

# Union Calendar No. 50

108TH CONGRESS  
1ST SESSION

# H. R. 1000

**[Report No. 108-43, Part I]**

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.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2003

Mr. BOEHNER (for himself, Mr. SAM JOHNSON of Texas, Mr. GREENWOOD, Mr. GIBBONS, Mr. KELLER, Mr. WILSON of South Carolina, Mr. NORWOOD, Mr. PLATTS, Mr. TIBERI, Mr. SHAYS, Mr. SIMMONS, Mr. MCKEON, Mrs. BIGGERT, Mr. FRELINGHUYSEN, Mr. ISAKSON, Ms. GINNY BROWN-WAITE of Florida, Mr. LATOURETTE, Ms. NORTON, Mr. SOUDER, Mr. SENSENBRENNER, Mr. ENGLISH, Mr. GREEN of Wisconsin, Mr. HERGER, Mr. WELDON of Pennsylvania, Mr. BEAUPREZ, Mr. FEENEY, Mr. NEY, Mr. BALLENGER, Mr. SWEENEY, Mr. BRADY of Texas, Mr. BURR, Mrs. MUSGRAVE, Mr. DEMINT, Mr. CRANE, Ms. HART, Mr. OXLEY, Mr. UPTON, Mrs. BLACKBURN, Mr. KLINE, Mr. COLE, Mr. CASTLE, Mr. PETERSON of Pennsylvania, Mr. TANCREDO, Mr. ROGERS of Michigan, Mr. KOLBE, Mr. JANKLOW, Mr. REYNOLDS, Mr. REHBERG, Mr. HILL, Mr. FOSSELLA, Mr. BOOZMAN, Mr. CULBERSON, and Mr. WALSH) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

MARCH 18, 2003

Reported from the Committee on Education and the Workforce with an amendment

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

MARCH 18, 2003

Referral to the Committee on Ways and Means extended for a period ending not later than March 28, 2003

MARCH 28, 2003

Referral to the Committee on Ways and Means extended for a period ending not later than May 9, 2003

MAY 9, 2003

Additional sponsors: Mr. WOLF, and Mr. GILLMOR

MAY 9, 2003

Committee on Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 27, 2003]

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## A BILL

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 as*  
 7       *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.—*

1                   (A) *IN GENERAL.*—Section 105(a) of the  
2                   *Employee Retirement Income Security Act of*  
3                   *1974 (29 U.S.C. 1025(a)) is amended to read as*  
4                   *follows:*

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

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

8                    “(ii) *to each plan beneficiary upon written re-*  
9                    *quest, and*

10                   “(iii) *in the case of an applicable individual ac-*  
11                    *count plan, to each individual who is a plan partici-*  
12                    *part or beneficiary and who has a right to direct in-*  
13                    *vestments, at least quarterly.*

14                   “(B) *The administrator of a defined benefit plan shall*  
15                    *furnish a pension benefit statement—*

16                    “(i) *at least once every 3 years to each partici-*  
17                    *part with a nonforfeitable accrued benefit who is em-*  
18                    *ployed by the employer maintaining the plan at the*  
19                    *time the statement is furnished to participants, and*

20                    “(ii) *to a plan participant or plan beneficiary*  
21                    *of the plan upon written request.*

22                    *Information furnished under clause (i) to a participant*  
23                    *may be based on reasonable estimates determined under reg-*  
24                    *ulations prescribed by the Secretary, in consultation with*  
25                    *the Pension Benefit Guaranty Corporation.*

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

3               “(A) shall indicate, on the basis of the latest  
4 available information—

5                       “(i) the total benefits accrued, and

6                       “(ii) the nonforfeitable pension benefits, if  
7 any, which have accrued, or the earliest date on  
8 which benefits will become nonforfeitable,

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

11               “(C) may be provided in written form or in elec-  
12 tronic or other appropriate form to the extent that  
13 such form is reasonably accessible to the recipient.

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

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

6                   (B) CONFORMING AMENDMENTS.—

7                   (i) Section 105 of the Employee Retire-  
8 ment Income Security Act of 1974 (29  
9 U.S.C. 1025) is amended by striking sub-  
10 section (d).

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

14       “(b) In no case shall a participant or beneficiary of  
15 a plan be entitled to more than one statement described in  
16 clause (i) or (ii) of subsection (a)(1)(A) or clause (i) or (ii)  
17 of subsection (a)(1)(B), whichever is applicable, in any 12-  
18 month period. If such report is required under subsection  
19 (a) to be furnished at least quarterly, the requirements of  
20 the preceding sentence shall be applied with respect to each  
21 quarter in lieu of the 12-month period.”.

22                   (2) INFORMATION REQUIRED FROM APPLICABLE  
23 INDIVIDUAL ACCOUNT PLANS.—Section 105 of such  
24 Act (as amended by paragraph (1)) is amended fur-

1        *ther by adding at the end the following new sub-*  
2        *section:*

3        *“(d)(1) The statements required to be provided at least*  
4        *quarterly under subsection (a)(1)(A)(iii) in the case of ap-*  
5        *plicable individual account plans shall include (together*  
6        *with the information required in subsection (a)) the fol-*  
7        *lowing:*

8                *“(A) the value of each investment to which assets*  
9                *in the individual account have been allocated, deter-*  
10               *mined as of the most recent valuation date under the*  
11               *plan, including the value of any assets held in the*  
12               *form of employer securities, without regard to whether*  
13               *such securities were contributed by the plan sponsor*  
14               *or acquired at the direction of the plan or of the par-*  
15               *ticipant or beneficiary,*

16               *“(B) an explanation, written in a manner cal-*  
17               *culated to be understood by the average plan partici-*  
18               *part, of any limitations or restrictions on the right*  
19               *of the participant or beneficiary to direct an invest-*  
20               *ment, and*

21               *“(C) an explanation, written in a manner cal-*  
22               *culated to be understood by the average plan partici-*  
23               *part, of the importance, for the long-term retirement*  
24               *security of participants and beneficiaries, of a well-*  
25               *balanced and diversified investment portfolio, includ-*

1        *ing a discussion of the risk of holding more than 25*  
2        *percent of a portfolio in the security of any one enti-*  
3        *ty, such as employer securities.*

4        *“(2) The Secretary shall issue guidance and model no-*  
5        *tices which meet the requirements of this subsection.”.*

6                *(3) DEFINITION OF APPLICABLE INDIVIDUAL AC-*  
7        *COUNT PLAN.—Section 3 of such Act (29 U.S.C. 1002)*  
8        *is amended by adding at the end the following new*  
9        *paragraph:*

10        *“(42)(A) The term ‘applicable individual account*  
11        *plan’ means any individual account plan, except that such*  
12        *term does not include an employee stock ownership plan*  
13        *(within the meaning of section 4975(e)(7) of the Internal*  
14        *Revenue Code of 1986) unless there are any contributions*  
15        *to such plan (or earnings thereunder) held within such plan*  
16        *that are subject to subsection (k)(3) or (m)(2) of section 401*  
17        *of the Internal Revenue Code of 1986. Such term shall not*  
18        *include a one-participant retirement plan.*

19        *“(B) The term ‘one-participant retirement plan’*  
20        *means a pension plan with respect to which the following*  
21        *requirements are met:*

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

23                        *“(I) the plan covered only one individual*  
24                        *(or the individual and the individual’s spouse)*



1           *and the individual owned 100 percent of the*  
2           *plan sponsor (whether or not incorporated), or*

3           *“(II) the plan covered only one or more*  
4           *partners (or partners and their spouses) in the*  
5           *plan sponsor;*

6           *“(ii) the plan meets the minimum coverage re-*  
7           *quirements of section 410(b) of the Internal Revenue*  
8           *Code of 1986 (as in effect on the date of the enactment*  
9           *of this paragraph) without being combined with any*  
10          *other plan of the business that covers the employees of*  
11          *the business;*

12          *“(iii) the plan does not provide benefits to any-*  
13          *one except the individual (and the individual’s*  
14          *spouse) or the partners (and their spouses);*

15          *“(iv) the plan does not cover a business that is*  
16          *a member of an affiliated service group, a controlled*  
17          *group of corporations, or a group of businesses under*  
18          *common control; and*

19          *“(v) the plan does not cover a business that*  
20          *leases employees.”.*

21                 (4) *CIVIL PENALTIES FOR FAILURE TO PROVIDE*  
22                 *QUARTERLY BENEFIT STATEMENTS.—Section 502 of*  
23                 *such Act (29 U.S.C. 1132) is amended—*

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

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

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

5           “(8) *The Secretary may assess a civil penalty against*  
6 *any plan administrator of up to \$1,000 a day for each day*  
7 *on which the plan administrator has failed to comply with*  
8 *the requirements of clause (iii) of section 105(a)(1)(A) and*  
9 *has not corrected such failure by providing the required*  
10 *pension benefit statements to the affected participants and*  
11 *beneficiaries.”.*

12           (5) *MODEL STATEMENTS.—The Secretary of*  
13 *Labor shall, not later than 180 days after the date of*  
14 *the enactment of this Act, issue initial guidance and*  
15 *a model benefit statement, written in a manner cal-*  
16 *culated to be understood by the average plan partici-*  
17 *part, that may be used by plan administrators in*  
18 *complying with the requirements of section 105 of the*  
19 *Employee Retirement Income Security Act of 1974.*  
20 *Not later than 75 days after the date of the enactment*  
21 *of this Act, the Secretary shall promulgate interim*  
22 *final rules necessary to carry out the amendments*  
23 *made by this subsection.*

24           (b) *AMENDMENTS TO THE INTERNAL REVENUE CODE*  
25 *OF 1986.—*

1           (1) *PROVISION OF INVESTMENT EDUCATION NO-*  
2           *TICES TO PARTICIPANTS IN CERTAIN PLANS.*—*Section*  
3           *414 of the Internal Revenue Code of 1986 (relating to*  
4           *definitions and special rules) is amended by adding*  
5           *at the end the following:*

6           “(w) *PROVISION OF INVESTMENT EDUCATION NOTICES*  
7           *TO PARTICIPANTS IN CERTAIN PLANS.*—

8           “(1) *IN GENERAL.*—*The plan administrator of*  
9           *an applicable pension plan shall provide to each ap-*  
10           *licable individual an investment education notice*  
11           *described in paragraph (2) at the time of the enroll-*  
12           *ment of the applicable individual in the plan and not*  
13           *less often than annually thereafter.*

14           “(2) *INVESTMENT EDUCATION NOTICE.*—*An in-*  
15           *vestment education notice is described in this para-*  
16           *graph if such notice contains—*

17           “(A) *an explanation, for the long-term re-*  
18           *tirement security of participants and bene-*  
19           *ficiaries, of generally accepted investment prin-*  
20           *ciples, including principles of risk management*  
21           *and diversification, and*

22           “(B) *a discussion of the risk of holding sub-*  
23           *stantial portions of a portfolio in the security of*  
24           *any one entity, such as employer securities.*

1           “(3) *UNDERSTANDABILITY.*—*Each notice re-*  
2           *quired by paragraph (1) shall be written in a manner*  
3           *calculated to be understood by the average plan par-*  
4           *ticipant and shall provide sufficient information (as*  
5           *determined in accordance with guidance provided by*  
6           *the Secretary) to allow recipients to understand such*  
7           *notice.*

8           “(4) *FORM AND MANNER OF NOTICES.*—*The no-*  
9           *tices required by this subsection shall be in writing,*  
10           *except that such notices may be in electronic or other*  
11           *form (or electronically posted on the plan’s website)*  
12           *to the extent that such form is reasonably accessible*  
13           *to the applicable individual.*

14           “(5) *DEFINITIONS.*—*For purposes of this sub-*  
15           *section—*

16                   “(A) *APPLICABLE INDIVIDUAL.*—*The term*  
17           *‘applicable individual’ means—*

18                           “(i) *any participant in the applicable*  
19                           *pension plan,*

20                           “(ii) *any beneficiary who is an alter-*  
21                           *nate payee (within the meaning of section*  
22                           *414(p)(8)) under a qualified domestic rela-*  
23                           *tions order (within the meaning of section*  
24                           *414(p)(1)(A)), and*

1                   “(iii) any beneficiary of a deceased  
2                   participant or alternate payee.

3                   “(B) *APPLICABLE PENSION PLAN.*—The  
4                   term ‘applicable pension plan’ means—

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

7                   “(ii) an eligible deferred compensation  
8                   plan (as defined in section 457(b)) of an el-  
9                   igible employer described in section  
10                  457(e)(1)(A),

11                  which permits any participant to direct the in-  
12                  vestment of some or all of his account in the  
13                  plan or under which the accrued benefit of any  
14                  participant depends in whole or in part on hy-  
15                  pothetical investments directed by the partici-  
16                  pant. Such term shall not include a one-partici-  
17                  pant retirement plan or a plan to which section  
18                  105 of the Employee Retirement Income Security  
19                  Act of 1974 applies.

20                  “(C) *ONE-PARTICIPANT RETIREMENT PLAN*  
21                  *DEFINED.*—The term ‘one-participant retirement  
22                  plan’ means a retirement plan with respect to  
23                  which the following requirements are met:

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

1           “(I) the plan covered only one in-  
2           dividual (or the individual and the in-  
3           dividual’s spouse) and the individual  
4           owned 100 percent of the plan sponsor  
5           (whether or not incorporated), or

6           “(II) the plan covered only one or  
7           more partners (or partners and their  
8           spouses) in the plan sponsor;

9           “(ii) the plan meets the minimum cov-  
10          erage requirements of 410(b) without being  
11          combined with any other plan of the busi-  
12          ness that covers the employees of the busi-  
13          ness;

14          “(iii) the plan does not provide benefits  
15          to anyone except the individual (and the in-  
16          dividual’s spouse) or the partners (and their  
17          spouses);

18          “(iv) the plan does not cover a business  
19          that is a member of an affiliated service  
20          group, a controlled group of corporations, or  
21          a group of businesses under common con-  
22          trol; and

23          “(v) the plan does not cover a business  
24          that leases employees.

1 “(6) *CROSS REFERENCE.*—

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

2 (2) *PENALTY FOR FAILURE TO PROVIDE NO-*  
 3 *TICE.*—Section 6652 of such Code (relating to failure  
 4 to file certain information returns, registration state-  
 5 ments, etc.) is amended by redesignating subsection  
 6 (m) as subsection (n) and by inserting after sub-  
 7 section (l) the following new subsection:

8 “(m) *FAILURE TO PROVIDE INVESTMENT EDUCATION*  
 9 *NOTICES TO PARTICIPANTS IN CERTAIN PLANS.*—In the  
 10 case of each failure to provide a written explanation as re-  
 11 quired by section 414(w) with respect to an applicable indi-  
 12 vidual (as defined in such section), at the time prescribed  
 13 therefor, unless it is shown that such failure is due to rea-  
 14 sonable cause and not to willful neglect, there shall be paid,  
 15 on notice and demand of the Secretary and in the same  
 16 manner as tax, by the person failing to provide such notice,  
 17 an amount equal to \$100 for each such failure, but the total  
 18 amount imposed on such person for all such failures during  
 19 any calendar year shall not exceed \$50,000.”.

20 ***SEC. 102. INAPPLICABILITY OF RELIEF FROM FIDUCIARY LI-***  
 21 ***ABILITY DURING BLACKOUT PERIODS.***

22 (a) *IN GENERAL.*—Section 404(c) of the Employee Re-  
 23 tirement Income Security Act of 1974 (29 U.S.C. 1104(c))

1 *is amended by adding at the end the following new para-*  
2 *graph:*

3       “(4)(A) Paragraph (1)(B) shall not apply in connec-  
4 *tion with the direction or diversification of assets credited*  
5 *to the account of any participant or beneficiary during a*  
6 *blackout period if, by reason of the imposition of such black-*  
7 *out period, the ability of such participant or beneficiary*  
8 *to direct or diversify such assets is suspended, limited, or*  
9 *restricted.*

10       “(B) *If the fiduciary authorizing a blackout period*  
11 *meets the requirements of this title in connection with au-*  
12 *thorizing such blackout period, no person who is a fiduciary*  
13 *shall be liable under this title for any loss occurring during*  
14 *the blackout period as a result of any exercise by the partic-*  
15 *ipant or beneficiary of control over assets in his or her ac-*  
16 *count prior to the blackout period. Matters to be considered*  
17 *in determining whether a fiduciary has met the require-*  
18 *ments of this title include whether such fiduciary—*

19               “(i) *has considered the reasonableness of the ex-*  
20               *pected length of the blackout period,*

21               “(ii) *has provided the notice required under sec-*  
22               *tion 101(i)(2), and*

23               “(iii) *has acted in accordance with the require-*  
24               *ments of subsection (a) in determining whether to*  
25               *enter into the blackout period.*



1       “(C) *If a blackout period arises in connection with a*  
2 *change in the investment options offered under the plan,*  
3 *a participant or beneficiary shall be deemed to have exer-*  
4 *cised control over the assets in his or her account prior to*  
5 *the blackout period, if, after reasonable notice of the change*  
6 *in investment options is given to such participant or bene-*  
7 *ficiary before such blackout period, assets in the account*  
8 *of the participant or beneficiary are transferred—*

9               “(i) *to plan investment options in accordance*  
10 *with the affirmative election of the participant or*  
11 *beneficiary, or*

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

14       “(D) *Any imposition of any limitation or restriction*  
15 *that may govern the frequency of transfers between invest-*  
16 *ment vehicles shall not be treated as the imposition of a*  
17 *blackout period to the extent such limitation or restriction*  
18 *is disclosed to participants or beneficiaries through the*  
19 *summary plan description or materials describing specific*  
20 *investment alternatives under the plan.*

21       “(E) *For purposes of this paragraph, the term ‘black-*  
22 *out period’ has the meaning given such term by section*  
23 *101(i)(7).”.*

24       (b) *GUIDANCE.—The Secretary of Labor shall, on or*  
25 *before December 31, 2004, issue interim final regulations*

1 *providing guidance on how plan sponsors or any other af-*  
2 *ected fiduciaries can satisfy their fiduciary responsibilities*  
3 *during any blackout period during which the ability of a*  
4 *participant or beneficiary to direct the investment of assets*  
5 *in his or her individual account is suspended.*

6 **SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT**  
7 **FOR PENSION PLAN FIDUCIARIES.**

8 *Section 404 of the Employee Retirement Income Secu-*  
9 *rity Act of 1974 (29 U.S.C. 1104) is amended by adding*  
10 *at the end the following new subsection:*

11 *“(e) The Secretary shall establish a program under*  
12 *which information and educational resources shall be made*  
13 *available on an ongoing basis to persons serving as fidu-*  
14 *ciaries under employee pension benefit plans so as to assist*  
15 *such persons in diligently and effectively carrying out their*  
16 *fiduciary duties in accordance with this part. Such pro-*  
17 *gram shall provide information concerning the practices*  
18 *that define prudent investment procedures for plan fidu-*  
19 *ciaries. Information provided under the program shall ad-*  
20 *dress the relevant investment considerations for defined ben-*  
21 *efit and defined contribution plans, including investment*  
22 *in employer securities by such plans. In developing such*  
23 *program, the Secretary shall solicit information from the*  
24 *public, including investment education professionals.”.*

1 **SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED**  
2 **CONTRIBUTION PLANS THAT HOLD EM-**  
3 **PLOYER SECURITIES.**

4 (a) *AMENDMENT TO THE EMPLOYEE RETIREMENT IN-*  
5 *COME SECURITY ACT OF 1974.*—Section 204 of the *Em-*  
6 *ployee Retirement Income Security Act of 1974 (29 U.S.C.*  
7 *1054) is amended—*

8 (1) *by redesignating subsection (j) as subsection*  
9 *(k); and*

10 (2) *by inserting after subsection (i) the following*  
11 *new subsection:*

12 “(j) *DIVERSIFICATION REQUIREMENTS FOR INDI-*  
13 *VIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURI-*  
14 *TIES.*—

15 “(1) *IN GENERAL.*—*An applicable individual ac-*  
16 *count plan shall meet the requirements of paragraphs*  
17 *(2) and (3).*

18 “(2) *EMPLOYEE CONTRIBUTIONS AND ELECTIVE*  
19 *DEFERRALS INVESTED IN EMPLOYER SECURITIES.*—  
20 *In the case of the portion of the account attributable*  
21 *to employee contributions and elective deferrals which*  
22 *is invested in employer securities, a plan meets the*  
23 *requirements of this paragraph if each applicable in-*  
24 *dividual may elect to direct the plan to divest any*  
25 *such securities in the individual’s account and to re-*

1       *invest an equivalent amount in other investment op-*  
2       *tions which meet the requirements of paragraph (4).*

3               “(3) *EMPLOYER CONTRIBUTIONS INVESTED IN*  
4       *EMPLOYER SECURITIES.—*

5               “(A) *IN GENERAL.—In the case of the por-*  
6       *tion of the account attributable to employer con-*  
7       *tributions (other than elective deferrals to which*  
8       *paragraph (2) applies) which is invested in em-*  
9       *ployer securities, a plan meets the requirements*  
10       *of this paragraph if, under the plan—*

11               “(i) *each applicable individual with a*  
12       *benefit based on 3 years of service may elect*  
13       *to direct the plan to divest any such securi-*  
14       *ties in the individual’s account and to rein-*  
15       *vest an equivalent amount in other invest-*  
16       *ment options which meet the requirements*  
17       *of paragraph (4), or*

18               “(ii) *with respect to any employer se-*  
19       *curity allocated to an applicable individ-*  
20       *ual’s account during any plan year, such*  
21       *applicable individual may elect to direct the*  
22       *plan to divest such employer security after*  
23       *a date which is not later than 3 years after*  
24       *the end of such plan year and to reinvest an*  
25       *equivalent amount in other investment op-*

1            *tions which meet the requirements of para-*  
2            *graph (4).*

3            *“(B) APPLICABLE INDIVIDUAL WITH BEN-*  
4            *EFIT BASED ON 3 YEARS OF SERVICE.—For pur-*  
5            *poses of subparagraph (A), an applicable indi-*  
6            *vidual has a benefit based on 3 years of service*  
7            *if such individual would be an applicable indi-*  
8            *vidual if only participants in the plan who have*  
9            *completed at least 3 years of service (as deter-*  
10           *mined under section 203(b)) were referred to in*  
11           *paragraph (5)(B)(i).*

12           *“(4) INVESTMENT OPTIONS.—The requirements*  
13           *of this paragraph are met if—*

14           *“(A) the plan offers not less than 3 invest-*  
15           *ment options, other than employer securities, to*  
16           *which an applicable individual may direct the*  
17           *proceeds from the divestment of employer securi-*  
18           *ties pursuant to this subsection, each of which is*  
19           *diversified and has materially different risk and*  
20           *return characteristics, and*

21           *“(B) the plan permits the applicable indi-*  
22           *vidual to choose from any of the investment op-*  
23           *tions made available under the plan to which*  
24           *such proceeds may be so directed, subject to such*  
25           *restrictions as may be provided by the plan lim-*

1            *iting such choice to periodic, reasonable opportu-*  
2            *nities occurring no less frequently than on a*  
3            *quarterly basis.*

4            “(5) *DEFINITIONS AND RULES.—For purposes of*  
5            *this subsection—*

6                    “(A) *APPLICABLE INDIVIDUAL ACCOUNT*  
7            *PLAN.—The term ‘applicable individual account*  
8            *plan’ means any individual account plan, except*  
9            *that such term does not include an employee*  
10           *stock ownership plan (within the meaning of sec-*  
11           *tion 4975(e)(7) of the Internal Revenue Code of*  
12           *1986) unless there are any contributions to such*  
13           *plan (or earnings thereon) held within such plan*  
14           *that are subject to subsection (k)(3) or (m)(2) of*  
15           *section 401 of the Internal Revenue Code of*  
16           *1986.*

17                    “(B) *APPLICABLE INDIVIDUAL.—The term*  
18            *‘applicable individual’ means—*

19                    “(i) *any participant in the plan, and*

20                    “(ii) *any beneficiary of a participant*  
21            *referred to in clause (i) who has an account*  
22            *under the plan with respect to which the*  
23            *beneficiary is entitled to exercise the rights*  
24            *of the participant.*

1           “(C) *ELECTIVE DEFERRAL.*—The term ‘elec-  
2           tive deferral’ means an employer contribution  
3           described in section 402(g)(3)(A) of the Internal  
4           Revenue Code of 1986 (as in effect on the date  
5           of the enactment of this subsection).

6           “(D) *EMPLOYER SECURITY.*—The term ‘em-  
7           ployer security’ shall have the meaning given  
8           such term by section 407(d)(1) of this Act (as in  
9           effect on the date of the enactment of this sub-  
10          section).

11          “(E) *EMPLOYEE STOCK OWNERSHIP*  
12          *PLAN.*—The term ‘employee stock ownership  
13          plan’ shall have the same meaning given to such  
14          term by section 4975(e)(7) of the Internal Rev-  
15          enue Code of 1986 (as in effect on the date of the  
16          enactment of this subsection).

17          “(F) *ELECTIONS.*—Elections under this sub-  
18          section may be made not less frequently than  
19          quarterly.

20          “(6) *EXCEPTION WHERE THERE IS NO READILY*  
21          *TRADABLE STOCK.*—This subsection shall not apply if  
22          there is no class of stock issued by the employer (or  
23          by a corporation which is an affiliate of the employer  
24          (as defined in section 407(d)(7))) that is readily  
25          tradable on an established securities market (or in

1        *such other circumstances as may be determined joint-*  
 2        *ly by the Secretary of Labor and the Secretary of the*  
 3        *Treasury in regulations).*

4            “(7) *TRANSITION RULE.—*

5                    “(A) *IN GENERAL.—In the case of any indi-*  
 6                    *vidual account plan which, on the first day of*  
 7                    *the first plan year to which this subsection ap-*  
 8                    *plies, holds employer securities of any class that*  
 9                    *were acquired before such date and on which*  
 10                   *there is a restriction on diversification otherwise*  
 11                   *precluded by this subsection, this subsection shall*  
 12                   *apply to such securities of such class held in any*  
 13                   *plan year only with respect to the number of*  
 14                   *such securities equal to the applicable percentage*  
 15                   *of the total number of such securities of such*  
 16                   *class held on such date.*

17                   “(B) *APPLICABLE PERCENTAGE.—For pur-*  
 18                   *poses of subparagraph (A), the applicable per-*  
 19                   *centage shall be as follows:*

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

<i>1st plan year .....</i>	<i>20 percent.</i>
<i>2nd plan year .....</i>	<i>40 percent.</i>
<i>3rd plan year .....</i>	<i>60 percent.</i>
<i>4th plan year .....</i>	<i>80 percent.</i>
<i>5th plan year or thereafter .....</i>	<i>100 percent.</i>

20                   “(C) *ELECTIVE DEFERRALS TREATED AS*  
 21                   *SEPARATE PLAN NOT INDIVIDUAL ACCOUNT*  
 22                   *PLAN.—For purposes of subparagraph (A), the*



1 applicable percentage shall be 100 percent with  
2 respect to—

3 “(i) employee contributions to a plan  
4 under which any portion attributable to  
5 elective deferrals is treated as a separate  
6 plan under section 407(b)(2) as of the date  
7 of the enactment of this paragraph, and

8 “(ii) such elective deferrals.

9 “(D) COORDINATION WITH PRIOR ELEC-  
10 TIONS.—In any case in which a divestiture of  
11 investment in employer securities of any class  
12 held by an employee stock ownership plan prior  
13 to the effective date of this subsection was under-  
14 taken pursuant to other applicable Federal law  
15 prior to such date, the applicable percentage (as  
16 determined without regard to this subparagraph)  
17 in connection with such securities shall be re-  
18 duced to the extent necessary to account for the  
19 amount to which such election applied.

20 “(8) REGULATIONS.—The Secretary of the Treas-  
21 ury shall prescribe regulations under this subsection  
22 in consultation with the Secretary of Labor.”.

23 (b) AMENDMENTS TO THE INTERNAL REVENUE CODE  
24 OF 1986.—

1           (1) *IN GENERAL.*—Section 401(a) of the Internal  
2           Revenue Code of 1986 (relating to requirements for  
3           qualification) is amended by inserting after para-  
4           graph (34) the following new paragraph:

5           “(35) *DIVERSIFICATION REQUIREMENTS FOR DE-*  
6           *FINED CONTRIBUTION PLANS THAT HOLD EMPLOYER*  
7           *SECURITIES.*—

8           “(A) *IN GENERAL.*—An applicable defined  
9           contribution plan shall meet the requirements of  
10          subparagraphs (B) and (C).

11          “(B) *EMPLOYEE CONTRIBUTIONS AND ELEC-*  
12          *TIVE DEFERRALS INVESTED IN EMPLOYER SECUR-*  
13          *ITIES.*—In the case of the portion of the ac-  
14          count attributable to employee contributions and  
15          elective deferrals which is invested in employer  
16          securities, a plan meets the requirements of this  
17          subparagraph if each applicable individual in  
18          such plan may elect to direct the plan to divest  
19          any such securities in the individual’s account  
20          and to reinvest an equivalent amount in other  
21          investment options which meet the requirements  
22          of subparagraph (D).

23          “(C) *EMPLOYER CONTRIBUTIONS INVESTED*  
24          *IN EMPLOYER SECURITIES.*—

1           “(i) *IN GENERAL.*—*In the case of the*  
2           *portion of the account attributable to em-*  
3           *ployer contributions (other than elective de-*  
4           *ferrals to which subparagraph (B) applies)*  
5           *which is invested in employer securities, a*  
6           *plan meets the requirements of this sub-*  
7           *paragraph if, under the plan—*

8                     “(I) *each applicable individual*  
9                     *with a benefit based on 3 years of serv-*  
10                    *ice may elect to direct the plan to di-*  
11                    *vest any such securities in the individ-*  
12                    *ual’s account and to reinvest an equiv-*  
13                    *alent amount in other investment op-*  
14                    *tions which meet the requirements of*  
15                    *subparagraph (D), or*

16                    “(II) *with respect to any em-*  
17                    *ployer security allocated to an applica-*  
18                    *ble individual’s account during any*  
19                    *plan year, such applicable individual*  
20                    *may elect to direct the plan to divest*  
21                    *such employer security after a date*  
22                    *which is not later than 3 years after*  
23                    *the end of such plan year and to rein-*  
24                    *vest an equivalent amount in other in-*

1                    *vestment options which meet the re-*  
2                    *quirements of subparagraph (D).*

3                    *“(ii) APPLICABLE INDIVIDUAL WITH*  
4                    *BENEFIT BASED ON 3 YEARS OF SERVICE.—*  
5                    *For purposes of clause (i), an applicable in-*  
6                    *dividual has a benefit based on 3 years of*  
7                    *service if such individual would be an ap-*  
8                    *plicable individual if only participants in*  
9                    *the plan who have completed at least 3*  
10                   *years of service (as determined under sec-*  
11                   *tion 411(a)) were referred to in subpara-*  
12                   *graph (E)(i)(I).*

13                   *“(D) INVESTMENT OPTIONS.—The require-*  
14                   *ments of this subparagraph are met if—*

15                   *“(i) the plan offers not less than 3 in-*  
16                   *vestment options, other than employer secu-*  
17                   *rities, to which an applicable individual*  
18                   *may direct the proceeds from the divestment*  
19                   *of employer securities pursuant to this*  
20                   *paragraph, each of which is diversified and*  
21                   *has materially different risk and return*  
22                   *characteristics, and*

23                   *“(ii) the plan permits the applicable*  
24                   *individual to choose from any of the invest-*  
25                   *ment options made available under the plan*

1           to which such proceeds may be so directed,  
2           subject to such restrictions as may be pro-  
3           vided by the plan limiting such choice to  
4           periodic, reasonable opportunities occurring  
5           no less frequently than on a quarterly basis.

6           “(E) *DEFINITIONS AND RULES.*—For pur-  
7           poses of this paragraph—

8                   “(i) *APPLICABLE DEFINED CONTRIBU-*  
9                   *TION PLAN.*—The term ‘applicable defined  
10                   contribution plan’ means any defined con-  
11                   tribution plan, except that such term does  
12                   not include an employee stock ownership  
13                   plan (within the meaning of section  
14                   4975(e)(7)) unless there are any contribu-  
15                   tions to such plan (or earnings thereon)  
16                   held within such plan that are subject to  
17                   subsection (k)(3) or (m)(2).

18                   “(ii) *APPLICABLE INDIVIDUAL.*—The  
19                   term ‘applicable individual’ means—

20                           “(I) any participant in the plan,

21                           and

22                           “(II) any beneficiary of a partici-  
23                           pant referred to in clause (i) who has  
24                           an account under the plan with respect

1                   to which the beneficiary is entitled to  
2                   exercise the rights of the participant.

3                   “(iii) *ELECTIVE DEFERRAL.*—The term  
4                   ‘elective deferral’ means an employer con-  
5                   tribution described in section 402(g)(3)(A)  
6                   (as in effect on the date of the enactment of  
7                   this paragraph).

8                   “(iv) *EMPLOYER SECURITY.*—The term  
9                   ‘employer security’ shall have the meaning  
10                  given such term by section 407(d)(1) of the  
11                  Employee Retirement Income Security Act  
12                  of 1974 (as in effect on the date of the en-  
13                  actment of this paragraph).

14                  “(v) *EMPLOYEE STOCK OWNERSHIP*  
15                  *PLAN.*—The term ‘employee stock ownership  
16                  plan’ shall have the same meaning given to  
17                  such term by section 4975(e)(7) of the Inter-  
18                  nal Revenue Code of 1986 (as in effect on  
19                  the date of the enactment of this para-  
20                  graph).

21                  “(vi) *ELECTIONS.*—Elections under  
22                  this paragraph may be made not less fre-  
23                  quently than quarterly.

24                  “(F) *EXCEPTION WHERE THERE IS NO*  
25                  *READILY TRADABLE STOCK.*—This paragraph

1 shall not apply if there is no class of stock issued  
 2 by the employer that is readily tradable on an  
 3 established securities market (or in such other  
 4 circumstances as may be determined jointly by  
 5 the Secretary of the Treasury and the Secretary  
 6 of Labor in regulations).

7 “(G) *TRANSITION RULE.*—

8 “(i) *IN GENERAL.*—In the case of any  
 9 defined contribution plan which, on the ef-  
 10 fective date of this subsection, holds em-  
 11 ployer securities of any class that were ac-  
 12 quired before such date and on which there  
 13 is a restriction on diversification otherwise  
 14 precluded by this paragraph, this para-  
 15 graph shall apply to such securities of such  
 16 class held in any plan year only with re-  
 17 spect to the number of such securities equal  
 18 to the applicable percentage of the total  
 19 number of such securities of such class held  
 20 on such date.

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

<b>“Plan years for which provi- sions are effective:</b>	<b>Applicable percentage:</b>
1st plan year .....	20 percent.
2nd plan year .....	40 percent.
3rd plan year .....	60 percent.

**“Plan years for which provisions are effective:      Applicable percentage:**

4th plan year .....	80 percent.
5th plan year or thereafter .....	100 percent.

1                                   “(iii) *ELECTIVE DEFERRALS TREATED*  
 2                                   *AS SEPARATE PLAN NOT INDIVIDUAL AC-*  
 3                                   *COUNT PLAN.—For purposes of clause (i),*  
 4                                   *the applicable percentage shall be 100 per-*  
 5                                   *cent with respect to—*

6                                   “(I) *employee contributions to a*  
 7                                   *plan under which any portion attrib-*  
 8                                   *utable to elective deferrals is treated as*  
 9                                   *a separate plan under section*  
 10                                   *407(b)(2) of the Employee Retirement*  
 11                                   *Income Security Act of 1974 as of the*  
 12                                   *date of the enactment of this para-*  
 13                                   *graph, and*

14                                   “(II) *such elective deferrals.*

15                                   “(iv) *CONTRIBUTIONS HELD WITHIN*  
 16                                   *AN ESOP.—In the case of contributions*  
 17                                   *(other than elective deferrals and employee*  
 18                                   *contributions) held within an employee*  
 19                                   *stock ownership plan, in the case of the 1st*  
 20                                   *and 2nd plan years referred to in the table*  
 21                                   *in clause (ii), the applicable percentage*  
 22                                   *shall be the greater of the amount deter-*  
 23                                   *mined under clause (ii) or the percentage*



1           *determined under paragraph (28) (deter-*  
2           *mined as if paragraph (28) applied to a*  
3           *plan described in this paragraph).*

4           “(v) *COORDINATION WITH PRIOR ELEC-*  
5           *TIONS UNDER PARAGRAPH (28).—In any*  
6           *case in which a divestiture of investment in*  
7           *employer securities of any class held by an*  
8           *employee stock ownership plan prior to the*  
9           *effective date of this paragraph was under-*  
10          *taken pursuant to an election under para-*  
11          *graph (28) prior to such date, the applica-*  
12          *ble percentage (as determined without re-*  
13          *gard to this clause) in connection with such*  
14          *securities shall be reduced to the extent nec-*  
15          *essary to account for the amount to which*  
16          *such election applied.*

17          “(H) *REGULATIONS.—The Secretary shall*  
18          *prescribe regulations under this paragraph in*  
19          *consultation with the Secretary of Labor.”.*

20          (2) *CONFORMING AMENDMENTS.—*

21                 (A) *Section 401(a)(28) of such Code is*  
22                 *amended by adding at the end the following new*  
23                 *subparagraph:*

1           “(D) *APPLICATION.*—*This paragraph shall*  
2           *not apply to a plan to which paragraph (35) ap-*  
3           *plies.*”.

4           (B) *Section 409(h)(7) of such Code is*  
5           *amended by inserting before the period at the*  
6           *end “or subparagraph (B) or (C) of section*  
7           *401(a)(35)”.*

8           (C) *Section 4980(c)(3)(A) of such Code is*  
9           *amended by striking “if—” and all that follows*  
10          *and inserting “if the requirements of subpara-*  
11          *graphs (B), (C), and (D) are met.”.*

12          (c) *EFFECTIVE DATE.*—

13           (1) *IN GENERAL.*—*Except as provided in para-*  
14          *graph (2) and section 108, the amendments made by*  
15          *this section shall apply to plan years beginning after*  
16          *December 31, 2003, and with respect to employer se-*  
17          *curities allocated to accounts before, on, or after the*  
18          *date of the enactment of this Act.*

19           (2) *EXCEPTION.*—*The amendments made by this*  
20          *section shall not apply to employer securities held by*  
21          *an employee stock ownership plan which are acquired*  
22          *before January 1, 1987.*

1 **SEC. 105. PROHIBITED TRANSACTION EXEMPTION FOR THE**  
2 **PROVISION OF INVESTMENT ADVICE.**

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

5 (1) *EXEMPTION FROM PROHIBITED TRANS-*  
6 *ACTIONS.*—*Section 408(b) of the Employee Retirement*  
7 *Income Security Act of 1974 (29 U.S.C. 1108(b)) is*  
8 *amended by adding at the end the following new*  
9 *paragraph:*

10 “(14)(A) *Any transaction described in subpara-*  
11 *graph (B) in connection with the provision of invest-*  
12 *ment advice described in section 3(21)(A)(ii), in any*  
13 *case in which—*

14 “(i) *the investment of assets of the plan is*  
15 *subject to the direction of plan participants or*  
16 *beneficiaries,*

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

23 “(iii) *the requirements of subsection (g) are*  
24 *met in connection with the provision of the ad-*  
25 *vice.*

1           “(B) *The transactions described in this subpara-*  
2 *graph are the following:*

3                   “(i) *the provision of the advice to the plan,*  
4 *participant, or beneficiary;*

5                   “(ii) *the sale, acquisition, or holding of a*  
6 *security or other property (including any lend-*  
7 *ing of money or other extension of credit associ-*  
8 *ated with the sale, acquisition, or holding of a*  
9 *security or other property) pursuant to the ad-*  
10 *vice; and*

11                   “(iii) *the direct or indirect receipt of fees or*  
12 *other compensation by the fiduciary adviser or*  
13 *an affiliate thereof (or any employee, agent, or*  
14 *registered representative of the fiduciary adviser*  
15 *or affiliate) in connection with the provision of*  
16 *the advice or in connection with a sale, acquisi-*  
17 *tion, or holding of a security or other property*  
18 *pursuant to the advice.”.*

19           (2) *REQUIREMENTS.—Section 408 of such Act is*  
20 *amended further by adding at the end the following*  
21 *new subsection:*

22                   “(g) *REQUIREMENTS RELATING TO PROVISION OF IN-*  
23 *VESTMENT ADVICE BY FIDUCIARY ADVISERS.—*

24                   “(1) *IN GENERAL.—The requirements of this sub-*  
25 *section are met in connection with the provision of*

1 *investment advice referred to in section 3(21)(A)(ii),*  
2 *provided to an employee benefit plan or a participant*  
3 *or beneficiary of an employee benefit plan by a fidu-*  
4 *ciary adviser with respect to the plan in connection*  
5 *with any sale, acquisition, or holding of a security or*  
6 *other property for purposes of investment of amounts*  
7 *held by the plan, if—*

8 *“(A) in the case of the initial provision of*  
9 *the advice with regard to the security or other*  
10 *property by the fiduciary adviser to the plan,*  
11 *participant, or beneficiary, the fiduciary adviser*  
12 *provides to the recipient of the advice, at a time*  
13 *reasonably contemporaneous with the initial pro-*  
14 *vision of the advice, a written notification*  
15 *(which may consist of notification by means of*  
16 *electronic communication)—*

17 *“(i) of all fees or other compensation*  
18 *relating to the advice that the fiduciary ad-*  
19 *viser or any affiliate thereof is to receive*  
20 *(including compensation provided by any*  
21 *third party) in connection with the provi-*  
22 *sion of the advice or in connection with the*  
23 *sale, acquisition, or holding of the security*  
24 *or other property,*

1           “(ii) of any material affiliation or  
2           contractual relationship of the fiduciary ad-  
3           viser or affiliates thereof in the security or  
4           other property,

5           “(iii) of any limitation placed on the  
6           scope of the investment advice to be pro-  
7           vided by the fiduciary adviser with respect  
8           to any such sale, acquisition, or holding of  
9           a security or other property,

10          “(iv) of the types of services provided  
11          by the fiduciary adviser in connection with  
12          the provision of investment advice by the fi-  
13          duciary adviser,

14          “(v) that the adviser is acting as a fi-  
15          duciary of the plan in connection with the  
16          provision of the advice, and

17          “(vi) that a recipient of the advice  
18          may separately arrange for the provision of  
19          advice by another adviser, that could have  
20          no material affiliation with and receive no  
21          fees or other compensation in connection  
22          with the security or other property,

23          “(B) the fiduciary adviser provides appro-  
24          priate disclosure, in connection with the sale, ac-  
25          quisition, or holding of the security or other

1           *property, in accordance with all applicable secu-*  
2           *rities laws,*

3           “(C) *the sale, acquisition, or holding occurs*  
4           *solely at the direction of the recipient of the ad-*  
5           *vice,*

6           “(D) *the compensation received by the fidu-*  
7           *ciary adviser and affiliates thereof in connection*  
8           *with the sale, acquisition, or holding of the secu-*  
9           *rity or other property is reasonable, and*

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

14          “(2) *STANDARDS FOR PRESENTATION OF INFOR-*  
15          *MATION.—*

16                 “(A) *IN GENERAL.—The notification re-*  
17                 *quired to be provided to participants and bene-*  
18                 *ficiaries under paragraph (1)(A) shall be written*  
19                 *in a clear and conspicuous manner and in a*  
20                 *manner calculated to be understood by the aver-*  
21                 *age plan participant and shall be sufficiently ac-*  
22                 *curate and comprehensive to reasonably apprise*  
23                 *such participants and beneficiaries of the infor-*  
24                 *mation required to be provided in the notifica-*  
25                 *tion.*

1           “(B) *MODEL FORM FOR DISCLOSURE OF*  
2           *FEES AND OTHER COMPENSATION.—The Sec-*  
3           *retary shall issue a model form for the disclosure*  
4           *of fees and other compensation required in para-*  
5           *graph (1)(A)(i) which meets the requirements of*  
6           *subparagraph (A).*

7           “(3) *EXEMPTION CONDITIONED ON MAKING RE-*  
8           *QUIRED INFORMATION AVAILABLE ANNUALLY, ON RE-*  
9           *QUEST, AND IN THE EVENT OF MATERIAL CHANGE.—*  
10          *The requirements of paragraph (1)(A) shall be deemed*  
11          *not to have been met in connection with the initial*  
12          *or any subsequent provision of advice described in*  
13          *paragraph (1) to the plan, participant, or beneficiary*  
14          *if, at any time during the provision of advisory serv-*  
15          *ices to the plan, participant, or beneficiary, the fidu-*  
16          *ciary adviser fails to maintain the information de-*  
17          *scribed in clauses (i) through (iv) of subparagraph*  
18          *(A) in currently accurate form and in the manner de-*  
19          *scribed in paragraph (2) or fails—*

20                 “(A) *to provide, without charge, such cur-*  
21                 *rently accurate information to the recipient of*  
22                 *the advice no less than annually,*

23                 “(B) *to make such currently accurate infor-*  
24                 *mation available, upon request and without*  
25                 *charge, to the recipient of the advice, or*



1           “(C) *in the event of a material change to*  
2           *the information described in clauses (i) through*  
3           *(iv) of paragraph (1)(A), to provide, without*  
4           *charge, such currently accurate information to*  
5           *the recipient of the advice at a time reasonably*  
6           *contemporaneous to the material change in in-*  
7           *formation.*

8           “(4) *MAINTENANCE FOR 6 YEARS OF EVIDENCE*  
9           *OF COMPLIANCE.—A fiduciary adviser referred to in*  
10           *paragraph (1) who has provided advice referred to in*  
11           *such paragraph shall, for a period of not less than 6*  
12           *years after the provision of the advice, maintain any*  
13           *records necessary for determining whether the require-*  
14           *ments of the preceding provisions of this subsection*  
15           *and of subsection (b)(14) have been met. A trans-*  
16           *action prohibited under section 406 shall not be con-*  
17           *sidered to have occurred solely because the records are*  
18           *lost or destroyed prior to the end of the 6-year period*  
19           *due to circumstances beyond the control of the fidu-*  
20           *ciary adviser.*

21           “(5) *EXEMPTION FOR PLAN SPONSOR AND CER-*  
22           *TAIN OTHER FIDUCIARIES.—*

23           “(A) *IN GENERAL.—Subject to subpara-*  
24           *graph (B), a plan sponsor or other person who*  
25           *is a fiduciary (other than a fiduciary adviser)*

1 shall not be treated as failing to meet the re-  
2 quirements of this part solely by reason of the  
3 provision of investment advice referred to in sec-  
4 tion 3(21)(A)(ii) (or solely by reason of con-  
5 tracting for or otherwise arranging for the provi-  
6 sion of the advice), if—

7 “(i) the advice is provided by a fidu-  
8 ciary adviser pursuant to an arrangement  
9 between the plan sponsor or other fiduciary  
10 and the fiduciary adviser for the provision  
11 by the fiduciary adviser of investment ad-  
12 vice referred to in such section,

13 “(ii) the terms of the arrangement re-  
14 quire compliance by the fiduciary adviser  
15 with the requirements of this subsection,  
16 and

17 “(iii) the terms of the arrangement in-  
18 clude a written acknowledgment by the fidu-  
19 ciary adviser that the fiduciary adviser is a  
20 fiduciary of the plan with respect to the  
21 provision of the advice.

22 “(B) CONTINUED DUTY OF PRUDENT SELEC-  
23 TION OF ADVISER AND PERIODIC REVIEW.—Noth-  
24 ing in subparagraph (A) shall be construed to  
25 exempt a plan sponsor or other person who is a

1       *fiduciary from any requirement of this part for*  
2       *the prudent selection and periodic review of a fi-*  
3       *duciary adviser with whom the plan sponsor or*  
4       *other person enters into an arrangement for the*  
5       *provision of advice referred to in section*  
6       *3(21)(A)(ii). The plan sponsor or other person*  
7       *who is a fiduciary has no duty under this part*  
8       *to monitor the specific investment advice given*  
9       *by the fiduciary adviser to any particular re-*  
10       *cipient of the advice.*

11               “(C) *AVAILABILITY OF PLAN ASSETS FOR*  
12       *PAYMENT FOR ADVICE.—Nothing in this part*  
13       *shall be construed to preclude the use of plan as-*  
14       *sets to pay for reasonable expenses in providing*  
15       *investment advice referred to in section*  
16       *3(21)(A)(ii).*

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

19               “(A) *FIDUCIARY ADVISER.—The term ‘fidu-*  
20       *ciary adviser’ means, with respect to a plan, a*  
21       *person who is a fiduciary of the plan by reason*  
22       *of the provision of investment advice by the per-*  
23       *son to the plan or to a participant or beneficiary*  
24       *and who is—*

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

7           “(ii) a bank or similar financial insti-  
8           tution referred to in section 408(b)(4) or a  
9           savings association (as defined in section  
10          3(b)(1) of the Federal Deposit Insurance Act  
11          (12 U.S.C. 1813(b)(1))), but only if the ad-  
12          vice is provided through a trust department  
13          of the bank or similar financial institution  
14          or savings association which is subject to  
15          periodic examination and review by Federal  
16          or State banking authorities,

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

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

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

24          “(vi) an employee, agent, or registered  
25          representative of a person described in any

1           of clauses (i) through (v) who satisfies the  
2           requirements of applicable insurance, bank-  
3           ing, and securities laws relating to the pro-  
4           vision of the advice.

5           “(B) *AFFILIATE*.—The term ‘affiliate’ of  
6           another entity means an affiliated person of the  
7           entity (as defined in section 2(a)(3) of the In-  
8           vestment Company Act of 1940 (15 U.S.C. 80a-  
9           2(a)(3))).

10          “(C) *REGISTERED REPRESENTATIVE*.—The  
11          term ‘registered representative’ of another entity  
12          means a person described in section 3(a)(18) of  
13          the Securities Exchange Act of 1934 (15 U.S.C.  
14          78c(a)(18)) (substituting the entity for the broker  
15          or dealer referred to in such section) or a person  
16          described in section 202(a)(17) of the Investment  
17          Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17))  
18          (substituting the entity for the investment ad-  
19          viser referred to in such section).”.

20          (b) *AMENDMENTS TO THE INTERNAL REVENUE CODE*  
21 *OF 1986*.—

22          (1) *EXEMPTION FROM PROHIBITED TRANS-*  
23 *ACTIONS*.—Subsection (d) of section 4975 of the Inter-  
24 *nal Revenue Code of 1986* (relating to exemptions  
25 *from tax on prohibited transactions*) is amended—

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

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

5           (C) by adding at the end the following new  
6           paragraph:

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

11           “(A) the investment of assets of the plan is  
12           subject to the direction of plan participants or  
13           beneficiaries,

14           “(B) the advice is provided to the plan or  
15           a participant or beneficiary of the plan by a fi-  
16           duciary adviser in connection with any sale, ac-  
17           quisition, or holding of a security or other prop-  
18           erty for purposes of investment of plan assets,  
19           and

20           “(C) the requirements of subsection (f)(7)(B)  
21           are met in connection with the provision of the  
22           advice.”.

23           (2) *ALLOWED TRANSACTIONS AND REQUIRE-*  
24           *MENTS.—Subsection (f) of such section 4975 (relating*

1 *to other definitions and special rules) is amended by*  
2 *adding at the end the following new paragraph:*

3 *“(7) PROVISIONS RELATING TO INVESTMENT AD-*  
4 *VICE PROVIDED BY FIDUCIARY ADVISERS.—*

5 *“(A) TRANSACTIONS ALLOWABLE IN CON-*  
6 *NECTION WITH INVESTMENT ADVICE PROVIDED*  
7 *BY FIDUCIARY ADVISERS.—The transactions re-*  
8 *ferred to in subsection (d)(16), in connection*  
9 *with the provision of investment advice by a fi-*  
10 *ducuary adviser, are the following:*

11 *“(i) the provision of the advice to the*  
12 *plan, participant, or beneficiary;*

13 *“(ii) the sale, acquisition, or holding of*  
14 *a security or other property (including any*  
15 *lending of money or other extension of cred-*  
16 *it associated with the sale, acquisition, or*  
17 *holding of a security or other property)*  
18 *pursuant to the advice; and*

19 *“(iii) the direct or indirect receipt of*  
20 *fees or other compensation by the fiduciary*  
21 *adviser or an affiliate thereof (or any em-*  
22 *ployee, agent, or registered representative of*  
23 *the fiduciary adviser or affiliate) in connec-*  
24 *tion with the provision of the advice or in*  
25 *connection with a sale, acquisition, or hold-*

1            *ing of a security or other property pursuant*  
2            *to the advice.*

3            “(B) *REQUIREMENTS RELATING TO PROVI-*  
4            *SION OF INVESTMENT ADVICE BY FIDUCIARY AD-*  
5            *VISERS.—The requirements of this subparagraph*  
6            *(referred to in subsection (d)(16)(C)) are met in*  
7            *connection with the provision of investment ad-*  
8            *vice referred to in subsection (e)(3)(B), provided*  
9            *to a plan or a participant or beneficiary of a*  
10           *plan by a fiduciary adviser with respect to the*  
11           *plan in connection with any sale, acquisition, or*  
12           *holding of a security or other property for pur-*  
13           *poses of investment of amounts held by the plan,*  
14           *if—*

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



1           “(I) of all fees or other compensa-  
2           tion relating to the advice that the fi-  
3           diciary adviser or any affiliate thereof  
4           is to receive (including compensation  
5           provided by any third party) in con-  
6           nection with the provision of the advice  
7           or in connection with the sale, acquisi-  
8           tion, or holding of the security or other  
9           property,

10           “(II) of any material affiliation  
11           or contractual relationship of the fidu-  
12           ciary adviser or affiliates thereof in the  
13           security or other property,

14           “(III) of any limitation placed on  
15           the scope of the investment advice to be  
16           provided by the fiduciary adviser with  
17           respect to any such sale, acquisition, or  
18           holding of a security or other property,

19           “(IV) of the types of services pro-  
20           vided by the fiduciary adviser in con-  
21           nection with the provision of invest-  
22           ment advice by the fiduciary adviser,

23           “(V) that the adviser is acting as  
24           a fiduciary of the plan in connection  
25           with the provision of the advice, and

1                   “(VI) that a recipient of the ad-  
2                   vice may separately arrange for the  
3                   provision of advice by another adviser,  
4                   that could have no material affiliation  
5                   with and receive no fees or other com-  
6                   pensation in connection with the secu-  
7                   rity or other property,

8                   “(ii) the fiduciary adviser provides ap-  
9                   propriate disclosure, in connection with the  
10                  sale, acquisition, or holding of the security  
11                  or other property, in accordance with all  
12                  applicable securities laws,

13                  “(iii) the sale, acquisition, or holding  
14                  occurs solely at the direction of the recipient  
15                  of the advice,

16                  “(iv) the compensation received by the  
17                  fiduciary adviser and affiliates thereof in  
18                  connection with the sale, acquisition, or  
19                  holding of the security or other property is  
20                  reasonable, and

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

1           “(C) *STANDARDS FOR PRESENTATION OF IN-*  
2           *FORMATION.—The notification required to be*  
3           *provided to participants and beneficiaries under*  
4           *subparagraph (B)(i) shall be written in a clear*  
5           *and conspicuous manner and in a manner cal-*  
6           *culated to be understood by the average plan*  
7           *participant and shall be sufficiently accurate*  
8           *and comprehensive to reasonably apprise such*  
9           *participants and beneficiaries of the information*  
10          *required to be provided in the notification.*

11          “(D) *EXEMPTION CONDITIONED ON MAKING*  
12          *REQUIRED INFORMATION AVAILABLE ANNUALLY,*  
13          *ON REQUEST, AND IN THE EVENT OF MATERIAL*  
14          *CHANGE.—The requirements of subparagraph*  
15          *(B)(i) shall be deemed not to have been met in*  
16          *connection with the initial or any subsequent*  
17          *provision of advice described in subparagraph*  
18          *(B) to the plan, participant, or beneficiary if, at*  
19          *any time during the provision of advisory serv-*  
20          *ices to the plan, participant, or beneficiary, the*  
21          *fiduciary adviser fails to maintain the informa-*  
22          *tion described in subclauses (I) through (IV) of*  
23          *subparagraph (B)(i) in currently accurate form*  
24          *and in the manner required by subparagraph*  
25          *(C), or fails—*

1           “(i) to provide, without charge, such  
2           currently accurate information to the re-  
3           cipient of the advice no less than annually,

4           “(ii) to make such currently accurate  
5           information available, upon request and  
6           without charge, to the recipient of the ad-  
7           vice, or

8           “(iii) in the event of a material change  
9           to the information described in subclauses  
10          (I) through (IV) of subparagraph (B)(i), to  
11          provide, without charge, such currently ac-  
12          curate information to the recipient of the  
13          advice at a time reasonably contempora-  
14          neous to the material change in informa-  
15          tion.

16          “(E) MAINTENANCE FOR 6 YEARS OF EVI-  
17          DENCE OF COMPLIANCE.—A fiduciary adviser re-  
18          ferred to in subparagraph (B) who has provided  
19          advice referred to in such subparagraph shall, for  
20          a period of not less than 6 years after the provi-  
21          sion of the advice, maintain any records nec-  
22          essary for determining whether the requirements  
23          of the preceding provisions of this paragraph  
24          and of subsection (d)(16) have been met. A trans-  
25          action prohibited under subsection (c)(1) shall

1           *not be considered to have occurred solely because*  
2           *the records are lost or destroyed prior to the end*  
3           *of the 6-year period due to circumstances beyond*  
4           *the control of the fiduciary adviser.*

5           “(F) *EXEMPTION FOR PLAN SPONSOR AND*  
6           *CERTAIN OTHER FIDUCIARIES.—A plan sponsor*  
7           *or other person who is a fiduciary (other than a*  
8           *fiduciary adviser) shall not be treated as failing*  
9           *to meet the requirements of this section solely by*  
10           *reason of the provision of investment advice re-*  
11           *ferred to in subsection (e)(3)(B) (or solely by*  
12           *reason of contracting for or otherwise arranging*  
13           *for the provision of the advice), if—*

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

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

23                   “(iii) *the terms of the arrangement in-*  
24                   *clude a written acknowledgment by the fidu-*  
25                   *ciary adviser that the fiduciary adviser is a*

1           *fiduciary of the plan with respect to the*  
2           *provision of the advice, and*

3           “(iv) *the requirements of part 4 of sub-*  
4           *title B of title I of the Employee Retirement*  
5           *Income Security Act of 1974 are met in*  
6           *connection with the provision of such ad-*  
7           *vice.*

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

10           “(i) *FIDUCIARY ADVISER.—The term*  
11           *‘fiduciary adviser’ means, with respect to a*  
12           *plan, a person who is a fiduciary of the*  
13           *plan by reason of the provision of invest-*  
14           *ment advice by the person to the plan or to*  
15           *a participant or beneficiary and who is—*

16           “(I) *registered as an investment*  
17           *adviser under the Investment Advisers*  
18           *Act of 1940 (15 U.S.C. 80b–1 et seq.)*  
19           *or under the laws of the State in which*  
20           *the fiduciary maintains its principal*  
21           *office and place of business,*

22           “(II) *a bank or similar financial*  
23           *institution referred to in subsection*  
24           *(d)(4) or a savings association (as de-*  
25           *finied in section 3(b)(1) of the Federal*

1           *Deposit Insurance Act (12 U.S.C.*  
2           *1813(b)(1))), but only if the advice is*  
3           *provided through a trust department of*  
4           *the bank or similar financial institu-*  
5           *tion or savings association which is*  
6           *subject to periodic examination and re-*  
7           *view by Federal or State banking au-*  
8           *thorities,*

9           *“(III) an insurance company*  
10          *qualified to do business under the laws*  
11          *of a State,*

12          *“(IV) a person registered as a*  
13          *broker or dealer under the Securities*  
14          *Exchange Act of 1934 (15 U.S.C. 78a*  
15          *et seq.),*

16          *“(V) an affiliate of a person de-*  
17          *scribed in any of subclauses (I)*  
18          *through (IV), or*

19          *“(VI) an employee, agent, or reg-*  
20          *istered representative of a person de-*  
21          *scribed in any of subclauses (I)*  
22          *through (V) who satisfies the require-*  
23          *ments of applicable insurance, bank-*  
24          *ing, and securities laws relating to the*  
25          *provision of the advice.*

1           “(ii) *AFFILIATE*.—The term ‘affiliate’  
 2           of another entity means an affiliated person  
 3           of the entity (as defined in section 2(a)(3)  
 4           of the Investment Company Act of 1940 (15  
 5           U.S.C. 80a–2(a)(3))).

6           “(iii) *REGISTERED REPRESENTA-*  
 7           *TIVE*.—The term ‘registered representative’  
 8           of another entity means a person described  
 9           in section 3(a)(18) of the Securities Ex-  
 10          change Act of 1934 (15 U.S.C. 78c(a)(18))  
 11          (substituting the entity for the broker or  
 12          dealer referred to in such section) or a per-  
 13          son described in section 202(a)(17) of the  
 14          Investment Advisers Act of 1940 (15 U.S.C.  
 15          80b–2(a)(17)) (substituting the entity for  
 16          the investment adviser referred to in such  
 17          section).”.

18 **SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT SAV-**  
 19 **INGS OF PARTICIPANTS AND BENEFICIARIES**  
 20 **BY REQUIRING CONSULTANTS TO ADVISE**  
 21 **PLAN FIDUCIARIES OF INDIVIDUAL ACCOUNT**  
 22 **PLANS.**

23           (a) *STUDY*.—As soon as practicable after the date of  
 24 the enactment of this Act, the Secretary of Labor shall un-  
 25 dertake a study of the costs and benefits to participants and



1 beneficiaries of requiring independent consultants to advise  
2 plan fiduciaries in connection with individual account  
3 plans. In conducting such study, the Secretary shall con-  
4 sider—

5           (1) the benefits to plan participants and bene-  
6           ficiaries of engaging independent advisers to provide  
7           investment and other advice regarding the assets of  
8           the plan to persons who have fiduciary duties with re-  
9           spect to the management or disposition of such assets,

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

12           (3) the availability of assistance to fiduciaries  
13           from appropriate Federal agencies,

14           (4) the availability of qualified independent con-  
15           sultants to serve the needs of individual account plan  
16           fiduciaries in the United States,

17           (5) the impact of the additional fiduciary duty  
18           of an independent advisor on the strict fiduciary obli-  
19           gations of plan fiduciaries,

20           (6) the impact of new requirements (consulting  
21           fees, reporting requirements, and new plan duties to  
22           prudently identify and contract with qualified inde-  
23           pendent consultants) on the availability of individual  
24           account plans, and

1           (7) *the impact of a new requirement on the plan*  
2           *administration costs per participant for small and*  
3           *mid-size employers and the pension plans they spon-*  
4           *sor.*

5           (b) *REPORT.—Not later than 1 year after the date of*  
6           *the enactment of this Act, the Secretary of Labor shall re-*  
7           *port the results of the study undertaken pursuant to this*  
8           *section, together with any recommendations for legislative*  
9           *changes, to the Committee on Education and the Workforce*  
10           *of the House of Representatives and the Committee on*  
11           *Health, Education, Labor, and Pensions of the Senate.*

12           **SEC. 107. TREATMENT OF QUALIFIED RETIREMENT PLAN-**  
13                            **NING SERVICES.**

14           (a) *IN GENERAL.—Subsection (m) of section 132 of the*  
15           *Internal Revenue Code of 1986 (defining qualified retire-*  
16           *ment services) is amended by adding at the end the fol-*  
17           *lowing new paragraph:*

18                            “(4) *NO CONSTRUCTIVE RECEIPT.—No amount*  
19           *shall be included in the gross income of any employee*  
20           *solely because the employee may choose between any*  
21           *qualified retirement planning services provided by a*  
22           *qualified investment advisor and compensation which*  
23           *would otherwise be includible in the gross income of*  
24           *such employee. The preceding sentence shall apply to*  
25           *highly compensated employees only if the choice de-*

1       scribed in such sentence is available on substantially  
2       the same terms to each member of the group of em-  
3       ployees normally provided education and information  
4       regarding the employer's qualified employer plan.”.

5       (b) *CONFORMING AMENDMENTS.*—

6             (1) Section 403(b)(3)(B) of such Code is amend-  
7       ed by inserting “132(m)(4),” after “132(f)(4),”.

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

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

12       (c) *EFFECTIVE DATE.*—The amendment made by this  
13       section shall apply to taxable years beginning after Decem-  
14       ber 31, 2003.

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

16       (a) *IN GENERAL.*—Except as otherwise provided in the  
17       preceding provisions of this title or in subsections (c) and  
18       (d), the amendments made by this Act shall apply with re-  
19       spect to plan years beginning on or after the general effec-  
20       tive date.

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

24       (c) *SPECIAL RULE FOR COLLECTIVELY BARGAINED*  
25       *PLANS.*—In the case of a plan maintained pursuant to 1

1 *or more collective bargaining agreements between employee*  
2 *representatives and 1 or more employers ratified on or be-*  
3 *fore the date of the enactment of this Act, subsection (a)*  
4 *shall be applied to benefits pursuant to, and individuals*  
5 *covered by, any such agreement by substituting for “the gen-*  
6 *eral effective date” the date of the commencement of the first*  
7 *plan year beginning on or after the earlier of—*

8 *(1) the later of—*

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

11 *(B) the date on which the last of such collec-*  
12 *tive bargaining agreements terminates (deter-*  
13 *mined without regard to any extension thereof*  
14 *after the date of the enactment of this Act), or*

15 *(2) the date which is 2 years after the general ef-*  
16 *fective 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) of*  
20 *the Employee Retirement Income Security Act of 1974 or*  
21 *section 4975(c)(3)(B) of the Internal Revenue Code of 1986*  
22 *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 U.S.C.  
7 412 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 769(c)  
14 of the Retirement Protection Act of 1994 is amended to read  
15 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) of  
19 the Internal Revenue Code of 1986 and section  
20 302(d)(9)(A) of the Employee Retirement Income  
21 Security Act of 1974, the funded current liability  
22 percentage for any plan year shall be treated as  
23 not less than 90 percent.

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

1           302(e) of the *Employee Retirement Income Secu-*  
2           *rity 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 unfunded*  
6           *vested benefits under section 4006(a)(3)(E)(iii)*  
7           *of the Employee Retirement Income Security Act*  
8           *of 1974, the mortality table shall be the mor-*  
9           *tality table used by the plan.”.*

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

13           ***SEC. 202. REPORTING SIMPLIFICATION.***

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

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

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

1        *ment plan with respect to which the following require-*  
2        *ments 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 not*  
8                        *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 spouses);*

20                *(D) the plan does not cover a business that*  
21                *is a member of an affiliated service group, a con-*  
22                *trolled group of corporations, or a group of busi-*  
23                *nesses under common control; and*

24                *(E) the plan does not cover a business that*  
25                *leases employees.*

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

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

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

17 **SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**  
18 **ANCE RESOLUTION SYSTEM.**

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

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



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

4           (3) *extending the duration of the self-correction*  
5           *period under the Self-Correction Program for signifi-*  
6           *cant compliance failures;*

7           (4) *expanding the availability to correct insig-*  
8           *nificant compliance failures under the Self-Correction*  
9           *Program during audit; and*

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

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

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

24          (a) **NONDISCRIMINATION.**—

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

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

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

14           *Subparagraph (B) shall only apply to the extent pro-*  
15           *vided by the Secretary.*

16           (2) *EFFECTIVE DATES.*—

17                   (A) *REGULATIONS.*—*The regulation re-*  
18                    *quired by paragraph (1) shall apply to years be-*  
19                    *ginning after December 31, 2004.*

20                   (B) *CONDITIONS OF AVAILABILITY.*—*Any*  
21                    *condition of availability prescribed by the Sec-*  
22                    *retary under paragraph (1)(A) shall not apply*  
23                    *before the first year beginning not less than 120*  
24                    *days after the date on which such condition is*  
25                    *prescribed.*

1       **(b) COVERAGE TEST.**—

2               **(1) IN GENERAL.**—*Section 410(b)(1) of the Inter-*  
3       *nal Revenue Code of 1986 (relating to minimum cov-*  
4       *erage requirements) is amended by adding at the end*  
5       *the following:*

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

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

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

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

19       *Clause (ii) shall apply only to the extent pro-*  
20       *vided by the Secretary.”.*

21       **(2) EFFECTIVE DATES.**—

22               **(A) IN GENERAL.**—*The amendment made*  
23       *by paragraph (1) shall apply to years beginning*  
24       *after December 31, 2004.*

1           (B) *CONDITIONS OF AVAILABILITY.*—*Any*  
2           *condition of availability prescribed by the Sec-*  
3           *retary under regulations prescribed by the Sec-*  
4           *retary under section 410(b)(1)(D) of the Internal*  
5           *Revenue Code of 1986 shall not apply before the*  
6           *first year beginning not less than 120 days after*  
7           *the date on which such condition is prescribed.*

8           (c) *LINE OF BUSINESS RULES.*—*The Secretary of the*  
9           *Treasury shall, on or before December 31, 2004, modify the*  
10          *existing regulations issued under section 414(r) of the Inter-*  
11          *nal Revenue Code of 1986 in order to expand (to the extent*  
12          *that the Secretary determines appropriate) the ability of*  
13          *a pension plan to demonstrate compliance with the line of*  
14          *business requirements based upon the facts and cir-*  
15          *cumstances surrounding the design and operation of the*  
16          *plan, even though the plan is unable to satisfy the mechan-*  
17          *ical tests currently used to determine compliance.*

18       **SEC. 205. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
19                               **MORATORIUM ON APPLICATION OF CERTAIN**  
20                               **NONDISCRIMINATION RULES APPLICABLE TO**  
21                               **STATE AND LOCAL PLANS.**

22           (a) *IN GENERAL.*—

23                   (1) *Subparagraph (G) of section 401(a)(5) of the*  
24           *Internal Revenue Code of 1986 and subparagraph*  
25           *(H) of section 401(a)(26) of such Code are each*

1       amended by striking “section 414(d)” and all that  
2       follows and inserting “section 414(d).”.

3               (2) Subparagraph (G) of section 401(k)(3) of the  
4       Internal Revenue Code of 1986 and paragraph (2) of  
5       section 1505(d) of the Taxpayer Relief Act of 1997  
6       (26 U.S.C. 401 note) are each amended by striking  
7       “maintained by a State or local government or polit-  
8       ical subdivision thereof (or agency or instrumentality  
9       thereof)”.

10       (b) CONFORMING AMENDMENTS.—

11               (1) The heading for subparagraph (G) of section  
12       401(a)(5) of such Code is amended to read as follows:  
13       “GOVERNMENTAL PLANS.—”.

14               (2) The heading for subparagraph (H) of section  
15       401(a)(26) of such Code is amended to read as fol-  
16       lows:       “EXCEPTION       FOR       GOVERNMENTAL  
17       PLANS.—”.

18               (3) Subparagraph (G) of section 401(k)(3) of  
19       such Code is amended by inserting “GOVERNMENTAL  
20       PLANS.—” after “(G)”.

21       (c) EFFECTIVE DATE.—The amendments made by this  
22       section shall apply to years beginning after December 31,  
23       2003.

1 **SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
2 **TRIBUTIONS.**

3 (a) *EXPANSION OF PERIOD.*—

4 (1) *AMENDMENT OF INTERNAL REVENUE*  
5 *CODE.*—

6 (A) *IN GENERAL.*—*Subparagraph (A) of*  
7 *section 417(a)(6) of the Internal Revenue Code of*  
8 *1986 is amended by striking “90-day” and in-*  
9 *serting “180-day”.*

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

17 (2) *AMENDMENT OF ERISA.*—

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

22 (B) *MODIFICATION OF REGULATIONS.*—*The*  
23 *Secretary of the Treasury shall modify the regu-*  
24 *lations under part 2 of subtitle B of title I of the*  
25 *Employee Retirement Income Security Act of*  
26 *1974 to the extent that they relate to sections*

1           203(e) and 205 of such Act to substitute “180  
2           days” for “90 days” each place it appears.

3           (3) *EFFECTIVE DATE.*—*The amendments made*  
4           *by paragraphs (1)(A) and (2)(A) and the modifica-*  
5           *tions required by paragraphs (1)(B) and (2)(B) shall*  
6           *apply to years beginning after December 31, 2003.*

7           (b) *CONSENT REGULATION INAPPLICABLE TO CERTAIN*  
8           *DISTRIBUTIONS.*—

9           (1) *IN GENERAL.*—*The Secretary of the Treasury*  
10           *shall modify the regulations under section 411(a)(11)*  
11           *of the Internal Revenue Code of 1986 and under sec-*  
12           *tion 205 of the Employee Retirement Income Security*  
13           *Act of 1974 to provide that the description of a par-*  
14           *ticipant’s right, if any, to defer receipt of a distribu-*  
15           *tion shall also describe the consequences of failing to*  
16           *defer such receipt.*

17           (2) *EFFECTIVE DATE.*—

18           (A) *IN GENERAL.*—*The modifications re-*  
19           *quired by paragraph (1) shall apply to years be-*  
20           *ginning after December 31, 2003.*

21           (B) *REASONABLE NOTICE.*—*In the case of*  
22           *any description of such consequences made before*  
23           *the date that is 90 days after the date on which*  
24           *the Secretary of the Treasury issues a safe har-*  
25           *bor description under paragraph (1), a plan*

1           shall not be treated as failing to satisfy the re-  
2           quirements of section 411(a)(11) of such Code or  
3           section 205 of such Act by reason of the failure  
4           to provide the information required by the modi-  
5           fications made under paragraph (1) if the Ad-  
6           ministrator of such plan makes a reasonable at-  
7           tempt to comply with such requirements.

8   **SEC. 207. ANNUAL REPORT DISSEMINATION.**

9           (a) *REPORT AVAILABLE THROUGH ELECTRONIC*  
10 *MEANS.*—Section 104(b)(3) of the Employee Retirement In-  
11 *come Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amend-*  
12 *ed by adding at the end the following new sentence: “The*  
13 *requirement to furnish information under the previous sen-*  
14 *tence with respect to an employee pension benefit plan shall*  
15 *be satisfied if the administrator makes such information*  
16 *reasonably available through electronic means or other new*  
17 *technology.”.*

18           (b) *EFFECTIVE DATE.*—The amendment made by this  
19 *section shall apply to reports for years beginning after De-*  
20 *cember 31, 2003.*

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

22           Section 517 of the Employee Retirement Income Secu-  
23 *rity Act of 1974 (29 U.S.C. 1147) is amended—*



1           (1) *in subsection (a), by striking “2001 and*  
2           *2005 on or after September 1 of each year involved”*  
3           *and inserting “2006 and 2010”;*

4           (2) *in subsection (e)(2)—*

5                 (A) *by striking “Committee on Labor and*  
6                 *Human Resources” in subparagraph (D) and in-*  
7                 *serting “Committee on Health, Education,*  
8                 *Labor, and Pensions”;*

9                 (B) *by striking subparagraph (F) and in-*  
10                 *serting the following:*

11                     *“(F) the Chairman and Ranking Member of*  
12                     *the Subcommittee on Labor, Health and Human*  
13                     *Services, and Education of the Committee on*  
14                     *Appropriations of the House of Representatives*  
15                     *and the Chairman and Ranking Member of the*  
16                     *Subcommittee on Labor, Health and Human*  
17                     *Services, and Education of the Committee on*  
18                     *Appropriations of the Senate;”;*

19                 (C) *by redesignating subparagraph (G) as*  
20                 *subparagraph (J); and*

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

23                     *“(G) the Chairman and Ranking Member of*  
24                     *the Committee on Finance of the Senate;*

1           “(H) the Chairman and Ranking Member  
2           of the Committee on Ways and Means of the  
3           House of Representatives;

4           “(I) the Chairman and Ranking Member of  
5           the Subcommittee on Employer-Employee Rela-  
6           tions of the Committee on Education and the  
7           Workforce of the House of Representatives; and”;  
8           (3) in subsection (e)(3)(B), by striking “January  
9           31, 1998” and inserting “2 months before the con-  
10          vening of each summit”;

11          (4) in subsection (f)(1)(C), by inserting “, no  
12          later than 60 days prior to the date of the commence-  
13          ment of the National Summit,” after “comment”;

14          (5) in subsection (i)—

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

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

19                 “(3) *RECEPTION AND REPRESENTATION AUTHOR-*  
20                 *ITY.—The Secretary is hereby granted reception and*  
21                 *representation authority limited specifically to the*  
22                 *events at the National Summit. The Secretary shall*  
23                 *use any private contributions accepted in connection*  
24                 *with the National Summit prior to using funds ap-*

1        *propriated for purposes of the National Summit pur-*  
 2        *suant to this paragraph.”; and*

3                *(6) in subsection (k)—*

4                        *(A) by striking “shall enter into a contract*  
 5                        *on a sole-source basis” and inserting “may enter*  
 6                        *into a contract on a sole-source basis”; and*

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

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

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

14                *“(c) MULTIEMPLOYER PLANS.—The corporation shall*  
 15        *prescribe rules similar to the rules in subsection (a) for mul-*  
 16        *tiemployer plans covered by this title that terminate under*  
 17        *section 4041A.*

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

19                        *“(1) TRANSFER TO CORPORATION.—The plan ad-*  
 20        *ministrator of a plan described in paragraph (4) may*  
 21        *elect to transfer the benefits of a missing participant*  
 22        *or beneficiary to the corporation upon termination of*  
 23        *the plan.*

24                        *“(2) INFORMATION TO THE CORPORATION.—To*  
 25        *the extent provided in regulations, the plan adminis-*

1 *trator of a plan described in paragraph (4) shall,*  
2 *upon termination of the plan, provide the corporation*  
3 *information with respect to benefits of a missing par-*  
4 *ticipant or beneficiary if the plan transfers such bene-*  
5 *fits—*

6 *“(A) to the corporation, or*

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

9 *“(3) PAYMENT BY THE CORPORATION.—If bene-*  
10 *fits of a missing participant or beneficiary were*  
11 *transferred to the corporation under paragraph (1),*  
12 *the corporation shall, upon location of the participant*  
13 *or beneficiary, pay to the participant or beneficiary*  
14 *the amount transferred (or the appropriate survivor*  
15 *benefit) either—*

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

17 *“(B) in such other form as is specified in*  
18 *regulations of the corporation.*

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

21 *“(A) the plan is a pension plan (within the*  
22 *meaning of section 3(2))—*

23 *“(i) to which the provisions of this sec-*  
24 *tion do not apply (without regard to this*  
25 *subsection), and*

1                   “(i) which is not a plan described in  
2                   paragraphs (2) through (11) of section  
3                   4021(b), and

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

6                   “(i) has one or more missing partici-  
7                   pants or beneficiaries, and

8                   “(ii) has not provided for the transfer  
9                   of assets to pay the benefits of all missing  
10                  participants and beneficiaries to another  
11                  pension plan (within the meaning of section  
12                  3(2)).

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

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

18                   (1) by striking “title IV” and inserting “section  
19                   4050”; and

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

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

1 **SEC. 210. REDUCED PBGC PREMIUM FOR NEW PLANS OF**  
2 **SMALL EMPLOYERS.**

3 (a) *IN GENERAL.*—Subparagraph (A) of section  
4 4006(a)(3) of the Employee Retirement Income Security  
5 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

6 (1) in clause (i), by inserting “other than a new  
7 single-employer plan (as defined in subparagraph  
8 (F)) maintained by a small employer (as so de-  
9 fined),” after “single-employer plan,”

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

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

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

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

23 “(F)(i) For purposes of this paragraph, a single-em-  
24 ployer plan maintained by a contributing sponsor shall be  
25 treated as a new single-employer plan for each of its first  
26 5 plan years if, during the 36-month period ending on the

1 *date of the adoption of such plan, the sponsor or any mem-*  
2 *ber of such sponsor's controlled group (or any predecessor*  
3 *of either) did not establish or maintain a plan to which*  
4 *this title applies with respect to which benefits were accrued*  
5 *for substantially the same employees as are in the new sin-*  
6 *gle-employer plan.*

7       “(i)(I) *For purposes of this paragraph, the term*  
8 *‘small employer’ means an employer which on the first day*  
9 *of any plan year has, in aggregation with all members of*  
10 *the controlled group of such employer, 100 or fewer employ-*  
11 *ees.*

12       “(II) *In the case of a plan maintained by two or more*  
13 *contributing sponsors that are not part of the same con-*  
14 *trolled group, the employees of all contributing sponsors and*  
15 *controlled groups of such sponsors shall be aggregated for*  
16 *purposes of determining whether any contributing sponsor*  
17 *is a small employer.”.*

18       (c) *EFFECTIVE DATE.*—*The amendments made by this*  
19 *section shall apply to plans first effective after December*  
20 *31, 2003.*

21 **SEC. 211. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**  
22 **NEW AND SMALL PLANS.**

23       (a) *NEW PLANS.*—*Subparagraph (E) of section*  
24 *4006(a)(3) of the Employee Retirement Income Security*

1 *Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by add-*  
2 *ing at the end the following new clause:*

3       “(v) *In the case of a new defined benefit plan, the*  
4 *amount determined under clause (ii) for any plan year*  
5 *shall be an amount equal to the product of the amount de-*  
6 *termined under clause (ii) and the applicable percentage.*  
7 *For purposes of this clause, the term ‘applicable percentage’*  
8 *means—*

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

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

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

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

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

14 *For purposes of this clause, a defined benefit plan (as de-*  
15 *finied in section 3(35)) maintained by a contributing spon-*  
16 *sor shall be treated as a new defined benefit plan for each*  
17 *of its first 5 plan years if, during the 36-month period end-*  
18 *ing on the date of the adoption of the plan, the sponsor*  
19 *and each member of any controlled group including the*  
20 *sponsor (or any predecessor of either) did not establish or*  
21 *maintain a plan to which this title applies with respect*  
22 *to which benefits were accrued for substantially the same*  
23 *employees as are in the new plan.”.*

24       (b) *SMALL PLANS.—Paragraph (3) of section 4006(a)*  
25 *of the Employee Retirement Income Security Act of 1974*



1 (29 U.S.C. 1306(a)), as amended by section 210(b), is  
2 amended—

3 (1) by striking “The” in subparagraph (E)(i)  
4 and inserting “Except as provided in subparagraph  
5 (G), the”, and

6 (2) by inserting after subparagraph (F) the fol-  
7 lowing new subparagraph:

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

14 “(ii) For purposes of clause (i), whether an employer  
15 has 25 or fewer employees on the first day of the plan year  
16 is determined by taking into consideration all of the em-  
17 ployees of all members of the contributing sponsor’s con-  
18 trolled group. In the case of a plan maintained by two or  
19 more contributing sponsors, the employees of all contrib-  
20 uting sponsors and their controlled groups shall be aggre-  
21 gated for purposes of determining whether the 25-or-fewer-  
22 employees limitation has been satisfied.”.

23 (c) *EFFECTIVE DATES.*—

1           (1) *SUBSECTION (a).*—*The amendments made by*  
2           *subsection (a) shall apply to plans first effective after*  
3           *December 31, 2003.*

4           (2) *SUBSECTION (b).*—*The amendments made by*  
5           *subsection (b) shall apply to plan years beginning*  
6           *after December 31, 2003.*

7   ***SEC. 212. AUTHORIZATION FOR PBGC TO PAY INTEREST ON***  
8           ***PREMIUM OVERPAYMENT REFUNDS.***

9           (a) *IN GENERAL.*—*Section 4007(b) of the Employment*  
10          *Retirement Income Security Act of 1974 (29 U.S.C.*  
11          *1307(b)) is amended—*

12                  (1) *by striking “(b)” and inserting “(b)(1)”, and*

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

15          “(2) *The corporation is authorized to pay, subject to*  
16          *regulations prescribed by the corporation, interest on the*  
17          *amount of any overpayment of premium refunded to a des-*  
18          *ignated payor. Interest under this paragraph shall be cal-*  
19          *culated at the same rate and in the same manner as interest*  
20          *is calculated for underpayments under paragraph (1).”.*

21          (b) *EFFECTIVE DATE.*—*The amendment made by sub-*  
22          *section (a) shall apply to interest accruing for periods be-*  
23          *ginning not earlier than the date of the enactment of this*  
24          *Act.*

1 **SEC. 213. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**  
2 **PLANS.**

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

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

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

13 “(ii) *in the case of a partnership, is a partner*  
14 *who owns, directly or indirectly, 50 percent or more*  
15 *of either the capital interest or the profits interest in*  
16 *such partnership, or*

17 “(iii) *in the case of a corporation, owns, directly*  
18 *or indirectly, 50 percent or more in value of either the*  
19 *voting stock of that corporation or all the stock of that*  
20 *corporation.*

21 *For purposes of clause (iii), the constructive ownership*  
22 *rules of section 1563(e) of the Internal Revenue Code of*  
23 *1986 shall apply (determined without regard to section*  
24 *1563(e)(3)(C)).*

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

4               “(i) *a fraction (not to exceed 1) the numerator*  
5 *of which is the number of years from the later of the*  
6 *effective date or the adoption date of the plan to the*  
7 *termination date, and the denominator of which is*  
8 *10, and*

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

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

13               (1) *Section 4044(a)(4)(B) of the Employee Re-*  
14 *irement Income Security Act of 1974 (29 U.S.C.*  
15 *1344(a)(4)(B)) is amended by striking “section*  
16 *4022(b)(5)” and inserting “section 4022(b)(5)(B)”.*

17               (2) *Section 4044(b) of such Act (29 U.S.C.*  
18 *1344(b)) is amended—*

19                       (A) *by striking “(5)” in paragraph (2) and*  
20 *inserting “(4), (5),”, and*

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

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

14          (c) CONFORMING AMENDMENTS.—

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

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

20                         (B) by adding at the end the following new  
21                         subsection:

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

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

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

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

11 *For purposes of paragraph (3), 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          (2) Section 4043(c)(7) of such Act (29 U.S.C.  
16 1343(c)(7)) is amended by striking “section 4022(b)(6)”  
17 and inserting “section 4021(d)”.

18          (d) *EFFECTIVE DATES.*—

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

22                       (A) *under section 4041(c) of the Employee*  
23 *Retirement Income Security Act of 1974 (29*  
24 *U.S.C. 1341(c)) with respect to which notices of*  
25 *intent to terminate are provided under section*

1           4041(a)(2) of such Act (29 U.S.C. 1341(a)(2))  
2           after December 31, 2003, and

3                   (B) under section 4042 of such Act (29  
4           U.S.C. 1342) with respect to which proceedings  
5           are instituted by the corporation after such date.

6           (2) *CONFORMING AMENDMENTS.*—The amend-  
7           ments made by subsection (c) shall take effect on Jan-  
8           uary 1, 2004.

9   **SEC. 214. BENEFIT SUSPENSION NOTICE.**

10           (a) *MODIFICATION OF REGULATION.*—The Secretary of  
11   Labor shall modify the regulation under subparagraph (B)  
12   of section 203(a)(3) of the Employee Retirement Income Se-  
13   curity Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide  
14   that the notification required by such regulation in connec-  
15   tion with any suspension of benefits described in such sub-  
16   paragraph—

17                   (1) in the case of an employee who returns to  
18   service described in section 203(a)(3)(B)(i) or (ii) of  
19   such Act after commencement of payment of benefits  
20   under the plan, shall be made during the first cal-  
21   endar month or the first 4 or 5-week payroll period  
22   ending in a calendar month in which the plan with-  
23   holds payments, and

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

1           (A) may be included in the summary plan  
2 description for the plan furnished in accordance  
3 with section 104(b) of such Act (29 U.S.C.  
4 1024(b)), rather than in a separate notice, and  
5           (B) need not include a copy of the relevant  
6 plan provisions.

7           (b) *EFFECTIVE DATE.*—The modification made under  
8 this section shall apply to plan years beginning after De-  
9 cember 31, 2003.

10 **SEC. 215. STUDIES.**

11           (a) *MODEL SMALL EMPLOYER GROUP PLANS*  
12 *STUDY.*—As soon as practicable after the date of the enact-  
13 ment of this Act, the Secretary of Labor, in consultation  
14 with the Secretary of the Treasury, shall conduct a study  
15 to determine—

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

17                           (A) employee pension benefit plans which  
18 would—

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

21                                   (ii) provide for ready portability of  
22 benefits for all participants and bene-  
23 ficiaries,



1           (B) *alternative arrangements providing*  
2           *comparable benefits which may be established by*  
3           *employee or employer associations, and*

4           (C) *alternative arrangements providing*  
5           *comparable benefits to which employees may con-*  
6           *tribute in a manner independent of employer*  
7           *sponsorship, and*

8           (2) *appropriate methods and strategies for mak-*  
9           *ing pension plan coverage described in paragraph (1)*  
10          *more widely available to American workers.*

11          (b) *MATTERS TO BE CONSIDERED.—In conducting the*  
12          *study under subsection (a), the Secretary of Labor shall con-*  
13          *sider the adequacy and availability of existing employee*  
14          *pension benefit plans and the extent to which existing mod-*  
15          *els may be modified to be more accessible to both employees*  
16          *and employers.*

17          (c) *REPORT.—Not later than 18 months after the date*  
18          *of the enactment of this Act, the Secretary of Labor shall*  
19          *report the results of the study under subsection (a), together*  
20          *with the Secretary's recommendations, to the Committee on*  
21          *Education and the Workforce and the Committee on Ways*  
22          *and Means of the House of Representatives and the Com-*  
23          *mittee on Health, Education, Labor, and Pensions and the*  
24          *Committee on Finance of the Senate. Such recommenda-*  
25          *tions shall include one or more model plans described in*

1 subsection (a)(1)(A) and model alternative arrangements  
2 described in subsections (a)(1)(B) and (a)(1)(C) which may  
3 serve as the basis for appropriate administrative or legisla-  
4 tive action.

5 (d) *STUDY ON EFFECT OF LEGISLATION.*—Not later  
6 than 5 years after the date of the enactment of this Act,  
7 the Secretary of Labor shall submit to the Committee on  
8 Education and the Workforce of the House of Representa-  
9 tives and the Committee on Health, Education, Labor, and  
10 Pensions of the Senate a report on the effect of the provi-  
11 sions of this Act and title VI of the Economic Growth and  
12 Tax Relief Reconciliation Act of 2001 on pension plan cov-  
13 erage, including any change in—

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

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

17 (3) the quality of pension plan coverage gen-  
18 erally,

19 (4) workers' access to and participation in pen-  
20 sion plans, and

21 (5) retirement security.

1 **SEC. 216. INTEREST RATE RANGE FOR ADDITIONAL FUND-**  
2 **ING REQUIREMENTS.**

3 (a) *IN GENERAL.*—Subclause (III) of section  
4 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is  
5 amended—

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

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

10 (b) *SPECIAL RULE.*—Subclause (III) of section  
11 302(d)(7)(C)(i) of the Employee Retirement Income Secu-  
12 rity Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is amended—

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

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

17 (c) *PBGC.*—Subclause (IV) of section  
18 4006(a)(3)(E)(iii) of such Act (29 U.S.C.  
19 1306(a)(3)(E)(iii)) is amended to read as follows—

20 “(IV) In the case of plan years beginning after  
21 December 31, 2001, and before January 1, 2004, sub-  
22 clause (II) shall be applied by substituting ‘100 per-  
23 cent’ for ‘85 percent’ and by substituting ‘115 percent’  
24 for ‘100 percent’. Subclause (III) shall be applied for  
25 such years without regard to the preceding sentence.  
26 Any reference to this clause or this subparagraph by

1     *any other sections or subsections (other than sections*  
2     *4005, 4010, 4011 and 4043) shall be treated as a ref-*  
3     *erence to this clause or this subparagraph without re-*  
4     *gard to this subclause.”.*

5     *(d) EFFECTIVE DATE.—*

6             *(1) GENERAL RULE.—Subject to paragraph (2),*  
7     *the amendments made by this section shall take effect*  
8     *as if included in the amendments made by section*  
9     *405 of the Job Creation and Worker Assistance Act of*  
10    *2002.*

11            *(2) ELECTION.—The plan sponsor or plan ad-*  
12    *ministrator of a plan may elect whether to have the*  
13    *amendments made by subsections (a) and (b) apply.*  
14    *Such election shall be made in such manner and at*  
15    *such time as the Secretary of the Treasury or his dele-*  
16    *gate may prescribe and, once made, may not be re-*  
17    *voked. An election to apply such amendments shall*  
18    *not be treated as a prohibited change in actuarial as-*  
19    *sumptions for purposes of reports required to be filed*  
20    *with the Secretary of Labor, the Secretary of Treas-*  
21    *ury, or the Pension Benefit Guaranty Corporation.*

1                                   **TITLE III—GENERAL**  
2                                   **PROVISIONS**

3   **SEC. 301. PROVISIONS RELATING TO PLAN AMENDMENTS.**

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

6                   (1) *such pension plan or contract shall be treated*  
7 *as being operated in accordance with the terms of the*  
8 *plan during the period described in subsection*  
9 *(b)(2)(A), and*

10                   (2) *except as provided by the Secretary of the*  
11 *Treasury, such pension plan shall not fail to meet the*  
12 *requirements of section 411(d)(6) of the Internal Rev-*  
13 *enue Code of 1986 and section 204(g) of the Employee*  
14 *Retirement Income Security Act of 1974 by reason of*  
15 *such amendment.*

16           (b) *AMENDMENTS TO WHICH SECTION APPLIES.*—

17                   (1) *IN GENERAL.*—*This section shall apply to*  
18 *any amendment to any pension plan or annuity con-*  
19 *tract which is made—*

20                                   (A) *pursuant to any amendment made by*  
21 *this Act or by title VI of the Economic Growth*  
22 *and Tax Relief Reconciliation Act of 2001, or*  
23 *pursuant to any regulation issued by the Sec-*  
24 *retary of the Treasury or the Secretary of Labor*  
25 *under this Act or such title VI, and*

1           (B) on or before the last day of the first  
2           plan year beginning on or after January 1,  
3           2006.

4           *In the case of a governmental plan (as defined in sec-*  
5           *tion 414(d) of the Internal Revenue Code of 1986),*  
6           *this paragraph shall be applied by substituting*  
7           *“2008” for “2006”.*

8           (2) *CONDITIONS.—This section shall not apply to*  
9           *any amendment unless—*

10           (A) *during the period—*

11           (i) *beginning on the date the legislative*  
12           *or regulatory amendment described in para-*  
13           *graph (1)(A) takes effect (or in the case of*  
14           *a plan or contract amendment not required*  
15           *by such legislative or regulatory amend-*  
16           *ment, the effective date specified by the*  
17           *plan), and*

18           (ii) *ending on the date described in*  
19           *paragraph (1)(B) (or, if earlier, the date the*  
20           *plan or contract amendment is adopted),*

21           *the plan or contract is operated as if such plan*  
22           *or contract amendment were in effect; and*

23           (B) *such plan or contract amendment ap-*  
24           *plies retroactively for such period.*



**Union Calendar No. 50**

108TH CONGRESS  
1ST SESSION

**H. R. 1000**

**[Report No. 108-43, Part I]**

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**A BILL**

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.

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MAY 9, 2003

Committee on Ways and Means discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed