107TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 107–51
Part 2

COMPREHENSIVE RETIREMENT SECURITY AND PENSION REFORM ACT OF 2001

MAY 1, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 10]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and the Workforce, to whom was referred the bill (H.R. 10) to provide for pension reform, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Comprehensive Retirement Security and Pension Reform Act of 2001".

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

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

TITLE I—INDIVIDUAL RETIREMENT ACCOUNTS

SEC. 101. MODIFICATION OF IRA CONTRIBUTION LIMITS.

(a) INCREASE IN CONTRIBUTION LIMIT.—

(1) IN GENERAL.—Paragraph (1)(A) of section 219(b) (relating to maximum amount of deduction) is amended by striking "$2,000" and inserting "the deductible amount".

(2) DEDUCTIBLE AMOUNT.—Section 219(b) is amended by adding at the end the following new paragraph:

"(5) DEDUCTIBLE AMOUNT.—For purposes of paragraph (1)(A)—

"(A) IN GENERAL.—The deductible amount shall be determined in accordance with the following table:

"For taxable years beginning in:	The deductible amount is:
2001	$3,000
2002	$4,000
2003 and thereafter	$5,000.

"(B) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS 50 OR OLDER.—In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for taxable years beginning in 2001 or 2002 shall be $5,000.

"(C) COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003, the $5,000 amount under subparagraph (A) shall be increased by an amount equal to—

"(I) such dollar amount, multiplied by

"(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 2002' for 'calendar year 1992' in subparagraph (B) thereof.

"(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.".

(b) CONFORMING AMENDMENTS.—

(1) Section 408(a)(1) is amended by striking "in excess of $2,000 on behalf of any individual" and inserting "on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)".

(2) Section 408(b)(2)(B) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(3) Section 408(b) is amended by striking "$2,000" in the matter following paragraph (4) and inserting "the dollar amount in effect under section 219(b)(1)(A)".

(4) Section 408(j) is amended by striking "$2,000".

(5) Section 408(p)(8) is amended by striking "$2,000" and inserting "the dollar amount in effect under section 219(b)(1)(A)".

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

TITLE II—EXPANDING COVERAGE

SEC. 201. INCREASE IN BENEFIT AND CONTRIBUTION LIMITS.

(a) DEFINED BENEFIT PLANS.—

(1) DOLLAR LIMIT.—

(A) Subparagraph (A) of section 415(b)(1) (relating to limitation for defined benefit plans) is amended by striking "$90,000" and inserting "$160,000".

(B) Subparagraphs (C) and (D) of section 415(b)(2) are each amended by striking "$90,000" each place it appears in the headings and the text and inserting "$160,000".

(C) Paragraph (7) of section 415(b) (relating to benefits under certain collectively bargained plans) is amended by striking "the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$90,000'" and inserting "one-half the amount otherwise applicable for such year under paragraph (1)(A) for '$160,000'".

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

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

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

(A) by striking "$90,000" in paragraph (1)(A) and inserting "$160,000"; and

(B) in paragraph (3)(A)—

(i) by striking "$90,000" in the heading and inserting "$160,000"; and

(ii) by striking "October 1, 1986" and inserting "July 1, 2000".

(5) CONFORMING AMENDMENTS.—

(A) Section 415(b)(2) is amended by striking subparagraph (F).

(B) Section 415(b)(9) is amended to read as follows:

"(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Fed-

eral Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

"(B) INDIVIDUALS WHO SEPARATE FROM SERVICE BEFORE AGE 60.—If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.".

(C) Section 415(b)(10)(C)(i) is amended by striking "applied without regard to paragraph (2)(F)".

(b) DEFINED CONTRIBUTION PLANS.—

(1) DOLLAR LIMIT.—Subparagraph (A) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking "$30,000" and inserting "$40,000".

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

(A) by striking "$30,000" in paragraph (1)(C) and inserting "$40,000"; and

(B) in paragraph (3)(D)—

(i) by striking "$30,000" in the heading and inserting "$40,000"; and

(ii) by striking "October 1, 1993" and inserting "July 1, 2000".

(c) QUALIFIED TRUSTS.—

(1) COMPENSATION LIMIT.—Sections 401(a)(17), 404(l), 408(k), and 505(b)(7) are each amended by striking "$150,000" each place it appears and inserting "$200,000".

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

(A) by striking "October 1, 1993" and inserting "July 1, 2000"; and

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

(d) ELECTIVE DEFERRALS.—

(1) IN GENERAL.—Paragraph (1) of section 402(g) (relating to limitation on exclusion for elective deferrals) is amended to read as follows:

"(1) IN GENERAL.—

"(A) LIMITATION.—Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount.

"(B) APPLICABLE DOLLAR AMOUNT.—For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	**The applicable dollar amount:**
2001	$11,000
2002	$12,000
2003	$13,000
2004	$14,000
2005 or thereafter	$15,000.".

(2) COST-OF-LIVING ADJUSTMENT.—Paragraph (5) of section 402(g) is amended to read as follows:

"(5) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2005, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2004, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.".

(3) CONFORMING AMENDMENTS.—

(A) Section 402(g) (relating to limitation on exclusion for elective deferrals), as amended by paragraphs (1) and (2), is further amended by striking paragraph (4) and redesignating paragraphs (5), (6), (7), (8), and (9) as paragraphs (4), (5), (6), (7), and (8), respectively.

(B) Paragraph (2) of section 457(c) is amended by striking "402(g)(8)(A)(iii)" and inserting "402(g)(7)(A)(iii)".

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

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

(1) IN GENERAL.—Section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations) is amended—

(A) in subsections (b)(2)(A) and (c)(1) by striking "$7,500" each place it appears and inserting "the applicable dollar amount"; and

(B) in subsection (b)(3)(A) by striking "$15,000" and inserting "twice the dollar amount in effect under subsection (b)(2)(A)".

(2) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT.—Paragraph (15) of section 457(e) is amended to read as follows:

"(15) APPLICABLE DOLLAR AMOUNT.—

"(A) IN GENERAL.—The applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	The applicable dollar amount:
2001	$11,000
2002	$12,000
2003	$13,000
2004	$14,000
2005 or thereafter	$15,000.

"(B) COST-OF-LIVING ADJUSTMENTS.—In the case of taxable years beginning after December 31, 2005, the Secretary shall adjust the $15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2004, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.".

(f) SIMPLE RETIREMENT ACCOUNTS.—

(1) LIMITATION.—Clause (ii) of section 408(p)(2)(A) (relating to general rule for qualified salary reduction arrangement) is amended by striking "$6,000" and inserting "the applicable dollar amount".

(2) APPLICABLE DOLLAR AMOUNT.—Subparagraph (E) of 408(p)(2) is amended to read as follows:

"(E) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT.—

"(i) IN GENERAL.—For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

"For taxable years beginning in calendar year:	The applicable dollar amount:
2001	$7,000
2002	$8,000
2003	$9,000
2004 or thereafter	$10,000.

"(ii) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2004, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2003, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.".

(3) CONFORMING AMENDMENTS.—

(A) Subclause (I) of section 401(k)(11)(B)(i) is amended by striking "$6,000" and inserting "the amount in effect under section 408(p)(2)(A)(ii)".

(B) Section 401(k)(11) is amended by striking subparagraph (E).

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

"(4) ROUNDING.—

"(A) $160,000 AMOUNT.—Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

"(B) $40,000 AMOUNT.—Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.".

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

SEC. 202. PLAN LOANS FOR SUBCHAPTER S OWNERS, PARTNERS, AND SOLE PROPRIETORS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Subparagraph (B) of section 4975(f)(6) (relating to exemptions not to apply to certain transactions) is amended by adding at the end the following new clause:

"(iii) LOAN EXCEPTION.—For purposes of subparagraph (A)(i), the term 'owner-employee' shall only include a person described in subclause (II) or (III) of clause (i).".

(b) AMENDMENT OF ERISA.—Section 408(d)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(d)(2)) is amended by adding at the end the following new subparagraph:

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

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

SEC. 203. MODIFICATION OF TOP-HEAVY RULES.

(a) SIMPLIFICATION OF DEFINITION OF KEY EMPLOYEE.—

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

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

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

"(i) an officer of the employer having an annual compensation greater than $150,000,";

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

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

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

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

(c) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—

(1) IN GENERAL.—Paragraph (3) of section 416(g) is amended to read as follows:

"(3) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—

"(A) IN GENERAL.—For purposes of determining—

"(i) the present value of the cumulative accrued benefit for any employee, or

"(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

"(B) 5-YEAR PERIOD IN CASE OF IN-SERVICE DISTRIBUTION.—In the case of any distribution made for a reason other than separation from service, death, or disability, subparagraph (A) shall be applied by substituting '5-year period' for '1-year period'.".

(2) BENEFITS NOT TAKEN INTO ACCOUNT.—Subparagraph (E) of section 416(g)(4) is amended—

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

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

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

"(H) CASH OR DEFERRED ARRANGEMENTS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—The term 'top-heavy plan' shall not include a plan which consists solely of—

"(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12), and

"(ii) matching contributions with respect to which the requirements of section 401(m)(11) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).".

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

(A) by striking "clause (ii)" in clause (i) and inserting "clause (ii) or (iii)"; and

(B) by adding at the end the following:

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

(f) ELIMINATION OF FAMILY ATTRIBUTION.—Section 416(i)(1)(B) (defining 5-percent owner) is amended by adding at the end the following new clause:

"(iv) FAMILY ATTRIBUTION DISREGARDED.—Solely for purposes of applying this paragraph (and not for purposes of any provision of this title which incorporates by reference the definition of a key employee or 5-percent owner under this paragraph), section 318 shall be applied without regard to subsection (a)(1) thereof in determining whether any person is a 5-percent owner.".

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2001.

SEC. 204. ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.

(a) IN GENERAL.—Section 404 (relating to deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred payment plan) is amended by adding at the end the following new subsection:

"(n) ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.—Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a), and such elective deferrals shall not be taken into account in applying any such limitation to any other contributions.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2001.

SEC. 205. REPEAL OF COORDINATION REQUIREMENTS FOR DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

(a) IN GENERAL.—Subsection (c) of section 457 (relating to deferred compensation plans of State and local governments and tax-exempt organizations), as amended by section 201, is amended to read as follows:

"(c) LIMITATION.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to years beginning after December 31, 2001.

SEC. 206. ELIMINATION OF USER FEE FOR REQUESTS TO IRS REGARDING PENSION PLANS.

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

(1) made after the later of—

(A) the fifth plan year the pension benefit plan is in existence; or

(B) the end of any remedial amendment period with respect to the plan beginning within the first 5 plan years; or

(2) made by the sponsor of any prototype or similar plan which the sponsor intends to market to participating employers.

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

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

(d) DETERMINATION OF AVERAGE FEES CHARGED.—For purposes of any determination of average fees charged, any request to which subsection (a) applies shall not be taken into account.

(e) EFFECTIVE DATE.—The provisions of this section shall apply with respect to requests made after December 31, 2001.

SEC. 207. DEDUCTION LIMITS.

(a) STOCK BONUS AND PROFIT SHARING TRUSTS.—

(1) IN GENERAL.—Subclause (I) of section 404(a)(3)(A)(i) (relating to stock bonus and profit sharing trusts) is amended by striking "15 percent" and inserting "20 percent".

(2) CONFORMING AMENDMENT.—Subparagraph (C) of section 404(h)(1) is amended by striking "15 percent" each place it appears and inserting "20 percent".

(b) COMPENSATION.—

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

"(12) DEFINITION OF COMPENSATION.—For purposes of paragraphs (3), (7), (8), and (9), the term 'compensation otherwise paid or accrued during the taxable year' shall include amounts treated as 'participant's compensation' under subparagraph (C) or (D) of section 415(c)(3).".

(2) CONFORMING AMENDMENTS.—

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

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

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

SEC. 208. OPTION TO TREAT ELECTIVE DEFERRALS AS AFTER-TAX CONTRIBUTIONS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(3) ROLLOVER CONTRIBUTIONS.—

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

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

"(ii) a Roth IRA of such individual.

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

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

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

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

"(A) IN GENERAL.—The term 'qualified distribution' has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) ROLLOVERS.—Subparagraph (B) of section 402(c)(8) is amended by adding at the end the following:

"If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated plus account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated plus account and a Roth IRA.".

(d) REPORTING REQUIREMENTS.—

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

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

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

(e) CONFORMING AMENDMENTS.—

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

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

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

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2001.

TITLE III—ENHANCING FAIRNESS FOR WOMEN

SEC. 301. CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.

(a) IN GENERAL.—Section 414 (relating to definitions and special rules) is amended by adding at the end the following new subsection:

"(v) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.—

"(1) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

"(2) LIMITATION ON AMOUNT OF ADDITIONAL DEFERRALS.—A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

"(A) $5,000, or

"(B) the excess (if any) of—

"(i) the participant's compensation for the year, over

"(ii) any other elective deferrals of the participant for such year which are made without regard to this subsection.

"(3) TREATMENT OF CONTRIBUTIONS.—In the case of any contribution to a plan under paragraph (1), such contribution shall not, with respect to the year in which the contribution is made—

"(A) be subject to any otherwise applicable limitation contained in section 402(g), 402(h)(2), 404(a), 404(h), 408(p)(2)(A)(ii), 415, or 457, or

"(B) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan.

"(4) APPLICATION OF NONDISCRIMINATION RULES.—

"(A) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

"(B) AGGREGATION.—For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 plan.

"(5) ELIGIBLE PARTICIPANT.—For purposes of this subsection, the term 'eligible participant' means, with respect to any plan year, a participant in a plan—

"(A) who has attained the age of 50 before the close of the plan year, and

"(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation contained in the terms of the plan.

"(6) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

"(A) APPLICABLE EMPLOYER PLAN.—The term 'applicable employer plan' means—

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

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

"(iii) an eligible deferred compensation plan under section 457 of an eligible employer as defined in section 457(e)(1)(A), and

"(iv) an arrangement meeting the requirements of section 408 (k) or (p).

"(B) ELECTIVE DEFERRAL.—The term 'elective deferral' has the meaning given such term by subsection (u)(2)(C).

"(C) EXCEPTION FOR SECTION 457 PLANS.—This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.

"(D) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2005, the Secretary shall adjust annually the $5,000 amount in paragraph (2)(A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to contributions in taxable years beginning after December 31, 2000.

SEC. 302. EQUITABLE TREATMENT FOR CONTRIBUTIONS OF EMPLOYEES TO DEFINED CONTRIBUTION PLANS.

(a) EQUITABLE TREATMENT.—

(1) IN GENERAL.—Subparagraph (B) of section 415(c)(1) (relating to limitation for defined contribution plans) is amended by striking "25 percent" and inserting "100 percent".

(2) APPLICATION TO SECTION 403(b).—Section 403(b) is amended—

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

(B) by striking paragraph (2); and

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

(3) CONFORMING AMENDMENTS.—

(A) Subsection (f) of section 72 is amended by striking "section 403(b)(2)(D)(iii))" and inserting "section 403(b)(2)(D)(iii), as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001)".

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

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

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

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

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

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

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

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

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

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

(G) Subparagraph (B) of section 402(g)(7) (as redesignated by section 201) is amended by inserting before the period at the end the following: "(as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001)".

(H) Section 664(g) is amended—

(i) in paragraph (3)(E) by striking "limitations under section 415(c)" and inserting "applicable limitation under paragraph (7)", and

(ii) by adding at the end the following new paragraph:

"(7) APPLICABLE LIMITATION.—

"(A) IN GENERAL.—For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

"(i) $30,000, or

"(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

"(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.".

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

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

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

"(4) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.".

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to limitation years beginning after December 31, 1999.

(B) EXCLUSION ALLOWANCE.—Effective for limitation years beginning in 2000, in the case of any annuity contract described in section 403(b) of the Internal Revenue Code of 1986, the amount of the contribution disqualified by reason of section 415(g) of such Code shall reduce the exclusion allowance as provided in section 403(b)(2) of such Code.

(3) MODIFICATION OF 403(b) EXCLUSION ALLOWANCE TO CONFORM TO 415 MODIFICATION.—The Secretary of the Treasury shall modify the regulations regarding the exclusion allowance under section 403(b)(2) of the Internal Revenue Code of 1986 to render void the requirement that contributions to a defined benefit pension plan be treated as previously excluded amounts for purposes of the exclusion allowance. For taxable years beginning after December 31, 1999, such regulations shall be applied as if such requirement were void.

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

(1) IN GENERAL.—Subparagraph (B) of section 457(b)(2) (relating to salary limitation on eligible deferred compensation plans) is amended by striking "33⅓ percent" and inserting "100 percent".

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

SEC. 303. FASTER VESTING OF CERTAIN EMPLOYER MATCHING CONTRIBUTIONS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(a) (relating to minimum vesting standards) is amended—

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

(2) by adding at the end the following:

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

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

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

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

(b) AMENDMENT OF ERISA.—Section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)) is amended—

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

(2) by adding at the end the following:

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

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

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

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

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2001.

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

(A) the later of—

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

(ii) January 1, 2002; or

(B) January 1, 2006.

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

SEC. 304. SIMPLIFY AND UPDATE THE MINIMUM DISTRIBUTION RULES.

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

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

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

(B) modify such regulations to—

(i) reflect current life expectancy; and

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

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

(3) DATE FOR REGULATIONS.—Not later than December 31, 2002, the Secretary shall issue final regulations described in paragraph (1) and such regulations shall apply without regard to whether an individual had previously begun receiving minimum distributions.

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

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

(2) CONFORMING CHANGES.—

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

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

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

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

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

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

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

(iii) by striking "the date on which the employee would have attained age 70½," in subclause (I) and inserting "April 1 of the calendar year following the calendar year in which the spouse attains 70½,"; and

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

(3) EFFECTIVE DATE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection shall apply to years beginning after December 31, 2001.

(B) DISTRIBUTIONS TO SURVIVING SPOUSE.—

(i) IN GENERAL.—In the case of an employee described in clause (ii), distributions to the surviving spouse of the employee shall not be required to commence prior to the date on which such distributions would have been required to begin under section 401(a)(9)(B) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act).

(ii) CERTAIN EMPLOYEES.—An employee is described in this clause if such employee dies before—

(I) the date of the enactment of this Act, and

(II) the required beginning date (within the meaning of section 401(a)(9)(C) of the Internal Revenue Code of 1986) of the employee.

(c) REDUCTION IN EXCISE TAX.—

(1) IN GENERAL.—Subsection (a) of section 4974 is amended by striking "50 percent" and inserting "10 percent".

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply to years beginning after December 31, 2001.

SEC. 305. CLARIFICATION OF TAX TREATMENT OF DIVISION OF SECTION 457 PLAN BENEFITS UPON DIVORCE.

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

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

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

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

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

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

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to transfers, distributions, and payments made after December 31, 2001.

SEC. 306. MODIFICATION OF SAFE HARBOR RELIEF FOR HARDSHIP WITHDRAWALS FROM CASH OR DEFERRED ARRANGEMENTS.

(a) IN GENERAL.—The Secretary of the Treasury shall revise the regulations relating to hardship distributions under section 401(k)(2)(B)(i)(IV) of the Internal Revenue Code of 1986 to provide that the period an employee is prohibited from making elective and employee contributions in order for a distribution to be deemed necessary to satisfy financial need shall be equal to 6 months.

(b) EFFECTIVE DATE.—The revised regulations under subsection (a) shall apply to years beginning after December 31, 2001.

TITLE IV—INCREASING PORTABILITY FOR PARTICIPANTS

SEC. 401. ROLLOVERS ALLOWED AMONG VARIOUS TYPES OF PLANS.

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

(1) ROLLOVERS FROM SECTION 457 PLANS.—

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

"(16) ROLLOVER AMOUNTS.—

"(A) GENERAL RULE.—In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

"(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4) without regard to subparagraph (C) thereof),

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

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

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

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

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

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

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

"(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

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

(D) WITHHOLDING.—

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

"(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) maintained by an employer described in section 457(e)(1)(A); or".

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

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

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

"(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).".

(2) ROLLOVERS TO SECTION 457 PLANS.—

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

"(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A).".

(B) SEPARATE ACCOUNTING.—Section 402(c) is amended by adding at the end the following new paragraph:

"(11) SEPARATE ACCOUNTING.—Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.".

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

"(9) SPECIAL RULE FOR ROLLOVERS TO SECTION 457 PLANS.—For purposes of this subsection, a distribution from an eligible deferred compensation plan (as

defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).".

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

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

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

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

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

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

(d) SPOUSAL ROLLOVERS.—Section 402(c)(9) (relating to rollover where spouse receives distribution after death of employee) is amended by striking "; except that" and all that follows up to the end period.

(e) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

(7) Subparagraph (B) of section 403(b)(8) is amended to read as follows:

"(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) and (9) of section 402(c) and section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.".

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

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

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

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

(f) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

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

SEC. 402. ROLLOVERS OF IRAS INTO WORKPLACE RETIREMENT PLANS.

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

"(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term 'eligible retirement plan' means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).".

(b) CONFORMING AMENDMENTS.—

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

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

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

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

(c) EFFECTIVE DATE; SPECIAL RULE.—

(1) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

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

SEC. 403. ROLLOVERS OF AFTER-TAX CONTRIBUTIONS.

(a) ROLLOVERS FROM EXEMPT TRUSTS.—Paragraph (2) of section 402(c) (relating to maximum amount which may be rolled over) is amended by adding at the end the following: "The preceding sentence shall not apply to such distribution to the extent—

"(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

"(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).".

(b) OPTIONAL DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—Subparagraph (B) of section 401(a)(31) (relating to limitation) is amended by adding at the end the following: "The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—

"(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

"(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).".

(c) RULES FOR APPLYING SECTION 72 TO IRAS.—Paragraph (3) of section 408(d) (relating to special rules for applying section 72) is amended by inserting at the end the following:

"(H) APPLICATION OF SECTION 72.—

"(i) IN GENERAL.—If—

"(I) a distribution is made from an individual retirement plan, and

"(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

"(ii) APPLICABLE RULES.—In the case of a distribution described in clause (i)—

"(I) section 72 shall be applied separately to such distribution,

"(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

"(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.".

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

SEC. 404. HARDSHIP EXCEPTION TO 60-DAY RULE.

(a) EXEMPT TRUSTS.—Paragraph (3) of section 402(c) (relating to transfer must be made within 60 days of receipt) is amended to read as follows:

"(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—

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

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

(b) IRAS.—Paragraph (3) of section 408(d) (relating to rollover contributions), as amended by section 403, is amended by adding after subparagraph (H) the following new subparagraph:

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 405. TREATMENT OF FORMS OF DISTRIBUTION.

(a) PLAN TRANSFERS.—

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

"(D) PLAN TRANSFERS.—

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

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

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

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

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

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

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

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

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

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

(2) AMENDMENT OF ERISA.—Section 204(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)) is amended by adding at the end the following:

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

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

"(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

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

"(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

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

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

"(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

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

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

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to years beginning after December 31, 2001.

(b) REGULATIONS.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (6)(B) of section 411(d) (relating to accrued benefit not to be decreased by amendment) is amended by inserting after the second sentence the following new sentence: "The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.".

(2) AMENDMENT OF ERISA.—Section 204(g)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g)(2)) is amended by inserting before the last sentence the following new sentence: "The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.".

(3) SECRETARY DIRECTED.—Not later than December 31, 2003, the Secretary of the Treasury is directed to issue regulations under section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement

Income Security Act of 1974, including the regulations required by the amendment made by this subsection. Such regulations shall apply to plan years beginning after December 31, 2003, or such earlier date as is specified by the Secretary of the Treasury.

SEC. 406. RATIONALIZATION OF RESTRICTIONS ON DISTRIBUTIONS.

(a) MODIFICATION OF SAME DESK EXCEPTION.—

(1) SECTION 401(k).—

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

(B) Subparagraph (A) of section 401(k)(10) (relating to distributions upon termination of plan or disposition of assets or subsidiary) is amended to read as follows:

"(A) IN GENERAL.—An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).".

(C) Section 401(k)(10) is amended—

(i) in subparagraph (B)—

(I) by striking "An event" in clause (i) and inserting "A termination"; and

(II) by striking "the event" in clause (i) and inserting "the termination";

(ii) by striking subparagraph (C); and

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

(2) SECTION 403(b).—

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

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

SEC. 407. PURCHASE OF SERVICE CREDIT IN GOVERNMENTAL DEFINED BENEFIT PLANS.

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

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

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

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

(b) 457 PLANS.—Subsection (e) of section 457 is amended by adding after paragraph (16) the following new paragraph:

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

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

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to trustee-to-trustee transfers after the date of the enactment of this Act.

SEC. 408. EMPLOYERS MAY DISREGARD ROLLOVERS FOR PURPOSES OF CASH-OUT AMOUNTS.

(a) QUALIFIED PLANS.—

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

"(D) SPECIAL RULE FOR ROLLOVER CONTRIBUTIONS.—A plan shall not fail to meet the requirements of this paragraph if, under the terms of the plan,

the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term 'rollover contributions' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16).".

(2) AMENDMENT OF ERISA.—Section 203(e) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended by adding at the end the following:

"(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term 'rollover contributions' means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Internal Revenue Code of 1986.".

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

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after December 31, 2001.

SEC. 409. MINIMUM DISTRIBUTION AND INCLUSION REQUIREMENTS FOR SECTION 457 PLANS.

(a) MINIMUM DISTRIBUTION REQUIREMENTS.—Paragraph (2) of section 457(d) (relating to distribution requirements) is amended to read as follows:

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

(b) INCLUSION IN GROSS INCOME.—

(1) YEAR OF INCLUSION.—Subsection (a) of section 457 (relating to year of inclusion in gross income) is amended to read as follows:

"(a) YEAR OF INCLUSION IN GROSS INCOME.—

"(1) IN GENERAL.—Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

"(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

"(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

"(2) SPECIAL RULE FOR ROLLOVER AMOUNTS.—To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.".

(2) CONFORMING AMENDMENTS.—

(A) So much of paragraph (9) of section 457(e) as precedes subparagraph (A) is amended to read as follows:

"(9) BENEFITS OF TAX EXEMPT ORGANIZATION PLANS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—".

(B) Section 457(d) is amended by adding at the end the following new paragraph:

"(3) SPECIAL RULE FOR GOVERNMENT PLAN.—An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

TITLE V—STRENGTHENING PENSION SECURITY AND ENFORCEMENT

SEC. 501. REPEAL OF PERCENT OF CURRENT LIABILITY FUNDING LIMIT.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Section 412(c)(7) (relating to full-funding limitation) is amended—

(1) by striking "the applicable percentage" in subparagraph (A)(i)(I) and inserting "in the case of plan years beginning before January 1, 2004, the applicable percentage"; and

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

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

"In the case of any plan year beginning in—	The applicable percentage is—
2002	165
2003	170.".

(b) AMENDMENT OF ERISA.—Section 302(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(c)(7)) is amended—

(1) by striking "the applicable percentage" in subparagraph (A)(i)(I) and inserting "in the case of plan years beginning before January 1, 2004, the applicable percentage"; and

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

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

"In the case of any plan year beginning in—	The applicable percentage is—
2002	165
2003	170.".

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

SEC. 502. MAXIMUM CONTRIBUTION DEDUCTION RULES MODIFIED AND APPLIED TO ALL DEFINED BENEFIT PLANS.

(a) IN GENERAL.—Subparagraph (D) of section 404(a)(1) (relating to special rule in case of certain plans) is amended to read as follows:

"(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—

"(i) IN GENERAL.—In the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded termination liability (determined as if the proposed termination date referred to in section 4041(b)(2)(A)(i)(II) of the Employee Retirement Income Security Act of 1974 were the last day of the plan year).

"(ii) PLANS WITH LESS THAN 100 PARTICIPANTS.—For purposes of this subparagraph, in the case of a plan which has less than 100 participants for the plan year, termination liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years before the termination date.

"(iii) RULE FOR DETERMINING NUMBER OF PARTICIPANTS.—For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as one plan, but only employees of such member or employer shall be taken into account.

"(iv) PLANS MAINTAINED BY PROFESSIONAL SERVICE EMPLOYERS.—Clause (i) shall not apply to a plan described in section 4021(b)(13) of the Employee Retirement Income Security Act of 1974.".

(b) CONFORMING AMENDMENT.—Paragraph (6) of section 4972(c) is amended to read as follows:

"(6) EXCEPTIONS.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account so much of the contributions to one or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

"(A) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

"(B) the sum of—

"(i) the amount of contributions described in section 401(m)(4)(A), plus

"(ii) the amount of contributions described in section 402(g)(3)(A).

For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (B).".

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

SEC. 503. EXCISE TAX RELIEF FOR SOUND PENSION FUNDING.

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

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

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2001.

SEC. 504. EXCISE TAX ON FAILURE TO PROVIDE NOTICE BY DEFINED BENEFIT PLANS SIGNIFICANTLY REDUCING FUTURE BENEFIT ACCRUALS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Chapter 43 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

"SEC. 4980F. FAILURE OF APPLICABLE PLANS REDUCING BENEFIT ACCRUALS TO SATISFY NOTICE REQUIREMENTS.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

"(b) AMOUNT OF TAX.—

"(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

"(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term 'noncompliance period' means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the failure is corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures that are due to reasonable cause and not to willful neglect, 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 one plan. For purposes of this paragraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

"(2) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the tax imposed by subsection (a) to the extent that the payment of such tax would be excessive relative to the failure involved.

"(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

"(1) In the case of a plan other than a multiemployer plan, the employer.

"(2) In the case of a multiemployer plan, the plan.

"(e) NOTICE REQUIREMENTS FOR PLANS SIGNIFICANTLY REDUCING BENEFIT ACCRUALS.—

"(1) IN GENERAL.—If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide written notice to each applicable individual (and to each employee organization representing applicable individuals).

"(2) NOTICE.—The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect

of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

"(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

"(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

"(3) TIMING OF NOTICE.—Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

"(4) DESIGNEES.—Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

"(5) NOTICE BEFORE ADOPTION OF AMENDMENT.—A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means, with respect to any plan amendment—

"(A) each participant in the plan, and

"(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

"(2) APPLICABLE PENSION PLAN.—The term 'applicable pension plan' means—

"(A) any defined benefit plan, or

"(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

"(3) EARLY RETIREMENT.—A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.

"(g) NEW TECHNOLOGIES.—The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 is amended by adding at the end the following new item:

"Sec. 4980F. Failure of applicable plans reducing benefit accruals to satisfy notice requirements.".

(b) AMENDMENT OF ERISA.—Section 204(h) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(h)) is amended by adding at the end the following new paragraphs:

"(3)(A) An applicable pension plan to which paragraph (1) applies shall not be treated as meeting the requirements of such paragraph unless, in addition to any notice required to be provided to an individual or organization under such paragraph, the plan administrator provides the notice described in subparagraph (B) to each applicable individual (and to each employee organization representing applicable individuals).

"(B) The notice required by subparagraph (A) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

"(i) which has fewer than 100 participants who have accrued a benefit under the plan, or

"(ii) which offers participants the option to choose between the new benefit formula and the old benefit formula.

"(C) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by subparagraph (A) shall be provided within a reasonable time before the effective date of the plan amendment.

"(D) Any notice under subparagraph (A) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

"(E) A plan shall not be treated as failing to meet the requirements of subparagraph (A) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

"(F) The Secretary of the Treasury may by regulations allow any notice under this paragraph to be provided by using new technologies.

"(4) For purposes of paragraph (3)—

"(A) The term 'applicable individual' means, with respect to any plan amendment—

"(i) each participant in the plan; and

"(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

"(B) The term 'applicable pension plan' means—

"(i) any defined benefit plan; or

"(ii) an individual account plan which is subject to the funding standards of section 412 of the Internal Revenue Code of 1986.

"(C) A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.".

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan amendments taking effect on or after the date of the enactment of this Act.

(2) TRANSITION.—Until such time as the Secretary of the Treasury issues regulations under sections 4980F(e)(2) and (3) of the Internal Revenue Code of 1986, and section 204(h)(3) of the Employee Retirement Income Security Act of 1974, as added by the amendments made by this section, a plan shall be treated as meeting the requirements of such sections if it makes a good faith effort to comply with such requirements.

(3) SPECIAL NOTICE RULE.—The period for providing any notice required by the amendments made by this section shall not end before the date which is 3 months after the date of the enactment of this Act.

(4) REASONABLE NOTICE.—The amendments made by this section shall not apply to any plan amendment taking effect on or after the date of the enactment of this Act if, before April 25, 2001, notice was provided to participants and beneficiaries adversely affected by the plan amendment (or their representatives) which was reasonably expected to notify them of the nature and effective date of the plan amendment.

(d) STUDY.—The Secretary of the Treasury shall prepare a report on the effects of conversions of traditional defined benefit plans to cash balance or hybrid formula plans. Such study shall examine the effect of such conversions on longer service participants, including the incidence and effects of "wear away" provisions under which participants earn no additional benefits for a period of time after the conversion. As soon as practicable, but not later than 60 days after the date of the enactment of this Act, the Secretary shall submit such report, together with recommendations thereon, to the Committee on Ways and Means and the Committee on Education and the Workforce of the House of Representatives and the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 505. TREATMENT OF MULTIEMPLOYER PLANS UNDER SECTION 415.

(a) COMPENSATION LIMIT.—

(1) IN GENERAL.—Paragraph (11) of section 415(b) (relating to limitation for defined benefit plans) is amended to read as follows:

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

(2) CONFORMING AMENDMENT.—Section 415(b)(7) (relating to benefits under certain collectively bargained plans) is amended by inserting "(other than a multiemployer plan)" after "defined benefit plan" in the matter preceding subparagraph (A).

(b) COMBINING AND AGGREGATION OF PLANS.—

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

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

multiemployer plan solely for purposes of determining whether such other plan meets the requirements of subsections (b)(1)(A) and (c).".

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

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

SEC. 506. PROTECTION OF INVESTMENT OF EMPLOYEE CONTRIBUTIONS TO 401(K) PLANS.

(a) IN GENERAL.—Section 1524(b) of the Taxpayer Relief Act of 1997 is amended to read as follows:

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

"(2) NONAPPLICATION TO PREVIOUSLY ACQUIRED PROPERTY.—The amendments made by this section shall not apply to any elective deferral which is invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired before January 1, 1999.".

(b) EFFECTIVE DATE.—The amendment made by this section shall apply as if included in the provision of the Taxpayer Relief Act of 1997 to which it relates.

SEC. 507. PERIODIC PENSION BENEFITS STATEMENTS.

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

"SEC. 105. (a)(1)(A) The administrator of an individual account plan shall furnish a pension benefit statement—

"(i) to a plan participant at least once annually, and

"(ii) to a plan beneficiary upon written request.

"(B) The administrator of a defined benefit plan shall furnish a pension benefit statement—

"(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

"(ii) to a plan participant or plan beneficiary of the plan upon written request.

"(2) A pension benefit statement under paragraph (1)—

"(A) shall indicate, on the basis of the latest available information—

"(i) the total benefits accrued, and

"(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

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

"(C) may be provided in written, electronic, or other appropriate form.

"(3)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

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

(b) CONFORMING AMENDMENTS.—

(1) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking subsection (d).

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

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

(c) MODEL STATEMENTS.—The Secretary of Labor shall develop a model benefit statement, written in a manner calculated to be understood by the average plan participant, that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2002.

SEC. 508. PROHIBITED ALLOCATIONS OF STOCK IN S CORPORATION ESOP.

(a) IN GENERAL.—Section 409 (relating to qualifications for tax credit employee stock ownership plans) is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

"(p) PROHIBITED ALLOCATIONS OF SECURITIES IN AN S CORPORATION.—

"(1) IN GENERAL.—An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

"(2) FAILURE TO MEET REQUIREMENTS.—

"(A) IN GENERAL.—If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

"(B) CROSS REFERENCE.—

"For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

"(3) NONALLOCATION YEAR.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'nonallocation year' means any plan year of an employee stock ownership plan if, at any time during such plan year—

"(i) such plan holds employer securities consisting of stock in an S corporation, and

"(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

"(B) ATTRIBUTION RULES.—For purposes of subparagraph (A)—

"(i) IN GENERAL.—The rules of section 318(a) shall apply for purposes of determining ownership, except that—

"(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

"(II) paragraph (4) thereof shall not apply.

"(ii) DEEMED-OWNED SHARES.—Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

"(4) DISQUALIFIED PERSON.—For purposes of this subsection—

"(A) IN GENERAL.—The term 'disqualified person' means any person if—

"(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

"(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

"(B) TREATMENT OF FAMILY MEMBERS.—In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

"(C) DEEMED-OWNED SHARES.—

"(i) IN GENERAL.—The term 'deemed-owned shares' means, with respect to any person—

"(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

"(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

"(ii) PERSON'S SHARE OF UNALLOCATED STOCK.—For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

"(D) MEMBER OF FAMILY.—For purposes of this paragraph, the term 'member of the family' means, with respect to any individual—

"(i) the spouse of the individual,

"(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

"(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

"(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

"(5) TREATMENT OF SYNTHETIC EQUITY.—For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

"(A) the treatment of any person as a disqualified person, or

"(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

"(6) DEFINITIONS.—For purposes of this subsection—

"(A) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' has the meaning given such term by section 4975(e)(7).

"(B) EMPLOYER SECURITIES.—The term 'employer security' has the meaning given such term by section 409(l).

"(C) SYNTHETIC EQUITY.—The term 'synthetic equity' means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

"(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.".

(b) COORDINATION WITH SECTION 4975(e)(7).—The last sentence of section 4975(e)(7) (defining employee stock ownership plan) is amended by inserting ", section 409(p)," after "409(n)".

(c) EXCISE TAX.—

(1) APPLICATION OF TAX.—Subsection (a) of section 4979A (relating to tax on certain prohibited allocations of employer securities) is amended—

(A) by striking "or" at the end of paragraph (1), and

(B) by striking all that follows paragraph (2) and inserting the following:

"(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

"(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.".

(2) LIABILITY.—Section 4979A(c) (defining liability for tax) is amended to read as follows:

"(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid—

"(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

"(A) the employer sponsoring such plan, or

"(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

"(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.".

(3) DEFINITIONS.—Section 4979A(e) (relating to definitions) is amended to read as follows:

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

"(1) DEFINITIONS.—Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

"(2) SPECIAL RULES RELATING TO TAX IMPOSED BY REASON OF PARAGRAPH (3) OR (4) OF SUBSECTION (a).—

"(A) PROHIBITED ALLOCATIONS.—The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

"(B) SYNTHETIC EQUITY.—The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

"(C) SPECIAL RULE DURING FIRST NONALLOCATION YEAR.—For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

"(D) STATUTE OF LIMITATIONS.—The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

"(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

"(ii) the date on which the Secretary is notified of such allocation or ownership.".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by this section shall apply to plan years beginning after December 31, 2004.

(2) EXCEPTION FOR CERTAIN PLANS.—In the case of any—

(A) employee stock ownership plan established after March 14, 2001, or

(B) employee stock ownership plan established on or before such date if employer securities held by the plan consist of stock in a corporation with respect to which an election under section 1362(a) of the Internal Revenue Code of 1986 is not in effect on such date,

the amendments made by this section shall apply to plan years ending after March 14, 2001.

TITLE VI—REDUCING REGULATORY BURDENS

SEC. 601. MODIFICATION OF TIMING OF PLAN VALUATIONS.

(a) AMENDMENT OF INTERNAL REVENUE CODE.—Paragraph (9) of section 412(c)(9) (relating to annual valuation) is amended to read as follows:

"(9) ANNUAL VALUATION.—

"(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

"(B) VALUATION DATE.—

"(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) ELECTION TO USE PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

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

"(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

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

"(iv) ELECTION.—An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary.".

(b) AMENDMENT OF ERISA.—Paragraph (9) of section 302(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(c)) is amended—

(1) by inserting "(A)" after "(9)"; and

(2) by adding at the end the following:

"(B)(i) Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

"(ii) The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

"(I) an election is in effect under this clause with respect to the plan; and

"(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

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

"(iv) An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary of the Treasury.".

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

SEC. 602. ESOP DIVIDENDS MAY BE REINVESTED WITHOUT LOSS OF DIVIDEND DEDUCTION.

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

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

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

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

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

SEC. 603. REPEAL OF TRANSITION RULE RELATING TO CERTAIN HIGHLY COMPENSATED EMPLOYEES.

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

(b) EFFECTIVE DATE.—The repeal made by subsection (a) shall apply to plan years beginning after December 31, 2001.

SEC. 604. EMPLOYEES OF TAX-EXEMPT ENTITIES.

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

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

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

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

SEC. 605. CLARIFICATION OF TREATMENT OF EMPLOYER-PROVIDED RETIREMENT ADVICE.

(a) IN GENERAL.—Subsection (a) of section 132 (relating to exclusion from gross income) is amended by striking "or" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting ", or", and by adding at the end the following new paragraph:

"(7) qualified retirement planning services.".

(b) QUALIFIED RETIREMENT PLANNING SERVICES DEFINED.—Section 132 is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

"(m) QUALIFIED RETIREMENT PLANNING SERVICES.—

"(1) IN GENERAL.—For purposes of this section, the term 'qualified retirement planning services' means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

"(2) NONDISCRIMINATION RULE.—Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

"(3) QUALIFIED EMPLOYER PLAN.—For purposes of this subsection, the term 'qualified employer plan' means a plan, contract, pension, or account described in section 219(g)(5).".

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

SEC. 606. REPORTING SIMPLIFICATION.

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

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

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

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

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

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

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

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

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

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

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

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case of plan years beginning after December 31, 2002, the Secretary of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 employees on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

(c) EFFECTIVE DATE.—The provisions of this section shall take effect on January 1, 2002.

SEC. 607. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

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

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

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

(3) extending the duration of the self-correction period under the Administrative Policy Regarding Self-Correction for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Administrative Policy Regarding Self-Correction during audit; and

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

SEC. 608. REPEAL OF THE MULTIPLE USE TEST.

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

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

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning after December 31, 2001.

SEC. 609. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, AND LINE OF BUSINESS RULES.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and cir-

cumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if—

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

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

Subparagraph (B) shall only apply to the extent provided by the Secretary.

(2) EFFECTIVE DATES.—

(A) REGULATIONS.—The regulation required by paragraph (1) shall apply to years beginning after December 31, 2003.

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

(b) COVERAGE TEST.—

(1) IN GENERAL.—Section 410(b)(1) (relating to minimum coverage requirements) is amended by adding at the end the following:

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

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

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

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

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

(2) EFFECTIVE DATES.—

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

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

(c) LINE OF BUSINESS RULES.—The Secretary of the Treasury shall, on or before December 31, 2003, modify the existing regulations issued under section 414(r) of the Internal Revenue Code of 1986 in order to expand (to the extent that the Secretary determines appropriate) the ability of a pension plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

SEC. 610. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) and subparagraph (H) of section 401(a)(26) are each amended by striking "section 414(d))" and all that follows and inserting "section 414(d)).".

(2) Subparagraph (G) of section 401(k)(3) and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 are each amended by striking "maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)".

(b) CONFORMING AMENDMENTS.—

(1) The heading for subparagraph (G) of section 401(a)(5) is amended to read as follows: "GOVERNMENTAL PLANS".

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

(3) Subparagraph (G) of section 401(k)(3) is amended by inserting "GOVERNMENTAL PLANS.—" after "(G)".

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

SEC. 611. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

(A) IN GENERAL.—Subparagraph (A) of section 417(a)(6) is amended by striking "90-day" and inserting "180-day".

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute "180 days" for "90 days" each

place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) AMENDMENT OF ERISA.—

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

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to the extent that they relate to sections 203(e) and 205 of such Act to substitute "180 days" for "90 days" each place it appears.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1)(A) and (2) and the modifications required by paragraph (1)(B) shall apply to years beginning after December 31, 2001.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 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.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2001.

SEC. 612. ANNUAL REPORT DISSEMINATION.

(a) REPORT AVAILABLE THROUGH ELECTRONIC MEANS.—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by adding at the end the following new sentence: "The requirement to furnish information under the previous sentence shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.".

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

SEC. 613. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking "2001 and 2005 on or after September 1 of each year involved" and inserting "2001, 2005, and 2009 in the month of September of each year involved";

(2) in subsection (b), by adding at the end the following new sentence: "To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with the American Savings Education Council or any other appropriate, qualified entity.";

(3) in subsection (e)(2)—

(A) by striking "Committee on Labor and Human Resources" in subparagraph (D) and inserting "Committee on Health, Education, Labor, and Pensions";

(B) by striking subparagraph (F) and inserting the following:

"(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;";

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

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

"(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

"(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

"(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and";

(4) in subsection (e)(3)—

(A) by striking "There shall be not more than 200 additional participants." in subparagraph (A) and inserting "The participants in the National Summit shall also include additional participants appointed under this subparagraph.";

(B) by striking "one-half shall be appointed by the President," in subparagraph (A)(i) and inserting "not more than 100 participants shall be appointed under this clause by the President,";

(C) by striking "one-half shall be appointed by the elected leaders of Congress" in subparagraph (A)(ii) and inserting "not more than 100 participants shall be appointed under this clause by the elected leaders of Congress";

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

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

"(B) PRESIDENTIAL AUTHORITY FOR ADDITIONAL APPOINTMENTS.—The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this subparagraph additional participants to the National Summit. The number of such additional participants appointed under this subparagraph may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by the organization referred to in subsection (b)(2) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.";

(5) in subsection (e)(3)(C) (as redesignated), by striking "January 31, 1998" and inserting "May 1, 2001, May 1, 2005, and May 1, 2009, for each of the subsequent summits, respectively";

(6) in subsection (f)(1)(C), by inserting ", no later than 90 days prior to the date of the commencement of the National Summit," after "comment";

(7) in subsection (g), by inserting ", in consultation with the congressional leaders specified in subsection (e)(2)," after "report" the first place it appears;

(8) in subsection (i)—

(A) by striking "beginning on or after October 1, 1997" in paragraph (1) and inserting "2001, 2005, and 2009"; and

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

"(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph."; and

(9) in subsection (k)—

(A) by striking "shall enter into a contract on a sole-source basis" and inserting "may enter into a contract on a sole-source basis"; and

(B) by striking "fiscal year 1998" and inserting "fiscal years 2001, 2005, and 2009".

TITLE VII—OTHER ERISA PROVISIONS

SEC. 701. MISSING PARTICIPANTS.

(a) IN GENERAL.—Section 4050 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1350) is amended by redesignating subsection (c) as subsection (e) and by inserting after subsection (b) the following new subsections:

"(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

"(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

"(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

"(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

"(A) to the corporation, or

"(B) to an entity other than the corporation or a plan described in paragraph (4)(B)(ii).

"(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

"(A) in a single sum (plus interest), or

"(B) in such other form as is specified in regulations of the corporation.

"(4) PLANS DESCRIBED.—A plan is described in this paragraph if—

"(A) the plan is a pension plan (within the meaning of section 3(2))—

"(i) to which the provisions of this section do not apply (without regard to this subsection), and

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

"(B) at the time the assets are to be distributed upon termination, the plan—

"(i) has missing participants, and

"(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

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

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

(1) by striking "title IV" and inserting "section 4050"; and

(2) by striking "the plan shall provide that,".

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

SEC. 702. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.

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

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

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

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

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

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

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

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

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

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

SEC. 703. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

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

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

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

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

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

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

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

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

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by section 702(b), is amended—

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

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

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

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

(c) EFFECTIVE DATES.—

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

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2001.

SEC. 704. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

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

(1) by striking "(b)" and inserting "(b)(1)", and

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

"(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).".

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

SEC. 705. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

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

"(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(i) owns the entire interest in an unincorporated trade or business,

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

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

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

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

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

"(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.".

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking "section 4022(b)(5)" and inserting "section 4022(b)(5)(B)".

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

(A) by striking "(5)" in paragraph (2) and inserting "(4), (5),", and

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

"(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.".

(c) CONFORMING AMENDMENTS.—

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

(A) in subsection (b)(9), by striking "as defined in section 4022(b)(6)", and

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

"(d) For purposes of subsection (b)(9), the term 'substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

"(1) owns the entire interest in an unincorporated trade or business,

"(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

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

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

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

(d) EFFECTIVE DATES.—

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

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2001, and

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

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2002.

SEC. 706. CIVIL PENALTIES FOR BREACH OF FIDUCIARY RESPONSIBILITY.

(a) IMPOSITION AND AMOUNT OF PENALTY MADE DISCRETIONARY.—Section 502(l)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)(1)) is amended—

(1) by striking "shall" and inserting "may", and

(2) by striking "equal to" and inserting "not greater than".

(b) APPLICABLE RECOVERY AMOUNT.—Section 502(l)(2) of such Act (29 U.S.C. 1132(l)(2)) is amended by inserting after "fiduciary or other person" the following: "(or from any other person on behalf of any such fiduciary or other person)".

(c) OTHER RULES.—Section 502(l) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(l)) is amended by adding at the end the following new paragraphs:

"(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

"(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and opportunity for a hearing with respect to the violation and applicable recovery amount.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any breach of fiduciary responsibility or other violation of part 4 of subtitle B of title

I of the Employee Retirement Income Security Act of 1974 occurring on or after the date of the enactment of this Act.

SEC. 707. BENEFIT SUSPENSION NOTICE.

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

(1) in the case of an employee who returns to service under the plan after commencement of payment of benefits under the plan—

(A) shall be made during the first calendar month or payroll period in which the plan withholds payments, and

(B) if a reduced rate of future benefit accrual will apply to the returning employee (as of the first date of participation in the plan by the employee after returning to work), shall include a statement that the rate of future benefit accrual will be reduced, and

(2) in the case of any employee who is not described in paragraph (1)—

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

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

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 2001.

SEC. 708. STUDIES.

(a) MODEL SMALL EMPLOYER GROUP PLANS STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall conduct a study to determine—

(1) the most appropriate form or forms of—

(A) employee pension benefit plans which would—

(i) be simple in form and easily maintained by multiple small employers, and

(ii) provide for ready portability of benefits for all participants and beneficiaries,

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

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

(2) appropriate methods and strategies for making pension plan coverage described in paragraph (1) more widely available to American workers.

(b) MATTERS TO BE CONSIDERED.—In conducting the study under subsection (a), the Secretary of Labor shall consider the adequacy and availability of existing employee pension benefit plans and the extent to which existing models may be modified to be more accessible to both employees and employers.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor shall report the results of the study under subsection (a), together with the Secretary's recommendations, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate. Such recommendations shall include one or more model plans described in subsection (a)(1)(A) and model alternative arrangements described in subsections (a)(1)(B) and (a)(1)(C) which may serve as the basis for appropriate administrative or legislative action.

(d) STUDY ON EFFECT OF LEGISLATION.—Not later than 5 years after the date of the enactment of this Act, the Secretary of Labor shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the effect of the provisions of this Act on pension plan coverage, including any change in—

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

(2) the levels of pension plan benefits generally,

(3) the quality of pension plan coverage generally,

(4) workers' access to and participation in pension plans, and

(5) retirement security.

TITLE VIII—PLAN AMENDMENTS

SEC. 801. 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 or section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

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

(A) pursuant to any amendment made by this Act, or pursuant to any regulation issued under this Act; and

(B) on or before the last day of the first plan year beginning on or after January 1, 2004.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting "2006" for "2004".

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

(A) during the period—

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

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

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

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

PURPOSE

The purpose of H.R. 10, the "Comprehensive Retirement Security and Pension Reform Act of 2001," is to make retirement security more available to millions of workers by (1) expanding small business retirement plans, (2) allowing workers to save more, (3) addressing the needs of an increasingly mobile workforce through greater portability and other changes, (4) making pensions more secure, and (5) cutting the red tape that has hamstrung employers who want to establish pension plans for their workers.

COMMITTEE ACTION

H.R. 10 was introduced by Representative Rob Portman, with the lead co-sponsorship of Representative Ben Cardin, on March 14, 2001. The bill has 305 cosponsors—175 Republicans and 130 Democrats, including Committee Chairman John Boehner, Subcommittee on Employer-Employee Relations Chairman Sam Johnson, and Subcommittee Ranking Member Rob Andrews.

The Subcommittee on Employer-Employee Relations held a legislative hearing on the bill on April 5, 2001. At the hearing, entitled "Enhancing Retirement Security: A Hearing on H.R. 10, The 'Comprehensive Retirement Security and Pension Reform Act of 2001,'" testimony was received from the bill's authors, Representatives Portman and Cardin, as well as representatives of the American Benefits Council, the Building and Construction Trades Department, AFL–CIO and the National Coordinating Committee for Multiemployer Plans, the American Council of Life Insurers, and the Pension Rights Center.

On April 26, 2001, the Committee on Education and the Workforce approved H.R. 10, as amended, by a voice vote, a quorum being present, and by voice vote ordered the bill favorably reported.

In the 106th Congress, the Subcommittee on Employer-Employee Relations held a legislative hearing on a very similar bill, H.R. 1102. On June 29, 1999, at the hearing, entitled "Enhancing Retirement Security: A Hearing on H.R. 1102, The 'Comprehensive Retirement Security and Pension Reform Act of 1999,'" testimony was received from the bill's authors, Representatives Portman and Cardin.

On July 14, 1999, the Committee on Education and the Workforce approved H.R. 1102, as amended, by a voice vote, a quorum being present, and by voice vote ordered the bill favorably reported.

Fifteen provisions of Title VI of the bill, containing amendments to the Employee Retirement Income Security Act (ERISA), were added to H.R. 2488, the "Taxpayer Refund and Relief Act of 1999," which passed the House and Senate on August 5, 1999, but was vetoed by the president. The tax bill passed by Congress included provisions either identical or similar to sections 601–606, 611–612, 615–616, 618, 621–622, and 627–628 of H.R. 1102, as reported.

The House passed H.R. 1102 on July 19, 2000 by a vote of 401–25 (although the ERISA provisions were deleted for procedural reasons). Twenty-two ERISA provisions from H.R. 1102 were included in the "Retirement Savings and Pension Coverage Act of 2000," part of H.R. 2614, the "Taxpayer Relief Act of 2000" passed on October 26, 2000 (but not acted upon by the Senate).

COMMITTEE STATEMENT AND VIEWS [1]

TITLE II—EXPANDING COVERAGE

Section 202—Plan loans for subchapter S owners, partners and sole proprietors

Current law

A qualified retirement plan or Internal Revenue Code section 403(b) arrangement is permitted to make loans to participants. However, the statutory exemption from ERISA prohibited transaction rules for participant loans, sec. 408 (with a counterpart in the Internal Revenue Code),[2] generally does not apply to small business owners if the business is unincorporated (i.e., partnerships and sole-proprietorships) or has made an election to be taxed under the provisions of Code subchapter S.

The statutory exemptions to the prohibited transaction rules do not apply to certain transactions in which the plan makes a loan to an owner-employee. For purposes of the prohibited transaction rules, an owner-employee means (1) a sole proprietor, (2) a partner who owns more than 10 percent of either the capital interest or the profits interest in the partnership, (3) an employee or officer of a Code subchapter S corporation who owns more than 5 percent of the outstanding stock of the corporation, and (4) the owner of an individual retirement arrangement ("IRA"). The term owner-em-

[1] This report only contains Committee views on those provisions of H.R. 10 within the Committee's jurisdiction.

[2] Note all section references are to the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. s1001, et seq., unless otherwise indicated.

ployee also includes certain family members of an owner-employee and certain corporations owned by an owner-employee.

Explanation of provision

The sec. 408 prohibited transaction rules are amended to provide equal access to participant loans for all employees, including the owners of small businesses that are unincorporated or that choose to be taxed under Code subchapter S.

Effective Date.—The provision is effective with respect to loans made after December 31, 2001.

Rationale

The Committee believes that the present-law prohibited transaction rules regarding loans unfairly discriminate against the owners of unincorporated businesses and subchapter S corporations. For example, under present law, the sole shareholder of a C corporation may take advantage of the statutory exemption to the prohibited transaction rules for loans, but an individual who does business as a sole proprietor may not. The restrictions on loans to owner-employees also reduce the incentive to establish plans and, for plans in existence, make it less likely that an affected plan will offer a loan feature.

The provision generally eliminates the special present-law rules relating to plan loans made to an owner-employee. Thus, the general statutory exemption applies to such transactions. Present law continues to apply with respect to IRAs.

TITLE III—ENHANCING FAIRNESS FOR WOMEN

Section 303—Faster vesting of certain employer matching contributions

Current law

Section 203(a) requires a participant's employer-provided benefit to vest in one of two ways: (1) a participant acquires a nonforfeitable right to 100 percent of the participant's accrued benefit derived from employer contributions upon the completion of 5 years of service; or (2) a participant has a nonforfeitable right to at least 20 percent of the participant's accrued benefit derived from employer contributions after 3 years of service, 40 percent after 4 years of service, 60 percent after 5 years of service, 80 percent after 6 years of service, and 100 percent after 7 years of service.

Explanation of provision

The provision applies an expedited vesting schedule to employer matching contributions. Under the provision, employer matching contributions have to vest in one of 2 accelerated ways: (1) a participant acquires a nonforfeitable right to 100 percent of employer matching contributions upon the completion of 3 years of service; or (2) a participant has a nonforfeitable right to 20 percent of employer matching contributions for each year of service beginning with the participant's second year of service and ending with 100 percent after 6 years of service.

Effective Date.—The provision is effective for plan years beginning after December 31, 2001, with a delayed effective date for plans maintained pursuant to a collective bargaining agreement.

The provision does not apply to any employee until the employee has an hour of service after the effective date. In applying the new vesting schedule, service before the effective date is taken into account.

Rationale

The Committee understands that many employees, particularly lower- and middle-income employees, do not take full advantage of the retirement savings opportunities provided by their employer's 401(k) plan. The Committee believes that providing faster vesting for matching contributions will make section 401(k) plans more attractive for employees, particularly lower- and middle-income employees, and will encourage workers to save more for their own retirement. In addition, faster vesting for matching contributions will enable short-service employees to accumulate greater retirement savings. Given the increasingly mobile nature of today's workforce, there is a growing risk that many participants will leave employment before vesting in their matching contributions.

TITLE IV—INCREASING PORTABILITY FOR PARTICIPANTS

Section 405—Treatment of forms of distributions

Current law

The sec. 204(g) "anti-cutback rule" generally provides that when a participant's benefits are transferred from one plan to another, the transferee plan must preserve all forms of distribution that were available under the transferor plan. The anti-cutback rule also generally provides that, without regard to a transfer, a plan may not eliminate forms of distribution. An amendment is treated as reducing an accrued benefit if, with respect to benefits accrued before the amendment is adopted, the amendment has the effect of either (1) eliminating or reducing an early retirement benefit or a retirement-type subsidy, or (2) except as provided by Department of Treasury regulations, eliminating an optional form of benefit. The prohibition against the elimination of an optional form of benefit applies to plan mergers, spinoffs, transfers, and transactions amending or having the effect of amending a plan or plans to transfer plan benefits.

Explanation of provision

A defined contribution plan to which benefits are transferred is not treated as reducing a participant's or beneficiary's accrued benefit even though it does not provide all of the forms of distribution previously available under the transferor plan if (1) the plan receives from another defined contribution plan a direct transfer of the participant's or beneficiary's benefit accrued under the transferor plan, or the plan results from a merger or other transaction that has the effect of a direct transfer (including consolidations of benefits attributable to different employers within a multiple employer plan), (2) the terms of both the transferor plan and the transferee plan authorize the transfer, (3) the transfer occurs pursuant to a voluntary election by the participant or beneficiary that is made after the participant or beneficiary received a notice describing the consequences of making the election, and (4) the transferee plan allows the participant or beneficiary to receive distribu-

tion of his or her benefit under the transferee plan in the form of a single sum distribution. Nothing in this amendment is to be construed to affect the applicability of the requirements of ERISA section 205 to the transferee plan.

In addition, except to the extent provided by the Secretary of the Treasury in regulations, a defined contribution plan is not treated as reducing a participant's accrued benefit if (1) a plan amendment eliminates a form of distribution previously available under the plan, (2) a single sum distribution is available to the participant at the same time or times as the form of distribution eliminated by the amendment, and (3) the single sum distribution is based on the same or greater portion of the participant's accrued benefit as the form of distribution eliminated by the amendment.

The Secretary of the Treasury is directed to issue, not later than December 31, 2003, final regulations under section 204(g) implementing the provision.

Furthermore, the provision directs the Secretary of the Treasury to provide by regulations that the prohibitions against eliminating or reducing an early retirement benefit, a retirement-type subsidy, or an optional form of benefit not apply to plan amendments that eliminate or reduce early retirement benefits, retirement-type subsidies, and optional forms of benefit that create significant burdens or complexities for a plan and its participants and that do not adversely affect the rights of any participant in more than a de minimis manner.

It is intended that the factors to be considered in determining whether an amendment has more than a de minimis adverse effect on any participant include (1) all of the participant's early retirement benefits, retirement-type subsidies, and optional forms of benefits that are reduced or eliminated by the amendment, (2) the extent to which early retirement benefits, retirement-type subsidies, and optional forms of benefit in effect with respect to a participant after the amendment effective date provide rights that are comparable to the rights that are reduced or eliminated by the plan amendment, (3) the number of years before the participant attains normal retirement age under the plan (or early retirement age, as applicable), (4) the amount of the participant's benefit that is affected by the plan amendment, in relation to the amount of the participant's compensation, and (5) the number of years before the plan amendment is effective.

Effective Date.—The provision is effective for years beginning after December 31, 2001.

Rationale

The Committee understands that the application of the prohibition against the elimination of any optional form of benefit to plan mergers and transfers with respect to defined contribution plans frequently results in complexity and confusion, especially in the context of business acquisitions and similar transactions. In addition, the Committee understands that a defined contribution plan participant who is entitled to receive a single sum distribution generally may roll over such a distribution to an IRA and control the manner of distribution from the IRA.

The requirement that a plan preserve all forms of distribution can significantly increase the cost of plan administration. This re-

quirement also causes confusion among plan participants who can have separate parts of their retirement benefits subject to very different plan provisions.

Section 408—Employers may disregard rollovers for purposes of cash-out amounts

Current law

Under sec. 203(e), if a retirement plan participant ceases to be employed by the employer that maintains the plan, the plan may distribute the participant's nonforfeitable accrued benefit without the consent of the participant and, if applicable, the participant's spouse, if the present value of the benefit does not exceed $5,000. For purposes of calculating the accrued benefit of an individual, amounts rolled over from another employer's retirement plan or an IRA are taken into account in calculating the $5,000 limit.

Explanation of provision

In determining whether an employee's benefit level falls below the $5,000 cash-out threshold, a plan is permitted to exclude any benefits attributable to amounts that have been rolled over by the employee from another employer's plan or an IRA (and any earnings on such rollovers).

Effective Date.—The provision is effective for distributions after December 31, 2001.

Rationale

Keeping track of and managing small account balances of former employees creates administrative burdens for plans. The Committee is concerned that, in some cases, the cash-out rule may discourage plans from accepting rollovers because the rollover will increase participants' benefits to above the cash-out amount, and increase administrative burdens. The Committee believes that disregarding rollovers for purposes of the cash-out rule will further the intent of the cash-out rule by removing a possible disincentive for plans to accept rollovers.

TITLE V—STRENGTHENING PENSION SECURITY AND ENFORCEMENT

Section 501—Repeal of 150% of current liability funding limit

Current law

Under present law, defined benefit pension plans are subject to minimum funding requirements designed to ensure that pension plans have sufficient assets to pay benefits. A defined benefit pension plan is funded using one of a number of acceptable actuarial cost methods. No contribution is required under the minimum funding rules in excess of the full funding limit. The full funding limit is generally defined by sec. 302(c)(7) as the excess, if any, of (1) the lesser of (a) the accrued liability under the plan (including normal cost) or (b) 155 percent of the plan's current liability, over (2) the value of the plan's assets. In general, current liability is all liabilities to plan participants and beneficiaries accrued to date, whereas the accrued liability full funding limit is based on projected benefits. The current liability full funding limit is scheduled to increase as follows: 160 percent for plan years beginning in 2001

and 2002, 165 percent for plan years beginning in 2003 and 2004, and 170 percent for plan years beginning in 2005 and thereafter. In no event is a plan's full funding limit less than 90 percent of the plan's current liability over the value of the plan's assets.

Explanation of provision

The arbitrary funding limitation based on current liability would be phased-out more quickly. The provision gradually increases and then repeals the current liability full funding limit. The current liability full funding limit will be 165 percent of current liability for plan years beginning in 2002 and 170 percent for plan years beginning in 2003. The current liability full funding limit is repealed for plan years beginning in 2004 and thereafter.

Effective Date.—The provision is effective for plan years beginning after December 31, 2001.

Rationale

The Committee is concerned that the current liability full funding limit may result in inadequate funding of pension plans and thus jeopardize pension security. The current-liability limitation was added in 1987, primarily to raise additional revenue. This funding limit—even at higher levels—can lead to systematic plan underfunding as well as erratic and unstable contribution patterns.

Section 504—Failure to provide notice by defined benefit plans significantly reducing future benefit accruals

Current law

Under section 204(h), a defined benefit plan or a money purchase pension plan may not be amended so as to provide for a significant reduction in the rate of future benefit accrual unless, after the adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator satisfies a notice requirement. Under such requirement, the plan administrator must provide a written notice to participants and alternate payees, other than those whose rate of future benefit accrual is reasonably expected not to be reduced by the amendment, and to each employee organization that represents a participant to whom a section 204(h) notice is required to be provided.

The written notice must set forth the plan amendment and its effective date. Alternatively, under the applicable regulations, the notice may contain:

> a summary of the amendment, rather than the text of the amendment, if the summary is written in a manner calculated to be understood by the average plan participant and contains the effective date. The summary need not explain how the individual benefit of each participant or alternate payee will be affected by the amendment.

Under the applicable regulations, in general, an amendment that significantly reduces the rate of future benefit accrual is effective with respect to participants and alternate payees with respect to whom a proper notice is provided in a timely manner. This rule applies even if certain participants and alternate payees do not receive a timely notice, provided that the plan administrator made a

"good faith effort to comply with the requirements of section 204(h)."

The applicable regulations also provide that, under certain circumstances, an amendment that significantly reduces the rate of future benefit accrual is effective with respect to all affected persons—even those who are entitled to a notice but do not receive one—if the plan administrator "made a good faith effort to comply" and failed to provide a notice to "no more than a de minimis percentage of participants and alternate payees to whom [a] section 204(h) notice is required to be provided."

Explanation of provision

The provision amends the notice requirement in section 204(h) to provide that an applicable pension plan may not be amended to provide for a significant reduction in the rate of future benefit accrual unless the plan administrator (of a defined benefit pension plan or a money purchase pension plan) furnishes a written notice concerning a plan amendment that provides for a significant reduction in the rate of future benefit accrual. Notice is also required with respect to the elimination or reduction of an early retirement benefit or retirement-type subsidy.

The plan administrator is required to provide in this notice, in a manner calculated to be understood by the average plan participant, sufficient information (as defined in Treasury regulations) to allow participants to understand the effect of the amendment. The plan administrator is required to provide this notice to each affected participant, each affected alternate payee, and each employee organization representing affected participants. For purposes of the provision, an affected participant or alternate payee is a participant or alternate payee to whom the significant reduction in the rate of future benefit accrual is reasonably expected to apply. Except to the extent provided by Treasury regulations, the plan administrator is required to provide the notice within a reasonable time before the effective date of the plan amendment.

The Secretary of the Treasury is authorized to provide a simplified notice requirement or an exemption from the notice requirement for plans with less than 100 participants and to allow any notice required under this section be provided by using new technologies. The Secretary of the Treasury is also authorized to provide a simplified notice requirement or an exemption from the notice requirement if participants are given the option to choose between benefits under the new plan formula and the old plan formula. In such cases, the Committee understands that the fiduciary rules applicable to pension plans may require appropriate disclosure to participants, even if no disclosure is required under the provision.

It is intended that the Secretary of the Treasury will issue the necessary regulations with respect to disclosure within 90 days of enactment. It is also intended that such guidance may be relatively detailed because of the need to provide for alternative disclosures rather than a single disclosure methodology that may not fit all situations, and the need to consider the complex actuarial calculations and assumptions involved in providing necessary disclosures.

In addition, the provision directs the Secretary of the Treasury to prepare a report on the effects of conversions of traditional de-

fined benefit plans to cash balance or hybrid formula plans. Such study is to examine the effect of such conversions on longer service participants, including the incidence and effects of "wear away" provisions under which participants earn no additional benefits for a period of time after the conversion. The Secretary is directed to submit such report, together with recommendations thereon, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health Education Labor and Pensions and the Committee on Finance of the Senate as soon as practicable, but not later than 60 days after the date of enactment.

Effective Date.—The provision is effective for plan amendments taking effect on or after the date of enactment. The period for providing any notice required under the provision will not end before the last day of the 3-month period following the date of enactment. Prior to the issuance of Treasury regulations, a plan will be treated as meeting the requirements of the provision if the plan makes a good faith effort to comply with such requirements.

Rationale

The Committee is aware of concerns raised regarding conversions of traditional defined benefit pension plans to so-called "cash balance" plans, with particular focus on the impact such conversions have on affected workers. The Committee believes that employees are entitled to meaningful disclosure concerning plan amendments that may result in reductions of future benefit accruals. The Committee has determined that present law does not require employers to provide such disclosure, particularly in cases where traditional defined benefit plans are converted to cash balance plans. The Committee also believes that any disclosure requirements applicable to plan amendments should strike a balance between providing meaningful disclosure and avoiding the imposition of unnecessary administrative burdens on employers.

Section 506—Protection of investment of employee contributions to 401(k) plans

Current law

Section 1524 of the Taxpayer Relief Act of 1997 ("TRA"), P.L. 105–34, amended ERISA to prohibit certain employee benefit plans from acquiring securities or real property of the employer who sponsors the plan if, after the acquisition, the fair market value of such securities and property exceeds 10 percent of the fair market value of plan assets. The 10–percent limitation does not apply to any "eligible individual account plans" that specifically authorize such investments. Generally, eligible individual account plans are defined contribution plans, including plans containing a cash or deferred arrangement (401(k) plans).

The term "eligible individual account plan" does not include the portion of a plan that consists of elective deferrals made under section 401(k) if elective deferrals equal to more than 1 percent of any employee's eligible compensation are required to be invested in employer securities and employer real property. The rule excluding elective deferrals from the definition of individual account plan does not apply if individual account plans are a small part of the

employer's retirement plans. In particular, that rule does not apply to an individual account plan for a plan year if the value of the assets of all individual account plans maintained by the employer do not exceed 10 percent of the value of the assets of all pension plans maintained by the employer (determined as of the last day of the preceding plan year).

The rule excluding elective deferrals from the definition of individual account plan applies to elective deferrals for plan years beginning after December 31, 1998. It does not apply with respect to earnings on elective deferrals for plan years beginning before January 1, 1999.

Explanation of provision

The provision modifies the effective date of the rule excluding certain elective deferrals from the definition of individual account plan by providing that the rule does not apply to any elective deferral invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired by the plan before January 1, 1999.

Effective Date.—The section is effective as if included in the section of the Taxpayer Relief Act of 1997 that contained the rule excluding certain elective deferrals.

Rationale

The change would correct a technical problem with the application of section 1524 of the TRA. The Committee believes that the effective date provided in the TRA with respect to the rule excluding certain elective deferrals from the definition of individual account plan has produced unintended results.

Section 507—Periodic pension benefits statements

Current law

Section 105 provides that a pension plan administrator must furnish a benefit statement to any participant or beneficiary who makes a written request for such a statement. This statement must indicate, on the basis of the latest available information, (1) the participant's or beneficiary's total accrued benefit, and (2) the participant's or beneficiary's vested accrued benefit or the earliest date on which the accrued benefit will become vested. A participant or beneficiary is not entitled to receive more than 1 benefit statement during any 12–month period.

Explanation of provision

A plan administrator of a defined contribution plan generally would be required to furnish a benefit statement to each participant at least once annually and to a beneficiary upon written request.

In addition to providing a benefit statement to a beneficiary upon written request, the plan administrator of a defined benefit plan generally would be required either (1) to furnish a benefit statement at least once every 3 years to each participant who has a vested accrued benefit and who is employed by the employer at the time the plan administrator furnishes the benefit statements to participants, or (2) to annually furnish written, electronic, or other

appropriate notice to each participant of the availability of and the manner in which the participant may obtain the benefit statement.

The plan administrator would be required to write the benefit statement in a manner calculated to be understood by the average plan participant and would be permitted to furnish the statement in written, electronic, or other appropriate form.

The Secretary of Labor is authorized to provide that years in which no employee or former employee benefits under a plan need not be taken into account in determining the applicable 3-year period.

In addition, the Secretary of Labor is directed to develop a model benefit statement, written in a manner calculated to be understood by the average plan participant, that may be used by plan administrators in complying with the requirements of section 105. The model statement's use would be optional. The model statement would include items such as the amount of nonforfeitable accrued benefits as of the statement date which is payable at normal retirement age under the plan, the amount of accrued benefits which are forfeitable but which may become nonforfeitable under the terms of the plan, information on how to contact the Social Security Administration to obtain a participant's personal earnings and benefit estimate statement, and other information that may be important to understanding benefits earned under the plan. Statements provided by electronic forms of communications shall be provided consistent with DOL and Treasury regulations.

Effective Date.—The changes would apply to plan years beginning after December 31, 2002.

Rationale

Benefit statements provide meaningful information that each participant should receive regularly in order to evaluate his or her retirement benefits. This will encourage better awareness by plan participants of their overall retirement preparedness and the status of their benefits under the plan.

TITLE VI—REDUCING REGULATORY BURDENS

Section 601—Modification of timing of plan valuations

Current law

Under present law, in the case of plans subject to the minimum funding rules, a plan valuation is generally required annually. Under proposed Treasury regulations, except as provided by the Commissioner of Internal Revenue, the valuation must be as of a date within the plan year to which the valuation refers or within the month prior to the beginning of that year.

Explanation of provision

The provision incorporates into the statute the proposed Treasury regulation regarding the date of valuations (the valuation must be as of a date within the plan year to which the valuation refers or within the month prior to the beginning of that year). The provision also provides, as an exception to this general rule, that the valuation date with respect to a plan year may be any date within the immediately preceding plan year if, as of such date, plan assets are not less than 125 percent of the plan's current liability. Infor-

mation determined as of such date is required to be adjusted actuarially, in accordance with Treasury regulations, to reflect significant differences in plan participants. An election to use a prior plan year valuation date, once made, may only be revoked with the consent of the Secretary of the Treasury.

Effective Date.—The provision is effective for plan years beginning after December 31, 2001.

Rationale

The Committee believes that while plan valuations are necessary to ensure adequate funding of defined benefit pension plans, they also create administrative burdens for employers. This new rule, in the case of well-funded plans, strikes an appropriate balance between funding concerns and employer concerns about plan administrative costs. Because valuations can be quite time consuming, the current-law rule means that a plan's minimum funding requirements, deductible limits, and full-funding limitation for a year are not known until after the beginning of the year, sometimes well into the year, and in extreme cases even after the year is over. This prevents accurate advance budgeting for pension contributions.

Section 606—Reporting simplification

Current law

A plan administrator of a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation generally must file with the Secretary of Labor, the Secretary of the Treasury, and the PBGC an annual return for each plan year containing certain information with respect to the qualification, financial condition, and operation of the plan. The plan administrator must use the Form 5500 series as the format for the required annual return. The Form 5500 series annual return/report, which consists of a primary form and various schedules, includes the information required to be filed with all three agencies. The plan administrator satisfies the reporting requirement with respect to each agency by filing the Form 5500 series annual return/report with the Internal Revenue Service, which forwards the form to the Department of Labor and the PBGC.

The Form 5500 series consists of 3 different forms: Form 5500, Form 5500–C/R, and Form 5500–EZ. Form 5500 is the most comprehensive of the forms and requires the most detailed financial information. Form 5500–C/R requires less information than Form 5500, and Form 5500–EZ, which consists of only 1 page, is the simplest of the forms. The size of the plan determines which form a plan administrator must file. If the plan has more than 100 participants at the beginning of the plan year, the plan administrator generally must file Form 5500. If the plan has fewer than 100 participants at the beginning of the plan year, the plan administrator generally may file Form 5500–C/R. A plan administrator generally may file Form 5500–EZ if (1) the only participants in the plan are the sole owner of a business that maintains the plan (and such owner's spouse), or partners in a partnership that maintains the plan (and such partners' spouses), (2) the plan is not aggregated with another plan in order to satisfy the minimum coverage requirements of Internal Revenue Code section 410(b), (3) the em-

ployer is not a member of a related group of employers, and (4) the employer does not receive the services of leased employees. If the plan satisfies the eligibility requirements for Form 5500–EZ and the total value of the plan assets as of the end of the plan year and all prior plan years does not exceed $100,000, the plan administrator is not required to file a return.

Explanation of provision

The Secretary of the Treasury and the Secretary of Labor are directed to modify the annual return filing requirements with respect to plans that satisfy the eligibility requirements for Form 5500 EZ to provide that if the total value of the plan assets of such a plan as of the end of the plan year and all prior plan years does not exceed $250,000, the plan administrator is not required to file a return.

In addition, the Secretary of the Treasury and the Secretary of Labor are directed to provide simplified reporting requirements for plan years beginning after December 31, 2001, for a plan that (1) covers less than 25 employees on the first day of the plan year, (2) is not aggregated with another plan in order to satisfy the minimum coverage requirements of Internal Revenue Code section 410(b), (3) is maintained by an employer that is not a member of a related group of employers, and (4) is maintained by an employer that does not receive the services of leased employees. The Secretary of the Treasury and the Secretary of Labor shall provide for the filing of annual returns for such retirement plans covering fewer than 25 workers in a manner and form that provides useful information to participants and that is simple for employers to comply with.

Effective Date.—The provision is effective on January 1, 2002.

Rationale

The Committee believes that simplification of the reporting requirements applicable to plans of small employers will make it easier for employers to provide retirement benefits for their employees.

Section 611—Notice and consent period regarding distributions

Current law

Notice and consent requirements in sec. 205 apply to certain distributions from qualified retirement plans. These requirements relate to the content and timing of information that a plan must provide to a participant prior to a distribution, and to whether the plan must obtain the participant's consent to the distribution. The nature and extent of the notice and consent requirements applicable to a distribution depend upon the value of the participant's vested accrued benefit and whether the joint and survivor annuity requirements apply to the participant.

If the present value of the participant's vested accrued benefit exceeds $5,000, the plan may not distribute the participant's benefit without the written consent of the participant. The participant's consent to a distribution is not valid unless the participant has received from the plan a notice that contains a written explanation of: (1) the material features and the relative values of the

optional forms of benefit available under the plan, (2) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (3) the rules concerning the taxation of a distribution. If the joint and survivor annuity requirements apply to the participant, this notice also must contain a written explanation of (1) the terms and conditions of the qualified joint and survivor annuity ("QJSA"), (2) the participant's right to make, and the effect of, an election to waive the QJSA, (3) the rights of the participant's spouse with respect to a participant's waiver of the QJSA, and (4) the right to make, and the effect of, a revocation of a waiver of the QJSA. The plan generally must provide this notice to the participant no less than 30 days and no more than 90 days before the date distribution commences.

If the participant's vested accrued benefit does not exceed $5,000, the terms of the plan may provide for distribution without the participant's consent. The plan generally is required, however, to provide to the participant a notice that contains a written explanation of: (1) the participant's right, if any, to have the distribution directly transferred to another retirement plan or IRA, and (2) the rules concerning the taxation of a distribution. The plan generally must provide this notice to the participant no less than 30 days and no more than 90 days before the date distribution commences.

Explanation of provision

A qualified retirement plan is required to provide the applicable distribution notice no less than 30 days and no more than 180 days before the date distribution commences. The Secretary of the Treasury is directed to modify the applicable regulations to reflect the extension of the notice period to 180 days and to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

Effective Date.—The provision is effective for years beginning after December 31, 2001.

Rationale

The Committee understands that an employee is not always able to evaluate distribution alternatives, select the most appropriate alternative, and notify the plan of the selection within a 90-day period. The Committee believes that requiring a plan to furnish multiple distribution notices to an employee who does not make a distribution election within 90 days is administratively burdensome. In addition, the Committee believes that participants who are entitled to defer distributions should be informed of the impact of a decision not to defer distribution on the taxation and accumulation of their retirement benefits.

Section 612—Annual report dissemination

Current law

Section 104(b)(3) requires that within nine months after the close of each plan year, the plan administrator must "furnish" a summary annual report to each plan participant and to each beneficiary receiving benefits. The summary annual report is a sum-

mary of the annual report filed with the DOL regarding the financial position and management of the plan.

Explanation of provision

The requirement that plan administrators furnish a summary annual report would be satisfied if the report were made reasonably available through electronic means or other new technology. This provision would be interpreted consistent with the regulations of the Departments of Labor and Treasury.

Effective Date.—The change applies to reports for years beginning after December 31, 2000.

Rationale

The Committee believes that this simplification of the summary annual report requirement will reduce the burden and cost of plan administration and disclosure, thereby encouraging more employers to establish and maintain retirement plans.

Section 613—Technical corrections to the SAVER Act

Current law

The Savings Are Vital to Everyone's Retirement (SAVER) Act of 1997 (P.L. 105–92), in addition to establishing an ongoing program by the DOL on retirement savings education and outreach (sec. 516), convenes a National Summit on Retirement Savings at the White House, cohosted by the President and the bipartisan Congressional leadership, in 1998 and again in 2001 and 2005 (sec. 517). The National Summit brings together experts in the fields of employee benefits and retirement savings, key leaders of government, and interested parties from the private sector and general public. The delegates are selected by the Congressional leadership and the President. The National Summit is a public-private partnership, receiving substantial funding from private sector contributions. The National Summits' goals are to: (1) advance the public's knowledge and understanding of retirement savings and facilitate the development of a broad-based, public education program; (2) identify the barriers which hinder workers from setting aside adequate savings for retirement and impede employers, especially small employers, from assisting their workers in accumulating retirement savings; and (3) develop specific recommendations for legislative, executive, and private sector actions to promote retirement income savings among American workers.

Explanation of provision

This section makes technical amendments to the SAVER Act regarding the administration of future statutorily created National Summits on Retirement Savings. It clarifies that National Summits shall be held in the month of September in 2001 and 2005, and adds an additional National Summit in 2009. To facilitate the administration of future National Summits, the DOL is given authority to enter into cooperative agreements (pursuant to the Federal Grant and Cooperative Agreement Act of 1977) with its 1998 summit partner, the American Savings Education Council, or any other appropriate, qualified entity.

Six new statutory delegates are added to future summits: the Chairman and Ranking Member of the House Ways and Means Committee, the Senate Finance Committee, and the Subcommittee on Employer-Employee Relations of the House Education and the Workforce Committee, respectively. Further, the President, in consultation with the Congressional leadership, may appoint up to 3% of the delegates (not to exceed 10) from a list of nominees provided by the private sector partner in Summit administration. The section also clarifies that new delegates are to be appointed for each future National Summit (as was the intent of the original legislation) and sets deadlines for their appointment.

The section also sets deadlines for DOL to publish the Summit agenda, gives DOL limited reception and representation authority, and mandates that DOL consult with the Congressional leadership in drafting the post-Summit report.

Effective Date.—The section is effective upon date of enactment.

Rationale

This section clarifies the administration of future National Summits and is designed to assist in their planning and execution. It is also intended to clarify issues regarding the selection of delegates to future National Summits.

TITLE VII—OTHER ERISA PROVISIONS

Section 701—Missing participants

Current law

The plan administrator of a defined benefit pension plan that is subject to Title IV of ERISA, is maintained by a single employer, and terminates under a standard termination is required to distribute the assets of the plan. With respect to a participant whom the plan administrator cannot locate after a diligent search, the plan administrator satisfies the distribution requirement only by purchasing irrevocable commitments from an insurer to provide all benefit liabilities under the plan or transferring the participant's designated benefit to the PBGC, which holds the benefit of the missing participant as trustee until the PBGC locates the missing participant and distributes the benefit. The PBGC missing participant program is not available to multiemployer plans or defined contribution plans and other plans not covered by Title IV of ERISA.

Explanation of provision

The PBGC is directed to prescribe for terminating multiemployer plans rules similar to the present-law missing participant rules applicable to terminating single employer plans that are subject to Title IV of ERISA. The missing participants program is also extended to defined contribution plans, defined benefit plans that do not have more than 25 active participants and are maintained by professional service employers, and the portions of defined benefit plans that provide benefits based upon the separate accounts of participants and therefore are treated as defined contribution plans under ERISA.

Effective Date.—The provision is effective for distributions from terminating plans that occur after the PBGC adopts final regula-

tions implementing the provision. The Committee expects the regulations to be completed within one year.

Rationale

By allowing plan sponsors the option of transferring pension funds to PBGC, the chances will be increased that a missing participant will be able to recover benefits. Sponsors of terminated multiemployer plans and plans that are not covered by Title IV face uncertainty with respect to missing participants due to a lack of statutory or regulatory guidance. The Committee believes that it is appropriate to extend the established PBGC missing participant program to these plans in order to reduce uncertainty for plan sponsors and increase the likelihood that missing participants will receive their retirement benefits.

Section 702—Reduced PBGC premium for new plans of small employers

Current law

Under present-law sec. 4006, the Pension Benefit Guaranty Corporation ("PBGC") provides insurance protection for participants and beneficiaries under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan is terminated with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by premium payments from employers who sponsor defined benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets, reduced by any credit balance in the funding standard account. No variable rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

The PBGC guarantee is phased in ratably in the case of plans that have been in effect for less than 5 years, and with respect to benefit increases from a plan amendment that was in effect for less than 5 years before termination of the plan.

Explanation of provision

Under the provision, for the first five plan years of a new single-employer plan of a small employer, the flat-rate PBGC premium is $5 per plan participant.

A small employer is a contributing sponsor that, on the first day of the plan year, has 100 or fewer employees. For this purpose, all employees of the members of the controlled group of the contributing sponsor are taken into account. In the case of a plan to which more than one unrelated contributing sponsor contributes, employees of all contributing sponsors (and their controlled group members) are taken into account in determining whether the plan is a plan of a small employer.

A new plan means a defined benefit plan maintained by a contributing sponsor if, during the 36-month period ending on the date of adoption of the plan, such contributing sponsor (or controlled

group member or a predecessor of either) has not established or maintained a plan subject to PBGC coverage with respect to which benefits were accrued for substantially the same employees as are in the new plan.

Effective Date.—The provisions relating to new plans are effective for plans established after December 31, 2001.

Rationale

The Committee believes that reducing the PBGC premiums for new and small plans will help encourage the establishment of defined benefit pension plans. The number of single-employer defined benefit plans covered by PBGC has declined dramatically in recent years—from 112,000 in 1985 to 43,000 in 1997. Most of the decline is because of the termination of small plans. An employer incurs a number of one-time costs to establish a plan. The proposal is intended to remove the PBGC premium as a disincentive to the establishment of a defined benefit plan by a small employer.

Section 703—Reduction of additional PBGC premium for new and small plans

Current law

Under present law, the PBGC provides insurance protection for participants and beneficiaries under certain defined benefit pension plans by guaranteeing certain basic benefits under the plan in the event the plan is terminated with insufficient assets to pay benefits promised under the plan. The guaranteed benefits are funded in part by premium payments from employers who sponsor defined benefit plans. The amount of the required annual PBGC premium for a single-employer plan is generally a flat rate premium of $19 per participant and an additional variable rate premium based on a charge of $9 per $1,000 of unfunded vested benefits. Unfunded vested benefits under a plan generally means (1) the unfunded current liability for vested benefits under the plan, over (2) the value of the plan's assets, reduced by any credit balance in the funding standard account. No variable rate premium is imposed for a year if contributions to the plan were at least equal to the full funding limit.

The PBGC guarantee is phased in ratably in the case of plans that have been in effect for less than 5 years, and with respect to benefit increases from a plan amendment that was in effect for less than 5 years before termination of the plan.

Explanation of provision

The provision amends sec. 4006(a)(3) to provide that the variable premium is phased in for new defined benefit plans over a six-year period starting with the plan's first plan year. The amount of the variable premium is a percentage of the variable premium otherwise due, as follows: 0 percent of the otherwise applicable variable premium in the first plan year; 20 percent in the second plan year; 40 percent in the third plan year; 60 percent in the fourth plan year; 80 percent in the fifth plan year; and 100 percent in the sixth plan year (and thereafter).

A new defined benefit plan is defined as in section 602 of this Act (relating to reduced PBGC premiums for new small employer plans).

The provision also provides that, in the case of any plan (not just a new plan) of an employer with 25 or fewer employees, the variable-rate premium is no more than $5 multiplied by the number of plan participants in the plan at the close of the preceding year.

Effective Date.—The provision reducing the PBGC variable premium for small plans is effective for years beginning after December 31, 2001.

Rationale

The Committee believes this provision will help encourage the establishment of defined benefit pension plans. The number of single-employer defined benefit plans covered by PBGC has declined dramatically in recent years—from 112,000 in 1985 to 43,000 in 1997. Moreover, employers that establish plans are not choosing defined benefit plans. The PBGC variable rate premium can be a disincentive to some employers.

Section 704—Authorization for PBGC to pay interest on premium overpayment refunds

Current law

Under Sec. 4007(b) of ERISA, the PBGC charges interest on underpayments of premiums, but is not authorized to pay interest on overpayments.

Explanation of provision

The provision allows the PBGC to pay interest on overpayments made by premium payers. Interest paid on overpayments is to be calculated at the same rate and in the same manner as interest is charged on premium underpayments.

Effective Date.—The provision is effective with respect to interest accruing for periods beginning not earlier than the date of enactment.

Rationale

Premium payers should receive interest on monies that are owed to them.

Section 705—Substantial owner benefits in terminated plans

Current law

The PBGC provides participants and beneficiaries in a defined benefit pension plan with certain minimal guarantees as to the receipt of benefits under the plan in case of plan termination. The employer sponsoring the defined benefit pension plan is required to pay premiums to the PBGC to provide insurance for the guaranteed benefits. In general, the PBGC will guarantee all basic benefits which are payable in periodic installments for the life (or lives) of the participant and his or her beneficiaries and are non-forfeitable at the time of plan termination. The amount of the guaranteed benefit is subject to certain limitations. One limitation is that the plan (or an amendment to the plan which increases benefits) must be in effect for 60 months before termination for the PBGC to guar-

antee the full amount of basic benefits for a plan participant, other than a substantial owner. In the case of a substantial owner, the guaranteed basic benefit is phased in over 30 years beginning with participation in the plan. A substantial owner is one who owns, directly or indirectly, more than 10 percent of the voting stock of a corporation or all the stock of a corporation. Special rules restricting the amount of benefit guaranteed and the allocation of assets also apply to substantial owners.

Explanation of provision

The provision provides that the 60 month phase-in of guaranteed benefits applies to a substantial owner with less than 50 percent ownership interest. For a substantial owner with a 50 percent or more ownership interest ("majority owner"), the phase-in depends on the number of years the plan has been in effect. The majority owner's guaranteed benefit is limited so that it may not be more than the amount phased in over 60 months for other participants. The rules regarding allocation of assets apply to substantial owners, other than majority owners, in the same manner as other participants.

Effective Date.—The provision is effective for plan terminations with respect to which notices of intent to terminate are provided, or for which proceedings for termination are instituted by the PBGC, after December 31, 2001.

Rationale

The Committee believes that the present-law rules concerning limitations on guaranteed benefits for substantial owners are overly complicated and restrictive and thus may discourage some small business owners from establishing defined benefit pension plans. Moreover, the current special substantial owner rules are inordinately complex and require plan documents going back as far as 30 years, which are often difficult or impossible to obtain.

Section 706—Civil penalties for breach of fiduciary responsibility

Current law

Section 502(l) was added to ERISA by the Omnibus Budget Reconciliation Act of 1989. In its current form, section 502(l) requires the Secretary of Labor to assess a civil penalty against (1) a fiduciary who breaches a fiduciary responsibility under, or commits a violation of, part 4 of Title I of ERISA, or (2) any other person who knowingly participates in such a breach or violation. The penalty is equal to 20 percent of the "applicable recovery amount" that is paid pursuant to a settlement agreement with the Secretary or that a court orders to be paid in a judicial proceeding brought by the Secretary to enforce ERISA's fiduciary responsibility provisions. The Secretary may waive or reduce the penalty only if the Secretary finds in writing that either (1) the fiduciary or other person acted reasonably and in good faith, or (2) it is reasonable to expect that the fiduciary or other person cannot restore all the losses without severe financial hardship unless the waiver or reduction is granted.

Explanation of provision

ERISA section 502(l) is amended to make the assessment of the penalty discretionary with the Secretary of Labor, rather than mandatory. This change will allow the Secretary to refrain from imposing the penalty in certain cases as well as to assess a penalty of less than 20 percent of the applicable recovery amount.

In addition, section 502(l) is amended so that the term "applicable recovery amount" means not only any amount recovered from a fiduciary or other person but also any amount recovered from any other person on behalf of any such fiduciary or other person.

Effective Date.—This section applies to any breach of fiduciary responsibility or other violation of part 4 of Title I of ERISA occurring on or after the date of enactment.

Rationale

The current statutory scheme of mandatory penalties creates disincentives to settlement and discourages parties from quickly settling claims of violations that the DOL brings to their attention.

Section 707—Benefit suspension notice

Current law

Section 203(a)(3)(B) provides that a plan will not fail to satisfy the vesting requirements with respect to a participant by reason of suspending payment of the participant's benefits while such participant is employed. Under the applicable DOL regulations, such a suspension is only permissible if the plan notifies the participant during the first calendar month or payroll period in which the plan withholds benefit payments. Such notice must provide certain information and must also include a copy of the plan's provisions relating to the suspension of payments.

In the case of a plan that suspends benefits for participants working past normal retirement age (i.e., does not commence benefit payments to those participants and also does not provide an actuarially increased benefit upon retirement), the employer must monitor plan participants to determine when any participant who is still employed attains normal retirement age. In order to "suspend" payment of such a participant's benefits, generally a plan must, as noted above, promptly provide the participant with a suspension notice.

Explanation of provision

This section directs the Secretary of Labor to revise the regulations relating to the benefit suspension notice to generally permit the information currently required to be set forth in a suspension notice to be included in the summary plan description. The provision also directs the Secretary of Labor to eliminate the requirement that the notice include a copy of relevant plan provisions. However, individuals reentering the workforce to resume work with a former employer—or with an employer that belongs to the same multiemployer pension plan—after they have begun to receive benefits will still receive the notification of the suspension of benefits (and a copy of the plan's provisions relating to suspension of payments). In addition, if a reduced rate of future benefit accrual will apply to a returning employee (as of his or her first date of partici-

pation in the plan after returning to work) who has begun to receive benefits, the notice must include a statement that the rate of future benefit accrual will be reduced. The individual benefit-suspension statement only need include such notice of reduction of future benefit accrual where the reduction is the result of a plan amendment covered under section 204(h). Such notice should include a description of the change and the date it took effect.

Effective Date.—The modification made under this section shall apply to plan years beginning after December 31, 2001.

Rationale

The Committee believes that the present-law rules regarding suspension notices create unjustified burdens on defined benefit plans that do not pay benefits to active participants upon attainment of normal retirement age when they continue to draw pay. This dispenses with individual notices going to employees at the time they attain the normal retirement age—a practice that often unduly alarms workers who believe they are being encouraged to retire by their employer. The provision does provide notice of suspension to those who are reentering the workforce, along with notice of any reduction in rate of future benefit accrual.

Section 708—Studies

Current law

Current law contains no provision for the study of the feasibility of small employer group pension plans or for the study of the effects of the Act.

Explanation of provision

Study on small employer group plans: This section directs the Department of Labor, in consultation with the Treasury Department, to conduct a study to determine (1) the most appropriate form(s) of pension plans that would be simple to create and easy to maintain by multiple small employers, while providing ready portability of benefits for all participants and beneficiaries, (2) how such arrangements could be established by employer or employee associations, (3) how such arrangements could provide for employees to contribute independent of employer sponsorship, and (4) appropriate methods and strategies for making such pension plan coverage more widely available to American workers.

The Department is to consider the adequacy and availability of existing pension plans and the extent to which existing models may be modified to be more accessible to both employees and employers. The Secretary of Labor is to issue a report within 18 months, including recommendations for one or more model plans or arrangements as described above which may serve as the basis for appropriate administrative or legislative action.

Study on pension coverage: This section also directs the Secretary of labor to report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate regarding the effect of the bill on pension coverage, including: the extent of pension plan coverage for low and middle-income workers, the levels of pension plan benefits generally, the quality of pension plan cov-

erage generally, worker's access to and participation in pension plans, and retirement security. This report is required to be submitted no later than five years after the date of enactment.

Effective Date.—This section is effective upon enactment.

Rationale

The Committee believes that the possibility of small employer pooling for pension coverage is worthy of study and consideration. During Committee hearings, witnesses have focused on the problem of low pension plan sponsorship rates by small employers. Some have proposed a possible solution of allowing individual small employers to join together to sponsor pension plans or to join into an existing group pension plan vehicle (similar to the "association health plan" concept reported out by the Employer-Employee Relations Subcommittee last Congress in H.R. 2047).

The Committee also believes that it is appropriate to study the effects of this Act on pension coverage.

TITLE VIII—PLAN AMENDMENTS

Section 801—Provisions relating to plan amendments

Current law

Plan amendments to reflect amendments to the law generally must be made by the time prescribed by law for filing the income tax return of the employer for the employer's taxable year in which the change in law occurs.

Explanation of provision

This provision permits certain plan amendments made pursuant to the changes made by the bill (or regulations issued under the provisions of the bill) to be retroactively effective. If the plan amendment meets the requirements of the bill, then the plan is treated as being operated in accordance with its terms and the amendment does not violate the prohibition of reductions of accrued benefits. In order for this treatment to apply, the plan amendment must be made on or before the last day of the first plan year beginning on or after January 1, 2004.

The provision applies to plan amendments required to maintain qualified status, as well as other amendments pursuant to the provisions of the bill (or applicable regulations). A plan amendment is not considered to be pursuant to the bill (or applicable regulations) if it has an effective date before the effective date of the provision of the bill (or regulations) to which it relates. Similarly, the provision does not provide relief from section 204(g) or Internal Revenue Code section 411(d)(6) for periods prior to the effective date of the relevant provision of the bill (or regulations) or the plan amendment. The Secretary of the Treasury is given authority to provide exceptions to the relief from the prohibition on reductions in accrued benefits.

Effective Date.—The provision is effective on the date of enactment.

Rationale

The Committee believes that plan sponsors should have adequate time to amend their plans to reflect amendments to the law.

SUMMARY

The ERISA provisions of the "Comprehensive Retirement Security and Pension Reform Act of 2001," H.R. 10, as amended, will directly improve the retirement security of American workers by expanding small business retirement plans, allowing workers to save more, making pensions more secure, and cutting the red tape that has hamstrung employers who want to establish pension plans for their employees.

SECTION-BY-SECTION ANALYSIS OF THE ERISA PROVISIONS OF H.R. 10, AS AMENDED

Sec. 202. Participant Loans for Small Business Owners. Generally, plans may make loans to participants. But, prohibited transaction rules prevent sole proprietors, partners, and Subchapter S corporation shareholders from taking participant loans. The prohibited transaction rules would be modified under this section to allow for participant loans to sole proprietors, partners, and subchapter S corporation shareholders.

Sec. 303. Faster Vesting of Employer Matching Contributions. Employee contributions to a qualified plan are immediately vested. Employer matching contributions either must be fully vested after the employee has completed 5 years of service, or must become vested in increments of 20% for each year beginning with the third year of service, with full vesting after the employee has completed seven years of service. Under this section, employer matching contributions would have to be vested under a maximum 3-year cliff or 6-year graded vesting schedule. In the case of graded vesting, vesting would have to begin with the employee's second year of service.

Sec. 405. Treatment of Forms of Distribution. Under the "anti-cutback rule," when a participant's benefits are transferred from one plan to another, the transferee plan must preserve all forms of distribution that were available under the transferor plan. The anti-cutback rule also provides that, without regard to a transfer, a plan may not eliminate forms of distribution. Under this section, an employee may elect to transfer benefits from one plan to another without requiring the transferee plan to preserve optional forms of benefits if the following requirements are satisfied: (1) the transfer was a direct transfer; (2) the transfer was authorized under the terms of both plans; (3) the transfer was pursuant to a voluntary election by the participant upon receipt of proper notice; (4) spousal consent for the transfer, if required, was obtained; and (5) the participant could have elected a lump sum distribution. In addition, under the provision, except to the extent provided in regulations, a form of distribution in a DC plan may be eliminated with respect to a participant if: (1) a lump sum distribution is available when the distribution form is being eliminated, and (2) such lump sum is based on the same or greater portion of the participant's account as the distribution form being eliminated. Treasury would also be directed to issue regulations.

Sec. 408. Employers May Disregard Rollovers for Purposes of Cash-Out Amounts. Terminated participants' benefits may be cashed out if the nonforfeitable present value of such benefits does not exceed $5,000. The provision permits a plan to ignore amounts

attributable to rollover contributions when determining the cash-out amount.

Sec. 501. Repeal of 150% of Current Liability Funding Limit. Contributions to a defined benefit plan that exceed 150% of current liability are not tax deductible. This limit will phase up to 170% by 2005. Under this section, the limit would be phased-up in 5% increments beginning with the 2001 plan year. For plan years beginning after December 31, 2003, the current liability full funding limit would be completely repealed.

Sec. 504. Notice of Significant Reduction in Benefit Accruals. Participants must be notified of a plan amendment significantly reducing future benefit accruals at least 15 days before such amendment takes effect. The notice must be given after the plan sponsor has formally adopted the amendment. Treasury regulations provide that participants need not be given an individual statement detailing how their own benefits will be affected by the amendment. This provision modifies ERISA Section 204(h) to require that affected participants be given "reasonable notice," to be defined by Treasury regulations, of a plan amendment significantly reducing future benefit accruals before the amendment takes effect. The notice could be provided before the plan amendment is formally adopted. A penalty for noncompliance is added in the tax code.

Sec. 506. Protection of Investment of Employee Contributions to 401(k) Plans. Section 1524 of the Taxpayer Relief Act of 1997 places certain limits on investment of employee salary reduction contributions in employer stock or employer real property. The section modifies the effective date of the rule excluding certain elective deferrals from the definition of individual account plan by providing that the rule does not apply to any elective deferral invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired by the plan before January 1, 1999.

Sec. 507. Periodic Pension Benefits Statements. Upon the request of a participant, the plan administrator must provide a summary of the participant's benefits under the plan. A participant is not entitled to more than one benefit statement per year. Under this provision, a benefit statement would have to be given to a defined contribution plan participant at least once a year. Statements would have to be provided to defined benefit plan participants at least once every three years. Alternatively, in the case of defined benefit plans, the employer could provide participants with notice of their right to request a benefit statement at least once a year. The DOL would be directed to develop a model benefits statement.

Sec. 601. Modification of Timing of Plan Valuations. The valuation date for a defined benefit plan for a plan year must generally be in the same plan year. Under this section, defined benefit plans would be permitted to use a valuation date up to one year prior to the beginning of the plan year. The change would apply at the election of the employer but would not be available to an underfunded plan.

Sec. 606. Reporting Simplification for Small Plans. A "one-participant retirement plan" that is not exempt from the annual report filing requirement is only required to file a simplified form, i.e., Form 5500–EZ. A one-participant plan is a plan that covers and benefits only certain owners (or such owners and their spouses) of

the sponsoring employer and meets the following requirements: (1) the plan satisfies the section 410(b) coverage requirements without being aggregated with any other plan; (2) the plan does not cover a business that is a member of an affiliated service group, a controlled group of employers, or a group of businesses under common control; and (3) the plan does not cover a business that leases employees. Under this section, a plan that covers fewer than 25 employees on the first day of the plan year would only be required to file a new simplified Form 5500, provided that the plan meets the three requirements with respect to the definition of a one-participant plan. Also raises from $100,000 to $250,000 the level at which one-participant retirement plans are exempt from the annual report-filing requirement.

Sec. 611. Notice and Consent Period Regarding Distributions. Generally, benefits cannot be distributed before the later of age 62 or normal retirement age unless the participant consents no more than 90 days before benefit commencement. Also, information on the tax implications of rollovers must be given to the employee within 90 days of distribution. Under this provision, the notice and consent period regarding distributions would be expanded from 90 days to 180 days.

Sec. 612. Summary Annual Reports. Within 210 days after the close of a plan's fiscal year, the plan administrator must provide certain information to participants in a summary annual report (SAR). Under this section, Summary Annual Reports could now be distributed through electronic means (including Internet) or via other new technologies.

Sec. 613. Technical Corrections to the SAVER Act. The Savings Are Vital to Everyone's Retirement (SAVER) Act of 1997 convenes a National Summit on Retirement Savings at the White House, cohosted by the executive and legislative branches in 1998 and again in 2001 and 2005. The National Summit brings together experts in the fields of employee benefits and retirement savings, key leaders of government, and interested parties from the private sector and general public. The delegates are selected by the Congressional leadership and the President. The National Summit is a public-private partnership, receiving substantial funding from private sector contributions. This section provides for technical amendments to the SAVER Act, regarding the administration of and delegate selection to future statutorily created National Summits on Retirement Savings.

Sec. 701. Expansion of Missing Participants Program. The PBGC acts as a clearinghouse for benefits due to participants who cannot be located. When a defined benefit plan terminates, the plan may transfer the benefits of the missing participant to the PBGC, which then attempts to locate the participant. Under this section, the PBGC's missing participant program would be expanded to cover defined contribution plans. This expansion would be voluntary at the election of the plan sponsor.

Sec. 702. Reduced PBGC Premiums for New Plans. Defined benefit plans are subject to a flat-rate premium of $19 per participant. Underfunded defined benefit plans are subject to an additional variable rate premium. There is no variable rate premium for the first year of a new defined benefit plan. Under this provision, new defined benefit plans established by employers with 100 employees

or less would only have to pay a $5 per participant PBGC premium for the first 5 years of the plan. No variable rate premium would be assessed during this period.

Sec. 703. Reduction of Additional PBGC Premiums. Defined benefit plans are subject to a flat-rate premium of $19 per participant. Underfunded defined benefit plans are subject to an additional variable rate premium. There is no variable rate premium for the first year of a new defined benefit plan. Under this section, any variable rate premium that might be assessed against a new defined benefit plan established by a larger employer would be phased-in as follows: 0% for the first plan year; 20% for the second; 40% for the third; 60% for the fourth; 80% for the fifth, and 100% for the sixth and succeeding plan years. For employers who have 25 or fewer employees on the first day of the plan year, the additional premium for each participant would not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

Sec. 704. Authorization for PBGC to Pay Interest on Premium Overpayment Refunds. This would allow the PBGC to pay interest on overpayments made by premium payers. Interest paid on overpayments would be calculated at the same rate and in the same manner as interest is charged on premium underpayments.

Sec. 705. Substantial Owner Benefits in Terminated Plans. "Substantial owners" are individuals who own more than 10% of a business. ERISA contains complicated rules governing the benefit earned by substantial owners when a plan is terminating. Under this section, the same five-year phase-in that currently applies to a participant who is not a substantial owner would apply to a substantial owner with less than a 50% ownership interest. For a majority owner, the phase-in would depend on the number of years the plan has been in effect, rather than on the number of years the owner has been a participant and the initial plan benefit.

Sec. 706. Waiver of Civil Penalties for Breach of Fiduciary Responsibility. Section 502(l) requires DOL to assess a 20% penalty for violations of part 4 of Title I of ERISA for breaches of fiduciary duty. The DOL is limited in its ability to reduce this penalty. Under the provision, ERISA section 502(l) would be amended to make the assessment discretionary with DOL rather than mandatory. This change would allow DOL to refrain from assessing the 20% penalty in certain cases or to assess a lower amount.

Sec. 707. Benefit Suspension Notice. When an employee continues to work beyond normal retirement age, or is reemployed after commencing benefits, a defined benefit plan may provide for a suspension of pension payments during the post normal retirement age employment period. DOL regulations require that affected participants be notified in writing of such suspension and that such notice include a copy of the relevant plan provisions. Under this section, DOL would be required to modify its regulations regarding suspension of benefits rules to eliminate the requirement of a written individual notice and instead require that the suspension of benefits rules be outlined in the summary plan description, except for individuals reentering the workforce. Those rejoining a former employer would still receive the existing notice of suspension, along with a notice of any reduction in the rate of future benefit accrual.

Sec. 708. Studies. *(1) Model Small Employer Group Plans:* Under this section, the DOL is directed to conduct a study to determine (1) the most appropriate form(s) of pension plans that would be simple to create and easy to maintain by multiple small employers, while providing ready portability of benefits for all participants and beneficiaries, (2) how such arrangements could be established by employer or employee associations, (3) how such arrangements could provide for employees to contribute independent of employer sponsorship, and (4) appropriate methods and strategies for making such pension plan coverage more widely available to American workers. *(2) Pension Coverage:* This section also directs the DOL to conduct a study regarding the effect of the bill on pension coverage, including: the extent of pension plan coverage for low and middle-income workers, the levels of pension plan benefits generally, the quality of pension plan coverage generally, worker's access to and participation in pension plans, and retirement security.

Sec. 801. Provisions Relating to Plan Amendments. Generally, there is a short time within which to make plan amendments to reflect amendments to the law. In addition, the anti-cutback rules can have the unintended consequence of preventing an employer from amending its plan to reflect a change in the law. Under this section, amendments to a plan or annuity contract made pursuant to any amendment made by the Act would not be required to be made before the last day of the first plan year beginning on or after January 1, 2003. Operational compliance would, of course, be required with respect to all plans as of the applicable effective date of any amendment made by the Act. In addition, timely amendments to a plan or annuity contract made pursuant to any amendment made by the Act would be deemed to satisfy the anti-cutback rules.

EXPLANATION OF AMENDMENTS

The provisions of the substitute are explained in this report.

ROLLCALL VOTES

No recorded votes were taken.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch. This bill initiates pension reform amendments to the Employee Retirement Income Security Act (ERISA). Since ERISA excludes governmental plans, the bill does not apply to legislative branch employees. As public employees, legislative branch employees are eligible to participate in the Federal Employee Retirement System.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of Rule XIII and clause (2)(b)(1) of Rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement of whether the provisions of the reported bill include unfunded mandates. This bill initiates pension reform amendments to the Employee Retirement Income Security Act (ERISA), and makes retirement security more available to millions of workers by expanding small business retirement plans, allowing workers to save more, addressing the needs of an increasingly mobile workforce through greater portability and other changes, making pensions more secure, and cutting the red tape that has hamstrung employers who want to establish pension plans for their workers. As such, the bill does not contain any unfunded mandates.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

With respect to the requirements of clause 3(c)(2) of Rule XIII of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of 3(c)(3) of Rule XIII of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 10 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 1, 2001.

Hon. JOHN A. BOEHNER,
Chairman, Committee on Education and the Workforce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 10, the Comprehensive Retirement Security and Pension Reform Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Erin Whitaker.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 10—Comprehensive Retirement Security and Pension Reform Act of 2001

Summary: H.R. 10 would make numerous changes to the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act of 1974 (ERISA) that would affect the taxation and operation of private pension plans.

CBO and the Joint Committee on Taxation (JCT) estimate that the bill would reduce federal revenues by $1.1 billion in 2002, by $16.4 billion over the 2002–2006 period, and by $51.7 billion over the 2002–2011 period. CBO estimates that the bill would increase direct spending by $2 million in 2002, by $49 million over the 2002–2006 period, and by $112 million over the 2002–2011 period. Since this bill would affect direct spending and revenues, pay-as-

you-go procedures would apply. In addition, CBO estimates that implementing H.R. 10 would cost about $2 million over the 2002–2006 period, subject to appropriation of the necessary amounts.

JCT and CBO have determined that H.R. 10 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. The bill contains one new private-sector mandate. JCT has determined that the cost of this mandate would not exceed the threshold established by UMRA for private-sector mandates ($113 million in fiscal year 2001, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 10 is shown in the following table. The costs of this legislation would fall within budget functions 600 (income security) and 800 (general government).

	By fiscal year, in millions of dollars—					
	2001	2002	2003	2004	2005	2006
CHANGES IN REVENUES						
Modification of IRA Contribution Limits	0	−368	−1,203	−2,059	−2,762	−3,311
Increased Limitation on Exclusion for Elective Deferrals	0	−100	−328	−500	−636	−708
Additional Increased Limitation on Exclusion for Elective Deferrals for Individuals Age 50 and Above	0	−241	−320	−239	−155	−96
Other Estimated Revenues	0	−385	−700	−663	−743	−919
Total Revenues	0	−1,094	−2,551	−3,461	−4,296	−5,034
CHANGES IN DIRECT SPENDING						
IRS User Fees	0	−1	−1	(1)	0	0
Reduced PBGC Flat-Rate Premiums	0	0	(1)	(1)	(1)	(1)
Reduced PBGC Variable Premiums	0	0	9	9	9	9
Missing Participants in Terminated Plans	0	0	(1)	(1)	(1)	(1)
Payment of Interest on PBGC Premium Overpayment	0	3	3	3	3	3
Benefits Paid to Substantial Owners	0	0	(1)	(1)	(1)	(1)
Total Direct Spending	0	2	11	12	12	12
TOTAL CHANGES SUBJECT TO PAY-AS-YOU-GO PROCEDURES						
Net Decrease in Budget Surplus	0	−1,096	−2,562	−3,473	−4,308	−5,046
SPENDING SUBJECT TO APPROPRIATION						
Studies by the Department of Labor:						
Estimated Authorization Level	0	2	0	0	0	0
Estimated Outlays	0	(1)	(1)	(1)	(1)	1

[1] Less than $500,000.

Notes.—Components may not sum to totals because of rounding. Budget authority equals outlays for direct spending proposals.

Sources: CBO and Joint Committee on Taxation.

Basis of estimate

Revenues

Federal Tax Revenues. JCT estimates that H.R. 10 would reduce federal tax revenues by $1.1 billion in 2002, by $16.4 billion over the 2002–2006 period, and by $51.7 billion over the 2002–2011 period. The bill would increase the maximum contribution limit for Individual Retirement Accounts (IRAs) to $3,000 in 2002, $4,000 in 2003, and $5,000 in 2004. After 2004, the maximum contribution rate would be indexed for inflation. The bill also would increase the maximum IRA contribution to $5,000 for individuals aged 50 or older in 2002 and 2003. In addition, the bill would make numerous

changes to pension laws. For 2002, it would increase to $11,000 the dollar limit on certain contributions made to qualified plans ("elective deferrals") under section 401(k) plans, section 403(b) annuities, and simplified employee pension plans (SEPs). That limitation would increase further, in $1,000 annual increments, until it reaches $15,000 in 2005. After 2005, the dollar limit would be indexed for inflation. The bill also would increase the otherwise applicable dollar limit on elective deferrals by $5,000 for individuals aged 50 or older in 2002 through 2006. After 2006, the dollar limit would be indexed for inflation.

IRS User Fees. H.R. 10 would eliminate the fee that the IRS charges small businesses for providing ruling, opinion, and determination letters regarding the firms' pension plans if certain conditions are met. This provision would take effect after December 31, 2001. Based on the amount of fees collected in recent years and on information from the IRS, CBO estimates that eliminating the fee would decrease governmental receipts by a total of $17 million over fiscal years 2002 and 2003. Under current law, the IRS's authority to charge such fees will expire at the end of fiscal year 2003, so the provision would have no impact on receipts beyond that year.

Department of Labor Civil Penalties. Under current law, the Department of Labor (DoL) is responsible for administering ERISA's reporting, disclosure, and fiduciary conduct requirements for private pension plans. In cases of fiduciary misconduct, DoL is required to assess a civil penalty equal to 20 percent of any amount that is restored to a pension plan as part of a settlement or court judgment. These penalties, which totaled $3 million in 1998, are recorded as miscellaneous receipts.

The bill would allow DoL to assess these civil penalties at its discretion and to assess penalties that could be less than 20 percent of the recovered amount. With this more flexible authority, DoL has indicated that it would no longer assess penalties in cases where companies comply voluntarily with the department's enforcement efforts. According to DoL, these cases comprise about a third of the total. The full 20-percent penalty would still be assessed in the remaining cases, which are typically resolved through litigation. CBO estimates that this provision would reduce penalties collected by about a third, and that the drop in penalties would total $5 million over the 2002–2006 period.

Direct spending

National Summit on Retirement Income Security. The bill would extend the authorization for the National Summit on Retirement Income Security to include a meeting in 2009. CBO estimates that the Department of Labor would receive at least $500,000 in private donations, which would be spent to defray part of the costs of the conference. Therefore, this provision would increase revenues and direct spending by the same amounts and would have no net impact on the budget surplus.

IRS User Fees. The Internal Revenue Service (IRS) has the authority to retain and spend without further appropriation action a small portion of the fees it collects from taxpayers for certain rulings and determinations by the Office of the Chief Counsel and by the Office for Employee Plans and Exempt Organizations. Because H.R. 10 would eliminate the fee paid by small businesses for rul-

ings and determinations, the bill would also reduce the amounts available for the IRS to spend. These fees are recorded in the budget as revenues, and are scheduled to expire in 2003. CBO estimates that eliminating the fee would decrease direct spending by a total of $2 million over the 2002–2004 period.

Reduced Flat-Rate Premiums Paid to the PBGC. Under current law, defined benefit pension plans operated by a single employer pay two types of annual premiums to the Pension Benefit Guaranty Corporation (PBGC). All covered plans are subject to a flat-rate premium of $19 per participant. In addition, underfunded plans must also pay a variable premium that depends on the amount by which the plan's liabilities exceed its assets.

The bill would reduce the flat-rate premium from $19 to $5 per participant for plans established by employers with 100 or fewer employees during the first five years of the plan's operation. According to information obtained from the PBGC, approximately 3,000 plans would qualify for this reduction. Those plans cover an average of about 10 participants each. CBO estimates that the change would reduce PBGC's premium income, which is classified as an offsetting collection, by about $400,000 annually beginning in 2003 and by about $1.7 million over the 2003–2006 period.

Reduced Variable Premiums Paid to the PBGC. H.R. 10 would make two changes affecting the variable-rate premium paid by underfunded plans. First, for all new plans that are underfunded, the bill would phase in the variable-rate premium. In the first year, plans would pay nothing. In the succeeding four years, they would pay 20 percent, 40 percent, 60 percent, and 80 percent, respectively, of the full amount. In the sixth and later years, they would pay the full variable-rate premium determined by their funding status. On the basis of information about premiums paid to the PBGC in 1998 and 1999, CBO estimates that this change would affect the premiums of approximately 400 plans each year. It would reduce PBGC's total premium receipts by about $28 million over the 2003–2006 period.

The bill would also reduce the variable-rate premium paid by all underfunded plans (not just new plans) established by employers with 25 or fewer employees. Under the bill, the variable-rate premium per participant paid by those plans would not exceed $5 multiplied by the number of participants in the plan. CBO estimates that approximately 8,300 plans would have their premium payments to reduced by this provision beginning in 2003. As a result, premium receipts would decline by $1.6 million in 2003 and by $7 million over the 2003–2006 period.

Missing Participants in Terminated Pension Plans. The legislation would expand the mission participant program. The Retirement Protection Act of 1994 established a program to locate missing participants when defined benefit plans are terminated. The bill would expand the program to include terminating multiemployer plans, defined benefit plans not covered by the PBGC, and defined contribution plans.

The budgetary impact of this provision would be less than $500,000 annually. The PBGC does not expect a high volume of missing participants as a result of this proposal, and the administrative costs of expanding the program would not be significant. The net budgetary effect of increased benefit payments would also

be small. Amounts paid by a pension plan to the PBGC for missing participants are held in the PBGC's trust fund, which is not a part of the federal budget. Amounts paid by the PBGC to participants at the time they are located are funded in the same manner as benefit payments in plans for which PBGC is the trustee—partially by the trust fund and partially by on-budget revolving funds.

Authorization for PBGC to Pay Interest on Premium Overpayment Refunds. The legislation would authorize the PBGC to pay interest to play sponsors on premium overpayments. Interest paid on overpayments would be calculated at the same rate as interest charged on premium underpayments. On average, PBGC receives $19 million per year in premium overpayments, charges an interest rate of 8 percent for underpayments, and allows for a two-year lag between the receipt of payments and the issuance of refunds. The agency would pay the same rate for premium overpayments as it charges for underpayments. Based on this information, CBO estimates that direct spending would increase by $3 million annually.

Substantial Owner Benefits in Terminated Plans. H.R. 10 would simplify the rules by which the PBGC pays benefits to substantial owners (those with an ownership interest of at least 10 percent) of terminated pension plans. Only about one-third of the plans taken over by the PBGC involve substantial owners, and the change in benefits paid to owner-employees under this provision would be less than $500,000 annually.

Spending subject to appropriation

H.R. 10 would extend the authorization for the National Summit on Retirement Income Security to 2009 and would require the Secretary of Labor to conduct two studies—one on models for pension plan design and another on the the impact of H.R. 10 on pension coverage. CBO estimates that these provisions would cost $2 million over the 2002–2006 period, subject to appropriation of the necessary funds.

National Summit on Retirement Income Security. H.R. 10 would amend ERISA to require the President to convene an additional conference on national savings in 2009. Under current law, the President is required to convene a National Summit on Retirement Income Security in 2001 and 2005. The appropriation of such sums as may be necessary is authorized for that purpose. The Secretary of Labor is also authorized to accept private donations to defray the costs of the conference. Based on the experience of the 1998 National Summit, CBO estimates that the 2009 National Summit would cost less than $1 million and that more than one-half of the expenses would be offset by private donations. (See the discussion under direct spending for more details.)

Model Small Employee Group Plans. H.R. 10 would direct the Secretary of Labor to undertake a study to determine the most appropriate forms of private pension plans that are easy to maintain and provide portable benefits. The study also should indicate alternative arrangements for providing benefits that might be used by employee or employer associations as well as those that could be independent of employer sponsorship. In addition, the Secretary would study methods and strategies for making coverage more widespread. Finally, the Secretary would be required to consider the adequacy and availability of existing plans. Based on discus-

sions with DoL staff, CBO estimates that the 18-month study would cost less than $500,000.

Report on Effects of Legislation. The bill would require the Secretary of Labor to report on the impact of H.R. 10 on various aspects of pension coverage to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate. The study would assess the impact of the bill on pension coverage for low- and middle-income workers, the levels of pension benefits, the quality of pension plan coverage, workers' access to and participation in pension plans, and retirement security. Based on discussions with DoL staff, CBO estimates that the study would cost about $1 million over the 2002–2006 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in millions of dollars—										
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in receipts ..	0	−1,094	−2,551	−3,461	−4,296	−5,034	−5,664	−6,287	−7,005	−7,799	−8,496
Changes in outlays	0	2	11	12	12	12	12	12	13	13	13

Estimated impact on state, local, and tribal governments: JCT has determined that H.R. 10 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: JCT has determined the provision that would prohibit allocations of stock in an Employee Stock Ownership Plan of a subchapter S corporation would be a new private sector mandate. JCT has estimated that the cost of this mandate would not exceed the threshold established by UMRA for private-sector mandates ($113 million in fiscal year 2001, adjusted annually for inflation).

Previous CBO estimate: On May 1, 2001, CBO transmitted a cost estimate of H.R. 10 as ordered reported by the Committee on Ways and Means. The pay-as-you-go estimates for the two versions of the bill are identical. However, the version of the bill approved by the Committee on Education and the Workforce contains additional discretionary authorizations.

Estimate prepared by: Federal Revenues: Erin Whitaker. IRS User Fees (direct spending): John R. Righter. DoL Civil Penalties and Administrative Expenses: Christi Hawley Sadoti. Pension Benefit Guaranty Corporation: Tamara Ohler.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis. Roberton Williams, Deputy Assistant Director for Tax Analysis.

Statement of General Performance Goals and Objectives

In accordance with Clause (3)(c) of House Rule XIII, the goals of H.R. 10 are to make retirement security more available to millions

of workers by expanding small business retirement plans, allowing workers to save more, addressing the needs of an increasingly mobile workforce through greater portability and other changes, making pensions more secure, and cutting the red tape that has hamstrung employers who want to establish pension plans for their workers. The Committee expects the Department of Labor to implement the changes to the law in accordance with these stated goals.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by H.R. 10.

The Employee Retirement Income Security Act (ERISA) has been determined by the federal courts to be within Congress' Constitutional authority. In *Commercial Mortgage Insurance, Inc.* v. *Citizens National Bank of Dallas,* 526 F.Supp. 510 (N.D. Tex. 1981), the court held that Congress legitimately concluded that employee benefit plans so affected interstate commerce as to be within the scope of Congressional powers under Article 1, Section 8, Clause 3 of the Constitution of the United States. In *Murphy* v. *Wal-Mart Associates' Group Health Plan,* 928 F.Supp. 700 (E.D. Tex 1996), the court upheld the preemption provisions of ERISA. Because H.R. 10 modifies but does not extend the federal regulation of pensions, the Committee believes that the Act falls within the same scope of Congressional authority as ERISA.

COMMITTEE ESTIMATE

Clause 3(d)(2) of Rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 10. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

INTERNAL REVENUE CODE OF 1986

Subtitle A—Income Taxes

* * * * * * *

CHAPTER 1—NORMAL TAXES AND SURTAXES

* * * * * * *

Subchapter B—Computation of Taxable Income

* * * * * * *

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

* * * * * * *

SEC. 72. ANNUITIES; CERTAIN PROCEEDS OF ENDOWMENT AND LIFE INSURANCE CONTRACTS.

(a) * * *

* * * * * * *

(f) SPECIAL RULES FOR COMPUTING EMPLOYEES' CONTRIBUTIONS.—In computing, for purposes of subsection (c)(1)(A), the aggregate amount of premiums or other consideration paid for the contract, and for purposes of subsection (e)(6), the aggregate premiums or other consideration paid, amounts contributed by the employer shall be included, but only to the extent that—

(1) * * *

* * * * * * *

Paragraph (2) shall not apply to amounts which were contributed by the employer after December 31, 1962, and which would not have been includible in the gross income of the employee by reason of the application of section 911 if such amounts had been paid directly to the employee at the time of contribution. The preceding sentence shall not apply to amounts which were contributed by the employer, as determined under regulations prescribed by the Secretary, to provide pension or annuity credits, to the extent such credits are attributable to services performed before January 1, 1963, and are provided pursuant to pension or annuity plan provisions in existence on March 12, 1962, and on that date applicable to such services, or to the extent such credits are attributable to services performed as a foreign missionary (within the meaning of [section 403(b)(2)(D)(iii)] *section 403(b)(2)(D)(iii), as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001)*.

* * * * * * *

(o) SPECIAL RULES FOR DISTRIBUTIONS FROM QUALIFIED PLANS TO WHICH EMPLOYEE MADE DEDUCTIBLE CONTRIBUTIONS.—

(1) * * *

* * * * * * *

(4) SPECIAL RULE FOR TREATMENT OF ROLLOVER AMOUNTS.—For purposes of sections 402(c), 403(a)(4), [and 408(d)(3)] *403(b)(8), 408(d)(3), and 457(e)(16)*, the Secretary shall prescribe regulations providing for such allocations of amounts attributable to accumulated deductible employee contributions, and for such other rules, as may be necessary to insure that such accumulated deductible employee contributions do not become eligible for additional tax benefits (or freed from limitations) through the use of rollovers.

* * * * * * *

(t) 10-PERCENT ADDITIONAL TAX ON EARLY DISTRIBUTIONS FROM QUALIFIED RETIREMENT PLANS.—

(1) * * *

* * * * * * *

(9) SPECIAL RULE FOR ROLLOVERS TO SECTION 457 PLANS.—For purposes of this subsection, a distribution from an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) shall be treated as a distribution from a qualified retirement plan described in 4974(c)(1) to the extent that such distribution is attributable to an amount transferred to an eligible deferred compensation plan from a qualified retirement plan (as defined in section 4974(c)).

* * * * * * *

PART III—ITEMS SPECIFICALLY EXCLUDED IN GROSS INCOME

* * * * * * *

SEC. 132. CERTAIN FRINGE BENEFITS.

(a) EXCLUSION FROM GROSS INCOME.—Gross income shall not include any fringe benefit which qualifies as a—

(1) * * *

* * * * * * *

(5) qualified transportation fringe, **[**or**]**

(6) qualified moving expense reimbursement**[**.**]***; or*

(7) qualified retirement planning services.

* * * * * * *

(m) QUALIFIED RETIREMENT PLANNING SERVICES.—

(1) IN GENERAL.—For purposes of this section, the term "qualified retirement planning services" means any retirement planning advice or information provided to an employee and his spouse by an employer maintaining a qualified employer plan.

(2) NONDISCRIMINATION RULE.—Subsection (a)(7) shall apply in the case of highly compensated employees only if such services are available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.

(3) QUALIFIED EMPLOYER PLAN.—For purposes of this subsection, the term "qualified employer plan" means a plan, contract, pension, or account described in section 219(g)(5).

[(m)**]** *(n)* REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

* * * * * * *

PART VII—ADDTIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

* * * * * * *

SEC. 219. RETIREMENT SAVINGS.

(a) * * *

(b) MAXIMUM AMOUNT OF DEDUCTION.—

(1) IN GENERAL.—The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of—

(A) [$2,000] *the deductible amount*, or

* * * * * * *

(5) DEDUCTIBLE AMOUNT.—For purposes of paragraph (1)(A)—

(A) IN GENERAL.—The deductible amount shall be determined in accordance with the following table:

For taxable years beginning in:	***The deductible amount is:***
2001	*$3,000*
2002	*$4,000*
2003 and thereafter	*$5,000.*

(B) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS 50 OR OLDER.—In the case of an individual who has attained the age of 50 before the close of the taxable year, the deductible amount for taxable years beginning in 2001 or 2002 shall be $5,000.

(C) COST-OF-LIVING ADJUSTMENT.—

(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003, the $5,000 amount under subparagraph (A) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting "calendar year 2002" for "calendar year 1992" in subparagraph (B) thereof.

(ii) ROUNDING RULES.—If any amount after adjustment under clause (i) is not a multiple of $500, such amount shall be rounded to the next lower multiple of $500.

* * * * * * *

(d) OTHER LIMITATIONS AND RESTRICTIONS.—

(1) * * *

(2) RECONTRIBUTED AMOUNTS.—No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), or [408(d)(3)] *408(d)(3), or 457(e)(16)*.

* * * * * * *

Subchapter D—Deferred Compensation, Etc.

* * * * * * *

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

* * * * * * *

Subpart A—General Rule

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) * * *

* * * * * * *

(5) SPECIAL RULES RELATING TO NONDISCRIMINATION REQUIREMENTS.—

(A) * * *

* * * * * * *

(G) **[**STATE AND LOCAL GOVERNMENTAL PLANS**]** *GOVERNMENTAL PLANS*.—Paragraphs (3) and (4) shall not apply to a governmental plan (within the meaning of **[**section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).**]** *section 414(d)).*

* * * * * * *

(9) REQUIRED DISTRIBUTIONS.—

(A) * * *

(B) REQUIRED DISTRIBUTION WHERE EMPLOYEE DIES BEFORE ENTIRE INTEREST IS DISTRIBUTED.—

[(i) WHERE DISTRIBUTIONS HAVE BEGUN UNDER SUBPARAGRAPH (A)(ii).—A trust shall not constitute a qualified trust under this section unless the plan provides that if—

[(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

[(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.**]**

[(ii)**]** *(i)* 5-YEAR RULE **[**FOR OTHER CASES**]**.—A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before **[**the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii)**]** *his entire interest has been distributed to him*, the entire interest of the employee will be distributed within 5 years after the death of such employee.

[(iii)] *(ii)* EXCEPTION TO 5-YEAR RULE FOR CERTAIN AMOUNTS PAYABLE OVER LIFE OF BENEFICIARY.—If—

(I) * * *

* * * * * * *

for purposes of clause [(ii)] *(i)*, the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

[(iv)] *(iii)* SPECIAL RULE FOR SURVIVING SPOUSE OF EMPLOYEE.—If the designated beneficiary referred to in clause [(iii)(I)] *(ii)(I)* is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause [(iii)(III)] *(ii)(III)* shall not be earlier than [the date on which the employee would have attained age 70½,] *April 1 of the calendar year following the calendar year in which the spouse attains 70½,* and

(II) if the surviving spouse dies before [the distributions to such spouse begin,] *his entire interest has been distributed to him,* this subparagraph shall be applied as if the surviving spouse were the employee.

* * * * * * *

(17) COMPENSATION LIMIT.—

(A) IN GENERAL.—A trust shall not constitute a qualified trust under this section unless, under the plan of which such trust is a part, the annual compensation of each employee taken into account under the plan for any year does not exceed [$150,000] *$200,000*.

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the [$150,000] *$200,000* amount in subparagraph (A) for increases in the cost-of-living at the same time and in the same manner as adjustments under section 415(d); except that the base period shall be the calendar quarter beginning [October 1, 1993] *July 1, 2000*, and any increase which is not a multiple of [$10,000] *$5,000* shall be rounded to the next lowest multiple of [$10,000] *$5,000*.

* * * * * * *

(26) ADDITIONAL PARTICIPATION REQUIREMENTS.—

(A) * * *

* * * * * * *

(H) [EXCEPTION FOR STATE AND LOCAL GOVERNMENTAL PLANS] *EXCEPTION FOR GOVERNMENTAL PLANS*.—This paragraph shall not apply to a governmental plan (within the meaning of [section 414(d)) maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof).] *section 414(d)).*

* * * * * * *

(31) OPTIONAL DIRECT TRANSFER OF ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(A) * * *

(B) LIMITATION.—Subparagraph (A) shall apply only to the extent that the eligible rollover distribution would be includible in gross income if not transferred as provided in subparagraph (A) (determined without regard to sections 402(c) [and 403(a)(4)], *403(a)(4), 403(b)(8), and 457(e)(16)*). *The preceding sentence shall not apply to such distribution if the plan to which such distribution is transferred—*

(i) agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(ii) is an eligible retirement plan described in clause (i) or (ii) of section 402(c)(8)(B).

* * * * * * *

(k) CASH OR DEFERRED ARRANGEMENTS.—

(1) * * *

(2) QUALIFIED CASH OR DEFERRED ARRANGEMENT.—A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan, a pre-ERISA money purchase plan, or a rural cooperative plan which meets the requirements of subsection (a)—

(A) * * *

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election—

(i) may not be distributable to participants or other beneficiaries earlier than—

(I) [separation from service] *severance from employment*, death, or disability,

* * * * * * *

(3) APPLICATION OF PARTICIPATION AND DISCRIMINATION STANDARDS.—

(A) * * *

* * * * * * *

(G) *GOVERNMENTAL PLANS.*—A governmental plan (within the meaning of section 414(d) [maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)] shall be treated as meeting the requirements of this paragraph.

* * * * * * *

(10) DISTRIBUTIONS UPON TERMINATION OF PLAN [OR DISPOSITION OF ASSETS OR SUBSIDIARY].—

[(A) IN GENERAL.—The following events are described in this paragraph:

[(i) TERMINATION.—The termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

[(ii) DISPOSITION OF ASSETS.—The disposition by a corporation of substantially all of the assets (within the meaning of section 409(d)(2)) used by such corporation in a trade or business of such corporation, but

only with respect to an employee who continues employment with the corporation acquiring such assets.

[(iii) DISPOSITION OF SUBSIDIARY.—The disposition by a corporation of such corporation's interest in a subsidiary (within the meaning of section 409(d)(3)), but only with respect to an employee who continues employment with such subsidiary.]

(A) IN GENERAL.—An event described in this subparagraph is the termination of the plan without establishment or maintenance of another defined contribution plan (other than an employee stock ownership plan as defined in section 4975(e)(7)).

(B) DISTRIBUTIONS MUST BE LUMP SUM DISTRIBUTIONS.—

(i) IN GENERAL.—[An event] *A termination* shall not be treated as described in subparagraph (A) with respect to any employee unless the employee receives a lump sum distribution by reason of [the event] *the termination*.

* * * * * * *

[(C) TRANSFEROR CORPORATION MUST MAINTAIN PLAN.—An event shall not be treated as described in clause (ii) or (iii) of subparagraph (A) unless the transferor corporation continues to maintain the plan after the disposition.]

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

(A) * * *

(B) CONTRIBUTION REQUIREMENTS.—

(i) IN GENERAL.—The requirements of this subparagraph are met if, under the arrangement—

(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage ofcompensation of the employee but which in no event exceeds [$6,000] *the amount in effect under section 408(p)(2)(A)(ii)*.

* * * * * * *

[(E) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $6,000 amount under subparagraph (B)(i)(I) at the same time and in the same manner as under section 408(p)(2)(E).]

* * * * * * *

(m) NONDISCRIMINATION TEST FOR MATCHING CONTRIBUTIONS AND EMPLOYEE CONTRIBUTIONS.—

(1) * * *

* * * * * * *

[(9) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (k) including—

[(A) such regulations as may be necessary to prevent the multiple use of the alternative limitation with respect to any highly compensated employee, and

[(B) regulations permitting appropriate aggregation of plans and contributions.

For purposes of the preceding sentence, the term "alternative limitation" means the limitation of section 401(k)(3)(A)(ii)(II) and the limitation of paragraph (2)(A)(ii) of this subsection.]

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

* * * * * * *

SEC. 402. TAXABILITY OF BENEFICIARY OF EMPLOYEES' TRUST.

(a) * * *

* * * * * * *

(c) RULES APPLICABLE TO ROLLOVERS FROM EXEMPT TRUSTS.—

(1) * * *

(2) MAXIMUM AMOUNT WHICH MAY BE ROLLED OVER.—In the case of any eligible rollover distribution, the maximum amount transferred to which paragraph (1) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to paragraph (1)). *The preceding sentence shall not apply to such distribution to the extent—*

(A) such portion is transferred in a direct trustee-to-trustee transfer to a qualified trust which is part of a plan which is a defined contribution plan and which agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible, or

(B) such portion is transferred to an eligible retirement plan described in clause (i) or (ii) of paragraph (8)(B).

[(3) TRANSFER MUST BE MADE WITHIN 60 DAYS OF RECEIPT.—Paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.]

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

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

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

* * * * * * *

(8) DEFINITIONS.—For purposes of this subsection—

(A) * * *

(B) ELIGIBLE RETIREMENT PLAN.—The term "eligible retirement plan" means—

(i) * * *

* * * * * * *

(iii) a qualified trust, [and]

(iv) an annuity plan described in section 403(a)[.],

(v) an eligible deferred compensation plan described in section 457(b) which is maintained by an eligible employer described in section 457(e)(1)(A), and

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

If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated plus account (as defined in section 402A), an eligible retirement plan with respect to such portion shall include only another designated plus account and a Roth IRA.

(9) ROLLOVER WHERE SPOUSE RECEIVES DISTRIBUTION AFTER DEATH OF EMPLOYEE.—If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, the preceding provisions of this subsection shall apply to such distribution in the same manner as if the spouse were the employee[; except that a trust or plan described in clause (iii) or (iv) of paragraph (8)(B) shall not be treated as an eligible retirement plan with respect to such distribution].

* * * * * * *

(11) SEPARATE ACCOUNTING.—Unless a plan described in clause (v) of paragraph (8)(B) agrees to separately account for amounts rolled into such plan from eligible retirement plans not described in such clause, the plan described in such clause may not accept transfers or rollovers from such retirement plans.

* * * * * * *

(f) WRITTEN EXPLANATION TO RECIPIENTS OF DISTRIBUTIONS ELIGIBLE FOR ROLLOVER TREATMENT.—

(1) IN GENERAL.—The plan administrator of any plan shall, within a reasonable period of time before making an eligible rollover distribution [from an eligible retirement plan], provide a written explanation to the recipient—

(A) of the provisions under which the recipient may have the distribution directly transferred to [another eligible retirement plan] *an eligible retirement plan*,

(B) of the provision which requires the withholding of tax on the distribution if it is not directly transferred to [another eligible retirement plan] *an eligible retirement plan*,

(C) of the provisions under which the distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution, [and]

(D) if applicable, of the provisions of subsections (d) and (e) of this section[.], *and*

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

(2) DEFINITIONS.—For purposes of this subsection—

(A) ELIGIBLE ROLLOVER DISTRIBUTION.—The term "eligible rollover distribution" has the same meaning as when used in subsection (c) of this section [or paragraph (4) of

section 403(a)], *paragraph (4) of section 403(a), subparagraph (A) of section 403(b)(8), or subparagraph (A) of section 457(e)(16).*

* * * * * * *

(g) LIMITATION ON EXCLUSION FOR ELECTIVE DEFERRALS.—

[(1) IN GENERAL.—Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds $7,000.]

(1) IN GENERAL.—

(A) LIMITATION.—Notwithstanding subsections (e)(3) and (h)(1)(B), the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals for the taxable year exceeds the applicable dollar amount. The preceding sentence shall not apply to so much of such excess as does not exceed the designated plus contributions of the individual for the taxable year.

(B) APPLICABLE DOLLAR AMOUNT.—For purposes of subparagraph (A), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	***The applicable dollar amount:***
2001	*$11,000*
2002	*$12,000*
2003	*$13,000*
2004	*$14,000*
2005 or thereafter	*$15,000.*

(2) DISTRIBUTION OF EXCESS DEFERRALS.—

(A) IN GENERAL.—If any amount (hereinafter in this paragraph referred to as "excess deferrals") is included in the gross income of an individual under paragraph (1) *(or would be included but for the last sentence thereof)* for any taxable year—

(i) * * *

* * * * * * *

[(4) INCREASE IN LIMIT FOR AMOUNTS CONTRIBUTED UNDER SECTION 403(b) CONTRACTS.—The limitation under paragraph (1) shall be increased (but not to an amount in excess of $9,500) by the amount of any employer contributions for the taxable year described in paragraph (3)(C).

[(5) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $7,000 amount under paragraph (1) at the same time and in the same manner as under section 415(d); except that any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.]

(4) COST-OF-LIVING ADJUSTMENT.—In the case of taxable years beginning after December 31, 2005, the Secretary shall adjust the $15,000 amount under paragraph (1)(B) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2004, and any increase under this paragraph which is

not a multiple of $500 shall be rounded to the next lowest multiple of $500.

[(6)] *(5)* DISREGARD OF COMMUNITY PROPERTY LAWS.—This subsection shall be applied without regard to community property laws.

[(7)] *(6)* COORDINATION WITH SECTION 72.—For purposes of applying section 72, any amount includible in gross income for any taxable year under this subsection but which is not distributed from the plan during such taxable year shall not be treated as investment in the contract.

[(8)] *(7)* SPECIAL RULE FOR CERTAIN ORGANIZATIONS.—

(A) * * *

(B) Qualified organizationFor purposes of this paragraph, the term "qualified organization" means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. Such term includes any organization described in section 414(e)(3)(B)(ii). Terms used in this subparagraph shall have the same meaning as when used in section 415(c)(4) *(as in effect before the enactment of the Comprehensive Retirement Security and Pension Reform Act of 2001)*.

* * * * * * *

[(9)] *(8)* MATCHING CONTRIBUTIONS ON BEHALF OF SELF-EMPLOYED INDIVIDUALS NOT TREATED AS ELECTIVE EMPLOYER CONTRIBUTIONS.—Except as provided in section 401(k)(3)(D)(ii), any matching contribution described in section 401(m)(4)(A) which is made on behalf of a self-employed individual (as defined in section 401(c) shall not be treated as an elective employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) for purposes of this title.

* * * * * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) ROLLOVER CONTRIBUTIONS.—

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

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

(ii) a Roth IRA of such individual.

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

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

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

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

(A) IN GENERAL.—The term "qualified distribution" has the meaning given such term by section 408A(d)(2)(A) (without regard to clause (iv) thereof).

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

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

(ii) if a rollover contribution was made to such designated plus account from a designated plus account previously established for such individual under another applicable retirement plan, the first taxable year for which the individual made a designated plus contribution to such previously established account.

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

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

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

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

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

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

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

SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) * * *

(b) TAXABILITY OF BENEFICIARY UNDER ANNUITY PURCHASED BY SECTION 501(c)(3) ORGANIZATION OR PUBLIC SCHOOL.—

(1) GENERAL RULE.—If—

(A) * * *

* * * * * * *

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed **[**the exclusion allowance for such taxable year**]** *the applicable limit under section 415*. The amount actually distributed to any distributee under such contract shall be taxable to the distributee (in the year in which so distributed) under section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or **[**section 408(d)(3)(A)(iii)**]** *section 408(d)(3)(A)(ii)* shall not be considered contributed by such employer.

[(2) EXCLUSION ALLOWANCE.—

[(A) IN GENERAL.—For purposes of this subsection, the exclusion allowance for any employee for the taxable year is an amount equal to the excess, if any, of—

[(i) the amount determined by multiplying 20 percent of his includible compensation by the number of years of service, over

[(ii) the aggregate of the amounts contributed by the employer for annuity contracts and excludable from the gross income of the employee for any prior taxable year.

[(B) ELECTION TO HAVE ALLOWANCE DETERMINED UNDER SECTION 415 RULES.—In the case of an employee who makes an election under section 415(c)(4)(D) to have the provisions of section 415(c)(4)(C) (relating to special rule for section 403(b) contracts purchased by educational institutions, hospitals, home health service agencies, and certain churches, etc.) apply, the exclusion allowance for any such employee for the taxable year is the amount which could be contributed (under section 415 without regard to section 415(c)(8)[(7)]) by his employer under a plan described in section 403(a) if the annuity contract for the benefit of such employee were treated as a defined contribution plan maintained by the employer.

[(C) NUMBER OF YEARS OF SERVICE FOR DULY ORDAINED, COMMISSIONED, OR LICENSED MINISTERS OR LAY EMPLOYEES.—For purposes of this subsection and section 415(c)(4)(A)—

[(i) all years of service by—

[(I) a duly ordained, commissioned, or licensed minister of a church, or

[(II) a lay person,as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for 1 employer, and

[(ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by 1 employer.

For purposes of the preceding sentence, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).

[(D) ALTERNATIVE EXCLUSION ALLOWANCE.—

[(i) IN GENERAL.—In the case of any individual described in subparagraph (C), the amount determined under subparagraph (A) shall not be less than the lesser of—

[(I) $3,000, or

[(II) the includible compensation of such individual.

[(ii) SUBPARAGRAPH NOT TO APPLY TO INDIVIDUALS WITH ADJUSTED GROSS INCOME OVER $17,000.—This subparagraph shall not apply with respect to any taxable year to any individual whose adjusted gross income for such taxable year (determined separately and without regard to any community property laws) exceeds $17,000.

[(iii) SPECIAL RULE FOR FOREIGN MISSIONARIES.—In the case of an individual described in subparagraph (C)(i) performing services outside the United States,

there shall be included as includible compensation for any year under clause (i)(II) any amount contributed during such year by a church (or convention or association of churches) for an annuity contract with respect to such individual.]

(3) INCLUDIBLE COMPENSATION.—For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies *or any amount received by a former employee after the fifth taxable year following the taxable year in which such employee was terminated*. Such term includes—

(A) * * *

* * * * * * *

(7) CUSTODIAL ACCOUNTS FOR REGULATED INVESTMENT COMPANY STOCK.—

(A) AMOUNTS PAID TREATED AS CONTRIBUTIONS.—For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) * * *

(ii) under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59½, [separates from service] *has a severance from employment*, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D), encounters financial hardship.

* * * * * * *

(8) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—If—

(i) * * *

(ii) the employee transfers any portion of the property he receives in [such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and] *such distribution to an eligible retirement plan described in section 402(c)(8)(B), and*

* * * * * * *

[(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of paragraphs (2) through (7) of section 402(c) (including paragraph (4)(C) thereof) shall apply for purposes of subparagraph (A).]

(B) CERTAIN RULES MADE APPLICABLE.—The rules of paragraphs (2) through (7) and (9) of section 402(c) and

section 402(f) shall apply for purposes of subparagraph (A), except that section 402(f) shall be applied to the payor in lieu of the plan administrator.

* * * * * * *

(11) REQUIREMENT THAT DISTRIBUTIONS NOT BEGIN BEFORE AGE 59½, [SEPARATION FROM SERVICE] *SEVERANCE FROM EMPLOYMENT*, DEATH, OR DISABILITY.—This subsection shall not apply to any annuity contract unless under such contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only—

(A) when the employee attains age 59½, [separates from service] *has a severance from employment*, dies, or becomes disabled (within the meaning of section 72(m)(7)), or

* * * * * * *

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

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

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

* * * * * * *

SEC. 404. DEDUCTION FOR CONTRIBUTIONS OF AN EMPLOYER TO AN EMPLOYEES' TRUST OR ANNUITY PLAN AND COMPENSATION UNDER A DEFERRED-PAYMENT PLAN.

(a) GENERAL RULE.—If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under this chapter; but, if they would otherwise be deductible, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

(1) PENSION TRUSTS.—

(A) * * *

* * * * * * *

[(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—In the case of any defined benefit plan (other than a multiemployer plan) which has more than 100 participants for the plan year, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded current liability determined under section 412(l). For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as 1 plan, but only employees of such member or employer shall be taken into account.]

(D) SPECIAL RULE IN CASE OF CERTAIN PLANS.—

(i) IN GENERAL.—In the case of any defined benefit plan, except as provided in regulations, the maximum amount deductible under the limitations of this paragraph shall not be less than the unfunded termination liability (determined as if the proposed termination date referred to in section 4041(b)(2)(A)(i)(II) of the Employee Retirement Income Security Act of 1974 were the last day of the plan year).

(ii) PLANS WITH LESS THAN 100 PARTICIPANTS.—For purposes of this subparagraph, in the case of a plan which has less than 100 participants for the plan year, termination liability shall not include the liability attributable to benefit increases for highly compensated employees (as defined in section 414(q)) resulting from a plan amendment which is made or becomes effective, whichever is later, within the last 2 years before the termination date.

(iii) RULE FOR DETERMINING NUMBER OF PARTICIPANTS.—For purposes of determining whether a plan has more than 100 participants, all defined benefit plans maintained by the same employer (or any member of such employer's controlled group (within the meaning of section 412(l)(8)(C))) shall be treated as one plan, but only employees of such member or employer shall be taken into account.

(iv) PLANS MAINTAINED BY PROFESSIONAL SERVICE EMPLOYERS.—Clause (i) shall not apply to a plan described in section 4021(b)(13) of the Employee Retirement Income Security Act of 1974.

* * * * * * *

(3) STOCK BONUS AND PROFIT-SHARING TRUSTS.—

(A) LIMITS ON DEDUCTIBLE CONTRIBUTIONS.—

(i) IN GENERAL.—In the taxable year when paid, if the contributions are paid into a stock bonus or profit-sharing trust, and if such taxable year ends within or with a taxable year of the trust with respect to which the trust is exempt under section 501(a), in an amount not in excess of the greater of—

(I) **[**15**]** *20* percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under the stock bonus or profit-sharing plan, or

* * * * * * *

(B) PROFIT-SHARING PLAN OF AFFILIATED GROUP.—In the case of a profit-sharing plan, or a stock bonus plan in which contributions are determined with reference to profits, of a group of corporations which is an affiliated group within the meaning of section 1504, if any member of such affiliated group is prevented from making a contribution which it would otherwise have made under the plan, by reason of having no current or accumulated earnings or profits or because such earnings or profits are less than the contributions which it would otherwise have made, then so much of the contribution which such member was

so prevented from making may be made, for the benefit of the employees of such member, by the other members of the group, to the extent of current or accumulated earnings or profits, except that such contribution by each such other member shall be limited, where the group does not file a consolidated return, to that proportion of its total current and accumulated earnings or profits remaining after adjustment for its contribution deductible without regard to this subparagraph which the total prevented contribution bears to the total current and accumulated earnings or profits of all the members of the group remaining after adjustment for all contributions deductible without regard to this subparagraph. Contributions made under the preceding sentence shall be deductible under subparagraph (A) of this paragraph by the employer making such contribution, and, for the purpose of determining amounts which may be carried forward and deducted under the second sentence of subparagraph (A) of this paragraph in succeeding taxable years, shall be deemed to have been made by the employer on behalf of whose employees such contributions were made. **[**The term "compensation otherwise paid or accrued during the taxable year to all employees" shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.**]**

* * * * * * *

(10) CONTRIBUTIONS BY CERTAIN MINISTERS TO RETIREMENT INCOME ACCOUNTS.—In the case of contributions made by a minister described in section 414(e)(5) to a retirement income account described in section 403(b)(9) and not by a person other than such minister, such contributions—

(A) * * *

(B) shall be deductible under this subsection to the extent such contributions do not exceed the limit on elective deferrals under section 402(g)**[**, the exclusion allowance under section 403(b)(2),**]** or the limit on annual additions under section 415.

For purposes of this paragraph, all plans in which the minister is a participant shall be treated as one plan.

* * * * * * *

(12) DEFINITION OF COMPENSATION.—For purposes of paragraphs (3), (7), (8), and (9), the term "compensation otherwise paid or accrued during the taxable year" shall include amounts treated as "participant's compensation" under subparagraph (C) or (D) of section 415(c)(3).

* * * * * * *

(h) SPECIAL RULES FOR SIMPLIFIED EMPLOYEE PENSIONS.—

(1) IN GENERAL.—Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) * * *

* * * * * * *

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed [15] *20* percent of the compensation paid to the employees during the calendar year ending with or within the taxable year (or during the taxable year in the case of a taxable year described in subparagraph (A)(ii)). The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the [15] *20* percent limit of the preceding sentence.

* * * * * * *

(k) DEDUCTION FOR DIVIDENDS PAID ON CERTAIN EMPLOYER SECURITIES.—

(1) * * *

(2) APPLICABLE DIVIDEND.—For purposes of this subsection—

(A) IN GENERAL.—The term "applicable dividend" means any dividend which, in accordance with the plan provisions—

(i) is paid in cash to the participants in the plan or their beneficiaries,

(ii) is paid to the plan and is distributed in cash to participants in the plan or their beneficiaries not later than 90 days after the close of the plan year in which paid, [or]

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

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

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

[(iii)] *(iv)* is used to make payments on a loan described in subsection (a)(9) the proceeds of which were used to acquire the employer securities (whether or not allocated to participants) with respect to which the dividend is paid.

* * * * * * *

(l) LIMITATION ON AMOUNT OF ANNUAL COMPENSATION TAKEN INTO ACCOUNT.—For purposes of applying the limitations of this section, the amount of annual compensation of each employee taken into account under the plan for any year shall not exceed [$150,000] *$200,000*. The Secretary shall adjust the [$150,000] *$200,000* amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). For purposes of clause (i), (ii), or (iii) of subsection (a)(1)(A), and in computing the full funding limitation, any adjustment under the preceding sentence shall not be taken into account for any year before the year for which such adjustment first takes effect.

* * * * * * *

(n) ELECTIVE DEFERRALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DEDUCTION LIMITS.—Elective deferrals (as defined in section 402(g)(3)) shall not be subject to any limitation contained in paragraph (3), (7), or (9) of subsection (a), and such elective defer-

rals shall not be taken into account in applying any such limitation to any other contributions.

* * * * * * *

SEC. 408. INDIVIDUAL RETIREMENT ACCOUNTS.

(a) INDIVIDUAL RETIREMENT ACCOUNT.—For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(c), 403(a)(4), [or 403(b)(8),] *403(b)(8), or 457(e)(16)* no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year [in excess of $2,000 on behalf of any individual] *on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A)*.

* * * * * * *

(b) INDIVIDUAL RETIREMENT ANNUITY.—For purposes of this section, the term "individual retirement annuity" means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) * * *

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed [$2,000] *the dollar amount in effect under section 219(b)(1)(A)*, and

* * * * * * *

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed [$2,000] *the dollar amount in effect under section 219(b)(1)(A)*.

* * * * * * *

(d) TAX TREATMENT OF DISTRIBUTIONS.—

(1) * * *

* * * * * * *

(3) ROLLOVER CONTRIBUTION.—An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) IN GENERAL.—Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; *or*

[(ii) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution (as defined in section 402 from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) or from an annuity plan described in section 403(a) (and any earnings on such contribution), and the entire amount received (including property and other money) is paid (for the benefit of such individual) into another such trust or annuity plan not later than the 60th day on which the individual receives the payment or the distribution; or

[(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

[(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

[(II) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution.**]**

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii), the term "eligible retirement plan" means an eligible retirement plan described in clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B).

* * * * * * *

(D) PARTIAL ROLLOVERS PERMITTED.—

(i) IN GENERAL.—If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause **[**(i), (ii), or (iii)**]** *(i) or (ii)* of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid

into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

* * * * * * *

[(G) SIMPLE RETIREMENTS ACCOUNTS.—This paragraph shall not apply to any amount paid or distributed out of a simple retirement account (as defined in subsection (p)) unless—

[(i) it is paid into another simple retirement account, or

[(ii) in the case of any payment or distribution to which section 72(t)(6) does not apply, it is paid into an individual retirement plan.]

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

(H) APPLICATION OF SECTION 72.—

(i) IN GENERAL.—If—

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

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c)(8)(B)(iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) APPLICABLE RULES.—In the case of a distribution described in clause (i)—

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

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

* * * * * * *

(j) INCREASE IN MAXIMUM LIMITATIONS FOR SIMPLIFIED EMPLOYEE PENSIONS.—In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by in-

creasing the [$2,000] amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) SIMPLIFIED EMPLOYEE PENSION DEFINED.—

(1) * * *

* * * * * * *

(3) CONTRIBUTIONS MAY NOT DISCRIMINATE IN FAVOR OF THE HIGHLY COMPENSATED, ETC.—

(A) * * *

* * * * * * *

(C) CONTRIBUTIONS MUST BEAR UNIFORM RELATIONSHIP TO TOTAL COMPENSATION.—For purposes of subparagraph (A), and except as provided in subparagraph (D), employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first [$150,000] *$200,000*) of each employee maintaining a simplified employee pension.

* * * * * * *

(6) EMPLOYEE MAY ELECT SALARY REDUCTION ARRANGEMENT.—

(A) * * *

* * * * * * *

(D) DEFERRAL PERCENTAGE.—For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) * * *

(ii) the employee's compensation (not in excess of the first [$150,000] *$200,000*) for the year.

* * * * * * *

(8) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $300 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the [$150,000] *$200,000* amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B) ; except that any increase in the $300 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

* * * * * * *

(p) SIMPLE RETIREMENT ACCOUNTS.—

(1) * * *

(2) QUALIFIED SALARY REDUCTION ARRANGEMENT.—

(A) IN GENERAL.—For purposes of this subsection, the term "qualified salary reduction arrangement" means a written arrangement of an eligible employer under which—

(i) * * *

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a

total of [$6,000] *the applicable dollar amount* for any year,

* * * * * * *

[(E) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust the $6,000 amount under subparagraph (A)(ii) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter ending September 30, 1996, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.]

(E) APPLICABLE DOLLAR AMOUNT; COST-OF-LIVING ADJUSTMENT.—

(i) IN GENERAL.—For purposes of subparagraph (A)(ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	***The applicable dollar amount:***
2001	*$7,000*
2002	*$8,000*
2003	*$9,000*
2004 or thereafter	*$10,000.*

(ii) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2004, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2003, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

* * * * * * *

(6) DEFINITIONS.—For purposes of this subsection—

(A) COMPENSATION.—

(i) * * *

(ii) SELF-EMPLOYED.—In the case of an employee described in subparagraph (B), the term "compensation" means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. *The preceding sentence shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c)(6).*

* * * * * * *

(8) COORDINATION WITH MAXIMUM LIMITATION UNDER SUBSECTION (A).—In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting "the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(ii) or (B)(i) of paragraph (2) of

this subsection, whichever is applicable" for "**[**$2,000**]** *the dollar amount in effect under section 219(b)(1)(A)*".

* * * * * * *

SEC. 408A. ROTH IRA'S.

(a) * * *

* * * * * * *

(e) QUALIFIED ROLLOVER CONTRIBUTION.—For purposes of this section, the term "qualified rollover contribution" means a rollover contribution to a Roth IRA from another such account, or from an individual retirement plan, but only if such rollover contribution meets the requirements of section 408(d)(3). *Such term includes a rollover contribution described in section 402A(c)(3)(A).* For purposes of section 408(d)(3)(B), there shall be disregarded any qualified rollover contribution from an individual retirement plan (other than a Roth IRA) to a Roth IRA.

* * * * * * *

SEC. 409. QUALIFICATIONS FOR TAX CREDIT EMPLOYEE STOCK OWNERSHIP PLANS.

(a) * * *

* * * * * * *

(p) PROHIBITED ALLOCATIONS OF SECURITIES IN AN S CORPORATION.—

(1) IN GENERAL.—An employee stock ownership plan holding employer securities consisting of stock in an S corporation shall provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

(2) FAILURE TO MEET REQUIREMENTS.—

(A) IN GENERAL.—If a plan fails to meet the requirements of paragraph (1), the plan shall be treated as having distributed to any disqualified person the amount allocated to the account of such person in violation of paragraph (1) at the time of such allocation.

(B) CROSS REFERENCE.—

For excise tax relating to violations of paragraph (1) and ownership of synthetic equity, see section 4979A.

(3) NONALLOCATION YEAR.—For purposes of this subsection—

(A) IN GENERAL.—The term "nonallocation year" means any plan year of an employee stock ownership plan if, at any time during such plan year—

(i) such plan holds employer securities consisting of stock in an S corporation, and

(ii) disqualified persons own at least 50 percent of the number of shares of stock in the S corporation.

(B) ATTRIBUTION RULES.—For purposes of subparagraph (A)—

(i) IN GENERAL.—The rules of section 318(a) shall apply for purposes of determining ownership, except that—

(I) in applying paragraph (1) thereof, the members of an individual's family shall include members of the family described in paragraph (4)(D), and

(II) paragraph (4) thereof shall not apply.

(ii) DEEMED-OWNED SHARES.—Notwithstanding the employee trust exception in section 318(a)(2)(B)(i), individual shall be treated as owning deemed-owned shares of the individual.

Solely for purposes of applying paragraph (5), this subparagraph shall be applied after the attribution rules of paragraph (5) have been applied.

(4) DISQUALIFIED PERSON.—For purposes of this subsection—

(A) IN GENERAL.—The term "disqualified person" means any person if—

(i) the aggregate number of deemed-owned shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned shares of stock in the S corporation, or

(ii) in the case of a person not described in clause (i), the number of deemed-owned shares of such person is at least 10 percent of the number of deemed-owned shares of stock in such corporation.

(B) TREATMENT OF FAMILY MEMBERS.—In the case of a disqualified person described in subparagraph (A)(i), any member of such person's family with deemed-owned shares shall be treated as a disqualified person if not otherwise treated as a disqualified person under subparagraph (A).

(C) DEEMED-OWNED SHARES.—

(i) IN GENERAL.—The term "deemed-owned shares" means, with respect to any person—

(I) the stock in the S corporation constituting employer securities of an employee stock ownership plan which is allocated to such person under the plan, and

(II) such person's share of the stock in such corporation which is held by such plan but which is not allocated under the plan to participants.

(ii) PERSON'S SHARE OF UNALLOCATED STOCK.—For purposes of clause (i)(II), a person's share of unallocated S corporation stock held by such plan is the amount of the unallocated stock which would be allocated to such person if the unallocated stock were allocated to all participants in the same proportions as the most recent stock allocation under the plan.

(D) MEMBER OF FAMILY.—For purposes of this paragraph, the term "member of the family" means, with respect to any individual—

(i) the spouse of the individual,

(ii) an ancestor or lineal descendant of the individual or the individual's spouse,

(iii) a brother or sister of the individual or the individual's spouse and any lineal descendant of the brother or sister, and

(iv) the spouse of any individual described in clause (ii) or (iii).

A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance shall not be treated as such individual's spouse for purposes of this subparagraph.

(5) TREATMENT OF SYNTHETIC EQUITY.—For purposes of paragraphs (3) and (4), in the case of a person who owns synthetic equity in the S corporation, except to the extent provided in regulations, the shares of stock in such corporation on which such synthetic equity is based shall be treated as outstanding stock in such corporation and deemed-owned shares of such person if such treatment of synthetic equity of 1 or more such persons results in—

(A) the treatment of any person as a disqualified person, or

(B) the treatment of any year as a nonallocation year.

For purposes of this paragraph, synthetic equity shall be treated as owned by a person in the same manner as stock is treated as owned by a person under the rules of paragraphs (2) and (3) of section 318(a). If, without regard to this paragraph, a person is treated as a disqualified person or a year is treated as a nonallocation year, this paragraph shall not be construed to result in the person or year not being so treated.

(6) DEFINITIONS.—For purposes of this subsection—

(A) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7).

(B) EMPLOYER SECURITIES.—The term "employer security" has the meaning given such term by section 409(l).

(C) SYNTHETIC EQUITY.—The term "synthetic equity" means any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

(7) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[(p)**]** *(q)* CROSS REFERENCES.—

(1) For requirements for allowance of employee plan credit, see section 48(n).

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an employee plan credit or employee stock ownership credit, see section 6699.

(3) For requirements for allowance of an employee stock ownership credit, see section 41.

* * * * * * *

Subpart B—Special Rules

* * * * * * *

SEC. 410. MINIMUM PARTICIPATION STANDARDS.

(a) * * *

(b) MINIMUM COVERAGE REQUIREMENTS.—

(1) IN GENERAL.—A trust shall not constitute a qualified trust under section 401(a) unless such trust is designated by the employer as part of a plan which meets 1 of the following requirements:

(A) * * *

* * * * * * *

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

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

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

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

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

* * * * * * *

SEC. 411. MINIMUM VESTING STANDARDS.

(a) GENERAL RULE.—A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1), (2), and (11) of this subsection and the requirements of subsection (b)(3), and also satisfies, in the case of a defined benefit plan, the requirements of subsection (b)(1) and, in the case of a defined contribution plan, the requirements of subsection (b)(2).

(1) * * *

(2) EMPLOYER CONTRIBUTIONS.—[A plan] *Except as provided in paragraph (12), a plan* satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A) or (B).

(A) * * *

(11) RESTRICTIONS ON CERTAIN MANDATORY DISTRIBUTIONS.—

(A) * * *

* * * * * * *

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

* * * * * * *

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

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

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

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

(d) SPECIAL RULES.—

(1) * * *

* * * * * * *

(6) ACCRUED BENEFIT NOT TO BE DECREASED BY AMENDMENT.—

(A) * * *

(B) TREATMENT OF CERTAIN PLAN AMENDMENTS.—For purposes of subparagraph (A), a plan amendment which has the effect of—

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. *The Secretary shall by regulations provide that this subparagraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.* The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment described in clause (ii) (other than a plan amendment having an effect described in clause (i)).

* * * * * * *

(D) PLAN TRANSFERS.—

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

(I) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor

plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan,

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

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

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

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

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

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

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

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

* * * * * * *

SEC. 412. MINIMUM FUNDING STANDARDS.

(a) * * *

* * * * * * *

(c) SPECIAL RULES.—

(1) * * *

* * * * * * *

(7) FULL-FUNDING LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (6), the term "full-funding limitation" means the excess (if any) of—

(i) the lesser of

(I) [the applicable percentage] *in the case of plan years beginning before January 1, 2004, the applicable percentage* of current liability (includ-

ing the expected increase in current liability due to benefits accruing during the plan year), or

* * * * * * *

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

[In the case of any plan year beginning in—	The applicable percentage is—]
1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 and succeeding years	170]

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

In the case of any plan year beginning in—	***The applicable percentage is—***
2002	*165*
2003	*170.*

* * * * * * *

[(9) ANNUAL VALUATION.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.]

(9) ANNUAL VALUATION.—

(A) IN GENERAL.—For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

(B) VALUATION DATE.—

(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) ELECTION TO USE PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

(I) an election is in effect under this clause with respect to the plan, and

(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

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

(iv) ELECTION.—An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary.

* * * * * * *

SEC. 414. DEFINITIONS AND SPECIAL RULES.

(a) * * *

* * * * * * *

(p) QUALIFIED DOMESTIC RELATIONS ORDER DEFINED.—For purposes of this subsection and section 401(a)(13)—

(1) * * *

* * * * * * *

(10) WAIVER OF CERTAIN DISTRIBUTION REQUIREMENTS.—With respect to the requirements of subsections (a) and (k) of section 401, section 403(b), [and section 409(d)] *section 409(d), and section 457(d)*, a plan shall not be treated as failing to meet such requirements solely by reason of payments to an alternative payee pursuant to a qualified domestic relations order.

(11) APPLICATION OF RULES TO [GOVERNMENTAL AND CHURCH PLANS] *CERTAIN OTHER PLANS*.—For purposes of this title, a distribution or payment from a governmental plan (as defined in subsection (d)) or a church plan (as described in subsection (e)) *or an eligible deferred compensation plan (within the meaning of section 457(b))* shall be treated as made pursuant to a qualified domestic relations order if it is made pursuant to a domestic relations order which meets the requirement of clause (i) of paragraph (1)(A).

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

[(12)] *(13)* CONSULTATION WITH THE SECRETARY.—In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

* * * * * * *

(v) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER.—

(1) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet any requirement of this title solely because the plan permits an eligible participant to make additional elective deferrals in any plan year.

(2) LIMITATION ON AMOUNT OF ADDITIONAL DEFERRALS.—A plan shall not permit additional elective deferrals under paragraph (1) for any year in an amount greater than the lesser of—

(A) $5,000, or

(B) the excess (if any) of—

(i) the participant's compensation for the year, over

(ii) any other elective deferrals of the participant for such year which are made without regard to this subsection.

(3) TREATMENT OF CONTRIBUTIONS.—In the case of any contribution to a plan under paragraph (1), such contribution shall not, with respect to the year in which the contribution is made—

(A) be subject to any otherwise applicable limitation contained in section 402(g), 402(h)(2), 404(a), 404(h), 408(p)(2)(A)(ii), 415, or 457, or

(B) be taken into account in applying such limitations to other contributions or benefits under such plan or any other such plan.

(4) APPLICATION OF NONDISCRIMINATION RULES.—

(A) IN GENERAL.—An applicable employer plan shall not be treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features if the plan allows all eligible participants to make the same election with respect to the additional elective deferrals under this subsection.

(B) AGGREGATION.—For purposes of subparagraph (A), all plans maintained by employers who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as 1 plan.

(5) ELIGIBLE PARTICIPANT.—For purposes of this subsection, the term "eligible participant" means, with respect to any plan year, a participant in a plan—

(A) who has attained the age of 50 before the close of the plan year, and

(B) with respect to whom no other elective deferrals may (without regard to this subsection) be made to the plan for the plan year by reason of the application of any limitation or other restriction described in paragraph (3) or comparable limitation contained in the terms of the plan.

(6) OTHER DEFINITIONS AND RULES.—For purposes of this subsection—

(A) APPLICABLE EMPLOYER PLAN.—The term "applicable employer plan" means—

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

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

(iii) an eligible deferred compensation plan under section 457 of an eligible employer as defined in section 457(e)(1)(A), and

(iv) an arrangement meeting the requirements of section 408 (k) or (p).

(B) ELECTIVE DEFERRAL.—The term "elective deferral" has the meaning given such term by subsection (u)(2)(C).

(C) EXCEPTION FOR SECTION 457 PLANS.—This subsection shall not apply to an applicable employer plan described in subparagraph (A)(iii) for any year to which section 457(b)(3) applies.

(D) COST-OF-LIVING ADJUSTMENT.—In the case of a year beginning after December 31, 2005, the Secretary shall adjust annually the $5,000 amount in paragraph (2)(A) for increases in the cost-of-living at the same time and in the

same manner as adjustments under section 415(d); except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

SEC. 415. LIMITATIONS ON BENEFITS AND CONTRIBUTIONS UNDER QUALIFIED PLANS.

(a) GENERAL RULE.—

(1) * * *

(2) SECTION APPLIES TO CERTAIN ANNUITIES AND ACCOUNTS.—In the case of—

(A) * * *

* * * * * * *

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate**[**, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2)**]**.

(b) LIMITATION FOR DEFINED BENEFIT PLANS.—

(1) IN GENERAL.—Benefits with respect to a participant exceed the limitation of this subsection if, when expressed as an annual benefit (within the meaning of paragraph (2)), such annual benefit is greater than the lesser of—

(A) **[**$90,000**]** *$160,000*, or

* * * * * * *

(2) ANNUAL BENEFIT.—

(A) IN GENERAL.—For purposes of paragraph (1), the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(c), 403(a)(4), **[**and 408(d)(3)**]** *403(b)(8), 408(d)(3), and 457(e)(16)*) are made.

(B) ADJUSTMENT FOR CERTAIN OTHER FORMS OF BENEFIT.—If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(c), 403(a)(4), **[**and 408(d)(3)**]** *403(b)(8), 408(d)(3), and 457(e)(16)*), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which

constitutes a qualified joint and survivor annuity (as defined in section 417 shall not be taken into account.

(C) ADJUSTMENT TO [$90,000] *$160,000* LIMIT WHERE BENEFIT BEGINS BEFORE [THE SOCIAL SECURITY RETIREMENT AGE] *AGE 62*.—If the retirement income benefit under the plan begins before [the social security retirement age] *age 62*, the determination as to whether the [$90,000] *$160,000* limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a [$90,000] *$160,000* annual benefit beginning at [the social security retirement age] *age 62*. [The reduction under this subparagraph shall be made in such manner as the Secretary may prescribe which is consistent with the reduction for old-age insurance benefits commencing before the social security retirement age under the Social Security Act.]

(D) ADJUSTMENT TO [$90,000] *$160,000* LIMIT WHERE BENEFIT BEGINS AFTER [THE SOCIAL SECURITY RETIREMENT AGE] *AGE 65*.—If the retirement income benefit under the plan begins after [the social security retirement age] *age 65*, the determination as to whether the [$90,000] *$160,000* limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a [$90,000] *$160,000* annual benefit beginning at [the social security retirement age] *age 65*.

* * * * * * *

[(F) PLANS MAINTAINED BY GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.—In the case of a governmental plan (within the meaning of section 414(d)), a plan maintained by an organization (other than a governmental unit) exempt from tax under this subtitle, or a qualified merchant marine plan—

[(i) subparagraph (C) shall be applied—

[(I) by substituting "age 62" for "social security retirement age" each place it appears, and

[(II) as if the last sentence thereof read as follows: "The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below (i) $75,000 if the benefit begins at or after age 55, or (ii) if the benefit begins before age 55, the equivalent of the $75,000 limitation for age 55.", and

[(ii) subparagraph (D) shall be applied by substituting "age 65" for "social security retirement age" each place it appears.

For purposes of this subparagraph, the term "qualified merchant marine plan" means a plan in existence on January 1, 1986, the participants in which are merchant ma-

rine officers holding licenses issued by the Secretary of Transportation under title 46, United States Code.]

* * * * * * *

(7) BENEFITS UNDER CERTAIN COLLECTIVELY BARGAINED PLANS.—For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan *(other than a multiemployer plan)*—

(A) * * *

* * * * * * *

This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. This paragraph shall not apply to a participant for any period for which he is a participant under another plan to which this section applies which is maintained by an employer maintaining this plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting [the greater of $68,212 or one-half the amount otherwise applicable for such year under paragraph (1)(A) for "$90,000"] *one-half the amount otherwise applicable for such year under paragraph (1)(A) for "$160,000"*.

* * * * * * *

[(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot—

[(i) the rule of paragraph (2)(F)(i)(II) shall apply, and

[(ii) if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before the social security retirement age, paragraph (2)(C) (after application of clause (i)) shall be applied by substituting such age for the social security retirement age.

[(B) INDIVIDUALS WHO SEPARATE FROM SERVICE BEFORE AGE 60.—If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(F) shall apply.]

(9) SPECIAL RULE FOR COMMERCIAL AIRLINE PILOTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any participant who is a commercial airline pilot, if, as of the time of the participant's retirement, regulations prescribed by the Federal Aviation Administration require an individual to separate from service as a commercial airline pilot after attaining any age occurring on or after age 60 and before

age 62, paragraph (2)(C) shall be applied by substituting such age for age 62.

(B) INDIVIDUALS WHO SEPARATE FROM SERVICE BEFORE AGE 60.—If a participant described in subparagraph (A) separates from service before age 60, the rules of paragraph (2)(C) shall apply.

(10) SPECIAL RULE FOR STATE AND LOCAL GOVERNMENT PLANS.—

(A) * * *

* * * * * * *

(C) ELECTION.—

(i) IN GENERAL—.—This paragraph shall not apply to any plan unless each employer maintaining the plan elects before the close of the 1st plan year beginning after December 31, 1989, to have this subsection (other than paragraph (2)(G)) **[**applied without regard to paragraph (2)(F)**]**.

[(11) SPECIAL LIMITATION RULE FOR GOVERNMENTAL PLANS.—In the case of a governmental plan (as defined in section 414(d), subparagraph (B) of paragraph (1) shall not apply.**]**

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

(c) LIMITATION FOR DEFINED CONTRIBUTION PLANS.—

(1) IN GENERAL.—Contributions and other additions with respect to a participant exceed the limitation of this subsection if, when expressed as an annual addition (within the meaning of paragraph (2)) to the participant's account, such annual addition is greater than the lesser of—

(A) **[**$30,000**]** *$40,000*, or

(B) **[**25**]** *100* percent of the participant's compensation.

(2) ANNUAL ADDITION.—For purposes of paragraph (1), the term "annual addition" means the sum for any year of—

(A) * * *

* * * * * * *

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(c), 403(a)(4), 403(b)(8), **[**and 408(d)(3)**]** *408(d)(3), and 457(e)(16)*) without regard to employee contributions to a simplified employee pension which are excludable from gross income under section 408(k)(6). Subparagraph (B) of paragraph (1) shall not apply to any contribution for medical benefits (within the meaning of section 419A(f)(2)) after separation from service which is treated as an annual addition.

(3) PARTICIPANT'S COMPENSATION.—For purposes of paragraph (1)—

(A) * * *

* * * * * * *

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

compensation" means the participant's includible compensation determined under section 403(b)(3).

[(4) SPECIAL ELECTION FOR SECTION 403(b) CONTRACTS PURCHASED BY EDUCATIONAL ORGANIZATIONS, HOSPITALS, HOME HEALTH SERVICE AGENCIES, AND CERTAIN CHURCHES, ETC.—

[(A) In the case of amounts contributed for an annuity contract described in section 403(b) for the year in which occurs a participant's separation from the service with an educational organization, a hospital, a home health service agency, a health and welfare service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii), at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the amount of the exclusion allowance which would be determined under section 403(b)(2) (without regard to this section) for the participant's taxable year in which such separation occurs if the participant's years of service were computed only by taking into account his service for the employer (as determined for purposes of section 403(b)(2)) during the period of years (not exceeding ten) ending on the date of such separation.

[(B) In the case of amounts contributed for an annuity contract described in section 403(b) for any year in the case of a participant who is an employee of an educational organization, a hospital, a home health service agency, a health and welfare service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii), at the election of the participant there is substituted for the amount specified in paragraph (1)(B) the least of—

[(i) 25 percent of the participant's includible compensation (as defined in section 403(b)(3)) plus $4,000,

[(ii) the amount of the exclusion allowance determined for the year under section 403(b)(2), or

[(iii) $15,000.

[(C) In the case of amounts contributed for an annuity contract described in section 403(b) for any year for a participant who is an employee of an educational organization, a hospital, a home health service agency, a health and welfare service agency, or a church, convention or association of churches, or an organization described in section 414(e)(3)(B)(ii), at the election of the participant the provisions of section 403(b)(2)(A) shall not apply.

[(D)(i) The provisions of this paragraph apply only if the participant elects its application at the time and in the manner provided under regulations prescribed by the Secretary. Not more than one election may be made under subparagraph (A) by any participant. A participant who elects to have the provisions of subparagraph (A), (B), or (C) of this paragraph apply to him may not elect to have any other subparagraph of this paragraph apply to him. Any election made under this paragraph is irrevocable.

[(ii) For purposes of this paragraph the term "educational organization" means an educational organization described in section 170(b)(1)(A)(ii).

[(iii) For purposes of this paragraph the term "home health service agency" means an organization described in subsection 501(c)(3) which is exempt from tax under section 501(a) and which has been determined by the Secretary of Health, Education, and Welfare to be a home health agency (as defined in section 1861(o) of the Social Security Act).

[(iv) For purposes of this paragraph, the terms "church" and "convention or association of churches" have the same meaning as when used in section 414(e).]

* * * * * * *

[(7) CERTAIN CONTRIBUTIONS BY CHURCH PLANS NOT TREATED AS EXCEEDING LIMITS.—

[(A) ALTERNATIVE EXCLUSION ALLOWANCE.—Any contribution or addition with respect to any participant, when expressed as an annual addition, which is allocable to the application of section 403(b)(2)(D) to such participant for such year, shall be treated as not exceeding the limitations of paragraph (1).

[(B) CONTRIBUTIONS NOT IN EXCESS OF $40,000 ($10,000 PER YEAR).—

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

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

[(iii) NO ELECTION IF PARAGRAPH (4)(A) ELECTION MADE.—No election may be made under this subparagraph for any year if an election is made under paragraph (4)(A) for such year.

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

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

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

paragraph (1) if such annual addition is not in excess of $10,000.

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

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

(d) COST-OF-LIVING ADJUSTMENTS.—

(1) IN GENERAL.—The Secretary shall adjust annually—

(A) the **[**$90,000**]** *$160,000* amount in subsection (b)(1)(A),

* * * * * * *

(C) the **[**$30,000**]** *$40,000* amount in subsection (c)(1)(A),for increases in the cost-of-living in accordance with regulations prescribed by the Secretary.

* * * * * * *

(3) BASE PERIOD.—For purposes of paragraph (2)—

(A) **[**$90,000**]** *$160,000* AMOUNT.—The base period taken into account for purposes of paragraph (1)(A) is the calendar quarter beginning **[**October 1, 1986**]** *July 1, 2000*.

* * * * * * *

(D) **[**$30,000**]** *$40,000* AMOUNT.—The base period taken into account for purposes of paragraph (1)(C) is the calendar quarter beginning **[**October 1, 1993**]** *July 1, 2000*.

[(4) ROUNDING.—Any increase under subparagraph (A) or (C) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.**]**

(4) ROUNDING.—

(A) $160,000 AMOUNT.—Any increase under subparagraph (A) of paragraph (1) which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

(B) $40,000 AMOUNT.—Any increase under subparagraph (C) of paragraph (1) which is not a multiple of $1,000 shall be rounded to the next lowest multiple of $1,000.

* * * * * * *

(f) COMBINING OF PLANS.—

(1) * * *

* * * * * * *

(3) EXCEPTION FOR MULTIEMPLOYER PLANS.—Notwithstanding paragraph (1) and subsection (g), a multiemployer plan (as defined in section 414(f)) shall not be combined or aggregated with any other plan maintained by an employer for purposes of applying the limitations established in this section, except that such plan shall be combined or aggregated with another plan which is not such a multiemployer plan solely for purposes of determining whether such other plan meets the requirements of subsections (b)(1)(A) and (c).

(g) AGGREGATION OF PLANS.—[The Secretary] *Except as provided in subsection (f)(3), the Secretary*, in applying the provisions of this section to benefits or contributions under more than one plan maintained by the same employer, and to any trusts, contracts, accounts, or bonds referred to in subsection (a)(2), with respect to which the participant has the control required under section 414(b) or (c), as modified by subsection (h), shall, under regulations prescribed by the Secretary, disqualify one or more trusts, plans, contracts, accounts, or bonds, or any combination thereof until such benefits or contributions do not exceed the limitations contained in this section. In addition to taking into account such other factors as may be necessary to carry out the purposes of subsection (f), the regulations prescribed under this paragraph shall provide that no plan which has been terminated shall be disqualified until all other trusts, plans, contracts, accounts, or bonds have been disqualified.

* * * * * * *

(k) SPECIAL RULES.—

(1) * * *

* * * * * * *

(4) SPECIAL RULES FOR SECTIONS 403(b) AND 408.—For purposes of this section, any annuity contract described in section 403(b) for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). For purposes of this section, any contribution by an employer to a simplified employee pension plan for an individual for a taxable year shall be treated as an employer contribution to a defined contribution plan for such individual for such year.

SEC. 416. SPECIAL RULES FOR TOP-HEAVY PLANS.

(a) * * *

* * * * * * *

(c) PLAN MUST PROVIDE MINIMUM BENEFITS.—

(1) DEFINED BENEFIT PLANS.—

(A) * * *

* * * * * * *

(C) YEARS OF SERVICE.—For purposes of this paragraph—

(i) IN GENERAL.—Except as provided in [clause (ii)] *clause (ii) or (iii)*, years of service shall be determined under the rules of paragraphs (4), (5), and (6) of section 411(a).

* * * * * * *

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

(2) DEFINED CONTRIBUTION PLANS.—

(A) IN GENERAL.—A defined contribution plan meets the requirements of the subsection if the employer contribution for the year for each participant who is a non-key employee is not less than 3 percent of such participant's compensation (within the meaning of section 415). *Employer matching contributions (as defined in section 401(m)(4)(A)) shall be taken into account for purposes of this subparagraph.*

* * * * * * *

(g) TOP-HEAVY PLAN DEFINED.—For purposes of this section—

(1) * * *

* * * * * * *

[(3) DISTRIBUTIONS DURING LAST 5 YEARS TAKEN INTO ACCOUNT.—For purposes of determining—

[(A) the present value of the cumulative accrued benefit for any employee, or

[(B) the amount of the account of any employee,such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.**]**

(3) DISTRIBUTIONS DURING LAST YEAR BEFORE DETERMINATION DATE TAKEN INTO ACCOUNT.—

(A) IN GENERAL.—For purposes of determining—

(i) the present value of the cumulative accrued benefit for any employee, or

(ii) the amount of the account of any employee,

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 1-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

(B) 5-YEAR PERIOD IN CASE OF IN-SERVICE DISTRIBUTION.—In the case of any distribution made for a reason other than separation from service, death, or disability, subparagraph (A) shall be applied by substituting "5-year period" for "1-year period".

(4) OTHER SPECIAL RULES.—For purposes of this subsection—

(A) * * *

* * * * * * *

(E) BENEFITS NOT TAKEN INTO ACCOUNT IF EMPLOYEE NOT EMPLOYED FOR **[**LAST 5 YEARS**]** *LAST YEAR BEFORE DETERMINATION DATE*.—If any individual has not performed services for the employer maintaining the plan at any time during the **[**5**]** *1*-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.

* * * * * * *

(H) CASH OR DEFERRED ARRANGEMENTS USING ALTERNATIVE METHODS OF MEETING NONDISCRIMINATION REQUIREMENTS.—The term "top-heavy plan" shall not include a plan which consists solely of—

(i) a cash or deferred arrangement which meets the requirements of section 401(k)(12), and

(ii) matching contributions with respect to which the requirements of section 401(m)(11) are met.

If, but for this subparagraph, a plan would be treated as a top-heavy plan because it is a member of an aggregation group which is a top-heavy group, contributions under the plan may be taken into account in determining whether any other plan in the group meets the requirements of subsection (c)(2).

* * * * * * *

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

(1) KEY EMPLOYEE.—

(A) IN GENERAL.—The term "key employee" means an employee who, at any time during the plan year [or any of the 4 preceding plan years], is—

[(i) an officer of the employer having an annual compensation greater than 50 percent of the amount in effect under section 415(b)(1)(A) for any such plan year,

[(ii) 1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318 the largest interests in the employer,]

(i) an officer of the employer having an annual compensation greater than $150,000,

[(iii)] *(ii)* a 5-percent owner of the employer, or

[(iv)] *(iii)* a 1-percent owner of the employer having an annual compensation from the employer of more than $150,000.

For purposes of clause (i), no more than 50 employees (or, if lesser, the greater of 3 or 10 percent of the employees) shall be treated as officers. [For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest.] Such term shall not include any officer or employee of an entity referred to in section 414(d) (relating to governmental plans). For purposes of determining the number of officers taken into account under clause (i), employees described in section 414(q)(5) shall be excluded.

(B) PERCENTAGE OWNERS.—

(i) * * *

* * * * * * *

(iii) CONSTRUCTIVE OWNERSHIP RULES.—For purposes of this subparagraph [and subparagraph (A)(ii)]—

(I) * * *

* * * * * * *

(iv) FAMILY ATTRIBUTION DISREGARDED.—Solely for purposes of applying this paragraph (and not for purposes of any provision of this title which incorporates by reference the definition of a key employee or 5-percent owner under this paragraph), section 318 shall be applied without regard to subsection (a)(1) thereof in determining whether any person is a 5-percent owner.

* * * * * * *

SEC. 417. DEFINITIONS AND SPECIAL RULES FOR PURPOSES OF MINIMUM SURVIVOR ANNUITY REQUIREMENTS.

(a) ELECTION TO WAIVE QUALIFIED JOINT AND SURVIVOR ANNUITY OR QUALIFIED PRERETIREMENT SURVIVOR ANNITY.—

(1) * * *

* * * * * * *

(6) APPLICABLE ELECTION PERIOD DEFINED.—For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the **[**90**]** *180*-day period ending on the annuity starting date, or

* * * * * * *

Subchapter E—Accounting Periods and Methods of Accounting

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PART II—METHODS OF ACCOUNTING

* * * * * * *

Subpart B—Taxable Year for Which Items of Gross Income Included

* * * * * * *

SEC. 457. DEFERRED COMPENSATION PLANS OF STATE AND LOCAL GOVERNMENTS AND TAX-EXEMPT ORGANIZATIONS.

[(a) YEAR OF INCLUSION IN GROSS INCOME.—In the case of a participant in an eligible deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.**]**

(a) YEAR OF INCLUSION IN GROSS INCOME.—

(1) IN GENERAL.—Any amount of compensation deferred under an eligible deferred compensation plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income—

(A) is paid to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(A), and

(B) is paid or otherwise made available to the participant or other beneficiary, in the case of a plan of an eligible employer described in subsection (e)(1)(B).

(2) SPECIAL RULE FOR ROLLOVER AMOUNTS.—To the extent provided in section 72(t)(9), section 72(t) shall apply to any amount includible in gross income under this subsection.

(b) ELIGIBLE DEFERRED COMPENSATION PLAN DEFINED.—For purposes of this section, the term "eligible deferred compensation plan" means a plan established and maintained by an eligible employer—

(1) in which only individuals who perform service for the employer may be participants,

(2) which provides that (except as provided in paragraph (3)) the maximum amount which may be deferred under the plan for the taxable year *(other than rollover amounts)* shall not exceed the lesser of—

(A) ⟦$7,500⟧ *the applicable dollar amount*, or

(B) ⟦33⅓⟧ *100* percent of the participant's includible compensation,

(3) which may provide that, for 1 or more of the participant's last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

(A) ⟦$15,000⟧ *twice the dollar amount in effect under subsection (b)(2)(A)*, or

* * * * * * *

⟦(c) INDIVIDUALS WHO ARE PARTICIPANTS IN MORE THAN 1 PLAN.—

⟦(1) IN GENERAL.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed $7,500 (as modified by any adjustment provided under subsection (b)(3)).

⟦(2) COORDINATION WITH CERTAIN OTHER DEFERRALS.—In applying paragraph (1) of this subsection—

⟦(A) any amount excluded from gross income under section 403(b) for the taxable year, and

⟦(B) any amount—

⟦(i) excluded from gross income under section 402(e)(3) or section 402(h)(1)(B) or (k) for the taxable year, or

⟦(ii) with respect to which a deduction is allowable by reason of a contribution to an organization described in section 501(c)(18) for the taxable year,

shall be treated as an amount deferred under subsection (a). In applying section 402(g)(8)(A)(iii) or 403(b)(2)(A)(ii), an amount deferred under subsection (a) for any year of service shall be taken into account as if described in section 402(g)(3)(C) or 403(b)(2)(A)(ii), respectively. Subparagraph (B) shall not apply in the case of a participant in a rural cooperative plan (as defined in section 401(k)(7)).⟧

(c) LIMITATION.—The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed the amount in effect under

subsection (b)(2)(A) (as modified by any adjustment provided under subsection (b)(3)).

(d) DISTRIBUTION REQUIREMENTS.—

(1) IN GENERAL.—For purposes of subsection (b)(5), a plan meets the distribution requirements of this subsection if—

(A) under the plan amounts will not be made available to participants or beneficiaries earlier than—

(i) the calendar year in which the participant attains age 70½,

(ii) when the participant [is separated from service] *has a severance from employment* with the employer, or

(iii) when the participant is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary in regulations), [and]

(B) the plan meets the minimum distribution requirements of paragraph (2)[.], *and*

(C) in the case of a plan maintained by an employer described in subsection (e)(1)(A), the plan meets requirements similar to the requirements of section 401(a)(31).

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

[(2) MINIMUM DISTRIBUTION REQUIREMENTS.—A plan meets the minimum distribution requirements of this paragraph if such plan meets the requirements of subparagraphs (A), (B), and (C):

[(A) APPLICATION OF SECTION 401(a)(9).—A plan meets the requirements of this subparagraph if the plan meets the requirements of section 401(a)(9).

[(B) ADDITIONAL DISTRIBUTION REQUIREMENTS.—A plan meets the requirements of this subparagraph if—

[(i) in the case of a distribution beginning before the death of the participant, such distribution will be made in a form under which—

[(I) the amounts payable with respect to the participant will be paid at times specified by the Secretary which are not later than the time determined under section 401(a)(9)(G) (relating to incidental death benefits), and

[(II) any amount not distributed to the participant during his life will be distributed after the death of the participant at least as rapidly as under the method of distributions being used under subclause (I) as of the date of his death, or

[(ii) in the case of a distribution which does not begin before the death of the participant, the entire amount payable with respect to the participant will be paid during a period not to exceed 15 years (or the life expectancy of the surviving spouse if such spouse is the beneficiary).

[(C) NONINCREASING BENEFITS.—A plan meets the requirements of this subparagraph if any distribution payable over a period of more than 1 year can only be made

in substantially nonincreasing amounts (paid not less frequently than annually).]

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

(3) SPECIAL RULE FOR GOVERNMENT PLAN.—An eligible deferred compensation plan of an employer described in subsection (e)(1)(A) shall not be treated as failing to meet the requirements of this subsection solely by reason of making a distribution described in subsection (e)(9)(A).

(e) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

[(9) BENEFITS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—]

(9) BENEFITS OF TAX EXEMPT ORGANIZATION PLANS NOT TREATED AS MADE AVAILABLE BY REASON OF CERTAIN ELECTIONS, ETC.—In the case of an eligible deferred compensation plan of an employer described in subsection (e)(1)(B)—

(A) TOTAL AMOUNT PAYABLE IS DOLLAR LIMIT OR LESS.—The total amount payable to a participant under the plan shall not be treated as made available merely because the participant may elect to receive such amount (or the plan may distribute such amount without the participant's consent) if—

(i) [such amount] *the portion of such amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D))* does not exceed the dollar limit under section 411(a)(11)(A), and

* * * * * * *

[(15) COST-OF-LIVING ADJUSTMENT OF MAXIMUM DEFERRAL AMOUNT.—The Secretary shall adjust the $7,500 amount specified in subsections (b)(2) and (c)(1) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter ending September 30, 1994, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.]

(15) APPLICABLE DOLLAR AMOUNT.—

(A) IN GENERAL.—The applicable dollar amount shall be the amount determined in accordance with the following table:

For taxable years beginning in calendar year:	*The applicable dollar amount:*
2001	*$11,000*
2002	*$12,000*
2003	*$13,000*
2004	*$14,000*
2005 or thereafter	*$15,000.*

(B) COST-OF-LIVING ADJUSTMENTS.—In the case of taxable years beginning after December 31, 2005, the Secretary shall adjust the $15,000 amount under subparagraph (A) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar

quarter beginning July 1, 2004, and any increase under this paragraph which is not a multiple of $500 shall be rounded to the next lowest multiple of $500.

(16) ROLLOVER AMOUNTS.—

(A) GENERAL RULE.—In the case of an eligible deferred compensation plan established and maintained by an employer described in subsection (e)(1)(A), if—

(i) any portion of the balance to the credit of an employee in such plan is paid to such employee in an eligible rollover distribution (within the meaning of section 402(c)(4) without regard to subparagraph (C) thereof),

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

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

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

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

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

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

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

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

* * * * * * *

Subchapter F—Exempt Organizations

* * * * * * *

PART I—GENERAL RULE

* * * * * * *

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) * * *

* * * * * * *

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

(1) * * *

* * * * * * *

(18) A trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan funded only by contributions of employees, if—

(A) * * *

* * * * * * *

(D) in the case of a plan under which an employee may designate certain contributions as deductible—

(i) * * *

* * * * * * *

(iii) such contributions are treated as elective deferrals for purposes of section 402(g) [(other than paragraph (4) thereof)], and

* * * * * * *

SEC. 505. ADDITIONAL REQUIREMENTS FOR ORGANIZATIONS DESCRIBED IN PARAGRAPH (9), (17), OR (20) OF SECTION 501(c).

(a) * * *

(b) NONDISCRIMINATION REQUIREMENTS.—

(1) * * *

* * * * * * *

(7) COMPENSATION LIMIT.—A plan shall not be treated as meeting the requirements of this subsection unless under the plan the annual compensation of each employee taken into account for any year does not exceed [$150,000] *$200,000*. The Secretary shall adjust the [$150,000] *$200,000* amount at the same time, and by the same amount, as any adjustment under section 401(a)(17)(B). This paragraph shall not apply in determining whether the requirements of section 79(d) are met.

* * * * * * *

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

* * * * * * *

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

* * * * * * *

Subpart C—Estates and Trusts Which May Accumulate Income or Which Distribute Corpus

* * * * * * *

SEC. 664. CHARITABLE REMAINDER TRUSTS.

(a) * * *

* * * * * * *

(g) QUALIFIED GRATUITOUS TRANSFER OF QUALIFIED EMPLOYER SECURITIES.—

(1) * * *

* * * * * * *

(3) PLAN REQUIREMENTS.—A plan contains the provisions required by this paragraph if such plan provides that—

(A) * * *

* * * * * * *

(E) such securities are held in a suspense account under the plan to be allocated each year, up to the [limitations under section 415(c)] *applicable limitation under paragraph (7)*, after first allocating all other annual additions for the limitation year, up to the limitations under sections 415 (c) and (e), and

* * * * * * *

(7) APPLICABLE LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (3)(E), the applicable limitation under this paragraph with respect to a participant is an amount equal to the lesser of—

(i) $30,000, or

(ii) 25 percent of the participant's compensation (as defined in section 415(c)(3)).

(B) COST-OF-LIVING ADJUSTMENT.—The Secretary shall adjust annually the $30,000 amount under subparagraph (A)(i) at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning October 1, 1993, and any increase under this subparagraph which is not a multiple of $5,000 shall be rounded to the next lowest multiple of $5,000.

* * * * * * *

Subtitle C—Employment Taxes

* * * * * * *

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

* * * * * * *

Subchapter A—Withholding from Wages

* * * * * * *

SEC. 3401. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

(1) * * *

* * * * * * *

(12) to, or on behalf of, an employee or his beneficiary—

(A) * * *

* * * * * * *

(E) under or to an eligible deferred compensation plan which, at the time of such payment, is a plan described in section 457(b) maintained by an employer described in section 457(e)(1)(A); or

* * * * * * *

SEC. 3405. SPECIAL RULES FOR PENSIONS, ANNUITIES, AND CERTAIN OTHER DEFERRED INCOME.

(a) * * *

* * * * * * *

(c) ELIGIBLE ROLLOVER DISTRIBUTIONS.—

(1) * * *

* * * * * * *

[(3) ELIGIBLE ROLLOVER DISTRIBUTION.—For purposes of this subsection, the term "eligible rollover distribution" has the meaning given such term by section 402(f)(2)(A) (or in the case of an annuity contract under section 403(b), a distribution from such contract described in section 402(f)(2)(A)).**]**

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

(d) LIABILITY FOR WITHHOLDING.—

(1) * * *

(2) PLAN ADMINISTRATOR LIABLE IN CERTAIN CASES.—

(A) * * *

(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph applies to any plan described in, or which at any time has been determined to be described in—

(i) section 401(a),

(ii) section 403(a), **[**or**]**

(iii) section 301(d) of the Tax Reduction Act of 1975**[**.**]***, or*

(iv) section 457(b) and which is maintained by an eligible employer described in section 457(e)(1)(A).

* * * * * * *

Subtitle D—Miscellaneous Excise Taxes

* * * * * * *

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

SEC. 4972. TAX ON NONDEDUCTIBLE CONTRIBUTIONS TO QUALIFIED EMPLOYER PLANS.

(a) * * *

* * * * * * *

(c) NONDEDUCTIBLE CONTRIBUTIONS.—For purposes of this section—

(1) * * *

* * * * * * *

[(6) EXCEPTIONS.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account—

[(A) contributions that would be deductible under section 404(a)(1)(D) if the plan had more than 100 participants if—

[(i) the plan is covered under section 4021 of the Employee Retirement Income Security Act of 1974, and

[(ii) the plan is terminated under section 4041(b) of such Act on or before the last day of the taxable year, and

[(B) so much of the contributions to 1 or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

[(i) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or]

(6) EXCEPTIONS.—In determining the amount of nondeductible contributions for any taxable year, there shall not be taken into account so much of the contributions to one or more defined contribution plans which are not deductible when contributed solely because of section 404(a)(7) as does not exceed the greater of—

(A) the amount of contributions not in excess of 6 percent of compensation (within the meaning of section 404(a)) paid or accrued (during the taxable year for which the contributions were made) to beneficiaries under the plans, or

(B) the sum of—

(i) the amount of contributions described in section 401(m)(4)(A), plus

(ii) the amount of contributions described in section 402(g)(3)(A).

For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to a defined benefit plan and then to amounts described in subparagraph (B).

(7) DEFINED BENEFIT PLAN EXCEPTION.—In determining the amount of nondeductible contributions for any taxable year, an employer may elect for such year not to take into account any contributions to a defined benefit plan except to the extent that such contributions exceed the full-funding limitation (as defined in section 412(c)(7), determined without regard to subparagraph

(A)(i)(I) thereof). For purposes of this paragraph, the deductible limits under section 404(a)(7) shall first be applied to amounts contributed to defined contribution plans and then to amounts described in this paragraph. If an employer makes an election under this paragraph for a taxable year, paragraph (6) shall not apply to such employer for such taxable year.

* * * * * * *

SEC. 4973. TAX ON EXCESS CONTRIBUTIONS TO CERTAIN TAX-FAVORED ACCOUNTS AND ANNUITIES.

(a) * * *

(b) EXCESS CONTRIBUTIONS.—For purposes of this section, in the case of individual retirement accounts or individual retirement annuities, the term "excess contributions" means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to the accounts or for the annuities (other than a contribution to a Roth IRA or a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), **[**or 408(d)(3)**]** *408(d)(3), or 457(e)(16)*), over

* * * * * * *

SEC. 4974. EXCISE TAX ON CERTAIN ACCUMULATIONS IN QUALIFIED RETIREMENT PLANS.

(a) GENERAL RULE.—If the amount distributed during the taxable year of the payee under any qualified retirement plan or any eligible deferred compensation plan (as defined in section 457(b)) is less than the minimum required distribution for such taxable year, there is hereby imposed a tax equal to **[**50**]** *10* percent of the amount by which such minimum required distribution exceeds the actual amount distributed during the taxable year. The tax imposed by this section shall be paid by the payee.

* * * * * * *

SEC. 4975. TAX ON PROHIBITED TRANSACTIONS.

(a) * * *

* * * * * * *

(e) DEFINITIONS.—

(1) * * *

* * * * * * *

(7) EMPLOYEE STOCK OWNERSHIP PLAN.—The term "employee stock ownership plan" means a defined contribution plan—

(A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a), and which are designed to invest primarily in qualifying employer securities; and

(B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h), section 409(o), and, if applicable, section 409(n)*, section 409(p),* and section 664(g) and, if the employer has a registration-type class

of securities (as defined in section 409(e)(4)), it meets the requirements of section 409(e).

* * * * * * *

(f) OTHER DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) * * *

* * * * * * *

(6) EXEMPTIONS NOT TO APPLY TO CERTAIN TRANSACTIONS.—

(A) * * *

(B) SPECIAL RULES FOR SHAREHOLDER-EMPLOYEES, ETC.—

(i) * * *

* * * * * * *

(iii) LOAN EXCEPTION.—For purposes of subparagraph (A)(i), the term "owner-employee" shall only include a person described in subclause (II) or (III) of clause (i).

* * * * * * *

SEC. 4979A. TAX ON CERTAIN PROHIBITED ALLOCATIONS OF QUALIFIED SECURITIES.

(a) IMPOSITION OF TAX.—If—

(1) there is a prohibited allocation of qualified securities by any employee stock ownership plan or eligible worker-owned cooperative, [or]

(2) there is an allocation described in section 664(g)(5)(A), there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.

[there is hereby imposed a tax on such allocation equal to 50 percent of the amount involved.]

(3) there is any allocation of employer securities which violates the provisions of section 409(p), or a nonallocation year described in subsection (e)(2)(C) with respect to an employee stock ownership plan, or

(4) any synthetic equity is owned by a disqualified person in any nonallocation year,

there is hereby imposed a tax on such allocation or ownership equal to 50 percent of the amount involved.

* * * * * * *

[(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid by—

[(1) the employer sponsoring such plan, or

[(2) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be).]

(c) LIABILITY FOR TAX.—The tax imposed by this section shall be paid—

(1) in the case of an allocation referred to in paragraph (1) or (2) of subsection (a), by—

(A) the employer sponsoring such plan, or

(B) the eligible worker-owned cooperative,

which made the written statement described in section 664(g)(1)(E) or in section 1042(b)(3)(B) (as the case may be), and

(2) in the case of an allocation or ownership referred to in paragraph (3) or (4) of subsection (a), by the S corporation the stock in which was so allocated or owned.

* * * * * * *

[(e) DEFINITIONS.—Terms used in this section have the same respective meaning as when used in section 4978.]

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

(1) DEFINITIONS.—Except as provided in paragraph (2), terms used in this section have the same respective meanings as when used in sections 409 and 4978.

(2) SPECIAL RULES RELATING TO TAX IMPOSED BY REASON OF PARAGRAPH (3) OR (4) OF SUBSECTION (a).—

(A) PROHIBITED ALLOCATIONS.—The amount involved with respect to any tax imposed by reason of subsection (a)(3) is the amount allocated to the account of any person in violation of section 409(p)(1).

(B) SYNTHETIC EQUITY.—The amount involved with respect to any tax imposed by reason of subsection (a)(4) is the value of the shares on which the synthetic equity is based.

(C) SPECIAL RULE DURING FIRST NONALLOCATION YEAR.—For purposes of subparagraph (A), the amount involved for the first nonallocation year of any employee stock ownership plan shall be determined by taking into account the total value of all the deemed-owned shares of all disqualified persons with respect to such plan.

(D) STATUTE OF LIMITATIONS.—The statutory period for the assessment of any tax imposed by this section by reason of paragraph (3) or (4) of subsection (a) shall not expire before the date which is 3 years from the later of—

(i) the allocation or ownership referred to in such paragraph giving rise to such tax, or

(ii) the date on which the Secretary is notified of such allocation or ownership.

* * * * * * *

SEC. 4980F. FAILURE OF APPLICABLE PLANS REDUCING BENEFIT ACCRUALS TO SATISFY NOTICE REQUIREMENTS.

(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

(b) AMOUNT OF TAX.—

(1) IN GENERAL.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100 for each day in the noncompliance period with respect to such failure.

(2) NONCOMPLIANCE PERIOD.—For purposes of this section, the term "noncompliance period" means, with respect to any failure, the period beginning on the date the failure first occurs and ending on the date the failure is corrected.

(c) LIMITATIONS ON AMOUNT OF TAX.—

(1) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures that are due to reasonable cause and not to willful neglect, 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 one plan. For purposes of this paragraph, if not all persons who are treated as a single employer for purposes of this section have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

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

(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

(1) In the case of a plan other than a multiemployer plan, the employer.

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

(e) NOTICE REQUIREMENTS FOR PLANS SIGNIFICANTLY REDUCING BENEFIT ACCRUALS.—

(1) IN GENERAL.—If an applicable pension plan is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide written notice to each applicable individual (and to each employee organization representing applicable individuals).

(2) NOTICE.—The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(A) which has fewer than 100 participants who have accrued a benefit under the plan, or

(B) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(3) TIMING OF NOTICE.—Except as provided in regulations, the notice required by paragraph (1) shall be provided within a reasonable time before the effective date of the plan amendment.

(4) DESIGNEES.—Any notice under paragraph (1) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(5) NOTICE BEFORE ADOPTION OF AMENDMENT.—A plan shall not be treated as failing to meet the requirements of paragraph (1) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

(1) APPLICABLE INDIVIDUAL.—The term "applicable individual" means, with respect to any plan amendment—

(A) each participant in the plan, and

(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(2) APPLICABLE PENSION PLAN.—The term "applicable pension plan" means—

(A) any defined benefit plan, or

(B) an individual account plan which is subject to the funding standards of section 412.

Such term shall not include a governmental plan (within the meaning of section 414(d)) or a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

(3) EARLY RETIREMENT.—A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.

(g) NEW TECHNOLOGIES.—The Secretary may by regulations allow any notice under subsection (e) to be provided by using new technologies.

* * * * * * *

Subtitle F—Procedure and Administration

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CHAPTER 61—INFORMATION AND RETURNS

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Subchapter A—Returns and Records

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PART III—INFORMATION RETURNS

* * * * * * *

Subpart B—Information Concerning Transactions with Other Persons

* * * * * * *

SEC. 6047. INFORMATION RELATING TO CERTAIN TRUSTS AND ANNUITY PLANS.

(a) * * *

* * * * * * *

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

ticipants and beneficiaries of the plan, and such other persons as the Secretary may prescribe.

[(f)] *(g)* CROSS REFERENCES.—

(1) For provisions relating to penalties for failures to file returns and reports required under this section, see sections 6652(e), 6721, and 6722.

(2) For criminal penalty for furnishing fraudulent information, see section 7207.

(3) For provisions relating to penalty for failure to comply with the provisions of subsection (d), see section 6704.

* * * * * * *

Subpart C—Information Regarding Wages Paid Employees

* * * * * * *

SEC. 6051. RECEIPTS FOR EMPLOYEES.

(a) REQUIREMENT.—Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to subsection (n)) if the employee had claimed no more than one withholding exemption, or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, within 30 days after the date of receipt of a written request from the employee if such 30-day period ends before January 31, a written statement showing the following:

(1) * * *

* * * * * * *

(8) the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457*, including the amount of designated plus contributions (as defined in section 402A)*,

* * * * * * *

EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

TITLE I—PROTECTION OF EMPLOYEE BENEFIT RIGHTS

* * * * * * *

SUBTITLE B—REGULATORY PROVISIONS

PART 1—REPORTING AND DISCLOSURE

* * * * * * *

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

SEC. 104. (a) * * *

(b) Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) * * *

* * * * * * *

(3) Within 210 days after the close of the fiscal year of the plan, the administrators shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of section 103(b)(3) and such other material (including the percentage determined under section 103(d)(11)) as is necessary to fairly summarize the latest annual report. *The requirement to furnish information under the previous sentence shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.*

* * * * * * *

REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

[SEC. 105. (a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

[(1) the total benefits accrued, and

[(2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

[(b) In no case shall a participant or beneficiary be entitled under this section to receive more than one report described in subsection (a) during any one 12-month period.]

SEC. 105. (a)(1)(A) The administrator of an individual account plan shall furnish a pension benefit statement—

(i) to a plan participant at least once annually, and

(ii) to a plan beneficiary upon written request.

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

(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

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

(2) A pension benefit statement under paragraph (1)—

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

(i) the total benefits accrued, and

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

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

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

(3)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a partici-

pant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

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

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

* * * * * * *

[(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.**]**

* * * * * * *

PART 2—PARTICIPATION AND VESTING

* * * * * * *

MINIMUM VESTING STANDARDS

SEC. 203. (a) Each pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age and in addition shall satisfy the requirements of paragraphs (1) and (2) of this subsection.

(1) * * *

(2) **[**A plan**]** *Except as provided in paragraph (4), a plan* satisfies the requirements of this paragraph if it satisfies the requirements of subparagraph (A) or (B).

(A) * * *

* * * * * * *

(4) In the case of matching contributions (as defined in section 401(m)(4)(A) of the Internal Revenue Code of 1986), paragraph (2) shall be applied—

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

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

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

* * * * * * *

(e)(1) * * *

* * * * * * *

(4) A plan shall not fail to meet the requirements of this subsection if, under the terms of the plan, the present value of the nonforfeitable accrued benefit is determined without regard to that portion of such benefit which is attributable to rollover contributions (and earnings allocable thereto). For purposes of this subparagraph, the term "rollover contributions" means any rollover contribution under sections 402(c), 403(a)(4), 403(b)(8), 408(d)(3)(A)(ii), and 457(e)(16) of the Internal Revenue Code of 1986.

BENEFIT ACCRUAL REQUIREMENTS

SEC. 204. (a) * * *

* * * * * * *

(g)(1) * * *

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. *The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants and does not adversely affect the rights of any participant in a more than de minimis manner.* The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

* * * * * * *

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

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

(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

(v) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

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

(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

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

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

(h)(1) * * *

* * * * * * *

(3)(A) An applicable pension plan to which paragraph (1) applies shall not be treated as meeting the requirements of such paragraph unless, in addition to any notice required to be provided to an individual or organization under such paragraph, the plan administrator provides the notice described in subparagraph (B) to each applicable individual (and to each employee organization representing applicable individuals).

(B) The notice required by subparagraph (A) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary of the Treasury) to allow applicable individuals to understand the effect of the plan amendment. The Secretary of the Treasury may provide a simplified form of notice for, or exempt from any notice requirement, a plan—

(i) which has fewer than 100 participants who have accrued a benefit under the plan, or

(ii) which offers participants the option to choose between the new benefit formula and the old benefit formula.

(C) Except as provided in regulations prescribed by the Secretary of the Treasury, the notice required by subparagraph (A) shall be provided within a reasonable time before the effective date of the plan amendment.

(D) Any notice under subparagraph (A) may be provided to a person designated, in writing, by the person to which it would otherwise be provided.

(E) A plan shall not be treated as failing to meet the requirements of subparagraph (A) merely because notice is provided before the adoption of the plan amendment if no material modification of the amendment occurs before the amendment is adopted.

(F) The Secretary of the Treasury may by regulations allow any notice under this paragraph to be provided by using new technologies.

(4) For purposes of paragraph (3)—

(A) The term "applicable individual" means, with respect to any plan amendment—

(i) each participant in the plan; and

(ii) any beneficiary who is an alternate payee (within the meaning of section 206(d)(3)(K)) under an applicable qualified domestic relations order (within the meaning of section 206(d)(3)(B)(i)),

whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

(B) The term "applicable pension plan" means—

(i) any defined benefit plan; or

(ii) an individual account plan which is subject to the funding standards of section 412 of the Internal Revenue Code of 1986.

(C) A plan amendment which eliminates or significantly reduces any early retirement benefit or retirement-type subsidy (within the meaning of subsection (g)(2)(A)) shall be treated as having the effect of significantly reducing the rate of future benefit accrual.

* * * * * * *

REQUIREMENT OF JOINT AND SURVIVOR ANNUITY AND PRERETIREMENT SURVIVOR ANNUITY

SEC. 205. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(7) For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the [90-day] *180-day* period ending on the annuity starting date, or

* * * * * * *

OTHER PROVISIONS RELATING TO FORM AND PAYMENT OF BENEFITS

SEC. 206. (a) * * *

* * * * * * *

(f) MISSING PARTICIPANTS IN TERMINATED PLANS.—In the case of a plan covered by [title IV] *section 4050*, [the plan shall provide that,] upon termination of the plan, benefits of missing participants shall be treated in accordance with section 4050.

* * * * * * *

PART 3—FUNDING

* * * * * * *

SEC. 302. (a) * * *
(c)(1) * * *

* * * * * * *

(7) FULL-FUNDING LIMITATION.—

(A) IN GENERAL.—For purposes of paragraph (6), the term "full-funding limitation" means the excess (if any) of—

(i) the lesser of (I) [the applicable percentage] *in the case of plan years beginning before January 1, 2004, the applicable percentage* of current liability (including the expected increase in current liability due to benefits accruing during the plan year), or (II) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

* * * * * * *

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

[In the case of any plan year beginning in—	The applicable percentage is—
1999 or 2000	155
2001 or 2002	160
2003 or 2004	165
2005 and succeeding years	170.]

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

In the case of any plan year beginning in—	***The applicable percentage is—***
2002	*165*
2003	*170.*

* * * * * * *

(9)*(A)* For purposes of this part, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(B)(i) Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if—

(I) an election is in effect under this clause with respect to the plan; and

(II) as of such date, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (7)(B)).

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

(iv) An election under clause (ii), once made, shall be irrevocable without the consent of the Secretary of the Treasury.

* * * * * * *

PART 4—FIDUCIARY RESPONSIBILITY

* * * * * * *

EXEMPTIONS FROM PROHIBITED TRANSACTIONS

SEC. 408. (a) * * *

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(d)(1) * * *
(2)(A) * * *

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

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PART 5—ADMINISTRATION AND ENFORCEMENT

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CIVIL ENFORCEMENT

SEC. 502. (a) * * *

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(l)(1) In the case of—

(A) any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary, or

(B) any knowing participation in such a breach or violation by any other person,

the Secretary **[**shall**]** *may* assess a civil penalty against such fiduciary or other person in an amount **[**equal to**]** *not greater than* 20 percent of the applicable recovery amount.

(2) For purposes of paragraph (1), the term "applicable recovery amount" means any amount which is recovered from a fiduciary or other person *(or from any other person on behalf of any such fiduciary or other person)* with respect to a breach or violation described in paragraph (1)—

(A) pursuant to any settlement agreement with the Secretary, or

(B) ordered by a court to be paid by such fiduciary or other person to a plan or its participants and beneficiaries in a judicial proceeding instituted by the Secretary under subsection (a)(2) or (a)(5).

* * * * * * *

(5) A person shall be jointly and severally liable for the penalty described in paragraph (1) to the same extent that such person is jointly and severally liable for the applicable recovery amount on which the penalty is based.

(6) No penalty shall be assessed under this subsection unless the person against whom the penalty is assessed is given notice and op-

portunity for a hearing with respect to the violation and applicable recovery amount.

* * * * * * *

NATIONAL SUMMIT ON RETIREMENT SAVINGS

SEC. 517. (a) AUTHORITY TO CALL SUMMIT.—Not later than July 15, 1998, the President shall convene a National Summit on Retirement Income Savings at the White House, to be co-hosted by the President and the Speaker and the Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate. Such a National Summit shall be convened thereafter in [2001 and 2005 on or after September 1 of each year involved] *2001, 2005, and 2009 in the month of September of each year involved*. Such a National Summit shall—

(1) * * *

* * * * * * *

(b) PLANNING AND DIRECTION.—The National Summit shall be planned and conducted under the direction of the Secretary, in consultation with, and with the assistance of, the heads of such other Federal departments and agencies as the President may designate. Such assistance may include the assignment of personnel. The Secretary shall, in planning and conducting the National Summit, consult with the congressional leaders specified in subsection (e)(2). The Secretary shall also, in carrying out the Secretary's duties under this subsection, consult and coordinate with at least one organization made up of private sector businesses and associations partnered with Government entities to promote long-term financial security in retirement through savings. *To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with the American Savings Education Council or any other appropriate, qualified entity.*

* * * * * * *

(e) NATIONAL SUMMIT PARTICIPANTS.—

(1) * * *

(2) STATUTORILY REQUIRED PARTICIPATION.—The participants in the National Summit shall include the following individuals or their designees:

(A) * * *

* * * * * * *

(D) the Chairman and ranking Member of the [Committee on Labor and Human Resources] *Committee on Health, Education, Labor, and Pensions* of the Senate;

(E) * * *

[(F) the Chairman and ranking Member of the Subcommittees on Labor, Health and Human Services, and Education of the Senate and House of Representatives; and]

(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Serv-

ices, and Education of the Committee on Appropriations of the Senate;

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

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

(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and

[(G)] *(J)* the parties referred to in subsection (b).

(3) ADDITIONAL PARTICIPANTS.—

(A) IN GENERAL.—[There shall be not more than 200 additional participants.] *The participants in the National Summit shall also include additional participants appointed under this subparagraph.* Of such additional participants—

(i) [one-half shall be appointed by the President,] *not more than 100 participants shall be appointed under this clause by the President,* in consultation with the elected leaders of the President's party in Congress (either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and either the Majority Leader or the Minority Leader of the Senate; and

(ii) [one-half shall be appointed by the elected leaders of Congress] *not more than 100 participants shall be appointed under this clause by the elected leaders of Congress* of the party to which the President does not belong (one-half of that allotment to be appointed by either the Speaker of the House of Representatives or the Minority Leader of the House of Representatives, and one-half of that allotment to be appointed by either the Majority Leader or the Minority Leader of the Senate).

(B) PRESIDENTIAL AUTHORITY FOR ADDITIONAL APPOINTMENTS.—The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this subparagraph additional participants to the National Summit. The number of such additional participants appointed under this subparagraph may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by the organization referred to in subsection (b)(2) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.

[(B)] *(C)* APPOINTMENT REQUIREMENTS.—The additional participants described in subparagraph (A) shall be—

(i) appointed not later than [January 31, 1998] *May 1, 2001, May 1, 2005, and May 1, 2009, for each of the subsequent summits, respectively*;

* * * * * * *

(f) NATIONAL SUMMIT ADMINISTRATION.—

(1) ADMINISTRATION.—In administering this section, the Secretary shall—

(A) * * *

* * * * * * *

(C) make available for public comment*, no later than 90 days prior to the date of the commencement of the National Summit,* a proposed agenda for the National Summit that reflects to the greatest extent possible the purposes for the National Summit set out in this section;

* * * * * * *

(g) REPORT.—The Secretary shall prepare a report*, in consultation with the congressional leaders specified in subsection (e)(2),* describing the activities of the National Summit and shall submit the report to the President, the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, and the chief executive officers of the States not later than 90 days after the date on which the National Summit is adjourned.

* * * * * * *

(i) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated for fiscal years [beginning on or after October 1, 1997] *2001, 2005, and 2009*, such sums as are necessary to carry out this section.

* * * * * * *

(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.

* * * * * * *

(k) CONTRACTS.—The Secretary may enter into contracts to carry out the Secretary's responsibilities under this section. The Secretary [shall enter into a contract on a sole-source basis] *may enter into a contract on a sole-source basis* to ensure the timely completion of the National Summit in [fiscal year 1998] *fiscal years 2001, 2005, and 2009*.

* * * * * * *

TITLE IV—PLAN TERMINATION INSURANCE

SUBTITLE A—PENSION BENEFIT GUARANTY CORPORATION

* * * * * * *

PREMIUM RATES

SEC. 4006. (a)(1) * * *

* * * * * * *

(3)(A) Except as provided in subparagraph (C), the annual premium rate payable to the corporation by all plans for basic benefits guaranteed under this title is—

(i) in the case of a single-employer plan, *other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),* for plan years beginning after December 31, 1990, an amount equal to the sum of $19 plus the additional premium (if any) determined under subparagraph (E) for each individual who is a participant in such plan during the plan year;

* * * * * * *

(iii) in the case of a multiemployer plan, for plan years beginning after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, an amount equal to—

(I) $1.40 for each participant, for the first, second, third, and fourth plan years,

(II) $1.80 for each participant, for the fifth and sixth plan years,

(III) $2.20 for each participant, for the seventh and eighth plan years, and

(IV) $2.60 for each participant, for the ninth plan year, and for each succeeding plan year**[**.**]**, *and*

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

* * * * * * *

(E)(i) **[**The**]** *Except as provided in subparagraph (G), the* additional premium determined under this subparagraph with respect to any plan for any plan year shall be an amount equal to the amount determined under clause (ii) divided by the number of participants in such plan as of the close of the preceding plan year.

* * * * * * *

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

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

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

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

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

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

For purposes of this clause, a defined benefit plan (as defined in section 3(35)) maintained by a contributing sponsor shall be treated as a new defined benefit plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of the plan, the sponsor and each member of any controlled group including the sponsor (or any predecessor of either) did not establish or

maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new plan.

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

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

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

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

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

PAYMENT OF PREMIUMS

SEC. 4007. (a) * * *

(b)*(1)* If any basic benefit premium is not paid when it is due the corporation is authorized to assess a late payment charge of not more than 100 percent of the premium payment which was not timely paid. The preceding sentence shall not apply to any payment of premium made within 60 days after the date on which payment is due, if before such date, the designated payor obtains a waiver from the corporation based upon a showing of substantial hardship arising from the timely payment of the premium. The corporation is authorized to grant a waiver under this subsection upon application made by the designated payor, but the corporation may not grant a waiver if it appears that the designated payor will be unable to pay the premium within 60 days after the date on which it is due. If any premium is not paid by the last date prescribed for a payment, interest on the amount of such premium at the rate imposed under section 6601(a) of the Internal Revenue Code of 1986 (relating to interest on underpayment, nonpayment, or extensions of time for payment of tax) shall be paid for the period from such last date to the date paid.

(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).

* * * * * * *

Subtitle B—Coverage

PLANS COVERED

SEC. 4021. (a) * * *

(b) This section does not apply to any plan—

(1) * * *

* * * * * * *

(9) which is established and maintained exclusively for substantial owners [as defined in section 4022(b)(6)];

* * * * * * *

(d) For purposes of subsection (b)(9), the term "substantial owner" means an individual who, at any time during the 60-month period ending on the date the determination is being made—

(1) owns the entire interest in an unincorporated trade or business,

(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

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

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

SINGLE-EMPLOYER PLAN BENEFITS GUARANTEED

SEC. 4022. (a) * * *

(b)(1) * * *

* * * * * * *

[(5)(A) For purposes of this title, the term "substantial owner" means an individual who—

[(i) owns the entire interest in an unincorporated trade or business,

[(ii) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

[(iii) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation.

For purposes of clause (iii) the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)). For purposes of this title an individual is also treated as a substantial owner with

respect to a plan if, at any time within the 60 months preceding the date on which the determination is made, he was a substantial owner under the plan.

[(B) In the case of a participant in a plan under which benefits have not been increased by reason of any plan amendments and who is covered by the plan as a substantial owner, the amount of benefits guaranteed under this section shall not exceed the product of—

[(i) a fraction (not to exceed 1) the numerator of which is the number of years the substantial owner was an active participant in the plan, and the denominator of which is 30, and

[(ii) the amount of the substantial owner's monthly benefits guaranteed under subsection (a) (as limited under paragraph (3) of this subsection).

[(C) In the case of a participant in a plan, other than a plan described in subparagraph (B), who is covered by the plan as a substantial owner, the amount of the benefit guaranteed under this section shall, under regulations prescribed by the corporation, treat each benefit increase attributable to a plan amendment as if it were provided under a new plan. The benefits guaranteed under this section with respect to all such amendments shall not exceed the amount which would be determined under subparagraph (B) if subparagraph (B) applied.]

(5)(A) For purposes of this paragraph, the term "majority owner" means an individual who, at any time during the 60-month period ending on the date the determination is being made—

(i) owns the entire interest in an unincorporated trade or business,

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

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

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

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

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

(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.

* * * * * * *

Subtitle C—Terminations

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REPORTABLE EVENTS

SEC. 4043. (a) * * *

* * * * * * *

(c) For purposes of this section a reportable event occurs—

(1) * * *

* * * * * * *

(7) when there is a distribution under the plan to a participant who is a substantial owner as defined in section [4022(b)(6)] *4021(d)* if—

(A) * * *

* * * * * * *

ALLOCATION OF ASSETS

SEC. 4044. (a) In the case of the termination of a single-employer plan, the plan administrator shall allocate the assets of the plan (available to provide benefits) among the participants and beneficiaries of the plan in the following order:

(1) * * *

* * * * * * *

(4) Fourth—

(A) * * *

(B) to the additional benefits (if any) which would be determined under subparagraph (A) if section [4022(b)(5)] *4022(b)(5)(B)* did not apply.

For purposes of this paragraph, section 4021 shall be applied without regard to subsection (c) thereof.

(b) For purposes of subsection (a)—

(1) * * *

(2) If the assets available for allocation under any paragraph of subsection (a) (other than paragraphs [(5)] *(4), (5),* and (6)) are insufficient to satisfy in full the benefits of all individuals which are described in that paragraph, the assets shall be allocated pro rata among such individuals on the basis of the present value (as of the termination date) of their respective benefits described in that paragraph.

(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.

[(3)] *(4)* This paragraph applies if the assets available for allocation under paragraph (5) of subsection (a) are not sufficient to satisfy in full the benefits of individuals described in that paragraph.

* * * * * * *

[(4)] *(5)* If the Secretary of the Treasury determines that the allocation made pursuant to this section (without regard to this paragraph) results in discrimination prohibited by section 401(a)(4) of the Internal Revenue Code of 1986 then, if required to prevent the disqualification of the plan (or any trust under the plan) under section 401(a) or 403(a) of such Code, the assets allocated under subsections (a)(4)(B), (a)(5), and (a)(6) shall be reallocated to the extent necessary to avoid such discrimination.

[(5)] *(6)* The term "mandatory contributions" means amounts contributed to the plan by a participant which are required as a condition of employment, as a condition of participation in such plan, or as a condition of obtaining benefits under the plan attributable to employer contributions. For this purpose, the total amount of mandatory contributions of a participant is the amount of such contributions reduced (but not below zero) by the sum of the amounts paid or distributed to him under the plan before its termination.

[(6)] *(7)* A plan may establish subclasses and categories within the classes described in paragraphs (1) through (6) of subsection (a) in accordance with regulations prescribed by the corporation.

* * * * * * *

SEC. 4050. MISSING PARTICIPANTS.

(a) * * *

* * * * * * *

(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant's benefits to the corporation upon termination of the plan.

(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

(A) to the corporation, or

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

(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

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

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

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

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

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

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

(B) at the time the assets are to be distributed upon termination, the plan—

(i) has missing participants, and

(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

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

[(c)**]** *(e)* REGULATORY AUTHORITY.—The corporation shall prescribe such regulations as are necessary to carry out the purposes of this section, including rules relating to what will be considered a diligent search, the amount payable to the corporation, and the amount to be paid by the corporation.

* * * * * * *

TAXPAYER RELIEF ACT OF 1997

* * * * * * *

TITLE XV—PENSIONS AND EMPLOYEE BENEFITS

Subtitle A—Simplification

* * * * * * *

SEC. 1505. EXTENSION OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES TO STATE AND LOCAL GOVERNMENTS.

(a) * * *

* * * * * * *

(d) EFFECTIVE DATES.—

(1) * * *

(2) TREATMENT FOR YEARS BEGINNING BEFORE DATE OF ENACTMENT.—A governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1986) **[**maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)**]** shall be treated as satisfying the requirements of sections 401(a)(3), 401(a)(4), 401(a)(26), 401(k), 401(m), 403 (b)(1)(D) and (b)(12)(A)(i), and 410 of such Code for all taxable years beginning before the date of enactment of this Act.

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Subtitle B—Other Provisions Relating to Pensions and Employee Benefits

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SEC. 1524. DIVERSIFICATION OF SECTION 401(k) PLAN INVESTMENTS.

(a) * * *

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[(b) EFFECTIVE DATE.—The amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.]

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to elective deferrals for plan years beginning after December 31, 1998.

(2) NONAPPLICATION TO PREVIOUSLY ACQUIRED PROPERTY.—The amendments made by this section shall not apply to any elective deferral which is invested in assets consisting of qualifying employer securities, qualifying employer real property, or both, if such assets were acquired before January 1, 1999.

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SECTION 1114 OF THE TAX REFORM ACT OF 1986

SEC. 1114. DEFINITION OF HIGHLY COMPENSATED EMPLOYEE.

(a) * * *

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(c) EFFECTIVE DATE.—

(1) * * *

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[(4) SPECIAL RULE FOR DETERMINING HIGHLY COMPENSATED EMPLOYEES.—For purposes of sections 401(k) and 401(m) of the Internal Revenue Code of 1986, in the case of an employer incorporated on December 15, 1924, if more than 50 percent of its employees in the top-paid group (within the meaning of section 414(q)(4) of such Code) earn less than $25,000 (indexed at the same time and in the same manner as under section 415(d) of such Code), then the highly compensated employees shall include employees described in section 414(q)(1)(C) of such Code determined without regard to the level of compensation of such employees. Any reference in this paragraph to section 414(q) shall be treated as a reference to such section as in effect on the day before the date of the enactment of the Small Business Job Protection Act of 1996.]

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ADDITIONAL VIEWS

We commend the sponsors of H.R. 10 for their commitment to strengthening incentives to maintain private pension plans and provide pension benefits to workers. The bill contains helpful provisions to shorten the period of time required for workers to vest a right to pension benefits in 401(k) plans and simplify the process for transferring pension monies between pension plans when employees change jobs. The bill also provides needed assistance to employees who work under multi-employer plans by eliminating unfair pension benefit caps and state and local government employees by treating their pension plans similarly to private sector plans.

We believe the bill could be strengthened by providing additional incentives to assist low and moderate income earners. H.R. 10 primarily seeks to provide incentives to employers and senior managerial employees to establish and maintain pension plans by increasing the amounts that such individuals may contribute for their own retirement. The expectation is that maintaining the support of the owners and senior employees also will benefit rank and file employees. We certainly hope that this will be the case, but believe more needs to be done.

During the past year, the Committee received several new reports documenting the scope of pension coverage, and the lack thereof, in the United States. Both the Congressional Research Service and the General Accounting Office released detailed analyses of pension coverage from the most recently released Current Population Survey. This data confirmed that the percent of the workforce without pension coverage has remained at about 50% for the past twenty-five years. Low income workers, part-time workers (primarily women), and employees of small business are the most likely not to have pension coverage.

According to a November 2000 Congressional Research Service (CRS) report, only 29% of full-time workers with earnings below $20,000 are covered by pensions. On the other hand, 76% of those with earnings above $60,000 have coverage. According to CRS, pension coverage for full-time workers averages 58%, but only 26% for part-time or part year workers. As of 1999, 71% of full-time employees at firms over 100 and 50% of full-time employees working for firms with 25 to 99 employees had pension coverage, but only 29% of employees working for firms with fewer than 25 employees had pension coverage.

The challenge before Congress is how to expand pension coverage and adequacy to the most needy groups: low-come earners, less than full time workers, and employees of small business. Certainly, providing incentives to upper income employees is one option assuming they trickle down to rank and file employees. But, under current law there are a variety of pension exemptions that permit employers to maintain pension plans without providing any or sig-

nificant benefits to lower income employees. For example, the coverage rules permit the exclusion of 30% of an employer's workforce without reason, and additional amounts with Internal Revenue Service permission. Other rules such as the Social Security integration rules, permit the benefits of lower income employees to be reduced by as much as 50% by taking Social Security into account. Although more than 90% of Americans are covered by Social Security, it only replaces slightly more than 40%, on average, of pre-retirement income. Most retirement experts believe that somewhere between 65–85% of pre-retirement income is necessary to maintain a decent standard of living in retirement. Therefore, all income earners are equally in need of supplemental pensions to provide needed income in retirement.

One of the most promising new ideas for improving private pension coverage is the creation of a refundable tax credit to match retirement contributions that low and moderate income individual make. President Clinton first conceptualized the idea in response to Social Security privatization proposals. But, the idea has received growing support from pension policymakers and economists. In the 107th congress, Congressman Neal of Massachusetts has introduced H.R. 1498 which would phase in a refundable tax credit for families earning up to $75,000 a year for retirement savings contributions and provide a tax credit to small employers who establish and contribute to new pension plans. We believe that these proposals would be an important addition to H.R. 10. We hope that these proposals will receive continued consideration as this bill continues through the legislative process.

The other major issue related to consideration of H.R. 10 is the provision providing for additional notice when employers convert their defined benefit pension plans to what are known as "cash balance" hybrid pension plans. Cash balance conversions are the most controversial pension issue occurring now. Cash balance plans were created during the 1980's, but it has only been in the past two years that large numbers of employers have moved to convert their traditional defined benefit plans. According to a 2000 GAO report, approximately 19 percent of Fortune 1000 firms have converted to cash balance plans affecting over 2 million workers.

Although the details vary somewhat from employer to employer, the primary change involves the plan's benefit formula calculation of future retirement benefits from a final pay formula to a career average formula. In addition, the employer expresses the career benefits in the form of a hypothetical "account" so that workers can see their benefits as a lump sum amount that increases with an assumed rate of earnings each year. The plan remains a defined benefit plan under which the employer provides a defined future benefit provided workers meet the necessary conditions, the employer guarantees a rate of return, and in the case of termination, the plan remains guaranteed by the Pension Benefit Guaranty Corporation (PBGC). As employers argue, in many ways a cash balance plan is fairer to younger workers since benefits accrue more evenly throughout a workers' career, instead of earning most benefits at the end of one's work service.

The controversy primarily arises when an employer converts an existing traditional defined benefit plan to a cash balance plan.

Three major issues have arisen in this context. First, the adequacy of the notice of the change that must be provided to workers. Under section 204(h) of ERISA, employers must provide participants and beneficiaries notice of a significant reduction of benefit accrual fifteen days before the change. Employers are not required to explain the effect of the amendment. They may simply give employees a copy of the amendment. In cash balance conversions, there has been considerable controversy not only that employers are not adequately explaining to their employees the effect on their retirement benefits of the change, but also that some employers may be intentionally hiding the negative effects from workers. There have been numerous documented statements by benefit consultants that one of the many benefits of cash balance conversions is that employers need not explain the effects to workers and workers are unlikely to understand the changes until it is too late.

Second, there are significant effects on older workers. Many employers who convert to cash balance plans include an aspect known as "wear-away" under which employees whose accrued benefit under the plan before the conversion is greater than the benefit they would have accrued under the converted plan do not accrue new benefits until their former and new benefit levels are equal. For many older workers, up to 50% of their expected pension benefits can be lost. Since it primarily is older workers who have greater accrued benefits, this provision primarily affects older workers and has been alleged to be illegal age discrimination. In addition, since an important protection under ERISA is the protection of workers' accrued benefits, it also is alleged to be an undermining of the principle that accrued benefits cannot be reduced. There also are issues related to employer usage of differing interest rates that result in underestimating the value of older workers' benefits. Legislation and litigation is pending on these issues.

Third is the issue of employee choice to remain under the former plan formula. A number of employers that have converted to cash balance plans have afforded all or vested workers the opportunity to remain covered by the prior plan formula. It also has been recommended that employers be required to provide workers an election option.

The language included in the Committee adopted bill does not adequately resolve this issue. The bill simply requires employers to provide notice a reasonable period of time before a conversion and directs the Department of Treasury to develop clarifying regulations. The Committee has not fully discussed or resolved this issue. Several bills have been introduced which address the above discussed issues. In addition, at the mark-up session on this bill, an amendment was offered to provide adequate notice, protect the earned benefits of older workers, and permit employees to choose to remain under the defined benefit plan. The amendment was defeated by a voice vote. These additional changes would provide important needed protections to workers affected by cash balance conversions.

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