

107TH CONGRESS
2D SESSION

H. R. 3762

AN ACT

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets, and to amend the Securities Exchange Act of 1934 to prohibit insider trades during any suspension of the ability of plan participants or beneficiaries to direct investment away from equity securities of the plan sponsor.

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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 AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Pension Security Act of 2002”.

6 (b) **TABLE OF CONTENTS.**—The table of contents is
 7 as follows:

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN PENSION SECURITY

- Sec. 101. Periodic pension benefits statements.
- Sec. 102. Protection from suspensions, limitations, or restrictions on ability of participant or beneficiary to direct or diversify plan assets.
- Sec. 103. Informational and educational support for pension plan fiduciaries.
- Sec. 104. Diversification requirements for defined contribution plans that hold employer securities.
- Sec. 105. Prohibited transaction exemption for the provision of investment advice.
- Sec. 106. Study regarding impact on retirement savings of participants and beneficiaries by requiring consultants to advise plan fiduciaries of individual account plans.
- Sec. 107. Treatment of qualified retirement planning services.
- Sec. 108. Insider trades during pension fund blackout periods prohibited.
- Sec. 109. Effective dates of title and related rules.

TITLE II—OTHER 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. Annual report dissemination.
- Sec. 208. Technical corrections to Saver Act.
- Sec. 209. Missing participants.
- Sec. 210. Reduced PBGC premium for new plans of small employers.
- Sec. 211. Reduction of additional PBGC premium for new and small plans.
- Sec. 212. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 213. Substantial owner benefits in terminated plans.
- Sec. 214. Benefit suspension notice.
- Sec. 215. Studies.
- Sec. 216. Interest rate range for additional funding requirements.
- Sec. 217. 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—IMPROVEMENTS IN**
 2 **PENSION SECURITY**

3 **SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.**

4 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 5 INCOME SECURITY ACT OF 1974.—

6 (1) REQUIREMENTS.—

7 (A) IN GENERAL.—Section 105(a) of the
 8 Employee Retirement Income Security Act of
 9 1974 (29 U.S.C. 1025(a)) is amended to read
 10 as follows:

11 “(a)(1)(A) The administrator of an individual ac-
 12 count plan shall furnish a pension benefit statement—

13 “(i) to each plan participant at least annually,

14 “(ii) to each plan beneficiary upon written re-
 15 quest, and

16 “(iii) in the case of an applicable individual ac-
 17 count plan, to each plan participant (and to each
 18 beneficiary with a right to direct investments) at
 19 least quarterly.

20 “(B) The administrator of a defined benefit plan
 21 shall furnish a pension benefit statement—

1 “(i) at least once every 3 years to each partici-
2 pant with a nonforfeitable accrued benefit who is
3 employed by the employer maintaining the plan at
4 the time the statement is furnished to participants,
5 and

6 “(ii) to a plan participant or plan beneficiary of
7 the plan upon written request.

8 “(2) A pension benefit statement under paragraph
9 (1)—

10 “(A) shall indicate, on the basis of the latest
11 available information—

12 “(i) the total benefits accrued, and

13 “(ii) the nonforfeitable pension benefits, if
14 any, which have accrued, or the earliest date on
15 which benefits will become nonforfeitable,

16 “(B) shall be written in a manner calculated to
17 be understood by the average plan participant, and

18 “(C) may be provided in written form or in
19 electronic or other appropriate form to the extent
20 that such form is reasonably accessible to the recipi-
21 ent.

22 “(3) In the case of an applicable individual account
23 plan, the requirements of paragraph (1)(A) shall be treat-
24 ed as met if the quarterly statement (together with the
25 information required in subparagraphs (A) and (B) of

1 subsection (d)(1)) is available electronically in reasonably
2 accessible form, and the participant or beneficiary is pro-
3 vided at least once each year a notice that such statement
4 (together with such information) is available in such form.
5 Such notice shall be in written, electronic, or other appro-
6 priate form.

7 “(4)(A) In the case of a defined benefit plan, the re-
8 quirements of paragraph (1)(B)(i) shall be treated as met
9 with respect to a participant if the administrator provides
10 the participant at least once each year with notice of the
11 availability of the pension benefit statement and the ways
12 in which the participant may obtain such statement. Such
13 notice shall be provided in written, electronic, or other ap-
14 propriate form, and may be included with other commu-
15 nications to the participant if done in a manner reasonably
16 designed to attract the attention of the participant.

17 “(B) The Secretary may provide that years in which
18 no employee or former employee benefits (within the
19 meaning of section 410(b) of the Internal Revenue Code
20 of 1986) under the plan need not be taken into account
21 in determining the 3-year period under paragraph
22 (1)(B)(i).”.

23 (B) CONFORMING AMENDMENTS.—

24 (i) Section 105 of the Employee Re-
25 tirement Income Security Act of 1974 (29

1 U.S.C. 1025) is amended by striking sub-
2 section (d).

3 (ii) Section 105(b) of such Act (29
4 U.S.C. 1025(b)) is amended to read as fol-
5 lows:

6 “(b) In no case shall a participant or beneficiary of
7 a plan be entitled to more than one statement described
8 in clause (i) or (ii) of subsection (a)(1)(A) or clause (i)
9 or (ii) of subsection (a)(1)(B), whichever is applicable, in
10 any 12-month period. If such report is required under sub-
11 section (a) to be furnished at least quarterly, the require-
12 ments of the preceding sentence shall be applied with re-
13 spect to each quarter in lieu of the 12-month period.”.

14 (2) INFORMATION REQUIRED FROM APPLICA-
15 BLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of
16 such Act (as amended by paragraph (1)) is amended
17 further by adding at the end the following new sub-
18 section:

19 “(d)(1) The statements required to be provided at
20 least quarterly under subsection (a) shall include (together
21 with the information required in subsection (a)) the fol-
22 lowing:

23 “(A) the value of investments allocated to the
24 individual account, including the value of any assets
25 held in the form of employer securities, without re-

1 gard to whether such securities were contributed by
2 the plan sponsor or acquired at the direction of the
3 plan or of the participant or beneficiary, and an ex-
4 planation of any limitations or restrictions on the
5 right of the participant or beneficiary to direct an
6 investment; and

7 “(B) an explanation, written in a manner cal-
8 culated to be understood by the average plan partici-
9 pant, of the importance, for the long-term retire-
10 ment security of participants and beneficiaries, of a
11 well-balanced and diversified investment portfolio,
12 including a discussion of the risk of holding more
13 than 25 percent of a portfolio in the security of any
14 one entity, such as employer securities.

15 “(2) The value of any employer securities that are
16 not readily tradable on an established securities market
17 that is required to be reported under paragraph (1)(A)
18 may be determined by using the most recent valuation of
19 the employer securities.

20 “(3) The Secretary shall issue guidance and model
21 notices which meet the requirements of this subsection.”.

22 (3) DEFINITION OF APPLICABLE INDIVIDUAL
23 ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.
24 1002) is amended by adding at the end the following
25 new paragraph:

1 “(42)(A) The term ‘applicable individual account
2 plan’ means any individual account plan, except that such
3 term does not include an employee stock ownership plan
4 (within the meaning of section 4975(e)(7) of the Internal
5 Revenue Code of 1986) unless there are any contributions
6 to such plan (or earnings thereunder) held within such
7 plan that are subject to subsection (k)(3) or (m)(2) of sec-
8 tion 401 of the Internal Revenue Code of 1986. Such term
9 shall not include a one-participant retirement plan.

10 “(B) The term ‘one-participant retirement plan’
11 means a retirement plan that—

12 “(i) on the first day of the plan year—

13 “(I) covered only the employer (and the
14 employer’s spouse) and the employer owned the
15 entire business (whether or not incorporated),
16 or

17 “(II) covered only one or more partners
18 (and their spouses) in a business partnership
19 (including partners in an S or C corporation),

20 “(ii) meets the minimum coverage requirements
21 of section 410(b) of the Internal Revenue Code of
22 1986 (as in effect on the date of the enactment of
23 this paragraph) without being combined with any
24 other plan of the business that covers the employees
25 of the business,

1 “(iii) does not provide benefits to anyone except
2 the employer (and the employer’s spouse) or the
3 partners (and their spouses),

4 “(iv) does not cover a business that is a mem-
5 ber of an affiliated service group, a controlled group
6 of corporations, or a group of businesses under com-
7 mon control, and

8 “(v) does not cover a business that leases em-
9 ployees.”.

10 (4) CIVIL PENALTIES FOR FAILURE TO PRO-
11 VIDE QUARTERLY BENEFIT STATEMENTS.—Section
12 502 of such Act (29 U.S.C. 1132) is amended—

13 (A) in subsection (a)(6), by striking “(5),
14 or (6)” and inserting “(5), (6), or (7)”;

15 (B) by redesignating paragraph (7) of sub-
16 section (c) as paragraph (8); and

17 (C) by inserting after paragraph (6) of
18 subsection (c) the following new paragraph:

19 “(7) The Secretary may assess a civil penalty against
20 any plan administrator of up to \$1,000 a day from the
21 date of such plan administrator’s failure or refusal to pro-
22 vide participants or beneficiaries with a benefit statement
23 on at least a quarterly basis in accordance with section
24 105(a)(1)(A)(iii).”.

1 (5) MODEL STATEMENTS.—The Secretary of
2 Labor shall, not later than January 1, 2003, issue
3 initial guidance and a model benefit statement, writ-
4 ten in a manner calculated to be understood by the
5 average plan participant, that may be used by plan
6 administrators in complying with the requirements
7 of section 105 of the Employee Retirement Income
8 Security Act of 1974. Not later than 75 days after
9 the date of the enactment of this Act, the Secretary
10 shall promulgate interim final rules necessary to
11 carry out the amendments made by this subsection.

12 (b) AMENDMENTS TO THE INTERNAL REVENUE
13 CODE OF 1986.—

14 (1) PROVISION OF INVESTMENT EDUCATION
15 NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—
16 Section 414 of the Internal Revenue Code of 1986
17 (relating to definitions and special rules) is amended
18 by adding at the end the following:

19 “(w) PROVISION OF INVESTMENT EDUCATION NO-
20 TICES TO PARTICIPANTS IN CERTAIN PLANS.—

21 “(1) IN GENERAL.—The plan administrator of
22 an applicable pension plan shall provide to each ap-
23 plicable individual an investment education notice
24 described in paragraph (2) at the time of the enroll-

1 ment of the applicable individual in the plan and not
2 less often than annually thereafter.

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

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

11 “(B) a discussion of the risk of holding
12 substantial portions of a portfolio in the secu-
13 rity of any one entity, such as employer securi-
14 ties.

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

22 “(4) FORM AND MANNER OF NOTICES.—The
23 notices required by this subsection shall be in writ-
24 ing, except that such notices may be in electronic or
25 other form (or electronically posted on the plan’s

1 website) to the extent that such form is reasonably
2 accessible to the applicable individual.

3 “(5) DEFINITIONS.—For purposes of this
4 subsection—

5 “(A) APPLICABLE INDIVIDUAL.—The term
6 ‘applicable individual’ means—

7 “(i) any participant in the applicable
8 pension plan,

9 “(ii) any beneficiary who is an alter-
10 nate payee (within the meaning of section
11 414(p)(8)) under a qualified domestic rela-
12 tions order (within the meaning of section
13 414(p)(1)(A)), and

14 “(iii) any beneficiary of a deceased
15 participant or alternate payee.

16 “(B) APPLICABLE PENSION PLAN.—The
17 term ‘applicable pension plan’ means—

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

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

24 which permits any participant to direct the invest-
25 ment of some or all of his account in the plan or

1 under which the accrued benefit of any participant
2 depends in whole or in part on hypothetical invest-
3 ments directed by the participant. Such term shall
4 not include a one-participant retirement plan or a
5 plan to which section 105 of the Employee Retirement
6 Income Security Act of 1974 applies.

7 “(C) ONE-PARTICIPANT RETIREMENT
8 PLAN DEFINED.—The term ‘one-participant re-
9 tirement plan’ means a retirement plan that—

10 “(i) on the first day of the plan
11 year—

12 “(I) covered only the employer
13 (and the employer’s spouse) and the
14 employer owned the entire business
15 (whether or not incorporated), or

16 “(II) covered only one or more
17 partners (and their spouses) in a busi-
18 ness partnership (including partners
19 in an S or C corporation),

20 “(ii) meets the minimum coverage re-
21 quirements of section 410(b) without being
22 combined with any other plan of the busi-
23 ness that covers the employees of the busi-
24 ness,

1 “(iii) does not provide benefits to any-
 2 one except the employer (and the employ-
 3 er’s spouse) or the partners (and their
 4 spouses),

5 “(iv) does not cover a business that is
 6 a member of an affiliated service group, a
 7 controlled group of corporations, or a
 8 group of businesses under common control,
 9 and

10 “(v) does not cover a business that
 11 leases employees.

12 “(6) CROSS REFERENCE.—

**“For provisions relating to penalty for failure to
 provide the notice required by this section, see sec-
 tion 6652(m).”.**

13 (2) PENALTY FOR FAILURE TO PROVIDE NO-
 14 TICE.—Section 6652 of such Code (relating to fail-
 15 ure to file certain information returns, registration
 16 statements, etc.) is amended by redesignating sub-
 17 section (m) as subsection (n) and by inserting after
 18 subsection (l) the following new subsection:

19 “(m) FAILURE TO PROVIDE INVESTMENT EDU-
 20 CATION NOTICES TO PARTICIPANTS IN CERTAIN
 21 PLANS.—In the case of each failure to provide a written
 22 explanation as required by section 414(w) with respect to
 23 an applicable individual (as defined in such section), at
 24 the time prescribed therefor, unless it is shown that such

1 failure is due to reasonable cause and not to willful ne-
 2 glect, there shall be paid, on notice and demand of the
 3 Secretary and in the same manner as tax, by the person
 4 failing to provide such notice, an amount equal to \$100
 5 for each such failure, but the total amount imposed on
 6 such person for all such failures during any calendar year
 7 shall not exceed \$50,000.”.

8 **SEC. 102. PROTECTION FROM SUSPENSIONS, LIMITATIONS,**
 9 **OR RESTRICTIONS ON ABILITY OF PARTICI-**
 10 **PANT OR BENEFICIARY TO DIRECT OR DI-**
 11 **VERSIFY PLAN ASSETS.**

12 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 13 INCOME SECURITY ACT OF 1974.—

14 (1) NOTICE REQUIREMENTS.—

15 (A) IN GENERAL.—Section 101 of the Em-
 16 ployee Retirement Income Security Act of 1974
 17 (29 U.S.C. 1021) is amended—

18 (i) by redesignating the second sub-
 19 section (h) as subsection (j); and

20 (ii) by inserting after the first sub-
 21 section (h) the following new subsection:

22 “(i) NOTICE OF SUSPENSION, LIMITATION, OR RE-
 23 STRICTION ON ABILITY OF PARTICIPANT OR BENEFICIARY
 24 TO DIRECT INVESTMENTS IN INDIVIDUAL ACCOUNT
 25 PLAN.—

1 “(1) DUTIES OF PLAN ADMINISTRATOR.—

2 “(A) IN GENERAL.—In the case of any ac-
3 tion having the effect of temporarily sus-
4 pending, limiting, or restricting any ability of
5 participants or beneficiaries under an applicable
6 individual account plan, which is otherwise
7 available under the terms of such plan, to direct
8 or diversify assets credited to their accounts, if
9 such suspension, limitation, or restriction is for
10 any period of more than 3 consecutive business
11 days, the plan administrator shall—

12 “(i) in advance of taking such action,
13 determine, in accordance with the require-
14 ments of part 4, that the expected period
15 of suspension, limitation, or restriction is
16 reasonable, and

17 “(ii) after making the determination
18 under subparagraph (A) and in advance of
19 taking such action, notify the plan partici-
20 pants and beneficiaries who are affected by
21 such action in accordance with this sub-
22 section.

23 “(B) EXCEPTIONS.—Subparagraph (A)
24 does not apply in connection with any suspen-
25 sion, limitation, or restriction—

1 “(i) which occurs by reason of the ap-
2 plication of the securities laws (as defined
3 in section 3(a)(47) of the Securities Ex-
4 change Act of 1934), or

5 “(ii) to the extent the suspension, lim-
6 itation, or restriction is a change to the
7 terms of the plan disclosed to participants
8 or beneficiaries through the summary plan
9 description or materials describing specific
10 investment alternatives under the plan.

11 “(C) BUSINESS DAY.—For purposes of
12 subparagraph (A), under regulations prescribed
13 by the Secretary, the term ‘business day’
14 means—

15 “(i) in the case of a security which is
16 traded on an established security market,
17 any day on which such security may be
18 traded on the principal securities market
19 of such security, and

20 “(ii) in the case of a security which is
21 not traded on an established security mar-
22 ket, any calendar day.

23 “(2) NOTICE REQUIREMENTS.—

24 “(A) IN GENERAL.—The notices described
25 in paragraph (1) shall be written in a manner

1 calculated to be understood by the average plan
2 participant and shall include—

3 “(i) the reasons for the suspension,
4 limitation, or restriction,

5 “(ii) an identification of the invest-
6 ments affected,

7 “(iii) the expected period of the sus-
8 pension, limitation, or restriction,

9 “(iv) a statement that the plan ad-
10 ministrator has evaluated the reasonable-
11 ness of the expected period of suspension,
12 limitation, or restriction,

13 “(v) a statement that the participant
14 or beneficiary should evaluate the appro-
15 priateness of their current investment deci-
16 sions in light of their inability to direct or
17 diversify assets credited to their accounts
18 during the expected period of suspension,
19 limitation, or restriction, and

20 “(vi) such other matters as the Sec-
21 retary may include in the model notices
22 issued under subparagraph (E).

23 “(B) PROVISION OF NOTICE.—Except as
24 otherwise provided in this subsection, notices
25 described in paragraph (1) shall be furnished to

1 all participants and beneficiaries under the plan
2 at least 30 days in advance of the action sus-
3 pending, limiting, or restricting the ability of
4 the participants or beneficiaries to direct or di-
5 versify assets.

6 “(C) EXCEPTION TO 30-DAY NOTICE RE-
7 QUIREMENT.—In any case in which—

8 “(i) a fiduciary of the plan deter-
9 mines, in writing, that a deferral of the
10 suspension, limitation, or restriction would
11 violate the requirements of subparagraph
12 (A) or (B) of section 404(a)(1), or

13 “(ii) the inability to provide the 30-
14 day advance notice is due to events that
15 were unforeseeable or circumstances be-
16 yond the reasonable control of the plan ad-
17 ministrators,

18 subparagraph (B) shall not apply, and the no-
19 tice shall be furnished to all participants and
20 beneficiaries under the plan as soon as reason-
21 ably possible under the circumstances unless
22 such a notice in advance of the termination of
23 the suspension, limitation, or restriction is im-
24 practicable.

1 “(D) WRITTEN NOTICE.—The notice re-
2 quired to be provided under this subsection
3 shall be in writing, except that such notice may
4 be in electronic or other form to the extent that
5 such form is reasonably accessible to the recipi-
6 ent.

7 “(E) MODEL NOTICES.—The Secretary
8 shall issue model notices which meet the re-
9 quirements of this paragraph.

10 “(3) EXCEPTION FOR SUSPENSIONS, LIMITA-
11 TIONS, OR RESTRICTIONS WITH LIMITED APPLICA-
12 BILITY.—In any case in which the suspension, limi-
13 tation, or restriction described in paragraph (1)—

14 “(A) applies only to 1 or more individuals,
15 each of whom is the participant, an alternate
16 payee (as defined in section 206(d)(3)(K)), or
17 any other beneficiary pursuant to a qualified
18 domestic relations order (as defined in section
19 206(d)(3)(B)(i)), or

20 “(B) applies only to 1 or more participants
21 or beneficiaries in connection with a merger, ac-
22 quisition, divestiture, or similar transaction in-
23 volving the plan or plan sponsor and occurs
24 solely in connection with becoming or ceasing to
25 be a participant or beneficiary under the plan

1 by reason of such merger, acquisition, divesti-
2 ture, or transaction,
3 the requirement of this subsection that the notice be
4 provided to all participants and beneficiaries shall be
5 treated as met if the notice required under para-
6 graph (1) is provided to all the individuals referred
7 to in subparagraph (A) or (B) to whom the suspen-
8 sion, limitation, or restriction applies as soon as rea-
9 sonably practicable.

10 “(4) CHANGES IN PERIOD OF SUSPENSION, LIM-
11 ITATION, OR RESTRICTION.—If, following the fur-
12 nishing of the notice pursuant to this subsection,
13 there is a change in the period of the suspension,
14 limitation, or restriction (specified in such notice
15 pursuant to paragraph (2)(A)(iii)) on the right of a
16 participant or beneficiary to direct or diversify as-
17 sets, the administrator shall provide affected partici-
18 pants and beneficiaries notice of the change as soon
19 as reasonably practicable. In relation to the extended
20 suspension, limitation, or restriction, such notice
21 shall meet the requirements of paragraph (2)(D)
22 and shall specify any material change in the matters
23 referred to in clauses (i) through (vi) of paragraph
24 (2)(A).

1 “(5) REGULATORY EXCEPTIONS.—The Sec-
2 retary may provide by regulation for additional ex-
3 ceptions to the requirements of this subsection which
4 the Secretary determines are in the interests of par-
5 ticipants and beneficiaries.

6 “(6) GUIDANCE AND MODEL NOTICES.—The
7 Secretary shall issue guidance and model notices
8 which meet the requirements of this subsection.”.

9 (B) ISSUANCE OF INITIAL GUIDANCE AND
10 MODEL NOTICE.—The Secretary of Labor shall
11 issue initial guidance and a model notice pursu-
12 ant to section 101(i)(6) of the Employee Retire-
13 ment Income Security Act of 1974 (as added by
14 this subsection) not later than January 1,
15 2003. Not later than 75 days after the date of
16 the enactment of this Act, the Secretary shall
17 promulgate interim final rules necessary to
18 carry out the amendments made by this sub-
19 section.

20 (2) CIVIL PENALTIES FOR FAILURE TO PRO-
21 VIDE NOTICE.—Section 502 of such Act (as amend-
22 ed by section 101(a)(4)) is amended further—

23 (A) in subsection (a)(6), by striking “(6),
24 or (7)” and inserting “(6), (7), or (8)”;

1 (B) by redesignating paragraph (8) of sub-
2 section (c) as paragraph (9); and

3 (C) by inserting after paragraph (7) of
4 subsection (c) the following new paragraph:

5 “(8) The Secretary may assess a civil penalty against
6 a plan administrator of up to \$100 a day from the date
7 of the plan administrator’s failure or refusal to provide
8 notice to participants and beneficiaries in accordance with
9 section 101(i). For purposes of this paragraph, each viola-
10 tion with respect to any single participant or beneficiary
11 shall be treated as a separate violation.”.

12 (3) INAPPLICABILITY OF RELIEF FROM FIDU-
13 CIARY LIABILITY DURING SUSPENSION OF ABILITY
14 OF PARTICIPANT OR BENEFICIARY TO DIRECT IN-
15 VESTMENTS.—Section 404(c)(1) of such Act (29
16 U.S.C. 1104(c)(1)) is amended—

17 (A) by redesignating subparagraphs (A)
18 and (B) as clauses (i) and (ii), respectively, and
19 by inserting “(A)” after “(c)(1)”;

20 (B) in subparagraph (A)(ii) (as redesign-
21 nated by subparagraph (A)), by inserting before
22 the period the following: “, except that this
23 clause shall not apply in connection with such
24 participant or beneficiary for any period during
25 which the ability of such participant or bene-

1 fiiciary to direct the investment of the assets in
2 his or her account is suspended by a plan spon-
3 sor or fiduciary’; and

4 (C) by adding at the end the following new
5 subparagraphs:

6 “(B) If the person referred to in subparagraph (A)(ii)
7 meets the requirements of this title in connection with au-
8 thorizing the suspension, such person shall not be liable
9 under this title for any loss occurring during the suspen-
10 sion as a result of any exercise by the participant or bene-
11 ficiary of control over assets in his or her account prior
12 to the suspension. Matters to be considered in determining
13 whether such person has satisfied the requirements of this
14 title include whether such person—

15 “(i) has considered the reasonableness of the
16 expected period of the suspension as required under
17 section 101(i)(1)(A)(i),

18 “(ii) has provided the notice required under sec-
19 tion 101(i)(1)(A)(ii), and

20 “(iii) has acted in accordance with the require-
21 ments of subsection (a) in determining whether to
22 enter into the suspension.

23 “(C) Any limitation or restriction that may govern
24 the frequency of transfers between investment vehicles
25 shall not be treated as a suspension referred to in subpara-

1 graph (A)(ii) to the extent such limitation or restriction
2 is disclosed to participants or beneficiaries through the
3 summary plan description or materials describing specific
4 investment alternatives under the plan.”.

5 (b) AMENDMENTS TO THE INTERNAL REVENUE
6 CODE OF 1986.—

7 (1) EXCISE TAX ON FAILURE OF PENSION
8 PLANS TO PROVIDE NOTICE OF TRANSACTION RE-
9 STRICTION PERIODS.—

10 (A) IN GENERAL.—Chapter 43 of the In-
11 ternal Revenue Code of 1986 (relating to quali-
12 fied pension, etc., plans) is amended by adding
13 at the end the following new section:

14 **“SEC. 4980H. FAILURE OF APPLICABLE PLANS TO PROVIDE**
15 **NOTICE OF TRANSACTION RESTRICTION PE-**
16 **RIODS.**

17 “(a) IMPOSITION OF TAX.—There is hereby imposed
18 a tax on the failure of any applicable pension plan to meet
19 the requirements of subsection (e) with respect to any ap-
20 plicable individual.

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

24 “(c) LIMITATIONS ON AMOUNT OF TAX.—

1 “(1) TAX NOT TO APPLY TO FAILURES COR-
2 RECTED AS SOON AS REASONABLY PRACTICABLE.—
3 No tax shall be imposed by subsection (a) on any
4 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) as soon as reasonably
11 practicable after the first date such person
12 knew, or exercising reasonable diligence should
13 have known, that such failure existed and at
14 least 1 business day before the beginning of the
15 transaction restriction period.

16 “(2) TAX NOT TO APPLY WHEN PROVIDING NO-
17 TICE NOT REASONABLY PRACTICABLE.—No tax shall
18 be imposed by subsection (a) if, in the case of the
19 occurrence of an unforeseeable event, it is not rea-
20 sonably practicable to provide such notice before the
21 beginning of the transaction restriction period.

22 “(3) OVERALL LIMITATION FOR UNINTEN-
23 TIONAL FAILURES.—

24 “(A) IN GENERAL.—If the person subject
25 to liability for tax under subsection (d) exer-

1 cised reasonable diligence to meet the require-
2 ments of subsection (e), the tax imposed by
3 subsection (a) for failures during the taxable
4 year of the employer (or, in the case of a multi-
5 employer plan, the taxable year of the trust
6 forming part of the plan) shall not exceed
7 \$500,000. For purposes of the preceding sen-
8 tence, all multiemployer plans of which the
9 same trust forms a part shall be treated as 1
10 plan.

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

19 “(4) WAIVER BY SECRETARY.—In the case of a
20 failure which is due to reasonable cause and not to
21 willful neglect, the Secretary may waive part or all
22 of the tax imposed by subsection (a) to the extent
23 that the payment of such tax would be excessive or
24 otherwise inequitable relative to the failure involved.

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

3 “(1) In the case of a plan other than a multi-
4 employer plan, the employer.

5 “(2) In the case of a multiemployer plan, the
6 plan.

7 “(e) NOTICE OF TRANSACTION RESTRICTION PE-
8 RIOD.—

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

15 “(2) UNDERSTANDABILITY.—The notice re-
16 quired by paragraph (1) shall be written in a man-
17 ner calculated to be understood by the average plan
18 participant and shall provide sufficient information
19 (as determined in accordance with guidance provided
20 by the Secretary) to allow recipients to understand
21 the timing and effect of such transaction restriction
22 period.

23 “(3) TIMING OF NOTICE.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), the notice required by para-

1 graph (1) shall be provided at least 30 days be-
2 fore the beginning of the transaction restriction
3 period.

4 “(B) DISPOSITION OF STOCK OR AS-
5 SETS.—

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

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

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

21 Subclause (I) shall not apply if the plan
22 administrator has a substantial basis to
23 believe that there will be no transaction re-
24 striction period in connection with the dis-
25 position.

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

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

8 “(II) the disposition of substan-
9 tially all of the assets used in a trade
10 or business of such corporation or
11 subsidiary.

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

16 “(4) FORM AND MANNER OF NOTICE.—The no-
17 tice required by this subsection shall be in writing,
18 except that such notice may be in electronic or other
19 form to the extent that such form is reasonably ac-
20 cessible to the applicable individual.

21 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-
22 poses of this section—

23 “(1) APPLICABLE INDIVIDUAL.—The term ‘ap-
24 plicable individual’ means—

1 “(A) any participant in the applicable pen-
2 sion plan, and

3 “(B) any beneficiary who is an alternate
4 payee (within the meaning of section 414(p)(8))
5 under a qualified domestic relations order
6 (within the meaning of section 414(p)(1)(A)),
7 and

8 “(C) any beneficiary of a deceased partici-
9 pant or alternate payee.

10 “(2) APPLICABLE PENSION PLAN.—

11 “(A) IN GENERAL.—The term ‘applicable
12 pension plan’ means—

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

15 “(ii) an eligible deferred compensation
16 plan (as defined in section 457(b)) of an
17 eligible employer described in section
18 457(e)(1)(A),

19 which maintains accounts for participants
20 under the plan or under which the accrued ben-
21 efit of any participant depends in whole or in
22 part on hypothetical investments directed by the
23 participant.

1 “(B) EXCEPTION.—Such term shall not in-
2 clude a one-participant retirement plan (as de-
3 fined in section 4980G(f)(3)).

4 “(3) TRANSACTION RESTRICTION PERIOD.—

5 “(A) IN GENERAL.—The term ‘transaction
6 restriction period’ means, with respect to an ap-
7 plicable pension plan, a period beginning on a
8 day in which there is a substantial reduction in
9 rights described in subparagraph (B) which are
10 not restored as of the beginning of the 3rd day
11 following the day of such reduction.

12 “(B) RIGHTS DESCRIBED.—For purposes
13 of this paragraph, rights described in this sec-
14 tion with respect to an applicable pension plan
15 are rights under such plan of 1 or more appli-
16 cable individuals to direct investments in such
17 plan, to obtain loans from such plan, or to ob-
18 tain distributions from such plan.

19 “(C) SPECIAL RULE FOR EMPLOYER SECUR-
20 ITIES.—For purposes of this paragraph—

21 “(i) IN GENERAL.—In the case of
22 rights relating to directing investments out
23 of employer securities, such rights shall be
24 treated as substantially reduced if such

1 rights are significantly restricted for at
2 least 3 consecutive business days.

3 “(ii) BUSINESS DAY.—For purposes
4 of clause (i), under regulations prescribed
5 by the Secretary, the term ‘business day’
6 means—

7 “(I) in the case of a security
8 which is traded on an established se-
9 curity market, any day on which such
10 security may be traded on the prin-
11 cipal securities market of such secu-
12 rity, and

13 “(II) in the case of a security
14 which is not traded on an established
15 security market, any calendar day.

16 “(iii) EMPLOYER SECURITIES.—For
17 purposes of this subparagraph, the term
18 ‘employer securities’ shall have the mean-
19 ing given such term by section 407(d)(1)
20 of the Employee Retirement Income Secu-
21 rity Act of 1974.

22 “(D) EXCEPTIONS.—Rights which are sub-
23 stantially reduced by reason of the application
24 of securities laws or other circumstances speci-
25 fied by the Secretary in regulations shall not be

1 taken into account for purposes of this para-
2 graph.”.

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

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

6 (3) GUIDANCE.—The Secretary of the Treas-
7 ury, in consultation with the Secretary of Labor,
8 shall issue guidance in carrying out section 4980H
9 of the Internal Revenue Code of 1986 (as added by
10 this section). Such guidance—

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

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

19 **SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT**
20 **FOR PENSION PLAN FIDUCIARIES.**

21 Section 404 of the Employee Retirement Income Se-
22 curity Act of 1974 (29 U.S.C. 1104) is amended by adding
23 at the end the following new subsection:

1 “(e) The Secretary shall establish a program under
2 which information and educational resources shall be
3 made available on an ongoing basis to persons serving as
4 fiduciaries under employee pension benefit plans so as to
5 assist such persons in diligently and effectively carrying
6 out their fiduciary duties in accordance with this part.”.

7 **SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED**
8 **CONTRIBUTION PLANS THAT HOLD EM-**
9 **PLOYER SECURITIES.**

10 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT
11 INCOME SECURITY ACT OF 1974.—Section 204 of the
12 Employee Retirement Income Security Act of 1974 (29
13 U.S.C. 1054) is amended—

14 (1) by redesignating subsection (j) as sub-
15 section (k); and

16 (2) by inserting after subsection (i) the fol-
17 lowing new subsection:

18 “(j) DIVERSIFICATION REQUIREMENTS FOR INDI-
19 VIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECUR-
20 ITIES.—

21 “(1) IN GENERAL.—An applicable individual ac-
22 count plan shall meet the requirements of para-
23 graphs (2) and (3).

24 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
25 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-

1 TIES.—In the case of the portion of the account at-
2 tributable to employee contributions and elective de-
3 ferrals which is invested in employer securities, a
4 plan meets the requirements of this paragraph if
5 each applicable individual may elect to direct the
6 plan to divest any such securities in the individual’s
7 account and to reinvest an equivalent amount in
8 other investment options which meet the require-
9 ments of paragraph (4).

10 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN
11 EMPLOYER SECURITIES.—

12 “(A) IN GENERAL.—In the case of the por-
13 tion of the account attributable to employer
14 contributions (other than elective deferrals to
15 which paragraph (2) applies) which is invested
16 in employer securities, a plan meets the require-
17 ments of this paragraph if, under the plan—

18 “(i) each applicable individual with a
19 benefit based on 3 years of service may
20 elect to direct the plan to divest any such
21 securities in the individual’s account and
22 to reinvest an equivalent amount in other
23 investment options which meet the require-
24 ments of paragraph (4), or

1 “(ii) with respect to any employer se-
2 curity allocated to an applicable individ-
3 ual’s account during any plan year, such
4 applicable individual may elect to direct
5 the plan to divest such employer security
6 after a date which is not later than 3 years
7 after the end of such plan year and to re-
8 invest an equivalent amount in other in-
9 vestment options which meet the require-
10 ments of paragraph (4).

11 “(B) APPLICABLE INDIVIDUAL WITH BEN-
12 EFIT BASED ON 3 YEARS OF SERVICE.—For
13 purposes of subparagraph (A), an applicable in-
14 dividual has a benefit based on 3 years of serv-
15 ice if such individual would be an applicable in-
16 dividual if only participants in the plan who
17 have completed at least 3 years of service (as
18 determined under section 203(b)) were taken
19 into account under paragraph (6)(B)(i).

20 “(4) INVESTMENT OPTIONS.—The requirements
21 of this paragraph are met if—

22 “(A) the plan offers not less than 3 invest-
23 ment options, other than employer securities, to
24 which an applicable individual may direct the
25 proceeds from the divestment of employer secu-

1 rities pursuant to this subsection, each of which
2 is diversified and has materially different risk
3 and return characteristics, and

4 “(B) the plan permits the applicable indi-
5 vidual to choose from any of the investment op-
6 tions made available under the plan to which
7 such proceeds may be so directed, subject to
8 such restrictions as may be provided by the
9 plan limiting such choice to periodic, reasonable
10 opportunities occurring no less frequently than
11 on a quarterly basis.

12 “(5) DEFINITIONS AND RULES.—For purposes
13 of this subsection—

14 “(A) APPLICABLE INDIVIDUAL ACCOUNT
15 PLAN.—The term ‘applicable individual account
16 plan’ means any individual account plan, except
17 that such term does not include an employee
18 stock ownership plan (within the meaning of
19 section 4975(e)(7) of the Internal Revenue
20 Code of 1986) unless there are any contribu-
21 tions to such plan (or earnings thereon) held
22 within such plan that are subject to subsection
23 (k)(3) or (m)(2) of section 401 of the Internal
24 Revenue Code of 1986.

1 “(B) APPLICABLE INDIVIDUAL.—The term
2 ‘applicable individual’ means—

3 “(i) any participant in the plan, and

4 “(ii) any beneficiary of a participant
5 referred to in clause (i) who has an ac-
6 count under the plan with respect to which
7 the beneficiary is entitled to exercise the
8 rights of the participant.

9 “(C) ELECTIVE DEFERRAL.—The term
10 ‘elective deferral’ means an employer contribu-
11 tion described in section 402(g)(3)(A) of the In-
12 ternal Revenue Code of 1986 (as in effect on
13 the date of the enactment of this subsection).

14 “(D) EMPLOYER SECURITY.—The term
15 ‘employer security’ shall have the meaning
16 given such term by section 407(d)(1) of this
17 Act (as in effect on the date of the enactment
18 of this subsection).

19 “(E) EMPLOYEE STOCK OWNERSHIP
20 PLAN.—The term ‘employee stock ownership
21 plan’ shall have the same meaning given to
22 such term by section 4975(e)(7) of the Internal
23 Revenue Code of 1986 (as in effect on the date
24 of the enactment of this subsection).

1 “(F) ELECTIONS.—Elections under this
2 subsection may be made not less frequently
3 than quarterly.

4 “(6) EXCEPTION WHERE THERE IS NO READILY
5 TRADABLE STOCK.—This subsection shall not apply
6 with respect to a plan if there is no class of stock
7 issued by any employer maintaining the plan (or by
8 a corporation which is an affiliate of any such em-
9 ployer, as defined in section 407(d)(7) as in effect
10 on the date of the enactment of this subsection) that
11 is readily tradable on an established securities mar-
12 ket.

13 “(7) TRANSITION RULE.—

14 “(A) IN GENERAL.—In the case of any in-
15 dividual account plan which, on the first day of
16 the first plan year to which this subsection ap-
17 plies, holds employer securities of any class that
18 were acquired before such date and on which
19 there is a restriction on diversification otherwise
20 precluded by this subsection, this subsection
21 shall apply to such securities of such class held
22 in any plan year only with respect to the num-
23 ber of such securities equal to the applicable
24 percentage of the total number of such securi-
25 ties of such class held on such date.

1 “(B) APPLICABLE PERCENTAGE.—For
 2 purposes of subparagraph (A), the applicable
 3 percentage shall be as follows:

“Plan years for which provisions are effective:	Applicable percentage:
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

4 “(C) ELECTIVE DEFERRALS TREATED AS
 5 SEPARATE PLAN NOT INDIVIDUAL ACCOUNT
 6 PLAN.—For purposes of subparagraph (A), the
 7 applicable percentage shall be 100 percent with
 8 respect to—

9 “(i) employee contributions to a plan
 10 under which any portion attributable to
 11 elective deferrals is treated as a separate
 12 plan under section 407(b)(2) as of the date
 13 of the enactment of this paragraph, and

14 “(ii) such elective deferrals.

15 “(D) COORDINATION WITH PRIOR ELEC-
 16 TIONS.—In any case in which a divestiture of
 17 investment in employer securities of any class
 18 held by an employee stock ownership plan prior
 19 to the effective date of this subsection was un-
 20 dertaken pursuant to other applicable Federal
 21 law prior to such date, the applicable percent-
 22 age (as determined without regard to this sub-

1 paragraph) in connection with such securities
2 shall be reduced to the extent necessary to ac-
3 count for the amount to which such election ap-
4 plied.

5 “(8) REGULATIONS.—The Secretary of the
6 Treasury shall prescribe regulations under this sub-
7 section in consultation with the Secretary of
8 Labor.”.

9 (b) AMENDMENTS TO THE INTERNAL REVENUE
10 CODE OF 1986.—

11 (1) IN GENERAL.—Section 401(a) of the Inter-
12 nal Revenue Code of 1986 (relating to requirements
13 for qualification) is amended by inserting after para-
14 graph (34) the following new paragraph:

15 “(35) DIVERSIFICATION REQUIREMENTS FOR
16 DEFINED CONTRIBUTION PLANS THAT HOLD EM-
17 PLOYER SECURITIES.—

18 “(A) IN GENERAL.—An applicable defined
19 contribution plan shall meet the requirements
20 of subparagraphs (B) and (C).

21 “(B) EMPLOYEE CONTRIBUTIONS AND
22 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
23 SECURITIES.—In the case of the portion of the
24 account attributable to employee contributions
25 and elective deferrals which is invested in em-

1 employer securities, a plan meets the requirements
2 of this subparagraph if each applicable indi-
3 vidual in such plan may elect to direct the plan
4 to divest any such securities in the individual's
5 account and to reinvest an equivalent amount
6 in other investment options which meet the re-
7 quirements of subparagraph (D).

8 “(C) EMPLOYER CONTRIBUTIONS IN-
9 VESTED IN EMPLOYER SECURITIES.—

10 “(i) IN GENERAL.—In the case of the
11 portion of the account attributable to em-
12 ployer contributions (other than elective
13 deferrals to which subparagraph (B) ap-
14 plies) which is invested in employer securi-
15 ties, a plan meets the requirements of this
16 subparagraph if, under the plan—

17 “(I) each applicable individual
18 with a benefit based on 3 years of
19 service may elect to direct the plan to
20 divest any such securities in the indi-
21 vidual's account and to reinvest an
22 equivalent amount in other investment
23 options which meet the requirements
24 of subparagraph (D), or

1 “(II) with respect to any em-
2 ployer security allocated to an applica-
3 ble individual’s account during any
4 plan year, such applicable individual
5 may elect to direct the plan to divest
6 such employer security after a date
7 which is not later than 3 years after
8 the end of such plan year and to rein-
9 vest an equivalent amount in other in-
10 vestment options which meet the re-
11 quirements of subparagraph (D).

12 “(ii) APPLICABLE INDIVIDUAL WITH
13 BENEFIT BASED ON 3 YEARS OF SERV-
14 ICE.—For purposes of clause (i), an appli-
15 cable individual has a benefit based on 3
16 years of service if such individual would be
17 an applicable individual if only participants
18 in the plan who have completed at least 3
19 years of service (as determined under sec-
20 tion 411(a)) were taken into account under
21 subparagraph (F)(ii)(I).

22 “(D) INVESTMENT OPTIONS.—The require-
23 ments of this subparagraph are met if—

24 “(i) the plan offers not less than 3 in-
25 vestment options, other than employer se-

1 curities, to which an applicable individual
2 may direct the proceeds from the divest-
3 ment of employer securities pursuant to
4 this paragraph, each of which is diversified
5 and has materially different risk and re-
6 turn characteristics, and

7 “(ii) the plan permits the applicable
8 individual to choose from any of the invest-
9 ment options made available under the
10 plan to which such proceeds may be so di-
11 rected, subject to such restrictions as may
12 be provided by the plan limiting such
13 choice to periodic, reasonable opportunities
14 occurring no less frequently than on a
15 quarterly basis.

16 “(E) DEFINITIONS AND RULES.—For pur-
17 poses of this paragraph—

18 “(i) APPLICABLE DEFINED CONTRIBU-
19 TION PLAN.—The term ‘applicable defined
20 contribution plan’ means any defined con-
21 tribution plan, except that such term does
22 not include an employee stock ownership
23 plan (within the meaning of section
24 4975(e)(7)) unless there are any contribu-
25 tions to such plan (or earnings thereon)

1 held within such plan that are subject to
2 subsection (k)(3) or (m)(2).

3 “(ii) APPLICABLE INDIVIDUAL.—The
4 term ‘applicable individual’ means—

5 “(I) any participant in the plan,

6 and

7 “(II) any beneficiary of a partici-

8 pant referred to in clause (i) who has

9 an account under the plan with re-

10 spect to which the beneficiary is enti-

11 tled to exercise the rights of the par-

12 ticipant.

13 “(iii) ELECTIVE DEFERRAL.—The
14 term ‘elective deferral’ means an employer
15 contribution described in section
16 402(g)(3)(A) (as in effect on the date of
17 the enactment of this paragraph).

18 “(iv) EMPLOYER SECURITY.—The
19 term ‘employer security’ shall have the
20 meaning given such term by section
21 407(d)(1) of the Employee Retirement In-
22 come Security Act of 1974 (as in effect on
23 the date of the enactment of this para-
24 graph).

1 “(v) EMPLOYEE STOCK OWNERSHIP
2 PLAN.—The term ‘employee stock owner-
3 ship plan’ shall have the same meaning
4 given to such term by section 4975(e)(7)
5 of the Internal Revenue Code of 1986 (as
6 in effect on the date of the enactment of
7 this paragraph).

8 “(vi) ELECTIONS.—Elections under
9 this paragraph may be made not less fre-
10 quently than quarterly.

11 “(F) EXCEPTION WHERE THERE IS NO
12 READILY TRADABLE STOCK.—This paragraph
13 shall not apply with respect to a plan if there
14 is no class of stock issued by any employer
15 maintaining the plan that is readily tradable on
16 an established securities market.

17 “(G) TRANSITION RULE.—

18 “(i) IN GENERAL.—In the case of any
19 defined contribution plan which, on the ef-
20 fective date of this subsection, holds em-
21 ployer securities of any class that were ac-
22 quired before such date and on which there
23 is a restriction on diversification otherwise
24 precluded by this paragraph, this para-
25 graph shall apply to such securities of such

1 class held in any plan year only with re-
 2 spect to the number of such securities
 3 equal to the applicable percentage of the
 4 total number of such securities of such
 5 class held on such date.

6 “(ii) APPLICABLE PERCENTAGE.—For
 7 purposes of clause (i), the applicable per-
 8 centage shall be as follows:

“Plan years for which provi- sions are effective:	Applicable percentage:
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter	100 percent.

9 “(iii) ELECTIVE DEFERRALS TREATED
 10 AS SEPARATE PLAN NOT INDIVIDUAL AC-
 11 COUNT PLAN.—For purposes of clause (i),
 12 the applicable percentage shall be 100 per-
 13 cent with respect to—

14 “(I) employee contributions to a
 15 plan under which any portion attrib-
 16 utable to elective deferrals is treated
 17 as a separate plan under section
 18 407(b)(2) of the Employee Retirement
 19 Income Security Act of 1974 as of the
 20 date of the enactment of this para-
 21 graph, and

22 “(II) such elective deferrals.

1 “(iv) CONTRIBUTIONS HELD WITHIN
2 AN ESOP.—In the case of contributions
3 (other than elective deferrals and employee
4 contributions) held within an employee
5 stock ownership plan, in the case of the 1st
6 and 2nd plan years referred to in the table
7 in clause (ii), the applicable percentage
8 shall be the greater of the amount deter-
9 mined under clause (ii) or the percentage
10 determined under paragraph (28) (deter-
11 mined as if paragraph (28) applied to a
12 plan described in this paragraph).

13 “(v) COORDINATION WITH PRIOR
14 ELECTIONS UNDER PARAGRAPH (28).—In
15 any case in which a divestiture of invest-
16 ment in employer securities of any class
17 held by an employee stock ownership plan
18 prior to the effective date of this para-
19 graph was undertaken pursuant to an elec-
20 tion under paragraph (28) prior to such
21 date, the applicable percentage (as deter-
22 mined without regard to this clause) in
23 connection with such securities shall be re-
24 duced to the extent necessary to account

1 for the amount to which such election ap-
2 plied.

3 “(H) REGULATIONS.—The Secretary shall
4 prescribe regulations under this paragraph in
5 consultation with the Secretary of Labor.”.

6 (2) CONFORMING AMENDMENTS.—

7 (A) Section 401(a)(28) of such Code is
8 amended by adding at the end the following
9 new subparagraph:

10 “(D) APPLICATION.—This paragraph shall
11 not apply to a plan to which paragraph (35) ap-
12 plies.”.

13 (B) Section 409(h)(7) of such Code is
14 amended by inserting before the period at the
15 end “or subparagraph (B) or (C) of section
16 401(a)(35)”.

17 (C) Section 4980(c)(3)(A) of such Code is
18 amended by striking “if—” and all that follows
19 and inserting “if the requirements of subpara-
20 graphs (B), (C), and (D) are met.”.

21 (c) EFFECTIVE DATE.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2) and section 109, the amendments made by
24 this section shall apply to plan years beginning after
25 December 31, 2002, and with respect to employer

1 securities allocated to accounts before, on, or after
2 the date of the enactment of this Act.

3 (2) EXCEPTION.—The amendments made by
4 this section shall not apply to employer securities
5 held by an employee stock ownership plan which are
6 acquired before January 1, 1987.

7 **SEC. 105. PROHIBITED TRANSACTION EXEMPTION FOR THE**
8 **PROVISION OF INVESTMENT ADVICE.**

9 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
10 INCOME SECURITY ACT OF 1974.—

11 (1) EXEMPTION FROM PROHIBITED TRANS-
12 ACTIONS.—Section 408(b) of the Employee Retirement
13 Income Security Act of 1974 (29 U.S.C.
14 1108(b)) is amended by adding at the end the fol-
15 lowing new paragraph:

16 “(14)(A) Any transaction described in subpara-
17 graph (B) in connection with the provision of invest-
18 ment advice described in section 3(21)(A)(ii), in any
19 case in which—

20 “(i) the investment of assets of the plan is
21 subject to the direction of plan participants or
22 beneficiaries,

23 “(ii) the advice is provided to the plan or
24 a participant or beneficiary of the plan by a fi-
25 duciary adviser in connection with any sale, ac-

1 quisition, or holding of a security or other prop-
2 erty for purposes of investment of plan assets,
3 and

4 “ (iii) the requirements of subsection (g)
5 are met in connection with the provision of the
6 advice.

7 “(B) The transactions described in this sub-
8 paragraph are the following:

9 “ (i) the provision of the advice to the plan,
10 participant, or beneficiary;

11 “ (ii) the sale, acquisition, or holding of a
12 security or other property (including any lend-
13 ing of money or other extension of credit associ-
14 ated with the sale, acquisition, or holding of a
15 security or other property) pursuant to the ad-
16 vice; and

17 “ (iii) the direct or indirect receipt of fees
18 or other compensation by the fiduciary adviser
19 or an affiliate thereof (or any employee, agent,
20 or registered representative of the fiduciary ad-
21 viser or affiliate) in connection with the provi-
22 sion of the advice or in connection with a sale,
23 acquisition, or holding of a security or other
24 property pursuant to the advice.”.

1 (2) REQUIREMENTS.—Section 408 of such Act
2 is amended further by adding at the end the fol-
3 lowing new subsection:

4 “(g) REQUIREMENTS RELATING TO PROVISION OF
5 INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

6 “(1) IN GENERAL.—The requirements of this
7 subsection are met in connection with the provision
8 of investment advice referred to in section
9 3(21)(A)(ii), provided to an employee benefit plan or
10 a participant or beneficiary of an employee benefit
11 plan by a fiduciary adviser with respect to the plan
12 in connection with any sale, acquisition, or holding
13 of a security or other property for purposes of in-
14 vestment of amounts held by the plan, if—

15 “(A) in the case of the initial provision of
16 the advice with regard to the security or other
17 property by the fiduciary adviser to the plan,
18 participant, or beneficiary, the fiduciary adviser
19 provides to the recipient of the advice, at a time
20 reasonably contemporaneous with the initial
21 provision of the advice, a written notification
22 (which may consist of notification by means of
23 electronic communication)—

24 “(i) of all fees or other compensation
25 relating to the advice that the fiduciary ad-

1 viser or any affiliate thereof is to receive
2 (including compensation provided by any
3 third party) in connection with the provi-
4 sion of the advice or in connection with the
5 sale, acquisition, or holding of the security
6 or other property,

7 “(ii) of any material affiliation or con-
8 tractual relationship of the fiduciary ad-
9 viser or affiliates thereof in the security or
10 other property,

11 “(iii) of any limitation placed on the
12 scope of the investment advice to be pro-
13 vided by the fiduciary adviser with respect
14 to any such sale, acquisition, or holding of
15 a security or other property,

16 “(iv) of the types of services provided
17 by the fiduciary adviser in connection with
18 the provision of investment advice by the
19 fiduciary adviser,

20 “(v) that the adviser is acting as a fi-
21 duciary of the plan in connection with the
22 provision of the advice, and

23 “(vi) that a recipient of the advice
24 may separately arrange for the provision of
25 advice by another adviser, that could have

1 no material affiliation with and receive no
2 fees or other compensation in connection
3 with the security or other property,

4 “(B) the fiduciary adviser provides appro-
5 priate disclosure, in connection with the sale,
6 acquisition, or holding of the security or other
7 property, in accordance with all applicable secu-
8 rities laws,

9 “(C) the sale, acquisition, or holding oc-
10 curs solely at the direction of the recipient of
11 the advice,

12 “(D) the compensation received by the fi-
13 duciary adviser and affiliates thereof in connec-
14 tion with the sale, acquisition, or holding of the
15 security or other property is reasonable, and

16 “(E) the terms of the sale, acquisition, or
17 holding of the security or other property are at
18 least as favorable to the plan as an arm’s
19 length transaction would be.

20 “(2) STANDARDS FOR PRESENTATION OF IN-
21 FORMATION.—

22 “(A) IN GENERAL.—The notification re-
23 quired to be provided to participants and bene-
24 ficiaries under paragraph (1)(A) shall be writ-
25 ten in a clear and conspicuous manner and in

1 a manner calculated to be understood by the av-
2 erage plan participant and shall be sufficiently
3 accurate and comprehensive to reasonably ap-
4 prise such participants and beneficiaries of the
5 information required to be provided in the noti-
6 fication.

7 “(B) MODEL FORM FOR DISCLOSURE OF
8 FEES AND OTHER COMPENSATION.—The Sec-
9 retary shall issue a model form for the disclo-
10 sure of fees and other compensation required in
11 paragraph (1)(A)(i) which meets the require-
12 ments of subparagraph (A).

13 “(3) EXEMPTION CONDITIONED ON MAKING RE-
14 QUIRED INFORMATION AVAILABLE ANNUALLY, ON
15 REQUEST, AND IN THE EVENT OF MATERIAL
16 CHANGE.—The requirements of paragraph (1)(A)
17 shall be deemed not to have been met in connection
18 with the initial or any subsequent provision of advice
19 described in paragraph (1) to the plan, participant,
20 or beneficiary if, at any time during the provision of
21 advisory services to the plan, participant, or bene-
22 ficiary, the fiduciary adviser fails to maintain the in-
23 formation described in clauses (i) through (iv) of
24 subparagraph (A) in currently accurate form and in
25 the manner described in paragraph (2) or fails—

1 “(A) to provide, without charge, such cur-
2 rently accurate information to the recipient of
3 the advice no less than annually,

4 “(B) to make such currently accurate in-
5 formation available, upon request and without
6 charge, to the recipient of the advice, or

7 “(C) in the event of a material change to
8 the information described in clauses (i) through
9 (iv) of paragraph (1)(A), to provide, without
10 charge, such currently accurate information to
11 the recipient of the advice at a time reasonably
12 contemporaneous to the material change in in-
13 formation.

14 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE
15 OF COMPLIANCE.—A fiduciary adviser referred to in
16 paragraph (1) who has provided advice referred to in
17 such paragraph shall, for a period of not less than
18 6 years after the provision of the advice, maintain
19 any records necessary for determining whether the
20 requirements of the preceding provisions of this sub-
21 section and of subsection (b)(14) have been met. A
22 transaction prohibited under section 406 shall not be
23 considered to have occurred solely because the
24 records are lost or destroyed prior to the end of the

1 6-year period due to circumstances beyond the con-
2 trol of the fiduciary adviser.

3 “(5) EXEMPTION FOR PLAN SPONSOR AND CER-
4 TAIN OTHER FIDUCIARIES.—

5 “(A) IN GENERAL.—Subject to subpara-
6 graph (B), a plan sponsor or other person who
7 is a fiduciary (other than a fiduciary adviser)
8 shall not be treated as failing to meet the re-
9 quirements of this part solely by reason of the
10 provision of investment advice referred to in
11 section 3(21)(A)(ii) (or solely by reason of con-
12 tracting for or otherwise arranging for the pro-
13 vision of the advice), if—

14 “(i) the advice is provided by a fidu-
15 ciary adviser pursuant to an arrangement
16 between the plan sponsor or other fidu-
17 ciary and the fiduciary adviser for the pro-
18 vision by the fiduciary adviser of invest-
19 ment advice referred to in such section,

20 “(ii) the terms of the arrangement re-
21 quire compliance by the fiduciary adviser
22 with the requirements of this subsection,
23 and

24 “(iii) the terms of the arrangement
25 include a written acknowledgment by the

1 fiduciary adviser that the fiduciary adviser
2 is a fiduciary of the plan with respect to
3 the provision of the advice.

4 “(B) CONTINUED DUTY OF PRUDENT SE-
5 LECTION OF ADVISER AND PERIODIC REVIEW.—
6 Nothing in subparagraph (A) shall be construed
7 to exempt a plan sponsor or other person who
8 is a fiduciary from any requirement of this part
9 for the prudent selection and periodic review of
10 a fiduciary adviser with whom the plan sponsor
11 or other person enters into an arrangement for
12 the provision of advice referred to in section
13 3(21)(A)(ii). The plan sponsor or other person
14 who is a fiduciary has no duty under this part
15 to monitor the specific investment advice given
16 by the fiduciary adviser to any particular recipi-
17 ent of the advice.

18 “(C) AVAILABILITY OF PLAN ASSETS FOR
19 PAYMENT FOR ADVICE.—Nothing in this part
20 shall be construed to preclude the use of plan
21 assets to pay for reasonable expenses in pro-
22 viding investment advice referred to in section
23 3(21)(A)(ii).

24 “(6) DEFINITIONS.—For purposes of this sub-
25 section and subsection (b)(14)—

1 “(A) FIDUCIARY ADVISER.—The term ‘fi-
2 duciary adviser’ means, with respect to a plan,
3 a person who is a fiduciary of the plan by rea-
4 son of the provision of investment advice by the
5 person to the plan or to a participant or bene-
6 ficiary and who is—

7 “(i) registered as an investment ad-
8 viser under the Investment Advisers Act of
9 1940 (15 U.S.C. 80b–1 et seq.) or under
10 the laws of the State in which the fiduciary
11 maintains its principal office and place of
12 business,

13 “(ii) a bank or similar financial insti-
14 tution referred to in section 408(b)(4), but
15 only if the advice is provided through a
16 trust department of the bank or similar fi-
17 nancial institution which is subject to peri-
18 odic examination and review by Federal or
19 State banking authorities,

20 “(iii) an insurance company qualified
21 to do business under the laws of a State,

22 “(iv) a person registered as a broker
23 or dealer under the Securities Exchange
24 Act of 1934 (15 U.S.C. 78a et seq.),

1 “(v) an affiliate of a person described
2 in any of clauses (i) through (iv), or

3 “(vi) an employee, agent, or registered
4 representative of a person described in any
5 of clauses (i) through (v) who satisfies the
6 requirements of applicable insurance,
7 banking, and securities laws relating to the
8 provision of the advice.

9 “(B) AFFILIATE.—The term ‘affiliate’ of
10 another entity means an affiliated person of the
11 entity (as defined in section 2(a)(3) of the In-
12 vestment Company Act of 1940 (15 U.S.C.
13 80a–2(a)(3))).

14 “(C) REGISTERED REPRESENTATIVE.—
15 The term ‘registered representative’ of another
16 entity means a person described in section
17 3(a)(18) of the Securities Exchange Act of
18 1934 (15 U.S.C. 78c(a)(18)) (substituting the
19 entity for the broker or dealer referred to in
20 such section) or a person described in section
21 202(a)(17) of the Investment Advisers Act of
22 1940 (15 U.S.C. 80b–2(a)(17)) (substituting
23 the entity for the investment adviser referred to
24 in such section).”.

1 (b) AMENDMENTS TO THE INTERNAL REVENUE
2 CODE OF 1986.—

3 (1) EXEMPTION FROM PROHIBITED TRANS-
4 ACTIONS.—Subsection (d) of section 4975 of the In-
5 ternal Revenue Code of 1986 (relating to exemptions
6 from tax on prohibited transactions) is amended—

7 (A) in paragraph (14), by striking “or” at
8 the end;

9 (B) in paragraph (15), by striking the pe-
10 riod at the end and inserting “; or”; and

11 (C) by adding at the end the following new
12 paragraph:

13 “(16) any transaction described in subsection
14 (f)(7)(A) in connection with the provision of invest-
15 ment advice described in subsection (e)(3)(B), in
16 any case in which—

17 “(A) the investment of assets of the plan
18 is subject to the direction of plan participants
19 or beneficiaries,

20 “(B) the advice is provided to the plan or
21 a participant or beneficiary of the plan by a fi-
22 duciary adviser in connection with any sale, ac-
23 quisition, or holding of a security or other prop-
24 erty for purposes of investment of plan assets,
25 and

1 “(C) the requirements of subsection
2 (f)(7)(B) are met in connection with the provi-
3 sion of the advice.”.

4 (2) ALLOWED TRANSACTIONS AND REQUIRE-
5 MENTS.—Subsection (f) of such section 4975 (relat-
6 ing to other definitions and special rules) is amended
7 by adding at the end the following new paragraph:

8 “(7) PROVISIONS RELATING TO INVESTMENT
9 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

10 “(A) TRANSACTIONS ALLOWABLE IN CON-
11 NECTION WITH INVESTMENT ADVICE PROVIDED
12 BY FIDUCIARY ADVISERS.—The transactions re-
13 ferred to in subsection (d)(16), in connection
14 with the provision of investment advice by a fi-
15 duciary adviser, are the following:

16 “(i) the provision of the advice to the
17 plan, participant, or beneficiary;

18 “(ii) the sale, acquisition, or holding
19 of a security or other property (including
20 any lending of money or other extension of
21 credit associated with the sale, acquisition,
22 or holding of a security or other property)
23 pursuant to the advice; and

24 “(iii) the direct or indirect receipt of
25 fees or other compensation by the fiduciary

1 adviser or an affiliate thereof (or any em-
2 ployee, agent, or registered representative
3 of the fiduciary adviser or affiliate) in con-
4 nection with the provision of the advice or
5 in connection with a sale, acquisition, or
6 holding of a security or other property pur-
7 suant to the advice.

8 “(B) REQUIREMENTS RELATING TO PROVI-
9 SION OF INVESTMENT ADVICE BY FIDUCIARY
10 ADVISERS.—The requirements of this subpara-
11 graph (referred to in subsection (d)(16)(C)) are
12 met in connection with the provision of invest-
13 ment advice referred to in subsection (e)(3)(B),
14 provided to a plan or a participant or bene-
15 ficiary of a plan by a fiduciary adviser with re-
16 spect to the plan in connection with any sale,
17 acquisition, or holding of a security or other
18 property for purposes of investment of amounts
19 held by the plan, if—

20 “(i) in the case of the initial provision
21 of the advice with regard to the security or
22 other property by the fiduciary adviser to
23 the plan, participant, or beneficiary, the fi-
24 duciary adviser provides to the recipient of
25 the advice, at a time reasonably contem-

1 poraneous with the initial provision of the
2 advice, a written notification (which may
3 consist of notification by means of elec-
4 tronic communication)—

5 “(I) of all fees or other com-
6 pensation relating to the advice that
7 the fiduciary adviser or any affiliate
8 thereof is to receive (including com-
9 pensation provided by any third
10 party) in connection with the provi-
11 sion of the advice or in connection
12 with the sale, acquisition, or holding
13 of the security or other property,

14 “(II) of any material affiliation
15 or contractual relationship of the fidu-
16 ciary adviser or affiliates thereof in
17 the security or other property,

18 “(III) of any limitation placed on
19 the scope of the investment advice to
20 be provided by the fiduciary adviser
21 with respect to any such sale, acquisi-
22 tion, or holding of a security or other
23 property,

24 “(IV) of the types of services
25 provided by the fiduciary adviser in

1 connection with the provision of in-
2 vestment advice by the fiduciary ad-
3 viser,

4 “(V) that the adviser is acting as
5 a fiduciary of the plan in connection
6 with the provision of the advice, and

7 “(VI) that a recipient of the ad-
8 vice may separately arrange for the
9 provision of advice by another adviser,
10 that could have no material affiliation
11 with and receive no fees or other com-
12 pensation in connection with the secu-
13 rity or other property,

14 “(ii) the fiduciary adviser provides ap-
15 propriate disclosure, in connection with the
16 sale, acquisition, or holding of the security
17 or other property, in accordance with all
18 applicable securities laws,

19 “(iii) the sale, acquisition, or holding
20 occurs solely at the direction of the recipi-
21 ent of the advice,

22 “(iv) the compensation received by the
23 fiduciary adviser and affiliates thereof in
24 connection with the sale, acquisition, or

1 holding of the security or other property is
2 reasonable, and

3 “(v) the terms of the sale, acquisition,
4 or holding of the security or other property
5 are at least as favorable to the plan as an
6 arm’s length transaction would be.

7 “(C) STANDARDS FOR PRESENTATION OF
8 INFORMATION.—The notification required to be
9 provided to participants and beneficiaries under
10 subparagraph (B)(i) shall be written in a clear
11 and conspicuous manner and in a manner cal-
12 culated to be understood by the average plan
13 participant and shall be sufficiently accurate
14 and comprehensive to reasonably apprise such
15 participants and beneficiaries of the information
16 required to be provided in the notification.

17 “(D) EXEMPTION CONDITIONED ON MAK-
18 ING REQUIRED INFORMATION AVAILABLE ANNU-
19 ALLY, ON REQUEST, AND IN THE EVENT OF MA-
20 TERIAL CHANGE.—The requirements of sub-
21 paragraph (B)(i) shall be deemed not to have
22 been met in connection with the initial or any
23 subsequent provision of advice described in sub-
24 paragraph (B) to the plan, participant, or bene-
25 ficiary if, at any time during the provision of

1 advisory services to the plan, participant, or
2 beneficiary, the fiduciary adviser fails to main-
3 tain the information described in subclauses (I)
4 through (IV) of subparagraph (B)(i) in cur-
5 rently accurate form and in the manner re-
6 quired by subparagraph (C), or fails—

7 “(i) to provide, without charge, such
8 currently accurate information to the re-
9 cipient of the advice no less than annually,

10 “(ii) to make such currently accurate
11 information available, upon request and
12 without charge, to the recipient of the ad-
13 vice, or

14 “(iii) in the event of a material
15 change to the information described in
16 subclauses (I) through (IV) of subpara-
17 graph (B)(i), to provide, without charge,
18 such currently accurate information to the
19 recipient of the advice at a time reasonably
20 contemporaneous to the material change in
21 information.

22 “(E) MAINTENANCE FOR 6 YEARS OF EVI-
23 DENCE OF COMPLIANCE.—A fiduciary adviser
24 referred to in subparagraph (B) who has pro-
25 vided advice referred to in such subparagraph

1 shall, for a period of not less than 6 years after
2 the provision of the advice, maintain any
3 records necessary for determining whether the
4 requirements of the preceding provisions of this
5 paragraph and of subsection (d)(16) have been
6 met. A transaction prohibited under subsection
7 (c)(1) shall not be considered to have occurred
8 solely because the records are lost or destroyed
9 prior to the end of the 6-year period due to cir-
10 cumstances beyond the control of the fiduciary
11 adviser.

12 “(F) EXEMPTION FOR PLAN SPONSOR AND
13 CERTAIN OTHER FIDUCIARIES.—A plan sponsor
14 or other person who is a fiduciary (other than
15 a fiduciary adviser) shall not be treated as fail-
16 ing to meet the requirements of this section
17 solely by reason of the provision of investment
18 advice referred to in subsection (e)(3)(B) (or
19 solely by reason of contracting for or otherwise
20 arranging for the provision of the advice), if—

21 “(i) the advice is provided by a fidu-
22 ciary adviser pursuant to an arrangement
23 between the plan sponsor or other fidu-
24 ciary and the fiduciary adviser for the pro-

1 vision by the fiduciary adviser of invest-
2 ment advice referred to in such section,

3 “(ii) the terms of the arrangement re-
4 quire compliance by the fiduciary adviser
5 with the requirements of this paragraph,

6 “(iii) the terms of the arrangement
7 include a written acknowledgment by the
8 fiduciary adviser that the fiduciary adviser
9 is a fiduciary of the plan with respect to
10 the provision of the advice, and

11 “(iv) the requirements of part 4 of
12 subtitle B of title I of the Employee Re-
13 tirement Income Security Act of 1974 are
14 met in connection with the provision of
15 such advice.

16 “(G) DEFINITIONS.—For purposes of this
17 paragraph and subsection (d)(16)—

18 “(i) FIDUCIARY ADVISER.—The term
19 ‘fiduciary adviser’ means, with respect to a
20 plan, a person who is a fiduciary of the
21 plan by reason of the provision of invest-
22 ment advice by the person to the plan or
23 to a participant or beneficiary and who
24 is—

1 “(I) registered as an investment
2 adviser under the Investment Advisers
3 Act of 1940 (15 U.S.C. 80b–1 et seq.)
4 or under the laws of the State in
5 which the fiduciary maintains its prin-
6 cipal office and place of business,

7 “(II) a bank or similar financial
8 institution referred to in subsection
9 (d)(4), but only if the advice is pro-
10 vided through a trust department of
11 the bank or similar financial institu-
12 tion which is subject to periodic exam-
13 ination and review by Federal or
14 State banking authorities,

15 “(III) an insurance company
16 qualified to do business under the
17 laws of a State,

18 “(IV) a person registered as a
19 broker or dealer under the Securities
20 Exchange Act of 1934 (15 U.S.C. 78a
21 et seq.),

22 “(V) an affiliate of a person de-
23 scribed in any of subclauses (I)
24 through (IV), or

1 “(VI) an employee, agent, or reg-
2 istered representative of a person de-
3 scribed in any of subclauses (I)
4 through (V) who satisfies the require-
5 ments of applicable insurance, bank-
6 ing, and securities laws relating to the
7 provision of the advice.

8 “(ii) AFFILIATE.—The term ‘affiliate’
9 of another entity means an affiliated per-
10 son of the entity (as defined in section
11 2(a)(3) of the Investment Company Act of
12 1940 (15 U.S.C. 80a-2(a)(3))).

13 “(iii) REGISTERED REPRESENTA-
14 TIVE.—The term ‘registered representa-
15 tive’ of another entity means a person de-
16 scribed in section 3(a)(18) of the Securi-
17 ties Exchange Act of 1934 (15 U.S.C.
18 78c(a)(18)) (substituting the entity for the
19 broker or dealer referred to in such sec-
20 tion) or a person described in section
21 202(a)(17) of the Investment Advisers Act
22 of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-
23 stituting the entity for the investment ad-
24 viser referred to in such section).”.

1 **SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT**
2 **SAVINGS OF PARTICIPANTS AND BENE-**
3 **FICIARIES BY REQUIRING CONSULTANTS TO**
4 **ADVISE PLAN FIDUCIARIES OF INDIVIDUAL**
5 **ACCOUNT PLANS.**

6 (a) STUDY.—As soon as practicable after the date of
7 the enactment of this Act, the Secretary of Labor shall
8 undertake a study of the costs and benefits to participants
9 and beneficiaries of requiring independent consultants to
10 advise plan fiduciaries in connection with individual ac-
11 count plans. In conducting such study, the Secretary shall
12 consider—

13 (1) the benefits to plan participants and bene-
14 ficiaries of engaging independent advisers to provide
15 investment and other advice regarding the assets of
16 the plan to persons who have fiduciary duties with
17 respect to the management or disposition of such as-
18 sets,

19 (2) the extent to which independent advisers
20 are currently retained by plan fiduciaries,

21 (3) the availability of assistance to fiduciaries
22 from appropriate Federal agencies,

23 (4) the availability of qualified independent con-
24 sultants to serve the needs of individual account
25 plan fiduciaries in the United States,

1 “(4) NO CONSTRUCTIVE RECEIPT.—No amount
2 shall be included in the gross income of any em-
3 ployee solely because the employee may choose be-
4 tween any qualified retirement planning services pro-
5 vided by a qualified investment advisor and com-
6 pensation which would otherwise be includible in the
7 gross income of such employee. The preceding sen-
8 tence shall apply to highly compensated employees
9 only if the choice described in such sentence is avail-
10 able on substantially the same terms to each mem-
11 ber of the group of employees normally provided
12 education and information regarding the employer’s
13 qualified employer plan.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) Section 403(b)(3)(B) of such Code is
16 amended by inserting “132(m)(4),” after
17 “132(f)(4),”.

18 (2) Section 414(s)(2) of such Code is amended
19 by inserting “132(m)(4),” after “132(f)(4),”.

20 (3) Section 415(c)(3)(D)(ii) of such Code is
21 amended by inserting “132(m)(4),” after
22 “132(f)(4),”.

23 (c) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to taxable years beginning after
25 December 31, 2002.

1 **SEC. 108. INSIDER TRADES DURING PENSION FUND BLACK-**
2 **OUT PERIODS PROHIBITED.**

3 (a) PROHIBITION.—It shall be unlawful for any per-
4 son who is directly or indirectly the beneficial owner of
5 more than 10 percent of any class of any equity security
6 (other than an exempted security) which is registered
7 under section 12 of the Securities Exchange Act of 1934
8 (15 U.S.C. 78l) or who is a director or an officer of the
9 issuer of such security, directly or indirectly, to purchase
10 (or otherwise acquire) or sell (or otherwise transfer) any
11 equity security of any issuer (other than an exempted se-
12 curity), during any blackout period with respect to such
13 equity security.

14 (b) REMEDY.—Any profit realized by such beneficial
15 owner, director, or officer from any purchase (or other ac-
16 quisition) or sale (or other transfer) in violation of this
17 section shall inure to and be recoverable by the issuer irre-
18 spective of any intention on the part of such beneficial
19 owner, director, or officer in entering into the transaction.
20 Suit to recover such profit may be instituted at law or
21 in equity in any court of competent jurisdiction by the
22 issuer, or by the owner of any security of the issuer in
23 the name and in behalf of the issuer if the issuer shall
24 fail or refuse to bring such suit within 60 days after re-
25 quest or shall fail diligently to prosecute the same there-
26 after; but no such suit shall be brought more than 2 years

1 after the date such profit was realized. This subsection
2 shall not be construed to cover any transaction where such
3 beneficial owner was not such both at the time of the pur-
4 chase and sale, or the sale and purchase, of the security
5 or security-based swap (as defined in section 206B of the
6 Gramm-Leach-Bliley Act) involved, or any transaction or
7 transactions which the Commission by rules and regula-
8 tions may exempt as not comprehended within the pur-
9 poses of this subsection.

10 (c) RULEMAKING PERMITTED.—The Commission
11 may issue rules to clarify the application of this sub-
12 section, to ensure adequate notice to all persons affected
13 by this subsection, and to prevent evasion thereof.

14 (d) As used in this section:

15 (1) BENEFICIAL OWNER.—The term “beneficial
16 owner” has the meaning provided such term in rules
17 or regulations issued by the Commission under sec-
18 tion 16 of the Securities Exchange Act of 1934 (15
19 U.S.C. 78p).

20 (2) BLACKOUT PERIOD.—The term “blackout
21 period” with respect to the equity securities of any
22 issuer—

23 (A) means any period during which the
24 ability of at least fifty percent of the partici-
25 pants or beneficiaries under all applicable indi-

1 vidual account plans maintained by the issuer
2 to purchase (or otherwise acquire) or sell (or
3 otherwise transfer) an interest in any equity of
4 such issuer is suspended by the issuer or a fidu-
5 ciary of the plan; but

6 (B) does not include—

7 (i) a period in which the employees of
8 an issuer may not allocate their interests
9 in the individual account plan due to an
10 express investment restriction—

11 (I) incorporated into the indi-
12 vidual account plan; and

13 (II) timely disclosed to employees
14 before joining the individual account
15 plan or as a subsequent amendment
16 to the plan;

17 (ii) any suspension described in sub-
18 paragraph (A) that is imposed solely in
19 connection with persons becoming partici-
20 pants or beneficiaries, or ceasing to be par-
21 ticipants or beneficiaries, in an applicable
22 individual account plan by reason of a cor-
23 porate merger, acquisition, divestiture, or
24 similar transaction.

1 (3) COMMISSION.—The term “Commission”
2 means the Securities and Exchange Commission.

3 (4) INDIVIDUAL ACCOUNT PLAN.—The term
4 “individual account plan” has the meaning provided
5 such term in section 3(34) of the Employee Retirement
6 Income Security Act of 1974 (29 U.S.C.
7 1002(34)).

8 (5) ISSUER.—The term “issuer” shall have the
9 meaning set forth in section 2(a)(4) of the Securities
10 Act of 1933 (15 U.S.C. 77b(a)(4)).

11 **SEC. 109. EFFECTIVE DATES OF TITLE AND RELATED**
12 **RULES.**

13 (a) IN GENERAL.—Except as otherwise provided in
14 this title or in subsection (b), the amendments made by
15 this title shall apply with respect to plan years beginning
16 on or after January 1, 2003.

17 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
18 PLANS.—In the case of a plan maintained pursuant to 1
19 or more collective bargaining agreements between em-
20 ployee representatives and 1 or more employers ratified
21 on or before the date of the enactment of this Act, sub-
22 section (a) shall be applied to benefits pursuant to, and
23 individuals covered by, any such agreement by substituting
24 for “January 1, 2003” the date of the commencement of
25 the first plan year beginning on or after the earlier of—

1 (1) the later of—

2 (A) January 1, 2004, or

3 (B) the date on which the last of such col-
4 lective bargaining agreements terminates (de-
5 termined without regard to any extension there-
6 of after the date of the enactment of this Act),
7 or

8 (2) January 1, 2005.

9 (c) PLAN AMENDMENTS.—If the amendments made
10 by sections 101, 102, 103, and 104 of this Act require
11 an amendment to any plan, such plan amendment shall
12 not be required to be made before the first plan year be-
13 ginning on or after January 1, 2005, if—

14 (1) during the period after such amendments
15 made by such sections take effect and before such
16 first plan year, the plan is operated in accordance
17 with the requirements of such amendments made by
18 such sections, and

19 (2) such plan amendment applies retroactively
20 to the period after such amendments made by such
21 sections take effect and before such first plan year.

22 (d) AMENDMENTS RELATING TO INVESTMENT AD-
23 VICE.—The amendments made by section 104 shall apply
24 with respect to advice referred to in section 3(21)(A)(ii)
25 of the Employee Retirement Income Security Act of 1974

1 or section 4975(c)(3)(B) of the Internal Revenue Code of
2 1986 provided on or after January 1, 2003.

3 **TITLE II—OTHER PROVISIONS**
4 **RELATING TO PENSIONS**

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

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

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

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

14 (b) SPECIAL RULES.—Paragraph (2) of section
15 769(c) of the Retirement Protection Act of 1994 is amend-
16 ed to read as follows:

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

19 “(A) For purposes of section 412(l)(9)(A)
20 of the Internal Revenue Code of 1986 and sec-
21 tion 302(d)(9)(A) of the Employee Retirement
22 Income Security Act of 1974, the funded cur-
23 rent liability percentage for any plan year shall
24 be treated as not less than 90 percent.

1 “(B) For purposes of section 412(m) of
2 the Internal Revenue Code of 1986 and section
3 302(e) of the Employee Retirement Income Se-
4 curity Act of 1974, the funded current liability
5 percentage for any plan year shall be treated as
6 not less than 100 percent.

7 “(C) For purposes of determining un-
8 funded vested benefits under section
9 4006(a)(3)(E)(iii) of the Employee Retirement
10 Income Security Act of 1974, the mortality
11 table shall be the mortality table used by the
12 plan.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to plan years beginning after De-
15 cember 31, 2001.

16 **SEC. 202. REPORTING SIMPLIFICATION.**

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

19 (1) IN GENERAL.—The Secretary of the Treas-
20 ury and the Secretary of Labor shall modify the re-
21 quirements for filing annual returns with respect to
22 one-participant retirement plans to ensure that such
23 plans with assets of \$250,000 or less as of the close
24 of the plan year need not file a return for that year.

1 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
2 FINED.—For purposes of this subsection, the term
3 “one-participant retirement plan” means a retire-
4 ment plan that—

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

6 (i) covered only the employer (and the
7 employer’s spouse) and the employer
8 owned the entire business (whether or not
9 incorporated); or

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

14 (B) meets the minimum coverage require-
15 ments of section 410(b) of the Internal Revenue
16 Code of 1986 without being combined with any
17 other plan of the business that covers the em-
18 ployees of the business;

19 (C) does not provide benefits to anyone ex-
20 cept the employer (and the employer’s spouse)
21 or 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
25 businesses under common control; and

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

3 (3) OTHER DEFINITIONS.—Terms used in para-
4 graph (2) which are also used in section 414 of the
5 Internal Revenue Code of 1986 shall have the re-
6 spective meanings given such terms by such section.

7 (4) EFFECTIVE DATE.—The provisions of this
8 subsection shall apply to plan years beginning on or
9 after January 1, 2002.

10 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
11 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
12 of plan years beginning after December 31, 2003, the Sec-
13 retary of the Treasury and the Secretary of Labor shall
14 provide for the filing of a simplified annual return for any
15 retirement plan which covers less than 25 employees on
16 the first day of a plan year and which meets the require-
17 ments described in subparagraphs (B), (D), and (E) of
18 subsection (a)(2).

19 **SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**
20 **ANCE RESOLUTION SYSTEM.**

21 The Secretary of the Treasury shall continue to up-
22 date and improve the Employee Plans Compliance Resolu-
23 tion System (or any successor program) giving special at-
24 tention to—

1 (1) increasing the awareness and knowledge of
2 small employers concerning the availability and use
3 of the program;

4 (2) taking into account special concerns and
5 circumstances that small employers face with respect
6 to compliance and correction of compliance failures;

7 (3) extending the duration of the self-correction
8 period under the Self-Correction Program for signifi-
9 cant compliance failures;

10 (4) expanding the availability to correct insig-
11 nificant compliance failures under the Self-Correc-
12 tion Program during audit; and

13 (5) assuring that any tax, penalty, or sanction
14 that is imposed by reason of a compliance failure is
15 not excessive and bears a reasonable relationship to
16 the nature, extent, and severity of the failure.

17 The Secretary of the Treasury shall have full authority
18 to effectuate the foregoing with respect to the Employee
19 Plans Compliance Resolution System (or any successor
20 program) and any other employee plans correction poli-
21 cies, including the authority to waive income, excise, or
22 other taxes to ensure that any tax, penalty, or sanction
23 is not excessive and bears a reasonable relationship to the
24 nature, extent, and severity of the failure.

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

3 (a) NONDISCRIMINATION.—

4 (1) IN GENERAL.—The Secretary of the Treas-
5 ury shall, by regulation, provide that a plan shall be
6 deemed to satisfy the requirements of section
7 401(a)(4) of the Internal Revenue Code of 1986 if
8 such plan satisfies the facts and circumstances test
9 under section 401(a)(4) of such Code, as in effect
10 before January 1, 1994, but only if—

11 (A) the plan satisfies conditions prescribed
12 by the Secretary to appropriately limit the
13 availability of such test; and

14 (B) the plan is submitted to the Secretary
15 for a determination of whether it satisfies such
16 test.

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

19 (2) EFFECTIVE DATES.—

20 (A) REGULATIONS.—The regulation re-
21 quired by paragraph (1) shall apply to years be-
22 ginning after December 31, 2003.

23 (B) CONDITIONS OF AVAILABILITY.—Any
24 condition of availability prescribed by the Sec-
25 retary under paragraph (1)(A) shall not apply
26 before the first year beginning not less than

1 120 days after the date on which such condition
2 is prescribed.

3 (b) COVERAGE TEST.—

4 (1) IN GENERAL.—Section 410(b)(1) of the In-
5 ternal Revenue Code of 1986 (relating to minimum
6 coverage requirements) is amended by adding at the
7 end the following:

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

11 “(i) satisfies subparagraph (B), as in
12 effect immediately before the enactment of
13 the Tax Reform Act of 1986,

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

17 “(iii) satisfies conditions prescribed by
18 the Secretary by regulation that appro-
19 priately limit the availability of this sub-
20 paragraph.

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

23 (2) EFFECTIVE DATES.—

1 (A) IN GENERAL.—The amendment made
2 by paragraph (1) shall apply to years beginning
3 after December 31, 2003.

4 (B) CONDITIONS OF AVAILABILITY.—Any
5 condition of availability prescribed by the Sec-
6 retary under regulations prescribed by the Sec-
7 retary under section 410(b)(1)(D) of the Inter-
8 nal Revenue Code of 1986 shall not apply be-
9 fore the first year beginning not less than 120
10 days after the date on which such condition is
11 prescribed.

12 (c) LINE OF BUSINESS RULES.—The Secretary of
13 the Treasury shall, on or before December 31, 2003, mod-
14 ify the existing regulations issued under section 414(r) of
15 the Internal Revenue Code of 1986 in order to expand
16 (to the extent that the Secretary determines appropriate)
17 the ability of a pension plan to demonstrate compliance
18 with the line of business requirements based upon the
19 facts and circumstances surrounding the design and oper-
20 ation of the plan, even though the plan is unable to satisfy
21 the mechanical tests currently used to determine compli-
22 ance.

1 **SEC. 205. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
2 **MORATORIUM ON APPLICATION OF CERTAIN**
3 **NONDISCRIMINATION RULES APPLICABLE TO**
4 **STATE AND LOCAL PLANS.**

5 (a) IN GENERAL.—

6 (1) Subparagraph (G) of section 401(a)(5) of
7 the Internal Revenue Code of 1986 and subpara-
8 graph (H) of section 401(a)(26) of such Code are
9 each amended by striking “section 414(d))” and all
10 that follows and inserting “section 414(d)).”.

11 (2) Subparagraph (G) of section 401(k)(3) of
12 the Internal Revenue Code of 1986 and paragraph
13 (2) of section 1505(d) of the Taxpayer Relief Act of
14 1997 are each amended by striking “maintained by
15 a State or local government or political subdivision
16 thereof (or agency or instrumentality thereof)”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) The heading for subparagraph (G) of sec-
19 tion 401(a)(5) of such Code is amended to read as
20 follows: “GOVERNMENTAL PLANS.—”.

21 (2) The heading for subparagraph (H) of sec-
22 tion 401(a)(26) of such Code is amended to read as
23 follows: “EXCEPTION FOR GOVERNMENTAL
24 PLANS.—”.

1 (3) Subparagraph (G) of section 401(k)(3) of
2 such Code is amended by inserting “GOVERN-
3 MENTAL PLANS.—” after “(G)”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to years beginning after December
6 31, 2002.

7 **SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DIS-**
8 **TRIBUTIONS.**

9 (a) EXPANSION OF PERIOD.—

10 (1) AMENDMENT OF INTERNAL REVENUE
11 CODE.—

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

16 (B) MODIFICATION OF REGULATIONS.—
17 The Secretary of the Treasury shall modify the
18 regulations under sections 402(f), 411(a)(11),
19 and 417 of the Internal Revenue Code of 1986
20 to substitute “180 days” for “90 days” each
21 place it appears in Treasury Regulations sec-
22 tions 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-
23 1(b).

24 (2) AMENDMENT OF ERISA.—

1 (A) IN GENERAL.—Section 205(c)(7)(A) of
2 the Employee Retirement Income Security Act
3 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended
4 by striking “90-day” and inserting “180-day”.

5 (B) MODIFICATION OF REGULATIONS.—
6 The Secretary of the Treasury shall modify the
7 regulations under part 2 of subtitle B of title
8 I of the Employee Retirement Income Security
9 Act of 1974 to the extent that they relate to
10 sections 203(e) and 205 of such Act to sub-
11 stitute “180 days” for “90 days” each place it
12 appears.

13 (3) EFFECTIVE DATE.—The amendments made
14 by paragraphs (1)(A) and (2)(A) and the modifica-
15 tions required by paragraphs (1)(B) and (2)(B)
16 shall apply to years beginning after December 31,
17 2002.

18 (b) CONSENT REGULATION INAPPLICABLE TO CER-
19 TAIN DISTRIBUTIONS.—

20 (1) IN GENERAL.—The Secretary of the Treas-
21 ury shall modify the regulations under section
22 411(a)(11) of the Internal Revenue Code of 1986
23 and under section 205 of the Employee Retirement
24 Income Security Act of 1974 to provide that the de-
25 scription of a participant’s right, if any, to defer re-

1 receipt of a distribution shall also describe the con-
2 sequences of failing to defer such receipt.

3 (2) EFFECTIVE DATE.—

4 (A) IN GENERAL.—The modifications re-
5 quired by paragraph (1) shall apply to years be-
6 ginning after December 31, 2002.

7 (B) REASONABLE NOTICE.—In the case of
8 any description of such consequences made be-
9 fore the date that is 90 days after the date on
10 which the Secretary of the Treasury issues a
11 safe harbor description under paragraph (1), a
12 plan shall not be treated as failing to satisfy the
13 requirements of section 411(a)(11) of such
14 Code or section 205 of such Act by reason of
15 the failure to provide the information required
16 by the modifications made under paragraph (1)
17 if the Administrator of such plan makes a rea-
18 sonable attempt to comply with such require-
19 ments.

20 **SEC. 207. ANNUAL REPORT DISSEMINATION.**

21 (a) REPORT AVAILABLE THROUGH ELECTRONIC
22 MEANS.—Section 104(b)(3) of the Employee Retirement
23 Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is
24 amended by adding at the end the following new sentence:
25 “The requirement to furnish information under the pre-

1 vious sentence with respect to an employee pension benefit
2 plan shall be satisfied if the administrator makes such in-
3 formation reasonably available through electronic means
4 or other new technology.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall apply to reports for years beginning after
7 December 31, 2002.

8 **SEC. 208. TECHNICAL CORRECTIONS TO SAVER ACT.**

9 Section 517 of the Employee Retirement Income Se-
10 curity Act of 1974 (29 U.S.C. 1147) is amended—

11 (1) in subsection (a), by striking “2001 and
12 2005 on or after September 1 of each year involved”
13 and inserting “2002, 2006, and 2010”;

14 (2) in subsection (b), by adding at the end the
15 following new sentence: “To effectuate the purposes
16 of this paragraph, the Secretary may enter into a co-
17 operative agreement, pursuant to the Federal Grant
18 and Cooperative Agreement Act of 1977 (31 U.S.C.
19 6301 et seq.), with any appropriate, qualified enti-
20 ty.”;

21 (3) in subsection (e)(2)—

22 (A) by striking “Committee on Labor and
23 Human Resources” in subparagraph (D) and
24 inserting “Committee on Health, Education,
25 Labor, and Pensions”;

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

3 “(F) the Chairman and Ranking Member
4 of the Subcommittee on Labor, Health and
5 Human Services, and Education of the Com-
6 mittee on Appropriations of the House of Rep-
7 resentatives and the Chairman and Ranking
8 Member of the Subcommittee on Labor, Health
9 and Human Services, and Education of the
10 Committee on Appropriations of the Senate;”;

11 (C) by redesignating subparagraph (G) as
12 subparagraph (J); and

13 (D) by inserting after subparagraph (F)
14 the following new subparagraphs:

15 “(G) the Chairman and Ranking Member
16 of the Committee on Finance of the Senate;

17 “(H) the Chairman and Ranking Member
18 of the Committee on Ways and Means of the
19 House of Representatives;

20 “(I) the Chairman and Ranking Member
21 of the Subcommittee on Employer-Employee
22 Relations of the Committee on Education and
23 the Workforce of the House of Representatives;
24 and”;

25 (4) in subsection (e)(3)—

1 (A) by striking “There shall be not more
2 than 200 additional participants.” in subpara-
3 graph (A) and inserting “The participants in
4 the National Summit shall also include addi-
5 tional participants appointed under this sub-
6 paragraph.”;

7 (B) by striking “one-half shall be ap-
8 pointed by the President,” in subparagraph
9 (A)(i) and inserting “not more than 100 par-
10 ticipants shall be appointed under this clause by
11 the President,”;

12 (C) by striking “one-half shall be ap-
13 pointed by the elected leaders of Congress” in
14 subparagraph (A)(ii) and inserting “not more
15 than 100 participants shall be appointed under
16 this clause by the elected leaders of Congress”;

17 (D) by redesignating subparagraph (B) as
18 subparagraph (C); and

19 (E) by inserting after subparagraph (A)
20 the following new subparagraph:

21 “(B) PRESIDENTIAL AUTHORITY FOR AD-
22 DITIONAL APPOINTMENTS.—The President, in
23 consultation with the elected leaders of Con-
24 gress referred to in subsection (a), may appoint
25 under this subparagraph additional participants

1 to the National Summit. The number of such
2 additional participants appointed under this
3 subparagraph may not exceed the lesser of 3
4 percent of the total number of all additional
5 participants appointed under this paragraph, or
6 10. Such additional participants shall be ap-
7 pointed from persons nominated by an organi-
8 zation referred to in subsection (b) which is
9 made up of private sector businesses and asso-
10 ciations partnered with Government entities to
11 promote long term financial security in retire-
12 ment through savings and with which the Sec-
13 retary is required thereunder to consult and co-
14 operate and shall not be Federal, State, or local
15 government employees.”;

16 (5) in subsection (e)(3)(C) (as redesignated), by
17 striking “January 31, 1998” and inserting “3
18 months before the convening of each summit;”;

19 (6) in subsection (f)(1)(C), by inserting “, no
20 later than 90 days prior to the date of the com-
21 mencement of the National Summit,” after “com-
22 ment”;

23 (7) in subsection (g), by inserting “, in con-
24 sultation with the congressional leaders specified in

1 subsection (e)(2),” after “report” the first place it
2 appears;

3 (8) in subsection (i)—

4 (A) by striking “for fiscal years beginning
5 on or after October 1, 1997,”; and

6 (B) by adding at the end the following new
7 paragraph:

8 “(3) RECEPTION AND REPRESENTATION AU-
9 THORITY.—The Secretary is hereby granted recep-
10 tion and representation authority limited specifically
11 to the events at the National Summit. The Secretary
12 shall use any private contributions accepted in con-
13 nection with the National Summit prior to using
14 funds appropriated for purposes of the National
15 Summit pursuant to this paragraph.”; and

16 (9) in subsection (k)—

17 (A) by striking “shall enter into a contract
18 on a sole-source basis” and inserting “may
19 enter into a contract on a sole-source basis”;
20 and

21 (B) by striking “in fiscal year 1998”.

22 **SEC. 209. MISSING PARTICIPANTS.**

23 (a) IN GENERAL.—Section 4050 of the Employee Re-
24 tirement Income Security Act of 1974 (29 U.S.C. 1350)
25 is amended by redesignating subsection (c) as subsection

1 (e) and by inserting after subsection (b) the following new
2 subsections:

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

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

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

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

18 “(A) to the corporation, or

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

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

1 transferred (or the appropriate survivor benefit)
2 either—

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

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

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

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

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

13 “(ii) which is not a plan described in
14 paragraphs (2) through (11) of section
15 4021(b), and

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

18 “(i) has missing participants, and

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

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

1 (b) CONFORMING AMENDMENTS.—Section 206(f) of
2 such Act (29 U.S.C. 1056(f)) is amended—

3 (1) by striking “title IV” and inserting “section
4 4050”; and

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

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

12 **SEC. 210. REDUCED PBGC PREMIUM FOR NEW PLANS OF**
13 **SMALL EMPLOYERS.**

14 (a) IN GENERAL.—Subparagraph (A) of section
15 4006(a)(3) of the Employee Retirement Income Security
16 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

17 (1) in clause (i), by inserting “other than a new
18 single-employer plan (as defined in subparagraph
19 (F)) maintained by a small employer (as so de-
20 fined),” after “single-employer plan,”,

21 (2) in clause (iii), by striking the period at the
22 end and inserting “, and”, and

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

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

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

11 “(F)(i) For purposes of this paragraph, a single-em-
12 ployer plan maintained by a contributing sponsor shall be
13 treated as a new single-employer plan for each of its first
14 5 plan years if, during the 36-month period ending on the
15 date of the adoption of such plan, the sponsor or any
16 member of such sponsor’s controlled group (or any prede-
17 cessor of either) did not establish or maintain a plan to
18 which this title applies with respect to which benefits were
19 accrued for substantially the same employees as are in the
20 new single-employer plan.

21 “(ii)(I) For purposes of this paragraph, the term
22 ‘small employer’ means an employer which on the first day
23 of any plan year has, in aggregation with all members of
24 the controlled group of such employer, 100 or fewer em-
25 ployees.

1 “(II) In the case of a plan maintained by two or more
2 contributing sponsors that are not part of the same con-
3 trolled group, the employees of all contributing sponsors
4 and controlled groups of such sponsors shall be aggregated
5 for purposes of determining whether any contributing
6 sponsor is a small employer.”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to plans first effective after Decem-
9 ber 31, 2002.

10 **SEC. 211. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
11 **NEW AND SMALL PLANS.**

12 (a) NEW PLANS.—Subparagraph (E) of section
13 4006(a)(3) of the Employee Retirement Income Security
14 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by
15 adding at the end the following new clause:

16 “(v) In the case of a new defined benefit plan, the
17 amount determined under clause (ii) for any plan year
18 shall be an amount equal to the product of the amount
19 determined under clause (ii) and the applicable percent-
20 age. For purposes of this clause, the term ‘applicable per-
21 centage’ means—

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

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

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

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

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

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

12 (b) SMALL PLANS.—Paragraph (3) of section
13 4006(a) of the Employee Retirement Income Security Act
14 of 1974 (29 U.S.C. 1306(a)), as amended by section
15 210(b), is amended—

16 (1) by striking “The” in subparagraph (E)(i)
17 and inserting “Except as provided in subparagraph
18 (G), the”, and

19 (2) by inserting after subparagraph (F) the fol-
20 lowing new subparagraph:

21 “(G)(i) In the case of an employer who has 25 or
22 fewer employees on the first day of the plan year, the addi-
23 tional premium determined under subparagraph (E) for
24 each participant shall not exceed \$5 multiplied by the

1 number of participants in the plan as of the close of the
2 preceding plan year.

3 “(ii) For purposes of clause (i), whether an employer
4 has 25 or fewer employees on the first day of the plan
5 year is determined by taking into consideration all of the
6 employees of all members of the contributing sponsor’s
7 controlled group. In the case of a plan maintained by two
8 or more contributing sponsors, the employees of all con-
9 tributing sponsors and their controlled groups shall be ag-
10 gregated for purposes of determining whether the 25-or-
11 fewer-employees limitation has been satisfied.”.

12 (c) EFFECTIVE DATES.—

13 (1) SUBSECTION (a).—The amendments made
14 by subsection (a) shall apply to plans first effective
15 after December 31, 2002.

16 (2) SUBSECTION (b).—The amendments made
17 by subsection (b) shall apply to plan years beginning
18 after December 31, 2002.

19 **SEC. 212. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
20 **PREMIUM OVERPAYMENT REFUNDS.**

21 (a) IN GENERAL.—Section 4007(b) of the Employ-
22 ment Retirement Income Security Act of 1974 (29 U.S.C.
23 1307(b)) is amended—

24 (1) by striking “(b)” and inserting “(b)(1)”,
25 and

1 (2) by inserting at the end the following new
2 paragraph:

3 “(2) The corporation is authorized to pay, subject to
4 regulations prescribed by the corporation, interest on the
5 amount of any overpayment of premium refunded to a des-
6 ignated payor. Interest under this paragraph shall be cal-
7 culated at the same rate and in the same manner as inter-
8 est is calculated for underpayments under paragraph
9 (1).”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply to interest accruing for periods
12 beginning not earlier than the date of the enactment of
13 this Act.

14 **SEC. 213. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
15 **PLANS.**

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

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

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

1 “(ii) in the case of a partnership, is a partner
2 who owns, directly or indirectly, 50 percent or more
3 of either the capital interest or the profits interest
4 in such partnership, or

5 “(iii) in the case of a corporation, owns, directly
6 or indirectly, 50 percent or more in value of either
7 the voting stock of that corporation or all the stock
8 of that corporation.

9 For purposes of clause (iii), the constructive ownership
10 rules of section 1563(e) of the Internal Revenue Code of
11 1986 shall apply (determined without regard to section
12 1563(e)(3)(C)).

13 “(B) In the case of a participant who is a majority
14 owner, the amount of benefits guaranteed under this sec-
15 tion shall equal the product of—

16 “(i) a fraction (not to exceed 1) the numerator
17 of which is the number of years from the later of the
18 effective date or the adoption date of the plan to the
19 termination date, and the denominator of which is
20 10, and

21 “(ii) the amount of benefits that would be guar-
22 anteed under this section if the participant were not
23 a majority owner.”.

24 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

1 (1) Section 4044(a)(4)(B) of the Employee Re-
2 tirement Income Security Act of 1974 (29 U.S.C.
3 1344(a)(4)(B)) is amended by striking “section
4 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

5 (2) Section 4044(b) of such Act (29 U.S.C.
6 1344(b)) is amended—

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

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

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

1 date) of their respective benefits described in that
2 subparagraph.”.

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 4021 of the Employee Retirement
5 Income Security Act of 1974 (29 U.S.C. 1321) is
6 amended—

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

9 (B) by adding at the end the following new
10 subsection:

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

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

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

21 “(3) in the case of a corporation, owns, directly
22 or indirectly, more than 10 percent in value of either
23 the voting stock of that corporation or all the stock
24 of that corporation.

1 For purposes of paragraph (3), 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 (2) Section 4043(c)(7) of such Act (29 U.S.C.
6 1343(c)(7)) is amended by striking “section 4022(b)(6)”
7 and inserting “section 4021(d)”.

8 (d) EFFECTIVE DATES.—

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

12 (A) under section 4041(c) of the Employee
13 Retirement Income Security Act of 1974 (29
14 U.S.C. 1341(c)) with respect to which notices
15 of intent to terminate are provided under sec-
16 tion 4041(a)(2) of such Act (29 U.S.C.
17 1341(a)(2)) after December 31, 2002, and

18 (B) under section 4042 of such Act (29
19 U.S.C. 1342) with respect to which proceedings
20 are instituted by the corporation after such
21 date.

22 (2) CONFORMING AMENDMENTS.—The amend-
23 ments made by subsection (c) shall take effect on
24 January 1, 2003.

1 **SEC. 214. BENEFIT SUSPENSION NOTICE.**

2 (a) **MODIFICATION OF REGULATION.**—The Secretary
3 of Labor shall modify the regulation under subparagraph
4 (B) of section 203(a)(3) of the Employee Retirement In-
5 come Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to
6 provide that the notification required by such regulation
7 in connection with any suspension of benefits described in
8 such subparagraph—

9 (1) in the case of an employee who returns to
10 service described in section 203(a)(3)(B)(i) or (ii) of
11 such Act after commencement of payment of bene-
12 fits under the plan, shall be made during the first
13 calendar month or the first 4 or 5-week payroll pe-
14 riod ending in a calendar month in which the plan
15 withholds payments, and

16 (2) in the case of any employee who is not de-
17 scribed in paragraph (1)—

18 (A) may be included in the summary plan
19 description for the plan furnished in accordance
20 with section 104(b) of such Act (29 U.S.C.
21 1024(b)), rather than in a separate notice, and

22 (B) need not include a copy of the relevant
23 plan provisions.

24 (b) **EFFECTIVE DATE.**—The modification made
25 under this section shall apply to plan years beginning after
26 December 31, 2002.

1 **SEC. 215. STUDIES.**

2 (a) MODEL SMALL EMPLOYER GROUP PLANS

3 STUDY.—As soon as practicable after the date of the en-
4 actment of this Act, the Secretary of Labor, in consulta-
5 tion with the Secretary of the Treasury, shall conduct a
6 study to determine—

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

8 (A) employee pension benefit plans which
9 would—

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

12 (ii) provide for ready portability of
13 benefits for all participants and bene-
14 ficiaries,

15 (B) alternative arrangements providing
16 comparable benefits which may be established
17 by employee or employer associations, and

18 (C) alternative arrangements providing
19 comparable benefits to which employees may
20 contribute in a manner independent of employer
21 sponsorship, and

22 (2) appropriate methods and strategies for
23 making pension plan coverage described in para-
24 graph (1) more widely available to American work-
25 ers.

1 (b) MATTERS TO BE CONSIDERED.—In conducting
2 the study under subsection (a), the Secretary of Labor
3 shall consider the adequacy and availability of existing em-
4 ployee pension benefit plans and the extent to which exist-
5 ing models may be modified to be more accessible to both
6 employees and employers.

7 (c) REPORT.—Not later than 18 months after the
8 date of the enactment of this Act, the Secretary of Labor
9 shall report the results of the study under subsection (a),
10 together with the Secretary's recommendations, to the
11 Committee on Education and the Workforce and the Com-
12 mittee on Ways and Means of the House of Representa-
13 tives and the Committee on Health, Education, Labor,
14 and Pensions and the Committee on Finance of the Sen-
15 ate. Such recommendations shall include one or more
16 model plans described in subsection (a)(1)(A) and model
17 alternative arrangements described in subsections
18 (a)(1)(B) and (a)(1)(C) which may serve as the basis for
19 appropriate administrative or legislative action.

20 (d) STUDY ON EFFECT OF LEGISLATION.—Not later
21 than 5 years after the date of the enactment of this Act,
22 the Secretary of Labor shall submit to the Committee on
23 Education and the Workforce of the House of Representa-
24 tives and the Committee on Health, Education, Labor,
25 and Pensions of the Senate a report on the effect of the

1 provisions of this Act and title VI of the Economic Growth
2 and Tax Relief Reconciliation Act of 2001 on pension plan
3 coverage, including any change in—

4 (1) the extent of pension plan coverage for low
5 and middle-income workers,

6 (2) the levels of pension plan benefits generally,

7 (3) the quality of pension plan coverage gen-
8 erally,

9 (4) workers' access to and participation in pen-
10 sion plans, and

11 (5) retirement security.

12 **SEC. 216. INTEREST RATE RANGE FOR ADDITIONAL FUND-**
13 **ING REQUIREMENTS.**

14 (a) **IN GENERAL.**—Subclause (III) of section
15 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is
16 amended—

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

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

21 (b) **SPECIAL RULE.**—Subclause (III) of section
22 302(d)(7)(C)(i) of the Employee Retirement Income Secu-
23 rity Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is
24 amended—

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

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

5 (c) PBGC.—Subclause (IV) of section
6 4006(a)(3)(E)(iii) of such Act (29 U.S.C.
7 1306(a)(3)(E)(iii)) is amended to read as follows—

8 “(IV) In the case of plan years beginning after
9 December 31, 2001, and before January 1, 2004,
10 subclause (II) shall be applied by substituting ‘100
11 percent’ for ‘85 percent’ and by substituting ‘115
12 percent’ for ‘100 percent’. Subclause (III) shall be
13 applied for such years without regard to the pre-
14 ceding sentence. Any reference to this clause or this
15 subparagraph by any other sections or subsections
16 (other than sections 4005, 4010, 4011 and 4043)
17 shall be treated as a reference to this clause or this
18 subparagraph without regard to this subclause.”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect as if included in the amend-
21 ments made by section 405 of the Job Creation and Work-
22 er Assistance Act of 2002.

23 **SEC. 217. PROVISIONS RELATING TO PLAN AMENDMENTS.**

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

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

5 (2) except as provided by the Secretary of the
6 Treasury, such plan shall not fail to meet the re-
7 quirements of section 411(d)(6) of the Internal Rev-
8 enue Code of 1986 and section 204(g) of the Em-
9 ployee Retirement Income Security Act of 1974 by
10 reason of such amendment.

11 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

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

15 (A) pursuant to any amendment made by
16 this title or title VI of the Economic Growth
17 and Tax Relief Reconciliation Act of 2001, or
18 pursuant to any regulation issued by the Sec-
19 retary of the Treasury or the Secretary of
20 Labor under this title or such title VI, and

21 (B) on or before the last day of the first
22 plan year beginning on or after January 1,
23 2005.

24 In the case of a governmental plan (as defined in
25 section 414(d) of the Internal Revenue Code of

1 1986), this paragraph shall be applied by sub-
2 stituting “2007” for “2005”.

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

5 (A) during the period—

6 (i) beginning on the date the legisla-
7 tive or regulatory amendment described in
8 paragraph (1)(A) takes effect (or in the
9 case of a plan or contract amendment not
10 required by such legislative or regulatory
11 amendment, the effective date specified by
12 the plan), and

13 (ii) ending on the date described in
14 paragraph (1)(B) (or, if earlier, the date
15 the plan or contract amendment is adopt-
16 ed),

17 the plan or contract is operated as if such plan
18 or contract amendment were in effect; and

19 (B) such plan or contract amendment ap-
20 plies retroactively for such period.

21 **TITLE III—STOCK OPTIONS**

22 **SEC. 301. EXCLUSION OF INCENTIVE STOCK OPTIONS AND** 23 **EMPLOYEE STOCK PURCHASE PLAN STOCK** 24 **OPTIONS FROM WAGES.**

25 (a) EXCLUSION FROM EMPLOYMENT TAXES.—

1 (1) SOCIAL SECURITY TAXES.—

2 (A) Section 3121(a) of the Internal Rev-
3 enue Code of 1986 (relating to definition of
4 wages) is amended by striking “or” at the end
5 of paragraph (20), by striking the period at the
6 end of paragraph (21) and inserting “; or”, and
7 by inserting after paragraph (21) the following
8 new paragraph:

9 “(22) remuneration on account of—

10 “(A) a transfer of a share of stock to any
11 individual pursuant to an exercise of an incen-
12 tive stock option (as defined in section 422(b))
13 or under an employee stock purchase plan (as
14 defined in section 423(b)), or

15 “(B) any disposition by the individual of
16 such stock.”.

17 (B) Section 209(a) of the Social Security
18 Act is amended by striking “or” at the end of
19 paragraph (17), by striking the period at the
20 end of paragraph (18) and inserting “; or”, and
21 by inserting after paragraph (18) the following
22 new paragraph:

23 “(19) Remuneration on account of—

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

1 tive stock option (as defined in section 422(b)
2 of the Internal Revenue Code of 1986) or under
3 an employee stock purchase plan (as defined in
4 section 423(b) of such Code), or

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

7 (2) RAILROAD RETIREMENT TAXES.—Sub-
8 section (e) of section 3231 of such Code is amended
9 by adding at the end the following new paragraph:

10 “(11) QUALIFIED STOCK OPTIONS.—The term
11 ‘compensation’ shall not include any remuneration
12 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))
16 or under an employee stock purchase plan (as
17 defined in section 423(b)), or

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

20 (3) UNEMPLOYMENT TAXES.—Section 3306(b)
21 of such Code (relating to definition of wages) is
22 amended by striking “or” at the end of paragraph
23 (16), by striking the period at the end of paragraph
24 (17) and inserting “; or”, and by inserting after
25 paragraph (17) the following new paragraph:

1 “(18) remuneration on account of—

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

7 “(B) any disposition by the individual of
8 such stock.”.

9 (b) WAGE WITHHOLDING NOT REQUIRED ON DIS-
10 QUALIFYING DISPOSITIONS.—Section 421(b) of such Code
11 (relating to effect of disqualifying dispositions) is amended
12 by adding at the end the following new sentence: “No
13 amount shall be required to be deducted and withheld
14 under chapter 24 with respect to any increase in income
15 attributable to a disposition described in the preceding
16 sentence.”.

17 (c) WAGE WITHHOLDING NOT REQUIRED ON COM-
18 PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-
19 CENT AND 100 PERCENT OF VALUE OF STOCK.—Section
20 423(c) of such Code (relating to special rule where option
21 price is between 85 percent and 100 percent of value of
22 stock) is amended by adding at the end the following new
23 sentence: “No amount shall be required to be deducted
24 and withheld under chapter 24 with respect to any amount
25 treated as compensation under this subsection.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to stock acquired pursuant to op-
3 tions exercised after the date of the enactment of this Act.

4 **TITLE IV—SOCIAL SECURITY**
5 **AND MEDICARE HELD HARM-**
6 **LESS**

7 **SEC. 401. PROTECTION OF SOCIAL SECURITY AND MEDI-**
8 **CARE.**

9 The amounts transferred to any trust fund under the
10 Social Security Act shall be determined as if this Act had
11 not been enacted.

Passed the House of Representatives April 11, 2002.

Attest:

Clerk.