

107TH CONGRESS  
2D SESSION

# S. 1971

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 27, 2002

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “National Employee  
5       Savings and Trust Equity Guarantee Act”.

1     **TITLE I—DIVERSIFICATION OF**  
 2             **PENSION PLAN ASSETS**

3     **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
 4             **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**  
 5             **VEST THEIR PLAN ASSETS.**

6             (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

7                 (1) QUALIFICATION REQUIREMENT.—Section  
 8             401(a) of the Internal Revenue Code of 1986 (relat-  
 9             ing to qualified pension, profit-sharing, and stock  
 10            bonus plans) is amended by inserting after para-  
 11           graph (34) the following new paragraph:

12                 “(35) DIVERSIFICATION REQUIREMENTS FOR  
 13             CERTAIN DEFINED CONTRIBUTION PLANS.—

14                 “(A) IN GENERAL.—A trust which is part  
 15             of an applicable defined contribution plan shall  
 16             not be treated as a qualified trust unless the  
 17             plan—

18                 “(i) provides that a participant or  
 19             beneficiary of a participant has the right  
 20             at any time to invest any elective deferrals  
 21             (and earnings thereon) contributed to his  
 22             or her account in the form of publicly trad-  
 23             ed employer securities in any other invest-  
 24             ment option offered under the plan,

1 “(ii) provides that a participant with  
 2 3 or more years of service and any bene-  
 3 ficiary of a participant has the right to in-  
 4 vest any publicly traded employer securi-  
 5 ties (and earnings thereon) to which clause  
 6 (i) does not apply and which are allocated  
 7 to his or her account in any other invest-  
 8 ment option offered under the plan, and

9 “(iii) offers at least 3 investment op-  
 10 tions (not inconsistent with regulations  
 11 prescribed by the Secretary).

12 “(B) CERTAIN RESTRICTIONS AND CONDI-  
 13 TIONS NOT ALLOWED.—A plan shall not meet  
 14 the requirements of subparagraph (A) if the  
 15 plan imposes restrictions or conditions on the  
 16 investment of publicly traded employer securi-  
 17 ties which are not imposed on the investment of  
 18 other assets of the plan. This subparagraph  
 19 shall not apply to any restrictions or conditions  
 20 imposed by reason of application of securities  
 21 laws.

22 “(C) APPLICABLE DEFINED CONTRIBU-  
 23 TION PLAN.—For purposes of this paragraph—

24 “(i) IN GENERAL.—The term ‘applica-  
 25 ble defined contribution plan’ means any

defined contribution plan which holds any publicly traded employer securities.

“(ii) EXCEPTION FOR CERTAIN ESOPS.—Such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7)) if—

“(I) there are no contributions to such plan (or earnings thereunder) which are held within such plan and are subject to subsections (k)(3) or (m)(2), and

“(II) such plan is a separate plan (within the meaning of section 414(l)) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

“(D) OTHER DEFINITIONS.—For purposes of this paragraph—

“(i) PUBLICLY TRADED EMPLOYER SECURITIES.—The term ‘publicly traded employer securities’ means employer securities which are readily tradable on an established securities market.

1                   “(ii) EMPLOYER SECURITIES.—The  
 2                   term ‘employer securities’ has the meaning  
 3                   given such term by section 407(d)(1) of  
 4                   the Employee Retirement Income Security  
 5                   Act of 1974.

6                   “(iii) YEAR OF SERVICE.—The term  
 7                   ‘year of service’ has the meaning given  
 8                   such term by section 411(a)(5).”

9                   (2) CONFORMING AMENDMENT.—Section  
 10                  401(a)(28)(B) of such Code (relating to additional  
 11                  requirements relating to employee stock ownership  
 12                  plans) is amended by adding at the end the following  
 13                  new clause:

14                   “(v) EXCEPTION.—This paragraph  
 15                   shall not apply to an applicable defined  
 16                   contribution plan (as defined in paragraph  
 17                   (35)(C)).”

18                  (b) AMENDMENT OF ERISA.—Section 204 of the  
 19                  Employee Retirement Income Security Act of 1974 (29  
 20                  U.S.C. 1054) is amended by redesignating subsection (j)  
 21                  as subsection (k) and by adding at the end the following  
 22                  new subsection:

23                   “(j)(1) An applicable individual account plan shall  
 24                   provide that—

1           “(A) a participant or beneficiary of a partici-  
2           pant has the right at any time to invest any elective  
3           deferrals (and earnings thereon) contributed to his  
4           or her account in the form of publicly traded em-  
5           ployer securities in any other investment option of-  
6           fered under the plan,

7           “(B) a participant with 3 or more years of serv-  
8           ice and any beneficiary of a participant has the right  
9           to invest any publicly traded employer securities  
10          (and earnings thereon) to which subparagraph (A)  
11          does not apply and which are allocated to his or her  
12          account in any other investment option offered  
13          under the plan, and

14          “(C) offers at least 3 investment options (not  
15          inconsistent with regulations prescribed by the Sec-  
16          retary).

17          “(2) A plan shall not meet the requirements of para-  
18          graph (1) if the plan imposes restrictions or conditions  
19          on the investment of publicly traded employer securities  
20          which are not imposed on the investment of other assets  
21          of the plan.

22          “(3)(A) For purposes of this subsection, the term ‘ap-  
23          plicable individual account plan’ means any individual ac-  
24          count plan which holds any publicly traded employer secu-  
25          rities.

1       “(B) Such term does not include an employee stock  
 2 ownership plan (within the meaning of section 4975(e)(7)  
 3 of the Internal Revenue Code of 1986) if—

4               “(i) there are no contributions to such plan (or  
 5 earnings thereunder) which are held within such  
 6 plan and subject to subsection (k)(3) or (m)(2) of  
 7 section 401 of such Code, and

8               “(ii) such plan is a separate plan (within the  
 9 meaning of section 414(l) of such Code) with respect  
 10 to any other defined benefit plan or defined con-  
 11 tribution plan maintained by the same employer or  
 12 employers.

13       “(4) For purposes of this subsection—

14               “(A) the term ‘publicly traded employer securi-  
 15 ties’ means employer securities which are readily  
 16 tradable on an established securities market,

17               “(B) the term ‘employer security’ has the  
 18 meaning given such term by section 407(d)(1), and

19               “(C) the term ‘year of service’ has the meaning  
 20 given such term by section 203(b)(2).”

21       (c) EFFECTIVE DATES.—

22               (1) IN GENERAL.—The amendments made by  
 23 this section shall apply to plan years beginning on  
 24 or after January 1, 2003.

(2) SPECIAL RULE FOR COLLECTIVELY BARGAINED AGREEMENTS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for “January 1, 2003” the earlier of—

(A) the later of—

(i) January 1, 2004, or

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

(B) January 1, 2005.

## **TITLE II—PROTECTION OF EMPLOYEES DURING PENSION PLAN TRANSACTION SUSPENSION PERIOD**

### **SEC. 201. PROTECTION OF PARTICIPANTS OR BENEFICIARIES FROM SUSPENSION OF ABILITY TO DIVERSIFY PLAN ASSETS.**

(a) NOTICE REQUIREMENTS.—



1 (1) EXCISE TAX.—

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

6 **“SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE**  
 7 **NOTICE OF TRANSACTION SUSPENSION PE-**  
 8 **RIOD.**

9 “(a) IMPOSITION OF TAX.—There is hereby imposed  
 10 a tax on the failure of any applicable defined contribution  
 11 plan to meet the requirements of subsection (e) with re-  
 12 spect to any participant or beneficiary.

13 “(b) AMOUNT OF TAX.—

14 “(1) IN GENERAL.—The amount of the tax im-  
 15 posed by subsection (a) on any failure with respect  
 16 to any participant or beneficiary shall be \$100 for  
 17 each day in the noncompliance period with respect to  
 18 the failure.

19 “(2) NONCOMPLIANCE PERIOD.—For purposes  
 20 of this section, the term ‘noncompliance period’  
 21 means, with respect to any failure, the period begin-  
 22 ning on the date the failure first occurs and ending  
 23 on the date the notice to which the failure relates is  
 24 provided or the failure is otherwise corrected.

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

1           “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
 2           DISCOVERED AND REASONABLE DILIGENCE EXER-  
 3           CISED.—No tax shall be imposed by subsection (a)  
 4           on any failure during any period for which it is es-  
 5           tablished to the satisfaction of the Secretary that  
 6           any person subject to liability for tax under sub-  
 7           section (d) did not know that the failure existed and  
 8           exercised reasonable diligence to meet the require-  
 9           ments of subsection (e).

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

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

18                   “(B) such person provides the notice de-  
 19                   scribed in subsection (e) as soon as reasonably  
 20                   practicable after the first date such person  
 21                   knew, or exercising reasonable diligence should  
 22                   have known, that such failure existed.

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

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

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

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

1       that the payment of such tax would be excessive or  
 2       otherwise inequitable relative to the failure involved.

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

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

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

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

11               “(1) IN GENERAL.—The plan administrator of  
 12       an applicable defined contribution plan shall provide  
 13       notice of any transaction suspension period to each  
 14       participant or beneficiary to whom the transaction  
 15       suspension period applies (and to any employee or-  
 16       ganization representing such participants).

17               “(2) NOTICE.—The notice required by para-  
 18       graph (1) shall be written in a manner calculated to  
 19       be understood by the average plan participant and  
 20       shall provide sufficient information (as determined  
 21       in accordance with rules or other guidance adopted  
 22       by the Secretary) to allow applicable individuals to  
 23       understand the timing and effect of such transaction  
 24       suspension period.

25               “(3) TIMING OF NOTICE.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), the notice required by para-  
3           graph (1) shall be provided not later than 30  
4           days before the beginning of the transaction  
5           suspension period.

6           “(B) EXCEPTIONS TO 30-DAY NOTICE.—

7           “(i) UNPLANNED EVENTS.—In the  
8           case of any transaction suspension period  
9           which is imposed by reason of an event  
10          outside of the control of a plan sponsor or  
11          administrator, subparagraph (A) shall not  
12          apply and the notice shall be furnished as  
13          soon as reasonably possible under the cir-  
14          cumstances.

15          “(ii) ACQUISITIONS, ETC.—In the case  
16          of any transaction suspension period—

17               “(I) in connection with an acqui-  
18               sition or disposition to which section  
19               410(b)(6)(C) applies, or

20               “(II) due to such other cir-  
21               cumstances specified by the Secretary,  
22               the Secretary may provide that subpara-  
23               graph (A) shall not apply and the notice  
24               shall be furnished at such time as the Sec-  
25               retary specifies.

1           “(4) FORM AND MANNER OF NOTICE.—The no-  
 2           tice required by paragraph (1) shall be in writing,  
 3           except that such notice may be in electronic or other  
 4           form to the extent that such form is reasonably ac-  
 5           cessible to the applicable individual.

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

8           “(1) APPLICABLE DEFINED CONTRIBUTION  
 9           PLAN.—The term ‘applicable defined contribution  
 10          plan’ means a defined contribution plan which—

11                   “(A) is a qualified retirement plan (as de-  
 12                   fined in section 4974(c)), and

13                   “(B) permits a participant or beneficiary  
 14                   to exercise control over assets in his or her ac-  
 15                   count.

16          “(2) TRANSACTION SUSPENSION PERIOD.—

17                   “(A) IN GENERAL.—The term ‘transaction  
 18                   suspension period’ means a temporary or indefi-  
 19                   nite period of 2 or more consecutive business  
 20                   days during which there is a substantial reduc-  
 21                   tion (other than by reason of application of se-  
 22                   curities laws) in the rights of 1 or more partici-  
 23                   pants or beneficiaries to direct investments in a  
 24                   defined contribution plan.

1           “(B) BUSINESS DAY.—For purposes of  
 2           this paragraph, a day shall not be treated as a  
 3           business day to the extent that 1 or more estab-  
 4           lished securities markets for trading securities  
 5           are not open.”

6           (B) CLERICAL AMENDMENT.—The table of  
 7           sections for chapter 43 of such Code is amend-  
 8           ed by adding at the end the following new item:

“Sec. 4980G. Failure of applicable plans to provide notice of transaction suspen-  
 sion period.”

9           (2) AMENDMENTS OF ERISA.—

10          (A) IN GENERAL.—Section 101 of the Em-  
 11          ployee Retirement Income Security Act of 1974  
 12          (29 U.S.C. 11021) is amended by redesignating  
 13          the second subsection (h) as subsection (j) and  
 14          by inserting after the first subsection (h) the  
 15          following new subsection:

16          “(i)(1) The plan administrator of an individual ac-  
 17          count plan which permits a participant or beneficiary to  
 18          exercise control over assets in his or her account applies  
 19          shall provide notice of any transaction suspension period  
 20          to each participant or beneficiary to whom the transaction  
 21          suspension period applies (and to any employee organiza-  
 22          tion representing such participants).

23          “(2) The notice required by paragraph (1) shall be  
 24          written in a manner calculated to be understood by the

1 average plan participant and shall provide sufficient infor-  
2 mation (as determined in accordance with rules or other  
3 guidance adopted by the Secretary of the Treasury) to  
4 allow applicable individuals to understand the timing and  
5 effect of such transaction suspension period.

6 “(3)(A) Except as provided in subparagraph (B), the  
7 notice required by paragraph (1) shall be provided not  
8 later than 30 days before the beginning of the transaction  
9 suspension period.

10 “(B)(i) In the case of any transaction suspension pe-  
11 riod which is imposed outside of the control of a plan spon-  
12 sor or administrator, subparagraph (A) shall not apply  
13 and the notice shall be furnished as soon as reasonably  
14 possible under the circumstances.

15 “(ii) In the case of any transaction suspension  
16 period—

17 “(I) in connection with an acquisition or dis-  
18 position to which section 410(b)(6)(C) of the Inter-  
19 nal Revenue Code of 1986 applies, or

20 “(II) due to such other circumstances specified  
21 by the Secretary of the Treasury,

22 the Secretary of the Treasury may provide that subpara-  
23 graph (A) shall not apply and the notice shall be furnished  
24 at such time as the Secretary specifies.



1       “(4) The notice required by paragraph (1) shall be  
 2 in writing, except that such notice may be in electronic  
 3 or other form to the extent that such form is reasonably  
 4 accessible to the applicable individual.

5       “(5)(A) For purposes of this subparagraph, the term  
 6 ‘transaction suspension period’ means a temporary or in-  
 7 definite period of 2 or more consecutive business days dur-  
 8 ing which there is a substantial reduction (other than by  
 9 reason of application of securities laws) in the rights of  
 10 1 or more participants or beneficiaries to direct invest-  
 11 ments in an individual account plan.

12       “(B) For purposes of this paragraph, a day shall not  
 13 be treated as a business day to the extent that 1 or more  
 14 established securities markets for trading securities are  
 15 not open.”

16                   (B) CIVIL PENALTIES FOR FAILURE TO  
 17 PROVIDE NOTICE.—Section 502 of such Act is  
 18 amended—

19                   (i) in subsection (a)(6), by striking  
 20 “or (6)” and inserting “(6), or (7)”;

21                   (ii) by redesignating paragraph (7) of  
 22 subsection (c) as paragraph (8); and

23                   (iii) by inserting after paragraph (6)  
 24 of subsection (c) the following new para-  
 25 graph:

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

8       (b) INAPPLICABILITY OF RELIEF FROM FIDUCIARY  
 9 LIABILITY DURING SUSPENSION OF ABILITY OF PARTICI-  
 10 PANT OR BENEFICIARY TO DIRECT INVESTMENTS.—Sec-  
 11 tion 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is  
 12 amended—

13           (1) in subparagraph (B), by inserting before  
 14 the period the following: “, except that this subpara-  
 15 graph shall not apply for any period during which  
 16 the ability of a participant or beneficiary to direct  
 17 the investment of assets in his or her individual ac-  
 18 count is suspended by a plan sponsor or fiduciary”;  
 19 and

20           (2) by adding at the end the following:  
 21 “Any limitation or restriction that may govern the fre-  
 22 quency of transfers between investment vehicles shall not  
 23 be treated as a suspension referred to in subparagraph  
 24 (B) to the extent such limitation or restriction is disclosed  
 25 to participants or beneficiaries through the summary plan

1 description or materials describing specific investment al-  
 2 ternatives under the plan.”

3 “(c) SAFE HARBOR GUIDANCE.—The Secretary of  
 4 Labor, in consultation with the Secretary of Treasury,  
 5 shall, prior to December 31, 2002, issue final regulations  
 6 providing clear guidance, including safe harbors, on how  
 7 plan sponsors or any other affected fiduciaries can satisfy  
 8 their fiduciary responsibilities during any period which the  
 9 ability of a participant or beneficiary to direct the invest-  
 10 ment of assets in his or her individual account is sus-  
 11 pended.”

12 (d) EFFECTIVE DATE.—

13 (1) IN GENERAL.—The amendments made by  
 14 this section shall apply to plan years beginning after  
 15 December 31, 2002.

16 (2) EXCEPTIONS TO 30-DAY NOTICE.—The Sec-  
 17 retary of the Treasury shall, no later than 120 days  
 18 after the date of the enactment of this Act, specify  
 19 the circumstances under section 4980G(e)(3)(B)(ii)  
 20 of the Internal Revenue Code of 1986 under which  
 21 the 30-day notice rule would not apply and the time  
 22 by which the notice is required to be provided.

1 **SEC. 202. CERTAIN SALES AND PURCHASES OF COMPANY**  
 2 **STOCK BY CORPORATE INSIDERS TO BE SUB-**  
 3 **JECT TO EXCISE TAX ON GOLDEN PARA-**  
 4 **CHUTE PAYMENTS.**

5 (a) IN GENERAL.—Section 4999 of the Internal Rev-  
 6 enue Code of 1986 (relating to golden parachute pay-  
 7 ments) is amended by redesignating subsection (c) as sub-  
 8 section (d) and by inserting after subsection (b) the fol-  
 9 lowing new subsection:

10 “(c) CERTAIN SALES OF COMPANY STOCK BY COR-  
 11 PORATE INSIDERS.—

12 “(1) TREATMENT AS EXCESS PARACHUTE PAY-  
 13 MENT.—

14 “(A) IN GENERAL.—For purposes of this  
 15 section, if there is a sale or exchange, or pur-  
 16 chase, of stock in a corporation by a corporate  
 17 insider during any period in which a transaction  
 18 suspension period affecting the ability of par-  
 19 ticipants and beneficiaries to invest stock in  
 20 such corporation is in effect with respect to a  
 21 defined contribution plan—

22 “(i) to which section 401(a) (28) or  
 23 (35) applies, and

24 “(ii) which is maintained by such cor-  
 25 poration (or any other entity consolidated  
 26 with such corporation for purposes of re-

1                   porting to the Securities and Exchange  
 2                   Commission),  
 3           any amount realized by the corporate insider on  
 4           such sale or exchange (or the purchase price in  
 5           the case of a purchase) shall be treated as an  
 6           excess parachute payment.

7                   “(B) LIMITATION.—Subparagraph (A)  
 8           shall only apply to stock acquired by an indi-  
 9           vidual by reason of the individual’s employment  
 10          with the corporation or by reason of any other  
 11          relationship with the corporation that makes  
 12          the individual a corporate insider.

13                   “(2) APPLICATION TO OTHER INSTRUMENTS.—  
 14          For purposes of paragraph (1)—

15                   “(A) any sale or exchange, or purchase, of  
 16           an option, warrant, or other derivative of stock  
 17           in a corporation,

18                   “(B) any transaction involving the exercise  
 19           of an option, warrant, or other derivative of  
 20           stock in a corporation, or

21                   “(C) any similar transaction,  
 22          shall be treated in the same manner as a transaction  
 23          involving the sale or exchange, or purchase, of stock.

24                   “(3) CORPORATE INSIDER.—For purposes of  
 25          this subsection, the term ‘corporate insider’ means,

1 with respect to a corporation, any individual who is  
 2 subject to the requirements of section 16(a) of the  
 3 Securities Exchange Act of 1934 with respect to  
 4 such corporation.

5 “(4) TRANSACTION SUSPENSION PERIOD.—The  
 6 term ‘transaction suspension period’ has the mean-  
 7 ing given such term by section 4980G(f)(2).”

8 (b) EFFECTIVE DATE.—The amendments made by  
 9 this section shall apply to sales and exchanges after the  
 10 120th day after the date of the enactment of this Act.

# 11 **TITLE III—PROVIDING OF IN-** 12 **FORMATION TO ASSIST PAR-** 13 **TICIPANTS**

## 14 **SEC. 301. PERIODIC PENSION BENEFITS STATEMENTS.**

15 (a) EXCISE TAX.—

16 (1) IN GENERAL.—Chapter 43 of the Internal  
 17 Revenue Code of 1986 (relating to qualified pension,  
 18 etc., plans), as amended by this Act, is amended by  
 19 adding at the end the following new section:

## 20 **“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-** 21 **TION PLANS TO PROVIDE REQUIRED QUAR-** 22 **TERLY STATEMENTS.**

23 “(a) IMPOSITION OF TAX.—There is hereby imposed  
 24 a tax on the failure of an applicable defined contribution

1 plan to meet the requirements of subsection (e) with re-  
 2 spect to any participant or beneficiary.

3 “(b) AMOUNT OF TAX.—

4 “(1) IN GENERAL.—The amount of the tax im-  
 5 posed by subsection (a) on any failure with respect  
 6 to any participant or beneficiary shall be \$100 for  
 7 each day in the noncompliance period with respect to  
 8 the failure.

9 “(2) NONCOMPLIANCE PERIOD.—For purposes  
 10 of this section, the term ‘noncompliance period’  
 11 means, with respect to any failure, the period begin-  
 12 ning on the date the failure first occurs and ending  
 13 on the date the statement to which the failure re-  
 14 lates is provided or the failure is otherwise corrected.

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

16 “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
 17 DISCOVERED AND REASONABLE DILIGENCE EXER-  
 18 CISED.—No tax shall be imposed by subsection (a)  
 19 on any failure during any period for which it is es-  
 20 tablished to the satisfaction of the Secretary that  
 21 any person subject to liability for tax under sub-  
 22 section (d) did not know that the failure existed and  
 23 exercised reasonable diligence to meet the require-  
 24 ments of subsection (e).

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

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

8           “(B) such person provides the statement  
 9       described in subsection (e) during the 30-day  
 10      period beginning on the first date such person  
 11      knew, or exercising reasonable diligence should  
 12      have known, that such failure existed.

13          “(3) OVERALL LIMITATION FOR UNINTEN-  
 14      TIONAL FAILURES.—

15          “(A) IN GENERAL.—If the person subject  
 16      to liability for tax under subsection (d) exer-  
 17      cised reasonable diligence to meet the require-  
 18      ments of subsection (e), the tax imposed by  
 19      subsection (a) for failures during the taxable  
 20      year of the employer (or, in the case of a multi-  
 21      employer plan, the taxable year of the trust  
 22      forming part of the plan) shall not exceed  
 23      \$500,000. For purposes of the preceding sen-  
 24      tence, all multiemployer plans of which the



1 same trust forms a part shall be treated as 1  
2 plan.

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

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

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

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

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

23 “(e) REQUIREMENT TO PROVIDE QUARTERLY  
24 STATEMENTS.—

1           “(1) IN GENERAL.—The administrator of an  
2           applicable defined contribution plan shall furnish a  
3           pension benefit statement—

4                   “(A) to a plan participant at least once  
5                   each calendar quarter, and

6                   “(B) to a plan beneficiary upon written re-  
7                   quest but no more frequently than once during  
8                   any 12-month period.

9           “(2) STATEMENT.—

10                   “(A) IN GENERAL.—A pension benefit  
11                   statement under paragraph (1) shall indicate,  
12                   on the basis of the latest available  
13                   information—

14                           “(i) the total benefits accrued, and

15                           “(ii) the nonforfeitable pension bene-  
16                           fits, if any, which have accrued, or the ear-  
17                           liest date on which benefits will become  
18                           nonforfeitable.

19                   “(B) SPECIFIC INFORMATION.—A pension  
20                   benefit statement under paragraph (1) shall in-  
21                   clude (together with the information required in  
22                   subparagraph (A))—

23                           “(i) the value of any assets held in the  
24                           form of employer securities, without regard  
25                           to whether such securities were contributed

by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and an explanation of any limitations or restrictions on the right of the participant or beneficiary to direct an investment; and

“(ii) an explanation of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities.

“(3) MANNER OF STATEMENT.—A pension benefit statement under paragraph (1)—

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

“(B) may be provided in written, electronic, or other appropriate form.

“(f) APPLICABLE DEFINED CONTRIBUTION PLAN.—

For purposes of this section, the term ‘applicable defined contribution plan’ means a defined contribution plan which—

1 “(1) is a qualified retirement plan (as defined  
2 in section 4974(c)), and

3 “(2) permits a participant or beneficiary to ex-  
4 ercise control over assets in his or her account.”

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

“Sec. 4980H. Failure of certain defined contribution plans to provide required  
quarterly statements.”

8 (b) AMENDMENTS OF ERISA.—

9 (1) IN GENERAL.—Section 105(a) of the Em-  
10 ployee Retirement Income Security Act of 1974 (29  
11 U.S.C. 1025(a)) is amended to read as follows:

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

14 “(i) to a plan participant at least once annually  
15 (each calendar quarter in the case of an applicable  
16 individual account plan), and

17 “(ii) to a plan beneficiary upon written request.

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

20 “(i) at least once every 3 years to each partici-  
21 pant with a nonforfeitable accrued benefit who is  
22 employed by the employer maintaining the plan at  
23 the time the statement is furnished to participants,  
24 and

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

3 Information furnished under subparagraph (B) to a par-  
4 ticipant (other than at the request of the participant) may  
5 be based on reasonable estimates determined under regu-  
6 lations prescribed by the Secretary.

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

9           “(i) shall indicate, on the basis of the latest  
10          available information—

11                  “(I) the total benefits accrued, and

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

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

17           “(iii) may be provided in written, electronic, tel-  
18          ephonic, or other appropriate form.

19           “(B) In the case of an applicable individual account  
20 plan, the pension benefit statement under paragraph (1)  
21 shall include (together with the information required in  
22 subparagraph (A))—

23                  “(i) the value of any assets held in the form of  
24          employer securities, without regard to whether such  
25          securities were contributed by the plan sponsor or

1       acquired at the direction of the plan or of the partic-  
 2       ipant or beneficiary, and an explanation of any limi-  
 3       tations or restrictions on the right of the participant  
 4       or beneficiary to direct an investment, and

5           “(ii) an explanation of the importance, for the  
 6       long-term retirement security of participants and  
 7       beneficiaries, of a well-balanced and diversified in-  
 8       vestment portfolio, including a discussion of the risk  
 9       of holding substantial portions of a portfolio in the  
 10      security of any 1 entity, such as employer securities.

11      “(C) For purposes of this subsection, the term ‘appli-  
 12      cable individual account plan’ means an individual account  
 13      plan to which section 404(c) applies.

14      “(3)(A) In the case of a defined benefit plan, the re-  
 15      quirements of paragraph (1)(B)(i) shall be treated as met  
 16      with respect to a participant if the administrator provides  
 17      the participant at least once each year with notice of the  
 18      availability of the pension benefit statement and the ways  
 19      in which the participant may obtain such statement. Such  
 20      notice shall be provided in written, electronic, telephonic,  
 21      or other appropriate form, and may be included with other  
 22      communications to the participant if done in a manner  
 23      reasonably designed to attract the attention of the partici-  
 24      pant.

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

7       (c) CONFORMING AMENDMENTS.—

8           (1) Section 105 of the Employee Retirement In-  
 9 come Security Act of 1974 (29 U.S.C. 1025) is  
 10 amended by striking subsection (d).

11          (2) Section 105(b) of such Act (29 U.S.C.  
 12 1025(b)) is amended to read as follows:

13       “(b) In no case shall a participant or beneficiary of  
 14 a plan be entitled to more than 1 statement described in  
 15 subsection (a)(1) (A)(ii) or (B)(ii), whichever is applicable,  
 16 in any 12-month period.”

17       (d) MODEL STATEMENTS.—The Secretary of Labor  
 18 shall develop 1 or more model benefit statements, written  
 19 in a manner calculated to be understood by the average  
 20 plan participant, that may be used by plan administrators  
 21 in complying with the requirements of section 4980H of  
 22 the Internal Revenue Code of 1986 and section 105 of  
 23 the Employee Retirement Income Security Act of 1974.

1       (e) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to plan years beginning after De-  
3 cember 31, 2003.

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