

108TH CONGRESS  
1ST SESSION

# **H. R. 1000**

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IN THE SENATE OF THE UNITED STATES

MAY 15, 2003

Received; read twice and referred to the Committee on Health, Education,  
Labor, and Pensions

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## **AN ACT**

To amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the  
 5 “Pension Security Act of 2003”.

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN PENSION SECURITY

- Sec. 101. Periodic pension benefits statements.
- Sec. 102. Inapplicability of relief from fiduciary liability during blackout periods.
- Sec. 103. Informational and educational support for pension plan fiduciaries.
- Sec. 104. Diversification requirements for defined contribution plans that hold employer securities.
- Sec. 105. Prohibited transaction exemption for the provision of investment advice.
- Sec. 106. Study regarding impact on retirement savings of participants and beneficiaries by requiring consultants to advise plan fiduciaries of individual account plans.
- Sec. 107. Treatment of qualified retirement planning services.
- Sec. 108. Effective dates and related rules.

TITLE II—OTHER PROVISIONS RELATING TO PENSIONS

- Sec. 201. Amendments to Retirement Protection Act of 1994.
- Sec. 202. Reporting simplification.
- Sec. 203. Improvement of employee plans compliance resolution system.
- Sec. 204. Flexibility in nondiscrimination, coverage, and line of business rules.
- Sec. 205. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 206. Notice and consent period regarding distributions.
- Sec. 207. Annual report dissemination.
- Sec. 208. Technical corrections to Saver Act.
- Sec. 209. Missing participants and beneficiaries.
- Sec. 210. Reduced PBGC premium for new plans of small employers.
- Sec. 211. Reduction of additional PBGC premium for new and small plans.
- Sec. 212. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 213. Substantial owner benefits in terminated plans.
- Sec. 214. Benefit suspension notice.
- Sec. 215. Studies.
- Sec. 216. Interest rate range for additional funding requirements.

## TITLE III—GENERAL PROVISIONS

Sec. 301. Provisions relating to plan amendments.

1       **TITLE I—IMPROVEMENTS IN**  
2                   **PENSION SECURITY**

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

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

6               (1) REQUIREMENTS.—

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

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

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

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

16               “(iii) in the case of an applicable individual ac-  
17 count plan, to each individual who is a plan partici-  
18 pant or beneficiary and who has a right to direct in-  
19 vestments, at least quarterly.

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

22               “(i) at least once every 3 years to each partici-  
23 pant with a nonforfeitable accrued benefit who is  
24 employed by the employer maintaining the plan at

1 the time the statement is furnished to participants,  
2 and

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

5 Information furnished under clause (i) to a participant  
6 may be based on reasonable estimates determined under  
7 regulations prescribed by the Secretary, in consultation  
8 with the Pension Benefit Guaranty Corporation.

9 “(2) A pension benefit statement under paragraph  
10 (1)—

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

13 “(i) the total benefits accrued, and

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

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

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

23 “(3)(A) In the case of a defined benefit plan, the re-  
24 quirements of paragraph (1)(B)(i) shall be treated as met  
25 with respect to a participant if the administrator, at least

1 once each year, provides the participant with notice, at  
2 the participant's last known address, of the availability of  
3 the pension benefit statement and the ways in which the  
4 participant may obtain such statement. Such notice shall  
5 be provided in written, electronic, or other appropriate  
6 form, and may be included with other communications to  
7 the participant if done in a manner reasonably designed  
8 to attract the attention of the participant.

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

15 (B) CONFORMING AMENDMENTS.—

16 (i) Section 105 of the Employee Re-  
17 tirement Income Security Act of 1974 (29  
18 U.S.C. 1025) is amended by striking sub-  
19 section (d).

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

23 “(b) In no case shall a participant or beneficiary of  
24 a plan be entitled to more than one statement described  
25 in clause (i) or (ii) of subsection (a)(1)(A) or clause (i)

1 or (ii) of subsection (a)(1)(B), whichever is applicable, in  
2 any 12-month period. If such report is required under sub-  
3 section (a) to be furnished at least quarterly, the require-  
4 ments of the preceding sentence shall be applied with re-  
5 spect to each quarter in lieu of the 12-month period.”.

6 (2) INFORMATION REQUIRED FROM APPLICA-  
7 BLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of  
8 such Act (as amended by paragraph (1)) is amended  
9 further by adding at the end the following new sub-  
10 section:

11 “(d)(1) The statements required to be provided at  
12 least quarterly under subsection (a)(1)(A)(iii) in the case  
13 of applicable individual account plans shall include (to-  
14 gether with the information required in subsection (a)) the  
15 following:

16 “(A) the value of each investment to which as-  
17 sets in the individual account have been allocated,  
18 determined as of the most recent valuation date  
19 under the plan, including the value of any assets  
20 held in the form of employer securities, without re-  
21 gard to whether such securities were contributed by  
22 the plan sponsor or acquired at the direction of the  
23 plan or of the participant or beneficiary,

24 “(B) an explanation, written in a manner cal-  
25 culated to be understood by the average plan partici-

1       pant, of any limitations or restrictions on the right  
2       of the participant or beneficiary to direct an invest-  
3       ment, and

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

12      “(2) The Secretary shall issue guidance and model  
13      notices which meet the requirements of this subsection.”.

14               (3) DEFINITION OF APPLICABLE INDIVIDUAL  
15      ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.  
16      1002) is amended by adding at the end the following  
17      new paragraph:

18      “(42)(A) The term ‘applicable individual account  
19      plan’ means any individual account plan, except that such  
20      term does not include an employee stock ownership plan  
21      (within the meaning of section 4975(e)(7) of the Internal  
22      Revenue Code of 1986) unless there are any contributions  
23      to such plan (or earnings thereunder) held within such  
24      plan that are subject to subsection (k)(3) or (m)(2) of sec-

1 tion 401 of the Internal Revenue Code of 1986. Such term  
2 shall not include a one-participant retirement plan.

3 “(B) The term ‘one-participant retirement plan’  
4 means a pension plan with respect to which the following  
5 requirements are met:

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

7 “(I) the plan covered only one individual  
8 (or the individual and the individual’s spouse)  
9 and the individual owned 100 percent of the  
10 plan sponsor (whether or not incorporated), or

11 “(II) the plan covered only one or more  
12 partners (or partners and their spouses) in the  
13 plan sponsor;

14 “(ii) the plan meets the minimum coverage re-  
15 quirements of section 410(b) of the Internal Rev-  
16 enue Code of 1986 (as in effect on the date of the  
17 enactment of this paragraph) without being com-  
18 bined with any other plan of the business that covers  
19 the employees of the business;

20 “(iii) the plan does not provide benefits to any-  
21 one except the individual (and the individual’s  
22 spouse) or the partners (and their spouses);

23 “(iv) the plan does not cover a business that is  
24 a member of an affiliated service group, a controlled



1 group of corporations, or a group of businesses  
2 under common control; and

3 “(v) the plan does not cover a business that  
4 leases employees.”.

5 (4) CIVIL PENALTIES FOR FAILURE TO PRO-  
6 VIDE QUARTERLY BENEFIT STATEMENTS.—Section  
7 502 of such Act (29 U.S.C. 1132) is amended—

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

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

12 (C) by inserting after paragraph (7) of  
13 subsection (c) the following new paragraph:

14 “(8) The Secretary may assess a civil penalty against  
15 any plan administrator of up to \$1,000 a day for each  
16 day on which the plan administrator has failed to comply  
17 with the requirements of clause (iii) of section  
18 105(a)(1)(A) and has not corrected such failure by pro-  
19 viding the required pension benefit statements to the af-  
20 fected participants and beneficiaries.”.

21 (5) MODEL STATEMENTS.—The Secretary of  
22 Labor shall, not later than 180 days after the date  
23 of the enactment of this Act, issue initial guidance  
24 and a model benefit statement, written in a manner  
25 calculated to be understood by the average plan par-

1        ticipant, that may be used by plan administrators in  
2        complying with the requirements of section 105 of  
3        the Employee Retirement Income Security Act of  
4        1974. Not later than 75 days after the date of the  
5        enactment of this Act, the Secretary shall promul-  
6        gate interim final rules necessary to carry out the  
7        amendments made by this subsection.

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

10            (1) PROVISION OF INVESTMENT EDUCATION  
11            NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—

12            Section 414 of the Internal Revenue Code of 1986  
13            (relating to definitions and special rules) is amended  
14            by adding at the end the following:

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

17            “(1) IN GENERAL.—The plan administrator of  
18            an applicable pension plan shall provide to each ap-  
19            plicable individual an investment education notice  
20            described in paragraph (2) at the time of the enroll-  
21            ment of the applicable individual in the plan and not  
22            less often than annually thereafter.

23            “(2) INVESTMENT EDUCATION NOTICE.—An in-  
24            vestment education notice is described in this para-  
25            graph if such notice contains—

1           “(A) an explanation, for the long-term re-  
2           tirement security of participants and bene-  
3           ficiaries, of generally accepted investment prin-  
4           ciples, including principles of risk management  
5           and diversification, and

6           “(B) a discussion of the risk of holding  
7           substantial portions of a portfolio in the secu-  
8           rity of any one entity, such as employer securi-  
9           ties.

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

17          “(4) FORM AND MANNER OF NOTICES.—The  
18          notices required by this subsection shall be in writ-  
19          ing, except that such notices may be in electronic or  
20          other form (or electronically posted on the plan’s  
21          website) to the extent that such form is reasonably  
22          accessible to the applicable individual.

23          “(5) DEFINITIONS.—For purposes of this sub-  
24          section—

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

3                   “(i) any participant in the applicable  
4                   pension plan,

5                   “(ii) any beneficiary who is an alter-  
6                   nate payee (within the meaning of section  
7                   414(p)(8)) under a qualified domestic rela-  
8                   tions order (within the meaning of section  
9                   414(p)(1)(A)), and

10                   “(iii) any beneficiary of a deceased  
11                   participant or alternate payee.

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

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

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

20           which permits any participant to direct the in-  
21           vestment of some or all of his account in the  
22           plan or under which the accrued benefit of any  
23           participant depends in whole or in part on hy-  
24           pothetical investments directed by the partici-  
25           pant. Such term shall not include a one-partici-

1           pant retirement plan or a plan to which section  
2           105 of the Employee Retirement Income Secu-  
3           rity Act of 1974 applies.

4           “(C)     ONE-PARTICIPANT     RETIREMENT  
5           PLAN DEFINED.—The term ‘one-participant re-  
6           tirement plan’ means a retirement plan with re-  
7           spect to which the following requirements are  
8           met:

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

11                             “(I) the plan covered only one in-  
12                            dividual (or the individual and the in-  
13                            dividual’s spouse) and the individual  
14                            owned 100 percent of the plan spon-  
15                            sor (whether or not incorporated), or

16                             “(II) the plan covered only one  
17                            or more partners (or partners and  
18                            their spouses) in the plan sponsor;

19                             “(ii) the plan meets the minimum cov-  
20                            erage requirements of 410(b) without  
21                            being combined with any other plan of the  
22                            business that covers the employees of the  
23                            business;

24                             “(iii) the plan does not provide bene-  
25                            fits to anyone except the individual (and

1 the individual's spouse) or the partners  
2 (and their spouses);

3 “(iv) the plan does not cover a busi-  
4 ness that is a member of an affiliated serv-  
5 ice group, a controlled group of corpora-  
6 tions, or a group of businesses under com-  
7 mon control; and

8 “(v) the plan does not cover a busi-  
9 ness that leases employees.

10 “(6) CROSS REFERENCE.—

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

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

17 “(m) FAILURE TO PROVIDE INVESTMENT EDU-  
18 CATION NOTICES TO PARTICIPANTS IN CERTAIN  
19 PLANS.—In the case of each failure to provide a written  
20 explanation as required by section 414(w) with respect to  
21 an applicable individual (as defined in such section), at  
22 the time prescribed therefor, unless it is shown that such  
23 failure is due to reasonable cause and not to willful ne-  
24 glect, there shall be paid, on notice and demand of the

1 Secretary and in the same manner as tax, by the person  
2 failing to provide such notice, an amount equal to \$100  
3 for each such failure, but the total amount imposed on  
4 such person for all such failures during any calendar year  
5 shall not exceed \$50,000.”.

6 **SEC. 102. INAPPLICABILITY OF RELIEF FROM FIDUCIARY**  
7 **LIABILITY DURING BLACKOUT PERIODS.**

8 (a) IN GENERAL.—Section 404(c) of the Employee  
9 Retirement Income Security Act of 1974 (29 U.S.C.  
10 1104(c)) is amended by adding at the end the following  
11 new paragraph:

12 “(4)(A) Paragraph (1)(B) shall not apply in connec-  
13 tion with the direction or diversification of assets credited  
14 to the account of any participant or beneficiary during a  
15 blackout period if, by reason of the imposition of such  
16 blackout period, the ability of such participant or bene-  
17 ficiary to direct or diversify such assets is suspended, lim-  
18 ited, or restricted.

19 “(B) If the fiduciary authorizing a blackout period  
20 meets the requirements of this title in connection with au-  
21 thorizing such blackout period, no person who is a fidu-  
22 ciary shall be liable under this title for any loss occurring  
23 during the blackout period as a result of any exercise by  
24 the participant or beneficiary of control over assets in his  
25 or her account prior to the blackout period. Matters to

1 be considered in determining whether a fiduciary has met  
2 the requirements of this title include whether such fidu-  
3 ciary—

4 “(i) has considered the reasonableness of the  
5 expected length of the blackout period,

6 “(ii) has provided the notice required under sec-  
7 tion 101(i)(2), and

8 “(iii) has acted in accordance with the require-  
9 ments of subsection (a) in determining whether to  
10 enter into the blackout period.

11 “(C) If a blackout period arises in connection with  
12 a change in the investment options offered under the plan,  
13 a participant or beneficiary shall be deemed to have exer-  
14 cised control over the assets in his or her account prior  
15 to the blackout period, if, after reasonable notice of the  
16 change in investment options is given to such participant  
17 or beneficiary before such blackout period, assets in the  
18 account of the participant or beneficiary are transferred—

19 “(i) to plan investment options in accordance  
20 with the affirmative election of the participant or  
21 beneficiary, or

22 “(ii) in any case in which there is no such elec-  
23 tion, in the manner set forth in such notice.

24 “(D) Any imposition of any limitation or restriction  
25 that may govern the frequency of transfers between invest-



1 ment vehicles shall not be treated as the imposition of a  
2 blackout period to the extent such limitation or restriction  
3 is disclosed to participants or beneficiaries through the  
4 summary plan description or materials describing specific  
5 investment alternatives under the plan.

6 “(E) For purposes of this paragraph, the term ‘black-  
7 out period’ has the meaning given such term by section  
8 101(i)(7).”.

9 (b) GUIDANCE.—The Secretary of Labor shall, on or  
10 before December 31, 2004, issue interim final regulations  
11 providing guidance on how plan sponsors or any other af-  
12 fected fiduciaries can satisfy their fiduciary responsibilities  
13 during any blackout period during which the ability of a  
14 participant or beneficiary to direct the investment of as-  
15 sets in his or her individual account is suspended.

16 **SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT**  
17 **FOR PENSION PLAN FIDUCIARIES.**

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

21 “(e) The Secretary shall establish a program under  
22 which information and educational resources shall be  
23 made available on an ongoing basis to persons serving as  
24 fiduciaries under employee pension benefit plans so as to  
25 assist such persons in diligently and effectively carrying

1 out their fiduciary duties in accordance with this part.  
2 Such program shall provide information concerning the  
3 practices that define prudent investment procedures for  
4 plan fiduciaries. Information provided under the program  
5 shall address the relevant investment considerations for  
6 defined benefit and defined contribution plans, including  
7 investment in employer securities by such plans. In devel-  
8 oping such program, the Secretary shall solicit information  
9 from the public, including investment education profes-  
10 sionals.”.

11 **SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED**  
12 **CONTRIBUTION PLANS THAT HOLD EM-**  
13 **PLOYER SECURITIES.**

14 (a) AMENDMENT TO THE EMPLOYEE RETIREMENT  
15 INCOME SECURITY ACT OF 1974.—Section 204 of the  
16 Employee Retirement Income Security Act of 1974 (29  
17 U.S.C. 1054) is amended—

18 (1) by redesignating subsection (j) as sub-  
19 section (k); and

20 (2) by inserting after subsection (i) the fol-  
21 lowing new subsection:

22 “(j) DIVERSIFICATION REQUIREMENTS FOR INDI-  
23 VIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECUR-  
24 ITIES.—

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

4           “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-  
5           TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-  
6           TIES.—In the case of the portion of the account at-  
7           tributable to employee contributions and elective de-  
8           ferrals which is invested in employer securities, a  
9           plan meets the requirements of this paragraph if  
10          each applicable individual may elect to direct the  
11          plan to divest any such securities in the individual’s  
12          account and to reinvest an equivalent amount in  
13          other investment options which meet the require-  
14          ments of paragraph (4).

15          “(3) EMPLOYER CONTRIBUTIONS INVESTED IN  
16          EMPLOYER SECURITIES.—

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

23                         “(i) each applicable individual with a  
24                         benefit based on 3 years of service may  
25                         elect to direct the plan to divest any such

1 securities in the individual’s account and  
2 to reinvest an equivalent amount in other  
3 investment options which meet the require-  
4 ments of paragraph (4), or

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

15 “(B) APPLICABLE INDIVIDUAL WITH BEN-  
16 EFIT BASED ON 3 YEARS OF SERVICE.—For  
17 purposes of subparagraph (A), an applicable in-  
18 dividual has a benefit based on 3 years of serv-  
19 ice if such individual would be an applicable in-  
20 dividual if only participants in the plan who  
21 have completed at least 3 years of service (as  
22 determined under section 203(b)) were referred  
23 to in paragraph (5)(B)(i).

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

1           “(A) the plan offers not less than 3 invest-  
2           ment options, other than employer securities, to  
3           which an applicable individual may direct the  
4           proceeds from the divestment of employer secu-  
5           rities pursuant to this subsection, each of which  
6           is diversified and has materially different risk  
7           and return characteristics, and

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

16          “(5) DEFINITIONS AND RULES.—For purposes  
17          of this subsection—

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

1 within such plan that are subject to subsection  
2 (k)(3) or (m)(2) of section 401 of the Internal  
3 Revenue Code of 1986.

4 “(B) APPLICABLE INDIVIDUAL.—The term  
5 ‘applicable individual’ means—

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

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

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

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

22 “(E) EMPLOYEE STOCK OWNERSHIP  
23 PLAN.—The term ‘employee stock ownership  
24 plan’ shall have the same meaning given to  
25 such term by section 4975(e)(7) of the Internal

1 Revenue Code of 1986 (as in effect on the date  
2 of the enactment of this subsection).

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

6 “(6) EXCEPTION WHERE THERE IS NO READILY  
7 TRADABLE STOCK.—This subsection shall not apply  
8 if there is no class of stock issued by the employer  
9 (or by a corporation which is an affiliate of the em-  
10 ployer (as defined in section 407(d)(7))) that is  
11 readily tradable on an established securities market  
12 (or in such other circumstances as may be deter-  
13 mined jointly by the Secretary of Labor and the Sec-  
14 retary of the Treasury in regulations).

15 “(7) TRANSITION RULE.—

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

1 percentage of the total number of such securi-  
 2 ties of such class held on such date.

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

**“Plan years for which provi- Applicable percentage:  
 sions are effective:**

|                                   |              |
|-----------------------------------|--------------|
| 1st plan year .....               | 20 percent.  |
| 2nd plan year .....               | 40 percent.  |
| 3rd plan year .....               | 60 percent.  |
| 4th plan year .....               | 80 percent.  |
| 5th plan year or thereafter ..... | 100 percent. |

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

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

16 “(ii) such elective deferrals.

17 “(D) COORDINATION WITH PRIOR ELEC-  
 18 TIONS.—In any case in which a divestiture of  
 19 investment in employer securities of any class  
 20 held by an employee stock ownership plan prior  
 21 to the effective date of this subsection was un-  
 22 dertaken pursuant to other applicable Federal



1 law prior to such date, the applicable percent-  
2 age (as determined without regard to this sub-  
3 paragraph) in connection with such securities  
4 shall be reduced to the extent necessary to ac-  
5 count for the amount to which such election ap-  
6 plied.

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

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

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

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

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

23 “(B) EMPLOYEE CONTRIBUTIONS AND  
24 ELECTIVE DEFERRALS INVESTED IN EMPLOYER  
25 SECURITIES.—In the case of the portion of the

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

10 “(C) EMPLOYER CONTRIBUTIONS IN-  
11 VESTED IN EMPLOYER SECURITIES.—

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

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

1 options which meet the requirements  
2 of subparagraph (D), or

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

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

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

1           “(i) the plan offers not less than 3 in-  
2           vestment options, other than employer se-  
3           curities, to which an applicable individual  
4           may direct the proceeds from the divest-  
5           ment of employer securities pursuant to  
6           this paragraph, each of which is diversified  
7           and has materially different risk and re-  
8           turn characteristics, and

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

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

20                 “(i) APPLICABLE DEFINED CONTRIBU-  
21                 TION PLAN.—The term ‘applicable defined  
22                 contribution plan’ means any defined con-  
23                 tribution plan, except that such term does  
24                 not include an employee stock ownership  
25                 plan (within the meaning of section

1 4975(e)(7)) unless there are any contribu-  
2 tions to such plan (or earnings thereon)  
3 held within such plan that are subject to  
4 subsection (k)(3) or (m)(2).

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

7 “(I) any participant in the plan,

8 and

9 “(II) any beneficiary of a partici-  
10 pant referred to in clause (i) who has  
11 an account under the plan with re-  
12 spect to which the beneficiary is enti-  
13 tled to exercise the rights of the par-  
14 ticipant.

15 “(iii) ELECTIVE DEFERRAL.—The  
16 term ‘elective deferral’ means an employer  
17 contribution described in section  
18 402(g)(3)(A) (as in effect on the date of  
19 the enactment of this paragraph).

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

1 the date of the enactment of this para-  
2 graph).

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

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

13 “(F) EXCEPTION WHERE THERE IS NO  
14 READILY TRADABLE STOCK.—This paragraph  
15 shall not apply if there is no class of stock  
16 issued by the employer that is readily tradable  
17 on an established securities market (or in such  
18 other circumstances as may be determined  
19 jointly by the Secretary of the Treasury and the  
20 Secretary of Labor in regulations).

21 “(G) TRANSITION RULE.—

22 “(i) IN GENERAL.—In the case of any  
23 defined contribution plan which, on the ef-  
24 fective date of this subsection, holds em-  
25 ployer securities of any class that were ac-

1           required before such date and on which there  
 2           is a restriction on diversification otherwise  
 3           precluded by this paragraph, this para-  
 4           graph shall apply to such securities of such  
 5           class held in any plan year only with re-  
 6           spect to the number of such securities  
 7           equal to the applicable percentage of the  
 8           total number of such securities of such  
 9           class held on such date.

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

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

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

18                                           “(I) employee contributions to a  
 19                                           plan under which any portion attrib-  
 20                                           utable to elective deferrals is treated  
 21                                           as a separate plan under section  
 22                                           407(b)(2) of the Employee Retirement

1           Income Security Act of 1974 as of the  
2           date of the enactment of this para-  
3           graph, and

4                   “(II) such elective deferrals.

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

17                  “(v) COORDINATION WITH PRIOR  
18          ELECTIONS UNDER PARAGRAPH (28).—In  
19          any case in which a divestiture of invest-  
20          ment in employer securities of any class  
21          held by an employee stock ownership plan  
22          prior to the effective date of this para-  
23          graph was undertaken pursuant to an elec-  
24          tion under paragraph (28) prior to such  
25          date, the applicable percentage (as deter-



1           mined without regard to this clause) in  
2           connection with such securities shall be re-  
3           duced to the extent necessary to account  
4           for the amount to which such election ap-  
5           plied.

6           “(H) REGULATIONS.—The Secretary shall  
7           prescribe regulations under this paragraph in  
8           consultation with the Secretary of Labor.”.

9           (2) CONFORMING AMENDMENTS.—

10           (A) Section 401(a)(28) of such Code is  
11           amended by adding at the end the following  
12           new subparagraph:

13           “(D) APPLICATION.—This paragraph shall  
14           not apply to a plan to which paragraph (35) ap-  
15           plies.”.

16           (B) Section 409(h)(7) of such Code is  
17           amended by inserting before the period at the  
18           end “or subparagraph (B) or (C) of section  
19           401(a)(35)”.

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

24           (c) EFFECTIVE DATE.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graph (2) and section 108, the amendments made by  
3           this section shall apply to plan years beginning after  
4           December 31, 2003, and with respect to employer  
5           securities allocated to accounts before, on, or after  
6           the date of the enactment of this Act.

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

11 **SEC. 105. PROHIBITED TRANSACTION EXEMPTION FOR THE**  
12 **PROVISION OF INVESTMENT ADVICE.**

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

15           (1) EXEMPTION FROM PROHIBITED TRANS-  
16 ACTIONS.—Section 408(b) of the Employee Retire-  
17 ment Income Security Act of 1974 (29 U.S.C.  
18 1108(b)) is amended by adding at the end the fol-  
19 lowing new paragraph:

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

1           “(i) the investment of assets of the plan is  
2 subject to the direction of plan participants or  
3 beneficiaries,

4           “(ii) the advice is provided to the plan or  
5 a participant or beneficiary of the plan by a fi-  
6 duciary adviser in connection with any sale, ac-  
7 quisition, or holding of a security or other prop-  
8 erty for purposes of investment of plan assets,  
9 and

10           “(iii) the requirements of subsection (g)  
11 are met in connection with the provision of the  
12 advice.

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

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

17           “(ii) the sale, acquisition, or holding of a  
18 security or other property (including any lend-  
19 ing of money or other extension of credit associ-  
20 ated with the sale, acquisition, or holding of a  
21 security or other property) pursuant to the ad-  
22 vice; and

23           “(iii) the direct or indirect receipt of fees  
24 or other compensation by the fiduciary adviser  
25 or an affiliate thereof (or any employee, agent,

1 or registered representative of the fiduciary ad-  
2 viser or affiliate) in connection with the provi-  
3 sion of the advice or in connection with a sale,  
4 acquisition, or holding of a security or other  
5 property pursuant to the advice.”.

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

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

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

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

1 provision of the advice, a written notification  
2 (which may consist of notification by means of  
3 electronic communication)—

4 “(i) of all fees or other compensation  
5 relating to the advice that the fiduciary ad-  
6 viser or any affiliate thereof is to receive  
7 (including compensation provided by any  
8 third party) in connection with the provi-  
9 sion of the advice or in connection with the  
10 sale, acquisition, or holding of the security  
11 or other property,

12 “(ii) of any material affiliation or con-  
13 tractual relationship of the fiduciary ad-  
14 viser or affiliates thereof in the security or  
15 other property,

16 “(iii) of any limitation placed on the  
17 scope of the investment advice to be pro-  
18 vided by the fiduciary adviser with respect  
19 to any such sale, acquisition, or holding of  
20 a security or other property,

21 “(iv) of the types of services provided  
22 by the fiduciary adviser in connection with  
23 the provision of investment advice by the  
24 fiduciary adviser,

1           “(v) that the adviser is acting as a fi-  
2           duciary of the plan in connection with the  
3           provision of the advice, and

4           “(vi) that a recipient of the advice  
5           may separately arrange for the provision of  
6           advice by another adviser, that could have  
7           no material affiliation with and receive no  
8           fees or other compensation in connection  
9           with the security or other property,

10          “(B) the fiduciary adviser provides appro-  
11          priate disclosure, in connection with the sale,  
12          acquisition, or holding of the security or other  
13          property, in accordance with all applicable secu-  
14          rities laws,

15          “(C) the sale, acquisition, or holding oc-  
16          curs solely at the direction of the recipient of  
17          the advice,

18          “(D) the compensation received by the fi-  
19          duciary adviser and affiliates thereof in connec-  
20          tion with the sale, acquisition, or holding of the  
21          security or other property is reasonable, and

22          “(E) the terms of the sale, acquisition, or  
23          holding of the security or other property are at  
24          least as favorable to the plan as an arm’s  
25          length transaction would be.

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

3           “(A) IN GENERAL.—The notification re-  
4           quired to be provided to participants and bene-  
5           ficiaries under paragraph (1)(A) shall be writ-  
6           ten in a clear and conspicuous manner and in  
7           a manner calculated to be understood by the av-  
8           erage plan participant and shall be sufficiently  
9           accurate and comprehensive to reasonably ap-  
10          prise such participants and beneficiaries of the  
11          information required to be provided in the noti-  
12          fication.

13          “(B) MODEL FORM FOR DISCLOSURE OF  
14          FEES AND OTHER COMPENSATION.—The Sec-  
15          retary shall issue a model form for the disclo-  
16          sure of fees and other compensation required in  
17          paragraph (1)(A)(i) which meets the require-  
18          ments of subparagraph (A).

19          “(3) EXEMPTION CONDITIONED ON MAKING RE-  
20          QUIRED INFORMATION AVAILABLE ANNUALLY, ON  
21          REQUEST, AND IN THE EVENT OF MATERIAL  
22          CHANGE.—The requirements of paragraph (1)(A)  
23          shall be deemed not to have been met in connection  
24          with the initial or any subsequent provision of advice  
25          described in paragraph (1) to the plan, participant,

1 or beneficiary if, at any time during the provision of  
2 advisory services to the plan, participant, or bene-  
3 ficiary, the fiduciary adviser fails to maintain the in-  
4 formation described in clauses (i) through (iv) of  
5 subparagraph (A) in currently accurate form and in  
6 the manner described in paragraph (2) or fails—

7 “(A) to provide, without charge, such cur-  
8 rently accurate information to the recipient of  
9 the advice no less than annually,

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

13 “(C) in the event of a material change to  
14 the information described in clauses (i) through  
15 (iv) of paragraph (1)(A), to provide, without  
16 charge, such currently accurate information to  
17 the recipient of the advice at a time reasonably  
18 contemporaneous to the material change in in-  
19 formation.

20 “(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE  
21 OF COMPLIANCE.—A fiduciary adviser referred to in  
22 paragraph (1) who has provided advice referred to in  
23 such paragraph shall, for a period of not less than  
24 6 years after the provision of the advice, maintain  
25 any records necessary for determining whether the



1 requirements of the preceding provisions of this sub-  
2 section and of subsection (b)(14) have been met. A  
3 transaction prohibited under section 406 shall not  
4 be considered to have occurred solely because the  
5 records are lost or destroyed prior to the end of the  
6 6-year period due to circumstances beyond the con-  
7 trol of the fiduciary adviser.

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

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

19 “(i) the advice is provided by a fidu-  
20 ciary adviser pursuant to an arrangement  
21 between the plan sponsor or other fidu-  
22 ciary and the fiduciary adviser for the pro-  
23 vision by the fiduciary adviser of invest-  
24 ment advice referred to in such section,

1           “(ii) the terms of the arrangement re-  
2           quire compliance by the fiduciary adviser  
3           with the requirements of this subsection,  
4           and

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

10           “(B) CONTINUED DUTY OF PRUDENT SE-  
11           LECTION OF ADVISER AND PERIODIC REVIEW.—  
12           Nothing in subparagraph (A) shall be construed  
13           to exempt a plan sponsor or other person who  
14           is a fiduciary from any requirement of this part  
15           for the prudent selection and periodic review of  
16           a fiduciary adviser with whom the plan sponsor  
17           or other person enters into an arrangement for  
18           the provision of advice referred to in section  
19           3(21)(A)(ii). The plan sponsor or other person  
20           who is a fiduciary has no duty under this part  
21           to monitor the specific investment advice given  
22           by the fiduciary adviser to any particular recipi-  
23           ent of the advice.

24           “(C) AVAILABILITY OF PLAN ASSETS FOR  
25           PAYMENT FOR ADVICE.—Nothing in this part

1 shall be construed to preclude the use of plan  
2 assets to pay for reasonable expenses in pro-  
3 viding investment advice referred to in section  
4 3(21)(A)(ii).

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

7 “(A) FIDUCIARY ADVISER.—The term ‘fi-  
8 duciary adviser’ means, with respect to a plan,  
9 a person who is a fiduciary of the plan by rea-  
10 son of the provision of investment advice by the  
11 person to the plan or to a participant or bene-  
12 ficiary and who is—

13 “(i) registered as an investment ad-  
14 viser under the Investment Advisers Act of  
15 1940 (15 U.S.C. 80b–1 et seq.) or under  
16 the laws of the State in which the fiduciary  
17 maintains its principal office and place of  
18 business,

19 “(ii) a bank or similar financial insti-  
20 tution referred to in section 408(b)(4) or a  
21 savings association (as defined in section  
22 3(b)(1) of the Federal Deposit Insurance  
23 Act (12 U.S.C. 1813(b)(1))), but only if  
24 the advice is provided through a trust de-  
25 partment of the bank or similar financial

1 institution or savings association which is  
2 subject to periodic examination and review  
3 by Federal or State banking authorities,

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

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

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

11 “(vi) an employee, agent, or registered  
12 representative of a person described in any  
13 of clauses (i) through (v) who satisfies the  
14 requirements of applicable insurance,  
15 banking, and securities laws relating to the  
16 provision of the advice.

17 “(B) AFFILIATE.—The term ‘affiliate’ of  
18 another entity means an affiliated person of the  
19 entity (as defined in section 2(a)(3) of the In-  
20 vestment Company Act of 1940 (15 U.S.C.  
21 80a-2(a)(3))).

22 “(C) REGISTERED REPRESENTATIVE.—  
23 The term ‘registered representative’ of another  
24 entity means a person described in section  
25 3(a)(18) of the Securities Exchange Act of

1           1934 (15 U.S.C. 78c(a)(18)) (substituting the  
2           entity for the broker or dealer referred to in  
3           such section) or a person described in section  
4           202(a)(17) of the Investment Advisers Act of  
5           1940 (15 U.S.C. 80b-2(a)(17)) (substituting  
6           the entity for the investment adviser referred to  
7           in such section).”.

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

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

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

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

18                   (C) by adding at the end the following new  
19                   paragraph:

20                   “(16) any transaction described in subsection  
21                   (f)(7)(A) in connection with the provision of invest-  
22                   ment advice described in subsection (e)(3)(B)(i), in  
23                   any case in which—

1           “(A) the investment of assets of the plan  
2 is subject to the direction of plan participants  
3 or beneficiaries,

4           “(B) the advice is provided to the plan or  
5 a participant or beneficiary of the plan by a fi-  
6 duciary adviser in connection with any sale, ac-  
7 quisition, or holding of a security or other prop-  
8 erty for purposes of investment of plan assets,  
9 and

10           “(C) the requirements of subsection  
11 (f)(7)(B) are met in connection with the provi-  
12 sion of the advice.”.

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

17           “(7) PROVISIONS RELATING TO INVESTMENT  
18 ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

19           “(A) TRANSACTIONS ALLOWABLE IN CON-  
20 NECTION WITH INVESTMENT ADVICE PROVIDED  
21 BY FIDUCIARY ADVISERS.—The transactions re-  
22 ferred to in subsection (d)(16), in connection  
23 with the provision of investment advice by a fi-  
24 duciary adviser, are the following:

1           “(i) the provision of the advice to the  
2           plan, participant, or beneficiary;

3           “(ii) the sale, acquisition, or holding  
4           of a security or other property (including  
5           any lending of money or other extension of  
6           credit associated with the sale, acquisition,  
7           or holding of a security or other property)  
8           pursuant to the advice; and

9           “(iii) the direct or indirect receipt of  
10          fees or other compensation by the fiduciary  
11          adviser or an affiliate thereof (or any em-  
12          ployee, agent, or registered representative  
13          of the fiduciary adviser or affiliate) in con-  
14          nection with the provision of the advice or  
15          in connection with a sale, acquisition, or  
16          holding of a security or other property pur-  
17          suant to the advice.

18          “(B) REQUIREMENTS RELATING TO PROVI-  
19          SION OF INVESTMENT ADVICE BY FIDUCIARY  
20          ADVISERS.—The requirements of this subpara-  
21          graph (referred to in subsection (d)(16)(C)) are  
22          met in connection with the provision of invest-  
23          ment advice referred to in subsection (e)(3)(B),  
24          provided to a plan or a participant or bene-  
25          ficiary of a plan by a fiduciary adviser with re-

1           spect to the plan in connection with any sale,  
2           acquisition, or holding of a security or other  
3           property for purposes of investment of amounts  
4           held by the plan, if—

5                   “(i) in the case of the initial provision  
6                   of the advice with regard to the security or  
7                   other property by the fiduciary adviser to  
8                   the plan, participant, or beneficiary, the fi-  
9                   duciary adviser provides to the recipient of  
10                  the advice, at a time reasonably contem-  
11                  poraneous with the initial provision of the  
12                  advice, a written notification (which may  
13                  consist of notification by means of elec-  
14                  tronic communication)—

15                   “(I) of all fees or other com-  
16                   pensation relating to the advice that  
17                   the fiduciary adviser or any affiliate  
18                   thereof is to receive (including com-  
19                   pensation provided by any third  
20                   party) in connection with the provi-  
21                   sion of the advice or in connection  
22                   with the sale, acquisition, or holding  
23                   of the security or other property,

24                   “(II) of any material affiliation  
25                   or contractual relationship of the fidu-



1           ciary adviser or affiliates thereof in  
2           the security or other property,

3           “(III) of any limitation placed on  
4           the scope of the investment advice to  
5           be provided by the fiduciary adviser  
6           with respect to any such sale, acquisi-  
7           tion, or holding of a security or other  
8           property,

9           “(IV) of the types of services  
10          provided by the fiduciary adviser in  
11          connection with the provision of in-  
12          vestment advice by the fiduciary ad-  
13          viser,

14          “(V) that the adviser is acting as  
15          a fiduciary of the plan in connection  
16          with the provision of the advice, and

17          “(VI) that a recipient of the ad-  
18          vice may separately arrange for the  
19          provision of advice by another adviser,  
20          that could have no material affiliation  
21          with and receive no fees or other com-  
22          pensation in connection with the secu-  
23          rity or other property,

24          “(ii) the fiduciary adviser provides ap-  
25          propriate disclosure, in connection with the

1 sale, acquisition, or holding of the security  
2 or other property, in accordance with all  
3 applicable securities laws,

4 “(iii) the sale, acquisition, or holding  
5 occurs solely at the direction of the recipi-  
6 ent of the advice,

7 “(iv) the compensation received by the  
8 fiduciary adviser and affiliates thereof in  
9 connection with the sale, acquisition, or  
10 holding of the security or other property is  
11 reasonable, and

12 “(v) the terms of the sale, acquisition,  
13 or holding of the security or other property  
14 are at least as favorable to the plan as an  
15 arm’s length transaction would be.

16 “(C) STANDARDS FOR PRESENTATION OF  
17 INFORMATION.—The notification required to be  
18 provided to participants and beneficiaries under  
19 subparagraph (B)(i) shall be written in a clear  
20 and conspicuous manner and in a manner cal-  
21 culated to be understood by the average plan  
22 participant and shall be sufficiently accurate  
23 and comprehensive to reasonably apprise such  
24 participants and beneficiaries of the information  
25 required to be provided in the notification.

1           “(D) EXEMPTION CONDITIONED ON MAK-  
2           ING REQUIRED INFORMATION AVAILABLE ANNU-  
3           ALLY, ON REQUEST, AND IN THE EVENT OF MA-  
4           TERIAL CHANGE.—The requirements of sub-  
5           paragraph (B)(i) shall be deemed not to have  
6           been met in connection with the initial or any  
7           subsequent provision of advice described in sub-  
8           paragraph (B) to the plan, participant, or bene-  
9           ficiary if, at any time during the provision of  
10          advisory services to the plan, participant, or  
11          beneficiary, the fiduciary adviser fails to main-  
12          tain the information described in subclauses (I)  
13          through (IV) of subparagraph (B)(i) in cur-  
14          rently accurate form and in the manner re-  
15          quired by subparagraph (C), or fails—

16                 “(i) to provide, without charge, such  
17                 currently accurate information to the re-  
18                 cipient of the advice no less than annually,

19                 “(ii) to make such currently accurate  
20                 information available, upon request and  
21                 without charge, to the recipient of the ad-  
22                 vice, or

23                 “(iii) in the event of a material  
24                 change to the information described in  
25                 subclauses (I) through (IV) of subpara-

1 graph (B)(i), to provide, without charge,  
2 such currently accurate information to the  
3 recipient of the advice at a time reasonably  
4 contemporaneous to the material change in  
5 information.

6 “(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser  
7 referred to in subparagraph (B) who has provided advice referred to in such subparagraph  
8 shall, for a period of not less than 6 years after the provision of the advice, maintain any  
9 records necessary for determining whether the requirements of the preceding provisions of this  
10 paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection  
11 (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed  
12 prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary  
13 adviser.  
14  
15  
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20

21 “(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor  
22 or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as fail-  
23 ing to meet the requirements of this section  
24  
25

1 solely by reason of the provision of investment  
2 advice referred to in subsection (e)(3)(B) (or  
3 solely by reason of contracting for or otherwise  
4 arranging for the provision of the advice), if—

5 “(i) the advice is provided by a fidu-  
6 ciary adviser pursuant to an arrangement  
7 between the plan sponsor or other fidu-  
8 ciary and the fiduciary adviser for the pro-  
9 vision by the fiduciary adviser of invest-  
10 ment advice referred to in such section,

11 “(ii) the terms of the arrangement re-  
12 quire compliance by the fiduciary adviser  
13 with the requirements of this paragraph,

14 “(iii) the terms of the arrangement  
15 include a written acknowledgment by the  
16 fiduciary adviser that the fiduciary adviser  
17 is a fiduciary of the plan with respect to  
18 the provision of the advice, and

19 “(iv) the requirements of part 4 of  
20 subtitle B of title I of the Employee Re-  
21 tirement Income Security Act of 1974 are  
22 met in connection with the provision of  
23 such advice.

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

1           “(i) FIDUCIARY ADVISER.—The term  
2           ‘fiduciary adviser’ means, with respect to a  
3           plan, a person who is a fiduciary of the  
4           plan by reason of the provision of invest-  
5           ment advice by the person to the plan or  
6           to a participant or beneficiary and who  
7           is—

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

14                  “(II) a bank or similar financial  
15                  institution referred to in subsection  
16                  (d)(4) or a savings association (as de-  
17                  fined in section 3(b)(1) of the Federal  
18                  Deposit Insurance Act (12 U.S.C.  
19                  1813(b)(1))), but only if the advice is  
20                  provided through a trust department  
21                  of the bank or similar financial insti-  
22                  tution or savings association which is  
23                  subject to periodic examination and  
24                  review by Federal or State banking  
25                  authorities,

1           “(III) an insurance company  
2 qualified to do business under the  
3 laws of a State,

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

8           “(V) an affiliate of a person de-  
9 scribed in any of subclauses (I)  
10 through (IV), or

11           “(VI) an employee, agent, or reg-  
12 istered representative of a person de-  
13 scribed in any of subclauses (I)  
14 through (V) who satisfies the require-  
15 ments of applicable insurance, bank-  
16 ing, and securities laws relating to the  
17 provision of the advice.

18           “(ii) AFFILIATE.—The term ‘affiliate’  
19 of another entity means an affiliated per-  
20 son of the entity (as defined in section  
21 2(a)(3) of the Investment Company Act of  
22 1940 (15 U.S.C. 80a-2(a)(3))).

23           “(iii) REGISTERED REPRESENTA-  
24 TIVE.—The term ‘registered representa-  
25 tive’ of another entity means a person de-

1           scribed in section 3(a)(18) of the Securi-  
2           ties Exchange Act of 1934 (15 U.S.C.  
3           78c(a)(18)) (substituting the entity for the  
4           broker or dealer referred to in such sec-  
5           tion) or a person described in section  
6           202(a)(17) of the Investment Advisers Act  
7           of 1940 (15 U.S.C. 80b-2(a)(17)) (sub-  
8           stituting the entity for the investment ad-  
9           viser referred to in such section).”.

10 **SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT**  
11 **SAVINGS OF PARTICIPANTS AND BENE-**  
12 **FICIARIES BY REQUIRING CONSULTANTS TO**  
13 **ADVISE PLAN FIDUCIARIES OF INDIVIDUAL**  
14 **ACCOUNT PLANS.**

15       (a) STUDY.—As soon as practicable after the date of  
16 the enactment of this Act, the Secretary of Labor shall  
17 undertake a study of the costs and benefits to participants  
18 and beneficiaries of requiring independent consultants to  
19 advise plan fiduciaries in connection with individual ac-  
20 count plans. In conducting such study, the Secretary shall  
21 consider—

22           (1) the benefits to plan participants and bene-  
23           ficiaries of engaging independent advisers to provide  
24           investment and other advice regarding the assets of  
25           the plan to persons who have fiduciary duties with



1 respect to the management or disposition of such as-  
2 sets,

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

5 (3) the availability of assistance to fiduciaries  
6 from appropriate Federal agencies,

7 (4) the availability of qualified independent con-  
8 sultants to serve the needs of individual account  
9 plan fiduciaries in the United States,

10 (5) the impact of the additional fiduciary duty  
11 of an independent advisor on the strict fiduciary ob-  
12 ligations of plan fiduciaries,

13 (6) the impact of new requirements (consulting  
14 fees, reporting requirements, and new plan duties to  
15 prudently identify and contract with qualified inde-  
16 pendent consultants) on the availability of individual  
17 account plans, and

18 (7) the impact of a new requirement on the  
19 plan administration costs per participant for small  
20 and mid-size employers and the pension plans they  
21 sponsor.

22 (b) REPORT.—Not later than 1 year after the date  
23 of the enactment of this Act, the Secretary of Labor shall  
24 report the results of the study undertaken pursuant to this  
25 section, together with any recommendations for legislative

1 changes, to the Committee on Education and the Work-  
2 force of the House of Representatives and the Committee  
3 on Health, Education, Labor, and Pensions of the Senate.

4 **SEC. 107. TREATMENT OF QUALIFIED RETIREMENT PLAN-**  
5 **NING SERVICES.**

6 (a) IN GENERAL.—Subsection (m) of section 132 of  
7 the Internal Revenue Code of 1986 (defining qualified re-  
8 tirement services) is amended by adding at the end the  
9 following new paragraph:

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

23 (b) CONFORMING AMENDMENTS.—

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

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

6           (3) Section 415(c)(3)(D)(ii) of such Code is  
7 amended by inserting “132(m)(4),” after  
8 “132(f)(4),”.

9           (c) EFFECTIVE DATE.—The amendment made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 2003.

12 **SEC. 108. EFFECTIVE DATES AND RELATED RULES.**

13           (a) IN GENERAL.—Except as otherwise provided in  
14 the preceding provisions of this title or in subsections (c)  
15 and (d), the amendments made by this Act shall apply  
16 with respect to plan years beginning on or after the gen-  
17 eral effective date.

18           (b) GENERAL EFFECTIVE DATE.—For purposes of  
19 this section, the term “general effective date” means the  
20 date which is 1 year after the date of the enactment of  
21 this Act.

22           (c) SPECIAL RULE FOR COLLECTIVELY BARGAINED  
23 PLANS.—In the case of a plan maintained pursuant to 1  
24 or more collective bargaining agreements between em-  
25 ployee representatives and 1 or more employers ratified

1 on or before the date of the enactment of this Act, sub-  
2 section (a) shall be applied to benefits pursuant to, and  
3 individuals covered by, any such agreement by substituting  
4 for “the general effective date” the date of the commence-  
5 ment of the first plan year beginning on or after the ear-  
6 lier of—

7 (1) the later of—

8 (A) the date which is 1 year after the gen-  
9 eral effective date, or

10 (B) the date on which the last of such col-  
11 lective bargaining agreements terminates (de-  
12 termined without regard to any extension there-  
13 of after the date of the enactment of this Act),  
14 or

15 (2) the date which is 2 years after the general  
16 effective date.

17 (d) AMENDMENTS RELATING TO INVESTMENT AD-  
18 VICE.—The amendments made by section 105 shall apply  
19 with respect to advice referred to in section 3(21)(A)(ii)  
20 of the Employee Retirement Income Security Act of 1974  
21 or section 4975(c)(3)(B) of the Internal Revenue Code of  
22 1986 provided on or after January 1, 2005.

1     **TITLE II—OTHER PROVISIONS**  
2             **RELATING TO PENSIONS**

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

5             (a) TRANSITION RULE MADE PERMANENT.—Section  
6 769(c) of the Retirement Protection Act of 1994 (26  
7 U.S.C. 412 note) is amended—

8                 (1) in the heading, by striking “TRANSITION”;  
9             and

10                (2) in paragraph (1), by striking “transition”  
11             and by striking “for any plan year beginning after  
12             1996 and before 2010”.

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

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

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

24                    “(B) For purposes of section 412(m) of  
25                    the Internal Revenue Code of 1986 and section

1           302(e) of the Employee Retirement Income Se-  
2           curity Act of 1974, the funded current liability  
3           percentage for any plan year shall be treated as  
4           not less than 100 percent.

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

11          (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to plan years beginning after De-  
13 cember 31, 2002.

14 **SEC. 202. REPORTING SIMPLIFICATION.**

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

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

23           (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
24           FINED.—For purposes of this subsection, the term  
25           “one-participant retirement plan” means a retire-

1       ment plan with respect to which the following re-  
2       quirements are met:

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

4                   (i) the plan covered only one indi-  
5                   vidual (or the individual and the individ-  
6                   ual's spouse) and the individual owned 100  
7                   percent of the plan sponsor (whether or  
8                   not incorporated), or

9                   (ii) the plan covered only one or more  
10                  partners (or partners and their spouses) in  
11                  the plan sponsor;

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

17               (C) the plan does not provide benefits to  
18               anyone except the individual (and the individ-  
19               ual's spouse) or the partners (and their  
20               spouses);

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

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

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

7                   (4) EFFECTIVE DATE.—The provisions of this  
8                   subsection shall apply to plan years beginning on or  
9                   after January 1, 2003.

10                  (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
11                  PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case  
12                  of plan years beginning after December 31, 2004, the Sec-  
13                  retary of the Treasury and the Secretary of Labor shall  
14                  provide for the filing of a simplified annual return for any  
15                  retirement plan which covers less than 25 employees on  
16                  the first day of a plan year and which meets the require-  
17                  ments described in subparagraphs (B), (D), and (E) of  
18                  subsection (a)(2).

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

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



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

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

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

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

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

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

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

3 (a) NONDISCRIMINATION.—

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

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

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

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

19 (2) EFFECTIVE DATES.—

20 (A) REGULATIONS.—The regulation re-  
21 quired by paragraph (1) shall apply to years be-  
22 ginning after December 31, 2004.

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

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

3           (b) COVERAGE TEST.—

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

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

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

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

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

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

23           (2) EFFECTIVE DATES.—

1           (A) IN GENERAL.—The amendment made  
2           by paragraph (1) shall apply to years beginning  
3           after December 31, 2004.

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

12          (c) LINE OF BUSINESS RULES.—The Secretary of  
13          the Treasury shall, on or before December 31, 2004, mod-  
14          ify the existing regulations issued under section 414(r) of  
15          the Internal Revenue Code of 1986 in order to expand  
16          (to the extent that the Secretary determines appropriate)  
17          the ability of a pension plan to demonstrate compliance  
18          with the line of business requirements based upon the  
19          facts and circumstances surrounding the design and oper-  
20          ation of the plan, even though the plan is unable to satisfy  
21          the mechanical tests currently used to determine compli-  
22          ance.

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

5 (a) IN GENERAL.—

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

11 (2) Subparagraph (G) of section 401(k)(3) of  
12 the Internal Revenue Code of 1986 and paragraph  
13 (2) of section 1505(d) of the Taxpayer Relief Act of  
14 1997 (26 U.S.C. 401 note) are each amended by  
15 striking “maintained by a State or local government  
16 or political subdivision thereof (or agency or instru-  
17 mentality thereof)”.

18 (b) CONFORMING AMENDMENTS.—

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

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



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

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

13 (3) EFFECTIVE DATE.—The amendments made  
14 by paragraphs (1)(A) and (2)(A) and the modifica-  
15 tions required by paragraphs (1)(B) and (2)(B)  
16 shall apply to years beginning after December 31,  
17 2003.

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

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

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

3 (2) EFFECTIVE DATE.—

4 (A) IN GENERAL.—The modifications re-  
5 quired by paragraph (1) shall apply to years be-  
6 ginning after December 31, 2003.

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

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

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



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

5 (b) EFFECTIVE DATE.—The amendment made by  
6 this section shall apply to reports for years beginning after  
7 December 31, 2003.

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

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

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

14 (2) in subsection (e)(2)—

15 (A) by striking “Committee on Labor and  
16 Human Resources” in subparagraph (D) and  
17 inserting “Committee on Health, Education,  
18 Labor, and Pensions”;

19 (B) by striking subparagraph (F) and in-  
20 serting the following:

21 “(F) the Chairman and Ranking Member  
22 of the Subcommittee on Labor, Health and  
23 Human Services, and Education of the Com-  
24 mittee on Appropriations of the House of Rep-  
25 resentatives and the Chairman and Ranking

1 Member of the Subcommittee on Labor, Health  
2 and Human Services, and Education of the  
3 Committee on Appropriations of the Senate;”;

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

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

8 “(G) the Chairman and Ranking Member  
9 of the Committee on Finance of the Senate;

10 “(H) the Chairman and Ranking Member  
11 of the Committee on Ways and Means of the  
12 House of Representatives;

13 “(I) the Chairman and Ranking Member  
14 of the Subcommittee on Employer-Employee  
15 Relations of the Committee on Education and  
16 the Workforce of the House of Representatives;  
17 and”;

18 (3) in subsection (e)(3)(B), by striking “Janu-  
19 ary 31, 1998” and inserting “2 months before the  
20 convening of each summit”;

21 (4) in subsection (f)(1)(C), by inserting “, no  
22 later than 60 days prior to the date of the com-  
23 mencement of the National Summit,” after “com-  
24 ment”;

25 (5) in subsection (i)—

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

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

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

13 (6) in subsection (k)—

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

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

19 **SEC. 209. MISSING PARTICIPANTS AND BENEFICIARIES.**

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

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

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

6           “(1) TRANSFER TO CORPORATION.—The plan  
7 administrator of a plan described in paragraph (4)  
8 may elect to transfer the benefits of a missing par-  
9 ticipant or beneficiary to the corporation upon ter-  
10 mination of the plan.

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

18           “(A) to the corporation, or

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

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

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

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

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

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

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

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

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

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

18               “(i) has one or more missing partici-  
19        pants or beneficiaries, and

20               “(ii) has not provided for the transfer  
21        of assets to pay the benefits of all missing  
22        participants and beneficiaries to another  
23        pension plan (within the meaning of sec-  
24        tion 3(2)).

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

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

6           (1) by striking “title IV” and inserting “section  
7           4050”; and

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

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

15       **SEC. 210. REDUCED PBGC PREMIUM FOR NEW PLANS OF**  
16                                                       **SMALL EMPLOYERS.**

17          (a) IN GENERAL.—Subparagraph (A) of section  
18          4006(a)(3) of the Employee Retirement Income Security  
19          Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

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

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

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

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

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

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

23           “(ii)(I) For purposes of this paragraph, the term  
24 ‘small employer’ means an employer which on the first day  
25 of any plan year has, in aggregation with all members of

1 the controlled group of such employer, 100 or fewer em-  
2 ployees.

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

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to plans first effective after Decem-  
11 ber 31, 2003.

12 **SEC. 211. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**  
13 **NEW AND SMALL PLANS.**

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

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

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

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



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

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

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

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

14       (b) SMALL PLANS.—Paragraph (3) of section  
15 4006(a) of the Employee Retirement Income Security Act  
16 of 1974 (29 U.S.C. 1306(a)), as amended by section  
17 210(b), is amended—

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

21           (2) by inserting after subparagraph (F) the fol-  
22       lowing new subparagraph:

23       “(G)(i) In the case of an employer who has 25 or  
24       fewer employees on the first day of the plan year, the addi-  
25       tional premium determined under subparagraph (E) for

1 each participant shall not exceed \$5 multiplied by the  
2 number of participants in the plan as of the close of the  
3 preceding plan year.

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

13 (c) EFFECTIVE DATES.—

14 (1) SUBSECTION (a).—The amendments made  
15 by subsection (a) shall apply to plans first effective  
16 after December 31, 2003.

17 (2) SUBSECTION (b).—The amendments made  
18 by subsection (b) shall apply to plan years beginning  
19 after December 31, 2003.

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

22 (a) IN GENERAL.—Section 4007(b) of the Employ-  
23 ment Retirement Income Security Act of 1974 (29 U.S.C.  
24 1307(b)) is amended—

1           (1) by striking “(b)” and inserting “(b)(1)”,  
2           and

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

5           “(2) The corporation is authorized to pay, subject to  
6 regulations prescribed by the corporation, interest on the  
7 amount of any overpayment of premium refunded to a des-  
8 ignated payor. Interest under this paragraph shall be cal-  
9 culated at the same rate and in the same manner as inter-  
10 est is calculated for underpayments under paragraph  
11 (1).”.

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

16 **SEC. 213. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**  
17 **PLANS.**

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

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

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

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

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

11 For purposes of clause (iii), the constructive ownership  
12 rules of section 1563(e) of the Internal Revenue Code of  
13 1986 shall apply (determined without regard to section  
14 1563(e)(3)(C)).

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

18           “(i) a fraction (not to exceed 1) the numerator  
19           of which is the number of years from the later of the  
20           effective date or the adoption date of the plan to the  
21           termination date, and the denominator of which is  
22           10, and

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

1 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

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

6 (2) Section 4044(b) of such Act (29 U.S.C.  
7 1344(b)) is amended—

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

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

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

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

3 (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

8 (d) EFFECTIVE DATES.—

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

12 (A) under section 4041(c) of the Employee  
13 Retirement Income Security Act of 1974 (29  
14 U.S.C. 1341(c)) with respect to which notices  
15 of intent to terminate are provided under sec-  
16 tion 4041(a)(2) of such Act (29 U.S.C.  
17 1341(a)(2)) after December 31, 2003, and

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

22 (2) CONFORMING AMENDMENTS.—The amend-  
23 ments made by subsection (c) shall take effect on  
24 January 1, 2004.

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

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

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

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

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

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

24 (b) EFFECTIVE DATE.—The modification made  
25 under this section shall apply to plan years beginning after  
26 December 31, 2003.



1 **SEC. 215. STUDIES.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (5) retirement security.

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

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

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

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

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

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

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

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

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

19           (d) EFFECTIVE DATE.—

20           (1) GENERAL RULE.—Subject to paragraph (2),  
21           the amendments made by this section shall take ef-  
22           fect as if included in the amendments made by sec-  
23           tion 405 of the Job Creation and Worker Assistance  
24           Act of 2002.

1           (2) ELECTION.—The plan sponsor or plan ad-  
2           ministrators of a plan may elect whether to have the  
3           amendments made by subsections (a) and (b) apply.  
4           Such election shall be made in such manner and at  
5           such time as the Secretary of the Treasury or his  
6           delegate may prescribe and, once made, may not be  
7           revoked. An election to apply such amendments shall  
8           not be treated as a prohibited change in actuarial  
9           assumptions for purposes of reports required to be  
10          filed with the Secretary of Labor, the Secretary of  
11          Treasury, or the Pension Benefit Guaranty Corpora-  
12          tion.

## 13                           **TITLE III—GENERAL** 14                           **PROVISIONS**

### 15   **SEC. 301. PROVISIONS RELATING TO PLAN AMENDMENTS.**

16          (a) IN GENERAL.—If this section applies to any pen-  
17          sion plan or contract amendment—

18               (1) such pension plan or contract shall be treat-  
19               ed as being operated in accordance with the terms  
20               of the plan during the period described in subsection  
21               (b)(2)(A), and

22               (2) except as provided by the Secretary of the  
23               Treasury, such pension plan shall not fail to meet  
24               the requirements of section 411(d)(6) of the Internal  
25               Revenue Code of 1986 and section 204(g) of the

1 Employee Retirement Income Security Act of 1974  
2 by reason of such amendment.

3 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

4 (1) IN GENERAL.—This section shall apply to  
5 any amendment to any pension plan or annuity con-  
6 tract which is made—

7 (A) pursuant to any amendment made by  
8 this Act or by title VI of the Economic Growth  
9 and Tax Relief Reconciliation Act of 2001, or  
10 pursuant to any regulation issued by the Sec-  
11 retary of the Treasury or the Secretary of  
12 Labor under this Act or such title VI, and

13 (B) on or before the last day of the first  
14 plan year beginning on or after January 1,  
15 2006.

16 In the case of a governmental plan (as defined in  
17 section 414(d) of the Internal Revenue Code of  
18 1986), this paragraph shall be applied by sub-  
19 stituting “2008” for “2006”.

20 (2) CONDITIONS.—This section shall not apply  
21 to any amendment unless—

22 (A) during the period—

23 (i) beginning on the date the legisla-  
24 tive or regulatory amendment described in  
25 paragraph (1)(A) takes effect (or in the

1 case of a plan or contract amendment not  
2 required by such legislative or regulatory  
3 amendment, the effective date specified by  
4 the plan), and

5 (ii) ending on the date described in  
6 paragraph (1)(B) (or, if earlier, the date  
7 the plan or contract amendment is adopt-  
8 ed),

9 the plan or contract is operated as if such plan  
10 or contract amendment were in effect; and

11 (B) such plan or contract amendment ap-  
12 plies retroactively for such period.

Passed the House of Representatives May 14, 2003.

Attest:

JEFF TRANDAHL,

*Clerk.*

By MARTHA C. MORRISON,

*Deputy Clerk.*