

Union Calendar No. 232

107TH CONGRESS
2D SESSION

H. R. 3669

[Report No. 107-382, Part I]

To amend the Internal Revenue Code of 1986 to empower employees to control their retirement savings accounts through new diversification rights, new disclosure requirements, and new tax incentives for retirement education.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2002

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

MARCH 20, 2002

Reported from the Committee on Ways and Means with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

MARCH 20, 2002

Referral to the Committee on Education and the Workforce extended for a period ending not later than April 9, 2002

APRIL 9, 2002

Additional sponsors: Mr. BLUNT, Mr. POMEROY, Mr. BRADY of Texas, Mr. FROST, Mr. BEREUTER, Mr. LUCAS of Kentucky, Mr. FORBES, Mr. FRELINGHUYSEN, Mr. LATHAM, Mr. JONES of North Carolina, Mr. ABERCROMBIE, Ms. HART, Mr. OXLEY, Mr. KENNEDY of Minnesota, Mrs. ROUKEMA, Mr. NUSSLE, Mr. WELDON of Florida, Mr. WALSH, Mr. MOORE, and Mr. HORN

APRIL 9, 2002

The Committee on Education and the Workforce discharged; committed to the

Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 4, 2002]

A BILL

To amend the Internal Revenue Code of 1986 to empower employees to control their retirement savings accounts through new diversification rights, new disclosure requirements, and new tax incentives for retirement education.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 *(a) SHORT TITLE.—This Act may be cited as the “Em-*
 5 *ployee Retirement Savings Bill of Rights”.*

6 *(b) TABLE OF CONTENTS.—*

Sec. 1. Short title; table of contents.

TITLE I—DEFINED CONTRIBUTION PLAN PROTECTIONS

Sec. 101. Excise tax on failure of pension plans to provide investment education notices to participants.

Sec. 102. Excise tax on failure of pension plans to provide notice of transaction restriction periods.

Sec. 103. Diversification requirements for defined contribution plans that hold employer securities.

Sec. 104. Treatment of qualified retirement planning services.

Sec. 105. Special rules.

TITLE II—OTHER TAX PROVISIONS RELATING TO PENSIONS

Sec. 201. Amendments to Retirement Protection Act of 1994.

Sec. 202. Reporting simplification.

Sec. 203. Improvement of Employee Plans Compliance Resolution System.

Sec. 204. Flexibility in nondiscrimination, coverage, and line of business rules.

Sec. 205. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.

Sec. 206. Notice and consent period regarding distributions.

- Sec. 207. Reduced PBGC premium for new plans of small employers.*
Sec. 208. Reduction of additional PBGC premium for new and small plans.
Sec. 209. Authorization for PBGC to pay interest on premium overpayment refunds.
Sec. 210. Substantial owner benefits in terminated plans.
Sec. 211. Studies.
Sec. 212. Interest rate range for additional funding requirements.
Sec. 213. Provisions relating to plan amendments.

TITLE III—STOCK OPTIONS

- Sec. 301. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.*

TITLE IV—SOCIAL SECURITY AND MEDICARE HELD HARMLESS

- Sec. 401. Protection of Social Security and Medicare.*

1 TITLE I—DEFINED CONTRIBUTION PLAN PROTECTIONS

2 SEC. 101. EXCISE TAX ON FAILURE OF PENSION PLANS TO **3 PROVIDE INVESTMENT EDUCATION NOTICES** **4 TO PARTICIPANTS.**

5 *(a) IN GENERAL.—Chapter 43 of the Internal Revenue*
6 *Code of 1986 (relating to qualified pension, etc., plans) is*
7 *amended by adding at the end the following new section:*
8 *“SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE*

9 *INVESTMENT EDUCATION NOTICES TO PAR-*
10 *TICIPANTS.*
11

12 *“(a) IMPOSITION OF TAX.—There is hereby imposed a*
13 *tax on the failure of any applicable pension plan to meet*
14 *the requirements of subsection (e) with respect to any appli-*
15 *cable individual.*

16 *“(b) AMOUNT OF TAX.—The amount of the tax im-*
17 *posed by subsection (a) on any failure with respect to any*
18 *applicable individual shall be \$100.*

1 “(c) *LIMITATIONS ON AMOUNT OF TAX.*—

2 “(1) *TAX NOT TO APPLY TO FAILURES COR-*
 3 *RECTED WITHIN 30 DAYS.*—*No tax shall be imposed*
 4 *by subsection (a) on any failure if—*

5 “(A) *any person subject to liability for the*
 6 *tax under subsection (d) exercised reasonable*
 7 *diligence to meet the requirements of subsection*
 8 *(e), and*

9 “(B) *such person provides the notice de-*
 10 *scribed in subsection (e) during the 30-day pe-*
 11 *riod beginning on the first date such person*
 12 *knew, or exercising reasonable diligence should*
 13 *have known, that such failure existed.*

14 “(2) *OVERALL LIMITATION FOR UNINTENTIONAL*
 15 *FAILURES.*—

16 “(A) *IN GENERAL.*—*If the person subject to*
 17 *liability for tax under subsection (d) exercised*
 18 *reasonable diligence to meet the requirements of*
 19 *subsection (e), the tax imposed by subsection (a)*
 20 *for failures during the taxable year of the em-*
 21 *ployer (or, in the case of a multiemployer plan,*
 22 *the taxable year of the trust forming part of the*
 23 *plan) shall not exceed \$500,000. For purposes of*
 24 *the preceding sentence, all multiemployer plans*

1 *of which the same trust forms a part shall be*
2 *treated as 1 plan.*

3 “(B) *TAXABLE YEARS IN THE CASE OF CER-*
4 *TAIN CONTROLLED GROUPS.—For purposes of*
5 *this paragraph, if all persons who are treated as*
6 *a single employer for purposes of this section do*
7 *not have the same taxable year, the taxable years*
8 *taken into account shall be determined under*
9 *principles similar to the principles of section*
10 *1561.*

11 “(3) *WAIVER BY SECRETARY.—In the case of a*
12 *failure which is due to reasonable cause and not to*
13 *willful neglect, the Secretary may waive part or all*
14 *of the tax imposed by subsection (a) to the extent that*
15 *the payment of such tax would be excessive or other-*
16 *wise inequitable relative to the failure involved.*

17 “(d) *LIABILITY FOR TAX.—The following shall be lia-*
18 *ble for the tax imposed by subsection (a):*

19 “(1) *In the case of a plan other than a multiem-*
20 *ployer plan, the employer.*

21 “(2) *In the case of a multiemployer plan, the*
22 *plan.*

23 “(e) *NOTICE REGARDING INVESTMENT EDUCATION.—*

24 “(1) *IN GENERAL.—The plan administrator of*
25 *an applicable pension plan shall provide to each ap-*

1 *plicable individual an investment education notice*
 2 *described in paragraph (2) at the time of the enroll-*
 3 *ment of the applicable individual in the plan and not*
 4 *less often than quarterly thereafter.*

5 “(2) *INVESTMENT EDUCATION NOTICE.*—*An in-*
 6 *vestment education notice is described in this para-*
 7 *graph if such notice contains—*

8 “(A) *an explanation, for the long-term re-*
 9 *tirement security of participants and bene-*
 10 *ficiaries, of generally accepted investment prin-*
 11 *ciples, including principles of risk management*
 12 *and diversification, and*

13 “(B) *a discussion of the risk of holding sub-*
 14 *stantial portions of a portfolio in the security of*
 15 *any one entity, such as employer securities.*

16 “(3) *UNDERSTANDABILITY.*—*Each notice re-*
 17 *quired by paragraph (1) shall be written in a manner*
 18 *calculated to be understood by the average plan par-*
 19 *ticipant and shall provide sufficient information (as*
 20 *determined in accordance with guidance provided by*
 21 *the Secretary) to allow recipients to understand such*
 22 *notice.*

23 “(4) *FORM AND MANNER OF NOTICES.*—*The no-*
 24 *tices required by this subsection shall be in writing,*
 25 *except that such notices may be in electronic or other*

1 *form to the extent that such form is reasonably acces-*
 2 *sible to the applicable individual.*

3 “(f) *DEFINITIONS.—For purposes of this section—*

4 “(1) *APPLICABLE INDIVIDUAL.—The term ‘appli-*
 5 *cable individual’ means—*

6 “(A) *any participant in the applicable pen-*
 7 *sion plan,*

8 “(B) *any beneficiary who is an alternate*
 9 *payee (within the meaning of section 414(p)(8))*
 10 *under a qualified domestic relations order (with-*
 11 *in the meaning of section 414(p)(1)(A)), and*

12 “(C) *any beneficiary of a deceased partici-*
 13 *pant or alternate payee.*

14 “(2) *APPLICABLE PENSION PLAN.—The term ‘ap-*
 15 *plicable pension plan’ means—*

16 “(A) *a plan described in clause (i), (ii), or*
 17 *(iv) of section 219(g)(5)(A), and*

18 “(B) *an eligible deferred compensation plan*
 19 *(as defined in section 457(b)) of an eligible em-*
 20 *ployer described in section 457(e)(1)(A),*

21 *which permits any participant to direct the invest-*
 22 *ment of some or all of his account in the plan or*
 23 *under which the accrued benefit of any participant*
 24 *depends in whole or in part on hypothetical invest-*

1 *ments directed by the participant. Such term shall*
2 *not include a one-participant retirement plan.*

3 *“(3) ONE-PARTICIPANT RETIREMENT PLAN DE-*
4 *FINED.—The term ‘one-participant retirement plan’*
5 *means a retirement plan that—*

6 *“(A) on the first day of the plan year—*

7 *“(i) covered only the employer (and the*
8 *employer’s spouse) and the employer owned*
9 *the entire business (whether or not incor-*
10 *porated), or*

11 *“(ii) covered only one or more partners*
12 *(and their spouses) in a business partner-*
13 *ship (including partners in an S or C cor-*
14 *poration),*

15 *“(B) meets the minimum coverage require-*
16 *ments of section 410(b) without being combined*
17 *with any other plan of the business that covers*
18 *the employees of the business,*

19 *“(C) does not provide benefits to anyone ex-*
20 *cept the employer (and the employer’s spouse) or*
21 *the partners (and their spouses),*

22 *“(D) does not cover a business that is a*
23 *member of an affiliated service group, a con-*
24 *trolled group of corporations, or a group of busi-*
25 *nesses under common control, and*

1 “(E) does not cover a business that leases
2 employees.”.

3 (b) *CLERICAL AMENDMENT.*—*The table of sections for*
4 *chapter 43 of such Code is amended by adding at the end*
5 *the following new item:*

*“Sec. 4980G. Failure of applicable plans to provide investment edu-
cation notices to participants.”.*

6 (c) *EFFECTIVE DATES.*—

7 (1) *IN GENERAL.*—*The amendments made by*
8 *this section shall apply with respect to plan years be-*
9 *ginning after December 31, 2002.*

10 (2) *MODEL INVESTMENT PRINCIPLES.*—*Not later*
11 *than the earlier of January 1, 2003, or 120 days after*
12 *the date of the enactment of this Act, the Secretary of*
13 *the Treasury, in consultation with the Secretary of*
14 *Labor, shall issue guidance and model notices which*
15 *meet the requirements of section 4980G of the Internal*
16 *Revenue Code of 1986 (as added by this section).*

17 **SEC. 102. EXCISE TAX ON FAILURE OF PENSION PLANS TO**
18 **PROVIDE NOTICE OF TRANSACTION RESTRIC-**
19 **TION PERIODS.**

20 (a) *IN GENERAL.*—*Chapter 43 of the Internal Revenue*
21 *Code of 1986 (relating to qualified pension, etc., plans) is*
22 *amended by adding at the end the following new section:*

1 **“SEC. 4980H. FAILURE OF APPLICABLE PLANS TO PROVIDE**
2 **NOTICE OF TRANSACTION RESTRICTION PE-**
3 **RIODS.**

4 “(a) *IMPOSITION OF TAX.*—*There is hereby imposed a*
5 *tax on the failure of any applicable pension plan to meet*
6 *the requirements of subsection (e) with respect to any appli-*
7 *cable individual.*

8 “(b) *AMOUNT OF TAX.*—*The amount of the tax im-*
9 *posed by subsection (a) on any failure with respect to any*
10 *applicable individual shall be \$100.*

11 “(c) *LIMITATIONS ON AMOUNT OF TAX.*—

12 “(1) *TAX NOT TO APPLY TO FAILURES COR-*
13 *RECTED AS SOON AS REASONABLY PRACTICABLE.*—*No*
14 *tax shall be imposed by subsection (a) on any failure*
15 *if—*

16 “(A) *any person subject to liability for the*
17 *tax under subsection (d) exercised reasonable*
18 *diligence to meet the requirements of subsection*
19 *(e), and*

20 “(B) *such person provides the notice de-*
21 *scribed in subsection (e) as soon as reasonably*
22 *practicable after the first date such person knew,*
23 *or exercising reasonable diligence should have*
24 *known, that such failure existed and at least 1*
25 *business day before the beginning of the trans-*
26 *action restriction period.*

1 “(2) *OVERALL LIMITATION FOR UNINTENTIONAL*
2 *FAILURES.*—

3 “(A) *IN GENERAL.*—*If the person subject to*
4 *liability for tax under subsection (d) exercised*
5 *reasonable diligence to meet the requirements of*
6 *subsection (e), the tax imposed by subsection (a)*
7 *for failures during the taxable year of the em-*
8 *ployer (or, in the case of a multiemployer plan,*
9 *the taxable year of the trust forming part of the*
10 *plan) shall not exceed \$500,000. For purposes of*
11 *the preceding sentence, all multiemployer plans*
12 *of which the same trust forms a part shall be*
13 *treated as 1 plan.*

14 “(B) *TAXABLE YEARS IN THE CASE OF CER-*
15 *TAIN CONTROLLED GROUPS.*—*For purposes of*
16 *this paragraph, if all persons who are treated as*
17 *a single employer for purposes of this section do*
18 *not have the same taxable year, the taxable years*
19 *taken into account shall be determined under*
20 *principles similar to the principles of section*
21 *1561.*

22 “(3) *WAIVER BY SECRETARY.*—*In the case of a*
23 *failure which is due to reasonable cause and not to*
24 *willful neglect, the Secretary may waive part or all*
25 *of the tax imposed by subsection (a) to the extent that*

1 *the payment of such tax would be excessive or other-*
2 *wise inequitable relative to the failure involved.*

3 “(d) *LIABILITY FOR TAX.—The following shall be lia-*
4 *ble for the tax imposed by subsection (a):*

5 “(1) *In the case of a plan other than a multiem-*
6 *ployer plan, the employer.*

7 “(2) *In the case of a multiemployer plan, the*
8 *plan.*

9 “(e) *NOTICE OF TRANSACTION RESTRICTION PE-*
10 *RIOD.—*

11 “(1) *IN GENERAL.—The plan administrator of*
12 *an applicable pension plan shall provide written no-*
13 *tice of any transaction restriction period to each ap-*
14 *plicable individual to whom the transaction restric-*
15 *tion period applies (and to each employee organiza-*
16 *tion representing such applicable individuals).*

17 “(2) *UNDERSTANDABILITY.—The notice required*
18 *by paragraph (1) shall be written in a manner cal-*
19 *culated to be understood by the average plan partici-*
20 *pant and shall provide sufficient information (as de-*
21 *termined in accordance with guidance provided by*
22 *the Secretary) to allow recipients to understand the*
23 *timing and effect of such transaction restriction pe-*
24 *riod.*

25 “(3) *TIMING OF NOTICE.—*

1 “(A) *IN GENERAL.*—*Except as provided in*
2 *subparagraphs (B) and (C), the notice required*
3 *by paragraph (1) shall be provided at least 30*
4 *days before the beginning of the transaction re-*
5 *striction period.*

6 “(B) *DISPOSITION OF STOCK OR ASSETS.*—

7 “(i) *IN GENERAL.*—*If, in connection*
8 *with the major corporate disposition by a*
9 *corporation maintaining an applicable pen-*
10 *sion plan, there is the possibility of a trans-*
11 *action restriction period—*

12 *“(I) the notice required by para-*
13 *graph (1) shall be provided at least 30*
14 *days before the date of such disposi-*
15 *tion, and*

16 *“(II) no other notice shall be re-*
17 *quired by paragraph (1) with respect*
18 *to such period if notice is provided*
19 *pursuant to subclause (I) and such pe-*
20 *riod begins not more than 30 days*
21 *after the date of such disposition.*

22 *Subclause (I) shall not apply if the plan*
23 *administrator has a substantial basis to be-*
24 *lieve that there will be no transaction re-*

1 *striction period in connection with the dis-*
 2 *position.*

3 “(ii) *MAJOR CORPORATE DISPOSI-*
 4 *TION.—For purposes of clause (i), the term*
 5 *‘major corporate disposition’ means, with*
 6 *respect to a corporation—*

7 “(I) *the disposition of substan-*
 8 *tially all of the stock of such corpora-*
 9 *tion or a subsidiary thereof, or*

10 “(II) *the disposition of substan-*
 11 *tially all of the assets used in a trade*
 12 *or business of such corporation or sub-*
 13 *sidary.*

14 “(iii) *NONCORPORATE ENTITIES.—*
 15 *Rules similar to the rules of this subpara-*
 16 *graph shall apply to entities that are not*
 17 *corporations.*

18 “(C) *EXCEPTION FOR UNFORESEEABLE*
 19 *EVENTS.—In the case of a transaction restriction*
 20 *period resulting from the occurrence of an un-*
 21 *foreseeable event, such notice shall be provided as*
 22 *soon as reasonably practicable after the occur-*
 23 *rence of such event.*

24 “(4) *FORM AND MANNER OF NOTICE.—The notice*
 25 *required by this subsection shall be in writing, except*

1 *that such notice may be in electronic or other form*
 2 *to the extent that such form is reasonably accessible*
 3 *to the applicable individual.*

4 “(f) *DEFINITIONS AND SPECIAL RULES.—For pur-*
 5 *poses of this section—*

6 “(1) *APPLICABLE INDIVIDUAL.—The term ‘appli-*
 7 *cable individual’ means—*

8 “(A) *any participant in the applicable pen-*
 9 *sion plan, and*

10 “(B) *any beneficiary who is an alternate*
 11 *payee (within the meaning of section 414(p)(8))*
 12 *under a qualified domestic relations order (with-*
 13 *in the meaning of section 414(p)(1)(A)), and*

14 “(C) *any beneficiary of a deceased partici-*
 15 *pant or alternate payee.*

16 “(2) *APPLICABLE PENSION PLAN.—*

17 “(A) *IN GENERAL.—The term ‘applicable*
 18 *pension plan’ means—*

19 “(i) *a plan described in clause (i), (ii),*
 20 *or (iv) of section 219(g)(5)(A), and*

21 “(ii) *an eligible deferred compensation*
 22 *plan (as defined in section 457(b)) of an el-*
 23 *igible employer described in section*
 24 *457(e)(1)(A),*

1 *which maintains accounts for participants under*
 2 *the plan or under which the accrued benefit of*
 3 *any participant depends in whole or in part on*
 4 *hypothetical investments directed by the partici-*
 5 *pant.*

6 “(B) *EXCEPTION.*—*Such term shall not in-*
 7 *clude a one-participant retirement plan (as de-*
 8 *fin**ed in section 4980G(f)(3)).*

9 “(3) *TRANSACTION RESTRICTION PERIOD.*—

10 “(A) *IN GENERAL.*—*The term ‘transaction*
 11 *restriction period’ means a temporary or indefi-*
 12 *nite period of at least 3 consecutive days during*
 13 *which rights otherwise provided under the plan*
 14 *to 1 or more applicable individuals to direct in-*
 15 *vestments in the applicable pension plan, obtain*
 16 *loans from such plan, or obtain distributions*
 17 *from such plan are substantially reduced (other*
 18 *than by reason of the application of securities*
 19 *laws or other circumstances specified by the Sec-*
 20 *retary in regulations). In determining consec-*
 21 *utive days, days on which such rights are not nor-*
 22 *mally available shall be disregarded.*

23 “(B) *SPECIAL RULE FOR EMPLOYER SECUR-*
 24 *ITIES.*—

1 “(i) *IN GENERAL.*—For purposes of
 2 subparagraph (A), rights shall be treated as
 3 substantially reduced with respect to direct-
 4 ing investments out of employer securities if
 5 rights in effect are significantly restricted
 6 for at least 3 consecutive business days.

7 “(ii) *BUSINESS DAY.*—For purposes of
 8 clause (i), under regulations prescribed by
 9 the Secretary, the term ‘business day’
 10 means—

11 “(I) in the case of a security
 12 which is traded on an established secu-
 13 rity market, any day on which such se-
 14 curity may be traded on the principal
 15 securities market of such security, and

16 “(II) in the case of a security
 17 which is not traded on an established
 18 security market, any calendar day.

19 “(4) *EMPLOYER SECURITIES.*—The term ‘em-
 20 ployer securities’ shall have the meaning given such
 21 term by section 407(d)(1) of the Employee Retirement
 22 Income Security Act of 1974.”.

23 “(b) *CLERICAL AMENDMENT.*—The table of sections for
 24 chapter 43 of such Code is amended by adding at the end
 25 the following new item:

“Sec. 4980H. Failure of applicable plans to provide notice of transaction restriction periods.”.

1 (c) *EFFECTIVE DATE.*—

2 (1) *IN GENERAL.*—*The amendments made by*
 3 *this section shall apply to plan years beginning after*
 4 *December 31, 2002.*

5 (2) *GUIDANCE.*—*The Secretary of the Treasury,*
 6 *in consultation with the Secretary of Labor, shall*
 7 *issue guidance in carrying out section 4980H of the*
 8 *Internal Revenue Code of 1986 (as added by this sec-*
 9 *tion). Such guidance—*

10 (A) *in the case of a reduction of rights re-*
 11 *lating to the direction of investments out of em-*
 12 *ployer securities, shall be issued by November 1,*
 13 *2002 (or, if later, the 60th day after the date of*
 14 *the enactment of this Act), and*

15 (B) *in any other case shall be issued not*
 16 *later than 120 days after the date of the enact-*
 17 *ment of this Act.*

18 **SEC. 103. DIVERSIFICATION REQUIREMENTS FOR DEFINED**
 19 **CONTRIBUTION PLANS THAT HOLD EM-**
 20 **PLOYER SECURITIES.**

21 (a) *IN GENERAL.*—*Subsection (a) of section 401 of the*
 22 *Internal Revenue Code of 1986 (relating to requirements for*
 23 *qualification) is amended by adding at the end the fol-*
 24 *lowing new paragraph:*

1 “(35) *DIVERSIFICATION REQUIREMENTS FOR DE-*
2 *FINED CONTRIBUTION PLANS THAT HOLD EMPLOYER*
3 *SECURITIES.*—

4 “(A) *IN GENERAL.*—*In the case of a defined*
5 *contribution plan described in this subsection*
6 *that includes a trust which is exempt from tax*
7 *under section 501(a) and which holds employer*
8 *securities that are readily tradable on an estab-*
9 *lished securities market, such trust shall not con-*
10 *stitute a qualified trust under this section unless*
11 *such plan meets the requirements of subpara-*
12 *graphs (B), (C), and (D).*

13 “(B) *ELECTIVE DEFERRALS AND EMPLOYEE*
14 *CONTRIBUTIONS INVESTED IN EMPLOYER SECUR-*
15 *ITIES.*—*In the case of the portion of the ac-*
16 *count attributable to elective deferrals and em-*
17 *ployee contributions which is invested in em-*
18 *ployer securities, a plan meets the requirements*
19 *of this subparagraph if each applicable indi-*
20 *vidual in such plan may elect to direct the plan*
21 *to divest up to the applicable percentage of such*
22 *securities in the individual’s account and to re-*
23 *invest an equivalent amount in other investment*
24 *options which meet the requirements of subpara-*
25 *graph (E).*

1 “(C) *MATCHING AND CERTAIN OTHER CON-*
 2 *TRIBUTIONS.—*

3 “(i) *IN GENERAL.—In the case of the*
 4 *portion of the account attributable to con-*
 5 *tributions to which this subparagraph ap-*
 6 *plies and which is invested in employer se-*
 7 *curities, a plan meets the requirements of*
 8 *this subparagraph if each applicable 3-year*
 9 *individual in the plan may elect to direct*
 10 *the plan to divest up to the applicable per-*
 11 *centage of such securities in the individual’s*
 12 *account and to reinvest an equivalent*
 13 *amount in other investment options which*
 14 *meet the requirements of subparagraph (E).*

15 “(ii) *CONTRIBUTIONS TO WHICH THIS*
 16 *SUBPARAGRAPH APPLIES.—This subpara-*
 17 *graph shall apply to—*

18 “(I) *matching contributions (as*
 19 *defined in subsection (m)(4)(A)),*

20 “(II) *qualified nonelective con-*
 21 *tributions (as defined in subsection*
 22 *(m)(4)(C)), and*

23 “(III) *contributions made in*
 24 *order to meet the requirements of sub-*
 25 *section (k)(12)(C). -*

1 “(iii) *APPLICABLE 3-YEAR INDIVIDUAL.*—For purposes of clause (i), the
 2 term ‘applicable 3-year individual’ means
 3 any individual who would be an applicable
 4 individual if only participants in the plan
 5 who have completed at least 3 years of serv-
 6 ice (as determined under section 411(a))
 7 were taken into account under subpara-
 8 graph (G)(i)(I).

9 “(D) *OTHER EMPLOYER CONTRIBUTIONS.*—

10 “(i) *IN GENERAL.*—In the case of the
 11 portion of the account attributable to em-
 12 ployer contributions (other than contribu-
 13 tions to which subparagraph (B) or (C) ap-
 14 plies) which is invested in employer securi-
 15 ties, a plan meets the requirements of this
 16 subparagraph if each applicable 5-year in-
 17 dividual described in clause (ii) may elect
 18 to direct the plan to divest up to the appli-
 19 cable percentage of such securities in the in-
 20 dividual’s account and to reinvest an equiv-
 21 alent amount in other investment options
 22 which meet the requirements of subpara-
 23 graph (E).
 24

1 “(i) *APPLICABLE 5-YEAR INDIVIDUAL.*—*For purposes of clause (i), the*
 2 *term ‘5-year individual’ means any indi-*
 3 *vidual who would be an applicable indi-*
 4 *vidual if only participants in the plan who*
 5 *have completed at least 5 years of service*
 6 *(as determined under section 411(a)) were*
 7 *taken into account under subparagraph*
 8 *(G)(i)(I).*

9 “(E) *INVESTMENT OPTIONS.*—*The require-*
 10 *ments of this subparagraph are met if the plan*
 11 *offers not less than 3 investment options (not in-*
 12 *consistent with regulations prescribed by the Sec-*
 13 *retary) other than employer securities.*

14 “(F) *ELECTION.*—*Elections under this*
 15 *paragraph maybe made not less frequently than*
 16 *quarterly.*

17 “(G) *OTHER DEFINITIONS AND RULES.*—
 18 *For purposes of this paragraph—*

19 “(i) *APPLICABLE INDIVIDUAL.*—*The*
 20 *term ‘applicable individual’ means—*

21 “(I) *any participant in the plan,*
 22 “(II) *any beneficiary who is an*
 23 *alternate payee (within the meaning of*
 24 *section 414(p)(8)) under an applicable*
 25

1 *qualified domestic relations order*
 2 *(within the meaning of section*
 3 *414(p)(1)(A)), and*

4 “(III) *any beneficiary of a de-*
 5 *ceased participant or alternate payee.*

6 “(ii) *ELECTIVE DEFERRALS.—The*
 7 *term ‘elective deferrals’ means an employer*
 8 *contribution described in section*
 9 *402(g)(3)(A).*

10 “(iii) *EMPLOYER SECURITIES.—The*
 11 *term ‘employer securities’ shall have the*
 12 *meaning given such term by section*
 13 *407(d)(1) of the Employee Retirement In-*
 14 *come Security Act of 1974.*

15 “(iv) *EMPLOYEE STOCK OWNERSHIP*
 16 *PLAN.—The term ‘employee stock ownership*
 17 *plan’ shall have the same meaning given to*
 18 *such term by section 4975(e)(7).*

19 “(v) *APPLICABLE PERCENTAGE.—*

20 “(I) *IN GENERAL.—The applicable*
 21 *percentage shall be as follows:*

“Plan years beginning in:	Applicable percentage:
2003	20
2004	40
2005	60
2006	80
2007 or thereafter	100.

1 “(II) *ELECTIVE DEFERRALS*
2 *TREATED AS SEPARATE PLAN NOT IN-*
3 *DIVIDUAL ACCOUNT PLAN.—In the case*
4 *of elective deferrals and employee con-*
5 *tributions (and any earnings allocable*
6 *thereto) held within a plan treated as*
7 *a separate plan as of the date of the*
8 *enactment of this paragraph under sec-*
9 *tion 407(b)(2) of the Employee Retire-*
10 *ment Income Security Act of 1974, for*
11 *purposes of subparagraph (B) the ap-*
12 *plicable percentage shall be 100 per-*
13 *cent.*

14 “(III) *CONTRIBUTIONS HELD*
15 *WITHIN AN ESOP.—In the case of con-*
16 *tributions (other than elective deferrals*
17 *and employee contributions) held with-*
18 *in an employee stock ownership plan,*
19 *in the case of years 2003 and 2004, the*
20 *applicable percentage shall be the*
21 *greater of the amount determined*
22 *under subclause (I) or the percentage*
23 *determined under paragraph (28) (de-*
24 *termined as if paragraph (28) applied*
25 *to a plan described in this paragraph).*

1 “(vi) *COORDINATION WITH PARAGRAPH*
 2 *(28).—Subparagraphs (B), (C), and (D)*
 3 *shall apply to the extent that the amount*
 4 *attributable to the applicable percentage*
 5 *under such subparagraph exceeds the*
 6 *amount to which a prior election under*
 7 *such subparagraph or paragraph (28) ap-*
 8 *plies.*

9 “(H) *EXCEPTION FOR CERTAIN ESOPS.—*
 10 *This paragraph shall apply to an employee stock*
 11 *ownership plan only if the plan holds amounts*
 12 *attributable to deferrals or contributions to*
 13 *which subparagraph (B) or (C) apply.”.*

14 (b) *CONFORMING AMENDMENTS.—*

15 (1) *Section 401(a)(28) of such Code is amended*
 16 *by adding at the end the following new subparagraph:*

17 “(D) *APPLICATION.—This paragraph shall*
 18 *not apply to a plan to which paragraph (35) ap-*
 19 *plies.”.*

20 (2) *Section 409(h)(7) of such Code is amended*
 21 *by inserting before the period at the end “or subpara-*
 22 *graph (B), (C), or (D) of section 401(a)(35)”.*

23 (3) *Section 4980(c)(3)(A) of such Code is amend-*
 24 *ed by striking “if—” and all that follows and insert-*

1 *ing “if the requirements of subparagraphs (B), (C),*
 2 *and (D) are met.”.*

3 *(c) EFFECTIVE DATE.—*

4 *(1) IN GENERAL.—Except as provided in para-*
 5 *graph (2), the amendments made by this section shall*
 6 *apply to plan years beginning after December 31,*
 7 *2002.*

8 *(2) EXCEPTION.—The amendments made by this*
 9 *section shall not apply to employer securities held by*
 10 *an employee stock ownership plan which are not sub-*
 11 *ject to section 401(a)(28) of the Internal Revenue*
 12 *Code of 1986 by reason of section 1175(a)(2) of the*
 13 *Tax Reform Act of 1986 (100 Stat. 2519).*

14 **SEC. 104. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
 15 **NING SERVICES.**

16 *(a) IN GENERAL.—Subsection (m) of section 132 of the*
 17 *Internal Revenue Code of 1986 (defining qualified retire-*
 18 *ment services) is amended by adding at the end the fol-*
 19 *lowing new paragraph:*

20 *“(4) NO CONSTRUCTIVE RECEIPT.—No amount*
 21 *shall be included in the gross income of any employee*
 22 *solely because the employee may choose between any*
 23 *qualified retirement planning services provided by a*
 24 *qualified investment advisor and compensation which*
 25 *would otherwise be includible in the gross income of*

1 *such employee. The preceding sentence shall apply to*
 2 *highly compensated employees only if the choice de-*
 3 *scribed in such sentence is available on substantially*
 4 *the same terms to each member of the group of em-*
 5 *ployees normally provided education and information*
 6 *regarding the employer's qualified employer plan."*

7 *(b) CONFORMING AMENDMENTS.—*

8 *(1) Section 403(b)(3)(B) of such Code is amend-*
 9 *ed by inserting "132(m)(4)," after "132(f)(4),".*

10 *(2) Section 414(s)(2) of such Code is amended by*
 11 *inserting "132(m)(4)," after "132(f)(4),".*

12 *(3) Section 415(c)(3)(D)(ii) of such Code is*
 13 *amended by inserting "132(m)(4)," after "132(f)(4),".*

14 *(c) EFFECTIVE DATE.—The amendment made by this*
 15 *section shall apply to taxable years beginning after Decem-*
 16 *ber 31, 2002.*

17 **SEC. 105. SPECIAL RULES.**

18 *(a) SPECIAL RULE FOR COLLECTIVELY BARGAINED*
 19 *PLANS.—In the case of a plan maintained pursuant to 1*
 20 *or more collective bargaining agreements between employee*
 21 *representatives and 1 or more employers ratified on or be-*
 22 *fore the date of the enactment of this Act, the amendments*
 23 *made by this title shall not apply to plan years beginning*
 24 *before the earlier of—*

25 *(1) the later of—*

1 (A) *January 1, 2004, or*

2 (B) *the date on which the last of such collec-*
3 *tive bargaining agreements terminates (deter-*
4 *mined without regard to any extension thereof*
5 *after the date of the enactment of this Act), or*

6 (2) *January 1, 2005.*

7 (b) *PLAN AMENDMENTS.—If the amendments made by*
8 *this title require an amendment to any plan, such plan*
9 *amendment shall not be required to be made before the first*
10 *plan year beginning on or after January 1, 2005, if—*

11 (1) *during the period after such amendments*
12 *made by this title take effect and before such first*
13 *plan year, the plan is operated in accordance with*
14 *the requirements of such amendments made by this*
15 *title, and*

16 (2) *such plan amendment applies retroactively to*
17 *the period after such amendments made by this Act*
18 *take effect and before such first plan year.*

1 **TITLE II—OTHER TAX PROVI-**
2 **SIONS RELATING TO PEN-**
3 **SIONS**

4 **SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT**
5 **OF 1994.**

6 (a) *TRANSITION RULE MADE PERMANENT.*—Para-
7 *graph (1) of section 769(c) of the Retirement Protection Act*
8 *of 1994 is amended—*

9 (1) *by striking “transition” each place it ap-*
10 *pears in the heading and the text, and*

11 (2) *by striking “for any plan year beginning*
12 *after 1996 and before 2010”.*

13 (b) *SPECIAL RULES.*—Paragraph (2) of section 769(c)
14 *of the Retirement Protection Act of 1994 is amended to read*
15 *as follows:*

16 “(2) *SPECIAL RULES.*—The rules described in
17 *this paragraph are as follows:*

18 “(A) *For purposes of section 412(l)(9)(A) of*
19 *the Internal Revenue Code of 1986, the funded*
20 *current liability percentage for any plan year*
21 *shall be treated as not less than 90 percent.*

22 “(B) *For purposes of section 412(m) of the*
23 *Internal Revenue Code of 1986, the funded cur-*
24 *rent liability percentage for any plan year shall*
25 *be treated as not less than 100 percent.”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to plan years beginning after December*
 3 *31, 2001.*

4 **SEC. 202. REPORTING SIMPLIFICATION.**

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

7 (1) *IN GENERAL.*—*The Secretary of the Treasury*
 8 *and the Secretary of Labor shall modify the require-*
 9 *ments for filing annual returns with respect to one-*
 10 *participant retirement plans to ensure that such*
 11 *plans with assets of \$250,000 or less as of the close*
 12 *of the plan year need not file a return for that year.*

13 (2) *ONE-PARTICIPANT RETIREMENT PLAN DE-*
 14 *FINED.*—*For purposes of this subsection, the term*
 15 *“one-participant retirement plan” means a retire-*
 16 *ment plan that—*

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

18 (i) *covered only the employer (and the*
 19 *employer’s spouse) and the employer owned*
 20 *the entire business (whether or not incor-*
 21 *porated); or*

22 (ii) *covered only one or more partners*
 23 *(and their spouses) in a business partner-*
 24 *ship (including partners in an S or C cor-*
 25 *poration);*

1 (B) meets the minimum coverage require-
2 ments of section 410(b) of the Internal Revenue
3 Code of 1986 without being combined with any
4 other plan of the business that covers the employ-
5 ees of the business;

6 (C) does not provide benefits to anyone ex-
7 cept the employer (and the employer's spouse) or
8 the partners (and their spouses);

9 (D) does not cover a business that is a
10 member of an affiliated service group, a con-
11 trolled group of corporations, or a group of busi-
12 nesses under common control; and

13 (E) does not cover a business that leases em-
14 ployees.

15 (3) *OTHER DEFINITIONS.*—Terms used in para-
16 graph (2) which are also used in section 414 of the
17 Internal Revenue Code of 1986 shall have the respec-
18 tive meanings given such terms by such section.

19 (4) *EFFECTIVE DATE.*—The provisions of this
20 subsection shall apply to plan years beginning on or
21 after January 1, 2002.

22 (b) *SIMPLIFIED ANNUAL FILING REQUIREMENT FOR*
23 *PLANS WITH FEWER THAN 25 EMPLOYEES.*—In the case
24 of plan years beginning after December 31, 2003, the Sec-
25 retary of the Treasury and the Secretary of Labor shall pro-

1 *vide for the filing of a simplified annual return for any*
 2 *retirement plan which covers less than 25 employees on the*
 3 *first day of a plan year and which meets the requirements*
 4 *described in subparagraphs (B), (D), and (E) of subsection*
 5 *(a)(2).*

6 **SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**
 7 **ANCE RESOLUTION SYSTEM.**

8 *The Secretary of the Treasury shall continue to update*
 9 *and improve the Employee Plans Compliance Resolution*
 10 *System (or any successor program) giving special attention*
 11 *to—*

12 *(1) increasing the awareness and knowledge of*
 13 *small employers concerning the availability and use*
 14 *of the program;*

15 *(2) taking into account special concerns and cir-*
 16 *cumstances that small employers face with respect to*
 17 *compliance and correction of compliance failures;*

18 *(3) extending the duration of the self-correction*
 19 *period under the Self-Correction Program for signifi-*
 20 *cant compliance failures;*

21 *(4) expanding the availability to correct insig-*
 22 *nificant compliance failures under the Self-Correction*
 23 *Program during audit; and*

24 *(5) assuring that any tax, penalty, or sanction*
 25 *that is imposed by reason of a compliance failure is*

1 *not excessive and bears a reasonable relationship to*
 2 *the nature, extent, and severity of the failure.*

3 *The Secretary of the Treasury shall have full authority to*
 4 *effectuate the foregoing with respect to the Employee Plans*
 5 *Compliance Resolution System (or any successor program)*
 6 *and any other employee plans correction policies, including*
 7 *the authority to waive income, excise, or other taxes to en-*
 8 *sure that any tax, penalty, or sanction is not excessive and*
 9 *bears a reasonable relationship to the nature, extent, and*
 10 *severity of the failure.*

11 **SEC. 204. FLEXIBILITY IN NONDISCRIMINATION, COV-**
 12 **ERAGE, AND LINE OF BUSINESS RULES.**

13 *(a) NONDISCRIMINATION.—*

14 *(1) IN GENERAL.—The Secretary of the Treasury*
 15 *shall, by regulation, provide that a plan shall be*
 16 *deemed to satisfy the requirements of section*
 17 *401(a)(4) of the Internal Revenue Code of 1986 if*
 18 *such plan satisfies the facts and circumstances test*
 19 *under section 401(a)(4) of such Code, as in effect be-*
 20 *fore January 1, 1994, but only if—*

21 *(A) the plan satisfies conditions prescribed*
 22 *by the Secretary to appropriately limit the*
 23 *availability of such test; and*

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

4 Subparagraph (B) shall only apply to the extent pro-
 5 vided by the Secretary.

6 (2) *EFFECTIVE DATES.*—

7 (A) *REGULATIONS.*—The regulation re-
 8 quired by paragraph (1) shall apply to years be-
 9 ginning after December 31, 2003.

10 (B) *CONDITIONS OF AVAILABILITY.*—Any
 11 condition of availability prescribed by the Sec-
 12 retary under paragraph (1)(A) shall not apply
 13 before the first year beginning not less than 120
 14 days after the date on which such condition is
 15 prescribed.

16 (b) *COVERAGE TEST.*—

17 (1) *IN GENERAL.*—Section 410(b)(1) of the *Inter-*
 18 *nal Revenue Code of 1986 (relating to minimum cov-*
 19 *erage requirements)* is amended by adding at the end
 20 the following:

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

1 “(i) satisfies subparagraph (B), as in
 2 effect immediately before the enactment of
 3 the Tax Reform Act of 1986,

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

7 “(iii) satisfies conditions prescribed by
 8 the Secretary by regulation that appro-
 9 priately limit the availability of this sub-
 10 paragraph.

11 Clause (ii) shall apply only to the extent pro-
 12 vided by the Secretary.”.

13 (2) *EFFECTIVE DATES.*—

14 (A) *IN GENERAL.*—The amendment made
 15 by paragraph (1) shall apply to years beginning
 16 after December 31, 2003.

17 (B) *CONDITIONS OF AVAILABILITY.*—Any
 18 condition of availability prescribed by the Sec-
 19 retary under regulations prescribed by the Sec-
 20 retary under section 410(b)(1)(D) of the Internal
 21 Revenue Code of 1986 shall not apply before the
 22 first year beginning not less than 120 days after
 23 the date on which such condition is prescribed.

24 (c) *LINE OF BUSINESS RULES.*—The Secretary of the
 25 Treasury shall, on or before December 31, 2003, modify the

1 *existing regulations issued under section 414(r) of the Inter-*
 2 *nal Revenue Code of 1986 in order to expand (to the extent*
 3 *that the Secretary determines appropriate) the ability of*
 4 *a pension plan to demonstrate compliance with the line of*
 5 *business requirements based upon the facts and cir-*
 6 *cumstances surrounding the design and operation of the*
 7 *plan, even though the plan is unable to satisfy the mechan-*
 8 *ical tests currently used to determine compliance.*

9 **SEC. 205. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
 10 **MORATORIUM ON APPLICATION OF CERTAIN**
 11 **NONDISCRIMINATION RULES APPLICABLE TO**
 12 **STATE AND LOCAL PLANS.**

13 *(a) IN GENERAL.—*

14 *(1) Subparagraph (G) of section 401(a)(5) of the*
 15 *Internal Revenue Code of 1986 and subparagraph*
 16 *(H) of section 401(a)(26) of such Code are each*
 17 *amended by striking “section 414(d))” and all that*
 18 *follows and inserting “section 414(d)).”.*

19 *(2) Subparagraph (G) of section 401(k)(3) of the*
 20 *Internal Revenue Code of 1986 and paragraph (2) of*
 21 *section 1505(d) of the Taxpayer Relief Act of 1997*
 22 *are each amended by striking “maintained by a State*
 23 *or local government or political subdivision thereof*
 24 *(or agency or instrumentality thereof)”.*

25 *(b) CONFORMING AMENDMENTS.—*

(2) The heading for subparagraph (H) of section 401(a)(26) of such Code is amended to read as follows: “EXCEPTION FOR GOVERNMENTAL PLANS.—”.

(3) Subparagraph (G) of section 401(k)(3) of such Code is amended by inserting “GOVERNMENTAL PLANS.—” after “(G)”.

10 (c) *EFFECTIVE DATE.*—*The amendments made by this*
11 *section shall apply to years beginning after December 31,*
12 *2002.*

13 *SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DIS-*
14 *TRIBUTIONS.*

15 (a) *EXPANSION OF PERIOD.*—

16 (1) *AMENDMENT OF INTERNAL REVENUE*
17 *CODE.*—

(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) of the Internal Revenue Code of 1986 is amended by striking “90-day” and inserting “180-day”.

(B) 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 sub-

1 *stitute “180 days” for “90 days” each place it*
 2 *appears in Treasury Regulations sections*
 3 *1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).*

4 *(2) EFFECTIVE DATE.—The amendment made by*
 5 *paragraph (1)(A) and the modifications required by*
 6 *paragraph (1)(B) shall apply to years beginning after*
 7 *December 31, 2002.*

8 *(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN*
 9 *DISTRIBUTIONS.—*

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

16 *(2) EFFECTIVE DATE.—*

17 *(A) IN GENERAL.—The modifications re-*
 18 *quired by paragraph (1) shall apply to years be-*
 19 *ginning after December 31, 2002.*

20 *(B) REASONABLE NOTICE.—In the case of*
 21 *any description of such consequences made before*
 22 *the date that is 90 days after the date on which*
 23 *the Secretary of the Treasury issues a safe har-*
 24 *bor description under paragraph (1), a plan*
 25 *shall not be treated as failing to satisfy the re-*

quirements of section 411(a)(11) of such Code by reason of the failure to provide the information required by the modifications made under paragraph (1) if the Administrator of such plan makes a reasonable attempt to comply with such requirements.

SEC. 207. 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.”.

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

5 “(F)(i) *For purposes of this paragraph, a single-em-*
6 *ployer plan maintained by a contributing sponsor shall be*
7 *treated as a new single-employer plan for each of its first*
8 *5 plan years if, during the 36-month period ending on the*
9 *date of the adoption of such plan, the sponsor or any mem-*
10 *ber of such sponsor’s controlled group (or any predecessor*
11 *of either) did not establish or maintain a plan to which*
12 *this title applies with respect to which benefits were accrued*
13 *for substantially the same employees as are in the new sin-*
14 *gle-employer plan.*

15 “(ii)(I) *For purposes of this paragraph, the term*
16 *‘small employer’ means an employer which on the first day*
17 *of any plan year has, in aggregation with all members of*
18 *the controlled group of such employer, 100 or fewer employ-*
19 *ees.*

20 “(II) *In the case of a plan maintained by two or more*
21 *contributing sponsors that are not part of the same con-*
22 *trolled group, the employees of all contributing sponsors and*
23 *controlled groups of such sponsors shall be aggregated for*
24 *purposes of determining whether any contributing sponsor*
25 *is a small employer.”.*

1 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 2 *section shall apply to plans established after December 31,*
 3 *2001.*

4 **SEC. 208. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
 5 **NEW AND SMALL PLANS.**

6 (a) *NEW PLANS.*—*Subparagraph (E) of section*
 7 *4006(a)(3) of the Employee Retirement Income Security*
 8 *Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by add-*
 9 *ing at the end the following new clause:*

10 “(v) *In the case of a new defined benefit plan, the*
 11 *amount determined under clause (ii) for any plan year*
 12 *shall be an amount equal to the product of the amount de-*
 13 *termined under clause (ii) and the applicable percentage.*
 14 *For purposes of this clause, the term ‘applicable percentage’*
 15 *means—*

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

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

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

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

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

21 *For purposes of this clause, a defined benefit plan (as de-*
 22 *finied in section 3(35)) maintained by a contributing spon-*
 23 *sor shall be treated as a new defined benefit plan for each*
 24 *of its first 5 plan years if, during the 36-month period end-*
 25 *ing on the date of the adoption of the plan, the sponsor*

1 *and each member of any controlled group including the*
 2 *sponsor (or any predecessor of either) did not establish or*
 3 *maintain a plan to which this title applies with respect*
 4 *to which benefits were accrued for substantially the same*
 5 *employees as are in the new plan.”.*

6 (b) *SMALL PLANS.—Paragraph (3) of section 4006(a)*
 7 *of the Employee Retirement Income Security Act of 1974*
 8 *(29 U.S.C. 1306(a)), as amended by section 207(b), is*
 9 *amended—*

10 (1) *by striking “The” in subparagraph (E)(i)*
 11 *and inserting “Except as provided in subparagraph*
 12 *(G), the”, and*

13 (2) *by inserting after subparagraph (F) the fol-*
 14 *lowing new subparagraph:*

15 “(G)(i) *In the case of an employer who has 25 or fewer*
 16 *employees on the first day of the plan year, the additional*
 17 *premium determined under subparagraph (E) for each par-*
 18 *ticipant shall not exceed \$5 multiplied by the number of*
 19 *participants in the plan as of the close of the preceding plan*
 20 *year.*

21 “(ii) *For purposes of clause (i), whether an employer*
 22 *has 25 or fewer employees on the first day of the plan year*
 23 *is determined taking into consideration all of the employees*
 24 *of all members of the contributing sponsor’s controlled*
 25 *group. In the case of a plan maintained by two or more*

1 *contributing sponsors, the employees of all contributing*
 2 *sponsors and their controlled groups shall be aggregated for*
 3 *purposes of determining whether the 25-or-fewer-employees*
 4 *limitation has been satisfied.”.*

5 *(c) EFFECTIVE DATES.—*

6 *(1) SUBSECTION (a).—The amendments made by*
 7 *subsection (a) shall apply to plans established after*
 8 *December 31, 2001.*

9 *(2) SUBSECTION (b).—The amendments made by*
 10 *subsection (b) shall apply to plan years beginning*
 11 *after December 31, 2002.*

12 **SEC. 209. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
 13 **PREMIUM OVERPAYMENT REFUNDS.**

14 *(a) IN GENERAL.—Section 4007(b) of the Employment*
 15 *Retirement Income Security Act of 1974 (29 U.S.C.*
 16 *1307(b)) is amended—*

17 *(1) by striking “(b)” and inserting “(b)(1)”, and*

18 *(2) by inserting at the end the following new*
 19 *paragraph:*

20 *“(2) The corporation is authorized to pay, subject to*
 21 *regulations prescribed by the corporation, interest on the*
 22 *amount of any overpayment of premium refunded to a des-*
 23 *ignated payor. Interest under this paragraph shall be cal-*
 24 *culated at the same rate and in the same manner as interest*
 25 *is calculated for underpayments under paragraph (1).”.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
 2 *section (a) shall apply to interest accruing for periods be-*
 3 *ginning not earlier than the date of the enactment of this*
 4 *Act.*

5 **SEC. 210. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
 6 **PLANS.**

7 (a) *MODIFICATION OF PHASE-IN OF GUARANTEE.*—
 8 *Section 4022(b)(5) of the Employee Retirement Income Se-*
 9 *curity Act of 1974 (29 U.S.C. 1322(b)(5)) is amended to*
 10 *read as follows:*

11 “(5)(A) *For purposes of this paragraph, the term ‘ma-*
 12 *jority owner’ means an individual who, at any time during*
 13 *the 60-month period ending on the date the determination*
 14 *is being made—*

15 “(i) *owns the entire interest in an unincor-*
 16 *porated trade or business,*

17 “(ii) *in the case of a partnership, is a partner*
 18 *who owns, directly or indirectly, 50 percent or more*
 19 *of either the capital interest or the profits interest in*
 20 *such partnership, or*

21 “(iii) *in the case of a corporation, owns, directly*
 22 *or indirectly, 50 percent or more in value of either the*
 23 *voting stock of that corporation or all the stock of that*
 24 *corporation.*

1 *For purposes of clause (iii), the constructive ownership*
 2 *rules of section 1563(e) of the Internal Revenue Code of*
 3 *1986 shall apply (determined without regard to section*
 4 *1563(e)(3)(C)).*

5 *“(B) In the case of a participant who is a majority*
 6 *owner, the amount of benefits guaranteed under this section*
 7 *shall equal the product of—*

8 *“(i) a fraction (not to exceed 1) the numerator*
 9 *of which is the number of years from the later of the*
 10 *effective date or the adoption date of the plan to the*
 11 *termination date, and the denominator of which is*
 12 *10, and*

13 *“(ii) the amount of benefits that would be guar-*
 14 *anteed under this section if the participant were not*
 15 *a majority owner.”.*

16 *(b) MODIFICATION OF ALLOCATION OF ASSETS.—*

17 *(1) Section 4044(a)(4)(B) of the Employee Re-*
 18 *irement Income Security Act of 1974 (29 U.S.C.*
 19 *1344(a)(4)(B)) is amended by striking “section*
 20 *4022(b)(5)” and inserting “section 4022(b)(5)(B)”.*

21 *(2) Section 4044(b) of such Act (29 U.S.C.*
 22 *1344(b)) is amended—*

23 *(A) by striking “(5)” in paragraph (2) and*
 24 *inserting “(4), (5),”, and*

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

5 “(3) If assets available for allocation under
 6 paragraph (4) of subsection (a) are insufficient to sat-
 7 isfy in full the benefits of all individuals who are de-
 8 scribed in that paragraph, the assets shall be allocated
 9 first to benefits described in subparagraph (A) of that
 10 paragraph. Any remaining assets shall then be allo-
 11 cated to benefits described in subparagraph (B) of
 12 that paragraph. If assets allocated to such subpara-
 13 graph (B) are insufficient to satisfy in full the bene-
 14 fits described in that subparagraph, the assets shall be
 15 allocated pro rata among individuals on the basis of
 16 the present value (as of the termination date) of their
 17 respective benefits described in that subparagraph.”.

18 (c) CONFORMING AMENDMENTS.—

19 (1) Section 4021 of the Employee Retirement In-
 20 come Security Act of 1974 (29 U.S.C. 1321) is
 21 amended—

22 (A) in subsection (b)(9), by striking “as de-
 23 fined in section 4022(b)(6)”, and

24 (B) by adding at the end the following new
 25 subsection:

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

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

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

11 “(3) in the case of a corporation, owns, directly
 12 or indirectly, more than 10 percent in value of either
 13 the voting stock of that corporation or all the stock of
 14 that corporation.

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

19 (2) Section 4043(c)(7) of such Act (29 U.S.C.
 20 1343(c)(7)) is amended by striking “section 4022(b)(6)”
 21 and inserting “section 4021(d)”.

22 (d) *EFFECTIVE DATES.*—

23 (1) *IN GENERAL.*—Except as provided in para-
 24 graph (2), the amendments made by this section shall
 25 apply to plan terminations—

1 (A) under section 4041(c) of the Employee
 2 Retirement Income Security Act of 1974 (29
 3 U.S.C. 1341(c)) with respect to which notices of
 4 intent to terminate are provided under section
 5 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2))
 6 after December 31, 2002, and

7 (B) under section 4042 of such Act (29
 8 U.S.C. 1342) with respect to which proceedings
 9 are instituted by the corporation after such date.

10 (2) CONFORMING AMENDMENTS.—The amend-
 11 ments made by subsection (c) shall take effect on Jan-
 12 uary 1, 2003.

13 **SEC. 211. STUDIES.**

14 (a) MODEL SMALL EMPLOYER GROUP PLANS
 15 STUDY.—As soon as practicable after the date of the enact-
 16 ment of this Act, the Secretary of Labor, in consultation
 17 with the Secretary of the Treasury, shall conduct a study
 18 to determine—

19 (1) the most appropriate form or forms of—

20 (A) employee pension benefit plans which
 21 would—

22 (i) be simple in form and easily main-
 23 tained by multiple small employers, and

1 (ii) provide for ready portability of
2 benefits for all participants and bene-
3 ficiaries,

4 (B) alternative arrangements providing
5 comparable benefits which may be established by
6 employee or employer associations, and

7 (C) alternative arrangements providing
8 comparable benefits to which employees may con-
9 tribute in a manner independent of employer
10 sponsorship, and

11 (2) appropriate methods and strategies for mak-
12 ing pension plan coverage described in paragraph (1)
13 more widely available to American workers.

14 (b) *MATTERS TO BE CONSIDERED.*—In conducting the
15 study under subsection (a), the Secretary of Labor shall con-
16 sider the adequacy and availability of existing employee
17 pension benefit plans and the extent to which existing mod-
18 els may be modified to be more accessible to both employees
19 and employers.

20 (c) *REPORT.*—Not later than 18 months after the date
21 of the enactment of this Act, the Secretary of Labor shall
22 report the results of the study under subsection (a), together
23 with the Secretary's recommendations, to the Committee on
24 Education and the Workforce and the Committee on Ways
25 and Means of the House of Representatives and the Com-

1 *mittee on Health, Education, Labor, and Pensions and the*
 2 *Committee on Finance of the Senate. Such recommenda-*
 3 *tions shall include one or more model plans described in*
 4 *subsection (a)(1)(A) and model alternative arrangements*
 5 *described in subsections (a)(1)(B) and (a)(1)(C) which may*
 6 *serve as the basis for appropriate administrative or legisla-*
 7 *tive action.*

8 *(d) STUDY ON EFFECT OF LEGISLATION.—Not later*
 9 *than 5 years after the date of the enactment of this Act,*
 10 *the Secretary of Labor shall submit to the Committee on*
 11 *Education and the Workforce of the House of Representa-*
 12 *tives and the Committee on Health, Education, Labor, and*
 13 *Pensions of the Senate a report on the effect of the provi-*
 14 *sions of this Act and title VI of the Economic Growth and*
 15 *Tax Relief Reconciliation Act of 2001 on pension plan cov-*
 16 *erage, including any change in—*

17 *(1) the extent of pension plan coverage for low*
 18 *and middle-income workers,*

19 *(2) the levels of pension plan benefits generally,*

20 *(3) the quality of pension plan coverage gen-*
 21 *erally,*

22 *(4) workers' access to and participation in pen-*
 23 *sion plans, and*

24 *(5) retirement security.*

1 **SEC. 212. INTEREST RATE RANGE FOR ADDITIONAL FUND-**
 2 **ING REQUIREMENTS.**

3 (a) *IN GENERAL.*—Subclause (III) of section
 4 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is
 5 amended—

6 (1) by striking “2002 or 2003” in the text and
 7 inserting “2001, 2002, or 2003”, and

8 (2) by striking “2002 AND 2003” in the heading
 9 and inserting “2001, 2002, AND 2003”.

10 (b) *EFFECTIVE DATE.*—The amendments made by this
 11 section shall take effect as if included in the amendments
 12 made by section 405 of the Job Creation and Worker Assist-
 13 ance Act of 2002.

14 **SEC. 213. PROVISIONS RELATING TO PLAN AMENDMENTS.**

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

17 (1) such plan or contract shall be treated as
 18 being operated in accordance with the terms of the
 19 plan for purposes of the Internal Revenue Code of
 20 1986 during the period described in subsection
 21 (b)(2)(A), and

22 (2) except as provided by the Secretary of the
 23 Treasury, such plan shall not fail to meet the require-
 24 ments of section 411(d)(6) of the Internal Revenue
 25 Code of 1986 by reason of such amendment.

26 (b) *AMENDMENTS TO WHICH SECTION APPLIES.*—

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

4 (A) *pursuant to any amendment made by*
 5 *this title or title VI of the Economic Growth and*
 6 *Tax Relief Reconciliation Act of 2001, or pursu-*
 7 *ant to any regulation issued by the Secretary of*
 8 *the Treasury under this title or such title VI,*
 9 *and*

10 (B) *on or before the last day of the first*
 11 *plan year beginning on or after January 1,*
 12 *2005.*

13 *In the case of a governmental plan (as defined in sec-*
 14 *tion 414(d) of the Internal Revenue Code of 1986),*
 15 *this paragraph shall be applied by substituting*
 16 *“2007” for “2005”.*

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

19 (A) *during the period—*

20 (i) *beginning on the date the legislative*
 21 *or regulatory amendment described in para-*
 22 *graph (1)(A) takes effect (or in the case of*
 23 *a plan or contract amendment not required*
 24 *by such legislative or regulatory amend-*

ment, 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.

TITLE III—STOCK OPTIONS

SEC. 301. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES.

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking “or” at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting “; or”, and by inserting after paragraph (21) the following new paragraph:

“(22) remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incen-

1 *tive stock option (as defined in section 422(b)) or*
 2 *under an employee stock purchase plan (as de-*
 3 *defined in section 423(b)), or*

4 *“(B) any disposition by the individual of*
 5 *such stock.”.*

6 *(B) Section 209(a) of the Social Security*
 7 *Act is amended by striking “or” at the end of*
 8 *paragraph (17), by striking the period at the end*
 9 *of paragraph (18) and inserting “; or”, and by*
 10 *inserting after paragraph (18) the following new*
 11 *paragraph:*

12 *“(19) Remuneration on account of—*

13 *“(A) a transfer of a share of stock to any*
 14 *individual pursuant to an exercise of an incen-*
 15 *tive stock option (as defined in section 422(b) of*
 16 *the Internal Revenue Code of 1986) or under an*
 17 *employee stock purchase plan (as defined in sec-*
 18 *tion 423(b) of such Code), or*

19 *“(B) any disposition by the individual of*
 20 *such stock.”.*

21 *(2) RAILROAD RETIREMENT TAXES.—Subsection*
 22 *(e) of section 3231 of such Code is amended by adding*
 23 *at the end the following new paragraph:*

1 “(11) *QUALIFIED STOCK OPTIONS.*—*The term*
 2 *‘compensation’ shall not include any remuneration on*
 3 *account of—*

4 “(A) *a transfer of a share of stock to any*
 5 *individual pursuant to an exercise of an incen-*
 6 *tive stock option (as defined in section 422(b)) or*
 7 *under an employee stock purchase plan (as de-*
 8 *finied in section 423(b)), or*

9 “(B) *any disposition by the individual of*
 10 *such stock.”.*

11 (3) *UNEMPLOYMENT TAXES.*—*Section 3306(b) of*
 12 *such Code (relating to definition of wages) is amend-*
 13 *ed by striking “or” at the end of paragraph (16), by*
 14 *striking the period at the end of paragraph (17) and*
 15 *inserting “; or”, and by inserting after paragraph*
 16 *(17) the following new paragraph:*

17 “(18) *remuneration on account of—*

18 “(A) *a transfer of a share of stock to any*
 19 *individual pursuant to an exercise of an incen-*
 20 *tive stock option (as defined in section 422(b)) or*
 21 *under an employee stock purchase plan (as de-*
 22 *finied in section 423(b)), or*

23 “(B) *any disposition by the individual of*
 24 *such stock.”.*

1 (b) *WAGE WITHHOLDING NOT REQUIRED ON DIS-*
2 *QUALIFYING DISPOSITIONS.*—Section 421(b) of such Code
3 *(relating to effect of disqualifying dispositions) is amended*
4 *by adding at the end the following new sentence: “No*
5 *amount shall be required to be deducted and withheld under*
6 *chapter 24 with respect to any increase in income attrib-*
7 *utable to a disposition described in the preceding sentence.”.*

8 (c) *WAGE WITHHOLDING NOT REQUIRED ON COM-*
9 *PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-*
10 *CENT AND 100 PERCENT OF VALUE OF STOCK.*—Section
11 *423(c) of such Code (relating to special rule where option*
12 *price is between 85 percent and 100 percent of value of*
13 *stock) is amended by adding at the end the following new*
14 *sentence: “No amount shall be required to be deducted and*
15 *withheld under chapter 24 with respect to any amount*
16 *treated as compensation under this subsection.”.*

17 (d) *EFFECTIVE DATE.*—*The amendments made by this*
18 *section shall apply to stock acquired pursuant to options*
19 *exercised after the date of the enactment of this Act.*

1 ***TITLE IV—SOCIAL SECURITY***
2 ***AND MEDICARE HELD HARM-***
3 ***LESS***

4 ***SEC. 401. PROTECTION OF SOCIAL SECURITY AND MEDI-***
5 ***CARE.***

6 *The amounts transferred to any trust fund under the*
7 *Social Security Act shall be determined as if this Act had*
8 *not been enacted.*

Union Calendar No. 232

107TH CONGRESS
2^D SESSION

H. R. 3669

[Report No. 107-382, Part I]

A BILL

To amend the Internal Revenue Code of 1986 to empower employees to control their retirement savings accounts through new diversification rights, new disclosure requirements, and new tax incentives for retirement education.

APRIL 9, 2002

The Committee on Education and the Workforce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed