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[Report No. 107-242]

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.

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

AUGUST 2, 2002

Reported under authority of the order of the Senate of August 1, 2002, by
Mr. BAUCUS, with an amendment

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

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”.

6 **TITLE I—DIVERSIFICATION OF**
 7 **PENSION PLAN ASSETS**

8 **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO**
 9 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**
 10 **VEST THEIR PLAN ASSETS.**

11 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

12 (1) QUALIFICATION REQUIREMENT.—Section
 13 401(a) of the Internal Revenue Code of 1986 (relat-
 14 ing to qualified pension, profit-sharing, and stock
 15 bonus plans) is amended by inserting after para-
 16 graph (34) the following new paragraph:

17 “(35) DIVERSIFICATION REQUIREMENTS FOR
 18 CERTAIN DEFINED CONTRIBUTION PLANS.—

19 “(A) IN GENERAL.—A trust which is part
 20 of an applicable defined contribution plan shall
 21 not be treated as a qualified trust unless the
 22 plan—

23 “(i) provides that a participant or
 24 beneficiary of a participant has the right
 25 at any time to invest any elective deferrals

(and earnings thereon) contributed to his or her account in the form of publicly traded employer securities in any other investment option offered under the plan;

“(ii) provides that a participant with 3 or more years of service and any beneficiary of a participant has the right to invest any publicly traded employer securities (and earnings thereon) to which clause (i) does not apply and which are allocated to his or her account in any other investment option offered under the plan; and

“(iii) offers at least 3 investment options (not inconsistent with regulations prescribed by the Secretary).

“(B) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—A plan shall not meet the requirements of subparagraph (A) if the plan imposes restrictions or conditions on the investment of publicly traded employer securities which are not imposed on the investment of other assets of the plan. This subparagraph shall not apply to any restrictions or conditions imposed by reason of application of securities laws.

1 ~~“(C) APPLICABLE DEFINED CONTRIBU-~~
 2 ~~TION PLAN.—For purposes of this paragraph—~~

3 ~~“(i) IN GENERAL.—The term ‘applica-~~
 4 ~~ble defined contribution plan’ means any~~
 5 ~~defined contribution plan which holds any~~
 6 ~~publicly traded employer securities.~~

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

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

16 ~~“(H) such plan is a separate plan~~
 17 ~~(within the meaning of section 414(l))~~
 18 ~~with respect to any other defined ben-~~
 19 ~~efit plan or defined contribution plan~~
 20 ~~maintained by the same employer or~~
 21 ~~employers.~~

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

24 ~~“(i) PUBLICLY TRADED EMPLOYER~~
 25 ~~SECURITIES.—The term ‘publicly traded~~

1 employer securities' means employer secu-
 2 rities which are readily tradable on an es-
 3 tablished securities market.

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

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

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

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

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

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

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

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

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

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

24 “(3)(A) For purposes of this subsection, the term ‘ap-
25 plicable individual account plan’ means any individual ac-

1 count plan which holds any publicly traded employer secu-
 2 rities.

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

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

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

15 ~~“(4) For purposes of this subsection—~~

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

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

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

23 ~~(e) EFFECTIVE DATES.—~~

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

4 (2) ~~SPECIAL RULE FOR COLLECTIVELY BAR-~~
 5 ~~GAINED AGREEMENTS.~~—In the case of a plan main-
 6 tained pursuant to 1 or more collective bargaining
 7 agreements between employee representatives and 1
 8 or more employers ratified on or before the date of
 9 the enactment of this Act, subsection (a) shall be ap-
 10 plied to benefits pursuant to, and individuals covered
 11 by, any such agreement by substituting for “Janu-
 12 ary 1, 2003” the earlier of—

13 (A) the later of—

14 (i) ~~January 1, 2004, or~~

15 (ii) the date on which the last of such
 16 collective bargaining agreements termi-
 17 nates (determined without regard to any
 18 extension thereof after such date of enact-
 19 ment); or

20 (B) ~~January 1, 2005.~~

1 **TITLE II—PROTECTION OF EM-**
 2 **PLOYEES DURING PENSION**
 3 **PLAN TRANSACTION SUSPEN-**
 4 **SION PERIOD**

5 **SEC. 201. PROTECTION OF PARTICIPANTS OR BENE-**
 6 **FICIARIES FROM SUSPENSION OF ABILITY TO**
 7 **DIVERSIFY PLAN ASSETS.**

8 (a) NOTICE REQUIREMENTS.—

9 (1) EXCISE TAX.—

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. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE**
 15 **NOTICE OF TRANSACTION SUSPENSION PE-**
 16 **RIOD.**

17 “(a) IMPOSITION OF TAX.—There is hereby imposed
 18 a tax on the failure of any applicable defined contribution
 19 plan to meet the requirements of subsection (c) with re-
 20 spect to any participant or beneficiary.

21 “(b) AMOUNT OF TAX.—

22 “(1) IN GENERAL.—The amount of the tax im-
 23 posed by subsection (a) on any failure with respect
 24 to any participant or beneficiary shall be \$100 for

1 each day in the noncompliance period with respect
 2 to the failure.

3 ~~“(2) NONCOMPLIANCE PERIOD.—~~For purposes
 4 of this section, the term ‘noncompliance period’
 5 means, with respect to any failure, the period begin-
 6 ning on the date the failure first occurs and ending
 7 on the date the notice to which the failure relates is
 8 provided or the failure is otherwise corrected.

9 ~~“(c) LIMITATIONS ON AMOUNT OF TAX.—~~

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

19 ~~“(2) TAX NOT TO APPLY TO FAILURES COR-~~
 20 ~~RECTED AS SOON AS REASONABLY PRACTICABLE.—~~
 21 No tax shall be imposed by subsection (a) on any
 22 failure if—

23 ~~“(A) any person subject to liability for the~~
 24 ~~tax under subsection (d) exercised reasonable~~

diligence to meet the requirements of subsection (e), and

“(B) such person provides the notice described in subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

“(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

“(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed \$500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

“(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section

1 do not have the same taxable year, the taxable
 2 years taken into account shall be determined
 3 under principles similar to the principles of sec-
 4 tion 1561.

5 “(4) WAIVER BY SECRETARY.—In the case of a
 6 failure which is due to reasonable cause and not to
 7 willful neglect, the Secretary may waive part or all
 8 of the tax imposed by subsection (a) to the extent
 9 that the payment of such tax would be excessive or
 10 otherwise inequitable relative to the failure involved.

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

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

15 “(2) In the case of a multiemployer plan, the
 16 plan.

17 “(e) NOTICE OF TRANSACTION SUSPENSION PE-
 18 RIOD.—

19 “(1) IN GENERAL.—The plan administrator of
 20 an applicable defined contribution plan shall provide
 21 notice of any transaction suspension period to each
 22 participant or beneficiary to whom the transaction
 23 suspension period applies (and to any employee or-
 24 ganization representing such participants).

1 ~~“(2) NOTICE.—~~The notice required by para-
 2 graph (1) shall be written in a manner calculated to
 3 be understood by the average plan participant and
 4 shall provide sufficient information (as determined
 5 in accordance with rules or other guidance adopted
 6 by the Secretary) to allow applicable individuals to
 7 understand the timing and effect of such transaction
 8 suspension period.

9 ~~“(3) TIMING OF NOTICE.—~~

10 ~~“(A) IN GENERAL.—~~Except as provided in
 11 subparagraph (B), the notice required by para-
 12 graph (1) shall be provided not later than 30
 13 days before the beginning of the transaction
 14 suspension period.

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

16 ~~“(i) UNPLANNED EVENTS.—~~In the
 17 case of any transaction suspension period
 18 which is imposed by reason of an event
 19 outside of the control of a plan sponsor or
 20 administrator, subparagraph (A) shall not
 21 apply and the notice shall be furnished as
 22 soon as reasonably possible under the cir-
 23 cumstances.

24 ~~“(ii) ACQUISITIONS, ETC.—~~In the case
 25 of any transaction suspension period—

1 “(I) in connection with an acqui-
 2 sition or disposition to which section
 3 410(b)(6)(C) applies; or

4 “(H) due to such other cir-
 5 cumstances specified by the Secretary,
 6 the Secretary may provide that subpara-
 7 graph (A) shall not apply and the notice
 8 shall be furnished at such time as the Sec-
 9 retary specifies.

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

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

17 “(1) APPLICABLE DEFINED CONTRIBUTION
 18 PLAN.—The term ‘applicable defined contribution
 19 plan’ means a defined contribution plan which—

20 “(A) is a qualified retirement plan (as de-
 21 fined in section 4974(c)); and

22 “(B) permits a participant or beneficiary
 23 to exercise control over assets in his or her ac-
 24 count.

25 “(2) TRANSACTION SUSPENSION PERIOD.—

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

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

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

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

17 (2) AMENDMENTS OF ERISA.—

18 (A) IN GENERAL.—Section 101 of the Em-
 19 ployee Retirement Income Security Act of 1974
 20 (29 U.S.C. 11021) is amended by redesignating
 21 the second subsection (h) as subsection (j) and
 22 by inserting after the first subsection (h) the
 23 following new subsection:

1 “(i)(1) The plan administrator of an individual ac-
 2 count plan which permits a participant or beneficiary to
 3 exercise control over assets in his or her account applies
 4 shall provide notice of any transaction suspension period
 5 to each participant or beneficiary to whom the transaction
 6 suspension period applies (and to any employee organiza-
 7 tion representing such participants).

8 “(2) The notice required by paragraph (1) shall be
 9 written in a manner calculated to be understood by the
 10 average plan participant and shall provide sufficient infor-
 11 mation (as determined in accordance with rules or other
 12 guidance adopted by the Secretary of the Treasury) to
 13 allow applicable individuals to understand the timing and
 14 effect of such transaction suspension period.

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

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

24 “(ii) In the case of any transaction suspension
 25 period—

1 “(I) in connection with an acquisition or dis-
2 position to which section 410(b)(6)(C) of the Inter-
3 nal Revenue Code of 1986 applies; or

4 “(H) due to such other circumstances specified
5 by the Secretary of the Treasury,

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

9 “(4) The notice required by paragraph (1) shall be
10 in writing; except that such notice may be in electronic
11 or other form to the extent that such form is reasonably
12 accessible to the applicable individual.

13 “(5)(A) For purposes of this subparagraph, the term
14 ‘transaction suspension period’ means a temporary or in-
15 definite period of 2 or more consecutive business days dur-
16 ing which there is a substantial reduction (other than by
17 reason of application of securities laws) in the rights of
18 1 or more participants or beneficiaries to direct invest-
19 ments in an individual account plan.

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

1 (B) CIVIL PENALTIES FOR FAILURE TO
2 PROVIDE NOTICE.—Section 502 of such Act is
3 amended—

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

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

8 (iii) by inserting after paragraph (6)
9 of subsection (c) the following new para-
10 graph:

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

18 (b) INAPPLICABILITY OF RELIEF FROM FIDUCIARY
19 LIABILITY DURING SUSPENSION OF ABILITY OF PARTICI-
20 PANT OR BENEFICIARY TO DIRECT INVESTMENTS.—Sec-
21 tion 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is
22 amended—

23 (1) in subparagraph (B), by inserting before
24 the period the following: “; except that this subpara-
25 graph shall not apply for any period during which

1 the ability of a participant or beneficiary to direct
 2 the investment of assets in his or her individual ac-
 3 count is suspended by a plan sponsor or fiduciary”;
 4 and

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

6 “Any limitation or restriction that may govern the fre-
 7 quency of transfers between investment vehicles shall not
 8 be treated as a suspension referred to in subparagraph
 9 (B) to the extent such limitation or restriction is disclosed
 10 to participants or beneficiaries through the summary plan
 11 description or materials describing specific investment al-
 12 ternatives under the plan.”

13 “(c) SAFE HARBOR GUIDANCE.—The Secretary of
 14 Labor, in consultation with the Secretary of Treasury,
 15 shall, prior to December 31, 2002, issue final regulations
 16 providing clear guidance, including safe harbors, on how
 17 plan sponsors or any other affected fiduciaries can satisfy
 18 their fiduciary responsibilities during any period which the
 19 ability of a participant or beneficiary to direct the invest-
 20 ment of assets in his or her individual account is sus-
 21 pended.”

22 (d) EFFECTIVE DATE.—

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

1 ~~(2) EXCEPTIONS TO 30-DAY NOTICE.~~—The Sec-
 2 retary of the Treasury shall, no later than 120 days
 3 after the date of the enactment of this Act, specify
 4 the circumstances under section 4980G(c)(3)(B)(ii)
 5 of the Internal Revenue Code of 1986 under which
 6 the 30-day notice rule would not apply and the time
 7 by which the notice is required to be provided.

8 **SEC. 202. CERTAIN SALES AND PURCHASES OF COMPANY**
 9 **STOCK BY CORPORATE INSIDERS TO BE SUB-**
 10 **JECT TO EXCISE TAX ON GOLDEN PARA-**
 11 **CHUTE PAYMENTS.**

12 ~~(a) IN GENERAL.~~—Section 4999 of the Internal Rev-
 13 enue Code of 1986 (relating to golden parachute pay-
 14 ments) is amended by redesignating subsection (e) as sub-
 15 section (d) and by inserting after subsection (b) the fol-
 16 lowing new subsection:

17 ~~“(e) CERTAIN SALES OF COMPANY STOCK BY COR-~~
 18 ~~PORATE INSIDERS.—~~

19 ~~“(1) TREATMENT AS EXCESS PARACHUTE PAY-~~
 20 ~~MENT.—~~

21 ~~“(A) IN GENERAL.~~—For purposes of this
 22 section, if there is a sale or exchange, or pur-
 23 chase, of stock in a corporation by a corporate
 24 insider during any period in which a transaction
 25 suspension period affecting the ability of par-

1 participants and beneficiaries to invest stock in
 2 such corporation is in effect with respect to a
 3 defined contribution plan—

4 “(i) to which section 401(a) (28) or
 5 (35) applies; and

6 “(ii) which is maintained by such cor-
 7 poration (or any other entity consolidated
 8 with such corporation for purposes of re-
 9 porting to the Securities and Exchange
 10 Commission);

11 any amount realized by the corporate insider on
 12 such sale or exchange (or the purchase price in
 13 the case of a purchase) shall be treated as an
 14 excess parachute payment.

15 “(B) LIMITATION.—Subparagraph (A)
 16 shall only apply to stock acquired by an indi-
 17 vidual by reason of the individual’s employment
 18 with the corporation or by reason of any other
 19 relationship with the corporation that makes
 20 the individual a corporate insider.

21 “(2) APPLICATION TO OTHER INSTRUMENTS.—

22 For purposes of paragraph (1)—

23 “(A) any sale or exchange, or purchase, of
 24 an option, warrant, or other derivative of stock
 25 in a corporation;

1 “(B) any transaction involving the exercise
2 of an option, warrant, or other derivative of
3 stock in a corporation, or

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

7 “(3) CORPORATE INSIDER.—For purposes of
8 this subsection, the term ‘corporate insider’ means,
9 with respect to a corporation, any individual who is
10 subject to the requirements of section 16(a) of the
11 Securities Exchange Act of 1934 with respect to
12 such corporation.

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

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to sales and exchanges after the
18 120th day after the date of the enactment of this Act.

19 **TITLE III—PROVIDING OF IN-**
20 **FORMATION TO ASSIST PAR-**
21 **TICIPANTS**

22 **SEC. 301. PERIODIC PENSION BENEFITS STATEMENTS.**

23 (a) EXCISE TAX.—

24 (1) IN GENERAL.—Chapter 43 of the Internal
25 Revenue Code of 1986 (relating to qualified pension,

1 etc., plans); as amended by this Act, is amended by
2 adding at the end the following new section:

3 **“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-**
4 **TION PLANS TO PROVIDE REQUIRED QUAR-**
5 **TERLY STATEMENTS.**

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

10 ~~“(b) AMOUNT OF TAX.—~~

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

16 ~~“(2) NONCOMPLIANCE PERIOD.—~~For purposes
17 of this section, the term ‘noncompliance period’
18 means, with respect to any failure, the period begin-
19 ning on the date the failure first occurs and ending
20 on the date the statement to which the failure re-
21 lates is provided or the failure is otherwise corrected.

22 ~~“(c) LIMITATIONS ON AMOUNT OF TAX.—~~

23 ~~“(1) TAX NOT TO APPLY WHERE FAILURE NOT~~
24 ~~DISCOVERED AND REASONABLE DILIGENCE EXER-~~
25 ~~CISED.—~~No tax shall be imposed by subsection (a)

on any failure during any period for which it is established to the satisfaction of the Secretary that any person subject to liability for tax under subsection (d) did not know that the failure existed and exercised reasonable diligence to meet the requirements of subsection (e).

~~“(2) TAX NOT TO APPLY TO FAILURES CORRECTED WITHIN 30 DAYS.—~~No tax shall be imposed by subsection (a) on any failure if—

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

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

~~“(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—~~

~~“(A) IN GENERAL.—~~If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable

1 year of the employer (or, in the case of a multi-
 2 employer plan, the taxable year of the trust
 3 forming part of the plan) shall not exceed
 4 \$500,000. For purposes of the preceding sen-
 5 tence, all multiemployer plans of which the
 6 same trust forms a part shall be treated as 1
 7 plan.

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

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

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

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

1 “(2) In the case of a multiemployer plan, the
2 plan:

3 “(e) REQUIREMENT TO PROVIDE QUARTERLY
4 STATEMENTS.—

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

8 “(A) to a plan participant at least once
9 each calendar quarter; and

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

13 “(2) STATEMENT.—

14 “(A) IN GENERAL.—A pension benefit
15 statement under paragraph (1) shall indicate,
16 on the basis of the latest available
17 information—

18 “(i) the total benefits accrued; and

19 “(ii) the nonforfeitable pension bene-
20 fits, if any, which have accrued; or the ear-
21 liest date on which benefits will become
22 nonforfeitable.

23 “(B) SPECIFIC INFORMATION.—A pension
24 benefit statement under paragraph (1) shall in-

clude (together with the information required in subparagraph (A))—

“(i) the value of any assets held in the form of employer securities, without regard 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

1 “(B) may be provided in written, elec-
2 tronic, or other appropriate form.

3 ~~“(f) APPLICABLE DEFINED CONTRIBUTION PLAN.—~~

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

7 ~~“(1) is a qualified retirement plan (as defined~~
8 ~~in section 4974(e)), and~~

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

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

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

14 ~~(b) AMENDMENTS OF ERISA.—~~

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

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

20 ~~“(i) to a plan participant at least once annually~~
21 ~~(each calendar quarter in the case of an applicable~~
22 ~~individual account plan); and~~

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

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

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

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

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

14 “(2)(A) A pension benefit statement under paragraph
15 (1)—

16 “(i) shall indicate, on the basis of the latest
17 available information—

18 “(I) the total benefits accrued, and

19 “(II) the nonforfeitable pension benefits, if
20 any, which have accrued, or the earliest date on
21 which benefits will become nonforfeitable;

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

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

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

5 “(i) the value of any assets held in the form of
 6 employer securities, without regard to whether such
 7 securities were contributed by the plan sponsor or
 8 acquired at the direction of the plan or of the partic-
 9 ipant or beneficiary, and an explanation of any limi-
 10 tations or restrictions on the right of the participant
 11 or beneficiary to direct an investment, and

12 “(ii) an explanation of the importance, for the
 13 long-term retirement security of participants and
 14 beneficiaries, of a well-balanced and diversified in-
 15 vestment portfolio, including a discussion of the risk
 16 of holding substantial portions of a portfolio in the
 17 security of any 1 entity, such as employer securities.

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

21 “(3)(A) In the case of a defined benefit plan, the re-
 22 quirements of paragraph (1)(B)(i) shall be treated as met
 23 with respect to a participant if the administrator provides
 24 the participant at least once each year with notice of the
 25 availability of the pension benefit statement and the ways

1 in which the participant may obtain such statement. Such
 2 notice shall be provided in written, electronic, telephonic,
 3 or other appropriate form, and may be included with other
 4 communications to the participant if done in a manner
 5 reasonably designed to attract the attention of the partici-
 6 pant.

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

13 (c) CONFORMING AMENDMENTS.—

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

17 (2) Section 105(b) of such Act (29 U.S.C.
 18 1025(b)) is amended to read as follows:

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

23 (d) MODEL STATEMENTS.—The Secretary of Labor
 24 shall develop 1 or more model benefit statements, written
 25 in a manner calculated to be understood by the average

1 plan participant, that may be used by plan administrators
 2 in complying with the requirements of section 4980H of
 3 the Internal Revenue Code of 1986 and section 105 of
 4 the Employee Retirement Income Security Act of 1974.

5 (e) **EFFECTIVE DATE.**—The amendments made by
 6 this section shall apply to plan years beginning after De-
 7 cember 31, 2003.

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

9 (a) **SHORT TITLE.**—*This Act may be cited as the “Na-*
 10 *tional Employee Savings and Trust Equity Guarantee*
 11 *Act”.*

12 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

TITLE I—DIVERSIFICATION OF PENSION PLAN ASSETS

Sec. 101. Defined contribution plans required to provide employees with freedom to invest their plan assets.

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

Sec. 201. Notice to participants or beneficiaries of transaction suspension periods.

Sec. 202. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.

Sec. 203. Clarification of participant access to remedies.

Sec. 204. Increase in maximum bond amount for plans holding employer securities.

TITLE III—PROVIDING OF INFORMATION TO ASSIST PARTICIPANTS

Subtitle A—General Provisions

Sec. 301. Periodic pension benefit statements.

Sec. 302. Defined contribution plans required to provide adequate investment education to participants.

Sec. 303. Information on optional form of benefits.

Sec. 304. Fiduciary duty to provide material information relating to investment in employer securities.

Sec. 305. Electronic disclosure of insider trading.

Sec. 306. Fiduciary rules for plan sponsors designating independent investment advisers.

TITLE IV—OTHER PROVISIONS RELATING TO PENSIONS

Subtitle A—General Provisions

- Sec. 401. Employee Plans Compliance Resolution System.*
- Sec. 402. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.*
- Sec. 403. Notice and consent period regarding distributions.*
- Sec. 404. Technical corrections to Saver Act.*
- Sec. 405. Missing participants.*
- Sec. 406. Reduced PBGC premium for new plans of small employers.*
- Sec. 407. Reduction of additional PBGC premium for new and small plans.*
- Sec. 408. Authorization for PBGC to pay interest on premium overpayment refunds.*
- Sec. 409. Substantial owner benefits in terminated plans.*
- Sec. 410. Benefit suspension notice.*
- Sec. 411. Interest rate range for additional funding requirements.*
- Sec. 412. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.*
- Sec. 413. Automatic rollovers of certain mandatory distributions.*
- Sec. 414. 2-year extension of transition rule to pension funding requirements.*

Subtitle B—Studies

- Sec. 421. Study regarding insurance system for individual account plans.*
- Sec. 422. Study regarding fees charged by individual account plans.*
- Sec. 423. Study on revitalizing defined benefit plans.*
- Sec. 424. Study on floor-offset ESOPS.*

Subtitle C—Plan Amendments

- Sec. 431. Provisions relating to plan amendments.*

TITLE V—PROVISIONS RELATING TO EXECUTIVES AND STOCK OPTIONS

Subtitle A—Provisions Relating to Executives

PART I—EXECUTIVE COMPENSATION

- Sec. 501. Repeal of 1978 Revenue Act limitation on Secretary of the Treasury's authority to determine year of inclusion of amounts under private deferred compensation plans.*
- Sec. 502. Treatment of nonqualified deferred compensation funded with assets located outside the United States.*
- Sec. 503. Treatment of employment loans made to corporate executives.*
- Sec. 504. Increase in withholding from supplemental wage payments in excess of \$1,000,000.*

PART II—SIGNING CORPORATE TAX RETURNS

- Sec. 511. Signing of corporate tax returns by chief executive officer.*

Subtitle B—Stock Options

- Sec. 521. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.*

Sec. 522. Treatment of sale of stock acquired pursuant to exercise of stock options to comply with conflict-of-interest requirements.

TITLE I—DIVERSIFICATION OF PENSION PLAN ASSETS

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

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) QUALIFICATION REQUIREMENT.—Section 401(a) of the Internal Revenue Code of 1986 (relating to qualified pension, profit-sharing, and stock bonus plans) is amended by inserting after paragraph (34) the following new paragraph:

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

“(A) IN GENERAL.—A trust which is part of an applicable defined contribution plan shall not be treated as a qualified trust unless the plan meets the requirements of subparagraphs (B) and (C).

“(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of an applicable individual’s account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets

the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

“(C) *EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.*—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual who—

“(i) is a participant who has completed at least 3 years of service, or

“(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

“(D) *INVESTMENT OPTIONS.*—

“(i) *IN GENERAL.*—The requirements of this subparagraph are met if the plan offers not less than 3 investment options,

1 *other than employer securities, to which an*
 2 *applicable individual may direct the pro-*
 3 *ceeds from the divestment of employer secu-*
 4 *rities pursuant to this paragraph, each of*
 5 *which is diversified and has materially dif-*
 6 *ferent risk and return characteristics.*

7 “(ii) *TREATMENTS OF CERTAIN RE-*
 8 *STRICTIONS AND CONDITIONS.—*

9 “(I) *TIME FOR MAKING INVEST-*
 10 *MENT CHOICES.—A plan shall not be*
 11 *treated as failing to meet the require-*
 12 *ments of this subparagraph merely be-*
 13 *cause the plan limits the time for di-*
 14 *vestment and reinvestment to periodic,*
 15 *reasonable opportunities occurring no*
 16 *less frequently than quarterly.*

17 “(II) *CERTAIN RESTRICTIONS AND*
 18 *CONDITIONS NOT ALLOWED.—A plan*
 19 *shall not meet the requirements of this*
 20 *subparagraph if the plan imposes re-*
 21 *strictions or conditions with respect to*
 22 *the investment of employer securities*
 23 *which are not imposed on the invest-*
 24 *ment of other assets of the plan. This*
 25 *subclause shall not apply to any re-*

1 *strictions or conditions imposed by*
 2 *reason of the application of securities*
 3 *laws.*

4 “(E) *APPLICABLE DEFINED CONTRIBUTION*
 5 *PLAN.—For purposes of this paragraph—*

6 “(i) *IN GENERAL.—The term ‘applica-*
 7 *ble defined contribution plan’ means any*
 8 *defined contribution plan which holds any*
 9 *publicly traded employer securities.*

10 “(ii) *EXCEPTION FOR CERTAIN*
 11 *ESOPS.—Such term does not include an em-*
 12 *ployee stock ownership plan if—*

13 “(I) *there are no contributions to*
 14 *such plan (or earnings thereunder)*
 15 *which are held within such plan and*
 16 *are subject to subsection (k) or (m),*
 17 *and*

18 “(II) *such plan is a separate plan*
 19 *for purposes of section 414(l) with re-*
 20 *spect to any other defined benefit plan*
 21 *or defined contribution plan main-*
 22 *tained by the same employer or em-*
 23 *ployers.*

24 “(iii) *EXCEPTION FOR ONE PARTICI-*
 25 *PANT PLANS.—Such term does not include a*

1 *one-participant retirement plan (as defined*
 2 *in section 4980G(f)(2)(B)).*

3 “(F) *CERTAIN PLANS TREATED AS HOLDING*
 4 *PUBLICLY TRADED EMPLOYER SECURITIES.—*

5 “(i) *IN GENERAL.—Except as provided*
 6 *in regulations or in clause (ii), a plan hold-*
 7 *ing employer securities which are not pub-*
 8 *licly traded employer securities shall be*
 9 *treated as holding publicly traded employer*
 10 *securities if any employer corporation, or*
 11 *any member of a controlled group of cor-*
 12 *porations which includes such employer cor-*
 13 *poration, has issued a class of stock which*
 14 *is a publicly traded employer security.*

15 “(ii) *EXCEPTION FOR CERTAIN CON-*
 16 *TROLLED GROUPS WITH PUBLICLY TRADED*
 17 *SECURITIES.—Clause (i) shall not apply to*
 18 *a plan if—*

19 “(I) *no employer corporation, or*
 20 *parent corporation of an employer cor-*
 21 *poration, has issued any publicly trad-*
 22 *ed employer security, and*

23 “(II) *no employer corporation, or*
 24 *parent corporation of an employer cor-*
 25 *poration, has issued any special class*

1 *of stock which grants particular rights*
 2 *to, or bears particular risks for, the*
 3 *holder or issuer with respect to any*
 4 *corporation described in clause (i)*
 5 *which has issued any publicly traded*
 6 *employer security.*

7 “(iii) *DEFINITIONS.—For purposes of*
 8 *this subparagraph, the term—*

9 “(I) ‘controlled group of corpora-
 10 *tions’ has the meaning given such term*
 11 *by section 1563(a), except that ‘50 per-*
 12 *cent’ shall be substituted for ‘80 per-*
 13 *cent’ each place it appears,*

14 “(II) ‘employer corporation’
 15 *means a corporation which is an em-*
 16 *ployer maintaining the plan, and*

17 “(III) ‘parent corporation’ has the
 18 *meaning given such term by section*
 19 *424(e).*

20 “(G) *OTHER DEFINITIONS.—For purposes*
 21 *of this paragraph—*

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

24 “(I) *any participant in the plan,*
 25 *and*

1 “(II) *any beneficiary of a partici-*
 2 *part referred to in clause (i) who has*
 3 *an account under the plan with respect*
 4 *to which the beneficiary is entitled to*
 5 *exercise the rights of the participant.*

6 “(ii) *ELECTIVE DEFERRAL.*—*The term*
 7 *‘elective deferral’ means an employer con-*
 8 *tribution described in section 402(g)(3)(A).*

9 “(iii) *EMPLOYER SECURITY.*—*The*
 10 *term ‘employer security’ has the meaning*
 11 *given such term by section 407(d)(1) of the*
 12 *Employee Retirement Income Security Act*
 13 *of 1974.*

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

18 “(v) *PUBLICLY TRADED EMPLOYER SE-*
 19 *CURITIES.*—*The term ‘publicly traded em-*
 20 *ployer securities’ means employer securities*
 21 *which are readily tradable on an established*
 22 *securities market.*

23 “(vi) *YEAR OF SERVICE.*—*The term*
 24 *‘year of service’ has the meaning given such*
 25 *term by section 411(a)(5).*

1 “(H) *TRANSITION RULE FOR SECURITIES*
 2 *ATTRIBUTABLE TO EMPLOYER CONTRIBUTIONS.—*

3 “(i) *RULES PHASED IN OVER 3*
 4 *YEARS.—*

5 “(I) *IN GENERAL.—In the case of*
 6 *the portion of an account to which sub-*
 7 *paragraph (C) applies and which con-*
 8 *sists of employer securities acquired in*
 9 *a plan year beginning before January*
 10 *1, 2003, subparagraph (C) shall only*
 11 *apply to the applicable percentage of*
 12 *such securities. This subparagraph*
 13 *shall be applied separately with respect*
 14 *to each class of securities.*

15 “(II) *EXCEPTION FOR CERTAIN*
 16 *PARTICIPANTS AGED 55 OR OVER.—*
 17 *Subclause (I) shall not apply to an ap-*
 18 *plicable individual who is a partici-*
 19 *pant who has attained age 55 and*
 20 *completed at least 3 years of service be-*
 21 *fore the first plan year beginning after*
 22 *December 31, 2002.*

23 “(ii) *APPLICABLE PERCENTAGE.—For*
 24 *purposes of clause (i), the applicable per-*
 25 *centage shall be determined as follows:*

“Plan year to which limit applies: The applicable percentage is:

<i>1st</i>	<i>33 percent</i>
<i>2d</i>	<i>66 percent</i>
<i>3d and following</i>	<i>100 percent.</i>

1 “(iii) CONTRIBUTIONS HELD WITHIN
2 AN ESOP.—Notwithstanding clause (i), in
3 the case of employer securities held in an
4 employee stock ownership plan—

5 “(I) the percentage of such em-
6 ployer securities which may be divested
7 by a participant or beneficiary shall
8 not be less than the percentage deter-
9 mined under paragraph (28) (deter-
10 mined as if paragraph (28) applied to
11 a plan described in this paragraph),
12 and

13 “(II) the portion of the account to
14 which subparagraph (C) applies for
15 any year (after application of clause
16 (i)) shall be determined by taking into
17 account the portion of the account to
18 which an election under paragraph
19 (28)(B) applied for prior years.

20 “(I) REGULATIONS.—The Secretary shall
21 prescribe regulations under this paragraph in
22 consultation with the Secretary of Labor.”

23 (2) CONFORMING AMENDMENTS.—

1 (A) Section 401(a)(28)(B) of such Code (re-
 2 lating to additional requirements relating to em-
 3 ployee stock ownership plans) is amended by
 4 adding at the end the following new clause:

5 “(v) *EXCEPTION.*—Except as provided
 6 in paragraph (35)(H), this paragraph shall
 7 not apply to an applicable defined contribu-
 8 tion plan (as defined in paragraph
 9 (35)(C)).”

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

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

18 (b) *AMENDMENTS OF ERISA.*—Section 204 of the *Em-*
 19 *ployee Retirement Income Security Act of 1974* (29 U.S.C.
 20 1054) is amended by redesignating subsection (j) as sub-
 21 section (k) and by adding after subsection (i) the following
 22 new subsection:

23 “(j)(1) An applicable defined contribution plan shall
 24 meet the requirements of paragraphs (2) and (3).

1 “(2) *In the case of the portion of an applicable individ-*
 2 *ual’s account attributable to employee contributions and*
 3 *elective deferrals which is invested in employer securities,*
 4 *a plan meets the requirements of this paragraph if the ap-*
 5 *plicable individual may elect to direct the plan to divest*
 6 *any such securities and to reinvest an equivalent amount*
 7 *in other investment options meeting the requirements of*
 8 *paragraph (4).*

9 “(3) *In the case of the portion of the account attrib-*
 10 *utable to employer contributions other than elective defer-*
 11 *als which is invested in employer securities, a plan meets*
 12 *the requirements of this paragraph if each applicable indi-*
 13 *vidual who—*

14 “(A) *is a participant who has completed at least*
 15 *3 years of service, or*

16 “(B) *is a beneficiary of a participant described*
 17 *in subparagraph (A) or of a deceased participant,*
 18 *may elect to direct the plan to divest any such securities*
 19 *and to reinvest an equivalent amount in other investment*
 20 *options meeting the requirements of paragraph (4).*

21 “(4)(A) *The requirements of this paragraph are met*
 22 *if the plan offers not less than 3 investment options, other*
 23 *than employer securities, to which an applicable individual*
 24 *may direct the proceeds from the divestment of employer*
 25 *securities pursuant to this subsection, each of which is di-*

1 *verified and has materially different risk and return char-*
 2 *acteristics.*

3 “(B)(i) *A plan shall not be treated as failing to meet*
 4 *the requirements of this paragraph merely because the plan*
 5 *limits the time for divestment and reinvestment to periodic,*
 6 *reasonable opportunities occurring no less frequently than*
 7 *quarterly.*

8 “(ii) *A plan shall not meet the requirements of this*
 9 *paragraph if the plan imposes restrictions or conditions*
 10 *with respect to the investment of employer securities which*
 11 *are not imposed on the investment of other assets of the*
 12 *plan. This subparagraph shall not apply to any restrictions*
 13 *or conditions imposed by reason of the application of secu-*
 14 *rities laws.*

15 “(5) *For purposes of this subsection—*

16 “(A) *The term ‘applicable defined contribution*
 17 *plan’ means any defined contribution plan which*
 18 *holds any publicly traded employer securities.*

19 “(B) *Such term does not include an employee*
 20 *stock ownership plan if—*

21 “(i) *there are no contributions to such plan*
 22 *(or earnings thereunder) which are held within*
 23 *such plan and are subject to subsection (k) or*
 24 *(m) of section 401 of the Internal Revenue Code*
 25 *of 1986, and*

1 “(ii) such plan is a separate plan (for pur-
 2 poses of section 414(l) of such Code) with respect
 3 to any other defined benefit plan or defined con-
 4 tribution plan maintained by the same employer
 5 or employers.

6 “(C) Such term shall not include a one-partici-
 7 pant retirement plan (as defined in section
 8 101(i)(7)(B)(ii)).

9 “(D)(i) Except as provided in regulations or in
 10 clause (ii), a plan holding employer securities which
 11 are not publicly traded employer securities shall be
 12 treated as holding publicly traded employer securities
 13 if any employer corporation, or any member of a con-
 14 trolled group of corporations which includes such em-
 15 ployer corporation, has issued a class of stock which
 16 is a publicly traded employer security.

17 “(ii) Clause (i) shall not apply to a plan if—

18 “(I) no employer corporation, or parent cor-
 19 poration of an employer corporation, has issued
 20 any publicly traded employer security, and

21 “(II) no employer corporation, or parent
 22 corporation of an employer corporation, has
 23 issued any special class of stock which grants
 24 particular rights to, or bears particular risks for,
 25 the holder or issuer with respect to any corpora-

1 tion described in clause (i) which has issued any
2 publicly traded employer security.

3 “(iii) *DEFINITIONS.*—For purposes of this sub-
4 paragraph, the term—

5 “(I) ‘controlled group of corporations’ has
6 the meaning given such term by section 1563(a)
7 of the Internal Revenue Code of 1986, except that
8 ‘50 percent’ shall be substituted for ‘80 percent’
9 each place it appears,

10 “(II) ‘employer corporation’ means a cor-
11 poration which is an employer maintaining the
12 plan, and

13 “(III) ‘parent corporation’ has the meaning
14 given such term by section 424(e) of such Code.

15 “(6) For purposes of this paragraph—

16 “(A) The term ‘applicable individual’ means—

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

18 “(ii) any beneficiary of a participant re-
19 ferred to in clause (i) who has an account under
20 the plan with respect to which the beneficiary is
21 entitled to exercise the rights of the participant.

22 “(B) The term ‘elective deferral’ means an em-
23 ployer contribution described in section 402(g)(3)(A)
24 of the Internal Revenue Code of 1986.

1 “(C) The term ‘employer security’ has the mean-
2 ing given such term by section 407(d)(1).

3 “(D) The term ‘employee stock ownership plan’
4 has the meaning given such term by section
5 4975(e)(7) of such Code.

6 “(E) The term ‘publicly traded employer securi-
7 ties’ means employer securities which are readily
8 tradable on an established securities market.

9 “(F) The term ‘year of service’ has the meaning
10 given such term by section 203(b)(2).

11 “(7)(A)(i) In the case of the portion of an account to
12 which paragraph (3) applies and which consists of em-
13 ployer securities acquired in a plan year beginning before
14 January 1, 2003, paragraph (3) shall only apply to the
15 applicable percentage of such securities. This subparagraph
16 shall be applied separately with respect to each class of secu-
17 rities.

18 “(ii) Clause (i) shall not apply to an applicable indi-
19 vidual who is a participant who has attained age 55 and
20 completed at least 3 years of service before the first plan
21 year beginning after December 31, 2002.

22 “(B) For purposes of subparagraph (A), the applicable
23 percentage shall be determined as follows:

“Plan year to which limit ap- The applicable percentage is:	
plies:	
1st	33 percent
2d	66 percent
3d and following	100 percent.

1 “(C) Notwithstanding subparagraph (A), in the case
 2 of employer securities held in an employee stock ownership
 3 plan—

4 “(i) the percentage of such employer securities
 5 that may be divested by a participant or beneficiary
 6 shall not be less than the percentage determined under
 7 section 401(a)(28) of the Internal Revenue Code of
 8 1986 (determined as if such section applied to a plan
 9 described in this subsection), and

10 “(ii) the portion of the account to which para-
 11 graph (3) applies for any year (after application of
 12 subparagraph (A)) shall be determined by taking into
 13 account the portion of the account to which an elec-
 14 tion under section 401(a)(28)(B) of such Code applied
 15 for prior years.

16 “(8) The Secretary of the Treasury shall prescribe reg-
 17 ulations under this subsection in consultation with the Sec-
 18 retary.”

19 (c) *EFFECTIVE DATES.*—

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

23 (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*
 24 *GAINED AGREEMENTS.*—In the case of a plan main-
 25 tained pursuant to 1 or more collective bargaining

1 *agreements between employee representatives and 1 or*
 2 *more employers ratified on or before the date of the*
 3 *enactment of this Act, subsection (a) shall be applied*
 4 *to benefits pursuant to, and individuals covered by,*
 5 *any such agreement by substituting for “December 31,*
 6 *2002” the earlier of—*

7 *(A) the later of—*

8 *(i) December 31, 2003, or*

9 *(ii) the date on which the last of such*
 10 *collective bargaining agreements terminates*
 11 *(determined without regard to any exten-*
 12 *sion thereof after such date of enactment),*
 13 *or*

14 *(B) December 31, 2004.*

15 ***TITLE II—PROTECTION OF EM-***
 16 ***PLOYEES DURING PENSION***
 17 ***PLAN TRANSACTION SUSPEN-***
 18 ***SION PERIOD***

19 ***SEC. 201. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF***
 20 ***TRANSACTION SUSPENSION PERIODS.***

21 *(a) AMENDMENTS OF INTERNAL REVENUE CODE.—*

22 *(1) EXCISE TAX.—*

23 *(A) IN GENERAL.—Chapter 43 of the Inter-*
 24 *nal Revenue Code of 1986 (relating to qualified*

1 pension, etc., plans) is amended by adding at the
2 end the following new section:

3 **“SEC. 4980G. FAILURE OF APPLICABLE PENSION PLAN TO**
4 **PROVIDE NOTICE OF TRANSACTION SUSPEN-**
5 **SION PERIOD.**

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

10 “(b) *AMOUNT OF TAX.*—

11 “(1) *IN GENERAL.*—The amount of the tax im-
12 posed by subsection (a) on any failure with respect to
13 any applicable individual shall be \$100 for each day
14 in the noncompliance period with respect to the fail-
15 ure.

16 “(2) *NONCOMPLIANCE PERIOD.*—For purposes of
17 this section, the term ‘noncompliance period’ means,
18 with respect to any failure, the period beginning on
19 the date the failure first occurs and ending on the
20 date the notice to which the failure relates is provided
21 or the failure is otherwise corrected.

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

23 “(1) *TAX NOT TO APPLY WHERE FAILURE NOT*
24 *DISCOVERED AND REASONABLE DILIGENCE EXER-*
25 *CISED.*—No tax shall be imposed by subsection (a) on

1 *any failure during any period for which it is estab-*
 2 *lished to the satisfaction of the Secretary that any*
 3 *person subject to liability for tax under subsection (d)*
 4 *did not know that the failure existed and exercised*
 5 *reasonable diligence to meet the requirements of sub-*
 6 *section (e).*

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

11 “(A) *any person subject to liability for the*
 12 *tax under subsection (d) exercised reasonable*
 13 *diligence to meet the requirements of subsection*
 14 *(e), and*

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

20 “(3) *OVERALL LIMITATION FOR UNINTENTIONAL*
 21 *FAILURES.—*

22 “(A) *IN GENERAL.—If the person subject to*
 23 *liability for tax under subsection (d) exercised*
 24 *reasonable diligence to meet the requirements of*
 25 *subsection (e), the tax imposed by subsection (a)*

1 for failures during the taxable year of the em-
 2 ployer (or, in the case of a multiemployer plan,
 3 the taxable year of the trust forming part of the
 4 plan) shall not exceed \$500,000. For purposes of
 5 the preceding sentence, all multiemployer plans
 6 of which the same trust forms a part shall be
 7 treated as 1 plan.

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

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

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

24 “(1) In the case of a plan not described in para-
 25 graph (2) or (3), the employer.

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

3 “(3) *In the case of a plan described in section*
 4 *403(b) not established or maintained by the employer,*
 5 *the plan administrator.*

6 “(e) *NOTICE OF TRANSACTION SUSPENSION PERIOD.—*

7 “(1) *IN GENERAL.—The plan administrator of*
 8 *an applicable pension plan shall provide notice of*
 9 *any transaction suspension period to each applicable*
 10 *individual to whom the transaction suspension period*
 11 *applies (and to any employee organization rep-*
 12 *resenting such individuals).*

13 “(2) *NOTICE.—*

14 “(A) *IN GENERAL.—The notice required by*
 15 *paragraph (1) shall be written in a manner cal-*
 16 *culated to be understood by the average plan*
 17 *participant and shall provide sufficient informa-*
 18 *tion (as determined in accordance with rules or*
 19 *other guidance adopted by the Secretary) to*
 20 *allow applicable individuals to understand the*
 21 *timing and effect of such transaction suspension*
 22 *period.*

23 “(B) *SPECIFIC INFORMATION.—Information*
 24 *provided under subparagraph (A) shall*
 25 *include—*

1 “(i) the reasons for the suspension,

2 “(ii) an identification of the rights de-
3 scribed in subsection (f)(3)(B) which will be
4 affected,

5 “(iii) the expected beginning date and
6 length of the period of the suspension, and

7 “(iv) if rights relating to plan invest-
8 ments will be affected, a statement that the
9 applicable individual should evaluate the
10 appropriateness of current investment deci-
11 sions in light of the inability to direct or
12 diversify assets in the account during the
13 expected period of suspension.

14 “(3) *TIMING OF NOTICE.*—

15 “(A) *IN GENERAL.*—Except as provided in
16 subparagraph (B), the notice required by para-
17 graph (1) shall be provided at least 30 days be-
18 fore the beginning of the transaction suspension
19 period.

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

21 “(i) *UNPLANNED EVENTS.*—In the case
22 of any transaction suspension period which
23 is imposed by reason of an event outside of
24 the control of an employer, plan, or plan
25 administrator, subparagraph (A) shall not

1 *apply and the notice shall be furnished as*
 2 *soon as reasonably possible under the cir-*
 3 *cumstances.*

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

6 “(I) *IN GENERAL.—In the case of*
 7 *a transaction suspension period begin-*
 8 *ning within 30 days after a major cor-*
 9 *porate disposition by a corporation*
 10 *maintaining an applicable pension*
 11 *plan, the requirements of subparagraph*
 12 *(A) shall be treated as having been met*
 13 *if, not later than 30 days before such*
 14 *major corporate disposition, the plan*
 15 *administrator (or any employer main-*
 16 *taining the applicable pension plan*
 17 *and acting on behalf of the plan ad-*
 18 *ministrator) provides notice of such*
 19 *transaction suspension period.*

20 “(II) *MAJOR CORPORATE DISPOSI-*
 21 *TION.—For purposes of subclause (I),*
 22 *the term ‘major corporate disposition’*
 23 *means, with respect to a corporation,*
 24 *the disposition of substantially all the*
 25 *stock (or the assets used in a trade or*

1 *business) of such corporation or a sub-*
 2 *sidary thereof.*

3 “(III) *NONCORPORATE ENTI-*
 4 *TIES.—In accordance with regulations*
 5 *prescribed by the Secretary, rules simi-*
 6 *lar to the rules of subclause (I) shall*
 7 *apply to entities that are not corpora-*
 8 *tions.*

9 “(iii) *OTHER EVENTS.—In the case of*
 10 *any transaction suspension period due to*
 11 *such other circumstances specified by the*
 12 *Secretary, including the application of secu-*
 13 *rities laws, the Secretary may provide that*
 14 *subparagraph (A) shall not apply and the*
 15 *notice shall be furnished at such time as the*
 16 *Secretary specifies.*

17 “(4) *CHANGES IN PERIOD OF SUSPENSION.—If*
 18 *there is a change in the beginning date or length of*
 19 *the transaction suspension period after notice has*
 20 *been provided under this subsection, the plan admin-*
 21 *istrator shall provide notice of the change as soon as*
 22 *reasonably practicable.*

23 “(5) *FORM AND MANNER OF NOTICE.—The notice*
 24 *required by paragraph (1) shall be in writing and*
 25 *may be delivered in electronic or other form to the ex-*

1 *tent that such notice may reasonably be expected to*
 2 *be received by the applicable individual.*

3 “(6) *MODEL NOTICE.*—*The Secretary shall, in*
 4 *consultation with the Secretary of Labor, issue a*
 5 *model notice that may be used to meet the require-*
 6 *ments of this subsection.*

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

9 “(1) *APPLICABLE INDIVIDUAL.*—*The term ‘appli-*
 10 *cable individual’ has the meaning given such term by*
 11 *section 401(a)(35)(G)(i).*

12 “(2) *APPLICABLE PENSION PLAN.*—

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

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

17 “(ii) *an eligible deferred compensation*
 18 *plan (as defined in section 457(b)) of an el-*
 19 *igible employer described in section*
 20 *457(e)(1)(A),*

21 *which maintains accounts for participants and*
 22 *beneficiaries under the plan. Such term shall not*
 23 *include a one-participant retirement plan.*

1 “(B) ONE-PARTICIPANT RETIREMENT

2 PLAN.—The term ‘one-participant retirement
3 plan’ means a retirement plan that—

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

5 “(I) covered only the individual
6 (or the individual and the individual’s
7 spouse) and the individual owned the
8 entire business (whether or not incor-
9 porated), or

10 “(II) covered only 1 or more part-
11 ners (or 1 or more partners and their
12 spouses) in a business partnership,

13 “(ii) meets the minimum coverage re-
14 quirements of section 410(b) without being
15 combined with any other plan of the busi-
16 ness that covers the employees of the busi-
17 ness,

18 “(iii) does not provide benefits to any-
19 one except the individuals described in sub-
20 clause (I) or (II) of clause (i),

21 “(iv) does not cover a business that is
22 a member of an affiliated service group, a
23 controlled group of corporations, or a group
24 of businesses under common control, and

1 “(v) does not cover a business that
2 leases employees (within the meaning of sec-
3 tion 414(n)).

4 “(3) TRANSACTION SUSPENSION PERIOD.—

5 “(A) IN GENERAL.—The term ‘transaction
6 suspension period’ means, with respect to an ap-
7 plicable pension plan, a period of more than 3
8 consecutive business days during which there is
9 a significant restriction on rights described in
10 subparagraph (B).

11 “(B) RIGHTS DESCRIBED.—For purposes of
12 this paragraph, rights described in this subpara-
13 graph with respect to an applicable pension plan
14 are rights otherwise provided under such plan to
15 1 or more applicable individuals to direct invest-
16 ments in such plan (including investments in
17 employer securities), to obtain loans from such
18 plan, or to obtain distributions from such plan.

19 “(C) EXCEPTIONS.—

20 “(i) IN GENERAL.—Rights which are
21 significantly restricted by reason of the ap-
22 plication of securities laws or other cir-
23 cumstances specified by the Secretary in
24 regulations shall not be taken into account
25 for purposes of this paragraph.

1 “(ii) *DOMESTIC RELATIONS ORDER.*—
 2 *Any restriction required in connection with*
 3 *a domestic relations order (within the*
 4 *meaning of section 414(p)(1)(B)) shall not*
 5 *be taken into account for purposes of this*
 6 *paragraph.*

7 “(4) *PENALTY IN LIEU OF TAX FOR GOVERNMENT*
 8 *AND CHURCH PLANS.*—*In the case of a failure of any*
 9 *applicable pension plan which is a governmental or*
 10 *church plan to meet the requirements of subsection*
 11 *(e)—*

12 “(A) *no tax shall be imposed by this section*
 13 *with respect to the failure, but*

14 “(B) *the provisions of section 6652(m) shall*
 15 *apply.*

16 *For purposes of this paragraph, the terms ‘govern-*
 17 *mental plan’ and ‘church plan’ have the meanings*
 18 *given such terms by section 414.”*

19 “(B) *AGGREGATION.*—*Section 414(t) of such*
 20 *Code is amended by striking “or 4980B” and in-*
 21 *serting “4980B, or 4980G”.*

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

 “Sec. 4980G. *Failure of applicable pension plan to provide notice of transaction suspension period.*”

1 (2) *PENALTY FOR FAILURES BY GOVERNMENTAL*
 2 *AND CHURCH PLANS.*—Section 6652 of such Code (re-
 3 *lating to failure to file certain information returns,*
 4 *registration statements, etc.) is amended by redesign-*
 5 *ating subsection (m) as subsection (n) and by insert-*
 6 *ing after subsection (l) the following new subsection:*
 7 “(m) *FAILURE TO PROVIDE NOTICE OF TRANSACTION*
 8 *SUSPENSION PERIOD.*—

9 “(1) *IN GENERAL.*—In the case of each failure of
 10 *an applicable pension plan which is a governmental*
 11 *plan or church plan (within the meaning of section*
 12 *414) to provide the notice required by section*
 13 *4980G(e) to any applicable individual, such plan*
 14 *shall pay, on notice and demand by the Secretary*
 15 *and in the same manner as tax, an amount equal to*
 16 *\$100 for each day in the noncompliance period with*
 17 *respect to the failure.*

18 “(2) *CERTAIN EXCEPTIONS TO APPLY.*—Rules
 19 *similar to the rules of section 4980G(c) shall apply*
 20 *for purposes of this subsection.*

21 “(3) *DEFINITIONS.*—For purposes of this sub-
 22 *section, any term used in this section which is also*
 23 *used in section 4980G shall have the meaning given*
 24 *such term by section 4980G.”*

25 (3) *AMENDMENTS OF ERISA.*—

1 (A) *IN GENERAL.*—Section 101 of the Em-
 2 ployee Retirement Income Security Act of 1974
 3 (29 U.S.C. 1021) is amended by redesignating
 4 the second subsection (h) as subsection (j) and by
 5 inserting after the first subsection (h) the fol-
 6 lowing new subsection:

7 “(i)(1) *The plan administrator of an applicable pen-*
 8 *sion plan shall provide notice of any transaction suspension*
 9 *period to each applicable individual to whom the trans-*
 10 *action suspension period applies (and to any employee or-*
 11 *ganization representing such individuals).*

12 “(2)(A) *The notice required by paragraph (1) shall be*
 13 *written in a manner calculated to be understood by the av-*
 14 *erage plan participant and shall provide sufficient infor-*
 15 *mation (as determined in accordance with rules or other*
 16 *guidance adopted by the Secretary of the Treasury) to allow*
 17 *applicable individuals to understand the timing and effect*
 18 *of such transaction suspension period.*

19 “(B) *Information provided under subparagraph (A)*
 20 *shall include—*

21 “(i) *the reasons for the suspension,*

22 “(ii) *an identification of the rights described in*
 23 *paragraph (7)(C)(ii) which will be affected,*

24 “(iii) *the expected beginning date and length of*
 25 *the period of the suspension, and*

1 “(iv) if rights relating to plan investments will
2 be affected, a statement that the applicable individual
3 should evaluate the appropriateness of current invest-
4 ment decisions in light of the inability to direct or di-
5 versify assets in the account during the expected pe-
6 riod of suspension.

7 “(3)(A) Except as provided in subparagraph (B), the
8 notice required by paragraph (1) shall be provided at least
9 30 days before the beginning of the transaction suspension
10 period.

11 “(B)(i) In the case of any transaction suspension pe-
12 riod which is imposed by reason of an event outside of the
13 control of an employer, plan, or plan administrator, sub-
14 paragraph (A) shall not apply and the notice shall be fur-
15 nished as soon as reasonably possible under the cir-
16 cumstances.

17 “(ii)(I) In the case of a transaction suspension period
18 beginning within 30 days after a major corporate disposi-
19 tion by a corporation maintaining an applicable pension
20 plan, the requirements of subparagraph (A) shall be treated
21 as having been met if, not later than 30 days before such
22 major corporate disposition, the plan administrator (or any
23 employer maintaining the applicable pension plan and act-
24 ing on behalf of the plan administrator) provides notice of
25 such transaction suspension period.

1 “(II) For purposes of subclause (I), the term ‘major
2 corporate disposition’ means, with respect to a corporation,
3 the disposition of substantially all the stock (or the assets
4 used in a trade or business) of such corporation or a sub-
5 sidiary thereof.

6 “(III) In accordance with regulations prescribed by the
7 Secretary of the Treasury, rules similar to the rules of sub-
8 clause (I) shall apply to entities that are not corporations.

9 “(iii) In the case of any transaction suspension period
10 due to such other circumstances specified by the Secretary
11 of the Treasury, including the application of securities laws,
12 the Secretary of the Treasury may provide that subpara-
13 graph (A) shall not apply and the notice shall be furnished
14 at such time as the Secretary of the Treasury specifies.

15 “(4) If there is a change in the beginning date or
16 length of the transaction suspension period after notice has
17 been provided under this subsection, the plan administrator
18 shall provide notice of the change as soon as reasonably
19 practicable.

20 “(5) The notice required by paragraph (1) shall be in
21 writing and may be delivered in electronic or other form
22 to the extent that such notice may reasonably be expected
23 to be received by the applicable individual.

1 “(6) *The Secretary of the Treasury shall, in consulta-*
 2 *tion with the Secretary, issue a model notice that may be*
 3 *used to meet the requirements of this subsection.*

4 “(7) *For purposes of this section—*

5 “(A) *The term ‘applicable individual’ has the*
 6 *meaning given such term by section 204(j)(6)(A).*

7 “(B)(i) *The term ‘applicable pension plan’*
 8 *means a plan described in clause (i), (ii), or (iv) of*
 9 *section 219(g)(5)(A) of the Internal Revenue Code of*
 10 *1986 which maintains accounts for participants and*
 11 *beneficiaries under the plan. Such term shall not in-*
 12 *clude a one-participant retirement plan.*

13 “(ii) *The term ‘one-participant retirement plan’*
 14 *means a retirement plan that—*

15 “(I) *on the first day of the plan year cov-*
 16 *ered only the individual (or the individual and*
 17 *the individual’s spouse) and the individual*
 18 *owned the entire business (whether or not incor-*
 19 *porated), or covered only 1 or more partners (or*
 20 *1 or more partners or their spouses) in a busi-*
 21 *ness partnership,*

22 “(II) *meets the minimum coverage require-*
 23 *ments of section 410(b) of such Code without*
 24 *being combined with any other plan of the busi-*
 25 *ness that covers the employees of the business,*

1 “(III) does not provide benefits to anyone
2 except individuals described in subclause (I),

3 “(IV) does not cover a business that is a
4 member of an affiliated service group, a con-
5 trolled group of corporations, or a group of busi-
6 nesses under common control, and

7 “(V) does not cover a business that leases
8 employees (within the meaning of section 414(n)
9 of such Code).

10 “(C)(i) The term ‘transaction suspension period’
11 means, with respect to an applicable pension plan, a
12 period of more than 3 consecutive business days dur-
13 ing which there is a significant restriction on rights
14 described in clause (ii).

15 “(ii) For purposes of this paragraph, rights de-
16 scribed in this clause with respect to an applicable
17 pension plan are rights otherwise provided under such
18 plan to 1 or more applicable individuals to direct in-
19 vestments in such plan (including investments in em-
20 ployer securities), to obtain loans from such plan, or
21 to obtain distributions from such plan.

22 “(iii)(I) Rights which are significantly restricted
23 by reason of the application of securities laws or other
24 circumstances specified by the Secretary of the Treas-

1 *ury in regulations shall not be taken into account for*
 2 *purposes of this subparagraph.*

3 *“(II) Any restriction required in connection with*
 4 *a domestic relations order (within the meaning of sec-*
 5 *tion 206(d)(3)(B)(ii)) shall not be taken into account*
 6 *for purposes of this subparagraph.”*

7 *(B) CIVIL PENALTIES FOR FAILURE TO PRO-*
 8 *VIDE NOTICE.—Section 502 of such Act is*
 9 *amended—*

10 *(i) in subsection (a)(6), by striking “or*
 11 *(6)” and inserting “(6), or (7)”;*

12 *(ii) by redesignating paragraph (7) of*
 13 *subsection (c) as paragraph (8); and*

14 *(iii) by inserting after paragraph (6)*
 15 *of subsection (c) the following new para-*
 16 *graph:*

17 *“(7) The Secretary may assess a civil penalty against*
 18 *any person of up to \$100 a day from the date of the person’s*
 19 *failure or refusal to provide notice to participants and bene-*
 20 *ficiaries in accordance with section 101(i). For purposes*
 21 *of this paragraph, each violation with respect to any single*
 22 *participant or beneficiary, shall be treated as a separate*
 23 *violation.”*

24 *(b) EFFECTIVE DATE.—*

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

4 (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*
 5 *GAINED AGREEMENTS.*—*In the case of a plan main-*
 6 *tained pursuant to 1 or more collective bargaining*
 7 *agreements between employee representatives and 1 or*
 8 *more employers ratified on or before the date of the*
 9 *enactment of this Act, subsection (a) shall be applied*
 10 *to benefits pursuant to, and individuals covered by,*
 11 *any such agreement by substituting for “December 31,*
 12 *2002” the earlier of—*

13 (A) *the later of—*

14 (i) *December 31, 2003, or*

15 (ii) *the date on which the last of such*
 16 *collective bargaining agreements terminates*
 17 *(determined without regard to any exten-*
 18 *sion thereof after such date of enactment),*
 19 *or*

20 (B) *December 31, 2004.*

21 (3) *EXCEPTIONS TO 30-DAY NOTICE.*—*The Sec-*
 22 *retary of the Treasury shall, no later than 120 days*
 23 *after the date of the enactment of this Act, specify the*
 24 *circumstances under section 4980G(e)(3)(B)(iii) of the*
 25 *Internal Revenue Code of 1986 and section*

1 101(i)(3)(B)(iii) of the *Employee Retirement Income*
 2 *Security Act of 1974* under which the 30-day notice
 3 rule would not apply and the time by which the no-
 4 tice is required to be provided.

5 **SEC. 202. INAPPLICABILITY OF RELIEF FROM FIDUCIARY LI-**
 6 **ABILITY DURING SUSPENSION OF ABILITY OF**
 7 **PARTICIPANT OR BENEFICIARY TO DIRECT**
 8 **INVESTMENTS.**

9 (a) *IN GENERAL.*—Section 404(c)(1) of the *Employee*
 10 *Retirement Income Security Act of 1974* (29 U.S.C.
 11 1104(c)(1)) is amended—

12 (1) by redesignating subparagraphs (A) and (B)
 13 as clauses (i) and (ii), respectively, and by inserting
 14 “(A)” after “(c)(1)”,

15 (2) in subparagraph (A)(ii) (as redesignated by
 16 paragraph (1)), by inserting before the period the fol-
 17 lowing: “, except that this clause shall not apply in
 18 connection with such participant or beneficiary for
 19 any transaction suspension period during which the
 20 ability of such participant or beneficiary to direct the
 21 investment of the assets in his or her account is sus-
 22 pended by a plan sponsor or fiduciary”, and

23 (3) by adding at the end the following new sub-
 24 paragraphs:

1 “(B)(i) If the person referred to in subparagraph
 2 (A)(ii) meets the requirements of this title in connection
 3 with authorizing the transaction suspension period, such
 4 person shall not be liable under this title for any loss occur-
 5 ring during such period as a result of any exercise by the
 6 participant or beneficiary of control over assets in his or
 7 her account before the period. Matters to be considered in
 8 determining whether such person has satisfied the require-
 9 ments of this title include, but are not limited to, whether
 10 such person—

11 “(I) has considered the reasonableness of the ex-
 12 pected transaction suspension period,

13 “(II) has provided the notice required under sec-
 14 tion 101(i)(1), and

15 “(III) has acted in accordance with the require-
 16 ments of subsection (a) in determining whether to
 17 enter into the transaction suspension period.

18 “(ii) For purposes of this subsection, if a suspension
 19 arises in connection with a change in the investment op-
 20 tions offered under the plan, a participant or beneficiary
 21 shall be deemed to have exercised control over the assets in
 22 his or her account prior to the suspension if, after notice
 23 of the change in investment options is given to such partici-
 24 pant or beneficiary, assets in the account of the participant
 25 or beneficiary are transferred—

1 “(I) to plan investment options in accordance
 2 with the affirmative election of the participant or
 3 beneficiary which otherwise meets the conditions of
 4 this subsection; or

5 “(II) in the absence of such an election and in
 6 the case in which fiduciary relief was provided under
 7 this subsection for the prior investment options, to
 8 plan investment options with reasonably comparable
 9 risk and return characteristics in accordance with
 10 procedures set forth in such notice.

11 “(C) For purposes of this paragraph, the term ‘trans-
 12 action suspension period’ has the meaning given such term
 13 by section 101(i)(7)(C).”

14 (b) *GUIDANCE.*—The Secretary of Labor, in consulta-
 15 tion with the Secretary of the Treasury, shall, before Decem-
 16 ber 31, 2002, issue final regulations providing guidance,
 17 including safe harbors, on how plan sponsors or any other
 18 affected fiduciaries can satisfy their fiduciary responsibil-
 19 ities during any transaction suspension period during
 20 which the ability of a participant or beneficiary to direct
 21 the investment of assets in his or her individual account
 22 is suspended.

23 (c) *EFFECTIVE DATE.*—

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

4 (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*
 5 *GAINED AGREEMENTS.*—*In the case of a plan main-*
 6 *tained pursuant to 1 or more collective bargaining*
 7 *agreements between employee representatives and 1 or*
 8 *more employers ratified on or before the date of the*
 9 *enactment of this Act, subsection (a) shall be applied*
 10 *to benefits pursuant to, and individuals covered by,*
 11 *any such agreement by substituting for “December 31,*
 12 *2002” the earlier of—*

13 (A) *the later of—*

14 (i) *December 31, 2003, or*

15 (ii) *the date on which the last of such*
 16 *collective bargaining agreements terminates*
 17 *(determined without regard to any exten-*
 18 *sion thereof after such date of enactment),*

19 *or*

20 (B) *December 31, 2004.*

21 **SEC. 203. CLARIFICATION OF PARTICIPANT ACCESS TO**
 22 **REMEDIES.**

23 (a) *PARTICIPANT ACCESS TO REMEDIES.*—*Section*
 24 *409(a) of the Employee Retirement Income Security Act of*
 25 *1974 (29 U.S.C. 1109(a)) is amended by inserting after the*

1 *first sentence the following new sentence: “In the case of*
 2 *any such breach with respect to a pension plan that is an*
 3 *individual account plan, the relief available under this sub-*
 4 *section shall, to the extent the court may deem appropriate,*
 5 *be apportioned to each individual account affected by such*
 6 *breach.”*

7 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 8 *section shall take effect on the date of the enactment of this*
 9 *Act.*

10 **SEC. 204. INCREASE IN MAXIMUM BOND AMOUNT FOR**
 11 **PLANS HOLDING EMPLOYER SECURITIES.**

12 (a) *IN GENERAL.*—*Section 412(a) of the Employee Re-*
 13 *tirement Income Security Act of 1974 (29 U.S.C. 1112) is*
 14 *amended by adding at the end the following: “In the case*
 15 *of a plan that holds employer securities (within the mean-*
 16 *ing of section 407(d)(1)), this subsection shall be applied*
 17 *by substituting ‘\$1,000,000’ for ‘\$500,000’ each place it ap-*
 18 *pears.”*

19 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 20 *section shall apply to plan years beginning after December*
 21 *31, 2002.*

1 ***TITLE III—PROVIDING OF INFOR-***
 2 ***MATION TO ASSIST PARTICI-***
 3 ***PANTS***

4 ***Subtitle A—General Provisions***

5 ***SEC. 301. PERIODIC PENSION BENEFIT STATEMENTS.***

6 *(a) AMENDMENTS OF INTERNAL REVENUE CODE.—*

7 *(1) EXCISE TAX.—*

8 *(A) IN GENERAL.—Chapter 43 of the Inter-*
 9 *nal Revenue Code of 1986 (relating to qualified*
 10 *pension, etc., plans), as amended by this Act, is*
 11 *amended by adding at the end the following new*
 12 *section:*

13 ***“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-***
 14 ***TION PLANS TO PROVIDE REQUIRED AC-***
 15 ***COUNT INFORMATION.***

16 *“(a) IMPOSITION OF TAX.—There is hereby imposed a*
 17 *tax on the failure of an applicable pension plan to meet*
 18 *the requirements of subsection (e) with respect to any par-*
 19 *ticipant or beneficiary.*

20 *“(b) AMOUNT OF TAX.—*

21 *“(1) IN GENERAL.—The amount of the tax im-*
 22 *posed by subsection (a) on any failure with respect to*
 23 *any participant or beneficiary shall be \$100 for each*
 24 *day in the noncompliance period with respect to the*
 25 *failure.*

1 “(2) *NONCOMPLIANCE PERIOD.*—For purposes of
 2 *this section, the term ‘noncompliance period’ means,*
 3 *with respect to any failure, the period beginning on*
 4 *the date the failure first occurs and ending on the*
 5 *date the statement to which the failure relates is pro-*
 6 *vided or the failure is otherwise corrected.*

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

8 “(1) *TAX NOT TO APPLY WHERE FAILURE NOT*
 9 *DISCOVERED AND REASONABLE DILIGENCE EXER-*
 10 *CISED.*—No tax shall be imposed by subsection (a) on
 11 *any failure during any period for which it is estab-*
 12 *lished to the satisfaction of the Secretary that any*
 13 *person subject to liability for tax under subsection (d)*
 14 *did not know that the failure existed and exercised*
 15 *reasonable diligence to meet the requirements of sub-*
 16 *section (e).*

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

20 “(A) *any person subject to liability for the*
 21 *tax under subsection (d) exercised reasonable*
 22 *diligence to meet the requirements of subsection*
 23 *(e), and*

24 “(B) *such person provides the statement de-*
 25 *scribed in subsection (e) during the 30-day pe-*

1 riod beginning on the first date such person
 2 knew, or exercising reasonable diligence should
 3 have known, that such failure existed.

4 “(3) *OVERALL LIMITATION FOR UNINTENTIONAL*
 5 *FAILURES.*—

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

17 “(B) *TAXABLE YEARS IN THE CASE OF CER-*
 18 *TAIN CONTROLLED GROUPS.*—For purposes of
 19 this paragraph, if all persons who are treated as
 20 a single employer for purposes of this section do
 21 not have the same taxable year, the taxable years
 22 taken into account shall be determined under
 23 principles similar to the principles of section
 24 1561.

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

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

9 “(1) *In the case of a plan not described in para-*
 10 *graph (2) or (3), the employer.*

11 “(2) *In the case of a multiemployer plan, the*
 12 *plan.*

13 “(3) *In the case of a plan described in section*
 14 *403(b) not established or maintained by the employer,*
 15 *the plan administrator.*

16 “(e) *REQUIREMENT TO PROVIDE QUARTERLY STATE-*
 17 *MENTS.*—

18 “(1) *IN GENERAL.*—*The administrator of an ap-*
 19 *plicable pension plan shall furnish a pension benefit*
 20 *statement as provided in paragraph (2).*

21 “(2) *TIME AND MANNER OF STATEMENTS.*—

22 “(A) *TIME.*—*The administrator shall fur-*
 23 *nish a pension benefit statement—*

24 “(i) *at least once each calendar quarter*
 25 *to an applicable individual who has the*

1 *right to direct the investment of assets in*
 2 *his or her account under the plan,*

3 “(ii) *at least once each calendar year*
 4 *to an applicable individual who does not*
 5 *have the right to direct the investment of as-*
 6 *sets in his or her account under the plan,*
 7 *and*

8 “(iii) *upon written request to a plan*
 9 *beneficiary who is not an applicable indi-*
 10 *vidual, except that this subparagraph shall*
 11 *apply to only 1 request during any 12-*
 12 *month period.*

13 “(B) *STATEMENT.—*

14 “(i) *IN GENERAL.—A pension benefit*
 15 *statement furnished under paragraph (1)*
 16 *shall indicate, on the basis of the latest*
 17 *available information—*

18 “(I) *the total benefits accrued,*
 19 *and*

20 “(II) *the nonforfeitable pension*
 21 *benefits, if any, which have accrued, or*
 22 *the earliest date on which benefits will*
 23 *become nonforfeitable.*

24 “(ii) *SPECIFIC INFORMATION.—A pen-*
 25 *sion benefit statement under clause (i) or*

1 (ii) of subparagraph (A) shall include (to-
 2 gether with the information required in
 3 clause (i))—

4 “(I) the value of investments allo-
 5 cated to the individual account deter-
 6 mined as of the most recent evaluation
 7 date under the plan, including the
 8 value of any assets held in the form of
 9 employer securities, without regard to
 10 whether such securities were contrib-
 11 uted by the plan sponsor or acquired
 12 at the direction of the plan or of the
 13 participant or beneficiary, and

14 “(II) an explanation of any limi-
 15 tations or restrictions on the right of
 16 the participant or beneficiary to direct
 17 an investment.

18 “(iii) *MANNER OF STATEMENT.*—A
 19 pension benefit statement under paragraph
 20 (1)—

21 “(I) shall be written in a manner
 22 calculated to be understood by the aver-
 23 age plan participant, and

24 “(II) shall be in writing and may
 25 be delivered in electronic or other form

1 to the extent that such statement may
 2 reasonably be expected to be received by
 3 an individual entitled to receive it.

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

6 “(1) *DEFINITIONS.*—Any term used in this sec-
 7 tion which is also used in section 4980G shall have
 8 the meaning given such term by section 4980G.

9 “(2) *PENALTY IN LIEU OF TAX FOR GOVERNMENT*
 10 *AND CHURCH PLANS.*—In the case of a failure of any
 11 applicable pension plan which is a governmental or
 12 church plan to meet the requirements of subsection
 13 (e)—

14 “(A) no tax shall be imposed by this section
 15 with respect to the failure, but

16 “(B) the provisions of section 6652(m) shall
 17 apply.

18 For purposes of this paragraph, the terms ‘govern-
 19 mental plan’ and ‘church plan’ have the meanings
 20 given such terms by section 414.”

21 “(B) *AGGREGATION.*—Section 414(t) of such
 22 Code, as amended by this Act, is amended by
 23 striking “or 4980G” and inserting “4980G, or
 24 4980H”.

1 (C) *CLERICAL AMENDMENT.*—*The table of*
 2 *sections for chapter 43 of such Code, as amended*
 3 *by this Act, is amended by adding at the end the*
 4 *following new item:*

“*Sec. 4980H. Failure of certain defined contribution plans to provide account information.*”

5 (2) *PENALTY FOR FAILURES BY GOVERNMENTAL*
 6 *AND CHURCH PLANS.*—*Section 6652(m) of such Code,*
 7 *as added by this Act, is amended—*

8 (A) *by inserting “or 4980H(e)” after*
 9 *“4980G(e)” in paragraph (1),*

10 (B) *by inserting “or 4980H(c)” after*
 11 *“4980G(c)” in paragraph (2), and*

12 (C) *by inserting “or 4980H” after “4980G”*
 13 *each place it appears in paragraph (3).*

14 (b) *AMENDMENTS OF ERISA.*—

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

18 “(a)(1)(A) *The administrator of an individual account*
 19 *plan shall furnish a pension benefit statement—*

20 *“(i) if the plan is an applicable pension plan—*

21 *“(I) at least once each calendar quarter to*
 22 *an applicable individual who has the right to di-*
 23 *rect the investment of assets in his or her ac-*
 24 *count under the plan, and*

1 “(II) at least once each calendar year to an
 2 applicable individual who does not have the
 3 right to direct the investment of assets in his or
 4 her account under the plan, and

5 “(ii) upon written request to a plan beneficiary
 6 who is not an applicable individual.

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

9 “(i) at least once every 3 years to each partici-
 10 pant with a nonforfeitable accrued benefit who is em-
 11 ployed by the employer maintaining the plan at the
 12 time the statement is furnished to participants, and

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

15 Information furnished under clause (i) to a participant
 16 may be based on reasonable estimates determined under reg-
 17 ulations prescribed by the Secretary.

18 “(2)(A) A pension benefit statement under paragraph
 19 (1)—

20 “(i) shall indicate, on the basis of the latest
 21 available information—

22 “(I) the total benefits accrued, and

23 “(II) the nonforfeitable pension benefits, if
 24 any, which have accrued, or the earliest date on
 25 which benefits will become nonforfeitable,

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

3 “(iii) shall be in writing and may be delivered
4 in electronic or other form to the extent such state-
5 ment may reasonably be expected to be received by the
6 individual entitled to receive it.

7 “(B) In the case of an applicable pension plan, the
8 pension benefit statement under paragraph (1)(A)(i) shall
9 include (together with the information required in subpara-
10 graph (A))—

11 “(i) the value of investments allocated to the in-
12 dividual account, including the value of any assets
13 held in the form of employer securities determined as
14 of the most recent valuation date under the plan,
15 without regard to whether such securities were con-
16 tributed by the plan sponsor or acquired at the direc-
17 tion of the plan or of the participant or beneficiary,
18 and

19 “(ii) an explanation of any limitations or re-
20 strictions on the right of the participant or bene-
21 ficiary to direct an investment.

22 “(C) For purposes of this subsection, any term used
23 in this section which is also used in section 101(i) shall
24 have the same meaning as when used in section 101(i).

1 “(3)(A) *In the case of a defined benefit plan, the re-*
 2 *quirements of paragraph (1)(B)(i) shall be treated as met*
 3 *with respect to a participant if the administrator provides*
 4 *the participant at least once each year with notice of the*
 5 *availability of the pension benefit statement and the ways*
 6 *in which the participant may obtain such statement. Such*
 7 *notice shall be in writing and may be delivered in electronic*
 8 *or other form to the extent such notice may reasonably be*
 9 *expected to be received by the participant.*

10 “(B) *The Secretary may provide that years in which*
 11 *no employee or former employee benefits (within the mean-*
 12 *ing of section 410(b) of the Internal Revenue Code of 1986)*
 13 *under the plan need not be taken into account in deter-*
 14 *mining the 3-year period under paragraph (1)(B)(i).”*

15 (c) *CONFORMING AMENDMENTS.—*

16 (1) *Section 105 of the Employee Retirement In-*
 17 *come Security Act of 1974 (29 U.S.C. 1025) is*
 18 *amended by striking subsection (d).*

19 (2) *Section 105(b) of such Act (29 U.S.C.*
 20 *1025(b)) is amended to read as follows:*

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

1 (d) *MODEL STATEMENTS.*—*The Secretary of Labor*
 2 *shall develop 1 or more model benefit statements, written*
 3 *in a manner calculated to be understood by the average*
 4 *plan participant, that may be used by plan administrators*
 5 *in complying with the requirements of section 4980H of the*
 6 *Internal Revenue Code of 1986 and section 105 of the Em-*
 7 *ployee Retirement Income Security Act of 1974.*

8 (e) *EFFECTIVE DATE.*—

9 (1) *IN GENERAL.*—*The amendments made by*
 10 *this section shall apply to plan years beginning after*
 11 *December 31, 2003.*

12 (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*
 13 *GAINED AGREEMENTS.*—*In the case of a plan main-*
 14 *tained pursuant to 1 or more collective bargaining*
 15 *agreements between employee representatives and 1 or*
 16 *more employers ratified on or before the date of the*
 17 *enactment of this Act, subsection (a) shall be applied*
 18 *to benefits pursuant to, and individuals covered by,*
 19 *any such agreement by substituting for “December 31,*
 20 *2003” the earlier of—*

21 (A) *the later of—*

22 (i) *December 31, 2004, or*

23 (ii) *the date on which the last of such*
 24 *collective bargaining agreements terminates*
 25 *(determined without regard to any exten-*

1 *sion thereof after such date of enactment),*

2 *or*

3 *(B) December 31, 2005.*

4 **SEC. 302. DEFINED CONTRIBUTION PLANS REQUIRED TO**
 5 **PROVIDE ADEQUATE INVESTMENT EDU-**
 6 **CATION TO PARTICIPANTS.**

7 *(a) EXCISE TAX ON FAILURE OF CERTAIN DEFINED*
 8 *CONTRIBUTION PLANS TO PROVIDE ADEQUATE INVEST-*
 9 *MENT INFORMATION.—*

10 *(1) IN GENERAL.—So much of section 4980H(e)*
 11 *of the Internal Revenue Code of 1986 as precedes*
 12 *paragraph (2) thereof, as added by section 301, is*
 13 *amended to read as follows:*

14 *“(e) REQUIREMENTS TO PROVIDE INVESTMENT IN-*
 15 *FORMATION.—*

16 *“(1) IN GENERAL.—The administrator of an ap-*
 17 *plicable pension plan shall—*

18 *“(A) furnish pension benefit statements as*
 19 *provided in paragraph (2), and*

20 *“(B) furnish to each applicable individual*
 21 *at least once each year the model form relating*
 22 *to basic investment guidelines as provided in*
 23 *paragraph (3).”*

1 (2) *BASIC INVESTMENT GUIDELINES.*—Section
 2 4980H(e) of such Code is amended by adding at the
 3 end the following new paragraph:

4 “(3) *BASIC INVESTMENT GUIDELINES.*—

5 “(A) *IN GENERAL.*—The Secretary shall, in
 6 consultation with the Secretary of Labor, develop
 7 and make available to applicable pension plans
 8 for distribution under paragraph (1)(B) a model
 9 form containing basic guidelines for investing for
 10 retirement. Except as otherwise provided by the
 11 Secretary, such guidelines shall include—

12 “(i) information on the benefits of di-
 13 versification,

14 “(ii) information on the essential dif-
 15 ferences, in terms of risk and return, of pen-
 16 sion plan investments, including stocks,
 17 bonds, mutual funds, and money market in-
 18 vestments,

19 “(iii) information on how an applica-
 20 ble individual’s pension plan investment al-
 21 locations may differ depending on the indi-
 22 vidual’s age and years to retirement and on
 23 other factors determined by the Secretary,

24 “(iv) sources of information where ap-
 25 plicable individuals may learn more about

1 *pension rights, individual investing, and*
 2 *investment advice, and*

3 “(v) *such other information related to*
 4 *individual investing as the Secretary deter-*
 5 *mines appropriate.*

6 “(B) *CALCULATION INFORMATION.—The*
 7 *model form under subparagraph (A) shall in-*
 8 *clude addresses for Internet sites, and a work-*
 9 *sheet, which an applicable individual may use to*
 10 *calculate—*

11 “(i) *the retirement age annuity value*
 12 *of the applicable individual’s nonforfeitable*
 13 *pension benefits under the plan (determined*
 14 *by reference to varied historical annual*
 15 *rates of return and annuity interest rates),*
 16 *and*

17 “(ii) *other important amounts relating*
 18 *to retirement savings, including the amount*
 19 *which an applicable individual would be re-*
 20 *quired to save to provide a retirement in-*
 21 *come equal to various percentages of their*
 22 *current salary (adjusted for expected growth*
 23 *prior to retirement).*

24 *The Secretary of Labor shall develop an Internet*
 25 *site which an applicable individual may use in*

1 *making such calculations and the address for*
 2 *such site shall be included with the form.*

3 “(C) *PUBLIC COMMENT; UPDATING.*—*The*
 4 *Secretary shall—*

5 “(i) *provide at least 90 days for public*
 6 *comment before publishing final notice of*
 7 *the model form, and*

8 “(ii) *update the model form at least*
 9 *annually.*

10 “(D) *RULES RELATING TO FORM AND*
 11 *STATEMENT.*—*The model form under subpara-*
 12 *graph (A)—*

13 “(i) *shall be written in a manner cal-*
 14 *culated to be understood by the average plan*
 15 *participant, and*

16 “(ii) *shall be in writing and may be*
 17 *delivered in electronic or other form to the*
 18 *extent such form may reasonably be ex-*
 19 *pected to be received by the applicable indi-*
 20 *viduals.”*

21 (3) *CONFORMING AMENDMENT.*—*Section*
 22 *4980H(c)(3) of such Code is amended by adding at*
 23 *the end the following new subparagraph:*

24 “(C) *SEPARATE APPLICATION.*—*This para-*
 25 *graph shall be applied separately to failures to*

1 *meet the requirements of subsection (e)(1)(A) and*
 2 *failures to meet the requirements of subsection*
 3 *(e)(1)(B).”*

4 ***(b) AMENDMENTS TO ERISA.—***

5 ***(1) IN GENERAL.—****Section 104 of the Employee*
 6 *Retirement Income Security Act of 1974 (29 U.S.C.*
 7 *1024) is amended by redesignating subsections (c)*
 8 *and (d) as subsections (d) and (e), respectively, and*
 9 *by inserting after subsection (b) the following new*
 10 *subsection:*

11 *“(c)(1) The plan administrator of an applicable pen-*
 12 *sion plan shall provide to each applicable individual at*
 13 *least once annually the model form relating to basic invest-*
 14 *ment guidelines which is described in paragraph (2).*

15 *“(2)(A) The Secretary of the Treasury shall, in con-*
 16 *sultation with the Secretary, develop and make available*
 17 *to applicable pension plans for distribution under para-*
 18 *graph (1) a model form containing basic guidelines for in-*
 19 *vesting for retirement. Except as otherwise provided by the*
 20 *Secretary of the Treasury, such guidelines shall include—*

21 *“(i) information on the benefits of diversifica-*
 22 *tion,*

23 *“(ii) information on the essential differences, in*
 24 *terms of risk and return, of pension plan investments,*

1 *including stocks, bonds, mutual funds, and money*
 2 *market investments,*

3 “(iii) *information on how an applicable individ-*
 4 *ual’s pension plan investment allocations may differ*
 5 *depending on the individual’s age and years to retire-*
 6 *ment and on other factors determined by the Sec-*
 7 *retary of the Treasury,*

8 “(iv) *sources of information where applicable in-*
 9 *dividuals may learn more about pension rights, indi-*
 10 *vidual investing, and investment advice, and*

11 “(v) *such other information related to individual*
 12 *investing as the Secretary of the Treasury determines*
 13 *appropriate.*

14 “(B) *The model form under subparagraph (A) shall*
 15 *include addresses for Internet sites, and a worksheet, which*
 16 *an applicable individual may use to calculate—*

17 “(i) *the retirement age annuity value of the ap-*
 18 *plicable individual’s nonforfeitable pension benefits*
 19 *under the plan (determined by reference to varied his-*
 20 *torical annual rates of return and annuity interest*
 21 *rates), and*

22 “(ii) *other important amounts relating to retire-*
 23 *ment savings, including the amount which an appli-*
 24 *cable individual would be required to save to provide*
 25 *a retirement income equal to various percentages of*

1 *their current salary (adjusted for expected growth*
 2 *prior to retirement).*

3 *The Secretary shall develop an Internet site which an appli-*
 4 *cable individual may use in making such calculations and*
 5 *the address for such site shall be included with the form.*

6 *“(C) The Secretary of the Treasury shall—*

7 *“(i) provide at least 90 days for public comment*
 8 *before publishing final notice of the model form, and*

9 *“(ii) update the model form at least annually.*

10 *“(3) The model form under paragraph (2)—*

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

13 *“(B) shall be in writing and may be delivered in*
 14 *electronic or other form to the extent such form may*
 15 *reasonably be expected to be received by applicable in-*
 16 *dividuals.*

17 *“(4) For purposes of this subsection, any term used*
 18 *in this section which is also used in section 101(i) shall*
 19 *have the meaning given such term by section 101(i).”*

20 *(2) ENFORCEMENT.—Section 502(c)(1) of such*
 21 *Act (29 U.S.C. 1132(c)(1)) is amended by striking*
 22 *“or section 101(e)(1)” and inserting “, section*
 23 *101(e)(1), or section 104(c)”.*

24 *(c) EFFECTIVE DATE.—*

1 (1) *IN GENERAL.*—*The amendments made by*
 2 *this section shall apply to plan years beginning after*
 3 *December 31, 2003.*

4 (2) *SPECIAL RULE FOR COLLECTIVELY BAR-*
 5 *GAINED AGREEMENTS.*—*In the case of a plan main-*
 6 *tained pursuant to 1 or more collective bargaining*
 7 *agreements between employee representatives and 1 or*
 8 *more employers ratified on or before the date of the*
 9 *enactment of this Act, subsection (a) shall be applied*
 10 *to benefits pursuant to, and individuals covered by,*
 11 *any such agreement by substituting for “December 31,*
 12 *2003” the earlier of—*

13 (A) *the later of—*

14 (i) *December 31, 2004, or*

15 (ii) *the date on which the last of such*
 16 *collective bargaining agreements terminates*
 17 *(determined without regard to any exten-*
 18 *sion thereof after such date of enactment),*
 19 *or*

20 (B) *December 31, 2005.*

21 **SEC. 303. INFORMATION ON OPTIONAL FORM OF BENEFITS.**

22 (a) *IN GENERAL.*—*The Secretary of the Treasury or*
 23 *his delegate shall, not later than 30 days after the date of*
 24 *the enactment of this Act, issue regulations requiring plan*
 25 *administrators of defined benefit plans providing optional*

1 *forms of benefits to provide a statement comparing the rel-*
 2 *ative values of each form of benefit.*

3 (b) *STATEMENT.*—*The statement under subsection (a)*
 4 *shall be provided at such time as specified by the Secretary*
 5 *and shall include such information as the Secretary deter-*
 6 *mines appropriate to enable a participant, spouse, or sur-*
 7 *living spouse to make an informed decision as to what form*
 8 *of benefit to elect. Such information shall be provided in*
 9 *a form calculated to be understood by the average plan par-*
 10 *ticipant.*

11 **SEC. 304. FIDUCIARY DUTY TO PROVIDE MATERIAL INFOR-**
 12 **MATION RELATING TO INVESTMENT IN EM-**
 13 **PLOYER SECURITIES.**

14 (a) *IN GENERAL.*—*Section 404(c) of the Employee Re-*
 15 *tirement Income Security Act of 1974 (29 U.S.C. 1104(c))*
 16 *is amended by adding at the end the following new para-*
 17 *graph:*

18 “(4) *The plan sponsor and plan administrator of a*
 19 *pension plan described in paragraph (1) shall, in addition*
 20 *to any other fiduciary duty or responsibility under this*
 21 *part, have a fiduciary duty to ensure that each participant*
 22 *and beneficiary under the plan, in connection with the in-*
 23 *vestment of assets in his or her account in employer securi-*
 24 *ties, is provided with all material investment information*
 25 *regarding investment of such assets in employer securities*

1 *to the extent that such information is generally required*
 2 *to be provided by the plan sponsor to investors in connec-*
 3 *tion with such an investment under applicable securities*
 4 *laws. The provision by the plan sponsor or plan adminis-*
 5 *trator of any materially misleading investment information*
 6 *shall be treated as a violation of this paragraph.”*

7 *(b) ENFORCEMENT.—Section 502 of such Act (29*
 8 *U.S.C. 1132), as amended by section 201, is amended—*

9 *(1) in subsection (a)(6), by striking “(6), or (7)”*
 10 *and inserting “(6), (7), or (8)”;*

11 *(2) by redesignating paragraph (8) of subsection*
 12 *(c) as paragraph (9); and*

13 *(3) by inserting after paragraph (7) of sub-*
 14 *section (c) the following new paragraph:*

15 *“(8) The Secretary may assess a civil penalty against*
 16 *any person of up to \$1,000 a day from the date of the per-*
 17 *son’s failure or refusal to comply with the requirements of*
 18 *section 404(c)(4) until such failure or refusal is corrected.”*

19 *(c) EFFECTIVE DATE.—The amendments made by this*
 20 *section shall apply to plan years beginning after December*
 21 *31, 2002.*

22 **SEC. 305. ELECTRONIC DISCLOSURE OF INSIDER TRADING.**

23 *(a) IN GENERAL.—Section 101 of the Employee Re-*
 24 *tirement Income Security Act of 1974 (29 U.S.C. 1021),*
 25 *as amended by section 201, is amended by redesignating*

1 subsection (j) as subsection (k) and by inserting after sub-
 2 section (i) the following new subsection:

3 “(j)(1) *Except as specifically provided in this Act, and*
 4 *notwithstanding any other provision of law, if the Commis-*
 5 *sion requires any disclosure of the sale or purchase of any*
 6 *securities by an officer or director or other affiliated person*
 7 *of any issuer of the securities that—*

8 “(A) *sponsors an individual account plan, and*

9 “(B) *permits elective deferrals (as defined in sec-*
 10 *tion 402(g)(3) of the Internal Revenue Code of 1986)*
 11 *to be invested in employer securities or employer real*
 12 *property,*

13 *the issuer shall, within a reasonable period after disclosure*
 14 *to the Commission, make such disclosure available on any*
 15 *individual account plan website the issuer or plan adminis-*
 16 *trator maintains which is accessible only by plan partici-*
 17 *pants and beneficiaries. If a participant or beneficiary of*
 18 *an individual account plan does not have access to such*
 19 *a website, the information required to be provided under*
 20 *this paragraph shall be provided to such participant or ben-*
 21 *eficiary upon request.*

22 “(2) *The Commission may provide that the disclosure*
 23 *requirement under this subsection will be in lieu of any*
 24 *other form of such disclosure to participants or beneficiaries*

1 *that may be required by the Commission or under any other*
 2 *Federal law.*

3 “(3) *In this subsection—*

4 “(A) *the terms ‘affiliated person’, ‘Commission’,*
 5 *‘issuer’, and ‘securities’ have the same meanings as in*
 6 *section 3 of the Securities Exchange Act of 1934, and*

7 “(B) *the terms ‘employer securities’ and ‘em-*
 8 *ployer real property’ have the meanings given such*
 9 *terms by section 407(d).”*

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

13 **SEC. 306. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**
 14 **NATING INDEPENDENT INVESTMENT ADVIS-**
 15 **ERS.**

16 (a) *IN GENERAL.—Section 404 of the Employee Re-*
 17 *tirement Income Security Act of 1974 (29 U.S.C. 1104) is*
 18 *amended by adding at the end the following new subsection:*

19 “(e)(1) *In the case of an individual account plan*
 20 *which permits a plan participant or beneficiary to exercise*
 21 *control over the assets in his or her account, if a plan spon-*
 22 *sor or other person who is a fiduciary designates and mon-*
 23 *itors a qualified investment adviser pursuant to the require-*
 24 *ments of paragraph (3), such fiduciary—*

1 “(A) shall be deemed to have satisfied the re-
 2 quirements under this section for the prudent designa-
 3 tion and periodic review of an investment adviser
 4 with whom the plan sponsor or other person who is
 5 a fiduciary enters into an arrangement for the provi-
 6 sion of advice referred to in section 3(21)(A)(ii),

7 “(B) shall not be liable under this section for
 8 any loss, or by reason of any breach, with respect to
 9 the provision of investment advice given by such ad-
 10 viser to any plan participant or beneficiary, and

11 “(C) shall not be liable for any co-fiduciary li-
 12 ability under subsections (a)(2) and (b) of section 405
 13 with respect to the provision of investment advice
 14 given by such adviser to any plan participant or ben-
 15 eficiary.

16 “(2)(A) For purposes of this section, the term ‘qualified
 17 investment adviser’ means, with respect to a plan, a
 18 person—

19 “(i) who is a fiduciary of the plan by reason of
 20 the provision of investment advice by such person to
 21 a plan participant or beneficiary;

22 “(ii) who—

23 “(I) is registered as an investment adviser
 24 under the Investment Advisers Act of 1940 (15
 25 U.S.C. 80b–1 et seq.),

1 “(II) is registered as an investment adviser
 2 under the laws of the State in which such adviser
 3 maintains the principal office and place of busi-
 4 ness of such adviser, but only if such State laws
 5 are consistent with section 203A of the Invest-
 6 ment Advisers Act of 1940 (15 U.S.C. 80b–3a),

7 “(III) is a bank or similar financial insti-
 8 tution referred to in section 408(b)(4),

9 “(IV) is an insurance company qualified to
 10 do business under the laws of a State, or

11 “(V) is any other comparably qualified en-
 12 tity which satisfies such criteria as the Secretary
 13 determines appropriate, consistent with the pur-
 14 poses of this subsection, and

15 “(iii) who meets the requirements of subpara-
 16 graph (B).

17 “(B) The requirements of this subparagraph are met
 18 if every individual employed (or otherwise compensated) by
 19 a person described in subparagraph (A)(ii) who provides
 20 investment advice on behalf of such person to any plan par-
 21 ticipant or beneficiary is—

22 “(i) an individual described in subclause (I) of
 23 subparagraph (A)(ii),

1 “(ii) an individual described in subclause (II) of
 2 subparagraph (A)(ii), but only if such State has an
 3 examination requirement to qualify for registration,

4 “(iii) registered as a broker or dealer under the
 5 Securities Exchange Act of 1934 (15 U.S.C. 78a et
 6 seq.),

7 “(iv) a registered representative as described in
 8 section 3(a)(18) of the Securities Exchange Act of
 9 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of
 10 the Investment Advisers Act of 1940 (15 U.S.C. 80b–
 11 2(a)(17)), or

12 “(v) any other comparably qualified individual
 13 who satisfies such criteria as the Secretary determines
 14 appropriate, consistent with the purposes of this sub-
 15 section.

16 “(3) The requirements of this paragraph are met if—

17 “(A) the plan sponsor or other person who is a
 18 fiduciary in designating a qualified investment ad-
 19 viser receives at the time of the designation, and an-
 20 nually thereafter, a written verification from the
 21 qualified investment adviser that the investment
 22 adviser—

23 “(i) is and remains a qualified investment
 24 adviser,

1 “(ii) acknowledges that the investment ad-
2 viser is a fiduciary with respect to the plan and
3 is solely responsible for its investment advice,

4 “(iii) has reviewed the plan documents (in-
5 cluding investment options) and has determined
6 that its relationship with the plan and the in-
7 vestment advice provided to any plan partici-
8 pant or beneficiary, including any fees or other
9 compensation it will receive, will not constitute
10 a violation of section 406,

11 “(iv) will, in providing investment advice
12 to any participant or beneficiary, consider any
13 employer securities or employer real property al-
14 located to his or her account, and

15 “(v) has the necessary insurance coverage
16 (as determined by the Secretary) for any claim
17 by any plan participant or beneficiary,

18 “(B) the plan sponsor or other person who is a
19 fiduciary in designating a qualified investment ad-
20 viser reviews the documents described in paragraph
21 (4) provided by such adviser and determines that
22 there is no material reason not to enter into an ar-
23 rangement for the provision of advice by such quali-
24 fied investment adviser, and

1 “(C) the plan sponsor or other person who is a
 2 fiduciary in designating a qualified investment ad-
 3 viser, within 30 days of having information brought
 4 to its attention that the investment adviser is no
 5 longer qualified or that a substantial number of plan
 6 participants or beneficiaries have raised concerns
 7 about the services being provided by the investment
 8 adviser—

9 “(i) investigates such information and con-
 10 cerns, and

11 “(ii) determines that there is no material
 12 reason not to continue the designation of the ad-
 13 viser as a qualified investment adviser.

14 “(4) A qualified investment adviser shall provide the
 15 following documents to the plan sponsor or other person who
 16 is a fiduciary in designating the adviser:

17 “(A) The contract with the plan sponsor or other
 18 person who is a fiduciary for the services to be pro-
 19 vided by the investment adviser to the plan partici-
 20 pants and beneficiaries.

21 “(B) A disclosure as to any fees or other com-
 22 pensation that will be received by the investment ad-
 23 viser for the provision of such investment advice.

24 “(C) The Uniform Application for Investment
 25 Adviser Registration as filed with the Securities and

1 *Exchange Commission or a substantially similar dis-*
 2 *closure application as determined by and filed with*
 3 *the Secretary.*

4 “(5) Any qualified investment adviser that acknowl-
 5 edges it is a fiduciary pursuant to paragraph (3)(A)(ii)
 6 shall be deemed a fiduciary under this part with respect
 7 to the provision of investment advice to a plan participant
 8 or beneficiary.”

9 (b) *FIDUCIARY LIABILITY*.—Section 404(c)(1)(B) is
 10 amended by inserting “(other than a qualified investment
 11 adviser)” after “fiduciary”.

12 (c) *EFFECTIVE DATE*.—The amendment made by this
 13 section shall apply with respect to investment advisers des-
 14 ignated after the date of the enactment of this Act.

15 ***TITLE IV—OTHER PROVISIONS***
 16 ***RELATING TO PENSIONS***
 17 ***Subtitle A—General Provisions***

18 ***SEC. 401. EMPLOYEE PLANS COMPLIANCE RESOLUTION***
 19 ***SYSTEM.***

20 (a) *IN GENERAL*.—The Secretary of the Treasury shall
 21 have full authority to establish and implement the Em-
 22 ployee Plans Compliance Resolution System (or any suc-
 23 cessor program) and any other employee plans correction
 24 policies, including the authority to waive income, excise,
 25 or other taxes to ensure that any tax, penalty, or sanction

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

3 (b) *IMPROVEMENTS.*—*The Secretary of the Treasury*
 4 *shall continue to update and improve the Employee Plans*
 5 *Compliance Resolution System (or any successor program),*
 6 *giving special attention to—*

7 (1) *increasing the awareness and knowledge of*
 8 *small employers concerning the availability and use*
 9 *of the program;*

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

13 (3) *extending the duration of the self-correction*
 14 *period under the Self-Correction Program for signifi-*
 15 *cant compliance failures;*

16 (4) *expanding the availability to correct insig-*
 17 *nificant compliance failures under the Self-Correction*
 18 *Program during audit; and*

19 (5) *assuring that any tax, penalty, or sanction*
 20 *that is imposed by reason of a compliance failure is*
 21 *not excessive and bears a reasonable relationship to*
 22 *the nature, extent, and severity of the failure.*

1 **SEC. 402. 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.*—*The following provisions are each*
 6 *amended by striking “maintained by a State or local gov-*
 7 *ernment or political subdivision thereof (or agency or in-*
 8 *strumentality thereof)”:*

9 (1) *Section 401(a)(5)(G) of the Internal Revenue*
 10 *Code of 1986.*

11 (2) *Section 401(a)(26)(H) of such Code.*

12 (3) *Section 401(k)(3)(G) of such Code.*

13 (4) *Section 1505(d)(2) of the Taxpayer Relief*
 14 *Act of 1997.*

15 (b) *CONFORMING AMENDMENTS.*—

16 (1) *The heading for section 401(a)(5)(G) of such*
 17 *Code is amended to read as follows: “GOVERNMENTAL*
 18 *PLANS.—”.*

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

22 (3) *Section 401(k)(3)(G) of such Code is amend-*
 23 *ed by inserting “GOVERNMENTAL PLANS.—” after*
 24 *“(G)”.*

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

4 **SEC. 403. NOTICE AND CONSENT PERIOD REGARDING DIS-**
 5 **TRIBUTIONS.**

6 (a) *EXPANSION OF PERIOD.*—

7 (1) *AMENDMENT OF INTERNAL REVENUE*
 8 *CODE.*—

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

12 (B) *MODIFICATION OF REGULATIONS.*—*The*
 13 *Secretary of the Treasury shall modify the regu-*
 14 *lations under sections 402(f), 411(a)(11), and*
 15 *417 of the Internal Revenue Code of 1986 by sub-*
 16 *stituting “180 days” for “90 days” each place it*
 17 *appears in Treasury Regulations sections*
 18 *1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).*

19 (2) *AMENDMENT OF ERISA.*—

20 (A) *IN GENERAL.*—*Section 205(c)(7)(A) of*
 21 *the Employee Retirement Income Security Act of*
 22 *1974 (29 U.S.C. 1055(c)(7)(A)) is amended by*
 23 *striking “90-day” and inserting “180-day”.*

24 (B) *MODIFICATION OF REGULATIONS.*—*The*
 25 *Secretary of the Treasury shall modify the regu-*

lations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 relating to sections 203(e) and 205 of such Act by substituting “180 days” for “90 days” each place it appears.

(3) *EFFECTIVE DATE.*—The amendments and modifications made or required by this subsection shall apply to years beginning after December 31, 2002.

(b) *NOTIFICATION OF RIGHT TO DEFER.*—

(1) *IN GENERAL.*—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant’s right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) *EFFECTIVE DATE.*—

(A) *IN GENERAL.*—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2002.

(B) *REASONABLE NOTICE.*—A plan shall not be treated as failing to meet the requirements of section 411(a)(11) of such Code or section 205

1 *of such Act with respect to any description of*
 2 *consequences described in paragraph (1) made*
 3 *within 90 days after the Secretary of the Treas-*
 4 *ury issues the modifications required by para-*
 5 *graph (1) if the plan administrator makes a rea-*
 6 *sonable attempt to comply with such require-*
 7 *ments.*

8 **SEC. 404. TECHNICAL CORRECTIONS TO SAVER ACT.**

9 *Section 517 of the Employee Retirement Income Secu-*
 10 *rity 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 of*
 16 *this paragraph, the Secretary may enter into a coop-*
 17 *erative agreement, pursuant to the Federal Grant and*
 18 *Cooperative Agreement Act of 1977 (31 U.S.C. 6301*
 19 *et seq.), with any appropriate, qualified entity.”;*

20 *(3) in subsection (e)(2)—*

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

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

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

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

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

15 *“(G) the Chairman and Ranking Member of*
16 *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 of*
21 *the Subcommittee on Employer-Employee Rela-*
22 *tions of the Committee on Education and the*
23 *Workforce of the House of Representatives; and”;*
24 *(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 appointed
8 by the President,” in subparagraph (A)(i) and
9 inserting “not more than 100 participants shall
10 be appointed under this clause by the Presi-
11 dent,”;

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

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

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

21 “(B) *PRESIDENTIAL AUTHORITY FOR ADDI-*
22 *TIONAL APPOINTMENTS.—The President, in con-*
23 *sultation with the elected leaders of Congress re-*
24 *ferred to in subsection (a), may appoint under*
25 *this subparagraph additional participants to the*

1 *National Summit. The number of such addi-*
 2 *tional participants appointed under this sub-*
 3 *paragraph may not exceed the lesser of 3 percent*
 4 *of the total number of all additional participants*
 5 *appointed under this paragraph, or 10. Such ad-*
 6 *ditional participants shall be appointed from*
 7 *persons nominated by an organization referred*
 8 *to in subsection (b) which is made up of private*
 9 *sector businesses and associations partnered with*
 10 *Government entities to promote long term finan-*
 11 *cial security in retirement through savings and*
 12 *with which the Secretary is required thereunder*
 13 *to consult and cooperate and shall not be Fed-*
 14 *eral, State, or local government employees.”;*

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

18 *(6) in subsection (f)(1)(C), by inserting “, no*
 19 *later than 90 days prior to the date of the commence-*
 20 *ment of the National Summit,” after “comment”;*

21 *(7) in subsection (g), by inserting “, in consulta-*
 22 *tion with the congressional leaders specified in sub-*
 23 *section (e)(2),” after “report” the first place it ap-*
 24 *pears in the text;*

25 *(8) in subsection (i)—*

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

3 (B) by adding at the end the following new
4 paragraph:

5 “(3) *RECEPTION AND REPRESENTATION AUTHOR-*
6 *ITY.—The Secretary is hereby granted reception and*
7 *representation authority limited specifically to the*
8 *events at the National Summit. The Secretary shall*
9 *use any private contributions accepted in connection*
10 *with the National Summit prior to using funds ap-*
11 *propriated for purposes of the National Summit pur-*
12 *suant to this paragraph.”; and*

13 (9) in subsection (k)—

14 (A) by striking “shall enter into a contract
15 on a sole-source basis” and inserting “may enter
16 into a contract on a sole-source basis”; and

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

18 **SEC. 405. MISSING PARTICIPANTS.**

19 (a) *IN GENERAL.—Section 4050 of the Employee Re-*
20 *tirement Income Security Act of 1974 (29 U.S.C. 1350) is*
21 *amended by redesignating subsection (c) as subsection (e)*
22 *and by inserting after subsection (b) the following new sub-*
23 *sections:*

24 “(c) *MULTIEMPLOYER PLANS.—The corporation shall*
25 *prescribe rules similar to the rules in subsection (a) for mul-*

1 *tiemployer plans covered by this title that terminate under*
 2 *section 4041A.*

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

4 “(1) *TRANSFER TO CORPORATION.—The plan ad-*
 5 *ministrator of a plan described in paragraph (4) may*
 6 *elect to transfer a missing participant’s benefits to the*
 7 *corporation upon termination of the plan.*

8 “(2) *INFORMATION TO THE CORPORATION.—To*
 9 *the extent provided in regulations, the plan adminis-*
 10 *trator of a plan described in paragraph (4) shall,*
 11 *upon termination of the plan, provide the corporation*
 12 *information with respect to benefits of a missing par-*
 13 *ticipant if the plan transfers such benefits—*

14 “(A) *to the corporation, or*

15 “(B) *to an entity other than the corporation*
 16 *or a plan described in paragraph (4)(B)(ii).*

17 “(3) *PAYMENT BY THE CORPORATION.—If bene-*
 18 *fits of a missing participant were transferred to the*
 19 *corporation under paragraph (1), the corporation*
 20 *shall, upon location of the participant or beneficiary,*
 21 *pay to the participant or beneficiary the amount*
 22 *transferred (or the appropriate survivor benefit)*
 23 *either—*

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

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

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

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

7 “(i) to which the provisions of this sec-
8 tion do not apply (without regard to this
9 subsection), and

10 “(ii) which is not a plan described in
11 paragraphs (2) through (11) of section
12 4021(b), and

13 “(B) at the time the assets are to be distrib-
14 uted upon termination, the plan—

15 “(i) has missing participants, and

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

20 “(5) *CERTAIN PROVISIONS NOT TO APPLY.*—Sub-
21 sections (a)(1) and (a)(3) shall not apply to a plan
22 described in paragraph (4).”.

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

1 (1) by striking “title IV” and inserting “section
2 4050”; and

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

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

9 **SEC. 406. REDUCED PBGC PREMIUM FOR NEW PLANS OF**
10 **SMALL EMPLOYERS.**

11 (a) *IN GENERAL*.—Subparagraph (A) of section
12 4006(a)(3) of the Employee Retirement Income Security
13 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

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

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

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

22 “(iv) in the case of a new single-employer plan
23 (as defined in subparagraph (F)) maintained by a
24 small employer (as so defined) for the plan year, \$5

1 *for each individual who is a participant in such plan*
 2 *during the plan year.”.*

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

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

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

22 *“(II) In the case of a plan maintained by two or more*
 23 *contributing sponsors that are not part of the same con-*
 24 *trolled group, the employees of all contributing sponsors and*
 25 *controlled groups of such sponsors shall be aggregated for*

1 *purposes of determining whether any contributing sponsor*
 2 *is a small employer.”.*

3 *(c) EFFECTIVE DATE.—The amendments made by this*
 4 *section shall apply to plans first effective after December*
 5 *31, 2002.*

6 **SEC. 407. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
 7 **NEW AND SMALL PLANS.**

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

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

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

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

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

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

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

23 *For purposes of this clause, a defined benefit plan (as de-*
 24 *finied in section 3(35)) maintained by a contributing spon-*
 25 *sor shall be treated as a new defined benefit plan for each*

1 of its first 5 plan years if, during the 36-month period end-
 2 ing on the date of the adoption of the plan, the sponsor
 3 and each member of any controlled group including the
 4 sponsor (or any predecessor of either) did not establish or
 5 maintain a plan to which this title applies with respect
 6 to which benefits were accrued for substantially the same
 7 employees as are in the new plan.”.

8 (b) *SMALL PLANS.*—Paragraph (3) of section 4006(a)
 9 of the *Employee Retirement Income Security Act of 1974*
 10 (29 U.S.C. 1306(a)), as amended by section 406(b), is
 11 amended—

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

15 (2) by inserting after subparagraph (F) the fol-
 16 lowing new subparagraph:

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

23 “(ii) For purposes of clause (i), whether an employer
 24 has 25 or fewer employees on the first day of the plan year
 25 is determined by taking into consideration all of the em-

1 *ployees of all members of the contributing sponsor's con-*
 2 *trolled group. In the case of a plan maintained by two or*
 3 *more contributing sponsors, the employees of all contrib-*
 4 *uting sponsors and their controlled groups shall be aggre-*
 5 *gated for purposes of determining whether the 25-or-fewer-*
 6 *employees limitation has been satisfied.”.*

7 *(c) EFFECTIVE DATES.—*

8 *(1) SUBSECTION (a).—The amendments made by*
 9 *subsection (a) shall apply to plans first effective after*
 10 *December 31, 2002.*

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

14 **SEC. 408. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
 15 **PREMIUM OVERPAYMENT REFUNDS.**

16 *(a) IN GENERAL.—Section 4007(b) of the Employment*
 17 *Retirement Income Security Act of 1974 (29 U.S.C.*
 18 *1307(b)) is amended—*

19 *(1) by striking “(b)” and inserting “(b)(1)”, and*
 20 *(2) by inserting at the end the following new*
 21 *paragraph:*

22 *“(2) The corporation is authorized to pay, subject to*
 23 *regulations prescribed by the corporation, interest on the*
 24 *amount of any overpayment of premium refunded to a des-*
 25 *ignated payor. Interest under this paragraph shall be cal-*

1 *culated at the same rate and in the same manner as interest*
 2 *is calculated for underpayments under paragraph (1).”.*

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

7 **SEC. 409. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
 8 **PLANS.**

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

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

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

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

23 “(iii) *in the case of a corporation, owns, directly*
 24 *or indirectly, 50 percent or more in value of either the*

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

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

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

10 *“(i) a fraction (not to exceed 1) the numerator*
 11 *of which is the number of years from the later of the*
 12 *effective date or the adoption date of the plan to the*
 13 *termination date, and the denominator of which is*
 14 *10, and*

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

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

19 *(1) Section 4044(a)(4)(B) of the Employee Re-*
 20 *irement Income Security Act of 1974 (29 U.S.C.*
 21 *1344(a)(4)(B)) is amended by striking “section*
 22 *4022(b)(5)” and inserting “section 4022(b)(5)(B)”.*

23 *(2) Section 4044(b) of such Act (29 U.S.C.*
 24 *1344(b)) is amended—*

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

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

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

20 (c) CONFORMING AMENDMENTS.—

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

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

1 (B) by adding at the end the following new
2 subsection:

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

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

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

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

17 For purposes of paragraph (3), the constructive ownership
18 rules of section 1563(e) of the Internal Revenue Code of
19 1986 shall apply (determined without regard to section
20 1563(e)(3)(C)).”.

21 (2) Section 4043(c)(7) of such Act (29 U.S.C.
22 1343(c)(7)) is amended by striking “section 4022(b)(6)”
23 and inserting “section 4021(d)”.

24 (d) *EFFECTIVE DATES.*—

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

4 (A) *under section 4041(c) of the Employee*
 5 *Retirement Income Security Act of 1974 (29*
 6 *U.S.C. 1341(c)) with respect to which notices of*
 7 *intent to terminate are provided under section*
 8 *4041(a)(2) of such Act (29 U.S.C. 1341(a)(2))*
 9 *after December 31, 2002, and*

10 (B) *under section 4042 of such Act (29*
 11 *U.S.C. 1342) with respect to which proceedings*
 12 *are instituted by the corporation after such date.*

13 (2) *CONFORMING AMENDMENTS.*—*The amend-*
 14 *ments made by subsection (c) shall take effect on Jan-*
 15 *uary 1, 2003.*

16 **SEC. 410. BENEFIT SUSPENSION NOTICE.**

17 (a) *MODIFICATION OF REGULATION.*—*The Secretary of*
 18 *Labor shall modify the regulation under subparagraph (B)*
 19 *of section 203(a)(3) of the Employee Retirement Income Se-*
 20 *curity Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide*
 21 *that the notification required by such regulation in connec-*
 22 *tion with any suspension of benefits described in such*
 23 *subparagraph—*

24 (1) *in the case of an employee who returns to*
 25 *service described in section 203(a)(3)(B)(i) or (ii) of*

1 *such Act after commencement of payment of benefits*
 2 *under the plan, shall be made during the first cal-*
 3 *endar month or the first 4 or 5-week payroll period*
 4 *ending in a calendar month in which the plan with-*
 5 *holds payments, and*

6 *(2) in the case of any employee who is not de-*
 7 *scribed in paragraph (1)—*

8 *(A) may be included in the summary plan*
 9 *description for the plan furnished in accordance*
 10 *with section 104(b) of such Act (29 U.S.C.*
 11 *1024(b)), rather than in a separate notice, and*

12 *(B) need not include a copy of the relevant*
 13 *plan provisions.*

14 *(b) EFFECTIVE DATE.—The modification made under*
 15 *this section shall apply to plan years beginning after De-*
 16 *cember 31, 2002.*

17 **SEC. 411. INTEREST RATE RANGE FOR ADDITIONAL FUND-**
 18 **ING REQUIREMENTS.**

19 *(a) IN GENERAL.—Subclause (III) of section*
 20 *412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is*
 21 *amended—*

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

24 *(2) by inserting “(108 percent for plan years be-*
 25 *ginning in 2001)” after “120 percent”, and*

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

3 (b) *SPECIAL RULE.*—Subclause (III) of section
4 302(d)(7)(C)(i) of the *Employee Retirement Income Secu-*
5 *rity Act of 1974* (29 U.S.C. 1082(d)(7)(C)(i)) is amended—

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

8 (2) by inserting “(108 percent for plan years be-
9 ginning in 2001)” after “120 percent”, and

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

12 (c) *PBGC.*—The last sentence of subclause (IV) of sec-
13 tion 4006(a)(3)(E)(iii) of such Act (29 U.S.C.
14 1306(a)(3)(E)(iii)) is amended to read as follows: “Any ref-
15 erence to this clause or this subparagraph by any other sec-
16 tions or subsections (other than sections 4005, 4010, 4011
17 and 4043) shall be treated as a reference to this clause or
18 this subparagraph without regard to this subclause.”.

19 (d) *EFFECTIVE DATE.*—The amendments made by this
20 section shall take effect as if included in the amendments
21 made by section 405 of the *Job Creation and Worker Assist-*
22 *ance Act of 2002.*

1 **SEC. 412. VOLUNTARY EARLY RETIREMENT INCENTIVE AND**
 2 **EMPLOYMENT RETENTION PLANS MAIN-**
 3 **TAINED BY LOCAL EDUCATIONAL AGENCIES**
 4 **AND OTHER ENTITIES.**

5 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE
 6 PLANS.—

7 (1) TREATMENT AS PLAN PROVIDING SEVERANCE
 8 PAY.—Section 457(e)(11) of the Internal Revenue
 9 Code of 1986 (relating to certain plans excluded) is
 10 amended by adding at the end the following new sub-
 11 paragraph:

12 “(D) CERTAIN VOLUNTARY EARLY RETIRE-
 13 MENT INCENTIVE PLANS.—

14 “(i) IN GENERAL.—If an applicable
 15 voluntary early retirement incentive plan—

16 “(I) makes payments or supple-
 17 ments as an early retirement benefit,
 18 retirement-type subsidy, or as a benefit
 19 described in the last sentence of section
 20 411(a)(9), and

21 “(II) such payments or supple-
 22 ments are made in coordination with a
 23 defined benefit plan which is described
 24 in section 401(a) and includes a trust
 25 exempt from tax under section 501(a)
 26 and which is maintained by an eligible

1 *employer described in paragraph*
 2 *(1)(A) or by an education association*
 3 *described in clause (ii)(II),*

4 *such applicable plan shall be treated for*
 5 *purposes of subparagraph (A)(i) as a bona*
 6 *fide severance pay plan with respect to such*
 7 *payments or supplements to the extent such*
 8 *payments or supplements could otherwise*
 9 *have been provided under such defined ben-*
 10 *efit plan (determined as if section 411 ap-*
 11 *plied to such defined benefit plan).*

12 “(ii) *APPLICABLE VOLUNTARY EARLY*
 13 *RETIREMENT INCENTIVE PLAN.—For pur-*
 14 *poses of this subparagraph, the term ‘appli-*
 15 *cable voluntary early retirement incentive*
 16 *plan’ means a voluntary early retirement*
 17 *incentive plan maintained by—*

18 *“(I) a local educational agency*
 19 *(as defined in section 9101 of the Ele-*
 20 *mentary and Secondary Education Act*
 21 *of 1965 (20 U.S.C. 7801)), or*

22 *“(II) an education association*
 23 *which principally represents employees*
 24 *of 1 or more agencies described in sub-*
 25 *clause (I) and which is described in*

1 *section 501(c) (5) or (6) and exempt*
 2 *from tax under section 501(a).”*

3 (2) *AGE DISCRIMINATION IN EMPLOYMENT*
 4 *ACT.—Section 4(l)(1) of the Age Discrimination in*
 5 *Employment Act of 1967 (29 U.S.C. 623(l)(1)) is*
 6 *amended—*

7 (A) *by inserting “(A)” after “(1)”,*

8 (B) *by redesignating subparagraphs (A)*
 9 *and (B) as clauses (i) and (ii), respectively,*

10 (C) *by redesignating clauses (i) and (ii) of*
 11 *subparagraph (B) (as in effect before the amend-*
 12 *ments made by subparagraph (B)) as subclauses*
 13 *(I) and (II), respectively, and*

14 (D) *by adding at the end the following:*

15 “(B) *A voluntary early retirement incentive*
 16 *plan that—*

17 “(i) *is maintained by—*

18 “(I) *a local educational agency*
 19 *(as defined in section 9101 of the Ele-*
 20 *mentary and Secondary Education Act*
 21 *of 1965 (20 U.S.C. 7801), or*

22 “(II) *an education association*
 23 *which principally represents employees*
 24 *of 1 or more agencies described in sub-*
 25 *clause (I) and which is described in*

1 *section 501(c) (5) or (6) of the Internal*
 2 *Revenue Code of 1986 and exempt from*
 3 *taxation under section 501(a) of such*
 4 *Code, and*

5 *“(ii) makes payments or supplements*
 6 *described in subclauses (I) and (II) of sub-*
 7 *paragraph (A)(ii) in coordination with a*
 8 *defined benefit plan (as so defined) main-*
 9 *tained by an eligible employer described in*
 10 *section 457(e)(1)(A) of such Code or by an*
 11 *education association described in clause*
 12 *(i)(II),*

13 *shall be treated solely for purposes of subpara-*
 14 *graph (A)(ii) as if it were a part of the defined*
 15 *benefit plan with respect to such payments or*
 16 *supplements. Payments or supplements under*
 17 *such a voluntary early retirement incentive plan*
 18 *shall not constitute severance pay for purposes of*
 19 *section 4(l)(2) of the Age Discrimination in Em-*
 20 *ployment Act (29 U.S.C. 623(l)(2)).”*

21 *(b) EMPLOYMENT RETENTION PLANS.—*

22 *(1) IN GENERAL.—Section 457(f)(2) of the Inter-*
 23 *nal Revenue Code of 1986 (relating to exceptions) is*
 24 *amended by striking “and” at the end of subpara-*
 25 *graph (D), by striking the period at the end of sub-*

paragraph (E) and inserting “, and”, and by adding at the end the following:

“(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.”

(2) *DEFINITIONS AND RULES RELATING TO EMPLOYMENT RETENTION PLANS.*—Section 457(f) of such Code is amended by adding at the end the following new paragraph:

“(4) *EMPLOYMENT RETENTION PLANS.*—For purposes of paragraph (2)(F)—

“(A) *IN GENERAL.*—The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that portion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

“(B) *OTHER RULES.*—

“(i) *LIMITATION.*—Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years preceding the year in which such portion is paid or otherwise made available to the participant.

1 “(ii) *TREATMENT.*—A plan shall not
 2 be treated for purposes of this title as pro-
 3 viding for the deferral of compensation for
 4 any year with respect to the portion of the
 5 plan described in subparagraph (A).

6 “(C) *APPLICABLE EMPLOYMENT RETENTION*
 7 *PLAN.*—The term ‘applicable employment reten-
 8 tion plan’ means an employment retention plan
 9 maintained by—

10 “(i) a local educational agency (as de-
 11 fined in section 9101 of the Elementary and
 12 Secondary Education Act of 1965 (20
 13 U.S.C. 7801), or

14 “(ii) an education association which
 15 represents employees of 1 or more agencies
 16 described in clause (i) and which is de-
 17 scribed in section 501(c) (5) or (6) and ex-
 18 empt from taxation under section 501(a),
 19 and

20 “(D) *EMPLOYMENT RETENTION PLAN.*—The
 21 term ‘employment retention plan’ means a plan
 22 to pay, upon termination of employment, com-
 23 pensation to an employee of a local educational
 24 agency or education association described in sub-
 25 paragraph (C) for purposes of—

1 “(i) retaining the services of the em-
2 ployee, or

3 “(ii) rewarding such employee for the
4 employee’s service with 1 or more such
5 agencies or associations.”

6 (c) *COORDINATION WITH ERISA*.—Section 3(2)(B) of
7 the *Employee Retirement Income Security Act of 1974* (29
8 U.S.C. 1002(2)(B)) is amended by adding at the end the
9 following: “An applicable voluntary early retirement incen-
10 tive plan (as defined in section 457(e)(11)(D)(ii) of the *In-*
11 ternal Revenue Code of 1986) making payments or supple-
12 ments described in section 457(e)(11)(D)(i) of such Code,
13 and an applicable employment retention plan (as defined
14 in section 457(f)(4)(C) of such Code) making payments of
15 benefits described in section 457(f)(4)(A) of such Code, shall,
16 for purposes of this title, be treated as a welfare plan (and
17 not a pension plan) with respect to such payments and sup-
18 plements.”

19 (d) *EFFECTIVE DATES*.—

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

23 (2) *TAX AMENDMENTS*.—The amendments made
24 by subsections (a)(1) and (b) shall apply to taxable

1 *years ending after the date of the enactment of this*
 2 *Act.*

3 (3) *ERISA AMENDMENTS.*—*The amendment*
 4 *made by subsection (c) shall apply to plan years end-*
 5 *ing after the date of the enactment of this Act.*

6 (4) *NO INFERENCE.*—*No inference (including*
 7 *any inference as to whether a voluntary early retire-*
 8 *ment incentive plan is a defined benefit plan for any*
 9 *purpose) may be drawn from the amendments made*
 10 *by this section with respect to the application of any*
 11 *law to—*

12 (A) *any plan or arrangement to which such*
 13 *amendments do not apply, or*

14 (B) *any period or year to which such*
 15 *amendments do not apply.*

16 **SEC. 413. AUTOMATIC ROLLOVERS OF CERTAIN MANDA-**
 17 **TORY DISTRIBUTIONS.**

18 (a) *IN GENERAL.*—*Subsections (c) and (d) of section*
 19 *657 of the Economic Growth and Tax Relief Reconciliation*
 20 *Act of 2001, as amended by section 411(t) of the Job Cre-*
 21 *ation and Worker Assistance Act of 2002, are amended to*
 22 *read as follows:*

23 “(c) *REGULATIONS.*—

24 “(1) *AUTOMATIC ROLLOVER SAFE HARBOR.*—*Not*
 25 *later than December 31, 2002, the Secretary of Labor*

1 *shall prescribe interim final regulations or other ad-*
 2 *ministrative guidance providing for safe harbors*
 3 *under which the designation of an institution and in-*
 4 *vestment of funds in accordance with section*
 5 *401(a)(31)(B) of the Internal Revenue Code of 1986*
 6 *is deemed to satisfy the fiduciary requirements of sec-*
 7 *tion 404(a) of the Employee Retirement Income Secu-*
 8 *rity Act of 1974 (29 U.S.C. 1104(a)).*

9 “(2) *USE OF LOW-COST INDIVIDUAL RETIREMENT*
 10 *PLANS.—The Secretary of the Treasury and the Sec-*
 11 *retary of Labor may provide, and shall give consider-*
 12 *ation to providing, special relief with respect to the*
 13 *use of low-cost individual retirement plans for pur-*
 14 *poses of transfers under section 401(a)(31)(B) of the*
 15 *Internal Revenue Code of 1986 and for other uses that*
 16 *promote the preservation of assets for retirement in-*
 17 *come purposes.*

18 “(d) *EFFECTIVE DATE.—The amendments made by*
 19 *this section shall apply to distributions made after Decem-*
 20 *ber 31, 2003.*”

21 (b) *EFFECTIVE DATE.—The amendment made by this*
 22 *section shall take effect as if included in the amendments*
 23 *made by, and provisions of, section 657 of the Economic*
 24 *Growth and Tax Relief Reconciliation Act of 2001.*

1 **SEC. 414. 2-YEAR EXTENSION OF TRANSITION RULE TO PEN-**
 2 **SION FUNDING REQUIREMENTS.**

3 (a) *IN GENERAL.*—Section 769(c) of the Retirement
 4 Protection Act of 1994, as added by section 1508 of the Tax-
 5 payer Relief Act of 1997, is amended—

6 (1) by inserting “except as provided in para-
 7 graph (3),” before “the transaction rules”, and

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

9 “(3) *SPECIAL RULES.*—In the case of plan years
 10 beginning in 2004 and 2005, the following transition
 11 rules shall apply in lieu of the transition rules de-
 12 scribed in paragraph (2):

13 “(A) For purposes of section 412(l)(9)(A) of
 14 the Internal Revenue Code of 1986 and section
 15 302(d)(9)(A) of the Employee Retirement Income
 16 Security Act of 1974, the funded current liability
 17 percentage for any plan year shall be treated as
 18 not less than 90 percent.

19 “(B) For purposes of section 412(m) of the
 20 Internal Revenue Code of 1986 and section
 21 302(e) of the Employee Retirement Income Secu-
 22 rity Act of 1974, the funded current liability
 23 percentage for any plan year shall be treated as
 24 not less than 100 percent.

25 “(C) For purposes of determining unfunded
 26 vested benefits under section 4006(a)(3)(E)(iii)

1 *of the Employee Retirement Income Security Act*
 2 *of 1974, the mortality table shall be the mor-*
 3 *tality table used by the plan.”*

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

7 ***Subtitle B—Studies***

8 ***SEC. 421. STUDY REGARDING INSURANCE SYSTEM FOR IN-*** 9 ***DIVIDUAL ACCOUNT PLANS.***

10 ***(a) STUDY.***—*As soon as practicable after the date of*
 11 *the enactment of this Act, the Pension Benefit Guaranty*
 12 *Corporation shall undertake a study relating to the estab-*
 13 *lishment of an insurance system for individual account*
 14 *plans. In conducting such study, the Corporation shall*
 15 *consider—*

16 ***(1) the feasibility of such a system,***

17 ***(2) the problem with insuring investments in***
 18 ***employer securities, and***

19 ***(3) options for developing such a system.***

20 ***(b) REPORT.***—*Not later than 2 years after the date*
 21 *of the enactment of this Act, the Corporation shall report*
 22 *the results of its study, together with any recommendations*
 23 *for legislative changes, to the Committees on Ways and*
 24 *Means and Education and the Workforce of the House of*

1 *Representatives and the Committees on Finance and*
 2 *Health, Education, Labor, and Pensions of the Senate.*

3 **SEC. 422. STUDY REGARDING FEES CHARGED BY INDIVIDUAL ACCOUNT PLANS.**
 4

5 (a) *STUDY.*—As soon as practicable after the date of
 6 the enactment of this Act, the Secretary of Labor shall un-
 7 dertake a study of the administrative and transaction fees
 8 incurred by participants and beneficiaries in connection
 9 with the investment of assets in their accounts under indi-
 10 vidual account plans. In conducting such study, the Sec-
 11 retary shall consider—

12 (1) *how the fees compare to fees charged for simi-*
 13 *lar services provided to investors not in individual*
 14 *account plans, and*

15 (2) *whether participants or beneficiaries are ade-*
 16 *quately notified of the fees.*

17 (b) *REPORT.*—Not later than 1 year after the date of
 18 the enactment of this Act, the Secretary shall report the re-
 19 sults of its study, together with any recommendations for
 20 legislative changes, to the Committees on Ways and Means
 21 and Education and the Workforce of the House of Rep-
 22 resentatives and the Committees on Finance and Health,
 23 Education, Labor, and Pensions of the Senate.

1 **SEC. 423. STUDY ON REVITALIZING DEFINED BENEFIT**
2 **PLANS.**

3 (a) *STUDY.*—As soon as practicable after the date of
4 enactment of this Act, the Secretary of the Treasury shall
5 undertake a study on ways to revitalize interest in defined
6 benefit plans among employers. In conducting such study,
7 the Secretary shall consider—

8 (1) ways to encourage the establishment of de-
9 fined benefit plans by small- and mid-sized employ-
10 ers,

11 (2) ways to encourage the continued mainte-
12 nance of defined benefit plans by larger employers,
13 and

14 (3) legislative proposals to accomplish the objec-
15 tives described in paragraphs (1) and (2).

16 (b) *REPORT.*—Not later than 18 months after the date
17 of the enactment of this Act, the Secretary of the Treasury
18 shall report the results of the study, together with any rec-
19 ommendations for legislative changes, to the Committees on
20 Ways and Means and Education and the Workforce of the
21 House of Representatives and the Committees on Finance
22 and Health, Education, Labor, and Pensions of the Senate.

23 **SEC. 424. STUDY ON FLOOR-OFFSET ESOPS.**

24 (a) *STUDY.*—As soon as practicable after the date of
25 the enactment of this Act, the Pension Benefit Guaranty
26 Corporation shall undertake a study to determine the num-

ber of floor-offset employee stock ownership plans still in existence and the extent to which such plans pose a risk to plan participants or beneficiaries and to the Corporation. Such study shall consider legislative proposals to address such risks.

(b) *REPORT*.—Not later than 12 months after the date of the enactment of this Act, the Corporation shall report the results of its study, together with any recommendations for legislative changes, to the Committees on Ways and Means and Education and the Workforce of the House of Representatives and the Committees on Finance and Health, Education, Labor, and Pensions of the Senate.

Subtitle C—Plan Amendments

SEC. 431. PROVISIONS RELATING TO PLAN AMENDMENTS.

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

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

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Re-

1 *tirement Income Security Act of 1974 by reason of*
 2 *such amendment.*

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

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

7 *(A) pursuant to any amendment made by*
 8 *this Act or the Economic Growth and Tax Relief*
 9 *Reconciliation Act of 2001, or pursuant to any*
 10 *regulation issued by the Secretary of the Treas-*
 11 *ury or the Secretary of Labor under such Acts,*
 12 *and*

13 *(B) on or before the last day of the first*
 14 *plan year beginning on or after January 1,*
 15 *2005.*

16 *In the case of a governmental plan (as defined in sec-*
 17 *tion 414(d) of the Internal Revenue Code of 1986),*
 18 *this paragraph shall be applied by substituting*
 19 *“2007” for “2005”.*

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

22 *(A) during the period—*

23 *(i) beginning on the date the legislative*
 24 *or regulatory amendment described in para-*
 25 *graph (1)(A) takes effect (or in the case of*

1 *a plan or contract amendment not required*
 2 *by such legislative or regulatory amend-*
 3 *ment, the effective date specified by the*
 4 *plan), and*

5 *(ii) ending on the date described in*
 6 *paragraph (1)(B) (or, if earlier, the date the*
 7 *plan or contract amendment is adopted),*
 8 *the plan or contract is operated as if such plan*
 9 *or contract amendment were in effect; and*

10 *(B) such plan or contract amendment ap-*
 11 *plies retroactively for such period.*

12 ***TITLE V—PROVISIONS RELATING***
 13 ***TO EXECUTIVES AND STOCK***
 14 ***OPTIONS***

15 ***Subtitle A—Provisions Relating to***
 16 ***Executives***

17 ***PART I—EXECUTIVE COMPENSATION***

18 ***SEC. 501. REPEAL OF 1978 REVENUE ACT LIMITATION ON***
 19 ***SECRETARY OF THE TREASURY'S AUTHORITY***
 20 ***TO DETERMINE YEAR OF INCLUSION OF***
 21 ***AMOUNTS UNDER PRIVATE DEFERRED COM-***
 22 ***PENSATION PLANS.***

23 *(a) REPEAL.—Section 132 of the Revenue Act of 1978*
 24 *(Public Law 95–600) is repealed.*

1 (b) *EFFECTIVE DATE.*—*The amendment made by this*
 2 *section shall apply to taxable years beginning after the date*
 3 *of the enactment of this Act.*

4 **SEC. 502. TREATMENT OF NONQUALIFIED DEFERRED COM-**
 5 **PENSATION FUNDED WITH ASSETS LOCATED**
 6 **OUTSIDE THE UNITED STATES.**

7 (a) *IN GENERAL.*—*Section 83(c) of the Internal Rev-*
 8 *enue Code of 1986 (relating to special rules for property*
 9 *transferred in connection with performance of services) is*
 10 *amended by adding at the end the following new paragraph:*

11 “(4) *FOREIGN ASSETS FUNDING NONQUALIFIED*
 12 *DEFERRED COMPENSATION ARRANGEMENTS.*—

13 “(A) *IN GENERAL.*—*In determining whether*
 14 *there is a transfer of property for purposes of*
 15 *subsection (a), if assets are—*

16 “(i) *designated or otherwise available*
 17 *for the payment of nonqualified deferred*
 18 *compensation, and*

19 “(ii) *located outside the United States,*
 20 *such assets shall not be treated as subject to the*
 21 *claims of creditors.*

22 “(B) *COMPENSATION FOR SERVICES PER-*
 23 *FORMED IN FOREIGN JURISDICTION.*—*Subpara-*
 24 *graph (A) shall not apply to assets located in a*
 25 *foreign jurisdiction if substantially all of the*

1 *services to which the nonqualified deferred com-*
 2 *pensation relates are performed in such jurisdic-*
 3 *tion.*

4 “(C) *REGULATIONS.*—*The Secretary shall*
 5 *prescribe such regulations as are necessary to*
 6 *carry out the provisions of this paragraph, in-*
 7 *cluding regulations to exempt arrangements from*
 8 *the application of this paragraph if—*

9 “(i) *the arrangement will not result in*
 10 *an improper deferral of United States tax,*
 11 *and*

12 “(ii) *the assets involved in the arrange-*
 13 *ment will be readily accessible in any insol-*
 14 *vency or bankruptcy proceeding.”*

15 (b) *EFFECTIVE DATE.*—*The amendments made by this*
 16 *section shall apply to amounts deferred after the date of*
 17 *the enactment of this Act in taxable years ending after such*
 18 *date.*

19 **SEC. 503. TREATMENT OF EMPLOYMENT LOANS MADE TO**
 20 **CORPORATE EXECUTIVES.**

21 (a) *IN GENERAL.*—*Subchapter C of chapter 80 of the*
 22 *Internal Revenue Code of 1986 (relating to provisions af-*
 23 *fecting more than one subtitle) is amended by adding after*
 24 *section 7872 the following new section:*

1 **“SEC. 7872A. TREATMENT OF EMPLOYMENT LOANS MADE**
2 **TO CORPORATE EXECUTIVES.**

3 “(a) *GENERAL RULE.—If—*

4 “(1) *an employer which is a C corporation di-*
5 *rectly or indirectly makes a loan to an applicable em-*
6 *ployee, and*

7 “(2) *the requirements of subsection (b) are not*
8 *met with respect to such loan,*

9 *then such employer shall, for purposes of subtitles A and*
10 *C, be treated as having paid compensation (and not as hav-*
11 *ing made a loan) to the employee in an amount equal to*
12 *the amount of the loan.*

13 “(b) *MINIMUM REQUIREMENTS TO BE TREATED AS A*
14 *LOAN.—*

15 “(1) *IN GENERAL.—A loan meets the require-*
16 *ments of this subsection only if—*

17 “(A) *the loan is evidenced by a promissory*
18 *note or other written evidence of indebtedness,*

19 “(B) *there is adequate collateral or security*
20 *for the loan, and*

21 “(C) *there is a fixed schedule of not greater*
22 *than 10 years over which the loan is to be repaid*
23 *in substantially equal installments or in such*
24 *other form as the Secretary may prescribe.*

1 “(2) *COLLATERAL.*—For purposes of paragraph
 2 (1)(B), there shall not be taken into account as collat-
 3 eral or security—

4 “(A) any stock or capital or profits interests
 5 in the employer,

6 “(B) any option or other contract to pur-
 7 chase such stock or interests,

8 “(C) any restricted stock or ownership in-
 9 terest,

10 “(D) any nonqualified deferred compensa-
 11 tion, or

12 “(E) any similar asset to the extent pro-
 13 vided by the Secretary.

14 “(3) *RELOCATION LOANS.*—This section shall not
 15 apply to a loan by an employer to an employee the
 16 proceeds of which are used by the employee to pur-
 17 chase a principal residence if the purchase is in con-
 18 nection with the commencement of work by an em-
 19 ployee or a change in the principal place of work of
 20 an employee to which section 217 applies.

21 “(4) *COORDINATION WITH OTHER PROVISIONS.*—
 22 Section 483, 643(i), or 1274 shall not apply to any
 23 loan to the extent this section applies to the loan.

24 “(c) *RULES APPLICABLE TO TREATMENT OF AMOUNTS*
 25 *AS COMPENSATION.*—

1 “(1) *COORDINATION WITH OTHER RE-*
 2 *CHARACTERIZATIONS.—Subsection (a) shall not apply*
 3 *to a loan which, without regard to this section, is re-*
 4 *characterized as compensation or dividends or with*
 5 *respect to which amounts are otherwise includible in*
 6 *the employee’s gross income for purposes of this title.*

7 “(2) *TREATMENT AS SUPPLEMENTAL WAGE PAY-*
 8 *MENT.—If an employer is treated under subsection*
 9 *(a) as having made a payment of compensation to an*
 10 *applicable employee, such payment shall be treated as*
 11 *a supplemental wage payment made on the date the*
 12 *loan was made.*

13 “(3) *SUBSEQUENT REPAYMENTS.—*

14 “(A) *IN GENERAL.—The Secretary shall*
 15 *prescribe rules for the application of this title in*
 16 *any case where an applicable employee repays*
 17 *any amount of a loan to which subsection (a)*
 18 *applies.*

19 “(B) *MODIFICATION OF PRECEDING TAX*
 20 *TREATMENT.—The rules under subparagraph (A)*
 21 *shall, to the extent the Secretary determines ap-*
 22 *propriate, provide that—*

23 “(i) *the employee shall be allowed a de-*
 24 *duction (and the employer shall include in*
 25 *gross income) for the taxable year of the re-*

1 *payment any portion of the amount repaid*
 2 *that was previously included in gross in-*
 3 *come of the employee (or allowed as a de-*
 4 *duction to the employer), and*

5 *“(ii) the amount treated as compensa-*
 6 *tion for purposes of subtitle C (other than*
 7 *chapter 24) and the Social Security Act for*
 8 *the calendar year of the repayment shall be*
 9 *reduced by any portion of the amount re-*
 10 *paid that was previously treated as com-*
 11 *ensation for such purposes.*

12 *“(C) CARRYFORWARDS.—The rules under*
 13 *subparagraph (A) shall, to the extent the Sec-*
 14 *retary determines appropriate, provide that any*
 15 *reduction described in subparagraph (B)(ii) may*
 16 *be carried forward to 1 or more succeeding years*
 17 *to the extent necessary to properly take the re-*
 18 *payment into account.*

19 *“(d) OTHER DEFINITIONS AND RULES.—For purposes*
 20 *of this section—*

21 *“(1) APPLICABLE EMPLOYEE.—*

22 *“(A) IN GENERAL.—The term ‘applicable*
 23 *employee’ means an employee who, at the time*
 24 *the loan is made—*

1 “(i) is an officer or director of the em-
2 ployer,

3 “(ii) is a 5-percent owner (within the
4 meaning of section 416(i)) of the employer,
5 or

6 “(iii) has an aggregate outstanding
7 balance of loans (including such loan) made
8 directly or indirectly to the employee by the
9 employer in excess of \$1,000,000.

10 “(B) *EMPLOYEE*.—For purposes of subpara-
11 graph (A), the term ‘employee’ includes a direc-
12 tor.

13 “(2) *APPLICATION OF SECTION TO LOANS OF IN-*
14 *DIVIDUALS WHO ARE NOT OFFICERS, DIRECTORS, OR*
15 *OWNERS*.—In the case of an individual who is an ap-
16 plicable employee solely by reason of paragraph
17 (1)(A)(iii)—

18 “(A) this section shall only apply to the
19 portion of a loan constituting the excess de-
20 scribed in such paragraph, and

21 “(B) such portion shall be treated as a sepa-
22 rate loan for purposes of applying this section.

23 “(3) *AGGREGATION*.—All persons treated as a
24 single employer under subsection (a) or (b) of section

1 52 shall be treated as a single person for purposes of
2 this section.

3 “(e) *REGULATIONS.*—The Secretary shall prescribe
4 such regulations as are necessary to carry out the purposes
5 of this section.”

6 (b) *APPLICATION OF SECTION 7872 TO EXCESSIVE EM-*
7 *PLOYEE LOANS.*—Section 7872 of the Internal Revenue
8 Code of 1986 (relating to below-market interest rate loans)
9 is amended by redesignating subsection (h) as subsection
10 (i) and by inserting after subsection (g) the following new
11 subsection:

12 “(h) *SPECIAL RULE FOR EXCESSIVE EMPLOYMENT*
13 *LOANS.*—

14 “(1) *IN GENERAL.*—If the principal amount of
15 any loan made by an employer which is a C corpora-
16 tion to a director or employee, when added to the ag-
17 gregate outstanding balance (as of the date of the
18 loan) of all other loans made by such employer to
19 such director or employee, exceeds \$1,000,000—

20 “(A) the portion of the loan constituting
21 such excess shall be treated as a separate loan for
22 purposes of applying this section, and

23 “(B) in determining whether such separate
24 loan is a below-market loan (and in applying
25 this section to such loan if it is a below-market

1 loan), the applicable Federal rate used shall be
 2 the rate determined without regard to this sub-
 3 section plus 3 percentage points.

4 “(2) *AGGREGATION.*—All persons treated as a
 5 single employer under subsection (a) or (b) of section
 6 52 shall be treated as a single employer for purposes
 7 of this subsection.”

8 (c) *CONFORMING AMENDMENT.*—The table of sections
 9 for subchapter C of chapter 80 of the Internal Revenue Code
 10 of 1986 is amended by adding after the item relating to
 11 section 7872 the following new item:

 “Sec. 7872A. *Treatment of employment loans made to corporate executives.*”

12 (d) *EFFECTIVE DATE.*—The amendments made by this
 13 section shall apply to—

14 (1) loans made after the date of the enactment of
 15 this Act, and

16 (2) refinancings after such date of loans made
 17 before such date.

18 **SEC. 504. INCREASE IN WITHHOLDING FROM SUPPLE-**
 19 **MENTAL WAGE PAYMENTS IN EXCESS OF**
 20 **\$1,000,000.**

21 (a) *IN GENERAL.*—If an employer elects under Treas-
 22 ury Regulation 31.3402(g)–1 to determine the amount to
 23 be deducted and withheld from any supplemental wage pay-
 24 ment by using a flat percentage rate, the rate to be used
 25 in determining the amount to be so deducted and withheld

1 *shall not be less than 28 percent (or the corresponding rate*
 2 *in effect under section 1(i)(2) of the Internal Revenue Code*
 3 *of 1986 for taxable years beginning in the calendar year*
 4 *in which the payment is made).*

5 (b) *SPECIAL RULE FOR LARGE PAYMENTS.*—

6 (1) *IN GENERAL.*—*Notwithstanding subsection*
 7 *(a), if the supplemental wage payment, when added*
 8 *to all such payments previously made by the employer*
 9 *to the employee during the calendar year, exceeds*
 10 *\$1,000,000, the rate used with respect to such excess*
 11 *shall be equal to the maximum rate of tax in effect*
 12 *under section 1 of such Code for taxable years begin-*
 13 *ning in such calendar year.*

14 (2) *AGGREGATION.*—*All persons treated as a sin-*
 15 *gle employer under subsection (a) or (b) of section 52*
 16 *of the Internal Revenue Code of 1986 shall be treated*
 17 *as a single employer for purposes of this subsection.*

18 (c) *CONFORMING AMENDMENT.*—*Section 13273 of the*
 19 *Revenue Reconciliation Act of 1993 (Public Law 103–66)*
 20 *is repealed.*

21 (d) *EFFECTIVE DATE.*—*The provisions of, and the*
 22 *amendment made by, this section shall apply to payments*
 23 *made after December 31, 2002.*

1 **PART II—SIGNING CORPORATE TAX RETURNS**

2 **SEC. 511. SIGNING OF CORPORATE TAX RETURNS BY CHIEF**
 3 **EXECUTIVE OFFICER.**

4 (a) *IN GENERAL.*—Section 6062 of the Internal Rev-
 5 *enue Code of 1986 (relating to signing of corporation re-*
 6 *turns) is amended by striking the first sentence and insert-*
 7 *ing the following new sentence: “The return of a corporation*
 8 *with respect to income shall be signed by the chief executive*
 9 *officer of such corporation (or other such officer of the cor-*
 10 *poration as the Secretary may designate if the corporation*
 11 *does not have a chief executive officer).”*

12 (b) *EFFECTIVE DATE.*—The amendment made by this
 13 *section shall apply to returns filed after the date of the en-*
 14 *actment of this Act.*

15 **Subtitle B—Stock Options**

16 **SEC. 521. EXCLUSION OF INCENTIVE STOCK OPTIONS AND**
 17 **EMPLOYEE STOCK PURCHASE PLAN STOCK**
 18 **OPTIONS FROM WAGES.**

19 (a) *EXCLUSION FROM EMPLOYMENT TAXES.*—

20 (1) *SOCIAL SECURITY TAXES.*—

21 (A) *Section 3121(a) of the Internal Revenue*
 22 *Code of 1986 (relating to definition of wages) is*
 23 *amended by striking “or” at the end of para-*
 24 *graph (20), by striking the period at the end of*
 25 *paragraph (21) and inserting “; or”, and by in-*

serting after paragraph (21) the following new paragraph:

“(22) remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

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

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

“(19) Remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

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

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

4 “(11) *QUALIFIED STOCK OPTIONS.*—The term
 5 ‘compensation’ shall not include any remuneration on
 6 account of—

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

12 “(B) any disposition by the individual of
 13 such stock.”

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

20 “(18) remuneration on account of—

21 “(A) a transfer of a share of stock to any
 22 individual pursuant to an exercise of an incen-
 23 tive stock option (as defined in section 422(b)) or
 24 under an employee stock purchase plan (as de-
 25 fined in section 423(b)), or

1 “(B) any disposition by the individual of
2 such stock.”

3 (b) WAGE WITHHOLDING NOT REQUIRED ON DIS-
4 QUALIFYING DISPOSITIONS.—Section 421(b) of the Internal
5 Revenue Code of 1986 (relating to effect of disqualifying dis-
6 positions) is amended by adding at the end the following
7 new sentence: “No amount shall be required to be deducted
8 and withheld under chapter 24 with respect to any increase
9 in income attributable to a disposition described in the pre-
10 ceding sentence.”

11 (c) WAGE WITHHOLDING NOT REQUIRED ON COM-
12 PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-
13 CENT AND 100 PERCENT OF VALUE OF STOCK.—Section
14 423(c) of the Internal Revenue Code of 1986 (relating to
15 special rule where option price is between 85 percent and
16 100 percent of value of stock) is amended by adding at the
17 end the following new sentence: “No amount shall be re-
18 quired to be deducted and withheld under chapter 24 with
19 respect to any amount treated as compensation under this
20 subsection.”

1 **SEC. 522. TREATMENT OF SALE OF STOCK ACQUIRED PUR-**
 2 **SUANT TO EXERCISE OF STOCK OPTIONS TO**
 3 **COMPLY WITH CONFLICT-OF-INTEREST RE-**
 4 **QUIREMENTS.**

5 (a) *IN GENERAL.*—Section 421 of the Internal Revenue
 6 Code of 1986 (relating to general rules for certain stock op-
 7 tions) is amended by adding at the end the following new
 8 subsection:

9 “(d) *CERTAIN SALES TO COMPLY WITH CONFLICT-OF-*
 10 *INTEREST REQUIREMENTS.*—If—

11 “(1) *a share of stock is transferred to an eligible*
 12 *person (as defined in section 1043(b)(1)) pursuant to*
 13 *such person’s exercise of an option to which this part*
 14 *applies, and*

15 “(2) *such share is disposed of by such person*
 16 *pursuant to a certificate of divestiture (as defined in*
 17 *section 1043(b)(2)),*

18 *such disposition shall be treated as meeting the require-*
 19 *ments of section 422(a)(1) or 423(a)(1), whichever is appli-*
 20 *cable.”*

21 (b) *EFFECTIVE DATE.*—The amendment made by this
 22 section shall apply to sales after July 1, 2002.

Calendar No. 552

107TH CONGRESS
2D SESSION

S. 1971

[Report No. 107-242]

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.

AUGUST 2, 2002

Reported under authority of the order of the Senate of
August 1, 2002, with an amendment