUAL NOTICE OF RIGHTS AND OBLIGATIONS.—The requirements of this clause are met if each employee eligible to participate in the arrangement is, within a reasonable period before any year, given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of paragraph (12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.".

(b) MATCHING CONTRIBUTIONS.—Section 401(m) (relating to nondiscrimination test for matching contributions and employee contributions) is amended by redesignating paragraph (12) as paragraph (13) and by inserting after paragraph (11) the following new paragraph:

"(12) ALTERNATIVE METHOD FOR AUTOMATIC CONTRIBUTION TRUSTS.—

"(A) IN GENERAL.—A defined contribution plan shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if the plan—

"(i) meets the contribution requirements of subparagraphs (B)(i) and (D) of subsection (k)(13),

"(ii) meets the participation requirements of subsection (k)(13)(C),

"(iii) meets the vesting and notice requirements of subparagraphs (E) and (F) of subsection (k)(13), and

"(iv) meets the requirements of paragraph (11)(B).

"(B) MATCHING CONTRIBUTIONS.—An annuity contract under section 403(b) shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if such contract meets requirements similar to the requirements under subparagraph (A).".

(c) EXCLUSION FROM DEFINITION OF TOP-HEAVY PLANS.—Paragraph (4) of section 416(d) (relating to other special rules for top-heavy plans), as amended by section 104(g), is amended by adding at the end the following new subparagraph:

"(J) AUTOMATIC CONTRIBUTION TRUST.—The term 'top-heavy plan' shall not include an automatic contribution trust under section 401(k)(13). Nothing in this subparagraph shall preclude an employer from taking into account contributions made under the automatic contribution trust when determining whether any plan of such employer satisfies the requirements of this section.".

(d) DEFINITION OF COMPENSATION.—

(1) IN GENERAL.—Paragraph (9) of section 401(k) is amended to read as follows:

"(9) COMPENSATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), for purposes of this section, the term 'compensation' has the meaning given such term by section 414(s).

"(B) USE OF BASE PAY.—For purposes of paragraph (12)(B), the term 'compensation' means the definition of compensation used by the cash or deferred arrangement if such compensation—

"(i) meets the requirements of section 414(s), or

"(ii) constitutes base pay.

"(C) BASE PAY.—For purposes of subparagraph (B), the term 'base pay' means a reasonable definition of compensation that does not by design favor highly compensated employees and that excludes on a consistent basis all irregular or additional compensation.".

(2) AUTOMATIC CONTRIBUTION TRUSTS.—Paragraph (9)(B) of section 401(k) (as amended by paragraph (1)) is amended by striking "paragraph (12)(B)" and inserting "paragraphs (12)(B), (13)(B), and (13)(D)(i)".

(3) MATCHING CONTRIBUTIONS.—Paragraph (11) of section 401(m) is amended by adding at the end the following:

"(C) DEFINITION OF COMPENSATION.—For purposes of subparagraph (B), the term 'compensation' has the meaning given such term by subsection (k)(9)(B).".

(e) APPLICATION BY YEAR OR PAYROLL PERIOD.—

(1) CASH OR DEFERRED ARRANGEMENTS.—Subparagraph (B) of section 401(k)(12) is amended by adding at the end the following:

"(iv) APPLICATION BY YEAR OR PAYROLL PERIOD.—The requirements of this subparagraph may be met for a plan year by meeting such requirements either—

"(I) with respect to the plan year as a whole, or

"(II) separately with respect to each payroll period (or other payment of compensation) taken into account under the arrangement for the plan year.".

(2) DEFINED CONTRIBUTION PLANS.—Paragraph (11) of section 401(m) (as amended by this section) is amended by adding at the end the following:

"(D) APPLICATION BY YEAR OR PAYROLL PERIOD.—The requirements of subparagraph (B) may be met for a plan year by meeting such requirements either—

"(i) with respect to the plan year as a whole, or

"(ii) separately with respect to each payroll period (or other payment of compensation) taken into account under the plan for the plan year.".

(f) SECTION 403(b) CONTRACTS.—Paragraph (11) of section 401(m) (as amended by this section) is amended by adding at the end the following:

"(E) SECTION 403(b) CONTRACTS.—An annuity contract under section 403(b) shall be treated as meeting the requirements of paragraph (2) with respect to matching contributions if such contract meets requirements similar to the requirements under subparagraph (A).".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 1999.

(2) EXCEPTION.—The amendments made by subsections (d)(1), (d)(3), (e), and (f) shall apply to years beginning after December 31, 1998.

SEC. 109. DEDUCTION LIMITS.

(a) IN GENERAL.—

(1) STOCK BONUS AND PROFIT SHARING TRUSTS.—Subclause (I) of section 404(a)(3)(A)(i) (relating to stock bonus and profit sharing trusts) is amended by striking "15 percent" and inserting "25 percent".

(2) COMPENSATION.—Section 404(a) (relating to general rule) is amended by adding at the end the following:

"(12) DEFINITION OF COMPENSATION.—For purposes of paragraphs (3), (7), and (9), the term 'compensation otherwise paid or accrued during the taxable year' shall include amounts treated as 'participant's compensation' under subparagraph (C) or (D) of section 415(c)(3).".

(3) DEFINED CONTRIBUTION PLANS.—Subparagraph (A) of section 404(a)(3) (relating to stock bonus and profit sharing trusts) is amended by adding at the end the following:

"(vi) DEFINED CONTRIBUTION PLANS SUBJECT TO THE FUNDING STANDARDS.—Except as provided by the Secretary, for purposes of this subparagraph, a defined contribution plan which is subject to the funding

standards of section 412 shall be treated in the same manner as a stock bonus or profit-sharing plan.''.

(b) CONFORMING AMENDMENTS.—

(1) Subparagraph (A) of section 404(a)(3) is amended by striking clause (v) and by redesignating clause (vi) (as added by subsection (a)(3) of this section) as clause (v).

(2) Subparagraph (B) of section 404(a)(3) is amended by striking the last sentence thereof.

(3) Subparagraph (D) of section 404(a)(8) is amended by striking the period at the end and inserting the following: '', except that such earned income shall be adjusted under rules similar to the rules of paragraph (12).''.

(4) Subparagraph (C) of section 404(h)(1) is amended by striking ''15 percent'' each place it appears and inserting ''25 percent''.

(5) Paragraph (2) of section 404(h) is amended by striking ''stock bonus or profit-sharing trust'' and inserting ''trust subject to subsection (a)(3)(A)''.

(6) Clause (i) of section 4972(c)(6)(B) is amended by striking ''(within the meaning of section 404(a))'' and inserting ''(within the meaning of section 404(a) and as adjusted under section 404(a)(12))''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

SEC. 110. OPTION TO TREAT ELECTIVE DEFERRALS AS AFTER-TAX CONTRIBUTIONS.

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

''SEC. 402A. OPTIONAL TREATMENT OF ELECTIVE DEFERRALS AS PLUS CONTRIBUTIONS.

''(a) GENERAL RULE.—If an applicable retirement plan includes a qualified plus contribution program—

''(1) any designated plus contribution made by an employee pursuant to the program shall be treated as an elective deferral for purposes of this chapter, except that such contribution shall not be excludable from gross income, and

''(2) such plan (and any arrangement which is part of such plan) shall not be treated as failing to meet any requirement of this chapter solely by reason of including such program.

''(b) QUALIFIED PLUS CONTRIBUTION PROGRAM.—For purposes of this section—

''(1) IN GENERAL.—The term 'qualified plus contribution program' means a program under which an employee may elect to make designated plus contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make under the applicable retirement plan.

''(2) SEPARATE ACCOUNTING REQUIRED.—A program shall not be treated as a qualified plus contribution program unless the applicable retirement plan—

''(A) establishes separate accounts ('designated plus accounts') for the designated plus contributions of each employee and any earnings properly allocable to the contributions, and

''(B) maintains separate recordkeeping with respect to each account.

''(c) DEFINITIONS AND RULES RELATING TO DESIGNATED PLUS CONTRIBUTIONS.—For purposes of this section—

''(1) DESIGNATED PLUS CONTRIBUTION.—The term 'designated plus contribution' means any elective deferral which—

''(A) is excludable from gross income of an employee without regard to this section, and

''(B) the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.

''(2) DESIGNATION LIMITS.—The amount of elective deferrals which an employee may designate under paragraph (1) shall not exceed the excess (if any) of—

''(A) the maximum amount of elective deferrals excludable from gross income of the employee for the taxable year (without regard to this section), over

''(B) the aggregate amount of elective deferrals of the employee for the taxable year which the employee does not designate under paragraph (1).

''(3) ROLLOVER CONTRIBUTIONS.—

''(A) IN GENERAL.—A rollover contribution of any payment or distribution from a designated plus account which is otherwise allowable under this chapter may be made only if the contribution is to—

''(i) another designated plus account of the individual from whose account the payment or distribution was made, or

''(ii) a Roth IRA of such individual.

"(B) COORDINATION WITH LIMIT.—Any rollover contribution to a designated plus account under subparagraph (A) shall not be taken into account for purposes of paragraph (1).

"(d) DISTRIBUTION RULES.—For purposes of this title—

"(1) EXCLUSION.—Any qualified distribution from a designated plus account shall not be includible in gross income.

"(2) QUALIFIED DISTRIBUTION.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'qualified distribution' has the meaning given such term by section 408A(d)(2)(A).

"(B) DISTRIBUTIONS WITHIN NONEXCLUSION PERIOD.—A payment or distribution from a designated plus account shall not be treated as a qualified distribution if such payment or distribution is made within the 5-taxable-year period beginning with the earlier of—

"(i) the earlier of—

"(I) the 1st taxable year for which the individual made a designated plus contribution to any designated plus account established for such individual under the same applicable retirement plan, or

"(II) if a rollover contribution was made to such designated plus account from a designated plus account previously established for such individual under another applicable retirement plan, the 1st taxable year for which the individual made a designated plus contribution to such previously established account), or

"(ii) the 1st taxable year for which the individual (or the individual's spouse) made a contribution to a Roth IRA established for such individual.

"(C) DISTRIBUTIONS OF EXCESS DEFERRALS AND EARNINGS.—The term 'qualified distribution' shall not include any distribution of any excess deferral under section 402(g)(2) and any income on the excess deferral.

"(3) AGGREGATION RULES.—Section 72 shall be applied separately with respect to distributions and payments from a designated plus account and other distributions and payments from the plan.

"(e) OTHER DEFINITIONS.—For purposes of this section—

"(1) APPLICABLE RETIREMENT PLAN.—The term 'applicable retirement plan' means—

"(A) an employees' trust described in section 401(a) which is exempt from tax under section 501(a), and

"(B) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

"(2) ELECTIVE DEFERRAL.—The term 'elective deferral' means any elective deferral described in subparagraph (A) or (C) of section 402(g)(3)."

(b) EXCESS DEFERRALS.—Section 402(g) (relating to limitation on exclusion for elective deferrals) is amended—

(1) by adding at the end of paragraph (1) the following new sentence: "The preceding sentence shall not apply to so much of such excess as does not exceed the designated plus contributions of the individual for the taxable year.", and

(2) by inserting "(or would be included but for the last sentence thereof)" after "paragraph (1)" in paragraph (2)(A).

(c) ROLLOVERS.—Subparagraph (B) of section 402(c)(7) (as amended by sections 301 and 302) is amended by adding at the end the following:

"Without regard to the foregoing provisions of this paragraph, if any portion of an eligible rollover distribution is attributable to payments or distributions from a designated plus account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated plus account and a Roth IRA."

(d) REPORTING REQUIREMENTS.—

(1) W–2 INFORMATION.—Section 6051(a)(8) is amended by inserting ", including the amount of designated plus contributions (as defined in section 402A)" before the comma at the end.

(2) INFORMATION.—Section 6047 is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

"(f) DESIGNATED PLUS CONTRIBUTIONS.—The Secretary shall require the plan administrator of each applicable retirement plan (as defined in section 402A) to make such returns and reports regarding designated plus contributions (as so defined) to the Secretary, participants and beneficiaries of the plan, and such other persons as the Secretary may prescribe."

(e) CONFORMING AMENDMENTS.—

(1) Section 408A(e) is amended by adding after the first sentence the following new sentence: "Such term includes a rollover contribution described in section 402A(c)(3)(A)."

(2) The table of sections for subpart A of part I of subchapter D of chapter 1 is amended by inserting after the item relating to section 402 the following new item:

"Sec. 402A. Optional treatment of elective deferrals as plus contributions."

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2000.

SEC. 111. CREDIT FOR PENSION PLAN STARTUP COSTS OF SMALL EMPLOYERS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by adding at the end the following new section:

"SEC. 45D. SMALL EMPLOYER PENSION PLAN STARTUP COSTS.

"(a) GENERAL RULE.—For purposes of section 38, in the case of an eligible employer, the small employer pension plan startup cost credit determined under this section for any taxable year is an amount equal to 50 percent of the qualified startup costs paid or incurred by the taxpayer during the taxable year.

"(b) DOLLAR LIMITATION.—The amount of the credit determined under this section for any taxable year shall not exceed—

"(1) $1,000 for the first credit year,

"(2) $500 for each of the 2 taxable years immediately following the first credit year, and

"(3) zero for any other taxable year.

"(c) ELIGIBLE EMPLOYER.—For purposes of this section—

"(1) IN GENERAL.—The term 'eligible employer' has the meaning given such term by section 408(p)(2)(C)(i).

"(2) EMPLOYERS MAINTAINING QUALIFIED PLANS DURING 1998 NOT ELIGIBLE.—Such term shall not include an employer if such employer (or any predecessor employer) maintained a qualified plan (as defined in section 408(p)(2)(D)(ii)) with respect to which contributions were made, or benefits were accrued, for service in 1998. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in the qualified employer plan referred to in subsection (d)(1), then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

"(d) OTHER DEFINITIONS.—For purposes of this section—

"(1) QUALIFIED STARTUP COSTS.—

"(A) IN GENERAL.—The term 'qualified startup costs' means any ordinary and necessary expenses of an eligible employer which are paid or incurred in connection with—

"(i) the establishment or administration of an eligible employer plan, or

"(ii) the retirement-related education of employees with respect to such plan.

"(B) PLAN MUST HAVE AT LEAST 2 PARTICIPANTS.—Such term shall not include any expense in connection with a plan that does not have at least 2 individuals who are eligible to participate.

"(C) PLAN MUST BE ESTABLISHED BEFORE JANUARY 1, 2002.—Such term shall not include any expense in connection with a plan established after December 31, 2001.

"(2) ELIGIBLE EMPLOYER PLAN.—The term 'eligible employer plan' means a qualified employer plan within the meaning of section 4972(d).

"(3) FIRST CREDIT YEAR.—The term 'first credit year' means—

"(A) the taxable year which includes the date that the eligible employer plan to which such costs relate becomes effective, or

"(B) at the election of the eligible employer, the taxable year preceding the taxable year referred to in subparagraph (A).

"(e) SPECIAL RULES.—For purposes of this section—

"(1) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52, or subsection (n) or (o) of section 414, shall be treated as one person. All eligible employer plans shall be treated as 1 eligible employer plan.

"(2) DISALLOWANCE OF DEDUCTION.—No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).

"(3) ELECTION NOT TO CLAIM CREDIT.—This section shall not apply to a taxpayer for any taxable year if such taxpayer elects to have this section not apply for such taxable year."

(b) CREDIT ALLOWED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) (defining current year business credit) is amended by striking "plus" at the end of paragraph (11), by striking the period at the end of paragraph (12) and inserting ", plus", and by adding at the end the following new paragraph:

"(13) in the case of an eligible employer (as defined in section 45D(c)), the small employer pension plan startup cost credit determined under section 45D(a)."

(c) CONFORMING AMENDMENTS.—

(1) Section 39(d) is amended by adding at the end the following new paragraph:

"(8) NO CARRYBACK OF SMALL EMPLOYER PENSION PLAN STARTUP COST CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the small employer pension plan startup cost credit determined under section 45D may be carried back to a taxable year ending on or before the date of the enactment of section 45D."

(2) Subsection (c) of section 196 is amended by striking "and" at the end of paragraph (7), by striking the period at the end of paragraph (8) and inserting ", and", and by adding at the end the following new paragraph:

"(9) the small employer pension plan startup cost credit determined under section 45D(a)."

(3) The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by adding at the end the following new item:

"Sec. 45D. Small employer pension plan startup costs."

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to costs paid or incurred in taxable years ending after the date of the enactment of this Act.

TITLE II—ENHANCING FAIRNESS FOR WOMEN AND CHILDREN

SEC. 201. ADDITIONAL SALARY REDUCTION CATCH-UP CONTRIBUTIONS.

(a) LIMITATION ON EXCLUSION FOR ELECTIVE DEFERRALS.—

(1) IN GENERAL.—Subsection (g) of section 402 (as amended by section 101(d)) is further amended by adding at the end the following:

"(9) CATCH-UP CONTRIBUTIONS FOR THOSE APPROACHING RETIREMENT.—In the case of an individual who has attained age 50 during any taxable year, the limitation of paragraph (1) for such year, after the application of paragraph (8), shall be increased by $5,000.".

(2) COST-OF-LIVING ADJUSTMENT.—Paragraph (4) of section 402(g) (relating to cost-of-living adjustment), as amended by section 101(d), is further amended by inserting "and the $5,000 amount under paragraph (9)" after "paragraph (1)".

(b) SIMPLE RETIREMENT ACCOUNTS.—

(1) IN GENERAL.—Paragraph (2) of section 408(p) (relating to qualified salary reduction arrangement) (as amended by sections 101(f) and 103(a)) is further amended by redesignating subparagraph (F) as subparagraph (G) and by inserting after subparagraph (E) the following new subparagraph:

"(F) CATCH-UP CONTRIBUTIONS FOR THOSE APPROACHING RETIREMENT.—In the case of an individual who has attained age 50 during any taxable year, the limitation of subparagraph (A)(ii) for such year shall be increased by $5,000.".

(2) COST-OF-LIVING ADJUSTMENT.—Subparagraph (G) of section 408(p)(2) (as so redesignated) is amended by inserting "and the $5,000 amount under subparagraph (F)" after "subparagraph (A)(ii)".

(c) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—

(1) IN GENERAL.—Subsection (b) of section 457 (relating to definition of eligible deferred compensation plan) is amended by adding at the end the following new paragraph:

"(7) CATCH-UP CONTRIBUTIONS FOR THOSE APPROACHING RETIREMENT.—In the case of an individual who has attained age 50 during any taxable year, the limitation of paragraph (2)(A) for such year shall be increased by $5,000".

(2) COST-OF-LIVING ADJUSTMENT.—Paragraph (15) of section 457(e) (relating to cost-of-living adjustment) is amended by inserting ", and the $5,000 amount specified in subsection (b)(7)," after "(c)(1)".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

SEC. 202. EQUITABLE TREATMENT FOR CONTRIBUTIONS OF EMPLOYEES TO DEFINED CONTRIBUTION PLANS.

(a) IN GENERAL.—

(1) Subparagraph (B) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended to read as follows:

"(B) the participant's compensation.".

(2) CONFORMING AMENDMENTS.—

(A) Subsection (f) of section 72 is amended by striking "section 403(b)(2)(D)(iii))" and inserting "section 403(b)(2)(D)(iii), as in effect on December 31, 1998)".

(B) Section 403(b) is amended—

(i) by striking "the exclusion allowance for such taxable year" in paragraph (1) and inserting "the applicable limit under section 415",

(ii) by striking paragraph (2), and

(iii) by inserting "or any amount received by a former employee after the 5th taxable year following the taxable year in which such employee was terminated" before the period at the end of the second sentence of paragraph (3).

(C) Section 404(a)(10)(B) is amended by striking ", the exclusion allowance under section 403(b)(2),".

(D) Section 415(a)(2) is amended by striking ", and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)".

(E) Section 415(c)(3) is amended by adding at the end the following new subparagraph:

"(E) ANNUITY CONTRACTS.—In the case of an annuity contract described in section 403(b), the term 'participant's compensation' means the participant's includible compensation determined under section 403(b)(3).".

(F) Section 415(c) is amended by striking paragraph (4).

(G) Section 415(c)(7) is amended to read as follows:

"(7) CERTAIN CONTRIBUTIONS BY CHURCH PLANS NOT TREATED AS EXCEEDING LIMIT.—

"(A) IN GENERAL.—Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

"(B) $40,000 AGGREGATE LIMITATION.—The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

"(C) ANNUAL ADDITION.—For purposes of this paragraph, the term 'annual addition' has the meaning given such term by paragraph (2).".

(H) Section 415(e)(5) is amended—

(i) by striking "(except in the case of a participant who has elected under subsection (c)(4)(D) to have the provisions of subsection (c)(4)(C) apply)", and

(ii) by striking the last sentence.

(I) Section 415(n)(2)(B) is amended by striking "percentage".

(J) Subparagraph (B) of section 402(g)(7) (as amended by section 101(d)) is amended by inserting before the period at the end the following: "(as in effect on the date of the enactment of the Retirement Security for the 21st Century Act)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 1999.

(b) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—

(1) IN GENERAL.—Subsection (k) of section 415 is amended by adding at the end the following new paragraph:

"(4) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—For purposes of this section, any annuity contract described in section 403(b) for the benefit of a partici-

pant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to limitation years beginning after December 31, 1999.

(c) DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—Subparagraph (B) of section 457(b)(2) (relating to salary limitation on eligible deferred compensation plans) is amended by striking "33⅓ percent" and inserting "100 percent".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

SEC. 203. FASTER VESTING OF CERTAIN EMPLOYER MATCHING CONTRIBUTIONS.

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

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

(2) by adding at the end the following:

"(12) FASTER VESTING FOR MATCHING CONTRIBUTIONS.—In the case of matching contributions (as defined in section 401(m)(4)(A)), paragraph (2) shall be applied—

"(A) by substituting '3 years' for '5 years' in subparagraph (A), and

"(B) by substituting the following table for the table contained in subparagraph (B):

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

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 1999.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified by the date of enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

(ii) January 1, 2000, or

(B) January 1, 2004.

(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

SEC. 204. 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, to the extent practicable, the present value of the future

payments of the annuity would be actuarially equivalent to the present value of the future payments under subparagraph (A) as of the day after the former employee's death; or

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

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

(b) CORRESPONDING AMENDMENT FOR FERS.—Section 8445(a) of title 5, United States Code, is amended—

(1) by striking "(or of a former employee or" and inserting "(or of a former"; and

(2) by striking "annuity)" and inserting "annuity, or of a former employee who dies after having separated from the service with title to a deferred annuity under section 8413 but before having established a valid claim for annuity (if such former spouse was married to such former employee prior to the date of separation))".

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

SEC. 205. SIMPLIFY AND UPDATE THE MINIMUM DISTRIBUTION RULES.

(a) SIMPLIFICATION AND FINALIZATION OF MINIMUM DISTRIBUTION REQUIREMENTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall—

(A) simplify and finalize the regulations relating to minimum distribution requirements under sections 401(a)(9), 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2) of the Internal Revenue Code of 1986, and

(B) modify such regulations to—

(i) reflect increases in life expectancy, and

(ii) revise the required distribution methods so that, under reasonable assumptions, the amount of the required minimum distribution does not decrease over a participant's life expectancy.

(2) FRESH START.—Notwithstanding subparagraph (D) of section 401(a)(9) of such Code, during the first year that regulations are in effect under this subsection, required distributions for future years may be redetermined to reflect changes under such regulations. Such redetermination shall include the opportunity to choose a new designated beneficiary and to elect a new method of calculating life expectancy.

(3) EFFECTIVE DATE FOR REGULATIONS.—Regulations referred to in paragraph (1) shall be effective for years beginning after December 31, 2000, and shall apply in such years without regard to whether an individual had previously begun receiving minimum distributions.

(b) AMOUNT NOT SUBJECT TO MINIMUM DISTRIBUTION REQUIREMENTS.—Paragraph (9) of section 401(a) is amended—

(1) in subparagraph (A), by inserting "(minus the exclusion amount)" after "the entire interest"; and

(2) by adding at the end the following:

"(H) EXCLUSION AMOUNT.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'exclusion amount' means—

"(I) $100,000 in the case of a defined contribution plan;

"(II) $100,000 in the case of an individual retirement plan; and

"(III) $0 in the case of a defined benefit plan.

"(ii) AGGREGATION OF PLANS.—For purposes of determining the exclusion amount under clause (i)—

"(I) all defined contribution plans maintained by the same employer shall be treated as a single plan; and

"(II) all individual retirement plans (other than Roth IRAs) of the individual shall be treated as a single plan.

"(iii) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $100,000 exclusion amount specified in clause (i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1999.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 2000.

(c) REPEAL OF RULE WHERE DISTRIBUTIONS HAD BEGUN BEFORE DEATH OCCURS.—

(1) IN GENERAL.—Subparagraph (B) of section 401(a)(9) is amended by striking clause (i) and redesignating clauses (ii), (iii), and (iv) as clauses (i), (ii), and (iii), respectively.

(2) CONFORMING CHANGES.—

(A) Clause (i) of section 401(a)(9)(B) (as so redesignated) is amended—

(i) by striking "FOR OTHER CASES" in the heading, and

(ii) by striking "the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii)" and inserting "his entire interest has been distributed to him,".

(B) Clause (ii) of section 401(a)(9)(B) (as so redesignated) is amended by striking "clause (ii)" and inserting "clause (i)".

(C) Clause (iii) of section 401(a)(9)(B)(iii) (as so redesignated) is amended—

(i) by striking "clause (iii)(I)" and inserting "clause (ii)(I)",

(ii) in subclause (I) by striking "clause (iii)(III)" and inserting "clause (ii)(III)",

(iii) in subclause (I) by striking "the date on which the employee would have attained the age 70½," and inserting "April 1 of the calendar year following the calendar year in which the spouse attains 70½, and clause (ii) shall not apply to the exclusion amount,", and

(iv) in subclause (II) by striking "the distributions to such spouse begin," and inserting "his entire interest has been distributed to him,".

(3) REDUCTION IN EXCISE TAX.—Subsection (a) of section 4974 is amended by striking "50 percent" and inserting "10 percent".

(4) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided by subparagraph (B), the amendments made by this subsection shall apply to years beginning after December 31, 2000.

(B) EXCISE TAX.—The amendment made by paragraph (3) shall apply to years beginning after December 31, 1999.

SEC. 206. CLARIFICATION OF TAX TREATMENT OF DIVISION OF SECTION 457 PLAN BENEFITS UPON DIVORCE.

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

(1) by inserting "or an eligible deferred compensation plan (within the meaning of section 457(b))" after "subsection (e))", and

(2) in the heading, by striking "GOVERNMENTAL AND CHURCH PLANS" and inserting "CERTAIN OTHER PLANS".

(b) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—Paragraph (10) of section 414(p) is amended by striking "and section 409(d)" and inserting "section 409(d), and section 457(d)".

(c) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN.—Subsection (p) of section 414 is amended by redesignating paragraph (12) as paragraph (13) and inserting after paragraph (11) the following new paragraph:

"(12) TAX TREATMENT OF PAYMENTS FROM A SECTION 457 PLAN.—If a distribution or payment from an eligible deferred compensation plan described in section 457(b) is made pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to such distribution or payment.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers, distributions, and payments made after the date of enactment of this Act.

SEC. 207. PERCENTAGE LIMITATIONS ON CONTRIBUTIONS.

(a) AMENDMENTS RELATING TO FERS.—

(1) IN GENERAL.—

(A) Subsection (a) of section 8432 of title 5, United States Code, is amended by striking "10 percent of".

(B) Subsection (d) of section 8432 of title 5, United States Code, is amended by striking "section 415" and inserting "section 401(a)(30) or 415".

(2) JUSTICES AND JUDGES.—Subsection (b) of section 8440a of title 5, United States Code, is amended—

(A) by striking paragraph (2) and by redesignating paragraphs (3) through (7) as paragraphs (2) through (6), respectively; and

(B) in paragraph (6) (as so redesignated by subparagraph (A)) by striking "paragraphs (4) and (5)" and inserting "paragraphs (3) and (4)".

(3) BANKRUPTCY JUDGES AND MAGISTRATES.—Subsection (b) of section 8440b of title 5, United States Code, is amended—

(A) by striking paragraph (2) and by redesignating paragraphs (3) through (8) as paragraphs (2) through (7), respectively;

(B) in paragraph (4) (as so redesignated by subparagraph (A)) by striking "paragraph (4)(A), (B), or (C)" and inserting "paragraph (3)(A), (B), or (C)"; and

(C) in paragraph (7) (as so redesignated by subparagraph (A)) by striking "Notwithstanding paragraph (4)," and inserting "Notwithstanding paragraph (3),".

(4) COURT OF FEDERAL CLAIMS JUDGES.—Subsection (b) of section 8440c of title 5, United States Code, is amended—

(A) by striking paragraph (2) and by redesignating paragraphs (3) through (8) as paragraphs (2) through (7), respectively;

(B) in paragraph (4) (as so redesignated by subparagraph (A)) by striking "paragraph (4)(A) or (B)" and inserting "paragraph (3)(A) or (B)"; and

(C) in paragraph (7) (as so redesignated by subparagraph (A)) by striking "Notwithstanding paragraph (4)," and inserting "Notwithstanding paragraph (3),".

(5) JUDGES OF THE UNITED STATES COURT OF VETERANS APPEALS.—Paragraph (2) of section 8440d(b) of title 5, United States Code, is amended to read as follows:

"(2) For purposes of contributions made to the Thrift Savings Fund, basic pay does not include any retired pay paid pursuant to section 7296 of title 38.".

(b) AMENDMENTS RELATING TO CSRS.—Paragraph (2) of section 8351(b) of title 5, United States Code, is amended by striking "5 percent of".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall take effect on the date of enactment of this Act.

(2) COORDINATION WITH ELECTION PERIODS.—The Executive Director shall by regulation determine the first election period in which elections may be made consistent with the amendments made by this section.

(3) DEFINITIONS.—For purposes of this section—

(A) the term "election period" means a period afforded under section 8432(b) of title 5, United States Code; and

(B) the term "Executive Director" has the meaning given such term by section 8401(13) of title 5, United States Code.

SEC. 208. ELIGIBLE ROLLOVER DISTRIBUTIONS.

Section 8432 of title 5, United States Code, is amended by adding at the end the following:

"(j)(1) For the purpose of this subsection—

"(A) the term 'eligible rollover distribution' has the meaning given such term by section 402(c)(3) of the Internal Revenue Code of 1986; and

"(B) the term 'eligible retirement plan' has the meaning given such term by section 402(c)(7) of the Internal Revenue Code of 1986.

"(2) An employee or Member may contribute to the Thrift Savings Fund an eligible rollover distribution from an eligible retirement plan. A contribution made under this subsection shall be made by means of a direct rollover from an eligible retirement plan in a manner that is similar to a direct rollover under section 401(a)(31) of the Internal Revenue Code of 1986. In the case of an eligible rollover distribution, the maximum amount transferred to the Thrift Savings Fund shall not exceed the amount which would otherwise have been included in the employee's or Member's gross income for Federal income tax purposes.

"(3) The Executive Director shall prescribe regulations to carry out this subsection.".

SEC. 209. IMMEDIATE PARTICIPATION IN THE THRIFT SAVINGS PLAN.

(a) ELIMINATION OF CERTAIN WAITING PERIODS FOR PURPOSES OF EMPLOYEE CONTRIBUTIONS.—Paragraph (4) of section 8432(b) of title 5, United States Code, is amended to read as follows:

"(4) The Executive Director shall prescribe such regulations as may be necessary to carry out the following:

"(A) Notwithstanding subparagraph (A) of paragraph (2), an employee or Member described in such subparagraph shall be afforded a reasonable opportunity to first make an election under this subsection beginning on the date of commencing service or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

"(B) An employee or Member described in subparagraph (B) of paragraph (2) shall be afforded a reasonable opportunity to first make an election under this subsection (based on the appointment or election described in such subparagraph) beginning on the date of commencing service pursuant to such appointment or election or, if that is not administratively feasible, beginning on the earliest date thereafter that such an election becomes administratively feasible, as determined by the Executive Director.

"(C) Notwithstanding the preceding provisions of this paragraph, contributions under paragraphs (1) and (2) of subsection (c) shall not be payable with respect to any pay period before the earliest pay period for which such contributions would otherwise be allowable under this subsection if this paragraph had not been enacted.

"(D) Sections 8351(a)(2), 8440a(a)(2), 8440b(a)(2), 8440c(a)(2), and 8440d(a)(2) shall be applied in a manner consistent with the purposes of subparagraphs (A) and (B), to the extent those subparagraphs can be applied with respect thereto.

"(E) Nothing in this paragraph shall affect paragraph (3).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—(1) Section 8432(a) of title 5, United States Code, is amended—

(A) in the first sentence by striking "(b)(1)" and inserting "(b)"; and

(B) by amending the second sentence to read as follows: "Contributions under this subsection pursuant to such an election shall, with respect to each pay period for which such election remains in effect, be made in accordance with a program of regular contributions provided in regulations prescribed by the Executive Director.".

(2) Section 8432(b)(1)(B) of title 5, United States Code, is amended by inserting "(or any election allowable by virtue of paragraph (4))" after "subparagraph (A)".

(3) Section 8432(b)(3) of title 5, United States Code, is amended by striking "Notwithstanding paragraph (2)(A), an" and inserting "An".

(4) Section 8432(i)(1)(B)(ii) of title 5, United States Code, is amended by striking "either elected to terminate individual contributions to the Thrift Savings Fund within 2 months before commencing military service or".

(5) Section 8439(a)(1) of title 5, United States Code, is amended by inserting "who makes contributions or" after "for each individual" and by striking "section 8432(c)(1)" and inserting "section 8432".

(6) Section 8439(c)(2) of title 5, United States Code, is amended by adding at the end the following: "Nothing in this paragraph shall be considered to limit the dissemination of information only to the times required under the preceding sentence.".

(7) Sections 8440a(a)(2) and 8440d(a)(2) of title 5, United States Code, are amended by striking all after "subject to" and inserting "this chapter.".

(c) EFFECTIVE DATE.—This section shall take effect 6 months after the date of enactment of this Act or such earlier date as the Executive Director (within the meaning of section 8401(13) of title 5, United States Code) may by regulation prescribe.

TITLE III—INCREASING PORTABILITY FOR PARTICIPANTS

SEC. 301. ROLLOVERS ALLOWED AMONG VARIOUS TYPES OF PLANS.

(a) ROLLOVERS FROM AND TO SECTION 457 PLANS.—

(1) ROLLOVERS FROM SECTION 457 PLANS.—

(A) IN GENERAL.—Section 457(e) (relating to other definitions and special rules) is amended by adding at the end the following:

"(16) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—In the case of an eligible deferred compensation plan, if—

"(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4) (other than section 402(c)(4)(C)),

"(ii) the employee transfers any portion of the property such employee receives in such distribution to an eligible retirement plan described in section 402(c)(8)(B), and

"(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

"(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) (other than paragraph (4)(C)) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A).

"(C) REPORTING.—Rollovers under this paragraph shall be reported to the Secretary in the same manner as rollovers from qualified retirement plans (as defined in section 4974(c)).".

(B) DEFERRAL LIMIT DETERMINED WITHOUT REGARD TO ROLLOVER AMOUNTS.—Section 457(b)(2) (defining eligible deferred compensation plan) is amended by inserting "(other than rollover amounts)" after "taxable year".

(C) DIRECT ROLLOVER.—Paragraph (1) of section 457(d) is amended by striking "and" at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting ", and", and by inserting after subparagraph (B) the following:

"(C) the plan meets requirements similar to the requirements of section 401(a)(31).

Any amount transferred in a direct trustee-to-trustee transfer in accordance with section 401(a)(31) shall not be includible in gross income for the taxable year of transfer.".

(D) WITHHOLDING.—

(i) Paragraph (12) of section 3401(a) is amended by adding at the end the following:

"(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b);".

(ii) Paragraph (5) of section 3405(e) is amended by adding at the end the following: "Such term shall include an eligible deferred compensation plan described in section 457(b).".

(iii) Paragraph (3) of section 3405(c) is amended to read as follows:

"(3) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term 'eligible rollover distribution' has the meaning given such term by section 402(f)(2)(A).".

(iv) LIABILITY FOR WITHHOLDING.—Subparagraph (B) of section 3405(d)(2) is amended by striking "or" at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ", or", and by adding at the end the following:

"(iv) section 457(b).".

(2) ROLLOVERS TO SECTION 457 PLANS.—

(A) Section 402(c)(8)(B) (defining eligible retirement plan) is amended by striking "and" at the end of clause (iii), by striking the period at the end of clause (iv) and inserting ", and", and by adding at the end the following:

"(v) an eligible deferred compensation plan described in section 457(b) of an eligible employer described in section 457(e)(1)(A).".

(B) Paragraph (9) of section 402(c) is amended by striking "except that" and all that follows and inserting "except that only an account or annuity described in clause (i) or (ii) of paragraph (8)(B) shall be treated as an eligible retirement plan with respect to such distribution.".

(C) Subsection (t) of section 72 (relating to 10-percent additional tax on early distributions from qualified retirement plans) is amended by adding at the end the following new paragraph:

"(9) SPECIAL RULE FOR ROLLOVERS TO SECTION 457 PLANS.—For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)). For purposes of this subsection, any such distribution shall be treated as if made from a qualified retirement plan described in section 4974(c)(1). This paragraph shall only apply to a transfer that is in excess of $50,000 and that is permitted by reason of section 402(c)(8)(B)(v) or section 408(d)(3)(A)(ii).".

(D) Subsection (a) of section 457 (relating to year of inclusion in gross income) is amended—

(i) by striking "or otherwise made available", and

(ii) by adding at the end the following: "To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.".

(3) MINIMUM DISTRIBUTIONS.—Paragraph (2) of section 457(d) is amended to read as follows:

"(2) MINIMUM DISTRIBUTION REQUIREMENTS.—A plan meets the distribution requirements of this paragraph if the plan meets the requirements of section 401(a)(9).".

(4) CONFORMING AMENDMENT.—Paragraph (9) of section 457(e) is amended to read as follows:

"(9) BENEFITS NOT TREATED AS FAILING TO MEET DISTRIBUTION REQUIREMENTS OF SUBSECTION (d).—A plan shall not be treated as failing to meet the distribution requirements of subsection (d) by reason of a distribution of the total amount payable to a participant under the plan if—

"(A) such amount does not exceed the dollar limit under section 411(a)(11)(A), and

"(B) such amount may be distributed only if—

"(i) no amount has been deferred under the plan with respect to such participant during the 2-year period ending on the date of the distribution, and

"(ii) there has been no prior distribution under the plan to such participant to which this paragraph applied.".

(b) ALLOWANCE OF ROLLOVERS FROM AND TO 403(b) PLANS.—

(1) ROLLOVERS FROM SECTION 403(b) PLANS.—Section 403(b)(8)(A)(ii) (relating to rollover amounts) is amended by striking "such distribution" and all that follows and inserting "such distribution to an eligible retirement plan described in section 402(c)(8)(B), and".

(2) ROLLOVERS TO SECTION 403(b) PLANS.—Section 402(c)(8)(B) (defining eligible retirement plan), as amended by subsection (a), is amended by striking "and" at the end of clause (iv), by striking the period at the end of clause (v) and inserting ", and", and by adding at the end the following:

"(vi) an annuity contract described in section 403(b)."

(3) CONFORMING AMENDMENT.—Subparagraph (B) of section 403(b)(8) is amended by striking "Rules similar to the" and inserting "The".

(c) EXPANDED EXPLANATION TO RECIPIENTS OF ROLLOVER DISTRIBUTIONS.—Paragraph (1) of section 402(f) (relating to written explanation to recipients of distributions eligible for rollover treatment) is amended by striking "and" at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ", and", and by adding at the end the following new subparagraph:

"(E) of the provisions under which distributions from the eligible retirement plan receiving the distribution may be subject to restrictions and tax consequences which are different from those applicable to distributions from the plan making such distribution.".

(d) CONFORMING AMENDMENTS.—

(1) Section 72(o)(4) is amended by striking "and 408(d)(3)" and inserting "403(b)(8), 408(d)(3), and 457(e)(16)".

(2) Section 219(d)(2) is amended by striking "or 408(d)(3)" and inserting "408(d)(3), or 457(e)(16)".

(3) Section 401(a)(31)(B) is amended by striking "and 403(a)(4)" and inserting ", 403(a)(4), 403(b)(8), and 457(e)(16)".

(4) Subparagraph (A) of section 402(f)(2) is amended by striking "or paragraph (4) of section 403(a)" and inserting ", paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16)".

(5) Paragraph (1) of section 402(f) is amended by striking "from an eligible retirement plan".

(6) Subparagraphs (A) and (B) of section 402(f)(1) are amended by striking "another eligible retirement plan" and inserting "an eligible retirement plan".

(7) Subparagraph (B) of section 403(b)(8) is amended by striking "shall apply for purposes of subparagraph (A)" and inserting "and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator".

(8) Subparagraph (B) of section 403(b)(8) is amended by inserting "and (9)" after "through (7)".

(9) Section 408(a)(1) is amended by striking "or 403(b)(8)" and inserting ", 403(b)(8), or 457(e)(16)".

(10) Subparagraphs (A) and (B) of section 415(b)(2) are each amended by striking "and 408(d)(3)" and inserting "403(b)(8), 408(d)(3), and 457(e)(16)".

(11) Section 415(c)(2) is amended by striking "and 408(d)(3)" and inserting "408(d)(3), and 457(e)(16)".

(12) Section 4973(b)(1)(A) is amended by striking "or 408(d)(3)" and inserting "408(d)(3), or 457(e)(16)".

(e) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1999.

(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of any amendment made by this section.

SEC. 302. ROLLOVERS OF IRAS INTO WORKPLACE RETIREMENT PLANS.

(a) IN GENERAL.—Subparagraph (A) of section 408(d)(3) (relating to rollover amounts) is amended by adding "or" at the end of clause (i), by striking clauses (ii) and (iii), and by adding at the end the following:

"(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which he receives the payment or distribution.

For purposes of clause (ii), the term 'eligible retirement plan' has the meaning given such term by clauses (iii), (iv), (v), and (vi) of section 402(c)(8)(B).".

(b) CONFORMING AMENDMENTS.—

(1) Paragraph (1) of section 403(b) is amended by striking "section 408(d)(3)(A)(iii)" and inserting "section 408(d)(3)(A)(ii)".

(2) Clause (i) of section 408(d)(3)(D) is amended by striking "(i), (ii), or (iii)" and inserting "(i) or (ii)".

(3) Subparagraph (G) of section 408(d)(3) is amended to read as follows:

"(G) SIMPLE RETIREMENT ACCOUNTS.—In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.".

(c) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1999.

(2) SPECIAL RULE.—Notwithstanding any other provision of law, subsections (h)(3) and (h)(5) of section 1122 of the Tax Reform Act of 1986 shall not apply to any distribution from an eligible retirement plan (as defined in clause (iii) or (iv) of section 402(c)(8)(B) of the Internal Revenue Code of 1986) on behalf of an individual if there was a rollover to such plan on behalf of such individual which is permitted solely by reason of the amendments made by this section.

SEC. 303. ROLLOVERS OF AFTER-TAX CONTRIBUTIONS.

(a) IN GENERAL.—

(1) Subsection (c) of section 402 (relating to rules applicable to rollovers from exempt trusts) (as amended by section 2) is amended by striking paragraph (2) and redesignating paragraphs (3) through (10) as paragraphs (2) through (9), respectively.

(2) Paragraph (31) of section 401(a) (relating to optional direct transfer of eligible rollover distributions) is amended by striking subparagraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(3) Subparagraph (B) of section 408(d)(3) (relating to rollover contributions) is amended by striking "which was not includible in his gross income because of the application of this paragraph" and inserting "to which this paragraph applied".

(4) Paragraph (7)(B) of section 402(c) (as redesignated by subsection (a)(1) and as amended by section 301) is amended—

(A) by striking "The term" and inserting "Except as provided in this subparagraph, the term", and

(B) by adding at the end the following:

"Arrangements described in clauses (iii), (iv) (v), and (vi) shall not be treated as eligible retirement plans for purposes of receiving a rollover contribution of an eligible rollover distribution to the extent that such eligible rollover distribution is not includible in gross income (determined without regard to paragraph (1)).".

(5) Paragraph (2) of section 408(d) is amended—

(A) by striking "For purposes" and inserting the following:

"(A) IN GENERAL.—Except as provided in this paragraph, for purposes",

(B) by striking "(A) all" and inserting "(i) all";

(C) by striking "(B) all" and inserting "(ii) all";

(D) by striking "(C) the" and inserting "(iii) the",

(E) by striking “subparagraph (C)” and inserting “clause (iii)”, and

(F) by inserting at the end the following:

“(B) APPLICATION OF SECTION 72.—For purposes of applying section 72, if—

“(i) a distribution is made from an individual retirement plan, and

“(ii) a rollover contribution described in paragraph (3) is made to an eligible retirement plan described in section 402(c)(7)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

the includible amount in the individual's individual retirement plans shall be reduced by the amount described in subparagraph (C). As of the close of the calendar year in which the taxable year begins, the reduction of all amounts described in subparagraph (C)(i) shall be applied prior to the computations described in subparagraph (A)(iii). The amount of any distribution with respect to which there is a rollover contribution described in clause (ii) shall not be treated as a distribution for purposes of subparagraph (A).

“(C) AMOUNT DESCRIBED.—The amount described in this subparagraph is the sum of—

“(i) the amount of the rollover contribution described in subparagraph (B)(ii), and

“(ii) in the case of any portion of the distribution with respect to which there is not a rollover contribution described in paragraph (3), the amount of such portion that is included in gross income under section 72.

“(D) INCLUDIBLE AMOUNT.—For purposes of this paragraph, the term ‘includible amount’ shall mean the amount that is not investment in the contract (as defined in section 72).”.

(6) Subparagraph (C) of section 402(c)(5) (as redesignated by subsection (a)(1)) is amended by inserting after “other than money” the following: “or where the amount of the distribution exceeds the amount of the rollover contribution”.

(b) HARDSHIP EXCEPTION TO 60-DAY RULE.—

(1) Paragraph (2) of section 402(c) (as so redesignated) is amended to read as follows:

“(2) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

“(B) HARDSHIP EXCEPTION.—The Secretary may waive the 60-day requirement under subparagraph (A) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.”.

(2) Paragraph (3) of section 408(d) (relating to rollover contributions) is amended by adding at the end the following new subparagraph:

“(H) WAIVER OF 60-DAY REQUIREMENT.—The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.”.

(c) CONFORMING AMENDMENTS.—

(1) Paragraph (4) of section 402(c) (as redesignated by subsection (a)(1)) is amended by striking “(8)(B)” and inserting “(7)(B)”.

(2) Subparagraph (B) of section 403(a)(4) is amended by striking “(2) through (7)” and inserting “(2) through (6)”.

(3) Section 403(b)(8)(A)(ii) (as amended by section 301) is amended by striking “section 402(c)(8)(B)” and inserting “section 402(c)(7)(B)”.

(4) Subparagraph (B) of section 403(b)(8) (as amended by section 301) is amended by striking “(2) through (7) and (9) of section 402(c) (including paragraph (4)(C) thereof)” and inserting “(2) through (6) and (8) of section 402(c) (including paragraph (3)(C) thereof)”.

(5) Subparagraph (A) of section 408(d)(3) (as amended by section 302) is amended by striking “402(c)(8)” and inserting “402(c)(7)”.

(6) Paragraph (16) of section 457(e) (as added by section 301) is amended—

(A) in subparagraph (A)(i) by striking “402(c)(4) (other than section 402(c)(4)(C))” and inserting “section 402(c)(3) (other than section 402(c)(3)(C))”,

(B) in subparagraph (A)(ii) by striking "402(c)(8)(B)" and inserting "402(c)(7)(B)", and

(C) in subparagraph (B) by striking "paragraphs (2) through (7) (other than paragraph (4)(C)) and (9) of section 402(c)" and inserting "paragraphs (2) through (6) (other than paragraph (3)(C)) and (8) of section 402(c)".

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided by paragraph (2), the amendments made by this section shall apply to distributions made after December 31, 1999.

(2) HARDSHIP EXCEPTION.—The amendments made by subsection (b) shall apply to 60-day periods ending after the date of the enactment of this Act.

SEC. 304. TREATMENT OF FORMS OF DISTRIBUTION.

(a) IN GENERAL.—

(1) PLAN TRANSFERS.—Paragraph (6) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by adding at the end the following:

"(D) PLAN TRANSFERS.—

"(i) A defined contribution plan (in this subparagraph referred to as the 'transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this paragraph referred to as the 'transferor plan') to the extent that—

"(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

"(II) the terms of both the transferor plan and the transferee plan authorize the transfer described in subclause (I);

"(III) the transfer described in subclause (I) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

"(IV) the election described in subclause (III) was made after the participant or beneficiary received a notice describing the consequences of making the election;

"(V) if the transferor plan provides for an annuity as the normal form of distribution under the plan in accordance with section 417, the transfer is made with the consent of the participant's spouse (if any), and such consent meets requirements similar to the requirements imposed by section 417(a)(2); and

"(VI) the transferee plan allows the participant or beneficiary described in subclause (III) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

"(ii) Clause (i) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

"(E) ELIMINATION OF FORM OF DISTRIBUTION.—Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This subparagraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

"(i) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

"(ii) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.".

(2) REGULATIONS.—The last sentence of paragraph (6)(B) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended to read as follows: "The Secretary may by regulations provide that this subparagraph shall not apply to any plan amendment that does not adversely affect the rights of participants in a material manner.

(3) SECRETARY DIRECTED.—Not later than December 31, 2001, the Secretary of the Treasury is directed to issue final regulations under section 411(d)(6) of the Internal Revenue Code of 1986. Such regulations shall apply to plan years beginning after December 31, 2001 or such earlier date as is specified by the

Secretary of the Treasury. Under such regulations, section 411(d)(6) of such Code shall not apply to plan amendments that do not adversely affect the rights of participants in a material manner. In determining whether a plan amendment has such a materially adverse effect on a participant, the factors taken into account shall include—

(A) all of the participant's early retirement benefits, retirement-type subsidies, and optional forms of benefit that are reduced or eliminated by the plan amendment,

(B) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect with respect to a participant after the effective date of the plan amendment provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment,

(C) the number of years before the participant attains normal retirement age under the plan (or early retirement age, as applicable),

(D) the size of the participant's benefit that is affected by the plan amendment, in relation to the amount of the participant's compensation, and

(E) the number of years before the plan amendment is effective.

The regulations described in this paragraph are intended to permit the elimination or reduction of early retirement benefits, retirement-type subsidies, and optional forms of benefit that do not have a material value for a plan's participants but create significant burdens and complexities for the plan and its participants.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1999.

SEC. 305. RATIONALIZATION OF RESTRICTIONS ON DISTRIBUTIONS.

(a) MODIFICATION OF SAME DESK EXCEPTION.—

(1) SECTION 401(k).—Section 401(k)(2)(B)(i)(I) (relating to qualified cash or deferred arrangements) is amended by striking "separation from service" and inserting "severance from employment".

(2) SECTION 403(b).—

(A) Paragraphs (7)(A)(ii) and (11)(A) of section 403(b) are each amended by striking "separates from service" and inserting "has a severance from employment".

(B) The heading for paragraph (11) of section 403(b) is amended by striking "SEPARATION FROM SERVICE" and inserting "SEVERANCE FROM EMPLOYMENT".

(3) SECTION 457.—Clause (ii) of section 457(d)(1)(A) is amended by striking "is separated from service" and inserting "has a severance from employment".

(b) BUSINESS SALE REQUIREMENTS REPEALED.—

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

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

(A) by striking subparagraph (A) and inserting the following:

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

(B) in subparagraph (B)—

(i) by striking "An event" and inserting "A termination", and

(ii) by striking "the event" and inserting "the termination",

(C) by striking subparagraph (C), and

(D) by striking "OR DISPOSITION OF ASSETS OR SUBSIDIARY" in the heading.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 1999.

SEC. 306. PURCHASE OF SERVICE CREDIT IN GOVERNMENTAL DEFINED BENEFIT PLANS.

(a) 403(b) PLANS.—Subsection (b) of section 403 (as amended by section 501) is amended by adding at the end the following new paragraph:

"(14) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.—No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

"(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

"(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.".

(b) 457 PLANS.—

(1) Subsection (e) of section 457 (as amended by section 509) is amended by adding at the end the following new paragraph:

"(18) TRUSTEE-TO-TRUSTEE TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.—No amount shall be includible in gross income by reason of a direct trustee-to-trustee transfer to a defined benefit governmental plan (as defined in section 414(d)) if such transfer is—

"(A) for the purchase of permissive service credit (as defined in section 415(n)(3)(A)) under such plan, or

"(B) a repayment to which section 415 does not apply by reason of subsection (k)(3) thereof.".

(2) Section 457(b)(2), as amended by sections 101, 202, and 301, is amended by striking "(other than rollover amounts)" and inserting "(other than rollover amounts and amounts received in a transfer referred to in subsection (e)(16))".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to trustee-to-trustee transfers after December 31, 1999.

SEC. 307. EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT AMOUNTS.

(a) AMENDMENTS TO 1986 CODE.—

(1) Section 411(a)(11) (relating to restrictions on certain mandatory distributions) is amended by adding at the end the following:

"(D) SPECIAL RULE FOR ROLLOVER CONTRIBUTIONS.—A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term 'rollover contributions' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), clause (ii), (iii), or (iv) of 408(d)(3)(A), and 457(e)(16).".

(2) Clause (i) of section 457(e)(9)(A) is amended by striking "such amount" and inserting "the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions after December 31, 1999.

TITLE IV—STRENGTHENING PENSION SECURITY AND ENFORCEMENT

SEC. 401. REPEAL OF 150 PERCENT OF CURRENT LIABILITY FUNDING LIMIT.

(a) IN GENERAL.—

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

(A) by striking "the applicable percentage" in subparagraph (A)(i)(I) and inserting "in the case of plan years beginning before January 1, 2003, the applicable percentage", and

(B) by amending subparagraph (F) to read as follows:

"(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

"In the case of any plan year beginning in—	The applicable percentage is—
2000	160
2001	165
2002	170.".

(2) EFFECTIVE DATES.—The amendments made by this subsection shall apply to plan years beginning after December 31, 1999.

(b) MAXIMUM CONTRIBUTION DEDUCTION RULES MODIFIED AND APPLIED TO ALL DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Section 404(a)(1)(D) (relating to special rule in case of certain plans) is amended—

(A) by striking "which has more than 100 participants for the plan year",

(B) by striking "unfunded current liability determined under section 414(l)" and inserting "unfunded termination liability (determined as if the proposed termination date referred to in section 4041(b)(2)(A)(i)(II) of the

Employee Retirement Income Security Act of 1974 were the last day of the plan year)",

(C) by inserting after the first sentence the following: "For purposes of this subparagraph, in the case of a plan which has less than 100 participants for the plan year, termination liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) brought about by plan amendment within the last 2 years before the termination date.", and

(D) by striking "(other than a multiemployer plan)".

(2) CONFORMING AMENDMENT.—Paragraph (6) of section 4972(c) is amended by striking the sentence preceding the last sentence thereof.

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

SEC. 402. PENALTY TAX RELIEF FOR SOUND PENSION FUNDING.

(a) IN GENERAL.—Subsection (c) of section 4972 (relating to nondeductible contributions) is amended by adding at the end the following new paragraph:

"(7) DEFINED BENEFIT PLAN EXCEPTION.—In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph (A)(i)(I) thereof). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

TITLE V—REDUCING REGULATORY BURDENS

SEC. 501. INTERMEDIATE SANCTIONS FOR INADVERTENT FAILURES.

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

"(35) PROTECTION FROM DISQUALIFICATION UPON TIMELY CORRECTION OR PAYMENT OF FINE.—A trust shall not fail to constitute a qualified trust under this section if the plan of which such trust is a part has made good faith efforts to meet the requirements of this section, has inadvertently failed to satisfy 1 or more of such requirements, and either—

"(A) substantially corrects (to the extent possible) such failure before the date the plan becomes subject to a plan examination for the applicable year (as determined under rules prescribed by the Secretary), or

"(B) substantially corrects (to the extent possible) such failure on or after such date.

If the plan satisfies the requirement under subparagraph (B), the Secretary may require the sponsoring employer to make a payment to the Secretary in an amount that does not exceed an amount that bears a reasonable relationship to the severity of the plan's failure to satisfy the requirements of this section.".

(b) APPLICATION TO CASH OR DEFERRED ARRANGEMENTS.—Section 401(k) is amended by inserting after paragraph (12) the following new paragraph:

"(13) PROTECTION FROM DISQUALIFICATION.—Rules similar to the rules set forth in section 401(a)(35) shall apply for purposes of determining whether a cash or deferred arrangement is a qualified cash or deferred arrangement.".

(c) APPLICATION TO SECTION 403(b) ANNUITY CONTRACTS.—Section 403(b) is amended by inserting after paragraph (12) the following:

"(13) CORRECTION OF ERRORS.—For purposes of determining whether the exclusion from gross income under paragraph (1) is applicable to an employee for any taxable year, rules similar to the rules set forth in section 401(a)(35) shall apply to any annuity contract purchased under this subsection or any plan established to meet the requirements of this subsection.".

(d) INCOME INCLUSION FOR DISQUALIFICATION NOT APPLICABLE TO NONHIGHLY COMPENSATED EMPLOYEES.—Section 402(b) (relating to taxability of beneficiary of nonexempt trust) is amended by striking paragraph (4) and inserting the following:

"(4) INCOME INCLUSION FOR DISQUALIFICATION NOT APPLICABLE TO NONHIGHLY COMPENSATED EMPLOYEES.—Paragraphs (1) and (2) shall not apply to employees who are not highly compensated employees.

"(5) FAILURE TO MEET REQUIREMENTS OF SECTION 401(a)(26) OR 410(b).—If 1 of the reasons a trust is not exempt from tax under section 501(a) is the failure of the plan to meet the requirements of section 401(a)(26) or 410(b), then a highly compensated employee shall, in lieu of the amount determined under paragraph (1) or (2), include in gross income for the taxable year with or within which the taxable year of the trust ends an amount equal to the vested accrued benefit of such employee (other than the employee's investment in the contract) as of the close of such taxable year of the trust.

"(6) HIGHLY COMPENSATED EMPLOYEE.—For purposes of this subsection, the term 'highly compensated employee' has the meaning given such term by section 414(q).".

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

SEC. 502. REPEAL OF THE MULTIPLE USE TEST.

(a) IN GENERAL.—Paragraph (9) of section 401(m) is amended to read as follows:

"(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k), including regulations permitting appropriate aggregation of plans and contributions.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1999.

SEC. 503. SAFETY VALVE FROM MECHANICAL RULES.

(a) IN GENERAL.—The Secretary of the Treasury, by regulation, shall provide that the plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, if—

(1) the plan satisfies conditions prescribed by the Secretary to appropriately limit the availability of such test, and

(2) the plan is submitted to the Secretary for a determination of whether it satisfies such test.

Paragraph (2) shall only apply to the extent provided by the Secretary.

(b) EFFECTIVE DATES.—

(1) REGULATIONS.—The regulation required by subsection (a) shall apply to years beginning after December 31, 2000.

(2) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under subsection (a)(1) shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

SEC. 504. REFORM OF THE LINE OF BUSINESS RULES.

(a) REPEAL OF GATEWAY TEST.—Paragraph (5) of section 410(b) is amended to read as follows:

"(5) LINE OF BUSINESS EXCEPTION.—If, under section 414(r), an employer is treated as operating separate lines of business for a year, the employer may apply the requirements of this subsection for such year separately with respect to employees in each separate line of business.".

(b) REGULATIONS.—The Secretary of the Treasury shall modify the regulations issued under section 414(r) of the Internal Revenue Code of 1986 (relating to special rules for separate line of business) to—

(1) simplify the administrability of the rules for both the Secretary and plans, and

(2) permit employees to be allocated among lines of business based on all the facts and circumstances.

(c) EFFECTIVE DATES.—

(1) REPEAL.—The repeal made by subsection (a) shall apply to years beginning after December 31, 2000.

(2) REGULATIONS.—The regulations modified under subsection (b) shall apply to years beginning after December 31, 2000.

SEC. 505. COVERAGE TEST FLEXIBILITY.

(a) IN GENERAL.—Paragraph (1) of section 410(b) is amended by adding at the end the following:

"(D) In the case that the plan fails to meet the requirements of subparagraphs (A), (B) and (C), the plan—

"(i) satisfies subparagraph (B), as in effect immediately before the enactment of the Tax Reform Act of 1986,

"(ii) is submitted to the Secretary for a determination of whether it satisfies the requirement described in clause (i), and

"(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2000.

(2) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under regulations prescribed by the Secretary under section 410(a)(1)(D) of the Internal Revenue Code of 1986 shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

SEC. 506. INCREASE IN RETIREMENT PLAN CASH-OUT AMOUNT.

(a) AMENDMENT TO 1986 CODE.—Section 411(a)(11) (relating to restrictions on certain mandatory distributions) is amended by adding at the end the following:

"(D) INFLATION ADJUSTMENT.—In the case of any plan year beginning in a calendar year after 1999, the Secretary shall adjust annually the $5,000 amount contained in subparagraph (A) for increases in the cost of living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter ending September 30, 1999, and any increase which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.".

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

SEC. 507. MODIFICATION OF TIMING OF PLAN VALUATIONS.

(a) IN GENERAL.—Section 412(c)(9) (relating to annual valuation) is amended—

(1) by striking "For purposes" and inserting the following:

"(A) IN GENERAL.—For purposes", and

(2) by adding at the end the following:

"(B) ELECTION TO USE PRIOR YEAR VALUATION.—

"(i) IN GENERAL.—If, for any plan year—

"(I) an election is in effect under this subparagraph with respect to a plan, and

"(II) the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)), determined as of the valuation date for the preceding plan year, then this section shall be applied using the information available as of such valuation date.

"(ii) ADJUSTMENTS.—Information under clause (i) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iii) ELECTION.—An election under this subparagraph, once made, shall be irrevocable without the consent of the Secretary.".

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

SEC. 508. SECTION 457 INAPPLICABLE TO CERTAIN MIRROR PLANS.

(a) IN GENERAL.—Subsection (e) of section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations) is amended by adding at the end the following new paragraph:

"(17) This section shall not apply to a plan, program, or arrangement maintained solely for the purposes of providing retirement benefits for employees in excess of the limitations imposed by sections 401(a)(17) or 415.".

(b) CERTAIN DEFERRED COMPENSATION NOT TAKEN INTO ACCOUNT.—Subsection (c) of section 457 (relating to individuals who are participants in more than 1 plan) (as amended by section 108(a)) is amended by adding at the end the following: "This section shall be applied without regard to a plan, program, or arrangement described in subsection (e)(17).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

SEC. 509. ESOP DIVIDENDS MAY BE REINVESTED WITHOUT LOSS OF DIVIDEND DEDUCTION.

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

"(iii) is, at the election of such participants or their beneficiaries—

"(I) payable as provided in clause (i) or (ii), or

"(II) paid to the plan and reinvested in qualifying employer securities, or".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 1999.

SEC. 510. MODIFICATION OF 403(b) EXCLUSION ALLOWANCE TO CONFORM TO 415 MODIFICATION.

The Secretary of the Treasury shall modify the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 to render void the requirement that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance. For taxable years beginning after December 31, 1999, such regulations shall be applied as if such requirement were void.

SEC. 511. TREATMENT OF MULTIEMPLOYER PLANS UNDER SECTION 415.

(a) COMPENSATION LIMIT.—Paragraph (11) of section 415(b) (relating to limitation for defined benefit plans) is amended to read as follows:

"(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL AND MULTIEMPLOYER PLANS.—In the case of a governmental plan (as defined in section 414(d)) or a multiemployer plan (as defined in section 414(f)), subparagraph (B) of paragraph (1) shall not apply.".

(b) EXEMPTION FOR SURVIVOR AND DISABILITY BENEFITS.—Subparagraph (I) of section 415(b)(2) (relating to limitation for defined benefit plans) is amended—

(1) by inserting "or a multiemployer plan (as defined in section 414(f))" after "section 414(d))" in clause (i),

(2) by inserting "or multiemployer plan" after "governmental plan" in clause (ii), and

(3) by inserting "AND MULTIEMPLOYER" after "GOVERNMENTAL" in the heading.

(c) COMBINING AND AGGREGATION OF PLANS.—

(1) COMBINING OF PLANS.—Subsection (f) of section 415 (relating to combining of plans) is amended by adding at the end the following:

"(3) EXCEPTION FOR MULTIEMPLOYER PLANS.—Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated with any other plan maintained by an employer for purposes of applying the limitations established in this section.".

(2) CONFORMING AMENDMENT FOR AGGREGATION OF PLANS.—Subsection (g) of section 415 (relating to aggregation of plans) is amended by striking "The Secretary" and inserting "Except as provided in subsection (f)(3), the Secretary".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

SEC. 512. ELIMINATION OF PARTIAL TERMINATION RULES FOR MULTIEMPLOYER PLANS.

(a) PARTIAL TERMINATION RULES FOR MULTIEMPLOYER PLANS.—Section 411(d)(3) (relating to termination or partial termination; discontinuance of contributions) is amended by adding at the end the following new sentence: "This paragraph shall not apply in the case of a partial termination of a multiemployer plan.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to partial terminations beginning after December 31, 1999.

SEC. 513. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) IN GENERAL.—Subparagraph (A) of section 417(a)(6) is amended by striking "90-day" and inserting "one-year".

(2) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute "one year" for "90 days" each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) and the modifications required by paragraph (2) shall apply to years beginning after December 31, 1999.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 1999.

SEC. 514. CONFORMING AMENDMENTS RELATING TO ELECTION TO RECEIVE TAXABLE CASH COMPENSATION IN LIEU OF NONTAXABLE PARKING BENEFITS.

(a) IN GENERAL.—

(1) Clause (ii) of section 415(c)(3)(D) and subparagraph (B) of section 403(b)(3) are each amended by striking "section 125 or" and inserting "section 125, 132(f)(4), or".

(2) Paragraph (2) of section 414(s) is amended by striking "section 125, 402(e)(3)" and inserting "section 125, 132(f)(4), 402(e)(3)".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the amendment made by section 1072 of the Taxpayer Relief Act of 1997.

SEC. 515. EXTENSION TO INTERNATIONAL ORGANIZATIONS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—Subparagraph (G) of section 401(a)(5), subparagraph (H) of section 401(a)(26), subparagraph (G) of section 401(k)(3), and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 are each amended by inserting "or by an international organization which is described in section 414(d)" after "or instrumentality thereof)".

(b) CONFORMING AMENDMENTS.—

(1) The headings for subparagraph (G) of section 401(a)(5) and subparagraph (H) of section 401(a)(26) are each amended by inserting "AND INTERNATIONAL ORGANIZATION" after "GOVERNMENTAL".

(2) Subparagraph (G) of section 401(k)(3) is amended by inserting "STATE AND LOCAL GOVERNMENTAL AND INTERNATIONAL ORGANIZATION PLANS.—" after "(G)".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendment made by section 1505 of the Taxpayer Relief Act of 1997.

SEC. 516. EMPLOYEES OF TAX-EXEMPT ENTITIES.

(a) IN GENERAL.—The Secretary of the Treasury shall modify Treasury Regulations section 1.410(b)–6(g) to provide that employees of an organization described in section 403(b)(1)(A)(i) of the Internal Revenue Code of 1986 who are eligible to make contributions under section 403(b) pursuant to a salary reduction agreement may be treated as excludable with respect to a plan under section 401(k), or section 401(m) of such Code that is provided under the same general arrangement as a plan under such section 401(k), if—

(1) no employee of an organization described in section 403(b)(1)(A)(i) of such Code is eligible to participate in such section 401(k) plan or section 401(m) plan, and

(2) 95 percent of the employees who are not employees of an organization described in section 403(b)(1)(A)(i) of such Code are eligible to participate in such section 401(k) plan or section 401(m) plan.

(b) EFFECTIVE DATE.—The modification required by subsection (a) shall apply as of the same date set forth in section 1426(b) of the Small Business Job Protection Act of 1996.

SEC. 517. PERMISSIVE AGGREGATION OF COLLECTIVE BARGAINING UNITS.

(a) IN GENERAL.—Paragraph (3) of section 410(b) is amended by inserting the following immediately before the last sentence thereof: "Solely for purposes of applying this subsection to employees who are not described in subparagraph (A), an employer may elect to have subparagraph (A) not apply to one or more units of employees who are described in subparagraph (A).".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1999.

SEC. 518. REPEAL OF TRANSITION RULE RELATING TO CERTAIN HIGHLY COMPENSATED EMPLOYEES.

(a) IN GENERAL.—Paragraph (4) of section 1114(c)(4) of the Tax Reform Act of 1986 is hereby repealed.

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to plan years beginning on or after January 1, 2000.

SEC. 519. CLARIFICATION OF TREATMENT OF EMPLOYER-PROVIDED RETIREMENT ADVICE.

(a) IN GENERAL.—Section 132(e) (defining de minimis fringe) is amended by adding at the end the following:

"(3) TREATMENT OF CERTAIN RETIREMENT PLANNING SERVICES.—The provision of retirement planning services by an employer to employees, to the extent not described in subsection (d), shall be treated as a de minimis fringe.".

(b) NO CONSTRUCTIVE RECEIPT.—Section 132 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

"(m) RETIREMENT PLANNING.—

"(1) IN GENERAL.—No amount shall be included in the gross income of an employee solely because the employee may choose between any retirement planning fringe and compensation which would otherwise be includible in the gross income of such employee.

"(2) NONDISCRIMINATION REQUIREMENT.—Paragraph (1) shall apply to a highly compensated employee only if the choice described in such paragraph is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of highly compensated employees.

"(3) RETIREMENT PLANNING FRINGE.—For purposes of this subsection, the term 'retirement planning fringe' means any retirement planning services provided by an employer to an employee which are not included in the gross income of the employee by reason of subsection (d) or (e).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 1999.

SEC. 520. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 or section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act (other than title VI), or pursuant to any regulation issued under this Act (other than title VI), and

(B) on or before the last day of the first plan year beginning on or after January 1, 2002.

In the case of a government plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting "2004" for "2002".

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

(B) such plan or contract amendment applies retroactively for such period.

SEC. 521. REPORTING SIMPLIFICATION.

(a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR OWNERS AND THEIR SPOUSES.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $500,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term "one-participant retirement plan" means a retirement plan that—

(A) on the first day of the plan year—

(i) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated), or

(ii) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation),

(B) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business,

(C) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses),

(D) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

(E) does not cover a business that leases employees.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case of a retirement plan which covers less than 25 employees on the 1st day of the plan year and meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2), the Secretary of the Treasury shall provide for the filing of a simplified annual return that is substantially similar to the annual return required to be filed by a one-participant retirement plan.

(c) TREATMENT OF ANNUAL REPORTS REQUIRED UNDER ERISA.—Section 629 shall apply with respect to annual reports required under sections 103 and 4065 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1023 and 1365).

SEC. 522. MODEL PLANS FOR SMALL BUSINESSES.

(a) IN GENERAL.—Not later than December 31, 2000, the Secretary of the Treasury is directed to issue at least one model defined contribution plan and at least one model defined benefit plan that fit the needs of small businesses and that shall be treated as meeting the requirements of section 401(a) of the Internal Revenue Code of 1986 with respect to the form of the plan. To the extent that the requirements of section 401(a) of such Code are modified after the issuance of such plans, the Secretary of the Treasury shall, in a timely manner, issue model amendments that, if adopted in a timely manner by an employer that has a model plan in effect, shall cause such model plan to be treated as meeting the requirements of section 401(a) of such Code, as modified, with respect to the form of the plan.

(b) MASTER AND PROTOTYPE PLAN ALTERNATIVE.—The Secretary of the Treasury may, in its discretion, satisfy the requirements of subsection (a) through the enhancement and simplification of the Secretary's programs for master and prototype plans in such a manner as to achieve the purposes of subsection (a).

TITLE VI—AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

Subtitle A—Expanding Coverage and Increasing Portability

SEC. 601. PLAN LOANS FOR SUBCHAPTER S OWNERS, PARTNERS, AND SOLE PROPRIETORS.

(a) IN GENERAL.—Paragraph (2) of section 408(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(d)(2)) is amended by adding at the end the following new subparagraph:

"(C) For purposes paragraph (1)(A), the term 'owner-employee' shall only include a person described in clause (ii) or (iii) of subparagraph (A)."

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to loans made after December 31, 2000.

SEC. 602. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.

(a) IN GENERAL.—Subparagraph (A) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

(1) in clause (i), by inserting "other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined)," after "single-employer plan,",

(2) in clause (iii), by striking the period at the end and inserting ", and", and

(3) by adding at the end the following new clause:

"(iv) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.".

(b) DEFINITION OF NEW SINGLE-EMPLOYER PLAN.—Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended by adding at the end the following new subparagraph:

"(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) had not established or maintained a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

"(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

"(II) In the case of a plan maintained by 2 or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans established after December 31, 2000.

SEC. 603. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

(a) NEW PLANS.—Subparagraph (E) of section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by adding at the end the following new clause:

"(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term 'applicable percentage' means—

"(I) 0 percent, for the first plan year.

"(II) 20 percent, for the second plan year.

"(III) 40 percent, for the third plan year.

"(IV) 60 percent, for the fourth plan year.

"(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.".

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)) is amended—

(1) in subparagraph (E)(i) by striking "The" and inserting "Except as provided in subparagraph (G), the", and

(2) by inserting after subparagraph (F) the following new subparagraph:

"(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

"(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by 2 or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether 25-or-fewer-employees limitation has been satisfied.".

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans established after December 31, 2000.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2000.

SEC. 604. FASTER VESTING OF CERTAIN EMPLOYER MATCHING CONTRIBUTIONS.

(a) IN GENERAL.—Section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)) is amended—

(1) in paragraph (2), by striking "A plan" and inserting "Except as provided in paragraph (4), a plan", and

(2) by adding at the end the following:

"(4) FASTER VESTING FOR MATCHING CONTRIBUTIONS.—In the case of matching contributions (as defined in section 401(m)(4)(A) of the Internal Revenue Code of 1986), paragraph (2) shall be applied—

"(A) by substituting '3 years' for '5 years' in subparagraph (A), and

"(B) by substituting the following table for the table contained in subparagraph (B):

"Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.".

(b) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2000.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified by the date of enactment of this Act, the amendments made by this section shall not apply to plan years beginning before the earlier of—

(A) the later of—

(i) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

(ii) January 1, 2001, or

(B) January 1, 2005.

(3) SERVICE REQUIRED.—With respect to any plan, the amendments made by this section shall not apply to any employee before the date that such employee has 1 hour of service under such plan in any plan year to which the amendments made by this section apply.

SEC. 605. TREATMENT OF FORMS OF DISTRIBUTION.

(a) IN GENERAL.—Subsection (g) of section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054) is amended—

(1) in paragraph (2), by striking the last sentence and inserting the following: "The Secretary of the Treasury may by regulations provide that this paragraph shall not apply to any plan amendment that does not adversely affect the rights of participants in a material manner."; and

(2) by adding at the end the following:

"(4)(A) A defined contribution plan (in this subparagraph referred to as the 'transferee plan') shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this paragraph referred to as the 'transferor plan') to the extent that—

"(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

"(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

"(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

"(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election;

"(v) if the transferor plan provides for an annuity as the normal form of distribution under the plan in accordance with section 205, the transfer is made with the consent of the participant's spouse (if any), and such consent meets requirements similar to the requirements imposed by section 205(c)(2); and

"(vi) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

"(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

"(5) Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

"(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

"(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.".

(b) REGULATIONS.—Not later than December 31, 2001, the Secretary of the Treasury is directed to issue final regulations under section 204(g) of the Employee Retirement Income Security Act of 1974. Such regulations shall apply to plan years beginning after December 31, 2001 or such earlier date as is specified by the Secretary of the Treasury.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2000.

SEC. 606. EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT AMOUNTS.

(a) IN GENERAL.—Section 203(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(e)) is amended by adding at the end the following:

"(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this paragraph, the term 'rollover contributions' means any rollover contribution under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Internal Revenue Code of 1986.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2000.

Subtitle B—Strengthening Pension Security and Enforcement

SEC. 611. REPEAL OF 150 PERCENT OF CURRENT LIABILITY FUNDING LIMIT.

(a) IN GENERAL.—Section 302(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended—

(1) by striking "the applicable percentage" in subparagraph (A)(i)(I) and inserting "in the case of plan years beginning before January 1, 2004, the applicable percentage", and

(2) by amending subparagraph (F) to read as follows:

"(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

"In the case of any plan year beginning in—	The applicable percentage is—
2001	160
2002	165
2003	170.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2000.

SEC. 612. MISSING PARTICIPANTS.

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

"(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

"(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

"(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

"(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

"(A) to the corporation, or

"(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

"(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

"(A) in a single sum (plus interest), or

"(B) in such other form as is specified in regulations of the corporation.

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

"(A) the plan is a pension plan (within the meaning of section 3(2))—

"(i) to which the provisions of this section do not apply (without regard to this subsection), and

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

"(B) at the time the assets are to be distributed upon termination, the plan—

"(i) has missing participants, and

"(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

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

(b) CONFORMING AMENDMENTS.—Section 206(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1056(f)) is amended—

(1) by striking "title IV" and inserting "section 4050"; and

(2) by striking "the plan shall provide that,".

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

SEC. 613. PERIODIC PENSION BENEFITS STATEMENTS.

(a) IN GENERAL.—Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025 (a)) is amended to read as follows:

"(a)(1) Except as provided in paragraph (2)—

"(A) The administrator of an individual account plan shall furnish a pension benefit statement—

"(i) to a plan participant at least once annually, and

"(ii) to a plan beneficiary upon written request.

"(B) The administrator of a defined benefit plan shall furnish a pension benefit statement—

"(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

"(ii) to a participant or beneficiary of the plan upon written request.

"(2) Notwithstanding paragraph (1), the administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall only be required to furnish a pension benefit statement under paragraph (1) upon the written request of a participant or beneficiary of the plan.

"(3) A pension benefit statement under paragraph (1)—

"(A) shall indicate, on the basis of the latest available information—

"(i) the total benefits accrued, and

"(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

"(B) shall be communicated in a manner calculated to be understood by the average plan participant, and

"(C) may be provided in written, electronic, telephonic, or other appropriate form.

"(4) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, telephonic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.".

(b) CONFORMING AMENDMENTS.—

(1) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking subsection (d).

(2) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

"(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in subsection (a)(1)(A) or (a)(1)(B)(ii), whichever is applicable, in any 12-month period.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2000.

SEC. 614. CIVIL PENALTIES FOR BREACH OF FIDUCIARY RESPONSIBILITY.

(a) IMPOSITION AND AMOUNT OF PENALTY MADE DISCRETIONARY.—Section 502(l)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)(1)) is amended—

(1) by striking "shall" and inserting "may", and

(2) by striking "equal to" and inserting "not greater than".

(b) APPLICABLE RECOVERY AMOUNT.—Section 502(l)(2) of such Act (29 U.S.C. 1132(l)(2)) is amended to read as follows:

"(2) For purposes of paragraph (1), the term 'applicable recovery amount' means any amount which is recovered from any fiduciary or other person (or from any other person on behalf of any such fiduciary or other person) with respect to a breach or violation described in paragraph (1) on or after the 30th day following receipt by such fiduciary or other person of written notice from the Secretary of the violation, whether paid voluntarily or by order of a court in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5). The Secretary may, in the Secretary's sole discretion, extend the 30-day period described in the preceding sentence.".

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

"(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

"(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to any breach of fiduciary responsibility or other violation of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 occurring on or after the date of enactment of this Act.

(2) TRANSITION RULE.—In applying the amendment made by subsection (b) (relating to applicable recovery amount), a breach or other violation occurring before the date of enactment of this Act which continues after the 180th day after such date (and which may have been discontinued at any time during its existence) shall be treated as having occurred after such date of enactment.

SEC. 615. PROTECTION OF INVESTMENT OF EMPLOYEE CONTRIBUTIONS TO 401(k) PLANS.

(a) IN GENERAL.—Section 1524(b) of the Taxpayer Relief Act of 1997 is amended to read as follows:

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

"(2) NONAPPLICATION TO PREVIOUSLY ACQUIRED PROPERTY.—The amendments made by this section shall not apply to any elective deferral that is invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired by the plan before January 1, 1999.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply as if included in the provision of the Taxpayer Relief Act of 1997 to which it relates.

SEC. 616. NOTICE OF SIGNIFICANT REDUCTION IN BENEFIT ACCRUALS.

(a) IN GENERAL.—Subsection (h) of section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054) is amended to read as follows:

"(h) NOTICE OF SIGNIFICANT REDUCTION IN BENEFIT ACCRUALS.—

"(1) If a plan described in paragraph (4) is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide a notice to—

"(A) each affected participant in the plan,

"(B) each affected beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)), and

"(C) each employee organization representing affected participants in the plan,

except that such notice shall instead be provided to a person designated to receive such notice on behalf of any person referred to in paragraph (A), (B), or

(C). For purposes of this paragraph, an affected participant or beneficiary is a participant or beneficiary to whom the significant reduction described in this paragraph is reasonably expected to apply.

"(2) The notice required by paragraph (1) shall—

"(A) include the plan amendment, or a summary of such plan amendment, and its effective date, and

"(B) provide a notification and description of the reduction described in paragraph (1).

A notification and description shall not fail to satisfy paragraph (2)(B) by reason of a failure to provide the specific amount of the reduction with respect to any participant or beneficiary.

"(3) The notice required by paragraph (1) shall be provided no less than 30 days prior to the effective date of the plan amendment.

"(4) A plan is described in this paragraph if such plan is—

"(A) a defined benefit plan, or

"(B) an individual account plan which is subject to the funding standards of section 302.

"(5) In the case of a material failure to comply with requirements of this subsection with respect to more than a de minimis number of persons described in paragraph (1), the plan amendment to which the failure relates shall not be effective with respect to such persons for any period prior to the expiration of 30 days following the date on which a notice is provided in accordance with this subsection. For purposes of this paragraph, the term 'material failure' includes any failure that results in materially less information being provided to the persons described in paragraph (1).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan amendments that are adopted more than 120 days after the date of enactment of this Act.

SEC. 617. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking "2001 and 2005 on or after September 1 of each year involved" and inserting "2001, 2005, and 2009 in the month of September of each year involved";

(2) in subsection (b), by adding at the end the following new sentence: "To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with the American Savings Education Council.";

(3) in subsection (e)(2)—

(A) by striking subparagraph (D) and inserting the following:

"(D) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;";

(B) by redesignating subparagraph (G) as subparagraph (J); and

(C) by inserting after subparagraph (F) the following new subparagraphs:

"(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

"(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

"(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and";

(4) in subsection (e)(3)(A)—

(A) by striking "There shall be no more than 200 additional participants." and inserting "The participants in the National Summit shall also include additional participants appointed under this subparagraph.";

(B) by striking "one-half shall be appointed by the President," in clause (i) and inserting "not more than 100 participants shall be appointed under this clause by the President,", and by striking "and" at the end of clause (i);

(C) by striking "one-half shall be appointed by the elected leaders of Congress" in clause (ii) and inserting "not more than 100 participants shall be appointed under this clause by the elected leaders of Congress", and by striking the period at the end of clause (ii) and inserting "; and"; and

(D) by adding at the end the following new clause:

"(iii) The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this clause additional participants to the National Summit. The number of such additional participants appointed under this clause may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by the organization referred to in subsection (b)(2) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.";

(5) in subsection (e)(3)(B), by striking "January 31, 1998" in subparagraph (B) and inserting "May 1, 2001, May 1, 2005, and May 1, 2009, for each of the subsequent summits, respectively";

(6) in subsection (f)(1)(C), by inserting ", no later than 90 days prior to the date of the commencement of the National Summit," after "comment" in paragraph (1)(C);

(7) in subsection (g), by inserting ", in consultation with the congressional leaders specified in subsection (e)(2)," after "report";

(8) in subsection (i)—

(A) by striking "beginning on or after October 1, 1997" in paragraph (1) and inserting "2001, 2005, and 2009"; and

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

"(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions received in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph."; and

(9) in subsection (k)—

(A) by striking "shall enter into a contract on a sole-source basis" and inserting "may enter into a contract on a sole-source basis"; and

(B) by striking "fiscal year 1998" and inserting "fiscal years 2001, 2005, and 2009".

SEC. 618. CONFORMING AMENDMENTS RELATING TO TRANSFER OF EXCESS DEFINED BENEFIT PLAN ASSETS FOR RETIREE HEALTH BENEFITS.

(a) IN GENERAL.—Title I of the Employee Retirement Income Security Act of 1974 is amended—

(1) in section 101(e)(3) (29 U.S.C. 1021(e)(3)), by striking "1995" and inserting "2001";

(2) in section 403(c)(1) (29 U.S.C. 1103(c)(1)), by striking "1995" and inserting "2001"; and

(3) in section 408(b)(13) (29 U.S.C. 1108(b)(13))—

(A) by striking "in a taxable year beginning before January 1, 2001" and inserting "made before October 1, 2009"; and

(B) by striking "1995" and inserting "2001".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to taxable years beginning after December 31, 2000.

SEC. 619. MODEL SPOUSAL CONSENT LANGUAGE AND QUALIFIED DOMESTIC RELATIONS ORDER.

(a) MODEL SPOUSAL CONSENT LANGUAGE.—Section 205(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(c)) is amended by adding at the end the following new paragraph:

"(9) Not later than January 1, 2001, the Secretary of Labor shall develop model language for the spousal consent required under paragraph (2) which—

"(A) is written in a manner calculated to be understood by the average person, and

"(B) discloses in plain terms whether—

"(i) the waiver is irrevocable, and

"(ii) the waiver may be revoked by a qualified domestic relations order.".

(b) MODEL QUALIFIED DOMESTIC RELATIONS ORDER.—Section 206(d)(3) of such Act (29 U.S.C. 1056(d)(3)) is amended by adding at the end the following new subparagraph:

"(O) Not later than January 1, 2001, the Secretary shall develop language for a qualified domestic relations order which meets—

"(i) the requirements of subparagraph (B)(i), and

"(ii) the requirements of this Act related to the need to consider the treatment of any lump sum payment, qualified joint and survivor annuity, or qualified preretirement survivor annuity.".

(c) PUBLICITY.—The Secretary of Labor shall include publicity for the model language required by the amendments made by this section in the pension outreach efforts undertaken by each Secretary.

SEC. 620. ELIMINATION OF ERISA DOUBLE JEOPARDY.

(a) ELIMINATION OF SECOND LAWSUITS BY THE SECRETARY.—Section 502(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(h)) is amended—

(1) by inserting "(1)" after "(h)", and

(2) by adding at the end the following:

"(2) In any case in which—

"(A) a complaint in an action brought against a person under subsection (a)(2) is served in accordance with paragraph (1), and

"(B) the action is maintained as a class action or derivative action under the Federal Rules of Civil Procedure,

"(C) the action is resolved by a court-approved settlement agreement,

"(D) the complaint is served upon the Secretary at least 90 days prior to final court approval of the settlement agreement, and

"(E) the Secretary receives a fully executed copy of the settlement agreement within the time established by the court for notifying the plan's participants of the proposed compromise pursuant to Rule 23 or 23.1 of the Federal Rules of Civil Procedure,

the Secretary shall be barred from litigating any claim against such person under subsection (a)(2) that was, or could have been, brought in that action with respect to the same plan. Notwithstanding this paragraph, the Secretary shall not be barred from litigating any claim against such person under subsection (a)(2) if the Secretary filed a complaint under subsection (a)(2) prior to the final court approval of the settlement agreement.".

(b) EFFECTIVE DATE.—The amendments made by this section are effective with respect to all actions or claims commenced by the Secretary that are pending on or after the date of the enactment of this Act.

Subtitle C—Reducing Regulatory Burdens

SEC. 621. MODIFICATION OF TIMING OF PLAN VALUATIONS.

(a) IN GENERAL.—Paragraph (9) of section 302(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended—

(1) by inserting "(A)" after "(9)", and

(2) by adding at the end the following:

"(B)(i) Except as provided in clause (ii), if, for any plan year—

"(I) an election is in effect under this subparagraph with respect to a plan, and

"(II) the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)), determined as of the valuation date for the preceding plan year,

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

"(ii)(I) Clause (i) shall not apply for more than 2 consecutive plan years and valuation shall be under subparagraph (A) with respect to any plan year to which clause (i) does not apply by reason of this clause.

"(II) Subclause (I) shall not apply to the extent that more frequent valuations are required under the regulations under subparagraph (A).

"(iii) Information under clause (i) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

"(iv) An election under this subparagraph, once made, shall be irrevocable without the consent of the Secretary of the Treasury.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2000.

SEC. 622. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

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

"(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(i) owns the entire interest in an unincorporated trade or business,

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

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

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

"(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

"(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

"(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.".

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking "section 4022(b)(5)" and inserting "section 4022(b)(5)(B)".

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

(A) by striking "(5)" in paragraph (2) and inserting "(4), (5),", and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following:

"(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.".

(c) CONFORMING AMENDMENTS.—

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

(A) in subsection (b)(9), by striking "as defined in section 4022(b)(6)", and

(B) by adding at the end the following:

"(d) For purposes of subsection (b)(9), the term "substantial owner" means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(1) owns the entire interest in an unincorporated trade or business,

"(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

"(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

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

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

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after the December 31, 2000, and

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

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on the date of enactment of this Act.

SEC. 623. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) IN GENERAL.—Subparagraph (A) of section 205(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055) is amended by striking "90-day" and inserting "180-day".

(2) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations of such Secretary under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to the extent that they relate to sections 203(e) and 205 of such Act to substitute "180 days" for "90 days" each place it appears.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) and the modifications required by paragraph (2) shall apply to years beginning after December 31, 2000.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2000.

SEC. 624. ANNUAL REPORT DISSEMINATION.

(a) IN GENERAL.—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by striking "shall furnish" and inserting "shall make available for examination (and, upon request, shall furnish)".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to reports for years beginning after December 31, 1998.

SEC. 625. EXCESS BENEFIT PLANS.

(a) IN GENERAL.—Section 3(36) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(36)) is amended to read as follows:

"(36) The term 'excess benefit plan' means a plan, without regard to whether such plan is funded, maintained by an employer solely for the purpose of providing benefits to employees in excess of any limitation imposed by section 401(a)(17) or 415 of the Internal Revenue Code of 1986 or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 1999.

SEC. 626. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION.—The Secretary of Labor shall modify the regulation under section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that, except in the case of employment, subsequent to the commencement of payment of benefits, with a former employer, the notification required by such regulation—

(1) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(2) need not include a copy of the relevant plan provisions.

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 1999.

SEC. 627. PROVISIONS RELATING TO PLAN AMENDMENTS.

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) such plan shall not fail to meet the requirements of section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act, or pursuant to any regulation issued under this Act, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2003.

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect, and

(B) such plan or contract amendment applies retroactively for such period.

SEC. 628. SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.

(a) IN GENERAL.—In the case of a retirement plan which covers less than 25 employees on the first day of the plan year and meets the requirements described in subsection (b), the Secretary of the Treasury shall provide for the filing of a simplified annual return that is substantially similar to the annual return required to be filed by a one-participant retirement plan.

(b) REQUIREMENTS.—A plan meets the requirements of this subsection if it—

(1) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business,

(2) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

(3) does not cover a business that leases employees.

AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT TO PROMOTE RETIREMENT SECURITY

PURPOSE

The purpose of H.R. 1102, the "Comprehensive Retirement Security and Pension Reform Act of 1999," is to makes retirement security more available to millions of workers by (1) expanding small business retirement plans, (2) allowing workers to save more, (3) addressing the needs of an increasingly mobile workforce through greater portability and other changes, (4) making pensions more secure, and (5) cutting the red tape that has hamstrung employers who want to establish pension plans for their workers.

COMMITTEE ACTION

H.R. 1102 was introduced by Representative Rob Portman, with the lead co-sponsorship of Representative Ben Cardin, on March 11, 1999. The bill has 136 cosponsors—72 Republicans and 64 Democrats, including Committee Chairman Bill Goodling, Subcommittee on Employer-Employee Relations Chairman John Boehner (an original cosponsor), and Subcommittee Ranking Member Rob Andrews. The Subcommittee on Employer-Employee Relations held a legislative hearing on the bill on June 29, 1999. At the hearing, entitled "Enhancing Retirement Security: A Hearing on H.R. 1102, The 'Comprehensive Retirement Security and Pension Reform Act of 1999,'" testimony was received from the bill's authors, Representatives Portman and Cardin.

On July 14, 1999, the Committee on Education and the Workforce approved H.R. 1102, as amended, by a voice vote, a quorum being present, and by voice vote ordered the bill favorably reported.

Fifteen provisions of Title VI of the bill, containing amendments to the Employee Retirement Income Security Act (ERISA), were added to H.R. 2488, the "Taxpayer Refund and Relief Act of 1999," which passed the House and Senate on August 5, 1999. The tax bill passed by Congress included provisions either identical or similar to sections 601–606, 611–612, 615–616, 618, 621–622, and 627–628 of H.R. 1102, as reported.

Two Committee bills relating to retirement security and pensions were enacted into law in the 105th Congress. The Savings Are Vital to Everyone's Retirement (SAVER) Act, P.L. 105–92, initiated a public-private partnership to educate American workers about retirement savings and directed the Department of Labor to maintain an ongoing program of public information and outreach. The bill also convened a National Summit on Retirement Savings held June 4–5, 1998 (and to be held again in 2001 and 2005), co-hosted by the President and the Congressional leadership.

The 105th Congress also passed P.L. 105–72, legislation that permits small investment advisers who are registered only with state security regulators to continue to serve as investment managers for pension plans. Without this bill, the practices of thousands of small investment advisers—and the pension plans of their clients—would have been seriously disrupted as an unintended result of 1996 security reform legislation.

During the last three years, the Subcommittee on Employer-Employee Relations has held a series of hearings on the subject of promoting the retirement security of American workers: "Preparing Americans For Retirement: The Roadblocks To Increased Savings," June 2, 1998 (jointly with the Senate Special Committee on Aging); "Defusing the Retirement Time Bomb: Encouraging Pension Savings," February 12, 1997; "Early Retirement in Higher Education," May 22, 1997 (which led to enactment of the Faculty Retirement Incentive Act as Title IX, Part D of P.L. 105–244); "Issues In Pension Reform," June 26, 1996; and "Retirement Crisis Ahead?: Exploring Ways to Simplify and Expand Pensions," June 6, 1996.

The Committee was also involved in crafting the ERISA pension provisions contained in the Small Business Job Protection Act of 1996, P.L. 104–188, and the Taxpayer Relief Act of 1997, P.L. 105–34.

Committee Statement and Views

Title VI—Amendments to the Employee Retirement Income Security Act of 1974 [1]

Subtitle A—Expanding Coverage and Increasing Portability

SECTION 601—PLAN LOANS FOR SUBCHAPTER S OWNERS, PARTNERS AND SOLE PROPRIETORS

Current law

A qualified retirement plan or Internal Revenue Code section 403(b) arrangement is permitted to make loans to participants.

[1] This report only contains Committee views on those provisions of H.R. 1102 within the Committee's jurisdiction.

However, the statutory exemption from ERISA prohibited transaction rules for participant loans, sec. 408 (with a counterpart in the Internal Revenue Code),[2] generally does not apply to small business owners if the business is unincorporated (i.e., partnerships and sole-proprietorships) or has made an election to be taxed under the provisions of Code subchapter S.

The statutory exemptions to the prohibited transaction rules do not apply to certain transactions in which the plan makes a loan to an owner-employee. For purposes of the prohibited transaction rules, an owner-employee means (1) a sole proprietor, (2) a partner who owns more than 10 percent of either the capital interest or the profits interest in the partnership, (3) an employee or officer of a Code subchapter S corporation who owns more than 5 percent of the outstanding stock of the corporation, and (4) the owner of an individual retirement arrangement ("IRA"). The term owner-employee also includes certain family members of an owner-employee and certain corporations owned by an owner-employee.

Explanation of provision

The sec. 408 prohibited transaction rules are amended to provide equal access to participant loans for all employees, including the owners of small businesses that are unincorporated or that choose to be taxed under Code subchapter S.

Effective Date—The provision is effective with respect to loans made after December 31, 2000.

Rationale

The Committee believes that the present-law prohibited transaction rules regarding loans unfairly discriminate against the owners of unincorporated businesses and subchapter S corporations. For example, under present law, the sole shareholder of a C corporation may take advantage of the statutory exemption to the prohibited transaction rules for loans, but an individual who does business as a sole proprietor may not. The restrictions on loans to owner-employees also reduce the incentive to establish plans and, for plans in existence, make it less likely that an affected plan will offer a loan feature.

The provision generally eliminates the special present-law rules relating to plan loans made to an owner-employee. Thus, the general statutory exemption applies to such transactions. Present law continues to apply with respect to IRAs.

SECTION 602—REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS

Current law

Under present-law sec. 4006, the Pension Benefit Guaranty Corporation ("PBGC") provides insurance protection for participants and beneficiaries under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan is terminated with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by pre-

[2] Note all section references are to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq., unless otherwise indicated.

mium payments from employers who sponsor defined benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets. No variable rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

Explanation of provision

Under the provision, for the first five plan years of a new single-employer plan of a small employer, the flat-rate PBGC premium is $5 per plan participant.

A small employer is a contributing sponsor that, on the first day of the plan year, has 100 or fewer employees. For this purpose, all employees of the members of the controlled group of the contributing sponsor are taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) are taken into account in determining whether the plan is a plan of a small employer.

A new plan means a defined benefit plan maintained by a contributing sponsor if, during the 36-month period ending on the date of adoption of the plan, such contributing sponsor (or controlled group member or a predecessor of either) has not established or maintained a plan subject to PBGC coverage with respect to which benefits were accrued for substantially the same employees as are in the new plan.

Effective Date—The provisions relating to new plans are effective for plans established after December 31, 2000.

Rationale

The Committee believes that reducing the PBGC premiums for new and small plans will help encourage the establishment of defined benefit pension plans. The number of single-employer defined benefit plans covered by PBGC has declined dramatically in recent years—from 112,000 in 1985 to 43,000 in 1997. Most of the decline is because of the termination of small plans. An employer incurs a number of one-time costs to establish a plan. The proposal is intended to remove the PBGC premium as a disincentive to the establishment of a defined benefit plan by a small employer.

SECTION 603—REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS

Current law

Under present law, the PBGC provides insurance protection for participants and beneficiaries under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan is terminated with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by premium payments from employers who sponsor defined

benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets. No variable rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

The PBGC guarantee is phased in ratably in the case of plans that have been in effect for less than 5 years, and with respect to benefit increases from a plan amendment that was in effect for less than 5 years before termination of the plan.

Explanation of provision

The provision amends sec. 4006(a)(3) to provide that the variable premium is phased in for new defined benefit plans over a six-year period starting with the plan's first plan year. The amount of the variable premium is a percentage of the variable premium otherwise due, as follows: 0 percent of the otherwise applicable variable premium in the first plan year; 20 percent in the second plan year; 40 percent in the third plan year; 60 percent in the fourth plan year; 80 percent in the fifth plan year; and 100 percent in the sixth plan year (and thereafter).

A new defined benefit plan is defined as in section 602 of this Act (relating to reduced PBGC premiums for new small employer plans).

The provision also provides that, in the case of any plan (not just a new plan) of an employer with 25 or fewer employees, the variable-rate premium, with respect to any participant, is no more than $5 multiplied by the number of plan participants in the plan at the close of the preceding year.

Effective Date—The provision reducing the PBGC variable premium for small plans is effective for years beginning after December 31, 2000.

Rationale

The Committee believes this provision will help encourage the establishment of defined benefit pension plans. The number of single-employer defined benefit plans covered by PBGC has declined dramatically in recent years—from 112,000 in 1985 to 43,000 in 1997. Moreover, employers that establish plans are not choosing defined benefit plans. The PBGC variable rate premium can be a disincentive to some employers.

SECTION 604—FASTER VESTING OF CERTAIN EMPLOYER MATCHING CONTRIBUTIONS

Current law

Section 203(a) requires a participant's employer-provided benefit to vest in one of two ways: (1) a participant acquires a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the completion of 5 years of service; or (2) a participant has a nonforfeitable right to at least

20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent after 4 years of service, 60 percent after 5 years of service, 80 percent after 6 years of service, and 100 percent after 7 years of service.

Explanation of provision

The provision applies an expedited vesting schedules to employer matching contributions. Under the provision, employer matching contributions have to vest in one of 2 accelerated ways: (1) a participant acquires a nonforfeitable right to 100 percent of employer matching contributions upon the completion of 3 years of service; or (2) a participant has a nonforfeitable right to 20 percent of employer matching contributions for each year of service beginning with the participant's second year of service and ending with 100 percent after 6 years of service.

Effective Date—The provision is effective for plan years beginning after December 31, 2000, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement. The provision does not apply to any employee until the employee has an hour of service after the effective date. In applying the new vesting schedule, service before the effective date is taken into account.

Rationale

The Committee understands that many employees, particularly lower- and middle-income employees, do not take full advantage of the retirement savings opportunities provided by their employer's 401(k) plan. The Committee believes that providing faster vesting for matching contributions will make section 401(k) plans more attractive for employees, particularly lower- and middle-income employees, and will encourage workers to save more for their own retirement. In addition, faster vesting for matching contributions will enable short-service employees to accumulate greater retirement savings. Given the increasingly mobile nature of today's workforce, there is a growing risk that many participants will leave employment before vesting in their matching contributions.

SECTION 605—TREATMENT OF FORMS OF DISTRIBUTIONS

Current law

The sec. 204(g) "anti-cutback rule" generally provides that when a participant's benefits are transferred from one plan to another, the transferee plan must preserve all forms of distribution that were available under the transferor plan. The anti-cutback rule also generally provides that, without regard to a transfer, a plan may not eliminate forms of distribution. An amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Department of Treasury regulations, eliminating an optional form of benefit. The prohibition against the elimination of an optional form of benefit applies to plan mergers, spinoffs, transfers, and transactions amending or having the effect of amending a plan or plans to transfer plan benefits.

Explanation of provision

A defined contribution plan to which benefits are transferred is not treated as reducing a participant's or beneficiary's accrued benefit even though it does not provide all of the forms of distribution previously available under the transferor plan if (1) the plan receives from another defined contribution plan a direct transfer of the participant's or beneficiary's benefit accrued under the transferor plan, or the plan results from a merger or other transaction that has the effect of a direct transfer (including consolidations of benefits attributable to different employers within a multiple employer plan), (2) the terms of both the transferor plan and the transferee plan authorize the transfer, (3) the transfer occurs pursuant to a voluntary election by the participant or beneficiary that is made after the participant or beneficiary received a notice describing the consequences of making the election, (4) if the transferor plan provides for an annuity as the normal form of distribution in accordance with the joint and survivor annuity rules (sec. 205), the participant's spouse (if any) consents to the transfer in a manner similar to the consent required by section 205, and (5) the transferee plan allows the participant or beneficiary to receive distribution of his or her benefit under the transferee plan in the form of a single sum distribution.

In addition, except to the extent provided by the Secretary of the Treasury in regulations, a defined contribution plan is not treated as reducing a participant's accrued benefit if (1) a plan amendment eliminates a form of distribution previously available under the plan, (2) a single sum distribution is available to the participant at the same time or times as the form of distribution eliminated by the amendment, and (3) the single sum distribution is based on the same or greater portion of the participant's accrued benefit as the form of distribution eliminated by the amendment.

The Secretary is directed to issue, not later than December 31, 2001, final regulations under section 204(g) implementing the provision.

Furthermore, the provision authorizes the Secretary of the Treasury to provide by regulations that the prohibitions against eliminating or reducing an early retirement benefit, a retirement-type subsidy, or an optional form of benefit not apply to plan amendments that do not adversely affect the rights of participants in a material manner but that do eliminate or reduce early retirement benefits, retirement-type subsidies, and optional forms of benefit that create significant burdens and complexities for a plan and its participants.

It is intended that the factors to be considered in determining whether an amendment has a materially adverse effect on a participant would include (1) all of the participant's early retirement benefits, retirement-type subsidies, and optional forms of benefits that are reduced or eliminated by the amendment, (2) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect with respect to a participant after the amendment effective date provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment, (3) the number of years before the participant attains normal retirement age under the plan (or early retirement age, as applica-

ble), (4) the size of the participant's benefit that is affected by the plan amendment, in relation to the amount of the participant's compensation, and (5) the number of years before the plan amendment is effective.

Effective Date—The provision is effective for years beginning after December 31, 2000.

Rationale

The Committee understands that the application of the prohibition against the elimination of any optional form of benefit to plan mergers and transfers with respect to defined contribution plans frequently results in complexity and confusion, especially in the context of business acquisitions and similar transactions. In addition, the Committee understands that a defined contribution plan participant who is entitled to receive a single sum distribution generally may roll over such a distribution to an IRA and control the manner of distribution from the IRA.

The requirement that a plan preserve all forms of distribution can significantly increase the cost of plan administration. This requirement also causes confusion among plan participants who can have separate parts of their retirement benefits subject to very different plan provisions.

SECTION 606—EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT AMOUNTS

Current law

Under sec. 203(e), if a retirement plan participant ceases to be employed by the employer that maintains the plan, the plan may distribute the participant's nonforfeitable accrued benefit without the consent of the participant and, if applicable, the participant's spouse, if the present value of the benefit does not exceed $5,000. For purposes of calculating the accrued benefit of an individual, amounts rolled over from another employer's retirement plan or an IRA are taken into account in calculating the $5,000 limit.

Explanation of provision

In determining whether an employee's benefit level falls below the $5,000 cash-out threshold, a plan is permitted to exclude any benefits attributable to amounts that have been rolled over by the employee from another employer's plan or an IRA (and any earnings on such rollovers).

Effective Date—The provision is effective for distributions after December 31, 2000.

Rationale

Keeping track of and managing small account balances of former employees creates administrative burdens for plans. The Committee is concerned that, in some cases, the cash-out rule may discourage plans from accepting rollovers because the rollover will increase participants' benefits to above the cash-out amount, and increase administrative burdens. The Committee believes that disregarding rollovers for purposes of the cash-out rule will further

the intent of the cash-out rule by removing a possible disincentive for plans to accept rollovers.

SUBTITLE B—STRENGTHENING PENSION SECURITY AND ENFORCEMENT

SECTION 611—REPEAL OF 150 PERCENT OF CURRENT LIABILITY FUNDING LIMIT

Current law

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit pension plan is funded using one of a number of acceptable actuarial cost methods. No contribution is required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined by sec. 302(c)(7) as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 155 percent of the plan's current liability, over (2) the value of the plan's assets. In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 160 percent for plan years beginning in 2001 and 2002, 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and thereafter. In no event is a plan's full funding limit less than 90 percent of the plan's current liability over the value of the plan's assets.

Explanation of provision

The arbitrary funding limitation based on current liability would be phased-out more quickly. The provision gradually increases and then repeals the current liability full funding limit. The current liability full funding limit will be 160 percent of current liability for plan years beginning in 2001, 165 percent for plan years beginning in 2002, and 170 percent for plan years beginning in 2003. The current liability full funding limit is repealed for plan years beginning in 2004 and thereafter.

Effective Date—The provision is effective for plan years beginning after December 31, 2000.

Rationale

The Committee is concerned that the current liability full funding limit may result in inadequate funding of pension plans and thus jeopardize pension security. The current-liability limitation was added in 1987, primarily to raise additional revenue. This funding limit—even at higher levels—can lead to systematic plan underfunding as well as erratic and unstable contribution patterns.

SECTION 612—MISSING PARTICIPANTS

Current law

The plan administrator of a defined benefit pension plan that is subject to Title IV of ERISA, is maintained by a single employer, and terminates under a standard termination is required to distribute the assets of the plan. With respect to a participant whom

the plan administrator cannot locate after a diligent search, the plan administrator satisfies the distribution requirement only by purchasing irrevocable commitments from an insurer to provide all benefit liabilities under the plan or transferring the participant's designated benefit to the PBGC, which holds the benefit of the missing participant as trustee until the PBGC locates the missing participant and distributes the benefit. The PBGC missing participant program is not available to multiemployer plans or defined contribution plans and other plans not covered by Title IV of ERISA.

Explanation of provision

The PBGC is directed to prescribe for terminating multiemployer plans rules similar to the present-law missing participant rules applicable to terminating single employer plans that are subject to Title IV of ERISA. The missing participants program is also extended to defined contribution plans, defined benefit plans that do not have more than 25 active participants and are maintained by professional service employers, and the portions of defined benefit plans that provide benefits based upon the separate accounts of participants and therefore are treated as defined contribution plans under ERISA.

Effective Date—The provision is effective for distributions from terminating plans that occur after the PBGC adopts final regulations implementing the provision.

Rationale

By allowing plan sponsors the option of transferring pension funds to PBGC, the chances will be increased that a missing participant will be able to recover benefits. Sponsors of terminated multiemployer plans and plans that are not covered by Title IV face uncertainty with respect to missing participants due to a lack of statutory or regulatory guidance. The Committee believes that it is appropriate to extend the established PBGC missing participant program to these plans in order to reduce uncertainty for plan sponsors and increase the likelihood that missing participants will receive their retirement benefits.

SECTION 613—PERIODIC PENSION BENEFITS STATEMENTS

Current law

Section 105 provides that a pension plan administrator must furnish a benefit statement to any participant or beneficiary who makes a written request for such a statement. This statement must indicate, on the basis of the latest available information, (1) the participant's or beneficiary's total accrued benefit, and (2) the participant's or beneficiary's vested accrued benefit or the earliest date on which the accrued benefit will become vested. A participant or beneficiary is not entitled to receive more than 1 benefit statement during any 12–month period.

Explanation of provision

A plan administrator of a defined contribution plan generally would be required to furnish a benefit statement to each partici-

pant at least once annually and to a beneficiary upon written request.

In addition to providing a benefit statement to a beneficiary upon written request, the plan administrator of a defined benefit plan generally would be required either (1) to furnish a benefit statement at least once every 3 years to each participant who has a vested accrued benefit and who is employed by the employer at the time the plan administrator furnishes the benefit statements to participants, or (2) to annually furnish written, electronic, telephonic, or other appropriate notice to each participant of the availability of and the manner in which the participant may obtain the benefit statement. The plan administrator of a multiemployer plan or a multiple employer plan would be required to furnish a benefit statement only upon written request of a participant or beneficiary.

The plan administrator would be required to write the benefit statement in a manner calculated to be understood by the average plan participant and would be permitted to furnish the statement in written, electronic, telephonic, or other appropriate form.

Effective Date—The changes would apply to plan years beginning after December 31, 2000.

Rationale

Benefit statements provide meaningful information that each participant should receive regularly in order to evaluate his or her retirement benefits. This will encourage better awareness by plan participants of their overall retirement preparedness.

SECTION 614—CIVIL PENALTIES FOR BREACH OF FIDUCIARY RESPONSIBILITY

Current law

Section 502(l) was added to ERISA by the Omnibus Budget Reconciliation Act of 1989. In its current form, section 502(l) requires the Secretary of Labor to assess a civil penalty against (1) a fiduciary who breaches a fiduciary responsibility under, or commits a violation of, part 4 of Title I of ERISA, or (2) any other person who knowingly participates in such a breach or violation. The penalty is equal to 20 percent of the "applicable recovery amount" that is paid pursuant to a settlement agreement with the Secretary or that a court orders to be paid in a judicial proceeding brought by the Secretary to enforce ERISA's fiduciary responsibility provisions. The Secretary may waive or reduce the penalty only if the Secretary finds in writing that either (1) the fiduciary or other person acted reasonably and in good faith, or (2) it is reasonable to expect that the fiduciary or other person cannot restore all the losses without severe financial hardship unless the waiver or reduction is granted.

Explanation of provision

ERISA section 502(l) is amended to make the assessment of the penalty discretionary with the Secretary of Labor, rather than mandatory. This change will allow the Secretary to refrain from imposing the penalty in certain cases as well as to assess a penalty of less than 20 percent of the applicable recovery amount. The re-

quirement of a settlement agreement would also be eliminated. The applicable recovery amount would be any amount recovered by a plan or by a participant or beneficiary more than 30 days after the fiduciary's or other person's receipt of a written notice of the violation from the Department of Labor (DOL). Payments made after the grace period, whether they are made pursuant to a settlement agreement, or simply to discourage the DOL from bringing a legal action, would be subject to the penalty, as would amounts recovered pursuant to a court order. ERISA section 502(l) is also amended to clarify that the term "applicable recovery amount" includes payments by third parties that are made on behalf of the relevant fiduciary or other persons liable for the amount that is recovered, including those who did not actually pay. These changes prevent avoidance of the penalty by having an unrelated third party pay the recovery amount.

Effective Date—This section applies to any breach of fiduciary responsibility or other violation of part 4 of Title I of ERISA occurring on or after the date of enactment. The change with respect to "applicable recovery amount" includes a transition rule whereby a breach or other violation occurring before the date of enactment which continues past the 180th day from enactment (and which may have been discontinued during that period) is treated as having occurred after the date of enactment (to avoid having to make a complex determination regarding how much of the applicable recovery amount for such continuing violations should be attributed to the post-enactment part of the violation).

Rationale

The current statutory scheme of mandatory penalties creates disincentives to settlement and discourages parties from quickly settling claims of violations that the DOL brings to their attention.

SECTION 615—PROTECTION OF INVESTMENT OF EMPLOYEE CONTRIBUTIONS TO 401(k) PLANS

Current law

Section 1524 of the Taxpayer Relief Act of 1997 ("TRA"), P.L. 105–34, amended ERISA to prohibit certain employee benefit plans from acquiring securities or real property of the employer who sponsors the plan if, after the acquisition, the fair market value of such securities and property exceeds 10 percent of the fair market value of plan assets. The 10-percent limitation does not apply to any "eligible individual account plans" that specifically authorize such investments. Generally, eligible individual account plans are defined contribution plans, including plans containing a cash or deferred arrangement (401(k) plans).

The term "eligible individual account plan" does not include the portion of a plan that consists of elective deferrals made under section 401(k) if elective deferrals equal to more than 1 percent of any employee's eligible compensation are required to be invested in employer securities and employer real property. The rule excluding elective deferrals from the definition of individual account plan does not apply if individual account plans are a small part of the employer's retirement plans. In particular, that rule does not apply

to an individual account plan for a plan year if the value of the assets of all individual account plans maintained by the employer do not exceed 10 percent of the value of the assets of all pension plans maintained by the employer (determined as of the last day of the preceding plan year).

The rule excluding elective deferrals from the definition of individual account plan applies to elective deferrals for plan years beginning after December 31, 1998. It does not apply with respect to earnings on elective deferrals for plan years beginning before January 1, 1999.

Explanation of provision

The provision modifies the effective date of the rule excluding certain elective deferrals from the definition of individual account plan by providing that the rule does not apply to any elective deferral invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired by the plan before January 1, 1999.

Effective Date—The section is effective as if included in the section of the Taxpayer Relief Act of 1997 that contained the rule excluding certain elective deferrals.

Rationale

The change would correct a technical problem with the application of section 1524 of the TRA. The Committee believes that the effective date provided in the TRA with respect to the rule excluding certain elective deferrals from the definition of individual account plan has produced unintended results.

SECTION 616—NOTICE OF SIGNIFICANT REDUCTION IN BENEFIT ACCRUALS

Current law

Under section 204(h), a defined benefit plan or a money purchase pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless, after the adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator satisfies a notice requirement. Under such requirement, the plan administrator must provide a written notice to participants and alternate payees, other than those whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, and to each employee organization that represents a participant to whom a section 204(h) notice is required to be provided.

The written notice must set forth the plan amendment and its effective date. Alternatively, under the applicable regulations, the notice may contain:

> a summary of the amendment, rather than the text of the amendment, if the summary is written in a manner calculated to be understood by the average plan participant and contains the effective date. The summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment.

Under the applicable regulations, in general, an amendment that significantly reduces the rate of future benefit accrual is effective with respect to participants and alternate payees with respect to whom a proper notice is provided in a timely manner. This rule applies even if certain participants and alternate payees do not receive a timely notice, provided that the plan administrator made a "good faith effort to comply with the requirements of section 204(h)."

The applicable regulations also provide that, under certain circumstances, an amendment that significantly reduces the rate of future benefit accrual is effective with respect to all affected persons—even those who are entitled to a notice but do not receive one—if the plan administrator "made a good faith effort to comply" and failed to provide a notice to "no more than a de minimis percentage of participants and alternate payees to whom [a] section 204(h) notice is required to be provided."

Explanation of provision

Under the provision, a section 204(h) notice must include, in addition to the information required under current law, a notification and description of the significant reduction in the rate of future benefit accrual. Such notification and description, which must be prepared in a manner calculated to be understood by the average employee eligible to participate, must clearly convey the significant reduction to affected participants, to any employee organization representing such participants, and to affected alternate payees. Accordingly, if a participant's projected benefits at normal retirement age, based on assumed service and compensation until such date, are reasonably expected to be significantly reduced, the section 204(h) notice must clearly convey this. Similarly, if a participant's benefits are reasonably expected to be frozen for a significant period of time (such as one year), this also must be clearly conveyed. As under present law, there would not be a required format for a section 204(h) notice; any format may be used, provided that it clearly conveys the required information.

Under the provision, a notification and description would not fail to satisfy the requirements of section 204(h) by reason of not setting forth the specific amount of the significant reduction in the rate of future benefit accrual that applies to any participant or alternate payee.

It is not intended that a plan would be able to avoid the provision of a meaningful notification and description through the use of a two-step approach to modifying the benefit formula. For example, a plan may be amended to freeze benefit accruals as of a certain date; subsequently, the plan may be amended retroactively to the same date to apply a new benefit formula. In order to comply with section 204(h), as amended by this provision, there must be a notification and description that communicates any significant reduction that occurs by reason of changing from the "pre-freeze" benefit formula to the new benefit formula.

Under the provision, the notice must be provided no less than 30 days prior to the effective date of the plan amendment. The requirement that the notice be provided after the adoption of the plan amendment is deleted. The provision also deletes the require-

ment that the notice be in writing; any form of notice, such as electronic, or a combination of different forms would be permissible, provided that, under the facts and circumstances, such form or forms are an effective and reliable means of conveying information to the persons required to receive the notice.

The bill would generally codify the rules set forth in the currently applicable regulations regarding the effect of a failure to provide a required section 204(h) notice, such as the "de minimis rule" set forth in Treasury Regulation sec. 1.411(d)–6 Q/A–14. The bill would also provide that a failure to comply with section 204(h) that is not a material failure would not result in a plan amendment being rendered ineffective. For this purpose, a "material failure" is any failure that results in materially less information being provided to required recipients. For example, if the provision of a section 204(h) notice is reasonably delayed and is provided 28 days before the effective date of a plan amendment, such a failure would not render the amendment ineffective nor would it cause the effective date of the plan amendment to be delayed. On the other hand, if a section 204(h) notice is provided unreasonably late, such as five days before the stated effective date, such a failure would result in the effective date of the plan amendment being delayed until 30 days after the provision of the notice.

Under another example, assume that an employer chooses to convey the significant reduction through a set of illustrative examples that are reasonably designed to enable participants and alternate payees to estimate the effect of the plan amendment on them. Assume further that there is an inadvertent failure to provide a sufficient number of examples with respect to a small (but not de minimis) subset of employees, so that the effect of the amendment on such employees cannot be reasonably estimated. In such a case, the plan amendment would not be rendered ineffective. The failure does not affect a substantial number of individuals. More importantly, all of those individuals can reasonably determine or infer that they may be significantly affected by the plan amendment, which serves the underlying purpose of section 204(h). Of course, in order for the plan amendment to be effective with respect to the subset of individuals, the plan administrator must correct the notice as soon as the administrator becomes aware of the deficiency in the notice.

Effective Date—The changes would apply to plan amendments that are adopted more than 120 days after the date of enactment.

Rationale

The Committee is aware of recent significant publicity concerning conversions of traditional defined benefit pension plans to "cash balance" plans, with particular focus on the impact such conversions have on affected workers. Legislation has been introduced to address some of the issues relating to such conversions. (*See, e.g.,* H.R. 1176 introduced by Congressman Weller, with companion legislation, S. 659, introduced by Senator Moynihan; see also, the conceptual proposal released by the Administration on July 13, 1999.)

The Committee believes that employees are entitled to meaningful disclosure concerning plan amendments that may result in re-

ductions of future benefit accruals. The Committee has determined that present law does not require employers to provide such disclosure, particularly in cases where traditional defined benefit plans are converted to cash balance plans. The Committee also believes that any disclosure requirements applicable to plan amendments should strike a balance between providing meaningful disclosure and avoiding the imposition of unnecessary administrative burdens on employers.

This section was included in H.R. 1102 with the anticipation that it would be refined through bipartisan discussions regarding an appropriate enhancement to sec. 204(h). The Committee had hoped to negotiate a mutually acceptable disclosure provision with the Administration prior to the markup. Committee staff and the staff of Ways and Means, Senate Finance, and Senate Labor have all been in discussions with the Administration (DOL, Treasury, and PBGC) for about 2 months. Despite repeated promises that a unified proposal from the Administration would be forthcoming shortly, no legislative proposal has ever arrived. The night before the markup the Administration finally offered something—but only “general principles,” not legislative language. Thus, the Committee has elected to retain this language, while continuing to discuss additional modification to sec. 204(h) regarding the specific situation of conversions to a cash balance plan.

SECTION 617—TECHNICAL CORRECTIONS TO THE SAVER ACT

Current law

The Savings Are Vital to Everyone’s Retirement (SAVER) Act of 1997 (P.L. 105–92), in addition to establishing an ongoing program by the DOL on retirement savings education and outreach (sec. 516), convenes a National Summit on Retirement Savings at the White House, cohosted by the President and the bipartisan Congressional leadership, in 1998 and again in 2001 and 2005 (sec. 517). The National Summit brings together experts in the fields of employee benefits and retirement savings, key leaders of government, and interested parties from the private sector and general public. The delegates are selected by the Congressional leadership and the President. The National Summit is a public-private partnership, receiving substantial funding from private sector contributions. The National Summits’ goals are to: (1) advance the public’s knowledge and understanding of retirement savings and facilitate the development of a broad-based, public education program; (2) identify the barriers which hinder workers from setting aside adequate savings for retirement and impede employers, especially small employers, from assisting their workers in accumulating retirement savings; and (3) develop specific recommendations for legislative, executive, and private sector actions to promote retirement income savings among American workers.

Explanation of provision

This section makes technical amendments to the SAVER Act regarding the administration of future statutorily created National Summits on Retirement Savings. It clarifies that National Summits shall be held in the month of September in 2001 and 2005, and

adds an additional National Summit in 2009. To facilitate the administration of future National Summits, the DOL is given authority to enter into cooperative agreements (pursuant to the Federal Grant and Cooperative Agreement Act of 1977) with its 1998 summit partner, the American Savings Education Council.

Six new statutory delegates are added to future summits: the Chairman and Ranking Member of the House Ways and Means Committee, the Senate Finance Committee, and the Subcommittee on Employer-Employee Relations of the House Education and the Workforce Committee, respectively. Further, the President, in consultation with the Congressional leadership, may appoint up to 3% of the delegates (not to exceed 10) from a list of nominees provided by the private sector partner in Summit administration. The section also clarifies that new delegates are to be appointed for each future National Summit (as was the intent of the original legislation) and sets deadlines for their appointment.

The section also sets deadlines for DOL to publish the Summit agenda, gives DOL limited reception and representation authority, and mandates that DOL consult with the Congressional leadership in drafting the post-Summit report.

Effective Date—The section is effective upon date of enactment.

Rationale

This section clarifies the administration of future National Summits and is designed to assist in their planning and execution. It is also intended to clarify issues regarding the selection of delegates to future National Summits.

SECTION 618—CONFORMING AMENDMENTS RELATING TO TRANSFER OF EXCESS DEFINED BENEFIT PLAN ASSETS FOR RETIREE HEALTH BENEFITS

Current law

Defined benefit pension plan assets generally may not revert to an employer prior to the termination of the plan and the satisfaction of all plan liabilities. A reversion prior to plan termination may constitute a prohibited transaction. However, a pension plan may provide medical benefits to retired employees through an Internal Revenue Code section 401(h) account that is a part of such plan. A qualified transfer of excess assets of a defined benefit pension plan (other than a multiemployer plan) into a section 401(h) account that is a part of such plan does not result in a prohibited transaction. Section 101(e) provides that plan participants, the Secretaries of Treasury and Labor, the plan administrator, and each employee organization representing plan participants must be notified 60 days before a qualified transfer of excess assets to a retiree health benefits account occurs. ERISA also provides that a qualified transfer is not a prohibited transaction (sec. 408(b)(13)) or a prohibited reversion of assets to the employer (sec. 403(c)(1)). For purposes of these provisions, a qualified transfer is generally defined as a transfer pursuant to section 420 of the Internal Revenue Code, as in effect on January 1, 1995. The provision permitting a qualified transfer of excess pension assets to pay qualified current

retiree health liabilities expires for taxable years beginning after December 31, 2000.

Explanation of provision

The present-law provision permitting qualified transfers of excess defined benefit pension plan assets to provide retiree health benefits under a Code section 401(h) account is extended through September 30, 2009.

Effective Date—The provision is effective with respect to qualified transfers of excess defined benefit pension plan assets to Code section 401(h) accounts after December 31, 2000, and before October 1, 2009.

Rationale

The Committee believes that it is appropriate to provide a temporary extension of the present-law rule permitting an employer to make a qualified transfer of excess pension assets to a Code section 401(h) account for retiree health benefits as long as the security of employees' pension benefits is not threatened by the transfer.

SECTION 619—MODEL SPOUSAL CONSENT LANGUAGE AND QUALIFIED DOMESTIC RELATIONS ORDER

Current law

Under sec. 205, pension plans must provide (1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable in the form of a qualified joint and survivor annuity, and (2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified pre-retirement survivor annuity payable to the surviving spouse of such participant. A participant may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified pre-retirement survivor annuity form of benefit (or both). However, plans must provide that such an election is ineffective unless (1) the spouse of the participant consents in writing to such election, (2) such election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (3) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public.

Under sec. 206(d), pension plans must provide that benefits provided under the plan may not be assigned or alienated, including the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, unless the order is determined to be a qualified domestic relations order. Pension plans must provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order (as defined by sec. 206(d)(3)).

Explanation of provision

This section requires the Secretary of Labor to develop model language for the spousal consent required under sec. 205(c) by Jan-

uary 1, 2001. The model language must be written in a manner calculated to be understood by the average person, and disclose in plain terms whether the waiver is irrevocable and whether the waiver may be revoked by a qualified domestic relations order.

This section also requires the Secretary of Labor to develop model language for qualified domestic relations orders by January 1, 2001. Such model language must meet the requirements of sec. 206(d)(3)(B)(i) and the ERISA requirements related to the need to consider the treatment of any lump sum payment, qualified joint and survivor annuity, or qualified preretirement survivor annuity. This also includes a requirement for the Secretary of Labor to undertake publicity for the model language as part of the Secretary's pension outreach efforts.

Effective Date—The section is effective upon date of enactment.

Rationale

The Committee believes that DOL's development of model language for spousal consent and qualified domestic relations orders will ensure the provision of better information to spouses involved in a divorce proceeding. These models will help individuals better understand rights they are being asked to waive.

SECTION 620—ELIMINATION OF ERISA DOUBLE JEOPARDY

Current law

If a fiduciary of an employee benefits plan breaches a duty or responsibility owed to the plan, the fiduciary is personally liable under sec. 409 to "make good to such plan any losses to the plan resulting from each such breach." Section 502(a)(2) grants a participant, a beneficiary or a fiduciary, as well as the Secretary of Labor, standing to sue on behalf of an injured plan for the relief provided in sec. 409. When suit is brought by a participant, a beneficiary or a fiduciary, sec. 502(h) requires the private plaintiff to notify the Secretary of the action. Section 502(h) also provides the Secretary a statutory right to intervene in the private suit.

Neither sec. 502 nor any other ERISA provision expressly states what happens if the Secretary fails to intervene in a private suit prior to a final court-approved settlement agreement. A federal appellate court recently held that the Secretary may sue a settling fiduciary for money damages on behalf of an ERISA plan even after an identical claim brought by a class of all participants was the subject of a court-approved settlement. *Herman* v. *South Carolina National Bank,* 140 F. 3d 1413 (11th Cir. 1998).

Explanation of provision

This section amends sec. 502(h) by applying the doctrine of claim preclusion (res judicata) to bar the Secretary from re-litigating claims under sec. 502(a)(2) against a fiduciary for monetary damages under the following circumstances: (1) the complaint in the action is served upon the Secretary at least 90 days prior to final court approval of the settlement agreement, (2) the action is maintained as a class action or derivative action under the Federal Rules of Civil Procedure, (3) the action is resolved by a court-approved settlement agreement, and (4) the Secretary receives a fully

executed copy of the settlement agreement within the time established by the court for notifying the plan's participants of the proposed compromise pursuant to Rule 23 or 23.1 of the Federal Rules of Civil Procedure.

This bars the Secretary from litigating any claim against such person that was or could have been brought in that action with respect to the same plan, consistent with the jurisprudence of *res judicata. See, e.g., Rivet* v. *Regions Bank of Louisiana,* 522 U.S. 470, 139 L. Ed. 912, 919 (1998); Restatement (2nd) of Judgments sec. 24 (1982). However, this section does not bar the Secretary from filing a second action against such person under sec. 502(a)(2) if the complaint was filed prior to the final court approval of the private suit settlement agreement.

Effective Date—The amendments made by this section are effective with respect to all actions or claims commenced by the Secretary that are pending on or after the date of the enactment of this Act.

Rationale

The Committee believes that subjecting a fiduciary to a subsequent suit for monetary damages by the Secretary of Labor, following the settlement of a suit by private parties on the same grounds and upon proper notice to the Secretary, violates the principles of *res judicata* and effectively results in double jeopardy. If the interpretation of the Eleventh Circuit in *South Carolina National Bank* were to prevail, settlement of ERISA litigation would be discouraged and plan participants and beneficiaries would be hindered in their ability to recover monetary damages for the plan. If a settlement of a private action brings no guarantee of foreclosure of future litigation of the identical claim, fiduciary defendants will have significantly less incentive to settle, or they will settle only for reduced amounts. This will only serve to increase litigation costs and reduce the amount of monetary recovery for plans.

This section continues to protect the institutional interests of the Secretary of Labor. The Secretary receives two notices of the private litigation before the bar applies: one when the suit commences and one when a proposed settlement is reached. And the Secretary receives notice of settlement comparable to that which all members of the class are entitled before they become bound by it. The Secretary has the ability to independently investigate the transaction at issue in the suit and then either intervene or file a separate action. This provision specifically preserves the Secretary's right to an independent action if timely filed.

The Secretary is only barred from bringing a subsequent action for monetary damages where the monetary interests of all plan participants and beneficiaries have been vindicated in the original suit. Proceeds from the type of private actions covered by this provision are paid to the plan for the benefit of all plan participants. Thus, the Secretary would never have a need to proceed with an action to vindicate the rights of persons not represented in the original suit. The Secretary still could proceed with an action for broader equitable relief under sec. 502(a)(5), including claims for equitable restitution. Barring a government agency from bringing a second suit for monetary (as opposed to equitable) relief for the

same parties is consistent with judicial precedent as well as the doctrine of *res judicata. See, e.g., EEOC* v. *United States Steel Corp.,* 921 F.2d 489 (3d Cir. 1990) (EEOC barred from asserting claim for monetary relief on behalf of individual age discrimination claimants who previously settled with employer).

The bar against a repetitive action by the Secretary only applies when the private settlement has been reviewed and approved by a federal judge under the "fairness" procedures mandated generally for all class and derivative action settlements by Rules 23 and 23.1 of the Federal Rules of Civil procedure. Nothing in this provision prevents the Secretary from seeking to reopen court-approved settlements that she believes were the product of fraud or collusion. Nor does anything in this provision limit the exposure of plan fiduciaries to criminal or civil liability under Part 5 of Title I of ERISA or under Title 18 of the U.S. Code, or to prohibited transaction excise tax penalties under section 4975 of the Internal Revenue Code.

SUBTITLE C—REDUCING REGULATORY BURDENS

SECTION 621—MODIFICATION OF TIMING OF PLAN VALUATIONS

Current law

Under present law, in the case of plans subject to the minimum funding rules, a plan valuation is generally required annually. Prior to the Retirement Protection Act of 1994 (P.L. 103–465), plan valuations generally were required at least once every three years. The valuation date for a defined benefit plan for a plan year must generally be in the same plan year.

Explanation of provision

The provision allows an employer to elect to use the prior year's plan valuation in certain cases. The election may be made only with respect to a defined benefit plan with assets of at least 125 percent of current liability (determined as of the valuation date for the preceding year). If the prior year's valuation is used, it must be adjusted, as provided in regulations, to reflect significant differences in participants. An election made under the provision may be revoked only with the consent of the Secretary of the Treasury. In any event, a plan valuation is required once every three years.

Effective Date—The provision is effective for plan years beginning after December 31, 2000.

Rationale

The Committee believes that while plan valuations are necessary to ensure adequate funding of defined benefit pension plans, they also create administrative burdens for employers. Requiring valuations at least once every three years in the case of well-funded plans strikes an appropriate balance between funding concerns and employer concerns about plan administrative costs. Because valuations can be quite time consuming, the current-law rule means that a plan's minimum funding requirements, deductible limits, and full-funding limitation for a year are not known until after the beginning of the year, sometimes well into the year, and in extreme cases even after the year is over. This prevents accurate advance budgeting for pension contributions.

SECTION 622—SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS

Current law

The PBGC provides participants and beneficiaries in a defined benefit pension plan with certain minimal guarantees as to the receipt of benefits under the plan in case of plan termination. The employer sponsoring the defined benefit pension plan is required to pay premiums to the PBGC to provide insurance for the guaranteed benefits. In general, the PBGC will guarantee all basic benefits which are payable in periodic installments for the life (or lives) of the participant and his or her beneficiaries and are non-forfeitable at the time of plan termination. The amount of the guaranteed benefit is subject to certain limitations. One limitation is that the plan (or an amendment to the plan which increases benefits) must be in effect for 60 months before termination for the PBGC to guarantee the full amount of basic benefits for a plan participant. In the case of a substantial owner, the guaranteed basic benefit is phased in over 30 years beginning with participation in the plan. A substantial owner is one who owns, directly or indirectly, more than 10 percent of the voting stock of a corporation or all the stock of a corporation. Special rules restricting the amount of benefit guaranteed and the allocation of assets also apply to substantial owners.

Explanation of provision

The provision provides that the 60 month phase-in of guaranteed benefits applies to a substantial owner with less than 50 percent ownership interest. For a substantial owner with a 50 percent or more ownership interest ("majority owner"), the guarantee is phased in over the first 10 years of the plans existence (after that, the majority owner's guarantee is the same as other participants guarantee). In addition, the majority owner's guaranteed benefit is limited so that it may not be more than the amount for other participants. The rules regarding allocation of assets apply to substantial owners, other than majority owners, in the same manner as other participants.

Effective Date—The provision is effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC, after December 31, 2000.

Rationale

The Committee believes that the present-law rules concerning limitations on guaranteed benefits for substantial owners are overly complicated and restrictive and thus may discourage some small business owners from establishing defined benefit pension plans. Moreover, the current special substantial owner rules are inordinately complex and require plan documents going back as far as 30 years, which are often difficult or impossible to obtain.

SECTION 623—NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS

Current law

Notice and consent requirements in sec. 205 apply to certain distributions from qualified retirement plans. These requirements relate to the content and timing of information that a plan must provide to a participant prior to a distribution, and to whether the plan must obtain the participant's consent to the distribution. The nature and extent of the notice and consent requirements applicable to a distribution depend upon the value of the participant's vested accrued benefit and whether the joint and survivor annuity requirements apply to the participant.

If the present value of the participant's vested accrued benefit exceeds $5,000, the plan may not distribute the participant's benefit without the written consent of the participant. The participant's consent to a distribution is not valid unless the participant has received from the plan a notice that contains a written explanation of: (1) the material features and the relative values of the optional forms of benefit available under the plan, (2) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (3) the rules concerning the taxation of a distribution. If the joint and survivor annuity requirements apply to the participant, this notice also must contain a written explanation of (1) the terms and conditions of the qualified joint and survivor annuity ("QJSA"), (2) the participant's right to make, and the effect of, an election to waive the QJSA, (3) the rights of the participant's spouse with respect to a participant's waiver of the QJSA, and (4) the right to make, and the effect of, a revocation of a waiver of the QJSA. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

If the participant's vested accrued benefit does not exceed $5,000, the terms of the plan may provide for distribution without the participant's consent. The plan generally is required, however, to provide to the participant a notice that contains a written explanation of: (1) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (2) the rules concerning the taxation of a distribution. The plan generally must provide this notice to the participant no less than 30 and no more than 90 days before the date distribution commences.

Explanation of provision

A qualified retirement plan is required to provide the applicable distribution notice no less than 30 days and no more than 180 days before the date distribution commences. The Secretary of the Treasury is directed to modify the applicable regulations to reflect the extension of the notice period to 6 months and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

Effective Date—The provision is effective for years beginning after December 31, 2000.

Rationale

The Committee understands that an employee is not always able to evaluate distribution alternatives, select the most appropriate alternative, and notify the plan of the selection within a 90-day period. The Committee believes that requiring a plan to furnish multiple distribution notices to an employee who does not make a distribution election within 90 days is administratively burdensome. In addition, the Committee believes that participants who are entitled to defer distributions should be informed of the impact of a decision not to defer distribution on the taxation and accumulation of their retirement benefits.

SECTION 624—ANNUAL REPORT DISSEMINATION

Current law

Section 104(b)(3) requires that within nine months after the close of each plan year, the plan administrator must "furnish" a summary annual report to each plan participant and to each beneficiary receiving benefits. The summary annual report is a summary of the annual report filed with the DOL regarding the financial position and management of the plan.

Explanation of provision

The requirement that plan administrators "furnish" a summary annual report would be changed to a requirement that plan administrators make the report "available for examination." A summary annual report must also be provided upon request.

Effective Date—The change applies to reports for years beginning after December 31, 1998.

Rationale

The Committee believes that simplification of the summary annual report requirement will reduce the burden and cost of plan administration and disclosure, thereby encouraging more employers to establish and maintain retirement plans, without denying participants the opportunity to obtain information concerning plan status and operation. A paper copy of the report will still be available upon request, protecting those who wish to examine the report.

SECTION 625—EXCESS BENEFIT PLANS

Current law

ERISA defines an "excess benefit plan" as a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by Internal Revenue Code section 415 on plans to which that section applies without regard to whether the plan is funded. ERISA does not apply to a nonqualified plan that provides benefits in excess of the Code section 415 limits. The rules governing such excess benefit plans have historically been useful in structuring arrangements that potentially benefit a significant range of employees, albeit without the tax advantages afforded to qualified plans. Separate provisions of ERISA provide exemptions from numerous

ERISA requirements (including the trust requirement) for so-called "top-hat" plans that cover a select group of management or highly compensated employees. Since ERISA was enacted in 1974, a number of limits and rules comparable to the section 415 limits have been added to the Internal Revenue Code, including section 401(a)(17).

Explanation of provision

The sec. 3(36) definition of an "excess benefit plan" would be expanded to include Internal Revenue Code section 401(a)(17), the annual compensation limit.

Effective Date—The change applies to years beginning after December 31, 1999.

Rationale

The Committee believes that the current-law ERISA provisions governing excess plans should be expanded. For employers wanting to provide retirement benefits to employees that wrap around the existing Code limits and rules, the current rules create a level of uncertainty. The change will expand the group of employees able to participate in so-called mirror plans.

SECTION 626—BENEFIT SUSPENSION NOTICE

Current law

Section 203(a)(3)(B) provides that a plan will not fail to satisfy the vesting requirements with respect to a participant by reason of suspending payment of the participant's benefits while such participant is employed. Under the applicable DOL regulations, such a suspension is only permissible if the plan notifies the participant during the first calendar month or payroll period in which the plan withholds benefit payments. Such notice must provide certain information and must also include a copy of the plan's provisions relating to the suspension of payments.

In the case of a plan that does not pay benefits to active participants upon attainment of normal retirement age, the employer must monitor plan participants to determine when any participant who is still employed attains normal retirement age. In order to "suspend" payment of such a participant's benefits, generally a plan must, as noted above, promptly provide the participant with a suspension notice.

Explanation of provision

This section permits the information currently required to be set forth in a suspension notice to be included in the summary plan description, rather than in a separate notice. In addition, the section deletes the requirement that the suspension notice (or the summary plan description) include a copy of the plan's provisions relating to suspension of payments. However, individuals reentering the workforce to resume work with a former employer, after they have begun to receive benefits, would still receive the existing notification of the suspension of benefits.

Effective Date—The change applies to plan years beginning after December 31, 1999.

Rationale

The Committee believes that the present-law rules regarding suspension notices create unjustified burdens on defined benefit plans that do not pay benefits to active participants upon attainment of normal retirement age when they continue to draw pay. This dispenses with individual notices going to employees at the time they attain the normal retirement age—a practice which often unduly alarms workers who believe they are being encouraged to retire by their employer.

SECTION 627—PROVISIONS RELATING TO PLAN AMENDMENTS

Current law

Plan amendments to reflect amendments to the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs.

Explanation of provision

Any amendments to a plan or annuity contract required to be made by the provisions of this Act are not required to be made before the last day of the first plan year beginning on or after January 1, 2003.

Effective Date—The provision is effective on the date of enactment.

Rationale

The Committee believes that plan sponsors should have adequate time to amend their plans to reflect amendments to the law.

SECTION 628—SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES

Current law

A plan administrator of a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation generally must file with the Secretary of Labor, the Secretary of the Treasury, and the PBGC an annual return for each plan year containing certain information with respect to the qualification, financial condition, and operation of the plan. The plan administrator must use the Form 5500 series as the format for the required annual return. The Form 5500 series annual return/report, which consists of a primary form and various schedules, includes the information required to be filed with all three agencies. The plan administrator satisfies the reporting requirement with respect to each agency by filing the Form 5500 series annual return/report with the Internal Revenue Service, which forwards the form to the Department of Labor and the PBGC.

The Form 5500 series consists of 3 different forms: Form 5500, Form 5500–C/R, and Form 5500–EZ. Form 5500 is the most comprehensive of the forms and requires the most detailed financial information. Form 5500–C/R requires less information than Form 5500, and Form 5500–EZ, which consists of only 1 page, is the simplest of the forms. The size of the plan determines which form a

plan administrator must file. If the plan has more than 100 participants at the beginning of the plan year, the plan administrator generally must file Form 5500. If the plan has fewer than 100 participants at the beginning of the plan year, the plan administrator generally may file Form 5500–C/R. A plan administrator generally may file Form 5500–EZ if (1) the only participants in the plan are the sole owner of a business that maintains the plan (and such owner's spouse), or partners in a partnership that maintains the plan (and such partners' spouses), (2) the plan is not aggregated with another plan in order to satisfy the minimum coverage requirements of Internal Revenue Code section 410(b), (3) the employer is not a member of a related group of employers, and (4) the employer does not receive the services of leased employees. If the plan satisfies the eligibility requirements for Form 5500–EZ and the total value of the plan assets as of the end of the plan year and all prior plan years does not exceed $100,000, the plan administrator is not required to file a return.

Explanation of provision

The Secretary of the Treasury is directed to provide for the filing of a simplified annual return substantially similar to the Form 5500–EZ by a plan that (1) covers less than 25 employees on the first day of the plan year, (2) is not aggregated with another plan in order to satisfy the minimum coverage requirements of Internal Revenue Code section 410(b), (3) is maintained by an employer that is not a member of a related group of employers, and (4) is maintained by an employer that does not receive the services of leased employees.

Effective Date—The provision is effective on the date of enactment.

Rationale

The Committee believes that simplification of the reporting requirements applicable to plans of small employers will encourage such employers to provide retirement benefits for their employees.

SUMMARY

The ERISA provisions (Title VI) of the "Comprehensive Retirement Security and Pension Reform Act of 1999," H.R. 1102, as amended, will directly improve the retirement security of American workers by expanding small business retirement plans, allowing workers to save more, making pensions more secure, and cutting the red tape that has hamstrung employers who want to establish pension plans for their employees.

SECTION-BY-SECTION ANALYSIS OF TITLE VI OF H.R. 1102, AS AMENDED

Section 601. Participant Loans for Small Business Owners

Generally, plans may make loans to participants. But, prohibited transaction rules prevent sole proprietors, partners, and Subchapter S corporation shareholders from taking participant loans. The prohibited transaction rules would be modified under this sec-

tion to allow for participant loans to sole proprietors, partners, and subchapter S corporation shareholders.

Sec. 602. Reduced PBGC Premiums for New Plans

Defined benefit plans are subject to a flat-rate premium of $19 per participant. Underfunded defined benefit plans are subject to an additional variable rate premium. There is no variable rate premium for the first year of a new defined benefit plan. Under this provision, new defined benefit plans established by employers with 100 employees or less would only have to pay a $5 per participant PBGC premium for the first 5 years of the plan. No variable rate premium would be assessed during this period.

Sec. 603. Reduction of Additional PBGC Premiums

Defined benefit plans are subject to a flat-rate premium of $19 per participant. Underfunded defined benefit plans are subject to an additional variable rate premium. There is no variable rate premium for the first year of a new defined benefit plan. Under this section, any variable rate premium that might be assessed against a new defined benefit plan established by a larger employer would be phased-in as follows: 0% for the first plan year; 20% for the second; 40% for the third; 60% for the fourth; 80% for the fifth, and 100% for the sixth and succeeding plan years. For employers who have 25 or fewer employees on the first day of the plan year, the additional premium for each participant would not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

Sec. 604. Faster Vesting of Employer Matching Contributions

Employee contributions to a qualified plan are immediately vested. Employer matching contributions either must be fully vested after the employee has completed 5 years of service, or must become vested in increments of 20% for each year beginning with the third year of service, with full vesting after the employee has completed seven years of service. Under this section, employer matching contributions would have to be vested under a maximum 3-year cliff or 6–year graded vesting schedule. In the case of graded vesting, vesting would have to begin with the employee's second year of service.

Sec. 605. Treatment of Forms of Distribution

Under the "anti-cutback rule," when a participant's benefits are transferred from one plan to another, the transferee plan must preserve all forms of distribution that were available under the transferor plan. The anti-cutback rule also provides that, without regard to a transfer, a plan may not eliminate forms of distribution. Under this section, an employee may elect to transfer benefits from one plan to another without requiring the transferee plan to preserve optional forms of benefits if the following requirements are satisfied: (1) the transfer was a direct transfer; (2) the transfer was authorized under the terms of both plans; (3) the transfer was pursuant to a voluntary election by the participant upon receipt of proper notice; (4) spousal consent for the transfer, if required, was obtained; and (5) the participant could have elected a lump sum dis-

tribution. In addition, under the provision, except to the extent provided in regulations, a form of distribution in a DC plan may be eliminated with respect to a participant if: (1) a lump sum distribution is available when the distribution form is being eliminated, and (2) such lump sum is based on the same or greater portion of the participant's account as the distribution form being eliminated. Treasury would also be directed to issue regulations.

Sec. 606. Employers May Disregard Rollovers for Purposes of Cash-Out Amounts

Terminated participants' benefits may be cashed out if the nonforfeitable present value of such benefits does not exceed $5,000. The provision permits a plan to ignore amounts attributable to rollover contributions when determining the cash-out amount.

Sec. 611. Repeal of 150% of Current Liability Funding Limit

Contributions to a defined benefit plan that exceed 150% of current liability are not tax deductible. This limit will phase up to 170% by 2005. Under this section, the limit would be phased-up in 5% increments beginning with the 2001 plan year. For plan years beginning after December 31, 2003, the current liability full funding limit would be completely repealed.

Sec. 612. Expansion of Missing Participants Program

The PBGC acts as a clearinghouse for benefits due to participants who cannot be located. When a defined benefit plan terminates, the plan may transfer the benefits of the missing participant to the PBGC, which then attempts to locate the participant. Under this section, the PBGC's missing participant program would be expanded to cover multiemployer plans. The program would also be expanded to include small professional service employees and defined contribution plans. This expansion would be voluntary at the election of the plan sponsor.

Sec. 613. Periodic Pension Benefits Statements

Upon the request of a participant, the plan administrator must provide a summary of the participant's benefits under the plan. A participant is not entitled to more than one benefit statement per year. Under this provision, a benefit statement would have to be given to a defined contribution plan participant at least once a year. Statements would have to be provided to defined benefit plan participants at least once every three years. Alternatively, in the case of defined benefit plans, the employer could provide participants with notice of their right to request a benefit statement at least once a year.

Sec. 614. Waiver of Civil Penalties for Breach of Fiduciary Responsibility

Section 502(l) requires DOL to assess a 20% penalty for violations of part 4 of Title I of ERISA for breaches of fiduciary duty. The DOL is limited in its ability to reduce this penalty. Under the provision, ERISA section 502(l) would be amended to make the assessment discretionary with DOL rather than mandatory. This

change would allow DOL to refrain from assessing the 20% penalty in certain cases or to assess a lower amount.

Sec. 615. Protection of Investment of Employee Contributions to 401(k) Plans

Section 1524 of the Taxpayer Relief Act of 1997 places certain limits on investment of employee salary reduction contributions in employer stock or employer real property. The section modifies the effective date of the rule excluding certain elective deferrals from the definition of individual account plan by providing that the rule does not apply to any elective deferral invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired by the plan before January 1, 1999.

Sec. 616. Notice of Significant Reduction in Benefit Accruals

Participants must be notified of a plan amendment significantly reducing future benefit accruals at least 15 days before such amendment takes effect. The notice must be given after the plan sponsor has formally adopted the amendment. Treasury regulations provide that participants need not be given an individual statement detailing how their own benefits will be affected by the amendment. This provision modifies ERISA Section 204(h) to require that affected participants be given a notice of a plan amendment significantly reducing future benefit accruals at least 30 days before the amendment takes effect. Such notice must include at least a summary of the amendment and a description of the reduction, but does not require an individual comparison statement. Further, the notice could be provided before the plan amendment is formally adopted.

Sec. 617. Technical Corrections to the SAVER Act

The Savings Are Vital to Everyone's Retirement (SAVER) Act of 1997 convenes a National Summit on Retirement Savings at the White House, cohosted by the executive and legislative branches in 1998 and again in 2001 and 2005. The National Summit brings together experts in the fields of employee benefits and retirement savings, key leaders of government, and interested parties from the private sector and general public. The delegates are selected by the Congressional leadership and the President. The National Summit is a public-private partnership, receiving substantial funding from private sector contributions. This section provides for technical amendments to the SAVER Act, regarding the administration of and delegate selection to future statutorily created National Summits on Retirement Savings.

Sec. 618. Transfer of Excess Defined Benefit Plan Assets for Retiree Health Benefits

Under ERISA sections 101(e)(3), 403(c)(1), and 408(b), an employer may—subject to specific limitations and other requirements—transfer excess defined benefit plan assets to a retiree "health benefits account" without causing the transferred assets to be included in the employer's gross income and without subjecting the employer to the excise tax on reversions. This provision is set

to expire on December 31, 2000. This amendment would extend the provision until October 1, 2009.

Sec. 619. Model Spousal Consent Language and Qualified Domestic Relations Order

Plans must seek spousal consent for the waiver of a qualified joint and survivor annuity form of benefit or a qualified pre-retirement survivor annuity form of benefit. Plans must pay benefits in accordance with Qualified Domestic Relations Orders. This provision requires the Secretary of Labor to develop model language for spousal consent and for qualified domestic relations orders.

Sec. 620. Elimination of ERISA Double Jeopardy

ERISA allows the DOL, a participant, a beneficiary or fiduciary to bring suit to recover losses to an employee benefit plan. If a claim is brought by a party other than the DOL, the DOL must be informed and may intervene in the case or may move independently against the party. Under this section, if the complaint in a suit brought on behalf of an employee benefit plan is served upon the DOL at least 90 days before the date of entry of final judgement and the DOL receives settlement notice consistent with Federal Rule 23, then the DOL would be barred from later litigating any claim against such person that was, or could have been, brought in that action with respect to the same plan.

Sec. 621. Modification of Timing of Plan Valuations

The valuation date for a defined benefit plan for a plan year must generally be in the same plan year. Under this section, defined benefit plans would be permitted to use a valuation date up to one year prior to the beginning of the plan year. The change would apply at the election of the employer but would not be available to an underfunded plan.

Sec. 622. Substantial Owner Benefits in Terminated Plans

"Substantial owners" are individuals who own more than 10% of a business. ERISA contains complicated rules governing the benefit earned by substantial owners when a plan is terminating. Under this section, the same five-year phase-in that currently applies to a participant who is not a substantial owner would apply to a substantial owner with less than a 50% ownership interest. For a majority owner, the same phase-in rules would apply once the plan had been in existence for 10 years. For the first 10 years, the guarantee would be phased in 1/10 per year.

Sec. 623. Notice and Consent Period Regarding Distributions

Generally, benefits cannot be distributed before the later of age 62 or normal retirement age unless the participant consents no more than 90 days before benefit commencement. Also, information on the tax implications of rollovers must be given to the employee within 90 days of distribution. Under this provision, the notice and consent period regarding distributions would be expanded from 90 days to 180 days.

Sec. 624. Summary Annual Reports

Within 210 days after the close of a plan's fiscal year, the plan administrator must provide certain information to participants in a summary annual report (SAR). Under this section, SARs would no longer have to be distributed. Instead they would only have to be made available upon request.

Sec. 625. Excess Benefit Plans

Unfunded excess benefit plans are exempt from ERISA. Currently, excess benefit plans are defined as plans which provide benefits in excess of the Internal Revenue Code section 415 limits. Under this provision, the definition of excess benefit plans would be revised to include plans which provide benefits in excess of the Code section 401(a)(17) or 415 limits.

Sec. 626. Benefit Suspension Notice

When an employee continues to work beyond normal retirement age, or is reemployed after commencing benefits, a defined benefit plan may provide for a suspension of pension payments during the post normal retirement age employment period. DOL regulations require that affected participants be notified in writing of such suspension and that such notice include a copy of the relevant plan provisions. Under this section, DOL would be required to modify its regulations regarding suspension of benefits rules to eliminate the requirement of a written individual notice and instead require that the suspension of benefits rules be outlined in the summary plan description, except for individuals reentering the workforce. Those rejoining a former employer would still receive the existing notice of suspension.

Sec. 627. Provisions Relating to Plan Amendments

Generally, there is a short time within which to make plan amendments to reflect amendments to the law. In addition, the anti-cutback rules can have the unintended consequence of preventing an employer from amending its plan to reflect a change in the law. Under this section, amendments to a plan or annuity contract made pursuant to any amendment made by the Act would not be required to be made before the last day of the first plan year beginning on or after January 1, 2003. Operational compliance would, of course, be required with respect to all plans as of the applicable effective date of any amendment made by the Act. In addition, timely amendments to a plan or annuity contract made pursuant to any amendment made by the Act would be deemed to satisfy the anti-cutback rules.

Sec. 628. Reporting Simplification for Small Plans

A "one-participant retirement plan" that is not exempt from the annual report filing requirement is only required to file a simplified form, i.e., Form 5500–EZ. A one-participant plan is a plan that covers and benefits only certain owners (or such owners and their spouses) of the sponsoring employer and meets the following requirements: (1) the plan satisfies the section 410(b) coverage requirements without being aggregated with any other plan; (2) the plan does not cover a business that is a member of an affiliated

service group, a controlled group of employers, or a group of businesses under common control; and (3) the plan does not cover a business that leases employees. Under this section, a plan that covers fewer than 25 employees on the first day of the plan year would only be required to file a Form 5500–EZ, provided that the plan meets the three requirements with respect to the definition of a one-participant plan.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This bill initiates pension reform amendments to the Employee Retirement Income Security Act (ERISA). Since ERISA excludes governmental plans, the bill does not apply to legislative branch employees. As public employees, legislative branch employees are eligible to participate in the Federal Employee Retirement System.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This bill initiates pension reform amendments to the Employee Retirement Income Security Act (ERISA), and makes retirement security more available to millions of workers by expanding small business retirement plans, allowing workers to save more, addressing the needs of an increasingly mobile workforce through greater portability and other changes, making pensions more secure, and cutting the red tape that has hamstrung employers who want to establish pension plans for their workers. As such, the bill does not contain any unfunded mandates.

ROLL CALL VOTES

COMMITTEE ON EDUCATION AND THE WORKFORCE

ROLL CALL 1 **BILL** H.R. 1102 **DATE** July 14, 1999

AMENDMENT NUMBER 4 **DEFEATED** 16-23

SPONSOR/AMENDMENT Mr. Andrews / amendment striking Section 624 (regarding annual report dissemination) and Section 626 (benefit suspension notice)

MEMBER	AYE	NO	PRESENT	NOT VOTING
Mr. GOODLING, Chairman		X		
Mr. PETRI, Vice Chairman		X		
Mrs. ROUKEMA		X		
Mr. BALLENGER		X		
Mr. BARRETT		X		
Mr. BOEHNER		X		
Mr. HOEKSTRA		X		
Mr. McKEON		X		
Mr. CASTLE		X		
Mr. JOHNSON				X
Mr. TALENT		X		
Mr. GREENWOOD				X
Mr. GRAHAM		X		
Mr. SOUDER		X		
Mr. McINTOSH				X
Mr. NORWOOD				X
Mr. PAUL		X		
Mr. SCHAFFER		X		
Mr. UPTON		X		
Mr. DEAL		X		
Mr. HILLEARY		X		
Mr. EHLERS		X		
Mr. SALMON		X		
Mr. TANCREDO		X		
Mr. FLETCHER		X		
Mr. DEMINT		X		
Mr. ISAKSON		X		
Mr. CLAY	X			
Mr. MILLER	X			
Mr. KILDEE				X
Mr. MARTINEZ	X			
Mr. OWENS	X			
Mr. PAYNE	X			
Mrs. MINK	X			
Mr. ANDREWS	X			
Mr. ROEMER	X			
Mr. SCOTT	X			
Ms. WOOLSEY	X			
Mr. ROMERO-BARCELO	X			
Mr. FATTAH				X
Mr. HINOJOSA	X			
Mrs. McCARTHY				X
Mr. TIERNEY	X			
Mr. KIND				X
Ms. SANCHEZ	X			
Mr. FORD				X
Mr. KUCINICH	X			
Mr. WU				X
Mr. HOLT	X			
TOTALS	16	23		10

CORRESPONDENCE

COMMITTEE ON EDUCATION AND THE WORKFORCE,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, July 22, 1999.

Hon. BILL ARCHER,
Chairman, Committee on Ways and Means, Washington, DC.

DEAR CHAIRMAN ARCHER: Thank you for your letter and for working with me regarding H.R. 2488, the Financial Freedom Act. As you have correctly noted, Title XII of H.R. 2488, as reported, contains numerous pension provisions designed to improve retirement security. As you also know, on July 14, 1999, the Committee on Education and the Workforce ordered favorably reported H.R. 1102, "Comprehensive Retirement Security an Pension Reform Act." The bill, as introduced, was referred to the Committee on Ways and Means, and in addition, to the Committee on Education and the Workforce, and Committee on Government Reform. Titles 1–V of the bill, as reported by the Committee on Education and the Workforce, contain many of the tax provisions included in H.R. 2488, and Title VI contains amendments to the Employee Retirement Income Security Act (ERISA).

As you know, I intended to have Rules Committee make in order the provisions in H.R. 1102, regarding ERISA; however, in order to expedite consideration of H.R. 2488 and with the understanding as outlined in your letter, I did not make such a request. I appreciate your working with me to include those pension provisions within the jurisdiction of the Committee on Education and the Workforce in the final conference agreement on H.R. 2488. I appreciate your support in my request to the Speaker for the appointment of conferees from my Committee with respect to matters within the jurisdiction of my committee when a conference with the Senate is convened on this legislation.

Thank you for agreeing to include this exchange of letters in the Congressional Record during the House debate on H.R. 2488. Again, I thank you for working with me in developing this legislation and I look forward to working with you on these issues in the future.

Sincerely,

BILL GOODLING, *Chairman.*

COMMITTEE ON EDUCATION AND THE WORKFORCE,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, August 2, 1999.

Hon. J. DENNIS HASTERT,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: I am writing with regard to the forthcoming Conference on H.R. 2488, the "Financial Freedom Act of 1999", and the Senate amendment thereto. The Senate Amendment contains a number of provisions amending the Employee Retirement Income Security Act (ERISA), which are within the jurisdiction of the Committee on Education and the Workforce. As such, I am requesting that Members of the Committee on Education and the Workforce be appointed to the Conference Committee on these provisions.

As you may recall, on July 14, 1999, the Committee on Education and the Workforce ordered favorably reported the bill, H.R. 1102, the "Comprehensive Retirement Security and Pension Reform Act." Title VI of the Committee reported bill contains a number of pension reform changes to ERISA, several of these provisions are the same or similar to provisions contained in the Senate Amendment. You may also recall that I had intended to ask the Committee on Rules to make the provisions regarding ERISA in order as an amendment to H.R. 2488, during the House Floor consideration; however, in order to expedite consideration of that bill and with the understanding that Members of the Education and the Workforce Committee would be appointed as conferees to matters within our jurisdiction, I withheld that request. Chairman Archer and I engaged in an exchange of letters dated July 21st and July 22nd, respectfully, regarding this understanding.

As such the Committee on Education and the Workforce has jurisdiction over the following sections of the Senate Amendment:

Sec. 313. Plan loans for suchapter S owners, partners, and sole proprietors

Sec. 315. Reduced PBGC premium for new plans of small employers

Sec. 316. Reduction of additional PBGC premium for new plans

Sec. 318. SAFE annuities and trusts

Sec. 325. Faster vesting of certain employer matching contributions

Sec. 335. Treatment of forms of distribution

Sec. 338. Employers may disregard rollovers for purposes of cash-out amounts

Sec. 341. Repeal of 150 percent of current liability funding limit

Sec. 342. Extension of missing participants program to multiemployer plans

Sec. 344. Failure to provide notice by defined plans significantly reducing future benefit accruals

Sec. 345. Protection of investment of employee contributions to 401(k) plans

Sec. 351. Periodic pension benefits statements

Sec. 362. Modification of timing of plan valuations

Sec. 363. Substantial owner benefits in terminated plans

Sec. 365. Notice and consent period regarding distributions

Sec. 369. Annual report dissemination

Sec. 371. Reporting Simplification

Sec. 381. Provisions relating to plan amendments

Sec. 1305. Transfer of excess defined benefit plan assets for retiree health benefits

Sec. 1406. Technical Corrections to SAVER Act

In addition H.R. 2248 includes one freestanding provision that is also within the jurisdiction of the Committee on Education and the Workforce: Section 1261, "Simplified Annual Filing Requirement for Plans with Fewer than 25 Employees."

If I may be of further assistance please do not hesitate to contact me. I thank you for your attention to this matter and look forward to working with the Conference Committee on these issues.

Sincerely,

BILL GOODLING, *Chairman.*

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1102 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 15, 1999.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1102, the Comprehensive Retirement Security and Pension Reform Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Eric Rollins and Tamara Ohler.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 1102.—Comprehensive Retirement Security and Pension Reform Act

Summary: H.R. 1102 would make numerous changes to the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act of 1974 (ERISA) that would affect the taxation and operation of private pension plans.

CBO and the Joint Committee on Taxation (JCT) estimate that the bill would reduce federal tax revenues by $27 billion over the 2000–2004 period. CBO estimates that the bill would reduce direct spending by $3 million over the same period. Since this bill would affect direct spending and revenues, pay-as-you-go procedures would apply.

JCT and CBO have determined that H.R. 1102 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated Cost to the Federal Government: The estimated budgetary impact of H.R. 1102 is shown in the following table. The costs of this legislation would fall within budget functions 600 (income security) and 800 (general government).

	By fiscal year, in millions of dollars				
	2000	2001	2002	2003	2004
CHANGES IN DIRECT SPENDING					
IRS User Fees	−1	−2	−1	−1	−([1])
Federal Retirement Benefits	−3	−3	−3	−2	−2
Department of Labor Civil Penalties	1	1	1	1	2
Reduced PBGC Flat-Rate Premiums	0	0	([1])	([1])	([1])
Reduced PBGC Variable Premiums	0	0	3	3	3
Missing Participants in Terminated Plans	([1])	([1])	([1])	([1])	([1])
Substantial Owner Benefits	([1])	([1])	([1])	([1])	([1])
Total Direct Spending	−3	−4	([1])	1	3
CHANGES IN REVENUES					
IRS User Fees	−9	−29	−11	−12	0
Other Estimated Revenues	−2,104	−5,355	−5,931	−6,493	−7,097
Total Revenues	−2,113	−5,384	−5,942	−6,505	−7,097
TOTAL CHANGES					
Direct Spending and Revenues	2,110	5,380	5,942	6,506	7,100

[1] Less than $500,000.

NOTE: The Joint Committee on Taxation prepared the estimates of changes in revenues other than IRS user fees.

Basis of estimate

Direct spending

IRS User Fees.—The Internal Revenue Service (IRS) has the authority to retain and spend without further appropriation action a small portion of the fees it collects from taxpayers for certain rulings and determinations by the office of the chief counsel and by the office for employee plans and exempt organizations. Because H.R. 1102 would eliminate the fee paid by small businesses for rulings and determinations, the bill would also reduce the amounts available for the IRS to spend. CBO estimates that eliminating the fee would decrease direct spending by a total of $5 million over the 2000–2004 period.

Federal Retirement Benefits.—Most federal employees who were hired before 1984 are covered by the Civil Service Retirement Systems (CSRS). Under CSRS, employees must have five years of service in order to qualify for retirement benefits. Employees who have qualified for retirement benefits but leave government service before retirement are eligible for a deferred annuity when they turn 62. If a former employee dies before reaching age 62, his or her retirement contributions are refunded in a lump sum, usually to the surviving spouse. The surviving spouse is not eligible to receive a survivor benefit. (by comparison, surviving spouses of current employees and annuitants are eligible for survivor benefits.)

Section 204 of the bill would allow these surviving spouses to receive survivor benefits. Surviving spouses would select one or two types of survivor benefit. The first type of benefit would be equal to 50 percent of the former employee's deferred annuity and payment would begin when the former employee would have turned 62. Under the second type of benefit, benefit payments would begin immediately after the former employee's death, but the amount of the benefit would be reduced to make it actuarially equivalent to the first type of benefit. Instead of a survivor benefit, surviving spouses would also be able to receive the refund of retirement contributions now available under current law.

According to the Office of Personnel Management, about 34,000 former CSRS employees are entitled to a deferred annuity but have not reached age 62. Based on Census data on marriage and mortality rates, CBO estimates that about 170 surviving spouses annually would be affected by this provision. The survivor benefits offered by the bill would be significantly more valuable than a refund of retirement contributions, so CBO assumes that all surviving spouses would opt for a survivor benefit, with half choosing a deferred benefit and half choosing an immediate benefit.

CBO estimates that this provision would reduce spending on CSRS retirement benefits by $13 million over the 2000–2004 period. Initially, outlays would decrease because surviving spouses would receive annual benefits of about $2,000 instead of a one-time payment of about $17,000 under current law. By 2007, spending on retirement benefits would be higher than under current law.

Department of Labor Civil Penalties.—Under current law, the Department of Labor (DoL) is responsible for administering ERISA's reporting, disclosure, and fiduciary conduct requirements for private pension plans. In cases of fiduciary misconduct, DoL is required to assess a civil penalty equal to 20 percent of any amount that is restored to a pension plan as part of a settlement or court judgment. These penalties, which totaled $3 million in 1998, are recorded as offsetting receipts.

Section 614 of the bill would allow DoL to assess these civil penalties at its discretion and to assess penalties that could be less than 20 percent of the recovered amount. With this more flexible authority, DoL has indicated that it would no longer assess penalties in cases where companies comply voluntarily with DoL's enforcement efforts. According to DoL, these cases comprise about a third of the total. The full 20-percent penalty would still be assessed in the remaining cases, which are typically resolved through litigation. CBO estimates that this provision would reduce penalties collected by about a third relative to current law, and that the drop in penalties would total $6 million over the 2000–2004 period.

Reduced PBGC Flat-Rate Premium.—Under current law, single-employer defined benefit pension plans pay two types of annual premiums to the Pension Benefit Guaranty Corporation (PBGC). All covered plans are subject to a flat-rate premium of $19 per participant. In addition, underfunded plans must also pay a variable premium that depends on the amount by which the plan's liabilities exceed its assets.

The bill would reduce the flat-rate premium from $19 to $5 per participant for plans established by employers with 100 or fewer employees during the first five years of the plan's operation. According to information obtained from the PBGC, approximately 3,000 plans would qualify for this reduction. Those plans contain an average of about 10 participants each. CBO estimates that the change would reduce PBGC's premium income, which is classified as on offsetting collection, by about $400,000 annually beginning in 2002 and by about $1.3 million over the 2000–2004 period.

Reduced PBGC Variable Premiums.—The bill would make two changes affecting the variable-rate premium paid by underfunded plans. First, for all new plans that are underfunded, the bill would phase in the variable-rate premium. In the first year, plans would pay nothing. In the succeeding four years, they would pay 20 percent, 40 percent, 60 percent, and 80 percent, respectively, of the full amount. In the sixth and later years, they would pay the full variable-rate premium determined by their funding status. On the basis of information on premium payments to the PBGC in 1996 and 1997, CBO estimates that this change would affect the premiums of approximately 400 plans each year. It would reduce PBGC's total premium receipts by about $4 million over the 2000–2004 period.

The bill would also reduce the variable-rate premium paid by all underfunded plans (not just new plans) established by employers with 25 or fewer employees. Under the bill, the variable-rate premium per participant paid by those plans would not exceed $5 multiplied by the number of participants in the plan. CBO estimates that approximately 8,300 plans would have their premium payments to PBGC reduced by this provision beginning in 2002. Premium receipts by the PBGC would decline by $1.5 million in 2002 and by $5 million over the 2002–2004 period.

Missing Participants in Terminated Plans.—The legislation would expand the missing participant program. The retirement Protection Act of 1994 established a missing participant program at PBGC for terminating defined benefit plans. The bill would expand the program to include terminating multiemployer plans, defined benefit plans not covered by PBGC, and defined contribution plans.

The budgetary impact of this provision would be less than $500,000 annually. PBGC does not expect a high volume of missing participants as a result of this proposal, and the administrative costs of expanding the program would not be high. The next budgetary effect of increased benefit payments would also be small. Amounts paid by a pension plan to PBGC for missing participants are held in PBGC's trust fund, which is off-budget. Amounts paid by PBGC to participants at the time they are located are funded in the same manner as benefit payments to participants in plans for which PBGC is the trustee—partially by the trust fund and partially by on-budget revolving funds.

Substantial Owner Benefits in Terminated Plans.—The legislation would simplify the rules by which the PBGC pays benefits to substantial owners (those with an ownership interest of at least 10 percent) of terminated pension plans. Only about one-third of the plans taken over by PBGC involve substantial owners, and the

change in benefits paid by PBGC to owner-employee under this provision would be less than $500,000 annually.

Revenues

IRS User Fees.—H.R. 1102 would eliminate the fee that the IRS charges small businesses for providing ruling, opinion, and determination letters regarding the companies' pension plans. This provision would take effect on December 31, 1999. Based on the amount of recent fees and on information from the IRS, CBO estimates that eliminating the fee would decrease governmental receipts by a total of $61 million over fiscal years 2000 through 2003. Under current law, the IRS's authority to charge such fees will expire at the end of fiscal year 2003, so the provision would have no impact on receipts beyond 2003.

Other Estimated Revenues.—JCT estimates that the bill's amendments to the Internal Revenue Code would reduce federal revenues by $27 billion over the 2000–2004 period. This revenue loss is attributable primarily to provisions that would increase the amount of contributions to an Individual Retirement Account that are tax-deductible from $2,000 per person to $5,000 ($14.4 billion in lower revenues over the 2000–2004 period), exempt $100,000 in assets from the minimum distribution rules that apply to defined contribution retirement plans ($5.6 billion in lower revenues), and increase the limit on annual contributions to 401(k) plans from $10,000 to $15,000 ($2.6 billion in lower revenues).

Pay-as-you-go considerations: the Balanced Budget and emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	−3	−4	0	1	3	4	4	5	6	7
Changes in receipts	0	−2,113	−5,384	−5,942	−6,505	−7,097	−7,742	−8,391	−9,033	−9,604	−10,233

Intergovernmental and private-sector impact: JCT and CBO have determined that H.R. 1102 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budget of state, local, or tribal governments.

Estimate prepared by: Federal Benefits and DoL Civil Penalties: Eric Rolling. Pension Benefit guaranty Corporation: Tamara Ohler. IRS User Fees (direct spending): John Righter. IRS User Fees (revenues): Hester Grippando.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Statement of Oversight Findings of the Committee on Government Reform

With respect to the requirement of clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform on the subject of H.R. 1102.

Constitutional Authority Statement

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 1102.

The Employee Retirement Income Security Act (ERISA) has been determined by the federal courts to be within Congress' Constitutional authority. In *Commercial Mortgage Insurance, Inc.* v. *Citizens National Bank of Dallas*, 526 F.Supp. 510 (N.D. Tex. 1981), the court held that Congress legitimately concluded that employee benefit plans so affected interstate commerce as to be within the scope of Congressional powers under Article 1, Section 8, Clause 3 of the Constitution of the United States. In *Murphy* v. *Wal-Mart Associates' Group Health Plan*, 928 F.Supp. 700 (E.D. Tex 1996), the court upheld the preemption provisions of ERISA. Because H.R. 1102 modifies but does not extend the federal regulation of pensions, the Committee believes that the Act falls within the same scope of Congressional authority as ERISA.

Committee Estimate

Clauses 3(d)(2) of Rule XIII of the rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 1102. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

Changes in Existing Law Made by the Bill, as Reported

Pursuant to the terms of the referral of the bill to the Committee, the effect of the amendment adopted by the Committee is to strike all provisions relating to the Employee Retirement Income Security Act of 1974 from titles I through V of the bill and to add

a new title VI to the bill comprised of all provisions relating to that Act. The Committee otherwise took no action on the provisions of titles I through V affecting existing law.

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by title VI of the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

* * * * * * *

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

SUBTITLE A—GENERAL PROVISIONS

* * * * * * *

DEFINITIONS

SEC. 3. For purposes of this title:
(1) * * *

* * * * * * *

⟦(36) The term “excess benefit plan” means a plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of the Internal Revenue Code of 1986 on plans to which that section applies, without regard to whether the plan is funded. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.⟧

(36) The term “excess benefit plan” means a plan, without regard to whether such plan is funded, maintained by an employer solely for the purpose of providing benefits to employees in excess of any limitation imposed by section 401(a)(17) or 415 of the Internal Revenue Code of 1986 or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply. To the extent that a separable part of a plan (as determined by the Secretary of Labor) maintained by an employer is maintained for such purpose, that part shall be treated as a separate plan which is an excess benefit plan.

* * * * * * *

SUBTITLE B—REGULATORY PROVISIONS

PART 1—REPORTING AND DISCLOSURE

DUTY OF DISCLOSURE AND REPORTING

SEC. 101. (a) * * *

* * * * * * *

(e) NOTICE OF TRANSFER OF EXCESS PENSION ASSETS TO HEALTH BENEFITS ACCOUNTS.—

(1) * * *

* * * * * * *

(3) DEFINITIONS.—For purposes of paragraph (1), any term used in such paragraph which is also used in section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, [1995] *2001*) shall have the same meaning as when used in such section.

* * * * * * *

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

SEC. 104. (a) * * *

* * * * * * *

(b) Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) * * *

* * * * * * *

(3) Within 210 days after the close of the fiscal year of the plan, the administrators [shall furnish] *shall make available for examination (and, upon request, shall furnish)* to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) and such other material (including the percentage determined under section 103(d)(11)) as is necessary to fairly summarize the latest annual report.

* * * * * * *

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

SEC. 105. [(a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

[(1) the total benefits accrued, and

[(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

[(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12-month period.]

(a)(1) Except as provided in paragraph (2)—

(A) The administrator of an individual account plan shall furnish a pension benefit statement—

(i) to a plan participant at least once annually, and

(ii) to a plan beneficiary upon written request.

(B) The administrator of a defined benefit plan shall furnish a pension benefit statement—

(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

(ii) to a participant or beneficiary of the plan upon written request.

(2) Notwithstanding paragraph (1), the administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall only be required to furnish a pension benefit statement under paragraph (1) upon the written request of a participant or beneficiary of the plan.

(3) A pension benefit statement under paragraph (1)—

(A) shall indicate, on the basis of the latest available information—

(i) the total benefits accrued, and

(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

(B) shall be communicated in a manner calculated to be understood by the average plan participant, and

(C) may be provided in written, electronic, telephonic, or other appropriate form.

(4) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, telephonic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in subsection (a)(1)(A) or (a)(1)(B)(ii), whichever is applicable, in any 12-month period.

* * * * * * *

⟦(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.⟧

* * * * * * *

PART 2—PARTICIPATION AND VESTING

COVERAGE

* * * * * * *

MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

* * * * * * *

(2) [A plan] *Except as provided in paragraph (4), a plan* satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A) or (B).

* * * * * * *

(4) FASTER VESTING FOR MATCHING CONTRIBUTIONS.—In the case of matching contributions (as defined in section 401(m)(4)(A) of the Internal Revenue Code of 1986), paragraph (2) shall be applied—

(A) by substituting "3 years" for "5 years" in subparagraph (A), and

(B) by substituting the following table for the table contained in subparagraph (B):

Years of service:	***The nonforfeitable percentage is:***
2	*20*
3	*40*
4	*60*
5	*80*
6 or more	*100.*

* * * * * * *

(e)(1) * * *

* * * * * * *

(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this paragraph, the term "rollover contributions" means any rollover contribution under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), or 457(e)(16) of the Internal Revenue Code of 1986.

* * * * * * *

BENEFIT ACCRUAL REQUIREMENTS

SEC. 204. (a) * * *

* * * * * * *

(g)(1) * * *

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. [The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).] *The Secretary of the Treasury may by regulations provide that this paragraph shall not apply to*

any plan amendment that does not adversely affect the rights of participants in a material manner.

* * * * * * *

(4)(A) A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely because the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this paragraph referred to as the "transferor plan") to the extent that—

(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election;

(v) if the transferor plan provides for an annuity as the normal form of distribution under the plan in accordance with section 205, the transfer is made with the consent of the participant's spouse (if any), and such consent meets requirements similar to the requirements imposed by section 205(c)(2); and

(vi) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(5) Except to the extent provided in regulations, a defined contribution plan shall not be treated as failing to meet the requirements of this section merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

[(h)(1) A plan described in paragraph (2) may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to—

⟦(A) each participant in the plan,

⟦(B) each beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)), and

⟦(C) each employee organization representing participants in the plan,

except that such notice shall instead be provided to a person designated, in writing, to receive such notice on behalf of any person referred to in subparagraph (A), (B), or (C).

⟦(2) A plan is described in this paragraph if such plan is—

⟦(A) a defined benefit plan, or

⟦(B) an individual account plan which is subject to the funding standards of section 302.⟧

(h) NOTICE OF SIGNIFICANT REDUCTION IN BENEFIT ACCRUALS.—

(1) If a plan described in paragraph (4) is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide a notice to—

(A) each affected participant in the plan,

(B) each affected beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)), and

(C) each employee organization representing affected participants in the plan,

except that such notice shall instead be provided to a person designated to receive such notice on behalf of any person referred to in paragraph (A), (B), or (C). For purposes of this paragraph, an affected participant or beneficiary is a participant or beneficiary to whom the significant reduction described in this paragraph is reasonably expected to apply.

(2) The notice required by paragraph (1) shall—

(A) include the plan amendment, or a summary of such plan amendment, and its effective date, and

(B) provide a notification and description of the reduction described in paragraph (1).

A notification and description shall not fail to satisfy paragraph (2)(B) by reason of a failure to provide the specific amount of the reduction with respect to any participant or beneficiary.

(3) The notice required by paragraph (1) shall be provided no less than 30 days prior to the effective date of the plan amendment.

(4) A plan is described in this paragraph if such plan is—

(A) a defined benefit plan, or

(B) an individual account plan which is subject to the funding standards of section 302.

(5) In the case of a material failure to comply with requirements of this subsection with respect to more than a de minimis number of persons described in paragraph (1), the plan amendment to which the failure relates shall not be effective with respect to such persons for any period prior to the expiration of 30 days following the date on which a notice is provided in accordance with this subsection. For purposes of this paragraph,

the term "material failure" includes any failure that results in materially less information being provided to the persons described in paragraph (1).

* * * * * * *

REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY

SEC. 205. (a) * * *

* * * * * * *

(c)(1) A plan meets the requirements of this section only if—

* * * * * * *

(7) For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the ⟦90-day⟧ *180-day* period ending on the annuity starting date, or

* * * * * * *

(9) Not later than January 1, 2001, the Secretary of Labor shall develop model language for the spousal consent required under paragraph (2) which—

(A) is written in a manner calculated to be understood by the average person, and

(B) discloses in plain terms whether—

(i) the waiver is irrevocable, and

(ii) the waiver may be revoked by a qualified domestic relations order.

* * * * * * *

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

SEC. 206. (a) * * *

* * * * * * *

(d)(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

* * * * * * *

(3)(A) * * *

* * * * * * *

(O) Not later than January 1, 2001, the Secretary shall develop language for a qualified domestic relations order which meets—

(i) the requirements of subparagraph (B)(i), and

(ii) the requirements of this Act related to the need to consider the treatment of any lump sum payment, qualified joint and survivor annuity, or qualified preretirement survivor annuity.

* * * * * * *

(f) MISSING PARTICIPANTS IN TERMINATED PLANS.—In the case of a plan covered by ⟦title IV⟧ *section 4050*, ⟦the plan shall provide that,⟧ upon termination of the plan, benefits of missing participants shall be treated in accordance with section 4050.

* * * * * * *

PART 3—FUNDING

COVERAGE

* * * * * * *

MINIMUM FUNDING STANDARDS

SEC. 302. (a)(1) * * *

* * * * * * *

(c)(1) For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

* * * * * * *

(7) FULL-FUNDING LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (6), the term "full-funding limitation" means the excess (if any) of—

(i) the lesser of (I) [the applicable percentage] *in the case of plan years beginning before January 1, 2004, the applicable percentage* of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

* * * * * * *

[(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

[In the case of any plan year beginning in—	The applicable percentage is—
1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 and succeeding years	170.]

(F) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)(i)(I), the applicable percentage shall be determined in accordance with the following table:

In the case of any plan year beginning in—	***The applicable percentage is—***
2001	*160*
2002	*165*
2003	*170.*

* * * * * * *

(9)*(A)* For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(B)(i) Except as provided in clause (ii), if, for any plan year—

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

(II) the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)), determined as of the valuation date for the preceding plan year,

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

(ii)(I) Clause (i) shall not apply for more than 2 consecutive plan years and valuation shall be under subparagraph (A) with respect to any plan year to which clause (i) does not apply by reason of this clause.

(II) Subclause (I) shall not apply to the extent that more frequent valuations are required under the regulations under subparagraph (A).

(iii) Information under clause (i) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) An election under this subparagraph, once made, shall be irrevocable without the consent of the Secretary of the Treasury.

* * * * * * *

PART 4—FIDUCIARY RESPONSIBILITY

* * * * * * *

ESTABLISHMENT OF TRUST

SEC. 403. (a) * * *

* * * * * * *

(c)(1) Except as provided in paragraph (2), (3), or (4) or subsection (d), or under section 4042 and 4044 (relating to termination of insured plans), or under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, [1995] *2001*), the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

* * * * * * *

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

SEC. 408. (a) * * *

* * * * * * *

(b) The prohibitions provided in section 406 shall not apply to any of the following transactions:

* * * * * * *

(13) Any transfer [in a taxable year beginning before January 1, 2001] *made before October 1, 2009*, of excess pension assets from a defined benefit plan to a retiree health account in a qualified transfer permitted under section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, [1995] *2001*).

* * * * * * *

(d)(1) * * *

* * * * * * *

(2)(A) For purposes of paragraph (1), the following shall be treated as owner-employees:

* * * * * * *

(C) For purposes paragraph (1)(A), the term "owner-employee" shall only include a person described in clause (ii) or (iii) of subparagraph (A).

* * * * * * *

PART 5—ADMINISTRATION AND ENFORCEMENT

CRIMINAL PENALTIES

* * * * * * *

CIVIL ENFORCEMENT

SEC. 502. (a) * * *

* * * * * * *

(h)*(1)* A copy of the complaint in any action under this title by a participant, beneficiary, or fiduciary (other than an action brought by one or more participants or beneficiaries under subsection (a)(1)(B) which is solely for the purpose of recovering benefits due such participants under the terms of the plan) shall be served upon the Secretary and the Secretary of the Treasury by certified mail. Either Secretary shall have the right in his discretion to intervene in any action, except that the Secretary of the Treasury may not intervene in any action under part 4 of this subtitle. If the Secretary brings an action under subsection (a) on behalf of a participant or beneficiary, he shall notify the Secretary of the Treasury.

(2) In any case in which—

(A) a complaint in an action brought against a person under subsection (a)(2) is served in accordance with paragraph (1),

(B) the action is maintained as a class action or derivative action under the Federal Rules of Civil Procedure,

(C) the action is resolved by a court-approved settlement agreement,

(D) the complaint is served upon the Secretary at least 90 days prior to final court approval of the settlement agreement, and

(E) the Secretary receives a fully executed copy of the settlement agreement within the time established by the court for notifying the plan's participants of the proposed compromise pursuant to Rule 23 or 23.1 of the Federal Rules of Civil Procedure,

the Secretary shall be barred from litigating any claim against such person under subsection (a)(2) that was, or could have been, brought in that action with respect to the same plan. Notwithstanding this paragraph, the Secretary shall not be barred from litigating any claim against such person under subsection (a)(2) if the Secretary filed a complaint under subsection (a)(2) prior to the final court approval of the settlement agreement.

* * * * * * *

(l)(1) In the case of—

(A) any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary [shall] *may* assess a civil penalty against such fiduciary or other person in an amount [equal to] *not greater than* 20 percent of the applicable recovery amount.

[(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from a fiduciary or other person with respect to a breach or violation described in paragraph (1)—

[(A) pursuant to any settlement agreement with the Secretary, or

[(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5).]

(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from any fiduciary or other person (or from any other person on behalf of any such fiduciary or other person) with respect to a breach or violation described in paragraph (1) on or after the 30th day following receipt by such fiduciary or other person of written notice from the Secretary of the violation, whether paid voluntarily or by order of a court in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5). The Secretary may, in the Secretary's sole discretion, extend the 30-day period described in the preceding sentence.

* * * * * * *

(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.

* * * * * * *

NATIONAL SUMMIT ON RETIREMENT SAVINGS

SEC. 517. (a) AUTHORITY TO CALL SUMMIT.—Not later than July 15, 1998, the President shall convene a National Summit on Retirement Income Savings at the White House, to be co-hosted by the President and the Speaker and the Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate. Such a National Summit shall be convened thereafter in [2001 and 2005 on or after September 1 of each year involved] *2001, 2005, and 2009 in the month of September of each year involved*. Such a National Summit shall—

* * * * * * *

(b) PLANNING AND DIRECTION.—The National Summit shall be planned and conducted under the direction of the Secretary, in con-

sultation with, and with the assistance of, the heads of such other Federal departments and agencies as the President may designate. Such assistance may include the assignment of personnel. The Secretary shall, in planning and conducting the National Summit, consult with the congressional leaders specified in subsection (e)(2). The Secretary shall also, in carrying out the Secretary's duties under this subsection, consult and coordinate with at least one organization made up of private sector businesses and associations partnered with Government entities to promote long-term financial security in retirement through savings. *To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with the American Savings Education Council.*

* * * * * * *

(e) NATIONAL SUMMIT PARTICIPANTS.—

(1) * * *

* * * * * * *

(2) STATUTORILY REQUIRED PARTICIPATION.—The participants in the National Summit shall include the following individuals or their designees:

(A) * * *

* * * * * * *

【(D) the Chairman and ranking Member of the Committee on Labor and Human Resources of the Senate;】

(D) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;

* * * * * * *

(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and

【(G)】 *(J)* the parties referred to in subsection (b).

(3) ADDITIONAL PARTICIPANTS.—

(A) IN GENERAL.—【There shall be not more than 200 additional participants.】 *The participants in the National Summit shall also include additional participants appointed under this subparagraph.* Of such additional participants—

(i) 【one-half shall be appointed by the President,】 *not more than 100 participants shall be appointed under this clause by the President,* in consultation with the elected leaders of the President's party in Con-

gress (either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and either the Majority Leader or the Minority Leader of the Senate; [and]

(ii) [one-half shall be appointed by the elected leaders of Congress] *not more than 100 participants shall be appointed under this clause by the elected leaders of Congress* of the party to which the President does not belong (one-half of that allotment to be appointed by either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and one-half of that allotment to be appointed by either the Majority Leader or the Minority Leader of the Senate)[.]*; and*

(iii) The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this clause additional participants to the National Summit. The number of such additional participants appointed under this clause may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by the organization referred to in subsection (b)(2) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.

(B) APPOINTMENT REQUIREMENTS.—The additional participants described in subparagraph (A) shall be—

(i) appointed not later than [January 31, 1998] *May 1, 2001, May 1, 2005, and May 1, 2009, for each of the subsequent summits, respectively*;

* * * * * * *

(f) NATIONAL SUMMIT ADMINISTRATION.—

(1) ADMINISTRATION.—In administering this section, the Secretary shall—

(A) * * *

* * * * * * *

(C) make available for public comment*, no later than 90 days prior to the date of the commencement of the National Summit,* a proposed agenda for the National Summit that reflects to the greatest extent possible the purposes for the National Summit set out in this section;

* * * * * * *

(g) REPORT.—The Secretary shall prepare a report*, in consultation with the congressional leaders specified in subsection (e)(2),* describing the activities of the National Summit and shall submit the report to the President, the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the

Senate, and the chief executive officers of the States not later than 90 days after the date on which the National Summit is adjourned.

* * * * * * *

(i) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated for fiscal years [beginning on or after October 1, 1997] *2001, 2005, and 2009*, such sums as are necessary to carry out this section.

* * * * * * *

(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions received in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.

* * * * * * *

(k) CONTRACTS.—The Secretary may enter into contracts to carry out the Secretary's responsibilities under this section. The Secretary [shall enter into a contract on a sole-source basis] *may enter into a contract on a sole-source basis* to ensure the timely completion of the National Summit in [fiscal year 1998] *fiscal years 2001, 2005, and 2009*.

* * * * * * *

TITLE IV—PLAN TERMINATION INSURANCE

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

DEFINITIONS

* * * * * * *

PREMIUM RATES

SEC. 4006. (a)(1) * * *

* * * * * * *

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

(i) in the case of a single-employer plan, *other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),* for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

* * * * * * *

(iii) in the case of a multiemployer plan, for plan years beginning after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980 [September 26, 1980], an amount equal to—

(I) $1.40 for each participant, for the first, second, third, and fourth plan years,

(II) $1.80 for each participant, for the fifth and sixth plan years,

(III) $2.20 for each participant, for the seventh and eighth plan years, and

(IV) $2.60 for each participant, for the ninth plan year, and for each succeeding plan year【.】*, and*

(iv) in the case of a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined) for the plan year, $5 for each individual who is a participant in such plan during the plan year.

* * * * * * *

(E)(i) 【The】 *Except as provided in subparagraph (G), the* additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

* * * * * * *

(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term "applicable percentage" means—

(I) 0 percent, for the first plan year.

(II) 20 percent, for the second plan year.

(III) 40 percent, for the third plan year.

(IV) 60 percent, for the fourth plan year.

(V) 80 percent, for the fifth plan year.

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.

(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) had not established or maintained a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

(ii)(I) For purposes of this paragraph, the term "small employer" means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

(II) In the case of a plan maintained by 2 or more contributing sponsors that are not part of the same controlled group, the employ-

ees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.

(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by 2 or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether 25-or-fewer-employees limitation has been satisfied.

* * * * * * *

Subtitle B—Coverage

PLANS COVERED

SEC. 4021. (a) * * *

* * * * * * *

(b) This section does not apply to any plan—

(1) * * *

* * * * * * *

(9) which is established and maintained exclusively for substantial owners **[**as defined in section 4022(b)(6)**]**;

* * * * * * *

(d) For purposes of subsection (b)(9), the term "substantial owner" means an individual who, at any time during the 60-month period ending on the date the determination is being made—

(1) owns the entire interest in an unincorporated trade or business,

(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

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

* * * * * * *

SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022. (a) * * *

(b)(1) Except to the extent provided in paragraph (7)—

(A) * * *

* * * * * * *

⟦(5)(A) For purposes of this title, the term "substantial owner" means an individual who—

⟦(i) owns the entire interest in an unincorporated trade or business,

⟦(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

⟦(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this title an individual is also treated as a substantial owner with respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

⟦(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

⟦(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

⟦(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) (as limited under paragraph (3) of this subsection).

⟦(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.⟧

(5)(A) For purposes of this paragraph, the term "majority owner" means an individual who, at any time during the 60-month period ending on the date the determination is being made—

(i) owns the entire interest in an unincorporated trade or business,

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

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

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

(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

(i) a fraction (not to exceed 1) the numerator of which is the number of years from the later of the effective date or the adoption date of the plan to the termination date, and the denominator of which is 10, and

(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.

* * * * * * *

Subtitle C—Terminations

* * * * * * *

REPORTABLE EVENTS

SEC. 4043. (a) * * *

* * * * * * *

(c) For purposes of this section a reportable event occurs—

(1) * * *

* * * * * * *

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section 【4022(b)(6)】 *4021(d)* if—

* * * * * * *

ALLOCATION OF ASSETS

SEC. 4044. (a) In the case of the termination of a single-employer plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) * * *

* * * * * * *

(4) Fourth—

(A) to all other benefits (if any) of individuals under the plan guaranteed under this title (determined without regard to section 4022B(a)), and

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section 【4022(b)(5)】 *4022(b)(5)(B)* did not apply.

* * * * * * *

(b) For purposes of subsection (a)—

(1) * * *

(2) If the assets available for allocation under any paragraph of subsection (a) (other than paragraphs 【(5)】 *(4), (5),* and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.

【(3)】 *(4)* This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

* * * * * * *

【(4)】 *(5)* If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1986 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a) or 403(a) of such Code, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination.

【(5)】 *(6)* The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

【(6)】 *(7)* A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) in accordance with regulations prescribed by the corporation.

* * * * * * *

SEC. 4050. MISSING PARTICIPANTS.

(a) * * *

* * * * * * *

(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

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

(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described

in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

(A) to the corporation, or

(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

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

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

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

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

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

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

(B) at the time the assets are to be distributed upon termination, the plan—

(i) has missing participants, and

(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

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

【(c)】 *(e)* REGULATORY AUTHORITY.—The corporation shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to what will be considered a diligent search, the amount payable to the corporation, and the amount to be paid by the corporation.

* * * * * * *

TAXPAYER RELIEF ACT OF 1997

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TITLE XV—PENSIONS AND EMPLOYEE BENEFITS

* * * * * * *

Subtitle B—Other Provisions Relating to Pensions and Employee Benefits

* * * * * * *

SEC. 1524. DIVERSIFICATION OF SECTION 401(k) PLAN INVESTMENTS.

(a) * * *

* * * * * * *

[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.]

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

(2) NONAPPLICATION TO PREVIOUSLY ACQUIRED PROPERTY.—The amendments made by this section shall not apply to any elective deferral that is invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired by the plan before January 1, 1999.

ADDITIONAL VIEWS

In recent years there has been a growing recognition of the importance of retirement issues in our society. Americans are living longer, and are therefore more likely to reach a point in their lives where they cannot or do not want to continue to work. It has been a long-standing element of our national retirement policy that we want individuals to retire at an appropriate point in their lives, and to live out their remaining years with adequate income. Through the Social Security program, more than 90% of Americans are able to retire between 62–65, receiving, on average, slightly less than 40% of their pre-retirement income in monthly benefits. State and local government employees who are covered by state pension systems are not included in this coverage rate. Most retirement experts believe that somewhere between 65–85% of pre-retirement income is necessary to maintain a decent standard of living in retirement. The challenge is to adopt national policies that provide individuals the remaining 25–45% of retirement income that they need.

For the past several decades, policy-makers have tried to do that through the encouragement of employer sponsored pension plans that provide supplemental income in retirement (as well as individual savings). In 1974, Congress enacted the Employee Retirement Income Security Act (ERISA) which established standards for the adoption and maintenance of employer sponsored pension plans. ERISA established requirements for reporting and disclosure, participation and vesting, funding, fiduciary responsibility, administration and enforcement. Congress has amended ERISA numerous times over the ensuing years seeking to further improve the operation of the law.

On some levels, ERISA has been an important success. According to the Social Security Administration, in 1998, approximately 28% of private sector retirees have at least 20% of retirement income. Regrettably, the percent of the workforce who do not have pension coverage has hovered either slightly above or slightly below 50% for the past twenty-five years. Low income workers, part-time workers (primarily women), and employees of small businesses are the most likely not to have pension coverage. According to the Center on Budget and Policy Priorities, only 8% of full-time workers with earnings below $10,000, and only 27% of those with earnings between $10,000 and $15,000 are covered by pensions. On the other hand, 81% of those with earnings above $75,000 have coverage. According to the Congressional Research Service, pension coverage for full-time workers averages 61%, but only 27% for part-time or part year workers. As of 1996, 42% of full-time employees working for firms with fewer than 100 employees had pension coverage, but only 20% of employees working for firms with fewer than 25 employees had pension coverage.

Even during this period of strong economic growth, more workers are joining the workforce than are receiving pension coverage. And for the half of the workforce covered by a pension plan, there is reason to believe that it will not provide them with an adequate level of supplemental income in retirement. Although there is insufficient data to measure contributions to and benefits received from pension plans, data from the Federal Reserve shows pension plan contributions declining by 50% in recent years. And the increased shift from employer funded plans, such as traditional defined benefit plans, to employee funded arrangements, such as 401(k) plans, further brings into question whether future retirees will have adequate private pension income (the average pension account is $25–35,000 which will barely provide more than a few years of retirement income).

The challenge before this Committee is to put forth legislative reforms that address these growing retirement issues. While the Committee has held several hearings in recent years on these issues, few of the recommendations made were considered or adopted as part of this legislation.

With respect to H.R. 1102, the Comprehensive Retirement Security and Pension Reform Act of 1999, the bulk of the bill contains amendments to the Internal Revenue Code which affect the tax deductibility of contributions to employer sponsored pension plans. Because this is not within the jurisdiction of the Committee, the entire bill was not considered. However, the minority members of the Committee expressed concerns about the overall balance and content of the entire bill. The bill includes a number of provisions which improve current protections for workers and retirees, such as reducing vesting to three years for 401(k) plan matching contributions, encouraging rollovers of pension plan monies by workers switching employment, and eliminating compensation caps that unfairly affect the pension benefits of rank and file workers. The bill also contains a number of provisions that primarily benefit employers and upper income employees and may or may not benefit lower income workers.

With respect to the specific amendments within the jurisdiction of the Committee, we offer the following comments and concerns.

SECTION 604—FASTER VESTING OF CERTAIN EMPLOYER MATCHING CONTRIBUTIONS

We support reducing from 5 to 3 years vesting of certain employer matching contributions (Section 604). Currently, employer contributions to a plan, including matching contributions to a 401(k) plan, are required to become vested only after five years (or seven years if vesting is phased in). If an employee switches jobs after four years, all employer matching contributions could be forfeited. Current plan vesting requirements also have an adverse impact on women who are more likely to have shorter job tenure. In the interests of fairness and simplicity, this provision should be extended to all employer matching contributions, not just 401(k) contributions.

SECTION 612—MISSING PARTICIPANTS

Extending the Missing Participant's Program to multi-employer, defined contribution, and other non-covered plans (Section 612) is another provision that we support. Presently, the Pension Benefit Guaranty Corporation (PBGC) operates a clearinghouse for benefits due to missing participants under defined benefit plans. When a defined benefit plan terminates, the plan may transfer the benefits of the missing participant to the PBGC. The PBGC then attempts to find the missing participant. Section 612 would expand the PBGC missing participant program to most other types of pension plans. This expansion would be voluntary at the election of the plan's sponsor. We support this provision because it helps ensure that participants and beneficiaries receive their entitled benefits.

SECTION 616—NOTICE OF SIGNIFICANT REDUCTION IN ACCRUAL BENEFITS

This innocuous sounding provision deals with the most controversial pension issue occurring now—the conversion of traditional defined benefit plans to cash balance plans. Though cash balance plans were created during the 1980's, it has only been in the past two years that large numbers of employees have moved to convert their traditional defined benefit plans. According to Pensions and Investments, over 300 of the largest employers have converted to cash balance plans. Although the details vary somewhat from employer to employer, the primary change involves the plans' benefit formula calculation of future retirement benefits from a final pay formula to a career average formula. In addition, the employer expresses the career benefits in the form of a hypothetical "account" so that workers can see their benefits as a lump sum amount that increases with an assumed rate of earnings each year. The plan remains a defined benefit plan under which the employer provides a defined future benefit provided workers meet the necessary conditions, the employer guarantees a rate of return, and in the case of termination, the plan remains guaranteed by the Pension Benefit Guaranty Corporation (PBGC). As employers argue, in many ways a cash balance plan is fairer to younger workers since benefits accrue more evenly throughout a workers' career, instead of earning most benefits at the end of one's work service.

The controversy primarily arises when an employer converts an existing traditional defined benefit plan to a cash balance plan. Three major issues have arisen in this context. First, the adequacy of the notice of the change that must be provided to workers. Under section 204(h) of ERISA, employers must provide participants and beneficiaries notice of a significant reduction of benefit accrual fifteen days before the change. Employers are not required to explain the effect of the amendment. They may simply give employees a copy of the amendment. In cash balance conversions, there has been considerable controversy not only that employers are not adequately explaining to their employees the effect on their retirement benefits of the change, but also that some employers may be intentionally hiding the negative effects from workers. There have been numerous documented statements by benefit consultants that one of the many benefits of cash balance conversions

is that employers need not explain the effects to workers and workers are unlikely to understand the changes until it is too late.

Second, the effects on older workers. Many employers who convert to cash balance plans include an aspect known as wear-away. Under wear-away, employees whose accrued benefit under the plan before the conversion is greater than the benefit they would have accrued under the converted plan do not accrue new benefits until their former and new benefit levels are equal. For many older workers, up to 50% of their expected pension benefits can be lost. Since it primarily is older workers who have greater accrued benefits, this provision primarily affects older workers and has been alleged to be illegal age discrimination. In addition, since an important protection under ERISA is the protection of workers' accrued benefits, it also is alleged to be an undermining of the principle that accrued benefits cannot be reduced. There also are issues related to employer usage of differing interest rates that result in underestimating the value of older workers' benefits. Legislation and litigation is pending on these issues.

Third is the issue of employee choice to remain under the former plan formula. A number of employers that have converted to cash balance plans have afforded all or vested workers the opportunity to remain covered by the prior plan formula. It also has been recommended that employers be required to provide workers an election option. As the majority notes, the language included in the Committee adopted bill is a placeholder. To date, the Committee has not fully discussed or resolved what legislative changes should be adopted to address the issues raised by cash balance conversions. Several bills have been introduced which address the above discussed issues. In addition, at the mark-up session on this bill, an amendment was offered to make clear that in cash balance conversions, all pension plan participants, including older participants, must receive future pension benefit accruals. The amendment was withdrawn after the majority committed to work bipartisanly to find a solution on the issue. To date, the majority has not initiated discussions with the minority on this matter.

We believe that Section 616 does not go for enough in notifying and disclosing to participants that there is a plan amendment that would significantly reduce future benefit accruals. In addition, we do not support the majority's view that employers need not apprise workers of the amount of their benefit reductions. Nor do we believe electronic means are sufficient to convey this level of important and sensitive information to participants. The majority criticizes the Administration for not working with them on legislative language. There have been several legislative drafting sessions on the Administration's proposal to which the majority was invited, but did not attend. This is one of the most important pension issues facing Congress today. We urge the Committee to hold hearings and that the majority work with us to develop legislation that fairly protect the pension benefits of workers and retirees.

SECTION 619—MODEL SPOUSAL CONSENT FORM AND QUALIFIED DOMESTIC RELATIONS ORDER

We support the model consent from and qualified domestic relations order provisions. A qualified domestic relations order is a

order that creates or recognizes the existence of an alternate payee's right to receive all or a portion of the benefits payable with respect to a participant under a qualified retirement plan. Many times during divorce proceedings, a husband or wife does not realize that he or she may have signed away his or her rights as a beneficiary to their spouse's pension plan. It may not be until years later that a spouse realizes that he or she is not entitled to his or her ex-spouse's pension benefits as they originally thought. Similar situations also occur for widowed spouses. This provision requires the Secretary to develop language that would facilitate better understanding by spouses when they waive their spousal pension rights.

SECTION 620—ELIMINATION OF ERISA DOUBLE JEOPARDY

Some Committee members are concerned about this provision which would limit the Department of Labor's legal authority. The Department has strongly objected to this provision. Under current law, the Secretary is provided an independent right to bring suit under § 502(a)(2) of ERISA in order to protect the public interest. According to the Department, under settled principles of res judicata, the government is not generally bound by private litigation to which it was not a party when the litigation implicates the public interest in the enforcement of federal statutes. See, e.g., Hathorn v. Lovorn, 457 U.S. 255, 268 n.23 (1982); City of Richmond v. United States, 422 U.S. 358, 373 n.6 (1975); and Sam Fox Publ'g Co., Inc. v. United States, 366 U.S. 683, 689–90 (1961). The law does not impose the significant burden of monitoring each and every one of the thousands of ERISA cases brought each year to ensure that they are not mishandled. The Department argues that it could not realistically intervene in each and every such case, nor would the courts uniformly permit intervention as late as settlement in light of the Federal Rules of Civil Procedure Rule 24's timeliness requirements. See, e.g., Campbell v. Hall-Mark Electronics Corp., 808 F.2d 775 (11th Cir. 1987).

The Department believes this provision responds to a problem that does not exist and has been raised by individuals interested in a specific case. The Secretary has brought lawsuits after private settlement in only a handful cases in which the parties have settled for a small fraction of the plan's losses and wholly failed to promote the public interest in enforcement of ERISA. The Secretary argues that section 620 would bar the Secretary from pursuing claims which were not raised in the private action, were undisclosed by the parties and were unknown to the Secretary. Nor would the Department have sufficient time to assess settlement proposals involving complex financial transactions. The Secretary is not given any right to object to the proposed settlement, or to stay proceedings pending an investigation. The Department believes this provision would promote collusive or inadequate settlements designed to defeat the public interest in vigorous enforcement of ERISA. It would bar the Secretary from seeking a recovery even for participants who were never represented in the private action. It would unfairly apply retroactively to pending actions brought by the Secretary. Under current law, no defendant faces the risk of double jeopardy or double damages because the plan's

losses are offset by the value of the private settlement and the Secretary retains the right to make the plan whole, not to recover excess damages. Not all members agree with the views of the Department of Labor, and we believe additional hearings are needed to fully consider the merits of this matter.

SECTION 624—ANNUAL REPORT DISSEMINATION

There is also a disturbing provision that would curtail the distribution of the Summary Annual Report (SAR) (Section 624). Under present law, within 210 days after the close of a plan's fiscal year, the plan administrator must provide certain information in a Summary Annual Report. Employers argue that this is a burdensome and unnecessary requirement. Section 624 provides that SARs would no longer have to be distributed to participants. They would only be available upon request. We are strongly opposed to this provision because we believe that workers should be routinely provided basic information about their plan. The SAR is the only document participants receive that provides them with information about their plan's financial condition, including funding levels, investment experience, administrative expenses, and benefit payments. The information is an easy to prepare summary compiled from information on the form 5500 which employers are required to file with the government. Elimination of the SAR would undermine the ability of a participant to know about plan performance, and to detect financial improprieties. The Department of Labor has also expressed opposition to section 624 (letter attached).

SECTION 626—BENEFIT SUSPENSION NOTICE

Another disturbing provision would cut back on the issuance of Suspension of Benefit Notices (Section 626). When an employee continues to work beyond normal retirement age, or is re-employed after commencing benefits, a defined benefit plan may provide for a suspension of pension payments during the past normal retirement age employment period. Department of Labor (DOL) regulations require that affected participants be notified in writing of such suspension and that such notice include a copy of the relevant plan provisions. Section 626 would eliminate the requirement of a written individual notice and instead require that the suspension of benefits rules be outlined in the Summary Plan Description (SPD). The SPD is a booklet that describes the plan's provisions and the participants' benefits, rights, and obligations in simple language. The SPD is a document that workers receive when they first start a job. It is inconceivable to think that a worker who started employment at age 30 would recall the fine-points of the suspension of benefits rules, by the time they he or she reaches age 65. The bill's authors contend that the production and distribution of the SAR is burdensome on the employer. We believe, however, that they are vital to the employees' understanding of their pension plan's status and their benefits. The requirements governing their issuance should not be changed. For these reasons, we do not support the elimination of the suspension of benefits notice.

The Department of Labor also opposes elimination of the benefit suspension notice. The Department believes that employees who

forgo such payments should receive individual notices explaining the effect of his or her continued employment. This information will permit employees to make informed decisions concerning whether, or how long, to continue to work for the same employer. Providing the information in the summary plan description would result in more employees not having sufficient and timely information they need in order to make their retirement decisions.

SECTION 628—SIMPLIFIED ANNUAL FILING REQUIREMENT

The Department of Labor has expressed reservations about section 628 of the bill. The fundamental problem with section 628 is that the IRS Form 5500–EZ is a tax return filed by sole proprietors and partnerships regarding pension benefits given to the business owners and their spouses—it does not contain the financial and other disclosures that employees deserve regarding their retirement savings and that the Department of Labor needs to effectively satisfy its enforcement responsibilities under ERISA.

Currently, under ERISA and the Internal Revenue Code, pension plans generally must file each year the Form 5500, and for plans covering fewer than 100 participants, a simplified version called the Form 5500–C/R, to report on the administration, operation, funding, assets and investments of the plan. The Form 5500 and 5500–C/R information is an integral part of the government's enforcement, research and policy development programs and a source of data for Congress and the private sector in assessing employee benefit, tax, and economic trends and policies. The return/reports also serve as the primary means by which the operations and estimated $3.5 trillion in plan assets can be monitored by participants, beneficiaries, the general public, as well as the Department of Labor.

The Department of Labor is nearing completion of a comprehensive project, started in 1995, with the other pension agencies (Internal Revenue Service, Pension Benefit Guaranty Corporation) to overhaul the Form 5500 and Form 5500–C/R. The agencies are also completing a new ERISA Filing Acceptance System (or "EFAST") that will rely on computer scannable forms and electronic filing technologies. The public has been following these developments and provided input, and the Department believes it could be disruptive to propose further modifications to annual reporting requirements at this time.

WILLIAM L. CLAY.
DALE E. KILDEE.
MAJOR R. OWENS.
PATSY T. MINK.
LYNN WOOLSEY.
CAROLYN MCCARTHY.
HAROLD E. FORD, Jr.
DAVID WU.
MATTHEW G. MARTINEZ.
ROBERT E. ANDREWS.
BOBBY C. SCOTT.
LORETTA SANCHEZ.
DENNIS J. KUCINICH.
RUSH HOLT.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, September 14, 1999.

Hon. WILLIAM CLAY,
Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR REPRESENTATIVE CLAY: This is to provide the Department of Labor's views on proposals that would amend the summary annual report (SAR) provisions in section 104 of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, the proposals would eliminate the requirement that plan administrators annually distribute a summary report of the plan's financial condition to plan participants, and instead require that SARs only be made available for examination with copies furnished only upon request. The Department of Labor opposes such a change because it would be inconsistent with a fundamental policy of ERISA to help protect workers by requiring disclosures of financial and other information about their employee benefit plans.

When Congress enacted ERISA in 1974, it contemplated that pension plan participants, as well as the Department of Labor, would have ready access to plan financial information. This dual approach, based on timely and accurate disclosure of plan information, has enhanced worker confidence in the private pension system. The SAR is the only routine report participants received without cost that provides them with information about their plan's financial condition, including the amount of plan assets, the plan's investment experience, administrative expenses, and benefits paid. The SAR provides plan participants with a measure of assurance that their retirement plans are secure.

The SAR summarizes key financial information that was disclosed to the government on the plan's Form 5500 Series Annual Return/Report. Plan administrators prepare the SAR based on information in the Form 5500. Since this information has already been compiled, it is not burdensome for plan administrators to prepare a SAR. In addition, under guidance published by the Department, plan administrators are permitted to disseminate the SAR through electronic means, including e-mail and the Internet, which are efficient and cost-effective ways of disseminating information to plan participants.

As you know, if current trends continue, more workers will rely on defined contribution plans to provide a larger and larger part of their retirement income. Benefits provided by defined contribution plans, unlike those provide by defined benefit plans, are not insured. The amount available to pay retirement benefits in defined contribution plans largely depends upon their investment performance net of expenses. Therefore, providing a worker with information concerning the financial condition of his or her plan is likely to become more, rather than less important. In this connection, receiving a SAR can function as an annual reminder to workers to monitor and evaluate their retirement plan. Information in the SAR may prompt plan participants to request additional information from their plan administrator including the more detailed Form 5500.

We believe it is not sound retirement policy to reduce workers' access to plan financial information at the same time we are asking them to take more responsibility for their retirement planning. Timely and accurate disclosure of plan financial information is critical to assuring workers that their pensions are secure. The SAR is a cost-effective and appropriate method of providing important financial disclosures.

Thank you for the opportunity to express our views on this important issue affecting workers' retirement security. I look forward to working closely with you to advance meaningful pension reform legislation that protects workers' rights to fundamental plan information.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ALEXIS M. HERMAN.

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, September 14, 1999.

Hon. WILLIAM F. GOODLING,
Chairman, Committee on Education and the Workforce,
House of Representatives, Washington, DC.

DEAR CHAIRMAN GOODLING: This is to provide the Department of Labor's views on proposals that would amend the summary annual report (SAR) provisions in section 104 of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, the proposals would eliminate the requirement that plan administrators annually distribute a summary report of the plan's financial condition to plan participants, and instead require that SARs only be made available for examination with copies furnished only upon request. The Department of Labor opposes such a change because it would be inconsistent with a fundamental policy of ERISA to help protect workers by requiring disclosures of financial and other information about their employee benefit plans.

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through electronic means, including e-mail and the Internet, which are efficient and cost-effective ways of disseminating information to plan participants.

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The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ALEXIS M. HERMAN.

ADDITIONAL VIEWS II

H.R. 1102 contains numerous provisions that primarily benefit employers and upper income employees without any corresponding assistance for lower income workers. Two-thirds of current pension tax preferences accrue to individuals in the top fifth of the income scale. These are not the people who need financial incentives or more plan options to save for retirement. Every study shows that individuals who have discretionary income save, and tax incentives simply cause them to shift from taxable to non-taxable savings. The people who need help are the overwhelming majority of workers who either cannot afford to save anything or save very little for retirement.

According to the Center on Budget and Policy Priorities, 20% of the individuals with the highest incomes would receive 77% of the tax breaks H.R. 1102 provides. In addition, the Center reports that the 5% of individuals with the highest incomes would receive 42% of the tax benefits provided. By contrast, the bottom 60% of wage earners would receive just 4.3% of the benefits. Therefore, the bill exacerbates the disparity in tax preferences that already exists in our pension system where two-thirds of the benefits of current tax preferences accrue to families with incomes of $100,000 or more a year.

The Congressional Budget Office and Joint Committee on Taxation's estimate of the cost of H.R. 1102 estimated that it would reduce federal revenues by $27 billion over five years and $72 billion over ten years. That $72 billion could be spent on other national priorities such as education and health. The underlying theory of this bill speculates that benefits provided to the top wage earners will "trickle down" to rank-and-file workers. The contention is that employers will either retain or create plans that provide benefits to all of their workers. But, based on past experience, gains in pension coverage are more the result of direct improvements in the coverage rules, not increases in deductible amounts. Furthermore, the bill includes exemptions from current pension and top heavy plan rules that may result in the exclusion of additional workers from pension plans. Again, we reiterate that although the bill contains provisions which we support, it also raises some serious concerns.

William L. Clay.
Dale E. Kildee.
Major R. Owens.
Patsy T. Mink.
Lynn Woolsey.
Chaka Fattah.
Carolyn McCarthy.
George Miller.
Donald M. Payne.
Robert E. Andrews.
Bobby C. Scott.

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