

108TH CONGRESS
1ST SESSION

H. R. 2101

To provide additional protections for participants and beneficiaries under employee pension benefit plans.

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 2003

Mr. GEORGE MILLER of California (for himself, Ms. DELAURO, Mr. KILDEE, Mr. BISHOP of New York, Mr. GRIJALVA, Mr. RYAN of Ohio, Mr. KUCINICH, Mr. OWENS, Mr. TIERNEY, Ms. MCCOLLUM, Mr. DAVIS of Illinois, Mr. CASE, Mr. PAYNE, Mr. BELL, Mr. LYNCH, Ms. BALDWIN, Mrs. MALONEY, Mr. MEEHAN, Mr. SCOTT of Georgia, Mr. STARK, Ms. WOOLSEY, Ms. LEE, Ms. SOLIS, Mr. BLUMENAUER, Mr. BROWN of Ohio, Mr. FARR, Mr. VAN HOLLEN, Ms. NORTON, Mr. MILLER of North Carolina, Ms. SCHAKOWSKY, and Ms. ROYBAL-ALLARD) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, the Judiciary, and Financial Services, 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

A BILL

To provide additional protections for participants and beneficiaries under employee pension benefit plans.

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 Fairness Act of 2003”.

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN DISCLOSURE

- Sec. 101. Pension benefit information.
 Sec. 102. Immediate warning of excessive stock holdings.
 Sec. 103. Report to participants and beneficiaries of trades in employer securities.
 Sec. 104. Enforcement of information and disclosure requirements.
 Sec. 105. Revision of accounting standard required.

TITLE II—FREEDOM TO MAKE INVESTMENT DECISIONS WITH PLAN ASSETS.

- Sec. 201. Amendments to the Internal Revenue Code of 1986.
 Sec. 202. Amendments to the Employee Retirement Income Security Act of 1974.
 Sec. 203. Recommendations relating to non-publicly traded stock.
 Sec. 204. Effective date of title.

TITLE III—EMPLOYEE REPRESENTATION

- Sec. 301. Participation of participants in trusteeship of individual account plans.

TITLE IV—INCREASED ACCOUNTABILITY

- Sec. 401. Bonding or insurance adequate to protect interest of participants and beneficiaries.
 Sec. 402. Liability for breach of fiduciary duty.
 Sec. 403. Preservation of rights or claims.
 Sec. 404. Office of pension participant advocacy.
 Sec. 405. Study regarding insurance system for individual account plans.
 Sec. 406. Excise tax on failure of pension plans to provide notice of transaction restriction periods.

TITLE V—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES

- Sec. 501. Independent investment advice.
 Sec. 502. Tax treatment of qualified retirement planning services.

TITLE VI—PARITY IN EMPLOYEE BENEFITS

- Sec. 601. Inclusion in gross income of funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock.
 Sec. 602. Performance-based compensation exception to \$1,000,000 limitation on deductible compensation not to apply in certain cases.

TITLE VII—PROTECTION OF RETIREMENT EXPECTATIONS

- Sec. 701. Protection of participants from conversions to hybrid defined benefit plans.

TITLE VIII—TREATMENT OF CORPORATE INSIDERS

- Sec. 801. Special rules for executive perks and retirement benefits.
 Sec. 802. Golden parachute excise tax to apply to deferred compensation paid by corporation after major decline in stock value or corporation declares bankruptcy.
 Sec. 803. Adequate disclosure regarding executive compensation packages.

TITLE IX—ADDITIONAL PROTECTIONS FOR EMPLOYEES OF BANKRUPT EMPLOYERS

- Sec. 901. Avoidance of certain transfers; alternate prosecution of action.
 Sec. 902. Limitation on retention bonuses, severance pay, and certain other payments.
 Sec. 903. Priorities.
 Sec. 904. Effective date of title.

TITLE X—MISCELLANEOUS PROVISIONS

- Sec. 1001. Corporate deduction for reinvested ESOP dividends subject to deductible limits.
 Sec. 1002. Credit for elective deferrals and IRA contributions by certain individuals made permanent (saver's tax credit).

TITLE XI—GENERAL PROVISIONS

- Sec. 1101. General effective date.
 Sec. 1102. Plan amendments.

1 **TITLE I—IMPROVEMENTS IN**
 2 **DISCLOSURE**

3 **SEC. 101. PENSION BENEFIT INFORMATION.**

4 (a) PENSION BENEFIT STATEMENTS REQUIRED ON
 5 PERIODIC BASIS.—

6 (1) IN GENERAL.—Subsection (a) of section
 7 105 of the Employee Retirement Income Security
 8 Act of 1974 (29 U.S.C. 1025) is amended—

9 (A) by striking “shall furnish to any plan
 10 participant or beneficiary who so requests in
 11 writing,” and inserting “shall furnish at least
 12 once every 3 years, in the case of a participant
 13 in a defined benefit plan who has attained age

1 35, and annually, in the case of an individual
2 account plan, to each plan participant, and
3 shall furnish to any plan participant or bene-
4 ficiary who so requests,” and

5 (B) by adding at the end the following
6 flush sentence:

7 “Information furnished under the preceding sentence to
8 a participant in a defined benefit plan (other than at the
9 request of the participant) may be based on reasonable
10 estimates determined under regulations prescribed by the
11 Secretary.”.

12 (2) MODEL STATEMENT.—Section 105 of such
13 Act (29 U.S.C. 1025) is amended by adding at the
14 end the following new subsection:

15 “(e)(1) The Secretary of Labor shall develop a model
16 benefit statement which shall be used by plan administra-
17 tors in complying with the requirements of subsection (a).
18 Such statement shall include—

19 “(A) the amount of nonforfeitable accrued ben-
20 efits as of the statement date which is payable at
21 normal retirement age under the plan,

22 “(B) the amount of accrued benefits which are
23 forfeitable but which may become nonforfeitable
24 under the terms of the plan,

1 “(C) the amount or percentage of any reduction
2 due to integration of the benefit with the partici-
3 pant’s Social Security benefits or similar govern-
4 mental benefits,

5 “(D) information on early retirement benefit
6 and joint and survivor annuity reductions,

7 “(E) in the case of an individual account plan,
8 the percentage of the net return on investment of
9 plan assets for the preceding plan year (or, with re-
10 spect to investments directed by the participant, the
11 net return on investment of plan assets for such
12 year so directed), itemized with respect to each type
13 of investment, and, stated separately, the adminis-
14 trative and transaction fees incurred in connection
15 with each such type of investment, and

16 “(F) in the case of an individual account plan,
17 the amount and percentage of assets in the indi-
18 vidual account that consists of employer securities
19 and employer real property (as defined in para-
20 graphs (1) and (2), respectively, of section 407(d)),
21 as determined as of the most recent valuation date
22 of the plan.

23 “(2) The Secretary shall also develop a separate no-
24 tice, which shall be included by the plan administrator
25 with the information furnished pursuant to subsection (a),

1 which advises participants and beneficiaries of generally
2 accepted investment principles, including principles of risk
3 management and diversification for long-term retirement
4 security and the risks of holding substantial assets in a
5 single asset such as employer securities.”.

6 (3) RULE FOR MULTIEMPLOYER PLANS.—Sub-
7 section (d) of section 105 of such Act (29 U.S.C.
8 1025) is amended to read as follows:

9 “(d) Each administrator of a plan to which more than
10 1 unaffiliated employer is required to contribute shall fur-
11 nish to any plan participant or beneficiary who so requests
12 in writing, a statement described in subsection (a).”.

13 (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

14 (1) IN GENERAL.—Section 105 of such Act (as
15 amended by subsection (a)) is amended further—

16 (A) by redesignating subsections (b), (c),
17 (d), and (e) as subsections (c), (d), (e), and (f),
18 respectively; and

19 (B) by inserting after subsection (a) the
20 following new subsection:

21 “(b)(1) In the case of a participant or beneficiary who
22 is entitled to a distribution of a benefit under an employee
23 pension benefit plan, the administrator of such plan shall
24 provide to the participant or beneficiary the information

1 described in paragraph (2) upon the written request of
2 the participant or beneficiary.

3 “(2) The information described in this paragraph in-
4 cludes—

5 “(A) a worksheet explaining how the amount of
6 the distribution was calculated and stating the as-
7 sumptions used for such calculation,

8 “(B) upon written request of the participant or
9 beneficiary, any documents relating to the calcula-
10 tion (if available), and

11 “(C) such other information as the Secretary
12 may prescribe.

13 Any information provided under this paragraph shall be
14 in a form calculated to be understood by the average plan
15 participant.”.

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 101(a)(2) of such Act (29
18 U.S.C. 1021(a)(2)) is amended by striking
19 “105(a) and (c)” and inserting “105(a), (b),
20 and (d)”.

21 (B) Section 105(c) of such Act (as redesign-
22 nated by paragraph (1)(A) of this subsection) is
23 amended by inserting “or (b)” after “subsection
24 (a)”.

1 (C) Section 106(b) of such Act (29 U.S.C.
2 1026(b)) is amended by striking “sections
3 105(a) and 105(c)” and inserting “subsections
4 (a), (b), and (d) of section 105”.

5 (c) AMENDMENTS TO INTERNAL REVENUE CODE OF
6 1986.—

7 (1) IN GENERAL.—Chapter 43 of the Internal
8 Revenue Code of 1986 (relating to qualified pension,
9 etc., plans) is amended by adding at the end the fol-
10 lowing new section:

11 **“SEC. 4980G. FAILURE OF APPLICABLE PLANS TO PROVIDE**
12 **NOTICE OF GENERALLY ACCEPTED INVEST-**
13 **MENT PRINCIPLES.**

14 “(a) IMPOSITION OF TAX.—There is hereby imposed
15 a tax on the failure of any applicable pension plan to meet
16 the requirements of subsection (e) with respect to any ap-
17 plicable individual.

18 “(b) AMOUNT OF TAX.—The amount of the tax im-
19 posed by subsection (a) on any failure with respect to any
20 applicable individual shall be \$100 for each day in the
21 noncompliance period with respect to such failure.

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

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

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

5 “(B) such person provides the notice de-
6 scribed in subsection (e) during the 30-day pe-
7 riod beginning on the first date such person
8 knew, or exercising reasonable diligence should
9 have known, that such failure existed.

10 “(2) OVERALL LIMITATION FOR UNINTEN-
11 TIONAL FAILURES.—

12 “(A) IN GENERAL.—If the person subject
13 to liability for tax under subsection (d) exer-
14 cised reasonable diligence to meet the require-
15 ments of subsection (e) and paragraph (1) is
16 not otherwise applicable, the tax imposed by
17 subsection (a) for failures during the taxable
18 year of the employer (or, in the case of a multi-
19 employer plan, the taxable year of the trust
20 forming part of the plan) shall not exceed
21 \$500,000. For purposes of the preceding sen-
22 tence, all multiemployer plans of which the
23 same trust forms a part shall be treated as 1
24 plan.

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

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

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

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

19 “(2) In the case of a multiemployer plan, the
20 plan.

21 “(e) NOTICE OF GENERALLY ACCEPTED INVEST-
22 MENT PRINCIPLES.—

23 “(1) IN GENERAL.—The plan administrator of
24 an applicable pension plan shall provide notice of
25 generally accepted investment principles, including

1 principles of risk management and diversification, to
2 each applicable individual.

3 “(2) NOTICE.—The notice required by para-
4 graph (1) shall be written in a manner calculated to
5 be understood by the average plan participant and
6 shall provide sufficient information (as determined
7 in accordance with rules or other guidance adopted
8 by the Secretary) to allow applicable individuals to
9 understand generally accepted investment principles,
10 including principles of risk management and diver-
11 sification.

12 “(3) TIMING OF NOTICE.—The notice required
13 by paragraph (1) shall be provided upon enrollment
14 of the applicable individual in such plan and at least
15 once per plan year thereafter.

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

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

23 “(1) APPLICABLE INDIVIDUAL.—The term ‘ap-
24 plicable individual’ means with respect to an applica-
25 ble pension plan—

1 “(A) any participant in the applicable pen-
2 sion plan,

3 “(B) any beneficiary who is an alternate
4 payee (within the meaning of section 414(p)(8))
5 under an applicable qualified domestic relations
6 order (within the meaning of section
7 414(p)(1)(A)), and

8 “(C) any beneficiary of a deceased partici-
9 pant or alternate payee described in subpara-
10 graph (A) or (B), as the case may be,

11 who has an accrued benefit under the plan and who
12 is entitled to direct the investment (or hypothetical
13 investment) of some or all of such accrued benefit.

14 “(2) APPLICABLE PENSION PLAN.—The term
15 ‘applicable pension plan’ means—

16 “(A) a plan described in section
17 219(g)(5)(A) (other than in clause (iii) thereof),
18 and

19 “(B) an eligible deferred compensation
20 plan (as defined in section 457(b)) of an eligible
21 employer described in section 457(e)(1)(A),

22 which permits any participant to direct the invest-
23 ment of some or all of his account in the plan or
24 under which the accrued benefit of any participant

1 depends in whole or in part on hypothetical invest-
2 ments directed by the participant.”.

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

“Sec. 4980G. Failure of applicable plans to provide notice of gen-
erally accepted investment principles.”.

6 (3) EFFECTIVE DATE.—

7 (A) IN GENERAL.—The amendments made
8 by this subsection shall take effect 60 days
9 after the adoption of rules or other guidance to
10 carry out the amendments made by this sub-
11 section, which shall include a model notice of
12 generally accepted investment principles, includ-
13 ing principles of risk management and diver-
14 sification.

15 (B) MODEL INVESTMENT PRINCIPLES.—
16 For purposes of subparagraph (A), not later
17 than 120 days after the date of the enactment
18 of this Act, the Secretary of the Treasury, in
19 consultation with the Secretary of Labor, shall
20 issue rules or other guidance and a model no-
21 tice which meets the requirements of section
22 4980G of the Internal Revenue Code of 1986
23 (as added by this section).

1 **SEC. 102. IMMEDIATE WARNING OF EXCESSIVE STOCK**
2 **HOLDINGS.**

3 Section 105 of the Employee Retirement Income Se-
4 curity Act of 1974 (29 U.S.C. 1025) (as amended by sec-
5 tion 101 of this Act) is amended further by adding at the
6 end the following new subsection:

7 “(g)(1) Upon receipt of information by the plan ad-
8 ministrator of an individual account plan indicating that
9 the individual account of any participant which had not
10 been excessively invested in employer securities is exces-
11 sively invested in such securities (or that such account,
12 as initially invested, is excessively invested in employer se-
13 curities), the plan administrator shall immediately provide
14 to the participant a separate, written statement—

15 “(A) indicating that the participant’s account
16 has become excessively invested in employer securi-
17 ties,

18 “(B) setting forth the notice described in sub-
19 section (e)(7), and

20 “(C) referring the participant to investment
21 education materials and investment advice which
22 shall be made available by or under the plan.

23 In any case in which such a separate, written statement
24 is required to be provided to a participant under this para-
25 graph, each statement issued to such participant pursuant
26 to subsection (a) thereafter shall also contain such sepa-

1 rate, written statement until the plan administrator is
2 made aware that such participant's account has ceased to
3 be excessively invested in employer securities or the em-
4 ployee, in writing, waives the receipt of the notice and ac-
5 knowledges understanding the importance of diversifica-
6 tion.

7 “(2) Each notice required under this subsection shall
8 be provided in a form and manner which shall be pre-
9 scribed in regulations of the Secretary. Such regulations
10 shall provide for inclusion in the notice a prominent ref-
11 erence to the risks of large losses in assets available for
12 retirement from excessive investment in employer securi-
13 ties.

14 “(3) For purposes of paragraph (1), a participant's
15 account is ‘excessively invested’ in employer securities if
16 more than 10 percent of the balance in such account is
17 invested in employer securities (as defined in section
18 407(d)(1)).”.

19 **SEC. 103. REPORT TO PARTICIPANTS AND BENEFICIARIES**
20 **OF TRADES IN EMPLOYER SECURITIES.**

21 (a) IN GENERAL.—Section 104 of the Employee Re-
22 tirement Income Security Act of 1974 (29 U.S.C. 1024)
23 is amended—

24 (1) by redesignating subsection (d) as sub-
25 section (e); and

1 (2) by inserting after subsection (c) the fol-
2 lowing new subsection:

3 “(d)(1) In any case in which assets in the individual
4 account of a participant or beneficiary under an individual
5 account plan include employer securities, if any person en-
6 gages in a transaction constituting a direct or indirect
7 purchase or sale of employer securities and—

8 “(A) such transaction is required under section
9 16 of the Securities Exchange Act of 1934 to be re-
10 ported by such person to the Securities and Ex-
11 change Commission, or

12 “(B) such person is a named fiduciary of the
13 plan,

14 such person shall comply with the requirements of para-
15 graph (2).

16 “(2) A person described in paragraph (1) complies
17 with the requirements of this paragraph in connection
18 with a transaction described in paragraph (1) if such per-
19 son provides to the plan administrator of the plan a writ-
20 ten notification of the transaction not later than 1 busi-
21 ness day after the date of the transaction.

22 “(3)(A) If the plan administrator is made aware, on
23 the basis of notifications received pursuant to paragraph
24 (2) or otherwise, that the proceeds from any transaction
25 described in paragraph (1), constituting direct or indirect

1 sales of employer securities by any person described in
2 paragraph (1), exceed \$100,000, the plan administrator
3 of the plan shall provide to each participant and bene-
4 ficiary a notification of such transaction. Such notification
5 shall be in writing, except that such notification may be
6 in electronic or other form to the extent that such form
7 is reasonably accessible to the participant or beneficiary.

8 “(B) In any case in which the proceeds from any
9 transaction described in paragraph (1) (with respect to
10 which a notification has not been provided pursuant to
11 this paragraph), together with the proceeds from any
12 other such transaction or transactions described in para-
13 graph (1) occurring during the preceding one-year period,
14 constituting direct or indirect sales of employer securities
15 by any person described in paragraph (1), exceed (in the
16 aggregate) \$100,000, such series of transactions by such
17 person shall be treated as a transaction described in sub-
18 paragraph (A) by such person.

19 “(C) Each notification required under this paragraph
20 shall be provided as soon as practicable, but not later than
21 3 business days after receipt of the written notification
22 or notifications indicating that the transaction (or series
23 of transactions) requiring such notice has occurred.

24 “(4) Each notification required under paragraph (2)
25 or (3) shall be made in such form and manner as may

1 be prescribed in regulations of the Secretary and shall in-
2 clude the number of shares involved in each transaction
3 and the price per share, and the notification required
4 under paragraph (3) shall be written in language designed
5 to be understood by the average plan participant. The Sec-
6 retary may provide by regulation, in consultation with the
7 Securities and Exchange Commission, for exemptions
8 from the requirements of this subsection with respect to
9 specified types of transactions to the extent that such ex-
10 emptions are consistent with the best interests of plan par-
11 ticipants and beneficiaries. Such exemptions may relate to
12 transactions involving reinvestment plans, stock splits,
13 stock dividends, qualified domestic relations orders, and
14 similar matters.

15 “(5) For purposes of this subsection, the term ‘em-
16 ployer security’ has the meaning provided in section
17 407(d)(1).”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to transactions occur-
20 ring after 90 days after the date of the enactment of this
21 Act.

1 **SEC. 104. ENFORCEMENT OF INFORMATION AND DISCLO-**
2 **SURE REQUIREMENTS.**

3 (a) IN GENERAL.—Section 502(c) of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C.
5 1132(c)) is amended—

6 (1) by redesignating paragraph (7) as para-
7 graph (8); and

8 (2) by inserting after paragraph (6) the fol-
9 lowing new paragraph:

10 “(7) The Secretary may assess a civil penalty against
11 any person required to provide any notification under the
12 provisions of section 104(d), any statement under the pro-
13 visions of subsection (a), (d), or (f) of section 105, any
14 information under the provisions of section 404(c)(4), or
15 any notice under the provisions of section 404(e)(1) of up
16 to \$1,000 a day from the date of any failure by such per-
17 son to provide such notification, statement, information,
18 or notice in accordance with such provisions.”

19 (b) CONFORMING AMENDMENT.—Section 502(a)(6)
20 of such Act (29 U.S.C. 1132(a)(6)) (as amended by sec-
21 tion 102(b)) is amended further by striking “(5), or (6)”
22 and inserting “(5), (6), or (7)”.

23 **SEC. 105. REVISION OF ACCOUNTING STANDARD RE-**
24 **QUIRED.**

25 The Securities and Exchange Commission shall not
26 treat as authoritative for purposes of compliance with sec-

1 tion 13 of the Securities Exchange Act of 1934 (15 U.S.C.
 2 78m) any accounting statement of the standard setting
 3 body recognized by the Commission under section 19(b)
 4 of the Securities Act of 1933 (15 U.S.C. 77s(b)) that re-
 5 lates to the accounting by an issuer for single-employer
 6 defined benefit pension plans unless such standard is
 7 modified to prevent the investment gains of such plan
 8 from being treated as income to such issuer.

9 **TITLE II—FREEDOM TO MAKE**
 10 **INVESTMENT DECISIONS**
 11 **WITH PLAN ASSETS**

12 **SEC. 201. AMENDMENTS TO THE INTERNAL REVENUE CODE**
 13 **OF 1986.**

14 (a) IN GENERAL.—Subsection (a) of section 401 of
 15 the Internal Revenue Code of 1986 (relating to require-
 16 ments for qualification) is amended by adding at the end
 17 the following new paragraph:

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

21 “(A) IN GENERAL.—In the case of a de-
 22 fined contribution plan described in this sub-
 23 section that includes a trust which is exempt
 24 from tax under section 501(a) and which holds
 25 employer securities that are readily tradable on

1 an established securities market, such trust
2 shall not constitute a qualified trust under this
3 section unless such plan meets the requirements
4 of subparagraphs (B) and (C).

5 “(B) ELECTIVE DEFERRALS INVESTED IN
6 EMPLOYER SECURITIES.—

7 “(i) IN GENERAL.—In the case of the
8 portion of the account attributable to elec-
9 tive deferrals which is invested in employer
10 securities, a plan meets the requirements
11 of this subparagraph if each applicable in-
12 dividual in such plan may elect to direct
13 the plan to divest any portion of such secu-
14 rities in the individual’s account and to re-
15 invest an equivalent amount in other in-
16 vestment options which meet the require-
17 ments of subparagraph (D). The preceding
18 sentence shall apply to the extent that the
19 amount attributable to reinvested portion
20 exceeds the amount to which a prior elec-
21 tion under this subparagraph or paragraph
22 (28) applies.

23 “(ii) APPLICABLE INDIVIDUAL.—For
24 purposes of this subparagraph, the term
25 ‘applicable individual’ means—

1 “(I) any participant in the plan,

2 “(II) any beneficiary who is an
3 alternate payee (within the meaning
4 of section 414(p)(8)) under an appli-
5 cable qualified domestic relations
6 order (within the meaning of section
7 414(p)(1)(A)), and

8 “(III) any beneficiary of a de-
9 ceased participant or alternate payee.

10 “(C) OTHER EMPLOYER CONTRIBU-
11 TIONS.—

12 “(i) IN GENERAL.—In the case of the
13 portion of the account attributable to em-
14 ployer contributions (other than elective
15 deferrals) which is invested in employer se-
16 curities, a plan meets the requirements of
17 this subparagraph if each qualified partici-
18 pant in the plan may elect to direct the
19 plan to divest any portion of such securi-
20 ties in the participant’s account and to re-
21 invest an equivalent amount in other in-
22 vestment options which meet the require-
23 ments of subparagraph (E). The preceding
24 sentence shall apply to the extent that the
25 amount attributable to such reinvested

1 portion exceeds the amount to which a
2 prior election under this subparagraph or
3 paragraph (28) applies.

4 “(ii) QUALIFIED PARTICIPANT.—For
5 purposes of this subparagraph, the term
6 ‘qualified participant’ means—

7 “(I) any participant in the plan
8 who has completed at least 3 years of
9 service (as determined under section
10 411(a)) under the plan,

11 “(II) any beneficiary who, with
12 respect to a participant who met the
13 service requirement in subclause (I),
14 is an alternate payee (within the
15 meaning of section 414(p)(8)) under
16 an applicable qualified domestic rela-
17 tions order (within the meaning of
18 section 414(p)(1)(A)), and

19 “(III) any beneficiary of a de-
20 ceased participant who met the service
21 requirement in subclause (I) or alter-
22 nate payee described in subclause (II).

23 “(D) INVESTMENT OPTIONS.—The require-
24 ments of this subparagraph are met if the plan
25 offers not less than 3 investment options (not

1 inconsistent with regulations prescribed by the
2 Secretary) other than employer securities.

3 “(E) PRESERVATION OF AUTHORITY OF
4 PLAN TO LIMIT INVESTMENT.—Nothing in this
5 paragraph shall be construed to limit the au-
6 thority of a plan to impose limitations on the
7 portion of plan assets in any account which
8 may be invested in employer securities.

9 “(F) OTHER DEFINITIONS AND RULES.—
10 For purposes of this paragraph—

11 “(i) EMPLOYER SECURITIES.—The
12 term ‘employer securities’ shall have the
13 meaning given such term by section
14 407(d)(1) of the Employee Retirement In-
15 come Security Act of 1974.

16 “(ii) ELECTIVE DEFERRALS.—For
17 purposes of this subparagraph, the term
18 ‘elective deferrals’ means an employer con-
19 tribution described in section 402(g)(3)(A)
20 and any employee contribution.

21 “(iii) ELECTION.—Elections under
22 this paragraph shall be not less frequently
23 than quarterly.

24 “(iv) EMPLOYEE STOCK OWNERSHIP
25 PLAN.—The term ‘employee stock owner-

1 ship plan' shall have the same meaning
2 given to such term by section 4975(e)(7).”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 401(a)(28) of such Code is amended
5 by adding at the end the following new subpara-
6 graph:

7 “(D) APPLICATION.—This paragraph shall
8 not apply with respect to employer securities
9 which are readily tradable on an established se-
10 curities market.”.

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

14 (3) Section 4975(e)(7) of such Code is amended
15 by adding at the end the following new sentence: “A
16 plan shall not fail to be treated as an employee stock
17 ownership plan merely because the plan meets the
18 requirements of section 401(a)(35) (or provides
19 greater diversification rights) or because participants
20 in such plan exercise diversification rights under
21 such section (or greater diversification rights avail-
22 able under the plan).”.

23 (4) Section 4980(c)(3)(A) of such Code is
24 amended by striking “if—” and all that follows and

1 inserting “if the requirements of subparagraphs (B)
2 and (C) are met.”.

3 (5) Section 407 of the Employee Retirement In-
4 come Security Act of 1974 (29 U.S.C. 1107) is
5 amended by adding at the end the following new
6 subsection:

7 “(g) Notwithstanding section 408(e) or any other
8 provision of this title, an individual account plan may not
9 include provisions that do not meet the requirements of
10 section 401(a)(35)(B) of the Internal Revenue Code of
11 1986.”.

12 **SEC. 202. AMENDMENTS TO THE EMPLOYEE RETIREMENT**
13 **INCOME SECURITY ACT OF 1974.**

14 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
15 INCOME SECURITY ACT OF 1974.—Section 404 of the
16 Employee Retirement Income Security Act of 1974 (29
17 U.S.C. 1104) is amended by adding at the end the fol-
18 lowing new subsection:

19 “(e) DIVERSIFICATION OF INVESTMENT OF ACCOUNT
20 ASSETS HELD UNDER INDIVIDUAL ACCOUNT PLANS.—

21 “(1) IN GENERAL.—In the case of an individual
22 account plan under which a participant or bene-
23 ficiary is permitted to exercise control over assets in
24 his or her account, with respect to the assets in the
25 account to which the participant or beneficiary has

1 a nonforfeitable right and which consist of employer
2 securities which are readily tradable on an estab-
3 lished securities market, the plan shall meet the re-
4 quirements of paragraphs (2), (3), (4), (5), (6), and
5 (7).

6 “(2) ASSETS ATTRIBUTABLE TO EMPLOYEE
7 CONTRIBUTIONS.—In the case of any portion of the
8 account assets described in paragraph (1) which is
9 attributable to employee contributions, there shall be
10 no restrictions on the right of a participant or bene-
11 ficiary to allocate the assets in such portion to any
12 investment option provided under the plan.

13 “(3) ELECTIVE DEFERRALS INVESTED IN EM-
14 PLOYER SECURITIES.—

15 “(A) IN GENERAL.—In the case of the por-
16 tion of the account assets described in para-
17 graph (1) which is attributable to elective defer-
18 rals and is invested in employer securities, a
19 plan meets the requirements of this paragraph
20 if each applicable individual in such plan may
21 elect to direct the plan to divest any portion of
22 such securities in the individual’s account and
23 to reinvest an equivalent amount in other in-
24 vestment options which meet the requirements
25 of paragraph (5). The preceding sentence shall

1 apply to the extent that the amount attributable
2 to such reinvested portion exceeds the amount
3 to which a prior election under this paragraph
4 or section 401(a)(28) of the Internal Revenue
5 Code of 1986 applies.

6 “(B) APPLICABLE INDIVIDUAL.—For pur-
7 poses of this paragraph, the term ‘applicable in-
8 dividual’ means—

9 “(i) any participant in the plan,

10 “(ii) any beneficiary who is an alter-
11 nate payee (within the meaning of section
12 206(d)(3)(K)) under an applicable quali-
13 fied domestic relations order (within the
14 meaning of section 206(d)(3)(B)(i)), and

15 “(iii) any beneficiary of a deceased
16 participant or alternate payee.

17 “(4) OTHER EMPLOYER CONTRIBUTIONS.—

18 “(A) IN GENERAL.—In the case of the por-
19 tion of the account assets described in para-
20 graph (1) which is attributable employer con-
21 tributions (other than elective deferrals) and is
22 invested in employer securities, a plan meets
23 the requirements of this paragraph if each
24 qualified participant in the plan may elect to di-
25 rect the plan to divest any portion of such secu-

1 rities in the participant’s account and to rein-
2 vest an equivalent amount in other investment
3 options which meet the requirements of para-
4 graph (6). The preceding sentence shall apply
5 to the extent that the amount attributable to
6 such reinvested portion exceeds the amount to
7 which a prior election under this paragraph or
8 section 401(a)(28) of such Code applies.

9 “(B) QUALIFIED PARTICIPANT.—For pur-
10 poses of this paragraph, the term ‘qualified par-
11 ticipant’ means—

12 “(i) any participant in the plan who
13 has completed at least 3 years of service
14 (as determined under section 203(a))
15 under the plan,

16 “(ii) any beneficiary who, with respect
17 to a participant who met the service re-
18 quirement in clause (i), is an alternate
19 payee (within the meaning of section
20 206(d)(3)(K)) under an applicable quali-
21 fied domestic relations order (within the
22 meaning of section 206(d)(3)(B)(i)), and

23 “(iii) any beneficiary of a deceased
24 participant who met the service require-

1 ment in clause (i) or alternate payee de-
2 scribed in clause (ii).

3 “(5) INVESTMENT OPTIONS.—The requirements
4 of this paragraph are met if, with respect to the ac-
5 count assets described in paragraph (1), the plan of-
6 fers not less than 3 investment options (not incon-
7 sistent with regulations prescribed by the Secretary)
8 other than employer securities.

9 “(6) PROMPT COMPLIANCE WITH DIRECTIONS
10 TO ALLOCATE INVESTMENTS.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), a plan meets the require-
13 ments of this paragraph with respect to plan
14 assets described in paragraph (1) if the plan
15 provides that, within 5 days after the date of
16 any election by a participant or beneficiary allo-
17 cating any such assets to any investment option
18 provided under the plan, the plan administrator
19 shall take such actions as are necessary to ef-
20 fectuate such allocation.

21 “(B) SPECIAL RULE FOR PERIODIC ELEC-
22 TIONS.—In any case in which the plan provides
23 for elections periodically during prescribed peri-
24 ods, the 5-day period described in subparagraph

1 (A) shall commence at the end of each such
2 prescribed period.

3 “(7) NOTICE OF RIGHTS AND OF IMPORTANCE
4 OF DIVERSIFICATION.—A plan meets the require-
5 ments of this paragraph if the plan provides that,
6 not later than 30 days prior to the date on which
7 the right of a participant under the plan to his or
8 her accrued benefit becomes nonforfeitable, the plan
9 administrator shall provide to such participant and
10 his or her beneficiaries a written notice—

11 “(A) setting forth their rights under this
12 section with respect to the accrued benefit, and

13 “(B) describing the importance of diversi-
14 fying the investment of account assets.

15 “(8) PRESERVATION OF AUTHORITY OF PLAN
16 TO LIMIT INVESTMENT.—Nothing in this subsection
17 shall be construed to limit the authority of a plan to
18 impose limitations on the portion of plan assets in
19 any account which may be invested in employer se-
20 curities.

21 “(9) OTHER DEFINITIONS AND RULES.—For
22 purposes of this subsection—

23 “(A) EMPLOYER SECURITIES.—The term
24 ‘employer securities’ shall have the meaning
25 given such term by section 407(d)(1) of the

1 Employee Retirement Income Security Act of
2 1974.

3 “(B) ELECTIVE DEFERRALS.—The term
4 ‘elective deferrals’ means an employer contribu-
5 tion described in section 402(g)(3)(A) of such
6 Code and any employee contribution.

7 “(C) ELECTION.—Elections under this
8 subsection shall be not less frequently than
9 quarterly.

10 “(D) EMPLOYEE STOCK OWNERSHIP
11 PLAN.—The term ‘employee stock ownership
12 plan’ shall have the same meaning given to
13 such term by section 4975(e)(7) of such Code.

14 **SEC. 203. RECOMMENDATIONS RELATING TO NON-PUB-**
15 **LICLY TRADED STOCK.**

16 Within 1 year after the date of the enactment of this
17 Act, the Secretary of Labor and the Secretary of the
18 Treasury shall jointly transmit to the Committee on Edu-
19 cation and the Workforce and the Committee on Ways and
20 Means of the House of Representatives and the Committee
21 on Health, Education, Labor, and Pensions and the Com-
22 mittee on Finance of the Senate their recommendations
23 regarding legislative changes relating to treatment, under
24 section 404(e) of the Employee Retirement Income Secu-
25 rity Act of 1974 and section 401(a)(35) of the Internal

1 Revenue Code of 1986 (as added by this title), of indi-
2 vidual account plans under which a participant or bene-
3 ficiary is permitted to exercise control over assets in his
4 or her account, in cases in which such assets do not in-
5 clude employer securities which are readily tradable under
6 an established securities market.

7 **SEC. 204. EFFECTIVE DATE OF TITLE.**

8 (a) IN GENERAL.—Except as provided in subsection
9 (b), the amendments made by this title shall apply with
10 respect to plan years beginning after December 31, 2003.

11 (b) EXCEPTION.—The amendments made by this sec-
12 tion shall not apply to employer securities held by an em-
13 ployee stock ownership plan which are not subject to sec-
14 tion 401(a)(28) of the Internal Revenue Code of 1986 by
15 reason of section 1175(a)(2) of the Tax Reform Act of
16 1986 (100 Stat. 2519).

17 (c) DELAYED EFFECTIVE DATE OF EXISTING HOLD-
18 INGS.—In any case in which a portion of the nonforfeit-
19 able accrued benefit of a participant or beneficiary is held
20 in the form of employer securities (as defined in section
21 407(d)(1) of the Employee Retirement Income Security
22 Act of 1974) immediately before the first date of the first
23 plan year to which the amendments made by this title
24 apply, such portion shall be taken into account only with

1 respect to plan years beginning on or after January 1,
2 2005.

3 **TITLE III—EMPLOYEE**
4 **REPRESENTATION**

5 **SEC. 301. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**
6 **SHIP OF INDIVIDUAL ACCOUNT PLANS.**

7 (a) IN GENERAL.—Section 403(a) of the Employee
8 Retirement Income Security Act of 1974 (29 U.S.C.
9 1103(a)) is amended—

10 (1) by redesignating paragraphs (1) and (2) as
11 subparagraphs (A) and (B), respectively;

12 (2) by inserting “(1)” after “(a)”; and

13 (3) by adding at the end the following new
14 paragraph:

15 “(2)(A) The assets of a single-employer plan which
16 is an individual account plan and under which some or
17 all of the assets are derived from employee contributions
18 shall be held in trust by a joint board of trustees, which
19 shall consist of two or more trustees representing on an
20 equal basis the interests of the employer or employers
21 maintaining the plan and the interests of the participants
22 and their beneficiaries and having equal voting rights.

23 “(B)(i) Except as provided in clause (ii), in any case
24 in which the plan is maintained pursuant to one or more
25 collective bargaining agreements between one or more em-

1 ployee organizations and one or more employers, the trust-
2 ees representing the interests of the participants and their
3 beneficiaries shall be designated by such employee organi-
4 zations.

5 “(ii) Clause (i) shall not apply with respect to a plan
6 described in such clause if the employee organization (or
7 all employee organizations, if more than one) referred to
8 in such clause file with the Secretary, in such form and
9 manner as shall be prescribed in regulations of the Sec-
10 retary, a written waiver of their rights under clause (i).

11 “(iii) In any case in which clause (i) does not apply
12 with respect to a single-employer plan because the plan
13 is not described in clause (i) or because of a waiver filed
14 pursuant to clause (ii), the trustee or trustees representing
15 the interests of the participants and their beneficiaries
16 shall be selected by the plan participants in accordance
17 with regulations of the Secretary.

18 “(C) An individual shall not be treated as ineligible
19 for selection as trustee solely because such individual is
20 an employee of the plan sponsor, except that the employee
21 so selected may not be a highly compensated employee (as
22 defined in section 414(q) of the Internal Revenue Code
23 of 1986).

24 “(D) The Secretary shall provide by regulation for
25 the appointment of a neutral individual, in accordance

1 with the procedures under section 203(f) of the Labor
2 Management Relations Act, 1947 (29 U.S.C. 173(f)), to
3 cast votes as necessary to resolve tie votes by the trust-
4 ees.”.

5 (b) REGULATIONS.—The Secretary of Labor shall
6 prescribe the initial regulations necessary to carry out the
7 provisions of the amendments made by this section not
8 later than 90 days after the date of the enactment of this
9 Act.

10 **TITLE IV—INCREASED** 11 **ACCOUNTABILITY**

12 **SEC. 401. BONDING OR INSURANCE ADEQUATE TO PRO-** 13 **TECT INTEREST OF PARTICIPANTS AND** 14 **BENEFICIARIES.**

15 Section 412 of the Employee Retirement Income Se-
16 curity Act of 1974 (29 U.S.C. 1112) is amended by adding
17 at the end the following new subsection:

18 “(f) Notwithstanding the preceding provisions of this
19 section, each fiduciary of an individual account plan shall
20 be bonded or insured, in accordance with regulations
21 which shall be prescribed by the Secretary, in an amount
22 sufficient to ensure coverage by the bond or insurance of
23 financial losses due to any failure to meet the require-
24 ments of this part.”.

1 **SEC. 402. LIABILITY FOR BREACH OF FIDUCIARY DUTY.**

2 (a) ADDITIONAL EQUITABLE OR REMEDIAL RE-
3 LIEF.—Section 409 of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1109) is amended—

5 (1) by redesignating subsection (b) as sub-
6 section (c);

7 (2) in subsection (a), by striking “, including
8 removal of such fiduciary”; and

9 (3) by inserting after subsection (a) the fol-
10 lowing new subsection:

11 “(b) The equitable or remedial relief referred to in
12 subsection (a) may include (but is not limited to) a court
13 order removing the fiduciary from the plan referred to in
14 subsection (a) and a court order prohibiting, conditionally
15 or unconditionally, and permanently or for such period of
16 time as the court shall determine, the fiduciary from serv-
17 ing—

18 “(1) as an administrator, fiduciary, officer,
19 trustee, custodian, counsel, agent, employee, or rep-
20 resentative in any capacity of any employee benefit
21 plan,

22 “(2) as a consultant or adviser to an employee
23 benefit plan, including but not limited to any entity
24 whose activities are in whole or substantial part de-
25 voted to providing goods or services to any employee
26 benefit plan, or

1 “(3) in any capacity that involves decision-
2 making authority or custody or control of the mon-
3 eys, funds, assets, or property of any employee ben-
4 efit plan.”.

5 (b) LIABILITY FOR PARTICIPATING IN OR CON-
6 CEALING FIDUCIARY BREACH IN CONNECTION WITH IN-
7 DIVIDUAL ACCOUNT PLANS.—

8 (1) APPLICATION TO PARTICIPANTS AND BENE-
9 FICIARIES OF 401(k) PLANS.—

10 (A) IN GENERAL.—Part 4 of subtitle B of
11 title I of the Employee Retirement Income Se-
12 curity Act of 1974 (29 U.S.C. 1101 et seq.) is
13 amended by adding after section 409 the fol-
14 lowing new section:

15 **“SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN**
16 **401(k) PLANS.**

17 “(a) Any person who is a fiduciary with respect to
18 an individual account plan that includes a qualified cash
19 or deferred arrangement under section 401(k) of the In-
20 ternal Revenue Code of 1986 who breaches any of the re-
21 sponsibilities, obligations, or duties imposed upon fidu-
22 ciaries by this title shall be personally liable to make good
23 to each participant and beneficiary of the plan any losses
24 to such participant or beneficiary resulting from each such
25 breach, and to restore to such participant or beneficiary

1 any profits of such fiduciary which have been made
2 through use of assets of the plan by the fiduciary, and
3 shall be subject to such other equitable or remedial relief
4 as the court may deem appropriate, including removal of
5 such fiduciary. A fiduciary may also be removed for a vio-
6 lation of section 411 of this Act.

7 “(b) The right of participants and beneficiaries under
8 subsection (a) to sue for breach of fiduciary duty with re-
9 spect to an individual account plan that includes a quali-
10 fied cash or deferred arrangement under section 401(k)
11 of such Code shall be in addition to all existing rights that
12 participants and beneficiaries have under section 409, sec-
13 tion 502, and any other provision of this title, and shall
14 not be construed to give rise to any inference that such
15 rights do not already exist under section 409, section 502,
16 or any other provision of this title.

17 “(c) No fiduciary shall be liable with respect to a
18 breach of fiduciary duty under this title if such breach
19 was committed before he or she became a fiduciary or
20 after he or she ceased to be a fiduciary.”

21 (B) CONFORMING AMENDMENT.—The
22 table of contents for part 4 of subtitle B of title
23 I of such Act is amended by inserting the fol-
24 lowing new item after the item relating to sec-
25 tion 409:

“Sec. 409A. Liability for breach of fiduciary duty in 401(k) plans.”

1 (2) INSIDER LIABILITY.—

2 (A) IN GENERAL.—Section 409 of the Em-
3 ployee Retirement Income Security Act of 1974
4 (29 U.S.C. 1109) is amended by redesignating
5 subsection (b) as subsection (c) and by insert-
6 ing after subsection (a) the following new sub-
7 section:

8 “(b)(1)(A) If an insider with respect to the plan spon-
9 sor of an individual account plan that holds employer secu-
10 rities that are readily tradable on an established securities
11 market—

12 “(i) knowingly participates in a breach of fidu-
13 ciary responsibility to which subsection (a) applies,
14 or

15 “(ii) knowingly undertakes to conceal such a
16 breach,

17 such insider shall be personally liable under this sub-
18 section for such breach in the same manner as the fidu-
19 ciary who commits such breach.

20 “(B) For purposes of subparagraph (A), the term ‘in-
21 sider’ means, with respect to any plan sponsor of a plan
22 to which subparagraph (A) applies—

23 “(i) any officer or director with respect to the
24 plan sponsor, or

1 “(ii) any independent qualified public account-
2 ant of the plan or of the plan sponsor.

3 “(3) Any relief provided under this subsection or sec-
4 tion 409A—

5 “(A) if provided to an individual account plan,
6 shall inure to the individual accounts of the affected
7 participants or beneficiaries, and

8 “(B) if provided to a participant or beneficiary,
9 shall be payable to the individual account plan on
10 behalf of such participant or beneficiary unless such
11 plan has been terminated.”

12 (B) CONFORMING AMENDMENT.—Section
13 409(c) of such Act (29 U.S.C. 1109(c)), as re-
14 designated by subparagraph (A), is amended by
15 inserting before the period the following:
16 “, unless such liability arises under subsection
17 (b)”.

18 (c) MAINTENANCE OF FIDUCIARY LIABILITY.—Sec-
19 tion 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B))
20 is amended by inserting before the period the following:
21 “, except that this subparagraph shall not be construed
22 to exempt any fiduciary from liability for any violation of
23 subsection (e)”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to breaches occurring
3 on or after the date of the enactment of this Act.

4 **SEC. 403. PRESERVATION OF RIGHTS OR CLAIMS.**

5 Section 502 of the Employee Retirement Income Se-
6 curity Act of 1974 (29 U.S.C. 1132) is amended by adding
7 at the end the following new subsection:

8 “(n)(1) The rights under this title (including the
9 right to maintain a civil action) may not be waived, de-
10 ferred, or lost pursuant to any agreement not authorized
11 under this title with specific reference to this subsection.

12 “(2) Paragraph (1) shall not apply to an agreement
13 providing for arbitration or participation in any other non-
14 judicial procedure to resolve a dispute if the agreement
15 is entered into knowingly and voluntarily by the parties
16 involved after the dispute has arisen or is pursuant to the
17 terms of a collective bargaining agreement.”.

18 **SEC. 404. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

19 (a) IN GENERAL.—Subtitle A of title III of the Em-
20 ployee Retirement Income Security Act of 1974 (29
21 U.S.C. 3001 et seq.) is amended by inserting after section
22 3004 the following new section:

23 “OFFICE OF PENSION PARTICIPANT ADVOCACY

24 “SEC. 3005. (a) ESTABLISHMENT.—

1 “(1) IN GENERAL.—There is established in the
2 Department of Labor an office to be known as the
3 ‘Office of Pension Participant Advocacy’.

4 “(2) PENSION PARTICIPANT ADVOCATE.—The
5 Office of Pension Participant Advocacy shall be
6 under the supervision and direction of an official to
7 be known as the ‘Pension Participant Advocate’ who
8 shall—

9 “(A) have demonstrated experience in the
10 area of pension participant assistance, and

11 “(B) be selected by the Secretary after
12 consultation with pension participant advocacy
13 organizations.

14 The Pension Participant Advocate shall report di-
15 rectly to the Secretary and shall be entitled to com-
16 pensation at the same rate as the highest rate of
17 basic pay established for the Senior Executive Serv-
18 ice under section 5382 of title 5, United States
19 Code.

20 “(b) FUNCTIONS OF OFFICE.—It shall be the func-
21 tion of the Office of Pension Participant Advocacy to—

22 “(1) evaluate the efforts of the Federal Govern-
23 ment, business, and financial, professional, retiree,
24 labor, women’s, and other appropriate organizations

1 in assisting and protecting pension plan participants,
2 including—

3 “(A) serving as a focal point for, and ac-
4 tively seeking out, the receipt of information
5 with respect to the policies and activities of the
6 Federal Government, business, and such organi-
7 zations which affect such participants,

8 “(B) identifying significant problems for
9 pension plan participants and the capabilities of
10 the Federal Government, business, and such or-
11 ganizations to address such problems, and

12 “(C) developing proposals for changes in
13 such policies and activities to correct such prob-
14 lems, and communicating such changes to the
15 appropriate officials,

16 “(2) promote the expansion of pension plan cov-
17 erage and the receipt of promised benefits by in-
18 creasing the awareness of the general public of the
19 value of pension plans and by protecting the rights
20 of pension plan participants, including—

21 “(A) enlisting the cooperation of the public
22 and private sectors in disseminating informa-
23 tion, and

1 “(B) forming private-public partnerships
2 and other efforts to assist pension plan partici-
3 pants in receiving their benefits,

4 “(3) advocating for the full attainment of the
5 rights of pension plan participants, including by
6 making pension plan sponsors and fiduciaries aware
7 of their responsibilities,

8 “(4) giving priority to the special needs of low
9 and moderate income participants,

10 “(5) developing needed information with respect
11 to pension plans, including information on the types
12 of existing pension plans, levels of employer and em-
13 ployee contributions, vesting status, accumulated
14 benefits, benefits received, and forms of benefits,
15 and

16 “(6) pursuing claims on behalf of participants
17 and beneficiaries and providing appropriate assist-
18 ance in the resolution of disputes between partici-
19 pants and beneficiaries and pension plans, including
20 assistance in obtaining settlement agreements.

21 “(c) REPORTS.—

22 “(1) ANNUAL REPORT.—Not later than Decem-
23 ber 31 of each calendar year, the Pension Partici-
24 pant Advocate shall report to the Committee on
25 Education and the Workforce and the Committee on

1 Ways and Means of the House of Representatives
2 and the Committee on Health, Education, Labor,
3 and Pensions and the Committee on Finance of the
4 Senate on its activities during the fiscal year ending
5 in the calendar year. Such report shall—

6 “(A) identify significant problems the Ad-
7 vocate has identified,

8 “(B) include specific legislative and regu-
9 latory changes to address the problems, and

10 “(C) identify any actions taken to correct
11 problems identified in any previous report.

12 The Advocate shall submit a copy of such report to
13 the Secretary and any other appropriate official at
14 the same time it is submitted to the committees of
15 Congress.

16 “(2) SPECIFIC REPORTS.—The Pension Partici-
17 pant Advocate shall report to the Secretary or any
18 other appropriate official any time the Advocate
19 identifies a problem which may be corrected by the
20 Secretary or such official.

21 “(3) REPORTS TO BE SUBMITTED DIRECTLY.—
22 The report required under paragraph (1) shall be
23 provided directly to the committees of Congress
24 without any prior review or comment by the Sec-
25 retary or any other Federal officer or employee.

1 “(d) SPECIFIC POWERS.—

2 “(1) RECEIPT OF INFORMATION.—Subject to
3 such confidentiality requirements as may be appro-
4 priate, the Secretary and other Federal officials
5 shall, upon request, provide such information (in-
6 cluding plan documents) as may be necessary to en-
7 able the Pension Participant Advocate to carry out
8 the Advocate’s responsibilities under this section.

9 “(2) APPEARANCES.—The Pension Participant
10 Advocate may represent the views and interests of
11 pension plan participants before any Federal agency,
12 including, upon request of a participant, in any pro-
13 ceeding involving the participant.

14 “(3) CONTRACTING AUTHORITY.—In carrying
15 out responsibilities under subsection (b)(5), the Pen-
16 sion Participant Advocate may, in addition to any
17 other authority provided by law—

18 “(A) contract with any person to acquire
19 statistical information with respect to pension
20 plan participants, and

21 “(B) conduct direct surveys of pension
22 plan participants.”

23 (b) CONFORMING AMENDMENT.—The table of con-
24 tents in section 1 of such Act is amended by inserting

1 after the item relating to section 3004 the following new
2 item:

“Sec. 3051. Office of Pension Participant Advocacy.”.

3 (c) **EFFECTIVE DATE.**—The amendment made by
4 this section shall take effect on January 1, 2004.

5 **SEC. 405. STUDY REGARDING INSURANCE SYSTEM FOR IN-**
6 **DIVIDUAL ACCOUNT PLANS.**

7 (a) **STUDY.**—As soon as practicable after the date of
8 the enactment of this Act, the Pension Benefit Guaranty
9 Corporation shall contract to carry out a study relating
10 to the establishment of an insurance system for individual
11 account plans. In conducting such study, the Corporation
12 shall consider—

13 (1) the feasibility and impact of such a system,

14 and

15 (2) options for developing such a system.

16 (b) **REPORT.**—Not later than 3 years after the date
17 of the enactment of this Act, the Corporation shall report
18 the results of its study, together with any recommenda-
19 tions for legislative changes, to the Committee on Edu-
20 cation and the Workforce and the Committee on Ways and
21 Means of the House of Representatives and the Committee
22 on Health, Education, Labor, and Pensions and the Com-
23 mittee on Finance of the Senate.

1 **SEC. 406. EXCISE TAX ON FAILURE OF PENSION PLANS TO**
2 **PROVIDE NOTICE OF TRANSACTION RESTRIC-**
3 **TION PERIODS.**

4 (a) IN GENERAL.—Chapter 43 of the Internal Rev-
5 enue Code of 1986 (relating to qualified pension, etc.,
6 plans) is amended by adding at the end the following new
7 section:

8 **“SEC. 4980H. FAILURE OF APPLICABLE PLANS TO PROVIDE**
9 **NOTICE OF TRANSACTION RESTRICTION PE-**
10 **RIODS.**

11 “(a) IMPOSITION OF TAX.—There is hereby imposed
12 a tax on the failure of any applicable pension plan to meet
13 the requirements of subsection (e) with respect to any ap-
14 plicable individual.

15 “(b) AMOUNT OF TAX.—The amount of the tax im-
16 posed by subsection (a) on any failure with respect to any
17 applicable individual shall be \$100 for each day in the
18 noncompliance period with respect to such failure.

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

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

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

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

3 “(B) such person provides the notice de-
4 scribed in subsection (e) as soon as reasonably
5 practicable after the first date such person
6 knew, or exercising reasonable diligence should
7 have known, that such failure existed.

8 “(2) OVERALL LIMITATION FOR UNINTEN-
9 TIONAL FAILURES.—

10 “(A) IN GENERAL.—If the person subject
11 to liability for tax under subsection (d) exer-
12 cised reasonable diligence to meet the require-
13 ments of subsection (e) and paragraph (1) is
14 not otherwise applicable, the tax imposed by
15 subsection (a) for failures during the taxable
16 year of the employer (or, in the case of a multi-
17 employer plan, the taxable year of the trust
18 forming part of the plan) shall not exceed
19 \$500,000. For purposes of the preceding sen-
20 tence, all multiemployer plans of which the
21 same trust forms a part shall be treated as 1
22 plan.

23 “(B) TAXABLE YEARS IN THE CASE OF
24 CERTAIN CONTROLLED GROUPS.—For purposes
25 of this paragraph, if all persons who are treated

1 as a single employer for purposes of this section
2 do not have the same taxable year, the taxable
3 years taken into account shall be determined
4 under principles similar to the principles of sec-
5 tion 1561.

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

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

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

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

18 “(e) NOTICE OF TRANSACTION RESTRICTION PERI-
19 ODS.—

20 “(1) DUTIES OF PLAN ADMINISTRATOR.—In
21 advance of the commencement of any transaction re-
22 striction period with respect to an applicable pension
23 plan, the plan administrator shall notify the plan
24 participants and beneficiaries who are affected by
25 such action in accordance with this subsection.

1 “(2) NOTICE REQUIREMENTS.—

2 “(A) IN GENERAL.—The notices described
3 in paragraph (1) shall be written in a manner
4 calculated to be understood by the average plan
5 participant and shall include—

6 “(i) the reasons for the transaction
7 restriction period,

8 “(ii) an identification of the invest-
9 ments and other rights affected,

10 “(iii) the expected beginning date and
11 length of the transaction restriction period,

12 “(iv) in the case of investments af-
13 fected, a statement that the applicable in-
14 dividual should evaluate the appropriate-
15 ness of their current investment decisions
16 in light of their inability to direct or diver-
17 sify assets credited to their accounts dur-
18 ing the transaction restriction period, and

19 “(v) such other matters as the Sec-
20 retary may require by regulation.

21 “(B) NOTICE TO PARTICIPANTS AND
22 BENEFICIARIES.—Except as otherwise provided
23 in this subsection, notices described in para-
24 graph (1) shall be furnished to all participants
25 and beneficiaries under the plan to whom the

1 transaction restriction period applies at least 30
2 days in advance of the transaction restriction
3 period.

4 “(C) EXCEPTION TO 30-DAY NOTICE RE-
5 QUIREMENT.—In any case in which—

6 “(i) a deferral of the transaction re-
7 striction period would violate the require-
8 ments of subparagraph (A) or (B) of sec-
9 tion 404(a)(1) of the Employee Retirement
10 Income Security Act of 1974, and a fidu-
11 ciary (within the meaning of section 3(21)
12 of such Act) of the plan reasonably so de-
13 termines in writing, or

14 “(ii) the inability to provide the 30-
15 day advance notice is due to events that
16 were unforeseeable or circumstances be-
17 yond the reasonable control of the plan ad-
18 ministrator, and a fiduciary of the plan
19 reasonably so determines in writing,

20 subparagraph (B) shall not apply, and the no-
21 tice shall be furnished to all participants and
22 beneficiaries under the plan to whom the trans-
23 action restriction period applies as soon as rea-
24 sonably possible under the circumstances unless
25 such a notice in advance of the termination of

1 the transaction restriction period is impracti-
2 cable.

3 “(D) WRITTEN NOTICE.—The notice re-
4 quired to be provided under this subsection
5 shall be in writing, except that such notice may
6 be in electronic or other form to the extent that
7 such form is reasonably accessible to the recipi-
8 ent.

9 “(E) NOTICE TO ISSUERS OF EMPLOYER
10 SECURITIES SUBJECT TO TRANSACTION RE-
11 STRICTION PERIOD.—In the case of any trans-
12 action restriction period in connection with an
13 applicable pension plan, the plan administrator
14 shall provide timely notice of such transaction
15 restriction period to the issuer of any employer
16 securities subject to such transaction restriction
17 period.

18 “(3) EXCEPTION FOR TRANSACTION RESTRIC-
19 TION PERIODS WITH LIMITED APPLICABILITY.—In
20 any case in which the transaction restriction period
21 applies to 1 or more participants or beneficiaries in
22 connection with a merger, acquisition, divestiture, or
23 similar transaction involving the plan or plan spon-
24 sor and occurs solely in connection with becoming or
25 ceasing to be an applicable individual under the plan

1 by reason of such merger, acquisition, divestiture, or
2 transaction, the requirement of this subsection that
3 the notice be provided to all participants and bene-
4 ficiaries shall be treated as met if the notice required
5 under paragraph (1) is provided to such participants
6 or beneficiaries to whom the transaction restriction
7 period applies as soon as reasonably practicable.

8 “(4) CHANGES IN LENGTH OF TRANSACTION
9 RESTRICTION PERIOD.—If, following the furnishing
10 of the notice pursuant to this subsection, there is a
11 change in the beginning date or length of the trans-
12 action restriction period (specified in such notice
13 pursuant to paragraph (2)(A)(iii)), the administrator
14 shall provide affected participants and beneficiaries
15 notice of the change as soon as reasonably prac-
16 ticable. In relation to the extended transaction re-
17 striction period, such notice shall meet the require-
18 ments of paragraph (2)(D) and shall specify any
19 material change in the matters referred to in clauses
20 (i) through (v) of paragraph (2)(A).

21 “(5) REGULATORY EXCEPTIONS.—The Sec-
22 retary may provide by regulation for additional ex-
23 ceptions to the requirements of this subsection which
24 the Secretary determines are in the interests of par-
25 ticipants and beneficiaries.

1 “(6) GUIDANCE AND MODEL NOTICES.—The
2 Secretary shall issue guidance and model notices
3 which meet the requirements of this subsection.

4 “(7) TRANSACTION RESTRICTION PERIOD.—For
5 purposes of this subsection—

6 “(A) IN GENERAL.—The term ‘transaction
7 restriction period’ means, in connection with an
8 applicable pension plan, any period for which
9 any ability of participants or beneficiaries under
10 the plan, which is otherwise available under the
11 terms of such plan, to direct or diversify assets
12 credited to their accounts, to obtain loans from
13 the plan, or to obtain distributions from the
14 plan is temporarily suspended, limited, or re-
15 stricted, if such suspension, limitation, or re-
16 striction is for any period of more than 3 con-
17 secutive business days.

18 “(B) EXCLUSIONS.—The term ‘transaction
19 restriction period’ does not include a suspen-
20 sion, limitation, or restriction—

21 “(i) which occurs by reason of the ap-
22 plication of the securities laws (as defined
23 in section 3(a)(47) of the Securities Ex-
24 change Act of 1934),

1 “(ii) which is a change to the plan
2 which provides for a regularly scheduled
3 suspension, limitation, or restriction which
4 is disclosed to participants or beneficiaries
5 through any summary of material modi-
6 fications, any materials describing specific
7 investment alternatives under the plan, or
8 any changes thereto, or

9 “(iii) which applies to 1 or more indi-
10 viduals, each of whom is the participant,
11 an alternate payee (as defined in section
12 414(p)(8)), or any other beneficiary pursu-
13 ant to a qualified domestic relations order
14 (as defined in section 414(p)(1)).

15 “(8) APPLICABLE INDIVIDUAL.—For purposes
16 of this section, the term ‘applicable individual’
17 means—

18 “(A) any participant in the applicable pen-
19 sion plan,

20 “(B) any beneficiary who is an alternate
21 payee (within the meaning of section 414(p)(8))
22 under an applicable qualified domestic relations
23 order (within the meaning of section
24 414(p)(1)(A)), and

1 “(C) any beneficiary of a deceased partici-
2 pant or alternate payee,
3 who has an accrued benefit under the plan and who
4 is entitled to direct the investment (or hypothetical
5 investment) of some or all of such accrued benefit.

6 “(9) APPLICABLE PENSION PLAN.—For pur-
7 poses of this subsection, the term ‘applicable pension
8 plan’ means—

9 “(A) a plan described in section
10 219(g)(5)(A) (other than in clause (iii) thereof),
11 and

12 “(B) an eligible deferred compensation
13 plan (as defined in section 457(b)) of an eligible
14 employer described in section 457(e)(1)(A),
15 which permits any participant to direct the invest-
16 ment of some or all of his account in the plan or
17 under which the accrued benefit of any participant
18 depends in whole or in part on hypothetical invest-
19 ments directed by the participant.”.

20 (b) CLERICAL AMENDMENT.—The table of sections
21 for chapter 43 of such Code is amended by adding at the
22 end the following new item:

 “Sec. 4980H. Failure of applicable plans to provide notice of
 transaction restriction periods.”.

23 (c) EFFECTIVE DATE AND RELATED RULES.—

1 (1) EFFECTIVE DATE.—The amendments made
2 by this section shall take effect 180 days after the
3 date of the enactment of this Act. Good faith compli-
4 ance with the requirements of such amendments in
5 advance of the issuance of applicable regulations
6 thereunder shall be treated as compliance with such
7 provisions.

8 (2) ISSUANCE OF INITIAL GUIDANCE AND
9 MODEL NOTICE.—The Secretary of the Treasury
10 shall, in consultation with the Secretary of Labor,
11 issue initial guidance and a model notice pursuant to
12 section 4980H(e)(6) of the Internal Revenue Code of
13 1986 (as added by this section) not later than Janu-
14 ary 1, 2005. Not later than 75 days after the date
15 of the enactment of this Act, the Secretary shall pro-
16 mulgate interim final rules necessary to carry out
17 the amendments made by this section.

18 (3) PLAN AMENDMENTS.—If any amendment
19 made by this section requires an amendment to any
20 plan, such plan amendment shall not be required to
21 be made before the first plan year beginning on or
22 after the effective date of this section, if—

23 (A) during the period after such amend-
24 ment made by this section takes effect and be-
25 fore such first plan year, the plan is operated

1 in good faith compliance with the requirements
2 of such amendment made by this section, and

3 (B) such plan amendment applies retro-
4 actively to the period after such amendment
5 made by this section takes effect and before
6 such first plan year.

7 **TITLE V—INVESTMENT ADVICE**
8 **FOR PARTICIPANTS AND**
9 **BENEFICIARIES**

10 **SEC. 501. INDEPENDENT INVESTMENT ADVICE.**

11 (a) IN GENERAL.—Section 404(c)(1) of the Em-
12 ployee Retirement Income Security Act of 1974 (29
13 U.S.C. 1104(c)(1)) (as amended by section 102(c)) is
14 amended further—

15 (1) by redesignating subparagraphs (A) and
16 (B) as clauses (i) and (ii), respectively, and by in-
17 serting “(A)” after “(c)(1)”; and

18 (2) by adding at the end the following new sub-
19 paragraphs:

20 “(B)(i) In the case of a pension plan described in sub-
21 paragraph (A) which provides investment in employer se-
22 curities as at least one option for investment of plan assets
23 at the direction of the participant or beneficiary, such plan
24 shall make available to the participant or beneficiary the
25 services of a qualified fiduciary adviser for purposes of

1 providing investment advice described in section
2 3(21)(A)(ii) regarding investment in such securities.

3 “(ii) No person who is otherwise a fiduciary shall be
4 liable by reason of any investment advice provided by a
5 qualified fiduciary adviser pursuant to a request under
6 clause (i) if—

7 “(I) the plan provides for selection and moni-
8 toring of such adviser in a prudent and effective
9 manner, and

10 “(II) such adviser is a named fiduciary under
11 the plan in connection with the provision of such ad-
12 vice.

13 “(C) For purposes of subparagraph (B)—

14 “(i) The term ‘qualified fiduciary adviser’
15 means, with respect to a plan, a person who—

16 “(I) is a fiduciary of the plan by reason of
17 the provision of qualified investment advice by
18 such person to a participant or beneficiary,

19 “(II) has no material interest in, and no
20 material affiliation or contractual relationship
21 with any third party having a material interest
22 in, the security or other property with respect
23 to which the person is providing the advice,

24 “(III) meets the qualifications of clause
25 (ii), and

1 “(IV) meets the additional requirements of
2 clause (iii).

3 “(ii) A person meets the qualifications of this
4 subparagraph if such person—

5 “(I) is registered as an investment ad-
6 viser under the Investment Advisers Act of
7 1940 (15 U.S.C. 80b–1 et seq.),

8 “(II) if not registered as an invest-
9 ment adviser under such Act by reason of
10 section 203A(a)(1) of such Act (15 U.S.C.
11 80b–3a(a)(1)), is registered under the laws
12 of the State in which the fiduciary main-
13 tains its principal office and place of busi-
14 ness, and, at the time the fiduciary last
15 filed the registration form most recently
16 filed by the fiduciary with such State in
17 order to maintain the fiduciary’s registra-
18 tion under the laws of such State, also
19 filed a copy of such form with the Sec-
20 retary,

21 “(III) is registered as a broker or
22 dealer under the Securities Exchange Act
23 of 1934 (15 U.S.C. 78a et seq.),

24 “(IV) is a bank or similar financial in-
25 stitution referred to in section 408(b)(4),

1 “(V) is an insurance company quali-
2 fied to do business under the laws of a
3 State, or

4 “(VI) is any other comparable entity
5 which satisfies such criteria as the Sec-
6 retary determines appropriate.

7 “(iii) A person meets the additional re-
8 quirements of this clause if every individual who
9 is employed (or otherwise compensated) by such
10 person and whose scope of duties includes the
11 provision of qualified investment advice on be-
12 half of such person to any participant or bene-
13 ficiary is—

14 “(I) a registered representative of
15 such person,

16 “(II) an individual described in sub-
17 clause (I), (II), or (III) of clause (i), or

18 “(III) such other comparable qualified
19 individual as may be designated in regula-
20 tions of the Secretary.”.

21 (b) MAINTENANCE OF FIDUCIARY LIABILITY.—Sec-
22 tion 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B))
23 is amended by inserting before the period the following:
24 “, except that this subparagraph shall not be construed

1 to exempt any fiduciary from liability for any violation of
2 this section”.

3 **SEC. 502. TAX TREATMENT OF QUALIFIED RETIREMENT**
4 **PLANNING SERVICES.**

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

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

22 (b) CONFORMING AMENDMENTS.—

23 (1) Section 403(b)(3)(B) of such Code is
24 amended by inserting “132(m)(4),” after
25 “132(f)(4),”.

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

3 (3) Section 415(c)(3)(D)(ii) of such Code is
4 amended by inserting “132(m)(4),” after
5 “132(f)(4),”.

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

9 **TITLE VI—PARITY IN EMPLOYEE**
10 **BENEFITS**

11 **SEC. 601. INCLUSION IN GROSS INCOME OF FUNDED DE-**
12 **FERRED COMPENSATION OF CORPORATE IN-**
13 **SIDERS IF CORPORATION FUNDS DEFINED**
14 **CONTRIBUTION PLAN WITH EMPLOYER**
15 **STOCK.**

16 (a) IN GENERAL.—Subpart A of part I of subchapter
17 D of chapter 1 of the Internal Revenue Code of 1986 is
18 amended by adding at the end the following new section:

19 **“SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED**
20 **COMPENSATION OF CORPORATE INSIDERS IF**
21 **CORPORATION FUNDS DEFINED CONTRIBU-**
22 **TION PLAN WITH EMPLOYER STOCK.**

23 “(a) IN GENERAL.—If an employer maintains a de-
24 fined contribution plan to which employer contributions

1 are made in the form of employer stock and such employer
2 maintains a funded deferred compensation plan—

3 “(1) compensation of any corporate insider
4 which is deferred under such funded deferred com-
5 pensation plan shall be included in the gross income
6 of the insider or beneficiary for the 1st taxable year
7 in which there is no substantial risk of forfeiture of
8 the rights to such compensation, and

9 “(2) the tax treatment of any amount made
10 available under the plan to a corporate insider or
11 beneficiary shall be determined under section 72 (re-
12 lating to annuities, etc.).

13 “(b) FUNDED DEFERRED COMPENSATION PLAN.—
14 For purposes of this section—

15 “(1) IN GENERAL.—The term ‘funded deferred
16 compensation plan’ means any plan providing for the
17 deferral of compensation unless—

18 “(A) the employee’s rights to the com-
19 pensation deferred under the plan are no great-
20 er than the rights of a general creditor of the
21 employer,

22 “(B) all amounts set aside (directly or in-
23 directly) for purposes of paying the deferred
24 compensation, and all income attributable to
25 such amounts, remain (until made available to

1 the participant or other beneficiary) solely the
2 property of the employer (without being re-
3 stricted to the provision of benefits under the
4 plan), and

5 “(C) the amounts referred to in subpara-
6 graph (B) are available to satisfy the claims of
7 the employer’s general creditors at all times
8 (not merely after bankruptcy or insolvency).

9 Such term shall not include a qualified employer
10 plan.

11 “(2) SPECIAL RULES.—

12 “(A) EMPLOYEE’S RIGHTS.—A plan shall
13 be treated as failing to meet the requirements
14 of paragraph (1)(A) unless, under the written
15 terms of the plan—

16 “(i) the compensation deferred under
17 the plan is paid only upon separation from
18 service, death, or at a specified time (or
19 pursuant to a fixed schedule), and

20 “(ii) the plan does not permit the ac-
21 celeration of the time such deferred com-
22 pensation is paid by reason of any event.

23 If the employer and employee agree to a modi-
24 fication of the plan that accelerates the time for
25 payment of any deferred compensation, then all

1 compensation previously deferred under the
2 plan shall be includible in gross income for the
3 taxable year during which such modification
4 takes effect and the taxpayer shall pay interest
5 at the underpayment rate on the underpay-
6 ments that would have occurred had the de-
7 ferred compensation been includible in gross in-
8 come in the taxable years deferred.

9 “(B) CREDITOR’S RIGHTS.—A plan shall
10 be treated as failing to meet the requirements
11 of paragraph (1)(B) with respect to amounts
12 set aside in a trust unless—

13 “(i) the employee has no beneficial in-
14 terest in the trust,

15 “(ii) assets in the trust are available
16 to satisfy claims of general creditors at all
17 times (not merely after bankruptcy or in-
18 solvency), and

19 “(iii) there is no factor (such as the
20 location of the trust outside the United
21 States) that would make it more difficult
22 for general creditors to reach the assets in
23 the trust than it would be if the trust as-
24 sets were held directly by the employer in
25 the United States.

1 “(c) CORPORATE INSIDER.—For purposes of this sec-
2 tion, the term ‘corporate insider’ means, with respect to
3 a corporation, any individual who is subject to the require-
4 ments of section 16(a) of the Securities Exchange Act of
5 1934 with respect to such corporation.

6 “(d) OTHER DEFINITIONS.—For purposes of this sec-
7 tion—

8 “(1) PLAN INCLUDES ARRANGEMENTS, ETC.—
9 The term ‘plan’ includes any agreement or arrange-
10 ment.

11 “(2) SUBSTANTIAL RISK OF FORFEITURE.—The
12 rights of a person to compensation are subject to a
13 substantial risk of forfeiture if such person’s rights
14 to such compensation are conditioned upon the fu-
15 ture performance of substantial services by any indi-
16 vidual.”

17 (b) CLERICAL AMENDMENT.—The table of sections
18 for such subpart A is amended by adding at the end the
19 following new item:

 “Sec. 409A. Denial of deferral for funded deferred compensation
 of corporate insiders if corporation funds defined
 contribution plan with employer stock.”

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to amounts deferred after the date
22 of the enactment of this Act.

1 **SEC. 602. PERFORMANCE-BASED COMPENSATION EXCEP-**
2 **TION TO \$1,000,000 LIMITATION ON DEDUCT-**
3 **IBLE COMPENSATION NOT TO APPLY IN CER-**
4 **TAIN CASES.**

5 (a) IN GENERAL.—Paragraph (4) of section 162(m)
6 of the Internal Revenue Code of 1986 is amended by add-
7 ing at the end the following new subparagraph:

8 “(G) CERTAIN FACTORS NOT PERMITTED
9 TO BE TAKEN INTO ACCOUNT IN DETERMINING
10 WHETHER PERFORMANCE GOALS ARE MET.—
11 Subparagraph (C) shall not apply if, in deter-
12 mining whether the performance goals are met,
13 any of the following are taken into account:

14 “(i) Cost savings as a result of
15 changes to any qualified employer plan (as
16 defined in section 4972(d)).

17 “(ii) Excess assets of such a plan or
18 earnings thereon.

19 “(iii) Any excess of the amount as-
20 sumed to be the return on the assets of
21 such a plan over the actual return on such
22 assets.”

23 (b) EFFECTIVE DATE.—The amendment made by
24 this section shall apply to taxable years beginning after
25 the date of the enactment of this Act.

1 **TITLE VII—PROTECTION OF**
2 **RETIREMENT EXPECTATIONS**

3 **SEC. 701. PROTECTION OF PARTICIPANTS FROM CONVER-**
4 **SIONS TO HYBRID DEFINED BENEFIT PLANS.**

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

7 (1) ELECTION TO MAINTAIN RATE OF ACCRUAL
8 IN EFFECT BEFORE PLAN AMENDMENT.—Section
9 204(b)(1) of the Employee Retirement Income Secu-
10 rity Act of 1974 (29 U.S.C. 1054(b)(1)) is amended
11 by adding at the end the following new subpara-
12 graph:

13 “(I)(i) Notwithstanding the preceding subpara-
14 graphs, in the case of a plan amendment to a defined ben-
15 efit plan—

16 “(I) which has the effect of converting the plan
17 to a plan under which the accrued benefit is ex-
18 pressed to participants and beneficiaries as an
19 amount other than an annual benefit commencing at
20 normal retirement age (or which has a similar effect
21 as determined under regulations issued under clause
22 (iii)), and

23 “(II) which has the effect of reducing the rate
24 of future benefit accrual of 1 or more participants,

1 such plan shall be treated as not satisfying the require-
2 ments of this paragraph unless such plan meets the re-
3 quirements of clause (ii).

4 “(ii) A plan meets the requirements of this clause if
5 the plan provides each participant who has attained 10
6 years of service (as determined under section 203) under
7 the plan at the time such amendment takes effect with—

8 “(I) notice of the plan amendment indicating
9 that it has such effect, including a comparison of the
10 present and projected values of the accrued benefit
11 determined both with and without regard to the plan
12 amendment, and

13 “(II) an election, on the date of the conversion,
14 to either receive benefits under the terms of the plan
15 as in effect on or after the effective date of such
16 plan amendment or to receive benefits under the
17 terms of the plan as in effect immediately before the
18 effective date of such plan amendment (taking into
19 account all benefit accruals under such terms since
20 such date).

21 “(iii) The Secretary shall issue regulations under
22 which any plan amendment which has an effect similar
23 to the effect described in clause (i)(I) shall be treated as
24 a plan amendment described in clause (i)(I). Such regula-
25 tions may provide that if a plan sponsor represents in com-

1 munications to participants and beneficiaries that a plan
2 amendment has an effect described in the preceding sen-
3 tence, such plan amendment shall be treated as a plan
4 amendment described in clause (i)(I).”.

5 (2) EARLY RETIREMENT SUBSIDY TAKEN INTO
6 ACCOUNT FOR PURPOSES OF OPENING BALANCE OF
7 HYBRID DEFINED BENEFIT PLAN.—Section 204(g)
8 of such Act (29 U.S.C. 1054(g)) is amended by add-
9 ing at the end the following new paragraph:

10 “(6) In the case of a plan amendment to a defined
11 benefit plan which has the effect of converting the plan
12 to a plan under which the accrued benefit is expressed to
13 participants and beneficiaries as an amount other than an
14 annual benefit commencing at normal retirement age (or
15 a plan amendment to such plan having a similar effect
16 as determined under regulations issued under subsection
17 (b)(1)(I)(iii)), such amendment shall not be treated as re-
18 ducing accrued benefits merely because under such
19 amendment any early retirement benefit or retirement-
20 type subsidy (within the meaning of paragraph (2)(A)) is
21 taken into account for purposes of the opening balance
22 of the amended plan.”.

23 (3) INTEREST RATE FOR DETERMINATIONS RE-
24 LATING TO PLAN CONVERSIONS.—Section 204(g) of
25 such Act (as amended by paragraph (2)) is amended

1 further by adding at the end the following new para-
2 graph:

3 “(7) For purposes of this subsection—

4 “(A) in the case of an amendment described in
5 paragraph (1) which takes effect on or after the en-
6 actment of this paragraph, the interest rate and
7 mortality tables to be used in determining the
8 present value of the accrued benefit under such
9 amendment shall be the applicable rate and tables
10 under section 417(e)(3) of the Internal Revenue
11 Code of 1986 as of the date on which such amend-
12 ment takes effect, and

13 “(B) in the case of amendments described in
14 paragraph (1) which took effect before the enact-
15 ment of this paragraph, the interest rate and mor-
16 tality tables to be used in determining the present
17 value of the accrued benefit under such amendments
18 shall be the applicable rate and tables which were in
19 effect under section 412(l) of the Internal Revenue
20 Code of 1986 as of the effective date of the respec-
21 tive amendment.”.

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

24 (1) ELECTION TO MAINTAIN RATE OF ACCRUAL
25 IN EFFECT BEFORE PLAN AMENDMENT.—Section

1 411(b)(1) of the Internal Revenue Code of 1986 (re-
2 lating to accrued benefit requirements for defined
3 benefit plans) is amended by adding at the end the
4 following new subparagraph:

5 “(I) ELECTION TO MAINTAIN RATE OF AC-
6 CRUAL IN EFFECT BEFORE CERTAIN PLAN
7 AMENDMENTS.—

8 “(i) IN GENERAL.—Notwithstanding
9 the preceding subparagraphs, in the case
10 of a plan amendment to a defined benefit
11 plan—

12 “(I) which has the effect of con-
13 verting the plan to a plan under which
14 the accrued benefit is expressed to
15 participants and beneficiaries as an
16 amount other than an annual benefit
17 commencing at normal retirement age
18 (or which has a similar effect as de-
19 termined under regulations issued
20 under clause (iii)), and

21 “(II) which has the effect of re-
22 ducing the rate of future benefit ac-
23 crual of 1 or more participants,
24 such plan shall be treated as not satisfying
25 the requirements of this paragraph unless

1 such plan meets the requirements of clause
2 (ii).

3 “(ii) REQUIREMENTS.—A plan meets
4 the requirements of this clause if the plan
5 provides each participant who has attained
6 10 years of service (as determined under
7 section 203) under the plan at the time
8 such amendment takes effect with—

9 “(I) notice of the plan amend-
10 ment indicating that it has such ef-
11 fect, including a comparison of the
12 present and projected values of the
13 accrued benefit determined both with
14 and without regard to the plan
15 amendment, and

16 “(II) an election, on the date of
17 the conversion, to either receive bene-
18 fits under the terms of the plan as in
19 effect on or after the effective date of
20 such plan amendment or to receive
21 benefits under the terms of the plan
22 as in effect immediately before the ef-
23 fective date of such plan amendment
24 (taking into account all benefit accru-
25 als under such terms since such date).

1 “(iii) REGULATIONS.—The Secretary
2 shall issue regulations under which any
3 plan amendment which has an effect simi-
4 lar to the effect described in clause (i)(I)
5 shall be treated as a plan amendment de-
6 scribed in clause (i)(I). Such regulations
7 may provide that if a plan sponsor rep-
8 resents in communications to participants
9 and beneficiaries that a plan amendment
10 has an effect described in the preceding
11 sentence, such plan amendment shall be
12 treated as a plan amendment described in
13 clause (i)(I).”.

14 (2) EARLY RETIREMENT SUBSIDY TAKEN INTO
15 ACCOUNT FOR PURPOSES OF OPENING BALANCE OF
16 HYBRID DEFINED BENEFIT PLAN.—Paragraph (6)
17 of section 411(d) (relating to accrued benefit not to
18 be decreased by amendment) is amended by adding
19 at the end the following new subparagraph:

20 “(F) EARLY RETIREMENT SUBSIDY TAKEN
21 INTO ACCOUNT FOR PURPOSES OF OPENING
22 BALANCE OF HYBRID DEFINED BENEFIT
23 PLAN.—In the case of a plan amendment to a
24 defined benefit plan which has the effect of con-
25 verting the plan to a plan under which the ac-

1 accrued benefit is expressed to participants and
2 beneficiaries as an amount other than an an-
3 nual benefit commencing at normal retirement
4 age (or a plan amendment to such plan having
5 a similar effect as determined under regulations
6 issued under subsection (b)(1)(I)(iii)), such
7 amendment shall not be treated as reducing ac-
8 crued benefits merely because under such
9 amendment any early retirement benefit or re-
10 tirement-type subsidy (within the meaning of
11 section subparagraph (B)(i)) is taken into ac-
12 count for purposes of the opening balance of
13 the amended plan.”.

14 (3) INTEREST RATE FOR DETERMINATIONS RE-
15 LATING TO PLAN CONVERSIONS.—Paragraph (6) of
16 section 411(d) of such Code (as amended by para-
17 graph (2)) is amended further by adding at the end
18 the following new subparagraph:

19 “(G) INTEREST RATE.—For purposes of
20 this paragraph—

21 “(i) in the case of an amendment de-
22 scribed in subparagraph (A) which takes
23 effect on or after the enactment of this
24 subparagraph, the interest rate and mor-
25 tality tables to be used in determining the

1 present value of the accrued benefit under
2 such amendment shall be the applicable
3 rate and tables under section 417(e)(3) as
4 of the date on which such amendment
5 takes effect, and

6 “(ii) in the case of amendments de-
7 scribed in subparagraph (A) which took ef-
8 fect before the enactment of this subpara-
9 graph, the interest rate and mortality ta-
10 bles to be used in determining the present
11 value of the accrued benefit under such
12 amendments shall be the applicable rate
13 and tables which were in effect under sec-
14 tion 412(l) as of the effective date of the
15 respective amendment.”.

16 (b) EFFECTIVE DATE AND RELATED RULES.—

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

20 (2) PLAN AMENDMENTS SUBJECT TO LITIGA-
21 TION.—The amendments made by this section also
22 shall apply to any plan amendment taking effect on
23 or before such date if—

24 (A) no determination letter is issued on or
25 before such date by the Internal Revenue Serv-

1 ice which has the effect of approving the plan
2 amendment, and

3 (B) such plan amendment is, on April 8,
4 2003, subject to a court action based on age
5 discrimination.

6 (3) SPECIAL RULE.—In the case of a plan
7 amendment taking effect before 90 days after the
8 date of the enactment of this Act, the requirements
9 of section 204(b)(1)(I) of the Employee Retirement
10 Income Security Act of 1974 (as added by this sec-
11 tion) and section 411(b)(1)(I) of the Internal Rev-
12 enue Code of 1986 (as added by this section) shall
13 be treated as satisfied in connection with such plan
14 amendment, in the case of any participant described
15 in such sections 204(b)(1)(I) and 411(b)(1)(I) in
16 connection with such plan amendment, if, as of the
17 end of such 90-day period—

18 (A) the notice described in clause (i)(I) of
19 such section 204(b)(1)(I) and clause (i)(I) of
20 such section 411(b)(1)(I) in connection with
21 such plan amendment has been provided to
22 such participant, and

23 (B) the plan provides for the election de-
24 scribed in clause (i)(II) of such section
25 204(b)(1)(I) and clause (i)(II) of such section

1 411(b)(1)(I) in connection with such partici-
2 pant’s retirement under the plan.

3 **TITLE VIII—TREATMENT OF**
4 **CORPORATE INSIDERS**

5 **SEC. 801. SPECIAL RULES FOR EXECUTIVE PERKS AND RE-**
6 **TIREMENT BENEFITS.**

7 (a) IN GENERAL.—Part I of subchapter D of chapter
8 1 of the Internal Revenue Code of 1986 (relating to pen-
9 sion, profit-sharing, stock bonus plans, etc.) is amended
10 by adding at the end the following new subpart:

11 “SUBPART F—SPECIAL RULES FOR EXECUTIVE PERKS
12 AND RETIREMENT BENEFITS

 “Sec. 420A. Holding period requirement for stock acquired
 through exercise of option.

 “Sec. 420B. Additional tax on nondisclosed retirement perks.

 “Sec. 420C. Definitions and special rule.

13 **“SEC. 420A. HOLDING PERIOD REQUIREMENT FOR STOCK**
14 **ACQUIRED THROUGH EXERCISE OF OPTION.**

15 “(a) IN GENERAL.—In the case of a corporate insider
16 with respect to a corporation, the tax imposed by this
17 chapter on a corporate insider for any taxable year shall
18 be increased by 50 percent of the amount realized by such
19 insider from the disqualified disposition during such year
20 of stock acquired by the corporate insider upon the exer-
21 cise of a stock option granted by the corporation with re-
22 spect to which such individual is a corporate insider.

23 “(b) DISQUALIFIED DISPOSITION OF STOCK.—

1 “(1) IN GENERAL.—For purposes of subsection
2 (a), the term ‘disqualified disposition of stock’
3 means any sale, exchange, or other disposition of
4 stock which, if such stock were employer securities
5 held in a qualified cash or deferred arrangement (as
6 defined in section 401(k)(2)), would violate any re-
7 striction imposed on the sale or other disposition of
8 such securities by the plan of which such arrange-
9 ment is a part.

10 “(2) SPECIAL RULE FOR 2 OR MORE CASH OR
11 DEFERRED ARRANGEMENTS.—If a corporation has
12 more than 1 qualified cash or deferred arrangement
13 (as so defined), the restrictions which apply for pur-
14 poses of paragraph (1) shall be the most restrictive
15 provisions relating to the disposition of employer se-
16 curities held pursuant to any such arrangements.

17 **“SEC. 420B. ADDITIONAL TAX ON NONDISCLOSED RETIRE-**
18 **MENT PERKS.**

19 “(a) IN GENERAL.—In the case of a publicly traded
20 corporation, the tax imposed by this chapter for the tax-
21 able year shall be increased by 50 percent of the net cost
22 to the corporation for the taxable year of personal perks
23 provided to a retired executive of the corporation.

24 “(b) WAIVER IF PERKS PROVIDED PURSUANT TO
25 SHAREHOLDER APPROVAL.—Subsection (a) shall not

1 apply with respect to any personal perks provided pursu-
2 ant to a contract if—

3 “(1) all of the material terms of such contract
4 (including a description of the benefits to be pro-
5 vided to the executive and the extent of such bene-
6 fits) are disclosed to shareholders, and

7 “(2) such contract is approved by a majority of
8 the vote in a separate shareholder vote before any
9 benefits are provided under the contract.

10 “(c) NET COST OF PERSONAL PERKS.—

11 “(1) IN GENERAL.—For purposes of subsection
12 (a), the net cost of personal perks provided to a re-
13 tired executive is the excess of—

14 “(A) the cost to the corporation of such
15 perks, over

16 “(B) the amount paid in cash during the
17 taxable year by the executive to reimburse the
18 corporation for the cost of such perks.

19 “(2) PERSONAL PERKS.—For purposes of para-
20 graph (1), the term ‘personal perks’ means—

21 “(A) the use of corporate-owned property,

22 “(B) travel expenses, including meals and
23 lodging, unless such expenses are directly re-
24 lated to the performance of services by the exec-
25 utive for the corporation and the business rela-

1 tationship of such expenses is substantiated under
2 the requirements of section 274,

3 “(C) tickets to sporting or other entertain-
4 ment events,

5 “(D) amounts paid or incurred for mem-
6 bership in any club organized for business,
7 pleasure, recreation, or other social purpose,
8 and

9 “(E) other personal services, including
10 services related to maintenance or protection of
11 any personal residence of the executive.

12 “(3) COST RELATING TO USE OF CORPORATE-
13 OWNED PROPERTY.—For purposes of this sub-
14 section—

15 “(A) IN GENERAL.—The cost taken into
16 account with respect to the use of corporate-
17 owned property shall be the allocable portion of
18 the total cost of operating such property.

19 “(B) ALLOCABLE PORTION.—For purposes
20 of subparagraph (A), the allocable portion of
21 total cost is—

22 “(i) the portion of the total cost (in-
23 cluding depreciation) incurred by the cor-
24 poration for operating and maintaining

1 such property during the corporation’s tax-
2 able year in which such use occurred,

3 “(ii) which is allocable to the use (de-
4 termined on the basis of the relationship of
5 such use to the total use of the property
6 during the taxable year).

7 **“SEC. 420C. DEFINITIONS AND SPECIAL RULE.**

8 “(a) DEFINITIONS.—For purposes of this subpart—

9 “(1) CORPORATE INSIDER.—The term ‘cor-
10 porate insider’ means, with respect to a corporation,
11 any individual—

12 “(A) who is subject to the requirements of
13 section 16(a) of the Securities Exchange Act of
14 1934 with respect to such corporation, or

15 “(B) who would be subject to such require-
16 ments if such corporation were an issuer of eq-
17 uity securities referred to in such section.

18 “(2) RETIRED EXECUTIVE.—The term ‘retired
19 executive’ means any corporate insider who is no
20 longer performing services on a substantially full
21 time basis in the capacity that resulted in being sub-
22 ject to the requirements of section 16(a) of the Se-
23 curities Exchange Act of 1934.

24 “(3) PUBLICLY TRADED CORPORATION.—The
25 term ‘publicly traded corporation’ means any cor-

1 poration issuing any class of securities required to
2 be registered under section 12 of the Securities Ex-
3 change Act of 1934.

4 “(4) CORPORATE-OWNED PROPERTY.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the term ‘corporate-owned
7 property’ means any of the following property
8 owned by a corporation—

9 “(i) planes,

10 “(ii) apartments or other residences,

11 “(iii) vacation, sports, and entertain-
12 ment facilities, and

13 “(iv) cars.

14 Such term includes any such property which is
15 leased or chartered by the corporation.

16 “(B) EXCEPTIONS.—Such term does not
17 include any property used directly by the cor-
18 poration in providing transportation, lodging, or
19 entertainment services to the general public.

20 “(b) ADDITIONS TO TAX NOT TREATED AS TAX FOR
21 CERTAIN PURPOSES.—The tax imposed by sections 420A
22 and 420B shall not be treated as a tax imposed by this
23 chapter for purposes of determining—

24 “(1) the amount of any credit allowable under
25 this chapter, or

1 “(2) the amount of the minimum tax imposed
2 by section 55.”.

3 (b) CLERICAL AMENDMENT.—The table of subparts
4 for part I of subchapter D of chapter 1 of such Code is
5 amended by adding at the end the following new item:

“Subpart F. Special Rules for Executive Perks and Retirement
Benefits.”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall take effect as follows:

8 (1) Section 420A of the Internal Revenue Code
9 of 1986 (as added by this section) shall apply to
10 stock acquired pursuant to the exercise of an option
11 after the date of the enactment of this Act.

12 (2)(A) Except as provided by subparagraph
13 (B), section 420B of such Code (as so added) shall
14 apply to perks provided after the date of the enact-
15 ment of this Act.

16 (B) In the case of perks provided pursuant to
17 a contract in existence on the date of the enactment
18 of this Act, such section 420B shall apply to such
19 perks after the date of the first annual shareholders
20 meeting after the date of the enactment of this Act.

1 **SEC. 802. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO**
2 **DEFERRED COMPENSATION PAID BY COR-**
3 **PORATION AFTER MAJOR DECLINE IN STOCK**
4 **VALUE OR CORPORATION DECLARES BANK-**
5 **RUPTCY.**

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

11 “(c) TAX TO APPLY TO DEFERRED COMPENSATION
12 PAID AFTER MAJOR STOCK VALUE DECLINE OR BANK-
13 RUPTCY.—

14 “(1) IN GENERAL.—For purposes of this sec-
15 tion, the term ‘excess parachute payment’ includes
16 severance pay, and any other payment of deferred
17 compensation, which is received by a corporate in-
18 sider after the date that the insider ceases to be em-
19 ployed by the corporation if—

20 “(A) there is at least a 75-percent decline
21 in the value of the stock in such corporation
22 during the 1-year period ending on such date,
23 or

24 “(B) such corporation becomes a debtor in
25 a title 11 or similar case (as defined in section

1 368(a)(3)(A)) during the 180-day period begin-
2 ning 90 days before such date.

3 Such term shall not include any payment from a
4 qualified employer plan.

5 “(2) CORPORATE INSIDER.—For purposes of
6 paragraph (1), the term ‘corporate insider’ means,
7 with respect to a corporation, any individual who is
8 subject to the requirements of section 16(a) of the
9 Securities Exchange Act of 1934 with respect to
10 such corporation.”

11 (b) EFFECTIVE DATE.—The amendment made by
12 this section shall apply with respect to cessations of em-
13 ployment after the date of the enactment of this Act.

14 **SEC. 803. ADEQUATE DISCLOSURE REGARDING EXECUTIVE**
15 **COMPENSATION PACKAGES.**

16 (a) IN GENERAL.—Section 402 of the Employee Re-
17 tirement Income Security Act of 1974 (29 U.S.C. 1102)
18 is amended by inserting after subsection (c) the following
19 new subsection:

20 “(d) DISCLOSURE REGARDING EXECUTIVE COM-
21 PENSATION PACKAGES.—

22 “(1) IN GENERAL.—In any case in which an
23 employer takes any action to establish or substan-
24 tially improve an executive compensation package
25 with respect to any employee, such action may not

1 take effect unless the employer has met the require-
2 ments of paragraph (2).

3 “(2) REQUIREMENTS.—An employer meets the
4 requirements of this paragraph if—

5 “(A) not less than 100 days prior to the
6 effective date of the action described in para-
7 graph (1), the employer provides written notifi-
8 cation of the action to—

9 “(i) each employee of the employer,

10 “(ii) each employee organization rep-
11 resenting employees of the employer (if
12 any), and

13 “(iii) in the case of an employer that
14 is a corporation, the board of directors,
15 and

16 “(B) in the case of an employer that is a
17 corporation, the board of directors has approved
18 such action.

19 Any such written notification shall be written in lan-
20 guage calculated to be understood by the average
21 plan participant.

22 “(3) DEFINITIONS.—For purposes of this sub-
23 section—

24 “(A) EXECUTIVE COMPENSATION PACK-
25 AGE.—The term ‘executive compensation pack-

1 age’ means a combination of pay, benefits
 2 under employee benefit plans, and other forms
 3 of compensation provided by an employer pri-
 4 marily for employees who are members of a se-
 5 lect group of management or highly com-
 6 pensated employees.

7 “(B) SUBSTANTIAL IMPROVEMENT.—An
 8 executive compensation package is ‘substantially
 9 improved’ if the present value of such package
 10 is increased by not less than 10 percent.”.

11 (b) EFFECTIVE DATE.—The amendment made by
 12 this section shall apply with respect to actions taken after
 13 the date of the enactment of this Act.

14 **TITLE IX—ADDITIONAL PROTEC-**
 15 **TIONS FOR EMPLOYEES OF**
 16 **BANKRUPT EMPLOYERS**

17 **SEC. 901. AVOIDANCE OF CERTAIN TRANSFERS; ALTER-**
 18 **NATE PROSECUTION OF ACTION.**

19 Section 547 of title 11, United States Code, is
 20 amended by adding at the end the following:

21 “(h) Notwithstanding subsections (b) and (c), the
 22 trustee may avoid a transfer of a debtor’s interest in prop-
 23 erty to any trust or similar arrangement to fund supple-
 24 mental retirement benefits or other deferred compensation
 25 for the benefit of an insider or other management em-

1 ployee made on or within one year before the date of the
2 filing of the petition.

3 “(i) If the trustee consents or fails to commence a
4 proceeding authorized under section 506, 543, 544, 545,
5 547, 548, 549, 550, 552, 553, or 724, on request of a
6 party in interest or a committee of creditors appointed
7 under section 1102 of this title, after notice and a hearing,
8 the court may authorize such party in interest or com-
9 mittee of creditors to commence and prosecute such pro-
10 ceeding if the court finds that commencing and pros-
11 ecuting such proceeding is in the best interest of the estate
12 and for the benefit of the estate.”.

13 **SEC. 902. LIMITATION ON RETENTION BONUSES, SEVER-**
14 **ANCE PAY, AND CERTAIN OTHER PAYMENTS.**

15 Section 503 of title 11, United States Code, is
16 amended by adding at the end the following:

17 “(c)(1) Notwithstanding subsection (b), there shall
18 neither be allowed, nor paid—

19 “(A) a transfer made to, or an obligation in-
20 curred for the benefit of, an insider of the debtor for
21 the purpose of inducing such person to remain with
22 the debtor’s business, absent a finding by the court
23 based on evidence in the record that—

24 “(i) the transfer or obligation is essential
25 to retention of the person because the individual

1 has a bona fide job offer from another business
2 at the same or greater rate of compensation;

3 “(ii) the services provided by the person
4 are essential to the survival of the business; and

5 “(iii) either—

6 “(I) the amount of the transfer made
7 to, or obligation incurred for the benefit of,
8 the person is not greater than an amount
9 equal to 10 times the amount of the mean
10 transfer or obligation of a similar kind
11 given to nonmanagement employees for
12 any purpose during the calendar year in
13 which the transfer is made or the obliga-
14 tion is incurred; or

15 “(II) if no such similar transfers were
16 made to, or obligations were incurred for
17 the benefit of, such nonmanagement em-
18 ployees during such calendar year, the
19 amount of the transfer or obligation is not
20 greater than an amount equal to 25 per-
21 cent of the amount of any similar transfer
22 or obligation made to or incurred for the
23 benefit of such insider for any purpose
24 during the calendar year before the year in

1 which such transfer is made or obligation
2 is incurred;

3 “(B) a severance payment to an insider of the
4 debtor, unless—

5 “(i) the payment is part of a program that
6 is generally applicable to all full-time employees;
7 and

8 “(ii) the amount of the payment is not
9 greater than 10 times the amount of the mean
10 severance pay given to nonmanagement employ-
11 ees during the calendar year in which the pay-
12 ment is made; or

13 “(C) other transfers or obligations that are out-
14 side the ordinary course of business and not justified
15 by the facts and circumstances of the case.

16 “(2) For purposes of paragraph (1)(C), transfers
17 made to, or obligations incurred for the benefit of, officers,
18 managers, or consultants hired after the date of the filing
19 of the petition shall be considered outside the ordinary
20 course of business.”.

21 **SEC. 903. PRIORITIES**

22 Section 507(a) of title 11, United States Code, is
23 amended—

24 (1) in paragraph (3), by striking “earned within
25 90 days before the date of the filing of the petition

1 or the date of the cessation of the debtor’s business,
2 whichever occurs first,”; and

3 (2) in paragraphs (3) and (4), by striking
4 “\$4,000” and inserting “\$10,000”.

5 **SEC. 904. EFFECTIVE DATE OF TITLE.**

6 The amendments made by this title shall take effect
7 on the date of the enactment of this Act.

8 **TITLE X—MISCELLANEOUS**
9 **PROVISIONS**

10 **SEC. 1001. CORPORATE DEDUCTION FOR REINVESTED**
11 **ESOP DIVIDENDS SUBJECT TO DEDUCTIBLE**
12 **LIMITS.**

13 (a) IN GENERAL.—Subsection (a) of section 404 of
14 the Internal Revenue Code of 1986 (relating to general
15 rule) is amended by adding at the end the following new
16 paragraph:

17 “(13) CERTAIN DIVIDENDS REINVESTED IN EM-
18 PLOYEE STOCK OWNERSHIP PLANS SUBJECT TO DE-
19 DUCTIBLE LIMITS.—For purposes of this subsection,
20 an applicable dividend described in subsection
21 (k)(2)(A)(iii)(I) shall be treated as compensation.”.

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall apply to taxable years beginning after
24 December 31, 2003.

1 **SEC. 1002. CREDIT FOR ELECTIVE DEFERRALS AND IRA**
2 **CONTRIBUTIONS BY CERTAIN INDIVIDUALS**
3 **MADE PERMANENT (SAVER'S TAX CREDIT).**

4 Section 25B of the Internal Revenue Code of 1986
5 is amended by striking subsection (h) (relating to termi-
6 nation).

7 **TITLE XI—GENERAL**
8 **PROVISIONS**

9 **SEC. 1101. GENERAL EFFECTIVE DATE.**

10 (a) IN GENERAL.—Except as otherwise provided in
11 this Act, the amendments made by this Act shall apply
12 with respect to plan years beginning on or after January
13 1, 2004.

14 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
15 PLANS.—In the case of a plan maintained pursuant to 1
16 or more collective bargaining agreements between em-
17 ployee representatives and 1 or more employers ratified
18 on or before the date of the enactment of this Act, sub-
19 section (a) shall be applied to benefits pursuant to, and
20 individuals covered by, any such agreement by substituting
21 for “January 1, 2004” the date of the commencement of
22 the first plan year beginning on or after the earlier of—

23 (1) the later of—

24 (A) January 1, 2005, or

25 (B) the date on which the last of such col-
26 lective bargaining agreements terminates (de-

1 terminated without regard to any extension there-
2 of after the date of the enactment of this Act),
3 or
4 (2) January 1, 2006.

5 **SEC. 1102. PLAN AMENDMENTS.**

6 If any amendment made by this Act requires an
7 amendment to any plan, such plan amendment shall not
8 be required to be made before the first plan year beginning
9 on or after the effective date specified in section 601, if—
10 (1) during the period after such amendment
11 made by this Act takes effect and before such first
12 plan year, the plan is operated in accordance with
13 the requirements of such amendment made by this
14 Act, and
15 (2) such plan amendment applies retroactively
16 to the period after such amendment made by this
17 Act takes effect and before such first plan year.

○