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[Report No. 108-266]

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 14, 2004

Mr. GRASSLEY, from the Committee on Finance, reported the following original bill; which was read twice and placed on the calendar

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

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

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

2 (a) SHORT TITLE.—This Act may be cited as the
3 “National Employee Savings and Trust Equity Guarantee
4 Act of 2004”.

5 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—DIVERSIFICATION OF PENSION PLAN ASSETS

Sec. 101. Defined contribution plans required to provide employees with free-
dom to invest their plan assets.

Sec. 102. Notice of freedom to divest employer securities or real property.

TITLE II—INFORMATION TO ASSIST PENSION PLAN
PARTICIPANTS

Sec. 201. Periodic pension benefit statements.

Sec. 202. Defined contribution plans required to provide adequate investment
education to participants.

Sec. 203. Material information relating to investment in employer securities.

Sec. 204. Fiduciary rules for plan sponsors designating independent investment
advisers.

Sec. 205. Treatment of qualified retirement planning services.

TITLE III—PROTECTION OF PENSION PLAN PARTICIPANTS

Sec. 301. Notice to participants or beneficiaries of blackout periods.

TITLE IV—OTHER PROVISIONS RELATING TO PENSIONS

Subtitle A—Provisions Relating to Pension Plan Funding

PART I—REPLACEMENT OF INTEREST RATE ON 30-YEAR TREASURY
SECURITIES

Sec. 401. Replacement of 30-year Treasury rate for purposes of funding and
PBGIC premium rates.

Sec. 402. Replacement of 30-year Treasury rate for calculating lump-sum dis-
tributions.

Sec. 403. Section 415 limitation on defined benefit plans.

PART II—OTHER PROVISIONS

Sec. 406. Deficit reduction contribution.

Sec. 407. Deduction limits for plan contributions.

Sec. 408. Benefit limitations for certain financially distressed plans.

Sec. 409. Updating deduction rules for combination of plans.

Subtitle B—Improvements in Portability and Distribution Rules

Sec. 411. Clarifications regarding purchase of permissive service credit.

Sec. 412. Allow rollover of after-tax amounts in annuity contracts.

Sec. 413. Clarification of minimum distribution rules.

- Sec. 414. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
- Sec. 415. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
- Sec. 416. Faster vesting of employer nonelective contributions.
- Sec. 417. Allow direct rollovers from retirement plans to Roth IRAs.
- Sec. 418. Elimination of higher penalty on certain simple plan distributions.
- Sec. 419. Simple plan portability.
- Sec. 420. Eligibility for participation in retirement plans.
- Sec. 421. Transfers to the PBGC.

Subtitle C—Administrative Provisions

- Sec. 431. Employee Plans Compliance Resolution System.
- Sec. 432. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 433. Notice and consent period regarding distributions.
- Sec. 434. Reporting simplification.
- Sec. 435. Missing participants.
- Sec. 436. Reduced PBGC premium for new plans of small employers.
- Sec. 437. Reduction of additional PBGC premium for new and small plans.
- Sec. 438. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 439. Substantial owner benefits in terminated plans.
- Sec. 440. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 441. Acceleration of computation of benefits attributable to recoveries of employer liability.
- Sec. 442. Multiemployer plan funding and solvency notices.
- Sec. 443. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 444. Withholding on distributions from governmental section 457 plans.
- Sec. 445. Minimum cost requirements.

Subtitle D—Studies

- Sec. 451. Joint study on revitalizing defined benefit plans.
- Sec. 452. Study on floor-offset ESOPs.

Subtitle E—Other Provisions

- Sec. 461. Allowance of catchup payments.
- Sec. 462. Treatment of distributions by ESOPs with respect to S corporation stock.
- Sec. 463. Transfer of excess pension assets to multiemployer health plan.

Subtitle F—Plan Amendments

- Sec. 471. Provisions relating to plan amendments.

TITLE V—PROVISIONS RELATING TO EXECUTIVES AND STOCK OPTIONS

Subtitle A—Provisions Relating to Executives

- Sec. 501. Repeal of 1978 Revenue Act limitation on Secretary of the Treasury's authority to determine year of inclusion of amounts under private deferred compensation plans.
- Sec. 502. Treatment of nonqualified deferred compensation plans.
- Sec. 503. Prohibition on deferral of gain from the exercise of stock options and restricted stock gains through deferred compensation arrangements.
- Sec. 504. Increase in withholding from supplemental wage payments in excess of \$1,000,000.

Subtitle B—Stock Options

- Sec. 511. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.
- Sec. 512. Treatment of sale of stock acquired pursuant to exercise of stock options to comply with conflict-of-interest requirements.

TITLE VI—WOMEN'S PENSION PROTECTION

- Sec. 600. Short title.

Subtitle A—Study of Spousal Consent for Distributions From Defined Contribution Plans

- Sec. 601. Joint study of application of spousal consent rules to defined contribution plans.

Subtitle B—Division of Pension Benefits Upon Divorce

- Sec. 611. Regulations on time and order of issuance of domestic relations orders.

Subtitle C—Railroad Retirement

- Sec. 621. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
- Sec. 622. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.

Subtitle D—Modifications of Joint and Survivor Annuity Requirements

- Sec. 631. Requirement for additional survivor annuity option.

TITLE VII—TAX COURT PENSION AND COMPENSATION

- Sec. 700. Amendment of 1986 Code.
- Sec. 701. Annuities for survivors of Tax Court judges who are assassinated.
- Sec. 702. Cost-of-living adjustments for Tax Court judicial survivor annuities.
- Sec. 703. Life insurance coverage for Tax Court judges.
- Sec. 704. Cost of life insurance coverage for Tax Court judges age 65 or over.
- Sec. 705. Modification of timing of lump-sum payment of judges' accrued annual leave.
- Sec. 706. Participation of Tax Court judges in the Thrift Savings Plan.
- Sec. 707. Exemption of teaching compensation of retired judges from limitation on outside earned income.
- Sec. 708. General provisions relating to magistrate judges of the Tax Court.
- Sec. 709. Annuities to surviving spouses and dependent children of magistrate judges of the Tax Court.

- Sec. 710. Retirement and annuity program.
 Sec. 711. Incumbent magistrate judges of the Tax Court.
 Sec. 712. Provisions for recall.
 Sec. 713. Effective date.

TITLE VIII—OTHER PROVISIONS

Subtitle A—General Provisions

- Sec. 801. Certain postsecondary educational benefits provided by an employer to children of employees excludable from gross income under educational assistance programs.
 Sec. 802. Exclusion for payments to individuals under National Health Service Corps loan repayment program and certain State loan repayment programs.
 Sec. 803. Exclusion for group legal services.
 Sec. 804. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.

Subtitle B—Revenue Provisions

- Sec. 811. Application of basis rules to nonresident aliens.
 Sec. 812. Treatment of death benefits from corporate-owned life insurance.
 Sec. 813. Reporting of taxable mergers and acquisitions.

1 **TITLE I—DIVERSIFICATION OF** 2 **PENSION PLAN ASSETS**

3 **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO** 4 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-** 5 **VEST THEIR PLAN ASSETS.**

6 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

7 (1) QUALIFICATION REQUIREMENT.—Section
 8 401(a) of the Internal Revenue Code of 1986 (relat-
 9 ing to qualified pension, profit-sharing, and stock
 10 bonus plans) is amended by inserting after para-
 11 graph (34) the following new paragraph:

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

14 “(A) IN GENERAL.—A trust which is part
 15 of an applicable defined contribution plan shall

1 not be treated as a qualified trust unless the
2 plan meets the diversification requirements of
3 subparagraphs (B), (C), and (D).

4 “(B) EMPLOYEE CONTRIBUTIONS AND
5 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
6 SECURITIES OR REAL PROPERTY.—In the case
7 of the portion of an applicable individual’s ac-
8 count attributable to employee contributions
9 and elective deferrals which is invested in em-
10 ployer securities or employer real property, a
11 plan meets the requirements of this subpara-
12 graph if the applicable individual may elect to
13 direct the plan to divest any such securities or
14 real property and to reinvest an equivalent
15 amount in other investment options meeting the
16 requirements of subparagraph (D).

17 “(C) EMPLOYER CONTRIBUTIONS IN-
18 VESTED IN EMPLOYER SECURITIES OR REAL
19 PROPERTY.—In the case of the portion of the
20 account attributable to employer contributions
21 other than elective deferrals which is invested in
22 employer securities or employer real property, a
23 plan meets the requirements of this subpara-
24 graph if each applicable individual who—

1 “(i) is a participant who has com-
2 pleted at least 3 years of service, or

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

6 may elect to direct the plan to divest any such
7 securities or real property and to reinvest an
8 equivalent amount in other investment options
9 meeting the requirements of subparagraph (D).

10 “(D) INVESTMENT OPTIONS.—

11 “(i) IN GENERAL.—The requirements
12 of this subparagraph are met if the plan
13 offers not less than 3 investment options,
14 other than employer securities or employer
15 real property, to which an applicable indi-
16 vidual may direct the proceeds from the di-
17 vestment of employer securities or em-
18 ployer real property pursuant to this para-
19 graph, each of which is diversified and has
20 materially different risk and return charac-
21 teristics.

22 “(ii) TREATMENT OF CERTAIN RE-
23 STRICTIONS AND CONDITIONS.—

24 “(I) TIME FOR MAKING INVEST-
25 MENT CHOICES.—A plan shall not be

1 treated as failing to meet the require-
2 ments of this subparagraph merely be-
3 cause the plan limits the time for di-
4 vestment and reinvestment to peri-
5 odic, reasonable opportunities occur-
6 ring no less frequently than quarterly.

7 “(II) CERTAIN RESTRICTIONS
8 AND CONDITIONS NOT ALLOWED.—

9 Except as provided in regulations, a
10 plan shall not meet the requirements
11 of this subparagraph if the plan im-
12 poses restrictions or conditions with
13 respect to the investment of employer
14 securities or employer real property
15 which are not imposed on the invest-
16 ment of other assets of the plan. This
17 subclause shall not apply to any re-
18 strictions or conditions imposed by
19 reason of the application of securities
20 laws.

21 “(E) APPLICABLE DEFINED CONTRIBU-
22 TION PLAN.—For purposes of this paragraph—

23 “(i) IN GENERAL.—The term ‘applica-
24 ble defined contribution plan’ means any

1 defined contribution plan which holds any
2 publicly traded employer securities.

3 “(ii) EXCEPTION FOR CERTAIN
4 ESOPS.—Such term does not include an
5 employee stock ownership plan if—

6 “(I) there are no contributions to
7 such plan (or earnings thereunder)
8 which are held within such plan and
9 are subject to subsection (k) or (m),
10 and

11 “(II) such plan is a separate plan
12 for purposes of section 414(l) with re-
13 spect to any other defined benefit plan
14 or defined contribution plan main-
15 tained by the same employer or em-
16 ployers.

17 “(iii) EXCEPTION FOR ONE PARTICI-
18 PANT PLANS.—Such term does not include
19 a one-participant retirement plan.

20 “(iv) ONE-PARTICIPANT RETIREMENT
21 PLAN.—For purposes of clause (iii), the
22 term ‘one-participant retirement plan’
23 means a retirement plan that—

24 “(I) on the first day of the plan
25 year covered only one individual (or

1 the individual and the individual's
2 spouse) and the individual owned 100
3 percent of the plan sponsor (whether
4 or not incorporated), or covered only
5 one or more partners (or partners and
6 their spouses) in the plan sponsor,

7 “(II) meets the minimum cov-
8 erage requirements of section 410(b)
9 without being combined with any
10 other plan of the business that covers
11 the employees of the business,

12 “(III) does not provide benefits
13 to anyone except the individual (and
14 the individual's spouse) or the part-
15 ners (and their spouses),

16 “(IV) does not cover a business
17 that is a member of an affiliated serv-
18 ice group, a controlled group of cor-
19 porations, or a group of businesses
20 under common control, and

21 “(V) does not cover a business
22 that uses the services of leased em-
23 ployees (within the meaning of section
24 414(n)).

1 For purposes of this clause, the term ‘part-
2 ner’ includes a 2-percent shareholder (as
3 defined in section 1372(b)) of an S cor-
4 poration.

5 “(F) CERTAIN PLANS TREATED AS HOLD-
6 ING PUBLICLY TRADED EMPLOYER SECURI-
7 TIES.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in regulations or in clause (ii), a plan
10 holding employer securities which are not
11 publicly traded employer securities shall be
12 treated as holding publicly traded employer
13 securities if any employer corporation, or
14 any member of a controlled group of cor-
15 porations which includes such employer
16 corporation, has issued a class of stock
17 which is a publicly traded employer secu-
18 rity.

19 “(ii) EXCEPTION FOR CERTAIN CON-
20 TROLLED GROUPS WITH PUBLICLY TRAD-
21 ED SECURITIES.—Clause (i) shall not
22 apply to a plan if—

23 “(I) no employer corporation, or
24 parent corporation of an employer cor-

1 corporation, has issued any publicly trad-
2 ed employer security, and

3 “(II) no employer corporation, or
4 parent corporation of an employer
5 corporation, has issued any special
6 class of stock which grants particular
7 rights to, or bears particular risks for,
8 the holder or issuer with respect to
9 any corporation described in clause (i)
10 which has issued any publicly traded
11 employer security.

12 “(iii) DEFINITIONS.—For purposes of
13 this subparagraph, the term—

14 “(I) ‘controlled group of corpora-
15 tions’ has the meaning given such
16 term by section 1563(a), except that
17 ‘50 percent’ shall be substituted for
18 ‘80 percent’ each place it appears,

19 “(II) ‘employer corporation’
20 means a corporation which is an em-
21 ployer maintaining the plan, and

22 “(III) ‘parent corporation’ has
23 the meaning given such term by sec-
24 tion 424(e).

1 “(G) OTHER DEFINITIONS.—For purposes
2 of this paragraph—

3 “(i) APPLICABLE INDIVIDUAL.—The
4 term ‘applicable individual’ means—

5 “(I) any participant in the plan,
6 and

7 “(II) any beneficiary who has an
8 account under the plan with respect to
9 which the beneficiary is entitled to ex-
10 ercise the rights of a participant.

11 “(ii) ELECTIVE DEFERRAL.—The
12 term ‘elective deferral’ means an employer
13 contribution described in section
14 402(g)(3)(A).

15 “(iii) EMPLOYER SECURITY.—The
16 term ‘employer security’ has the meaning
17 given such term by section 407(d)(1) of
18 the Employee Retirement Income Security
19 Act of 1974.

20 “(iv) EMPLOYER REAL PROPERTY.—
21 The term ‘employer real property’ has the
22 meaning given such term by section
23 407(d)(2) of the Employee Retirement In-
24 come Security Act of 1974.

1 “(v) EMPLOYEE STOCK OWNERSHIP
2 PLAN.—The term ‘employee stock owner-
3 ship plan’ has the meaning given such
4 term by section 4975(e)(7).

5 “(vi) PUBLICLY TRADED EMPLOYER
6 SECURITIES.—The term ‘publicly traded
7 employer securities’ means employer secu-
8 rities which are readily tradable on an es-
9 tablished securities market.

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

13 “(H) TRANSITION RULE FOR SECURITIES
14 OR REAL PROPERTY ATTRIBUTABLE TO EM-
15 PLOYER CONTRIBUTIONS.—

16 “(i) RULES PHASED IN OVER 3
17 YEARS.—

18 “(I) IN GENERAL.—In the case
19 of the portion of an account to which
20 subparagraph (C) applies and which
21 consists of employer securities or em-
22 ployer real property acquired in a plan
23 year beginning before January 1,
24 2004, subparagraph (C) shall only
25 apply to the applicable percentage of

1 such securities or real property. This
2 subparagraph shall be applied sepa-
3 rately with respect to each class of se-
4 curities and employer real property.

5 “(II) EXCEPTION FOR CERTAIN
6 PARTICIPANTS AGED 55 OR OVER.—
7 Subclause (I) shall not apply to an
8 applicable individual who is a partici-
9 pant who has attained age 55 and
10 completed at least 3 years of service
11 before the first plan year beginning
12 after December 31, 2003.

13 “(ii) APPLICABLE PERCENTAGE.—For
14 purposes of clause (i), the applicable per-
15 centage shall be determined as follows:

“Plan year to which subpara-		The applicable percentage is:
graph (C) applies:		
1st		33 percent
2d		66 percent
3d and following		100 percent.”

16 (2) CONFORMING AMENDMENTS.—

17 (A) Section 401(a)(28)(B) of such Code
18 (relating to additional requirements relating to
19 employee stock ownership plans) is amended by
20 adding at the end the following new clause:

21 “(v) EXCEPTION.—This subparagraph
22 shall not apply to an applicable defined

1 contribution plan (as defined in paragraph
2 (35)(E)).”

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

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

11 (b) AMENDMENTS OF ERISA.—Section 204 of the
12 Employee Retirement Income Security Act of 1974 (29
13 U.S.C. 1054) is amended by redesignating subsection (j)
14 as subsection (k) and by inserting after subsection (i) the
15 following new subsection:

16 “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN
17 INDIVIDUAL ACCOUNT PLANS.—

18 “(1) IN GENERAL.—An applicable individual ac-
19 count plan shall meet the diversification require-
20 ments of paragraphs (2), (3), and (4).

21 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
22 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-
23 TIES OR REAL PROPERTY.—In the case of the por-
24 tion of an applicable individual’s account attrib-
25 utable to employee contributions and elective defer-

1 rals which is invested in employer securities or em-
2 ployer real property, a plan meets the requirements
3 of this paragraph if the applicable individual may
4 elect to direct the plan to divest any such securities
5 or real property and to reinvest an equivalent
6 amount in other investment options meeting the re-
7 quirements of paragraph (4).

8 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN
9 EMPLOYER SECURITIES OR REAL PROPERTY.—In the
10 case of the portion of the account attributable to
11 employer contributions other than elective deferrals
12 which is invested in employer securities or employer
13 real property, a plan meets the requirements of this
14 paragraph if each applicable individual who—

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

17 “(B) is a beneficiary of a participant de-
18 scribed in subparagraph (A) or of a deceased
19 participant,

20 may elect to direct the plan to divest any such secu-
21 rities or real property and to reinvest an equivalent
22 amount in other investment options meeting the re-
23 quirements of paragraph (4).

24 “(4) INVESTMENT OPTIONS.—

1 “(A) IN GENERAL.—The requirements of
2 this paragraph are met if the plan offers not
3 less than 3 investment options, other than em-
4 ployer securities or employer real property, to
5 which an applicable individual may direct the
6 proceeds from the divestment of employer secu-
7 rities or employer real property pursuant to this
8 subsection, each of which is diversified and has
9 materially different risk and return characteris-
10 tics.

11 “(B) TREATMENT OF CERTAIN RESTRIC-
12 TIONS AND CONDITIONS.—

13 “(i) TIME FOR MAKING INVESTMENT
14 CHOICES.—A plan shall not be treated as
15 failing to meet the requirements of this
16 paragraph merely because the plan limits
17 the time for divestment and reinvestment
18 to periodic, reasonable opportunities occur-
19 ring no less frequently than quarterly.

20 “(ii) CERTAIN RESTRICTIONS AND
21 CONDITIONS NOT ALLOWED.—Except as
22 provided in regulations, a plan shall not
23 meet the requirements of this paragraph if
24 the plan imposes restrictions or conditions
25 with respect to the investment of employer

1 securities or employer real property which
2 are not imposed on the investment of other
3 assets of the plan. This subparagraph shall
4 not apply to any restrictions or conditions
5 imposed by reason of the application of se-
6 curities laws.

7 “(5) APPLICABLE INDIVIDUAL ACCOUNT
8 PLAN.—For purposes of this subsection—

9 “(A) IN GENERAL.—The term ‘applicable
10 individual account plan’ means any individual
11 account plan (as defined in section 3(34)) which
12 holds any publicly traded employer securities.

13 “(B) EXCEPTION FOR CERTAIN ESOPS.—
14 Such term does not include an employee stock
15 ownership plan if—

16 “(i) there are no contributions to such
17 plan (or earnings thereunder) which are
18 held within such plan and are subject to
19 subsection (k) or (m) of section 401 of the
20 Internal Revenue Code of 1986, and

21 “(ii) such plan is a separate plan (for
22 purposes of section 414(l) of such Code)
23 with respect to any other defined benefit
24 plan or individual account plan maintained
25 by the same employer or employers.

1 “(C) EXCEPTION FOR ONE PARTICIPANT
2 PLANS.—Such term shall not include a one-par-
3 ticipant retirement plan (as defined in section
4 101(i)(8)(B)).

5 “(D) CERTAIN PLANS TREATED AS HOLD-
6 ING PUBLICLY TRADED EMPLOYER SECURI-
7 TIES.—

8 “(i) IN GENERAL.—Except as pro-
9 vided in regulations or in clause (ii), a plan
10 holding employer securities which are not
11 publicly traded employer securities shall be
12 treated as holding publicly traded employer
13 securities if any employer corporation, or
14 any member of a controlled group of cor-
15 porations which includes such employer
16 corporation, has issued a class of stock
17 which is a publicly traded employer secu-
18 rity.

19 “(ii) EXCEPTION FOR CERTAIN CON-
20 TROLLED GROUPS WITH PUBLICLY TRAD-
21 ED SECURITIES.—Clause (i) shall not
22 apply to a plan if—

23 “(I) no employer corporation, or
24 parent corporation of an employer

1 corporation, has issued any publicly
2 traded employer security, and

3 “(II) no employer corporation, or
4 parent corporation of an employer
5 corporation, has issued any special
6 class of stock which grants particular
7 rights to, or bears particular risks for,
8 the holder or issuer with respect to
9 any corporation described in clause (i)
10 which has issued any publicly traded
11 employer security.

12 “(iii) DEFINITIONS.—For purposes of
13 this subparagraph, the term—

14 “(I) ‘controlled group of corpora-
15 tions’ has the meaning given such
16 term by section 1563(a) of the Inter-
17 nal Revenue Code of 1986, except
18 that ‘50 percent’ shall be substituted
19 for ‘80 percent’ each place it appears,

20 “(II) ‘employer corporation’
21 means a corporation which is an em-
22 ployer maintaining the plan, and

23 “(III) ‘parent corporation’ has
24 the meaning given such term by sec-
25 tion 424(e) of such Code.

1 “(6) OTHER DEFINITIONS.—For purposes of
2 this paragraph—

3 “(A) APPLICABLE INDIVIDUAL.—The term
4 ‘applicable individual’ means—

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

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

10 “(B) ELECTIVE DEFERRAL.—The term
11 ‘elective deferral’ means an employer contribu-
12 tion described in section 402(g)(3)(A) of the In-
13 ternal Revenue Code of 1986.

14 “(C) EMPLOYER SECURITY.—The term
15 ‘employer security’ has the meaning given such
16 term by section 407(d)(1).

17 “(D) EMPLOYER REAL PROPERTY.—The
18 term ‘employer real property’ has the meaning
19 given such term by section 407(d)(2).

20 “(E) EMPLOYEE STOCK OWNERSHIP
21 PLAN.—The term ‘employee stock ownership
22 plan’ has the meaning given such term by sec-
23 tion 4975(e)(7) of such Code.

24 “(F) PUBLICLY TRADED EMPLOYER SECUR-
25 ITIES.—The term ‘publicly traded employer

1 securities' means employer securities which are
2 readily tradable on an established securities
3 market.

4 “(G) YEAR OF SERVICE.—The term ‘year
5 of service’ has the meaning given such term by
6 section 203(b)(2).

7 “(7) TRANSITION RULE FOR SECURITIES OR
8 REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-
9 TRIBUTIONS.—

10 “(A) RULES PHASED IN OVER 3 YEARS.—

11 “(i) IN GENERAL.—In the case of the
12 portion of an account to which paragraph
13 (3) applies and which consists of employer
14 securities or employer real property ac-
15 quired in a plan year beginning before
16 January 1, 2004, paragraph (3) shall only
17 apply to the applicable percentage of such
18 securities or real property. This subpara-
19 graph shall be applied separately with re-
20 spect to each class of securities and em-
21 ployer real property.

22 “(ii) EXCEPTION FOR CERTAIN PAR-
23 TICIPANTS AGED 55 OR OVER.—Clause (i)
24 shall not apply to an applicable individual
25 who is a participant who has attained age

1 55 and completed at least 3 years of service
2 before the first plan year beginning after
3 December 31, 2003.

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

**“Plan year to which para- The applicable percentage is:
graph (3) applies:**

1st	33 percent
2d	66 percent
3d and following	100 percent.”

7 (c) EFFECTIVE DATES.—

8 (1) IN GENERAL.—Except as provided in para-
9 graphs (2) and (3), the amendments made by this
10 section shall apply to plan years beginning after De-
11 cember 31, 2003.

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

21 (A) the later of—

22 (i) December 31, 2004, or

1 (ii) the date on which the last of such
2 collective bargaining agreements termi-
3 nates (determined without regard to any
4 extension thereof after such date of enact-
5 ment), or

6 (B) December 31, 2005.

7 (3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-
8 CURITIES HELD IN AN ESOP.—

9 (A) IN GENERAL.—In the case of employer
10 securities to which this paragraph applies, the
11 amendments made by this section shall apply to
12 plan years beginning after the earlier of—

13 (i) December 31, 2006, or

14 (ii) the first date on which the fair
15 market value of such securities exceeds the
16 guaranteed minimum value described in
17 subparagraph (B)(ii).

18 (B) APPLICABLE SECURITIES.—This para-
19 graph shall apply to employer securities which
20 are attributable to employer contributions other
21 than elective deferrals, and which, on Sep-
22 tember 17, 2003—

23 (i) consist of preferred stock, and

24 (ii) are within an employee stock own-
25 ership plan (as defined in section

1 4975(e)(7) of the Internal Revenue Code
 2 of 1986), the terms of which provide that
 3 the value of the securities cannot be less
 4 than the guaranteed minimum value speci-
 5 fied by the plan on such date.

6 (C) COORDINATION WITH TRANSITION
 7 RULE.—In applying section 401(a)(35)(H) of
 8 the Internal Revenue Code of 1986 and section
 9 204(j)(7) of the Employee Retirement Income
 10 Security Act of 1974 (as added by this section)
 11 to employer securities to which this paragraph
 12 applies, the applicable percentage shall be de-
 13 termined without regard to this paragraph.

14 **SEC. 102. NOTICE OF FREEDOM TO DIVEST EMPLOYER SE-**
 15 **CURITIES OR REAL PROPERTY.**

16 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

17 (1) EXCISE TAX.—Chapter 43 of the Internal
 18 Revenue Code of 1986 (relating to qualified pension,
 19 etc., plans) is amended by adding at the end the fol-
 20 lowing new section:

21 **“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-**
 22 **TION PLANS TO PROVIDE NOTICE OF FREE-**
 23 **DOM TO DIVEST EMPLOYER SECURITIES.**

24 “(a) IMPOSITION OF TAX.—There is hereby imposed
 25 a tax on the failure of a defined contribution plan to meet

1 the requirements of subsection (e) with respect to any par-
2 ticipant or beneficiary.

3 “(b) AMOUNT OF TAX.—

4 “(1) IN GENERAL.—The amount of the tax im-
5 posed by subsection (a) on any failure with respect
6 to any participant or beneficiary shall be \$100 for
7 each day in the noncompliance period with respect to
8 the failure.

9 “(2) NONCOMPLIANCE PERIOD.—For purposes
10 of this section, the term ‘noncompliance period’
11 means, with respect to any failure, the period begin-
12 ning on the date the failure first occurs and ending
13 on the date the notice to which the failure relates is
14 provided or the failure is otherwise corrected.

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

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

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

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

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

13 “(3) OVERALL LIMITATION FOR UNINTEN-
14 TIONAL FAILURES.—

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

1 same trust forms a part shall be treated as 1
2 plan.

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

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

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

19 “(1) In the case of a plan not described in
20 paragraph (2), the employer.

21 “(2) In the case of a multiemployer plan, the
22 plan.

23 “(e) NOTICE OF RIGHT TO DIVEST.—Not later than
24 30 days before the first date on which an applicable indi-
25 vidual of an applicable defined contribution plan is eligible

1 to exercise the right under section 401(a)(35) to direct
2 the proceeds from the divestment of employer securities
3 or employer real property with respect to any type of con-
4 tribution, the plan administrator shall provide to such in-
5 dividual a notice—

6 “(1) setting forth such right under such sec-
7 tion, and

8 “(2) describing the importance of diversifying
9 the investment of retirement account assets.

10 The notice required by this subsection shall be written in
11 a manner calculated to be understood by the average plan
12 participant and may be delivered in written, electronic, or
13 other appropriate form to the extent that such form is rea-
14 sonably accessible to the applicable individual.

15 “(f) DEFINITIONS.—Any term used in this section
16 which is also used in section 401(a)(35) shall have the
17 meaning given such term by section 401(a)(35).”

18 (2) AGGREGATION.—Section 414(t) of such
19 Code is amended by striking “or 4980B” and insert-
20 ing “4980B, or 4980H”.

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

 “Sec. 4980H. Failure of certain defined contribution plans to pro-
 vide notice of freedom to divest employer securi-
 ties.”

24 (b) AMENDMENTS OF ERISA.—

1 (1) IN GENERAL.—Section 104 of the Employee
2 Retirement Income Security Act of 1974 (29 U.S.C.
3 1024) is amended by redesignating subsection (d) as
4 subsection (e) and by inserting after subsection (c)
5 the following new subsection:

6 “(d) NOTICE OF RIGHT TO DIVEST.—Not later than
7 30 days before the first date on which an applicable indi-
8 vidual of an applicable individual account plan is eligible
9 to exercise the right under section 204(j) to direct the pro-
10 ceeds from the divestment of employer securities or em-
11 ployer real property with respect to any type of contribu-
12 tion, the administrator shall provide to such individual a
13 notice—

14 “(1) setting forth such right under such sec-
15 tion, and

16 “(2) describing the importance of diversifying
17 the investment of retirement account assets.

18 The notice required by this subsection shall be written in
19 a manner calculated to be understood by the average plan
20 participant and may be delivered in written, electronic, or
21 other appropriate form to the extent that such form is rea-
22 sonably accessible to the applicable individual.”

23 (2) PENALTIES.—Section 502(c)(7) of the Em-
24 ployee Retirement Income Security Act of 1974 (29

1 U.S.C. 1132(c)(7)) is amended by inserting “or sec-
 2 tion 104(d)” after “section 101(i)”.

3 (c) MODEL NOTICE.—The Secretary of Labor shall,
 4 within 180 days after the date of the enactment of this
 5 subsection, prescribe a model notice for purposes of satis-
 6 fying the requirements of the amendments made by this
 7 section.

8 (d) EFFECTIVE DATES.—

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

12 (2) TRANSITION RULE.—If notice under section
 13 4980H(e) of the Internal Revenue Code of 1986 or
 14 section 104(d) of the Employee Retirement Income
 15 Security Act of 1974 (as added by this section)
 16 would otherwise be required to be provided before
 17 the 90th day after the date of the enactment of this
 18 Act, such notice shall not be required to be provided
 19 until such 90th day.

20 **TITLE II—INFORMATION TO AS-**
 21 **SIST PENSION PLAN PARTICI-**
 22 **PANTS**

23 **SEC. 201. PERIODIC PENSION BENEFIT STATEMENTS.**

24 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

1 (1) EXCISE TAX.—Chapter 43 of the Internal
2 Revenue Code of 1986 (relating to qualified pension,
3 etc., plans), as amended by this Act, is amended by
4 adding at the end the following new section:

5 **“SEC. 4980I. FAILURE OF CERTAIN PENSION PLANS TO PRO-**
6 **VIDE REQUIRED INFORMATION.**

7 “(a) IMPOSITION OF TAX.—There is hereby imposed
8 a tax on the failure of an applicable pension plan to meet
9 the requirements of subsection (e) with respect to any par-
10 ticipant or beneficiary.

11 “(b) AMOUNT OF TAX.—

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

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

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

24 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
25 DISCOVERED AND REASONABLE DILIGENCE EXER-

1 CISED.—No tax shall be imposed by subsection (a)
2 on any failure during any period for which it is es-
3 tablished to the satisfaction of the Secretary that
4 any person subject to liability for tax under sub-
5 section (d) did not know that the failure existed and
6 exercised reasonable diligence to meet the require-
7 ments of subsection (e).

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

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

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

20 “(3) OVERALL LIMITATION FOR UNINTEN-
21 TIONAL FAILURES.—

22 “(A) IN GENERAL.—If the person subject
23 to liability for tax under subsection (d) exer-
24 cised reasonable diligence to meet the require-
25 ments of subsection (e), the tax imposed by

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

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

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

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

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

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

3 “(3) In the case of an arrangement described in
4 subsection (e)(4), the person required to provide the
5 statement under subsection (e).

6 “(e) REQUIREMENTS TO PROVIDE PENSION BEN-
7 EFIT STATEMENTS.—

8 “(1) REQUIREMENTS.—

9 “(A) DEFINED CONTRIBUTION PLAN.—

10 The administrator of an applicable pension plan
11 which is a defined contribution plan shall fur-
12 nish a pension benefit statement described in
13 paragraph (2)—

14 “(i) at least once each calendar quar-
15 ter to a participant or beneficiary who has
16 the right to direct the investment of assets
17 in his or her account under the plan,

18 “(ii) at least once each calendar year
19 to a participant or beneficiary who has his
20 or her own account under the plan but who
21 does not have the right to direct the invest-
22 ment of assets in that account, and

23 “(iii) upon written request to a plan
24 beneficiary who is not a participant or ben-
25 efiary described in clause (i) or (ii), ex-

1 cept that this subparagraph shall apply to
2 only 1 request during any 12-month pe-
3 riod.

4 “(B) DEFINED BENEFIT PLAN.—The ad-
5 ministrator of an applicable pension plan which
6 is a defined benefit plan shall furnish a pension
7 benefit statement described in paragraph (2)—

8 “(i) at least once every 3 years to
9 each participant who has a nonforfeitable
10 accrued benefit and who is employed by
11 the employer maintaining the plan at the
12 time the statement is to be furnished, and

13 “(ii) to a participant or beneficiary of
14 the plan upon written request, except that
15 this clause shall apply to only 1 request
16 during any 12-month period.

17 Information furnished under clause (i) to a par-
18 ticipant may be based on reasonable estimates
19 determined under regulations prescribed by the
20 Secretary of Labor, in consultation with the
21 Pension Benefit Guaranty Corporation.

22 “(2) STATEMENTS.—

23 “(A) IN GENERAL.—A pension benefit
24 statement furnished under paragraph (1)—

1 “(i) shall indicate, on the basis of the
2 latest available information—

3 “(I) the total benefits accrued,
4 and

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

9 “(ii) shall include an explanation of
10 any permitted disparity under section
11 401(l) or any floor-offset arrangement that
12 may be applied in determining any accrued
13 benefits described in clause (i),

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

17 “(iv) may be delivered in written, elec-
18 tronic, or other appropriate form to the ex-
19 tent such form is reasonably accessible to
20 the participant or beneficiary.

21 “(B) ADDITIONAL INFORMATION.—In the
22 case of a defined contribution plan, any pension
23 benefit statement under clause (i) or (ii) of
24 paragraph (1)(A) shall include—

1 “(i) the value of each investment to
2 which assets in the individual account have
3 been allocated, determined as of the most
4 recent valuation date under the plan, in-
5 cluding the value of any assets held in the
6 form of employer securities or employer
7 real property, without regard to whether
8 such securities or real property were con-
9 tributed by the plan sponsor or acquired at
10 the direction of the plan or of the partici-
11 pant or beneficiary, and

12 “(ii) in the case of a pension benefit
13 statement under paragraph (1)(A)(i)—

14 “(I) an explanation of any limita-
15 tions or restrictions on any right of
16 the participant or beneficiary under
17 the plan to direct an investment, and

18 “(II) a notice that investments in
19 any individual account may not be
20 adequately diversified if the value of
21 any investment in the account exceeds
22 20 percent of the fair market value of
23 all investments in the account.

24 “(C) ALTERNATIVE NOTICE.—The require-
25 ments of subparagraph (A)(i)(II) are met if, at

1 least annually and in accordance with require-
2 ments of the Secretary of Labor, the plan—

3 “(i) updates the information described
4 in such paragraph which is provided in the
5 pension benefit statement, or

6 “(ii) provides in a separate statement
7 such information as is necessary to enable
8 a participant or beneficiary to determine
9 their nonforfeitable vested benefits.

10 “(3) DEFINED BENEFIT PLANS.—

11 “(A) ALTERNATIVE NOTICE.—In the case
12 of a defined benefit plan, the requirements of
13 paragraph (1)(B)(i) shall be treated as met
14 with respect to a participant if at least once
15 each year the administrator provides to the par-
16 ticipant notice of the availability of the pension
17 benefit statement and the ways in which the
18 participant may obtain such statement. Such
19 notice may be delivered in written, electronic, or
20 other appropriate form to the extent such form
21 is reasonably accessible to the participant.

22 “(B) YEARS IN WHICH NO BENEFITS AC-
23 CRUE.—The Secretary may provide that years
24 in which no employee or former employee bene-
25 fits (within the meaning of section 410(b))

1 under the plan need not be taken into account
2 in determining the 3-year period under para-
3 graph (1)(B)(i).

4 “(4) SPECIAL RULE FOR CERTAIN ANNU-
5 ITIES.—In the case of an annuity contract or custo-
6 dial account described in section 403(b) which is not
7 a plan established or maintained by the employer,
8 the pension benefit statement under this subsection
9 shall be furnished by the issuer of the contract, the
10 custodian of the account, or such other person as is
11 specified by the Secretary.

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

14 “(1) APPLICABLE PENSION PLAN.—The term
15 ‘applicable pension plan’ means a plan described in
16 clause (i), (ii), or (iv) of section 219(g)(5)(A) other
17 than a one-participant retirement plan (as defined in
18 section 401(a)(35)(E)(iv)).

19 “(2) EXCEPTION FOR GOVERNMENT AND
20 CHURCH PLANS.—This section shall not apply to any
21 governmental or church plan. For purposes of this
22 paragraph, the terms ‘governmental plan’ and
23 ‘church plan’ have the meanings given such terms by
24 section 414.”

1 (2) AGGREGATION.—Section 414(t) of such
2 Code, as amended by this Act, is amended by strik-
3 ing “or 4980H” and inserting “4980H, or 4980I”.

4 (3) CLERICAL AMENDMENT.—The table of sec-
5 tions for chapter 43 of such Code, as amended by
6 this Act, is amended by adding at the end the fol-
7 lowing new item:

“Sec. 4980I. Failure of certain pension plans to provide required information.”

8 (b) AMENDMENTS OF ERISA.—

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

12 “(a) REQUIREMENTS TO PROVIDE PENSION BEN-
13 EFIT STATEMENTS.—

14 “(1) REQUIREMENTS.—

15 “(A) INDIVIDUAL ACCOUNT PLAN.—The
16 administrator of an individual account plan
17 (other than a one-participant retirement plan
18 described in section 101(i)(8)(B)) shall furnish
19 a pension benefit statement—

20 “(i) at least once each calendar quar-
21 ter to a participant or beneficiary who has
22 the right to direct the investment of assets
23 in his or her account under the plan,

24 “(ii) at least once each calendar year
25 to a participant or beneficiary who has his

1 or her own account under the plan but
2 does not have the right to direct the invest-
3 ment of assets in that account, and

4 “(iii) upon written request to a plan
5 beneficiary not described in clause (i) or
6 (ii).

7 “(B) DEFINED BENEFIT PLAN.—The ad-
8 ministrator of a defined benefit plan (other
9 than a one-participant retirement plan de-
10 scribed in section 101(i)(8)(B)) shall furnish a
11 pension benefit statement—

12 “(i) at least once every 3 years to
13 each participant with a nonforfeitable ac-
14 crued benefit and who is employed by the
15 employer maintaining the plan at the time
16 the statement is to be furnished, and

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

19 Information furnished under clause (i) to a par-
20 ticipant may be based on reasonable estimates
21 determined under regulations prescribed by the
22 Secretary, in consultation with the Pension
23 Benefit Guaranty Corporation.

24 “(2) STATEMENTS.—

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

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

5 “(I) the total benefits accrued,
6 and

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

11 “(ii) shall include an explanation of
12 any permitted disparity under section
13 401(l) of the Internal Revenue Code of
14 1986 or any floor-offset arrangement that
15 may be applied in determining any accrued
16 benefits described in clause (i),

17 “(iii) shall be written in a manner cal-
18 culated to be understood by the average
19 plan participant, and

20 “(iv) may be delivered in written, elec-
21 tronic, or other appropriate form to the ex-
22 tent such form is reasonably accessible to
23 the participant or beneficiary.

24 “(B) ADDITIONAL INFORMATION.—In the
25 case of an individual account plan, any pension

1 benefit statement under clause (i) or (ii) of
2 paragraph (1)(A) shall include—

3 “(i) the value of each investment to
4 which assets in the individual account have
5 been allocated, determined as of the most
6 recent valuation date under the plan, in-
7 cluding the value of any assets held in the
8 form of employer securities or employer
9 real property, without regard to whether
10 such securities or real property were con-
11 tributed by the plan sponsor or acquired at
12 the direction of the plan or of the partici-
13 pant or beneficiary, and

14 “(ii) in the case of a pension benefit
15 statement under paragraph (1)(A)(i)—

16 “(I) an explanation of any limita-
17 tions or restrictions on any right of
18 the participant or beneficiary under
19 the plan to direct an investment, and

20 “(II) a notice that investments in
21 any individual account may not be
22 adequately diversified if the value of
23 any investment in the account exceeds
24 20 percent of the fair market value of
25 all investments in the account.

1 “(C) ALTERNATIVE NOTICE.—The require-
2 ments of subparagraph (A)(i)(II) are met if, at
3 least annually and in accordance with require-
4 ments of the Secretary, the plan—

5 “(i) updates the information described
6 in such paragraph which is provided in the
7 pension benefit statement, or

8 “(ii) provides in a separate statement
9 such information as is necessary to enable
10 a participant or beneficiary to determine
11 their nonforfeitable vested benefits.

12 “(3) DEFINED BENEFIT PLANS.—

13 “(A) ALTERNATIVE NOTICE.—In the case
14 of a defined benefit plan, the requirements of
15 paragraph (1)(B)(i) shall be treated as met
16 with respect to a participant if at least once
17 each year the administrator provides to the par-
18 ticipant notice of the availability of the pension
19 benefit statement and the ways in which the
20 participant may obtain such statement. Such
21 notice may be delivered in written, electronic, or
22 other appropriate form to the extent such form
23 is reasonably accessible to the participant.

24 “(B) YEARS IN WHICH NO BENEFITS AC-
25 CRUE.—The Secretary may provide that years

1 in which no employee or former employee bene-
2 fits (within the meaning of section 410(b) of
3 the Internal Revenue Code of 1986) under the
4 plan need not be taken into account in deter-
5 mining the 3-year period under paragraph
6 (1)(B)(i).”

7 (2) CONFORMING AMENDMENTS.—

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

11 (B) Section 105(b) of such Act (29 U.S.C.
12 1025(b)) is amended to read as follows:

13 “(b) LIMITATION ON NUMBER OF STATEMENTS.—In
14 no case shall a participant or beneficiary of a plan be enti-
15 tled to more than 1 statement described in subparagraph
16 (A)(iii) or (B)(ii) of subsection (a)(1), whichever is appli-
17 cable, in any 12-month period.”

18 (C) Section 502(c)(1) of such Act (29
19 U.S.C. 1132(c)(1)) is amended by striking “or
20 section 101(f)” and inserting “section 101(f),
21 or section 105(a)”.

22 (c) MODEL STATEMENTS.—The Secretary of Labor
23 shall, within 180 days after the date of the enactment of
24 this section, develop 1 or more model benefit statements
25 that are written in a manner calculated to be understood

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

6 (d) EFFECTIVE DATE.—

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

10 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
11 GAINED AGREEMENTS.—In the case of a plan main-
12 tained pursuant to 1 or more collective bargaining
13 agreements between employee representatives and 1
14 or more employers ratified on or before the date of
15 the enactment of this Act, paragraph (1) shall be
16 applied to benefits pursuant to, and individuals cov-
17 ered by, any such agreement by substituting for
18 “December 31, 2004” the earlier of—

19 (A) the later of—

20 (i) December 31, 2005, or

21 (ii) the date on which the last of such
22 collective bargaining agreements termi-
23 nates (determined without regard to any
24 extension thereof after such date of enact-
25 ment), or

1 (B) December 31, 2006.

2 **SEC. 202. DEFINED CONTRIBUTION PLANS REQUIRED TO**
3 **PROVIDE ADEQUATE INVESTMENT EDU-**
4 **CATION TO PARTICIPANTS.**

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

8 (1) IN GENERAL.—Section 4980I(e)(1)(A) of
9 the Internal Revenue Code of 1986, as added by sec-
10 tion 201, is amended by adding at the end the fol-
11 lowing new flush sentence:

12 “In addition to the pension benefit statement,
13 the administrator shall furnish at least once
14 each year to each participant or beneficiary who
15 has the right to direct the investment of assets
16 in his or her account the model form relating
17 to basic investment guidelines as provided in
18 paragraph (5).”

19 (2) BASIC INVESTMENT GUIDELINES.—Section
20 4980I(e) of such Code, as so added, is amended by
21 adding at the end the following new paragraph:

22 “(5) BASIC INVESTMENT GUIDELINES.—

23 “(A) IN GENERAL.—The Secretary shall,
24 in consultation with the Secretary of Labor, de-
25 velop and make available to defined contribu-

1 tion plans for distribution under paragraph
2 (1)(A) a model form containing basic guidelines
3 for investing for retirement. Except as other-
4 wise provided by the Secretary, such guidelines
5 shall include—

6 “(i) information on the benefits of di-
7 versification,

8 “(ii) information on the essential dif-
9 ferences, in terms of risk and return, of
10 pension plan investments, including stocks,
11 bonds, mutual funds, and money market
12 investments,

13 “(iii) information on how an individ-
14 ual’s pension plan investment allocations
15 may differ depending on the individual’s
16 age and years to retirement and on other
17 factors determined by the Secretary,

18 “(iv) sources of information where in-
19 dividuals may learn more about pension
20 rights, individual investing, and investment
21 advice, and

22 “(v) such other information related to
23 individual investing as the Secretary deter-
24 mines appropriate.

1 “(B) CALCULATION INFORMATION.—The
2 model form under subparagraph (A) shall in-
3 clude addresses for Internet sites, and a work-
4 sheet, which a participant or beneficiary may
5 use to calculate—

6 “(i) the retirement age value of the
7 participant’s or beneficiary’s nonforfeitable
8 pension benefits under the plan (expressed
9 as an annuity amount and determined by
10 reference to varied historical annual rates
11 of return and annuity interest rates), and

12 “(ii) other important amounts relating
13 to retirement savings, including the
14 amount which a participant or beneficiary
15 would be required to save annually to pro-
16 vide a retirement income equal to various
17 percentages of their current salary (ad-
18 justed for expected growth prior to retire-
19 ment).

20 The Secretary of Labor shall develop an Inter-
21 net site which an individual may use in making
22 such calculations and the address for such site
23 shall be included with the form.

24 “(C) PUBLIC COMMENT.—The Secretary
25 shall provide at least 90 days for public com-

1 ment before publishing final notice of the model
2 form.

3 “(D) RULES RELATING TO FORM AND
4 STATEMENT.—The model form under subpara-
5 graph (A)—

6 “(i) shall be written in a manner cal-
7 culated to be understood by the average
8 plan participant, and

9 “(ii) may be delivered in written, elec-
10 tronic, or other appropriate form to the ex-
11 tent such form is reasonably accessible to
12 participants and beneficiaries.”

13 (3) CONFORMING AMENDMENTS.—Section
14 4980I of such Code is amended—

15 (A) by adding at the end of subsection
16 (c)(3) the following new subparagraph:

17 “(C) SEPARATE APPLICATION.—This para-
18 graph shall be applied separately to failures to
19 meet the requirements of subsection (e)(1)(A)
20 to provide pension benefit statements and fail-
21 ures to meet the requirements of subsection
22 (e)(1)(A) to provide model forms containing
23 basic investment guidelines.”;

24 (B) by inserting “or model form” after
25 “statement” in subsection (d)(3); and

1 (C) by inserting “or model form containing
2 basic investment guidelines” after “statement”
3 in subsection (e)(4).

4 (b) ADEQUATE INVESTMENT EDUCATION.—

5 (1) IN GENERAL.—Section 104 of the Employee
6 Retirement Income Security Act of 1974 (29 U.S.C.
7 1024), as amended by section 102, is amended by
8 redesignating subsection (e) as subsection (f) and by
9 inserting after subsection (d) the following new sub-
10 section:

11 “(e) BASIC INVESTMENT GUIDELINES.—

12 “(1) IN GENERAL.—The administrator of an in-
13 dividual account plan (other than a one-participant
14 retirement plan described in section 101(i)(8)(B))
15 shall furnish at least once each year to each partici-
16 pant or beneficiary who has the right to direct the
17 investment of assets in his or her account the model
18 form relating to basic investment guidelines which is
19 described in paragraph (2).

20 “(2) MODEL FORM.—

21 “(A) IN GENERAL.—The Secretary of the
22 Treasury, in consultation with the Secretary,
23 shall develop and make available to individual
24 account plans for distribution under paragraph
25 (1) a model form containing basic guidelines for

1 investing for retirement. Except as otherwise
2 provided by the Secretary of the Treasury, such
3 guidelines shall include—

4 “(i) information on the benefits of di-
5 versification,

6 “(ii) information on the essential dif-
7 ferences, in terms of risk and return, of
8 pension plan investments, including stocks,
9 bonds, mutual funds, and money market
10 investments,

11 “(iii) information on how an individ-
12 ual’s pension plan investment allocations
13 may differ depending on the individual’s
14 age and years to retirement and on other
15 factors determined by the Secretary of the
16 Treasury,

17 “(iv) sources of information where in-
18 dividuals may learn more about pension
19 rights, individual investing, and investment
20 advice, and

21 “(v) such other information related to
22 individual investing as the Secretary of the
23 Treasury determines appropriate.

24 “(B) CALCULATION INFORMATION.—The
25 model form under subparagraph (A) shall in-

1 clude addresses for Internet sites, and a work-
2 sheet, which a participant or beneficiary may
3 use to calculate—

4 “(i) the retirement age value of the
5 participant’s or beneficiary’s nonforfeitable
6 pension benefits under the plan (expressed
7 as an annuity amount and determined by
8 reference to varied historical annual rates
9 of return and annuity interest rates), and

10 “(ii) other important amounts relating
11 to retirement savings, including the
12 amount which a participant or beneficiary
13 would be required to save annually to pro-
14 vide a retirement income equal to various
15 percentages of their current salary (ad-
16 justed for expected growth prior to retire-
17 ment).

18 The Secretary shall develop an Internet site which an indi-
19 vidual may use in making such calculations and the ad-
20 dress for such site shall be included with the form.

21 “(3) RULES RELATING TO FORM AND STATE-
22 MENT.—The model form under paragraph (2)—

23 “(A) shall be written in a manner cal-
24 culated to be understood by the average plan
25 participant, and

1 “(B) may be delivered in written, elec-
2 tronic, or other appropriate form to the extent
3 such form is reasonably accessible to partici-
4 pants and beneficiaries.”

5 (2) ENFORCEMENT.—Section 502(c)(7) of such
6 Act (29 U.S.C. 1132(c)(7)), as amended by section
7 102, is amended by striking “section 104(d)” and
8 inserting “subsection (d) or (e) of section 104”.

9 (c) EFFECTIVE DATE.—

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

13 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
14 GAINED AGREEMENTS.—In the case of a plan main-
15 tained pursuant to 1 or more collective bargaining
16 agreements between employee representatives and 1
17 or more employers ratified on or before the date of
18 the enactment of this Act, paragraph (1) shall be
19 applied to benefits pursuant to, and individuals cov-
20 ered by, any such agreement by substituting for
21 “December 31, 2004” the earlier of—

22 (A) the later of—

23 (i) December 31, 2005, or

24 (ii) the date on which the last of such
25 collective bargaining agreements termi-

1 nates (determined without regard to any
2 extension thereof after such date of enact-
3 ment), or

4 (B) December 31, 2006.

5 **SEC. 203. MATERIAL INFORMATION RELATING TO INVEST-**
6 **MENT IN EMPLOYER SECURITIES.**

7 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

8 (1) IN GENERAL.—Section 4980H(e) of the In-
9 ternal Revenue Code of 1986, as added by section
10 102, is amended—

11 (A) by striking “(e) NOTICE OF RIGHT TO
12 DIVEST.—Not” and inserting:

13 “(e) NOTICE REQUIREMENTS.—

14 “(1) NOTICE OF RIGHT TO DIVEST.—Not”,

15 (B) by redesignating paragraphs (1) and
16 (2) as subparagraphs (A) and (B) and adjust-
17 ing all margins accordingly, and

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

20 “(2) MATERIAL INFORMATION.—

21 “(A) IN GENERAL.—The administrator of
22 a defined contribution plan (other than a one-
23 participant retirement plan) shall provide to
24 each participant and beneficiary who has the
25 right to direct the investment of assets in his or

1 her account in employer securities with all re-
2 ports, proxy statements, and other communica-
3 tions regarding investment of such assets in
4 employer securities to the extent that such re-
5 ports, statements, and communications are re-
6 quired to be provided by the plan sponsor to in-
7 vestors in connection with such an investment
8 under applicable securities laws. Such reports,
9 statements, and communications may be deliv-
10 ered in written, electronic, or other appropriate
11 form to the extent such form is reasonably ac-
12 cessible to participants and beneficiaries.

13 “(B) PLAN SPONSOR.—If any information
14 required to be provided under paragraph (1) is
15 maintained by the plan sponsor, the plan spon-
16 sor shall transmit such information to the plan
17 administrator.”

18 (2) CONFORMING AMENDMENTS.—

19 (A) Section 4980H(c)(3) of such Code, as
20 so added, is amended by adding at the end the
21 following new subparagraph:

22 “(C) SEPARATE APPLICATION.—This para-
23 graph shall be applied separately for failures to
24 meet the requirements of subsection (e)(1) and

1 failures to meet the requirements of subsection
 2 (e)(2).”

3 (B)(i) The heading for section 4980H of
 4 such Code, as so added, is amended by striking
 5 **“NOTICE OF FREEDOM TO DIVEST EM-**
 6 **PLOYER SECURITIES”** and inserting **“INFOR-**
 7 **MATION REGARDING INVESTMENT IN EM-**
 8 **PLOYER SECURITIES”**.

9 (ii) The item relating to section 4980H in
 10 the table of sections for chapter 43 of such
 11 Code, as so added, is amended by striking “no-
 12 tice of freedom to divest employer securities”
 13 and inserting “information regarding invest-
 14 ment in employer securities”.

15 (b) AMENDMENTS OF ERISA.—

16 (1) IN GENERAL.—Section 104 of the Employee
 17 Retirement Income Security Act of 1974 (29 U.S.C.
 18 1024) as amended by sections 102 and 202, is
 19 amended by redesignating subsection (f) as sub-
 20 section (g) and by inserting after subsection (e) the
 21 following new subsection:

22 **“(f) PROVIDING OF MATERIAL INFORMATION.—**

23 **“(1) IN GENERAL.—**The administrator of an in-
 24 dividual account plan (other than a one-participant
 25 retirement plan described in section 101(i)(8)(B))

1 shall provide to each participant and beneficiary who
2 has the right to direct the investment of assets in
3 his or her account in employer securities with all re-
4 ports, proxy statements, and other communications
5 regarding investment of such assets in employer se-
6 curities to the extent that such reports, statements,
7 and communications are required to be provided by
8 the plan sponsor to investors in connection with such
9 an investment under applicable securities laws. Such
10 reports, statements, and communications may be de-
11 livered in written, electronic, or other appropriate
12 form to the extent such form is reasonably accessible
13 to participants and beneficiaries.

14 “(2) PLAN SPONSOR.—If any information re-
15 quired to be provided under paragraph (1) is main-
16 tained by the plan sponsor, the plan sponsor shall
17 transmit such information to the plan adminis-
18 trator.”

19 (2) ENFORCEMENT.—Section 502 of such Act
20 (29 U.S.C. 1132) is amended—

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

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

1 (C) by inserting after paragraph (7) of
2 subsection (c) the following new paragraph:

3 “(8) The Secretary may assess a civil penalty against
4 any person of up to \$1,000 a day from the date of the
5 person’s failure or refusal to comply with the requirements
6 of section 104(f) until such failure or refusal is corrected.”

7 (c) EFFECTIVE DATE.—

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

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

20 (A) the later of—

21 (i) December 31, 2004, or

22 (ii) the date on which the last of such
23 collective bargaining agreements termi-
24 nates (determined without regard to any

1 extension thereof after such date of enact-
2 ment), or

3 (B) December 31, 2005.

4 **SEC. 204. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**
5 **NATING INDEPENDENT INVESTMENT ADVIS-**
6 **ERS.**

7 (a) IN GENERAL.—Section 404 of the Employee Re-
8 tirement Income Security Act of 1974 (29 U.S.C. 1104)
9 is amended by adding at the end the following new sub-
10 section:

11 “(e) INDEPENDENT INVESTMENT ADVISER.—

12 “(1) IN GENERAL.—In the case of an individual
13 account plan which permits a plan participant or
14 beneficiary to direct the investment of the assets in
15 his or her account, if a plan sponsor or other person
16 who is a fiduciary designates and monitors a quali-
17 fied investment adviser pursuant to the requirements
18 of paragraph (3), such fiduciary—

19 “(A) shall be deemed to have satisfied the
20 requirements under this section for the prudent
21 designation and periodic review of an investment
22 adviser with whom the plan sponsor or other
23 person who is a fiduciary enters into an arrange-
24 ment for the provision of advice referred to in
25 section 3(21)(A)(ii),

1 “(B) shall not be liable under this section
2 for any loss, or by reason of any breach, with
3 respect to the provision of investment advice
4 given by such adviser to any plan participant or
5 beneficiary, and

6 “(C) shall not be liable for any co-fiduciary
7 liability under subsections (a)(2) and (b) of sec-
8 tion 405 with respect to the provision of invest-
9 ment advice given by such adviser to any plan
10 participant or beneficiary.

11 “(2) QUALIFIED INVESTMENT ADVISER.—

12 “(A) IN GENERAL.—For purposes of this
13 subsection, the term ‘qualified investment ad-
14 viser’ means, with respect to a plan, a person—

15 “(i) who is a fiduciary of the plan by
16 reason of the provision of investment ad-
17 vice by such person to a plan participant
18 or beneficiary;

19 “(ii) who—

20 “(I) is registered as an invest-
21 ment adviser under the Investment
22 Advisers Act of 1940 (15 U.S.C. 80b-
23 1 et seq.),

24 “(II) is registered as an invest-
25 ment adviser under the laws of the

1 State in which such adviser maintains
2 the principal office and place of busi-
3 ness of such adviser, but only if such
4 State laws are consistent with section
5 203A of the Investment Advisers Act
6 of 1940 (15 U.S.C. 80b-3a),

7 “(III) is a bank or similar finan-
8 cial institution referred to in section
9 408(b)(4),

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

13 “(V) is any other comparably
14 qualified entity which satisfies such
15 criteria as the Secretary determines
16 appropriate, consistent with the pur-
17 poses of this subsection, and

18 “(iii) who meets the requirements of
19 subparagraph (B).

20 “(B) ADVISER REQUIREMENTS.—The re-
21 quirements of this subparagraph are met if
22 every individual employed (or otherwise com-
23 pensated) by a person described in subpara-
24 graph (A)(ii) who provides investment advice on

1 behalf of such person to any plan participant or
2 beneficiary is—

3 “(i) an individual described in sub-
4 clause (I) of subparagraph (A)(ii),

5 “(ii) an individual described in sub-
6 clause (II) of subparagraph (A)(ii), but
7 only if such State has an examination re-
8 quirement to qualify for registration,

9 “(iii) registered as a broker or dealer
10 under the Securities Exchange Act of 1934
11 (15 U.S.C. 78a et seq.),

12 “(iv) a registered representative as de-
13 scribed in section 3(a)(18) of the Securi-
14 ties Exchange Act of 1934 (15 U.S.C.
15 78c(a)(18)) or section 202(a)(17) of the
16 Investment Advisers Act of 1940 (15
17 U.S.C. 80b-2(a)(17)), or

18 “(v) any other comparably qualified
19 individual who satisfies such criteria as the
20 Secretary determines appropriate, con-
21 sistent with the purposes of this sub-
22 section.

23 “(3) VERIFICATION REQUIREMENTS.—The re-
24 quirements of this paragraph are met if—

1 “(A) the plan sponsor or other person who
2 is a fiduciary in designating a qualified invest-
3 ment adviser receives at the time of the des-
4 ignation, and annually thereafter, a written
5 verification from the qualified investment ad-
6 viser that the investment adviser—

7 “(i) is and remains a qualified invest-
8 ment adviser,

9 “(ii) acknowledges that the investment
10 adviser is a fiduciary with respect to the
11 plan and is solely responsible for its invest-
12 ment advice,

13 “(iii) has reviewed the plan documents
14 (including investment options) and has de-
15 termined that its relationship with the plan
16 and the investment advice provided to any
17 plan participant or beneficiary, including
18 any fees or other compensation it will re-
19 ceive, will not constitute a violation of sec-
20 tion 406,

21 “(iv) will, in providing investment ad-
22 vice to any participant or beneficiary, con-
23 sider any employer securities or employer
24 real property allocated to his or her ac-
25 count, and

1 “(v) has the necessary insurance cov-
2 erage (as determined by the Secretary) for
3 any claim by any plan participant or bene-
4 ficiary,

5 “(B) the plan sponsor or other person who
6 is a fiduciary in designating a qualified invest-
7 ment adviser reviews the documents described
8 in paragraph (4) provided by such adviser and
9 determines that there is no material reason not
10 to enter into an arrangement for the provision
11 of advice by such qualified investment adviser,
12 and

13 “(C) the plan sponsor or other person who
14 is a fiduciary in designating a qualified invest-
15 ment adviser, within 30 days of having informa-
16 tion brought to its attention that the invest-
17 ment adviser is no longer qualified or that a
18 substantial number of plan participants or
19 beneficiaries have raised concerns about the
20 services being provided by the investment ad-
21 viser—

22 “(i) investigates such information and
23 concerns, and

24 “(ii) determines that there is no mate-
25 rial reason not to continue the designation

1 of the adviser as a qualified investment ad-
2 viser.

3 “(4) DOCUMENTATION.—A qualified investment
4 adviser shall provide the following documents to the
5 plan sponsor or other person who is a fiduciary in
6 designating the adviser:

7 “(A) The contract with the plan sponsor or
8 other person who is a fiduciary for the services
9 to be provided by the investment adviser to the
10 plan participants and beneficiaries.

11 “(B) A disclosure as to any fees or other
12 compensation that will be received by the in-
13 vestment adviser for the provision of such in-
14 vestment advice and as to any fees and other
15 compensation that will be received as a result of
16 a participant’s investment election.

17 “(C) The Uniform Application for Invest-
18 ment Adviser Registration as filed with the Se-
19 curities and Exchange Commission or a sub-
20 stantially similar disclosure application as de-
21 termined by and filed with the Secretary.

22 “(5) TREATMENT AS FIDUCIARY.—Any quali-
23 fied investment adviser that acknowledges it is a fi-
24 duciary pursuant to paragraph (3)(A)(ii) shall be
25 deemed a fiduciary under this part with respect to

1 the provision of investment advice to a plan partici-
2 pant or beneficiary.”

3 (b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of
4 such Act is amended by inserting “(other than a qualified
5 investment adviser)” after “fiduciary”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply with respect to investment advisers
8 designated after the date of the enactment of this Act.

9 **SEC. 205. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
10 **NING SERVICES.**

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

15 “(4) NO CONSTRUCTIVE RECEIPT.—

16 “(A) IN GENERAL.—No amount shall be
17 included in the gross income of any employee
18 solely because the employee may choose between
19 any qualified retirement planning services pro-
20 vided by an eligible investment advisor and
21 compensation which would otherwise be includ-
22 ible in the gross income of such employee. The
23 preceding sentence shall apply to highly com-
24 pensated employees only if the choice described
25 in such sentence is available on substantially

1 the same terms to each member of the group of
2 employees normally provided education and in-
3 formation regarding the employer's qualified
4 employer plan.

5 “(B) LIMITATION.—The maximum amount
6 which may be excluded under subparagraph (A)
7 with respect to any employee for any taxable
8 year shall not exceed \$1,000.

9 “(C) ELIGIBLE INVESTMENT ADVISER.—
10 For purposes of this paragraph, the term ‘eligi-
11 ble investment adviser’ means, with respect to
12 a plan, a person—

13 “(i) who—

14 “(I) is registered as an invest-
15 ment adviser under the Investment
16 Advisers Act of 1940 (15 U.S.C. 80b-
17 1 et seq.),

18 “(II) is registered as an invest-
19 ment adviser under the laws of the
20 State in which such adviser maintains
21 the principal office and place of busi-
22 ness of such adviser, but only if such
23 State laws are consistent with section
24 203A of the Investment Advisers Act
25 of 1940 (15 U.S.C. 80b-3a),

1 “(III) is a bank or similar finan-
2 cial institution referred to in section
3 408(b)(4),

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

7 “(V) is any other comparably
8 qualified entity which satisfies such
9 criteria as the Secretary determines
10 appropriate, consistent with the pur-
11 poses of this subsection, and

12 “(ii) who meets the requirements of
13 subparagraph (D).

14 “(D) ADVISER REQUIREMENTS.—The re-
15 quirements of this subparagraph are met if
16 every individual employed (or otherwise com-
17 pensated) by a person described in subpara-
18 graph (C)(i) who provides investment advice on
19 behalf of such person to any plan participant or
20 beneficiary is—

21 “(i) an individual described in sub-
22 clause (I) of subparagraph (C)(i),

23 “(ii) an individual described in sub-
24 clause (II) of subparagraph (C)(i), but

1 only if such State has an examination re-
2 quirement to qualify for registration,

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

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

12 “ (v) any other comparably qualified
13 individual who satisfies such criteria as the
14 Secretary determines appropriate, con-
15 sistent with the purposes of this para-
16 graph.

17 “ (E) TERMINATION.—This paragraph
18 shall not apply to taxable years beginning after
19 December 31, 2009.”

20 (b) CONFORMING AMENDMENTS.—

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

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

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

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2004.

7 **TITLE III—PROTECTION OF**
8 **PENSION PLAN PARTICIPANTS**

9 **SEC. 301. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**
10 **BLACKOUT PERIODS.**

11 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

12 (1) EXCISE TAX.—

13 (A) IN GENERAL.—Chapter 43 of the In-
14 ternal Revenue Code of 1986 (relating to quali-
15 fied pension, etc., plans), as amended by this
16 Act, is amended by adding at the end the fol-
17 lowing new section:

18 **“SEC. 4980J. FAILURE OF CERTAIN DEFINED CONTRIBU-**
19 **TION PLANS TO PROVIDE NOTICE OF BLACK-**
20 **OUT PERIODS.**

21 “(a) IMPOSITION OF TAX.—There is hereby imposed
22 a tax on the failure of any defined contribution plan to
23 which this section applies to meet the requirements of sub-
24 section (e) with respect to any participant or beneficiary.

25 “(b) AMOUNT OF TAX.—

1 “(1) IN GENERAL.—The amount of the tax im-
2 posed by subsection (a) on any failure with respect
3 to any participant or beneficiary shall be \$100 for
4 each day in the noncompliance period with respect to
5 the failure.

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

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

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

22 “(2) TAX NOT TO APPLY TO FAILURES COR-
23 RECTED AS SOON AS REASONABLY PRACTICABLE.—
24 No tax shall be imposed by subsection (a) on any
25 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) as soon as reasonably
7 practicable after the first date such person
8 knew, or exercising reasonable diligence should
9 have known, that such failure existed.

10 “(3) 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), the tax imposed by
16 subsection (a) for failures during the taxable
17 year of the employer (or, in the case of a multi-
18 employer plan, the taxable year of the trust
19 forming part of the plan) shall not exceed
20 \$500,000. For purposes of the preceding sen-
21 tence, all multiemployer plans of which the
22 same trust forms a part shall be treated as 1
23 plan.

24 “(B) TAXABLE YEARS IN THE CASE OF
25 CERTAIN CONTROLLED GROUPS.—For purposes

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

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

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

15 “(1) In the case of a plan not described in
16 paragraph (2) or (3), the employer.

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

19 “(3) In the case of an arrangement described in
20 subsection (e)(1)(B), the person required to provide
21 the notice under subsection (e).

22 “(e) NOTICE OF BLACKOUT PERIODS TO PARTICI-
23 PANT OR BENEFICIARY UNDER DEFINED CONTRIBUTION
24 PLAN.—

25 “(1) IN GENERAL.—

1 “(A) DUTIES OF PLAN ADMINISTRATOR.—

2 In advance of the commencement of any black-
3 out period with respect to a defined contribu-
4 tion plan, the plan administrator shall notify
5 the plan participants and beneficiaries who are
6 affected by such action in accordance with this
7 subsection.

8 “(B) SPECIAL RULE FOR CERTAIN ANNU-

9 ITIES.—In the case of an annuity contract or
10 custodial account described in section 403(b)
11 which is not a plan established or maintained
12 by the employer, the notice shall be furnished
13 by the issuer of the contract, the custodian of
14 the account, or such other person as is specified
15 by the Secretary.

16 “(2) NOTICE REQUIREMENTS.—

17 “(A) IN GENERAL.—The notices described
18 in paragraph (1) shall be written in a manner
19 calculated to be understood by the average plan
20 participant and shall include—

21 “(i) the reasons for the blackout pe-
22 riod,

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

1 “(iii) the expected beginning date and
2 length of the blackout period,

3 “(iv) in the case of investments af-
4 fected, a statement that the participant or
5 beneficiary should evaluate the appro-
6 priateness of their current investment deci-
7 sions in light of their inability to direct or
8 diversify assets credited to their accounts
9 during the blackout period, and

10 “(v) such other matters as the Sec-
11 retary of Labor may require by regulation.

12 “(B) NOTICE TO PARTICIPANTS AND
13 BENEFICIARIES.—Except as otherwise provided
14 in this subsection, notices described in para-
15 graph (1) shall be furnished to all participants
16 and beneficiaries under the plan to whom the
17 blackout period applies at least 30 days in ad-
18 vance of the blackout period.

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

21 “(i) a deferral of the blackout period
22 would violate the requirements of subpara-
23 graph (A) or (B) of section 404(a)(1) of
24 the Employee Retirement Income Security

1 Act of 1974, and a fiduciary of the plan
2 reasonably so determines in writing, or

3 “(ii) the inability to provide the 30-
4 day advance notice is due to events that
5 were unforeseeable or circumstances be-
6 yond the reasonable control of the plan ad-
7 ministrator, and a fiduciary of the plan
8 reasonably so determines in writing,

9 subparagraph (B) shall not apply, and the no-
10 tice shall be furnished to all participants and
11 beneficiaries under the plan to whom the black-
12 out period applies as soon as reasonably pos-
13 sible under the circumstances unless such a no-
14 tice in advance of the termination of the black-
15 out period is impracticable.

16 “(D) WRITTEN NOTICE.—The notice re-
17 quired to be provided under this subsection
18 shall be in writing, except that such notice may
19 be in electronic or other form to the extent that
20 such form is reasonably accessible to the recipi-
21 ent.

22 “(E) NOTICE TO ISSUERS OF EMPLOYER
23 SECURITIES SUBJECT TO BLACKOUT PERIOD.—
24 In the case of any blackout period in connection
25 with a defined contribution plan, the plan ad-

1 administrator shall provide timely notice of such
2 blackout period to the issuer of any employer
3 securities subject to such blackout period.

4 “(3) EXCEPTION FOR BLACKOUT PERIODS
5 WITH LIMITED APPLICABILITY.—In any case in
6 which the blackout period applies only to 1 or more
7 participants or beneficiaries in connection with a
8 merger, acquisition, divestiture, or similar trans-
9 action involving the plan or plan sponsor and occurs
10 solely in connection with becoming or ceasing to be
11 a participant or beneficiary under the plan by reason
12 of such merger, acquisition, divestiture, or trans-
13 action, the requirement of this subsection that the
14 notice be provided to all participants and bene-
15 ficiaries shall be treated as met if the notice required
16 under paragraph (1) is provided to such participants
17 or beneficiaries to whom the blackout period applies
18 as soon as reasonably practicable.

19 “(4) CHANGES IN LENGTH OF BLACKOUT PE-
20 RIOD.—If, following the furnishing of the notice pur-
21 suant to this subsection, there is a change in the be-
22 ginning date or length of the blackout period (speci-
23 fied in such notice pursuant to paragraph
24 (2)(A)(iii)), the administrator shall provide affected
25 participants and beneficiaries notice of the change as

1 soon as reasonably practicable. In relation to the ex-
2 tended blackout period, such notice shall meet the
3 requirements of paragraph (2)(D) and shall specify
4 any material change in the matters referred to in
5 clauses (i) through (v) of paragraph (2)(A).

6 “(5) REGULATORY EXCEPTIONS.—The Sec-
7 retary of Labor may provide by regulation for addi-
8 tional exceptions to the requirements of this sub-
9 section which the Secretary of Labor determines are
10 in the interests of participants and beneficiaries.

11 “(6) GUIDANCE AND MODEL NOTICES.—The
12 Secretary of Labor shall issue guidance and model
13 notices which meet the requirements of this sub-
14 section.

15 “(7) BLACKOUT PERIOD.—For purposes of this
16 subsection—

17 “(A) IN GENERAL.—The term ‘blackout
18 period’ means, in connection with a defined con-
19 tribution plan, any period for which any ability
20 of participants or beneficiaries under the plan,
21 which is otherwise available under such plan, to
22 direct or diversify assets credited to their ac-
23 counts, to obtain loans from the plan, or to ob-
24 tain distributions from the plan is temporarily
25 suspended, limited, or restricted, if such sus-

1 pension, limitation, or restriction is for any pe-
2 riod of more than 3 consecutive business days.

3 “(B) EXCLUSIONS.—The term ‘blackout
4 period’ does not include a suspension, limita-
5 tion, or restriction—

6 “(i) which occurs by reason of the ap-
7 plication of the securities laws (as defined
8 in section 3(a)(47) of the Securities Ex-
9 change Act of 1934),

10 “(ii) which is a change to the plan
11 which provides for a regularly scheduled
12 suspension, limitation, or restriction which
13 is disclosed to participants or beneficiaries
14 through any summary of material modi-
15 fications, any materials describing specific
16 investment alternatives under the plan, or
17 any changes thereto, or

18 “(iii) which applies only to 1 or more
19 individuals, each of whom is the partici-
20 pant, an alternate payee (as defined in sec-
21 tion 414(p)(8)), or any other beneficiary
22 pursuant to a qualified domestic relations
23 order (as defined in section 414(p)(1)(A)).

24 “(8) DEFINED CONTRIBUTION PLAN TO WHICH
25 SECTION APPLIES.—

1 “(A) IN GENERAL.—Except as provided in
2 this paragraph, this section applies to any de-
3 fined contribution plan described in clause (i),
4 (ii), or (iv) of section 219(g)(5)(A).

5 “(B) EXCEPTION FOR ONE-PARTICIPANT
6 RETIREMENT PLAN.—This section shall not
7 apply to a one-participant retirement plan (as
8 defined in section 401(a)(35)(E)(iv)).

9 “(C) EXCEPTION FOR GOVERNMENTAL
10 AND CHURCH PLANS.—This section shall not
11 apply to governmental and church plans. For
12 purposes of this subparagraph, the terms ‘gov-
13 ernmental plan’ and ‘church plan’ have the
14 meanings given such terms by section 414.”

15 (B) AGGREGATION.—Section 414(t) of
16 such Code, as amended by this Act, is amended
17 by striking “or 4980I” and inserting “4980I, or
18 4980J”.

19 (C) CLERICAL AMENDMENT.—The table of
20 sections for chapter 43 of such Code is amend-
21 ed by adding at the end the following new item:

“Sec. 4980J. Failure of applicable defined contribution plan to provide notice
of blackout periods.”

22 (2) EFFECTIVE DATE.—The amendments made
23 by this subsection shall apply to failures after the
24 date of the enactment of this Act.

1 (b) AMENDMENTS OF ERISA.—

2 (1) IN GENERAL.—Section 101(i) of the Em-
3 ployee Retirement Income Security Act of 1974 (29
4 U.S.C. 1021(i)) is amended—

5 (A) by striking “the terms of” in para-
6 graph (7)(A),

7 (B) by striking clause (i) of paragraph
8 (8)(B) and inserting:

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

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

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

19 (C) by striking “employer” and “employ-
20 er’s” in paragraph (8)(B)(iii) and inserting “in-
21 dividual” and “individual’s”, respectively,

22 (D) by striking “leases employees” in
23 paragraph (8)(B)(v) and inserting “uses the
24 services of leased employees (within the mean-

1 ing of section 414(n) of the Internal Revenue
2 Code of 1986)”, and

3 (E) by adding at the end of paragraph
4 (8)(B) the following flush sentence:

5 “For purposes of this paragraph, an individual
6 shall be treated as a partner if the individual is
7 so treated under section 401(a)(35)(E)(iv) of
8 the Internal Revenue Code of 1986.”

9 (2) EFFECTIVE DATE.—The amendments made
10 by this subsection shall take effect as if included in
11 the provisions of section 306 of Public Law 107–204
12 (116 Stat. 745 et seq.).

13 **TITLE IV—OTHER PROVISIONS**
14 **RELATING TO PENSIONS**
15 **Subtitle A—Provisions Relating to**
16 **Pension Plan Funding**

17 **PART I—REPLACEMENT OF INTEREST RATE ON**
18 **30-YEAR TREASURY SECURITIES**

19 **SEC. 401. REPLACEMENT OF 30-YEAR TREASURY RATE FOR**
20 **PURPOSES OF FUNDING AND PBGC PREMIUM**
21 **RATES.**

22 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—
23 (1) IN GENERAL.—Section 412(b)(5)(B) of the
24 Internal Revenue Code of 1986 is amended to read
25 as follows:

1 “(B) DETERMINATION OF CURRENT LI-
 2 ABILITY.—Notwithstanding subsection (c)(3), a
 3 plan’s current liability (including for purposes
 4 of determining a plan’s required contribution
 5 under subsection (l)) for any plan year shall be
 6 determined—

7 “(i) in the case of plan years begin-
 8 ning in 2004, 2005, or 2006, by using an
 9 interest rate determined in accordance with
 10 the rules prescribed under subsection
 11 (o)(1),

12 “(ii) in the case of plan years begin-
 13 ning in 2007, 2008, 2009, or 2010, by
 14 using the phase-in yield curve method (as
 15 defined in subsection (o)(3)), and

16 “(iii) in the case of plan years begin-
 17 ning after 2010, by using the yield curve
 18 method (as defined in subsection (o)(2)).”

19 (2) RULES RELATING TO CURRENT LIABILITY
 20 DETERMINATIONS.—Section 412 of such Code is
 21 amended by adding at the end the following new
 22 subsection:

23 “(o) RULES RELATING TO CURRENT LIABILITY DE-
 24 TERMINATIONS.—For purposes of subsection (b)(5)(B)—

1 “(1) RULES RELATING TO INTEREST RATES
2 FOR 2004–2006.—

3 “(A) DETERMINATION OF RATE.—

4 “(i) IN GENERAL.—If any rate of in-
5 terest used under the plan to determine
6 cost is not within the permissible range,
7 the plan shall establish a new rate of inter-
8 est within the permissible range.

9 “(ii) PERMISSIBLE RANGE.—For pur-
10 poses of clause (i), the term ‘permissible
11 range’ means a rate of interest which is
12 not more than, and not more than 10 per-
13 cent below, the weighted average of con-
14 servative long-term corporate bond rates
15 during the 4-year period ending on the last
16 day before the beginning of the plan year.

17 “(B) CONSERVATIVE LONG-TERM COR-
18 PORATE BOND RATES.—The Secretary shall, by
19 regulation, prescribe a method for periodically
20 determining conservative long-term corporate
21 bond rates for purposes of this paragraph. Such
22 rates shall reflect rates of interest on amounts
23 invested in high-quality, long-term corporate
24 bonds and shall be based on the use of 1 or

1 more indices, as determined from time to time
2 by the Secretary.

3 “(2) YIELD CURVE METHOD.—For purposes of
4 this subsection, the yield curve method is a method
5 under which current liability is determined—

6 “(A) by using interest rates drawn from a
7 yield curve which is prescribed by the Secretary
8 and which reflects high-quality corporate bonds,
9 and

10 “(B) by matching the timing of the ex-
11 pected benefit payments under the plan to the
12 interest rates on such yield curve.

13 The Secretary shall publish any yield curve pre-
14 scribed under this paragraph and the method by
15 which the yield curve was established.

16 “(3) PHASE-IN YIELD CURVE METHOD.—

17 “(A) IN GENERAL.—The current liability
18 under the phase-in yield curve method shall be
19 equal to the sum of—

20 “(i) the applicable percentage of cur-
21 rent liability determined under the yield
22 curve method described in paragraph (2),
23 and

24 “(ii) the product of the current liabil-
25 ity determined by using the interest rate

1 rules described in paragraph (1) and a per-
 2 centage equal to 100 percent minus the ap-
 3 plicable percentage.

4 “(B) APPLICABLE PERCENTAGE.—For
 5 purposes of subparagraph (A), the applicable
 6 percentage shall be determined in accordance
 7 with the following table:

“In the case of years beginning in—	The applicable percentage is—
2007	20
2008	40
2009	60
2010	80.

8 “(4) SIMPLIFIED METHODS.—

9 “(A) ESTABLISHMENT BY SECRETARY.—
 10 The Secretary shall prescribe 1 or more sim-
 11 plified methods under which current liability
 12 can be determined by substituting any such
 13 method for the yield curve method for purposes
 14 of paragraphs (2) and (3).

15 “(B) USE OF SIMPLIFIED METHOD.—A
 16 plan (other than a multiemployer plan) may use
 17 a simplified method established under subpara-
 18 graph (A) if, on each day during the preceding
 19 plan year, the plan had no more than 100 par-
 20 ticipants. The aggregation rule under sub-
 21 section (l)(6)(C) shall apply for purposes of this
 22 subparagraph.”

1 (3) ADDITIONAL FUNDING REQUIREMENTS.—
2 Section 412(l)(7)(C)(i) of such Code is amended to
3 read as follows:

4 “(i) CURRENT LIABILITY.—Current li-
5 ability under this subsection for any plan
6 year shall be determined under the rules or
7 method provided under subsection (b)(5)
8 for the plan year.”

9 (b) AMENDMENTS OF ERISA.—

10 (1) IN GENERAL.—Section 302(b)(5)(B) of the
11 Employee Retirement Income Security Act of 1974
12 (29 U.S.C. 1082(b)(5)(B)) is amended to read as
13 follows:

14 “(B) DETERMINATION OF CURRENT LI-
15 ABILITY.—Notwithstanding subsection (c)(3), a
16 plan’s current liability (including for purposes
17 of determining a plan’s required contribution
18 under subsection (d)) for any plan year shall be
19 determined—

20 “(i) in the case of plan years begin-
21 ning in 2004, 2005, or 2006, by using an
22 interest rate determined in accordance with
23 the rules prescribed under subsection
24 (h)(1),

1 “(ii) in the case of plan years begin-
 2 ning in 2007, 2008, 2009, or 2010, by
 3 using the phase-in yield curve method (as
 4 defined in subsection (h)(3)), and

5 “(iii) in the case of plan years begin-
 6 ning after 2010, by using the yield curve
 7 method (as defined in subsection (h)(2)).”

8 (2) RULES RELATING TO CURRENT LIABILITY
 9 DETERMINATIONS.—Section 302 of such Act (29
 10 U.S.C. 1082) is amended by redesignating sub-
 11 section (h) as subsection (i) and by inserting after
 12 subsection (g) the following new subsection:

13 “(h) RULES RELATING TO CURRENT LIABILITY DE-
 14 TERMINATIONS.—For purposes of subsection (b)(5)(B)—

15 “(1) RULES RELATING TO INTEREST RATES
 16 FOR 2004–2006.—

17 “(A) DETERMINATION OF RATE.—

18 “(i) IN GENERAL.—If any rate of in-
 19 terest used under the plan to determine
 20 cost is not within the permissible range,
 21 the plan shall establish a new rate of inter-
 22 est within the permissible range.

23 “(ii) PERMISSIBLE RANGE.—For pur-
 24 poses of clause (i), the term ‘permissible
 25 range’ means a rate of interest which is

1 not more than, and not more than 10 per-
2 cent below, the weighted average of con-
3 servative long-term corporate bond rates
4 during the 4-year period ending on the last
5 day before the beginning of the plan year.

6 “(B) CONSERVATIVE LONG-TERM COR-
7 PORATE BOND RATES.—The Secretary of the
8 Treasury shall, by regulation, prescribe a meth-
9 od for periodically determining conservative
10 long-term corporate bond rates for purposes of
11 this paragraph. Such rates shall reflect rates of
12 interest on amounts invested in high-quality,
13 long-term corporate bonds and shall be based
14 on the use of 1 or more indices, as determined
15 from time to time by the Secretary of the
16 Treasury.

17 “(2) YIELD CURVE METHOD.—For purposes of
18 this subsection, the yield curve method is a method
19 under which current liability is determined—

20 “(A) by using interest rates drawn from a
21 yield curve which is prescribed by the Secretary
22 of the Treasury and which reflects high-quality
23 corporate bonds, and

1 “(B) by matching the timing of the ex-
2 pected benefit payments under the plan to the
3 interest rates on such yield curve.

4 The Secretary of the Treasury shall publish any
5 yield curve prescribed under this paragraph and the
6 method by which the yield curve was established.

7 “(3) PHASE-IN YIELD CURVE METHOD.—

8 “(A) IN GENERAL.—The current liability
9 under the phase-in yield curve method shall be
10 equal to the sum of—

11 “(i) the applicable percentage of cur-
12 rent liability determined under the yield
13 curve method described in paragraph (2),
14 and

15 “(ii) the product of the current liabil-
16 ity determined by using the interest rate
17 rules described in paragraph (1) and a per-
18 centage equal to 100 percent minus the ap-
19 plicable percentage.

20 “(B) APPLICABLE PERCENTAGE.—For
21 purposes of subparagraph (A), the applicable
22 percentage shall be determined in accordance
23 with the following table:

“In the case of years beginning in—	The applicable percentage is—
2007	20
2008	40

“In the case of years beginning in—	The applicable percentage is—
2009	60
2010	80.

1 “(4) SIMPLIFIED METHODS.—

2 “(A) ESTABLISHMENT BY SECRETARY.—

3 The Secretary of the Treasury shall prescribe 1
4 or more simplified methods under which current
5 liability can be determined by substituting any
6 such method for the yield curve method for pur-
7 poses of paragraphs (2) and (3).

8 “(B) USE OF SIMPLIFIED METHOD.—A

9 plan (other than a multiemployer plan) may use
10 a simplified method established under subpara-
11 graph (A) if, on each day during the preceding
12 plan year, the plan had no more than 100 par-
13 ticipants. The aggregation rule under sub-
14 section (d)(6)(C) shall apply for purposes of
15 this subparagraph.”

16 (3) ADDITIONAL FUNDING REQUIREMENTS.—

17 Section 302(d)(7)(C)(i) of such Act (29 U.S.C.
18 1082(d)(7)(C)(i)) is amended to read as follows:

19 “(i) CURRENT LIABILITY.—Current li-
20 ability under this subsection for any plan
21 year shall be determined under the rules or
22 method provided under subsection (b)(5)
23 for the plan year.”

1 (4) PBGC PREMIUM RATES.—

2 (A) IN GENERAL.—Section
3 4006(a)(3)(E)(iii)(II) of such Act (29 U.S.C.
4 1306(a)(3)(E)(iii)(II)) is amended to read as
5 follows:

6 “(II) For purposes of deter-
7 mining unfunded current liability
8 under subclause (I), current liability
9 for any plan year shall be determined
10 under the rules or method provided
11 under section 302(b)(5) for the plan
12 year, except that for purposes of plan
13 years beginning in 2004, 2005, or
14 2006, the interest rate used shall be
15 the conservative long-term corporate
16 bond rate for the month preceding the
17 month in which the plan year begins.
18 For purposes of the preceding sen-
19 tence, a plan may, in lieu of the yield
20 curve method, use a simplified method
21 under section 302(h)(4) in applying
22 paragraph (2) or (3) of section
23 302(h).”

24 (B) CONFORMING AMENDMENTS.—Section
25 4006(a)(3)(E)(iii) of such Act (29 U.S.C.

1 1306(a)(3)(E)(iii) is amended by striking sub-
2 clauses (III), (IV), and (V).

3 (c) CONFORMING CHANGES REGARDING QUARTERLY
4 CONTRIBUTIONS.—

5 (1) AMENDMENT OF INTERNAL REVENUE
6 CODE.—Section 412(m)(1)(B) of the Internal Rev-
7 enue Code of 1986 (relating to quarterly contribu-
8 tions) is amended by striking “(including adjust-
9 ments under subsection (b)(5)(B))”.

10 (2) AMENDMENT OF ERISA.—Section
11 302(e)(1)(B) of the Employee Retirement Income
12 Security Act of 1974 (29 U.S.C. 1082(e)(1)(B)) is
13 amended by striking “(including adjustments under
14 subsection (b)(5)(B))”.

15 (d) EFFECTIVE DATES.—

16 (1) IN GENERAL.—Except as provided in para-
17 graphs (2) and (3), the amendments made by this
18 section shall apply to plan years beginning after De-
19 cember 31, 2003.

20 (2) LOOKBACK RULES.—For purposes of apply-
21 ing subsections (d)(9)(B) and (e)(1) of section 302
22 of the Employee Retirement Income Security Act of
23 1974 and subsections (l)(9)(B) and (m)(1) of section
24 412 of the Internal Revenue Code of 1986 to plan
25 years beginning after December 31, 2003, the

1 amendments made by this section may be applied as
 2 if such amendments had been in effect for all prior
 3 plan years. The Secretary of the Treasury may pre-
 4 scribe simplified assumptions which may be used in
 5 applying the amendments made by this section to
 6 such prior plan years.

7 **SEC. 402. REPLACEMENT OF 30-YEAR TREASURY RATE FOR**
 8 **CALCULATING LUMP-SUM DISTRIBUTIONS.**

9 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—
 10 Section 417(e)(3)(A) of the Internal Revenue Code of
 11 1986 (relating to determination of present value) is
 12 amended—

13 (1) by striking “and the applicable interest
 14 rate.” in clause (i) and inserting “and by using—

15 “(I) the phase-in yield curve
 16 method in the case of plan years be-
 17 ginning in 2007, 2008, 2009, or
 18 2010, and

19 “(II) the yield curve method for
 20 years beginning after 2010.”, and

21 (2) by striking subclause (II) of clause (ii) and
 22 inserting:

23 “(II) YIELD CURVE METHODS.—
 24 The terms ‘yield curve method’ and
 25 ‘phase-in yield curve method’ have the

1 meanings given such terms by para-
2 graphs (2) and (3) of section 412(o),
3 respectively, except that each such
4 paragraph shall be applied by sub-
5 stituting ‘present value’ for ‘current
6 liability’ and in applying paragraph
7 (3)(A)(ii) of section 412(o), the an-
8 nual rate of interest on 30-year
9 Treasury securities shall be sub-
10 stituted for the interest rate under
11 section 412(o)(1). A plan may, in lieu
12 of the yield curve method, use a sim-
13 plified method under section
14 412(o)(4) for purposes of applying
15 such paragraphs.”

16 (b) AMENDMENTS OF ERISA.—Section 205(g)(3)(A)
17 of the Employee Retirement Income Security Act of 1974
18 (29 U.S.C. 1055(g)(3)) is amended—

19 (1) by striking “and the applicable interest
20 rate.” in clause (i) and inserting “and by using—

21 “(I) the phase-in yield curve
22 method in the case of plan years be-
23 ginning in 2007, 2008, 2009, or
24 2010, and

1 “(II) the yield curve method for
2 years beginning after 2010.”, and

3 (2) by striking subclause (II) of clause (ii) and
4 inserting:

5 “(II) YIELD CURVE METHODS.—
6 The terms ‘yield curve method’ and
7 ‘phase-in yield curve method’ have the
8 meanings given such terms by para-
9 graphs (2) and (3) of section 302(h),
10 respectively, except that each such
11 paragraph shall be applied by sub-
12 stituting ‘present value’ for ‘current
13 liability’ and in applying paragraph
14 (3)(A)(ii) of section 302(h), the an-
15 nual rate of interest on 30-year
16 Treasury securities shall be sub-
17 stituted for the interest rate under
18 section 302(h)(1). A plan may, in lieu
19 of the yield curve method, use a sim-
20 plified method under section
21 302(h)(4) for purposes of applying
22 such paragraphs.”

23 (c) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
2 this section shall apply to plan years beginning after
3 December 31, 2006.

4 (2) SPECIAL RULE FOR CERTAIN OPTIONAL
5 BENEFITS.—If—

6 (A) for the last plan year of a plan begin-
7 ning in 2003, the plan provides that the appli-
8 cable interest rate under section 417(e)(3) of
9 the Internal Revenue Code of 1986 and section
10 205(g)(3) of Employee Retirement Income Se-
11 curity Act of 1974 shall be used for purposes
12 of determining the amount of a benefit (other
13 than the accrued benefit) to which such sections
14 417(e)(3) and 205(g)(3) do not apply, and

15 (B) such plan is amended to provide that
16 a rate other than the applicable interest rate
17 shall be used for such purposes and the first
18 plan year for which such amendment is effective
19 begins no later than January 1, 2007,

20 such plan shall not fail to meet the requirements of
21 section 411(d)(6) of the Internal Revenue Code of
22 1986 and section 204(g) of Employee Retirement
23 Income Security Act of 1974 by reason of such
24 amendment.

1 **SEC. 403. SECTION 415 LIMITATION ON DEFINED BENEFIT**
2 **PLANS.**

3 (a) IN GENERAL.—Section 415(b)(2)(E)(ii) of the
4 Internal Revenue Code of 1986 (relating to limitation on
5 certain assumptions) is amended to read as follows:

6 “(ii) For purposes of adjusting any
7 benefit under subparagraph (B) for any
8 form of benefit subject to section
9 417(e)(3), ‘5.5 percent’ shall be sub-
10 stituted for ‘5 percent’ in clause (i).”

11 (b) EFFECTIVE DATES.—

12 (1) IN GENERAL.—The amendment made by
13 this section shall apply to years beginning after De-
14 cember 31, 2003.

15 (2) TRANSITION RULE FOR 2004 AND 2005.—In
16 the case of any year beginning in 2004 or 2005, the
17 amendment made by this section shall not apply if
18 a greater benefit would be permitted if section
19 415(b)(2)(E)(ii) of such Code were applied without
20 regard to the amendment.

21 **PART II—OTHER PROVISIONS**

22 **SEC. 406. DEFICIT REDUCTION CONTRIBUTION.**

23 (a) AMENDMENT OF 1986 CODE.—Section
24 412(l)(12) of the Internal Revenue Code of 1986 (relating
25 to applicability of subsection) is amended to read as fol-
26 lows:

1 “(12) EXCEPTION FOR PLANS MEETING RE-
2 QUIREMENTS IN 2000.—If this subsection did not
3 apply to any plan year of a plan beginning in 2000
4 (determined without regard to paragraph (6)), this
5 subsection shall not apply to such plan for any plan
6 year beginning in 2004, 2005, or 2006.”

7 (b) AMENDMENT OF ERISA.—Section 302(d)(12) of
8 the Employee Retirement Income Security Act of 1974
9 (29 U.S.C. 1082(d)(9)) is amended to read as follows:

10 “(12) EXCEPTION FOR PLANS MEETING RE-
11 QUIREMENTS IN 2000.—If this subsection did not
12 apply to any plan year of a plan beginning in 2000
13 (determined without regard to paragraph (6)), this
14 subsection shall not apply to such plan for any plan
15 year beginning in 2004, 2005, or 2006.”

16 **SEC. 407. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

17 (a) IN GENERAL.—Clause (i) of section 404(a)(1)(D)
18 of the Internal Revenue Code of 1986 (relating to special
19 rule in case of certain plans) is amended by striking “sec-
20 tion 412(l)” and inserting “section 412(l)(8)(A), except
21 that section 412(l)(8)(A) shall be applied for purposes of
22 this clause by substituting ‘130 percent of current liability’
23 for ‘the current liability’ in clause (i).”

1 (b) CONFORMING AMENDMENT.—Section 404(a)(1)
2 of the Internal Revenue Code of 1986 is amended by strik-
3 ing subparagraph (F).

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to years beginning after December
6 31, 2003.

7 **SEC. 408. BENEFIT LIMITATIONS FOR CERTAIN FINAN-**
8 **CIALLY DISTRESSED PLANS.**

9 (a) INTERNAL REVENUE CODE OF 1986.—Section
10 401(a) of the Internal Revenue Code of 1986 (relating to
11 qualified pension, profit-sharing, and stock bonus plans),
12 as amended by this Act, is amended by adding after para-
13 graph (35) the following new paragraph:

14 “(36) BENEFIT LIMITATIONS FOR CERTAIN FI-
15 NANCIALY DISTRESSED PLANS.—

16 “(A) IN GENERAL.—Notwithstanding any
17 other provision of this part, if a defined benefit
18 plan to which the requirements of section 412(l)
19 apply is a financially distressed plan for any
20 plan year, a trust forming part of the plan shall
21 not be treated as a qualified trust under this
22 section unless—

23 “(i) no amendment to the plan takes
24 effect during the plan year if such amend-
25 ment increases liabilities of the plan by

1 reason of increases in benefits, any change
2 in the accrual of benefits, or any change in
3 the rate at which benefits become non-
4 forfeitable,

5 “(ii) notwithstanding any other provi-
6 sion of the plan—

7 “(I) the accrued benefit, any
8 death or disability benefit, and any so-
9 cial security supplement described in
10 the last sentence of section 411(a)(9)
11 of each participant are frozen at the
12 amount of such benefit or supplement
13 as of the end of the preceding plan
14 year, determined without regard to
15 any plan amendment adopted during
16 the preceding plan year which in-
17 creased any such benefit or supple-
18 ment and determined after the appli-
19 cation of this subclause, and

20 “(II) all other benefits provided
21 under the plan are eliminated,

22 but only to the extent the freezing or elimi-
23 nation of such benefits would have been
24 permitted under section 411(d)(6) if they
25 had been implemented by a plan amend-

1 ment adopted at the end of the preceding
2 plan year, and

3 “(iii) no payments described in para-
4 graph (32)(B) are made to any participant
5 or beneficiary whose annuity starting date
6 occurs during the plan year.

7 Clause (iii) shall apply to any plan year begin-
8 ning after such plan year and before the 1st
9 plan year following such plan year for which the
10 plan is not a financially distressed plan.

11 “(B) SPECIAL RULES IF FUNDING IN-
12 CREASES TO AT LEAST 50 PERCENT.—If a plan
13 is a financially distressed plan for any plan year
14 but the funded current liability percentage as of
15 the beginning of the preceding plan year is at
16 least 50 percent—

17 “(i) an amendment described in sub-
18 paragraph (A)(i) may take effect but only
19 if the funded current liability percentage
20 as of the end of the plan year is projected
21 (taking into the account the effect of the
22 amendment) to be at least 50 percent, and

23 “(ii) the requirements of subpara-
24 graph (A)(ii) shall not apply with respect

1 to the plan year or any preceding plan
2 year.

3 “(C) SPECIAL RULES.—For purposes of
4 this paragraph—

5 “(i) IMPERMISSIBLE AMENDMENTS.—
6 If a plan adopts an amendment in violation
7 of subparagraph (A)(i) or (B)(i), the provi-
8 sions of the plan shall be applied without
9 regard to the amendment.

10 “(ii) COLLECTIVELY BARGAINED
11 PLANS.—In the case of a plan maintained
12 pursuant to a collective bargaining agree-
13 ment between employee representatives
14 and the employer and in effect before the
15 beginning of the first plan year of any con-
16 tinuous period of 1 or more plan years for
17 which a plan is a financially distressed
18 plan, this paragraph shall not be applied to
19 benefits pursuant to, and individuals cov-
20 ered by, such agreement for plan years be-
21 ginning before the date on which such col-
22 lective bargaining agreement terminates
23 (determined without regard to any exten-
24 sion thereof).

1 “(D) FINANCIALLY DISTRESSED PLAN.—

2 For purposes of this paragraph—

3 “(i) IN GENERAL.—A plan shall be
4 treated as a financially distressed plan for
5 any plan year if—

6 “(I) the plan sponsor during any
7 2 of the 5 plan years immediately pre-
8 ceding such plan year has an out-
9 standing debt instrument which is
10 rated speculative grade or lower by 1
11 or more nationally recognized statis-
12 tical rating organizations for cor-
13 porate bonds, and

14 “(II) the funded current liability
15 percentage of the plan as of the begin-
16 ning of the plan year preceding such
17 plan year is less than 50 percent.

18 The Secretary shall prescribe rules for the
19 application of subclause (I) in cases where
20 outstanding debt instruments of the plan
21 sponsor are not rated.

22 “(ii) FINANCIAL STATUS MUST IM-
23 PROVE FOR AT LEAST 5 YEARS.—

24 “(I) IN GENERAL.—Notwith-
25 standing clause (i), if a plan is treated

1 under clause (i) as a financially dis-
2 tressed plan for 1 or more plan years,
3 the plan shall continue to be treated
4 as a financially distressed plan for
5 subsequent plan years beginning be-
6 fore the first plan year after the close
7 of the first period described in sub-
8 clause (II).

9 “(II) 5-YEAR PERIOD.—A period
10 described in this subparagraph is a 5-
11 consecutive-plan year period if during
12 each of the 5 plan years in the period
13 the plan sponsor did not have an out-
14 standing debt obligation described in
15 clause (i)(I) or during each of such 5
16 plan years the plan was not described
17 in clause (i)(II).

18 “(E) FUNDED CURRENT LIABILITY PER-
19 CENTAGE.—For purposes of this paragraph, the
20 term ‘funded current liability percentage’ has
21 the meaning given such term by section
22 412(l)(8)(B), except that the current liability
23 used in computing such percentage shall be de-
24 termined by only taking into account vested
25 benefits and by using the interest rate described

1 in section 4006(a)(3)(E)(iii)(II) of the Em-
2 ployee Retirement Income Security Act of 1974
3 and the fair market value of the plan assets.”

4 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
5 OF 1974.—

6 (1) IN GENERAL.—Section 206 of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1056) is amended by adding at the end the following
9 new subsection:

10 “(g) BENEFIT LIMITATIONS FOR CERTAIN FINAN-
11 CIALLY DISTRESSED PLANS.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of this part, if a defined benefit plan to
14 which the requirements of section 302(d) apply is a
15 financially distressed plan for any plan year—

16 “(A) no amendment to the plan shall take
17 effect during the plan year if such amendment
18 increases liabilities of the plan by reason of in-
19 creases in benefits, any change in the accrual of
20 benefits, or any change in the rate at which
21 benefits become nonforfeitable,

22 “(B) notwithstanding any other provision
23 of the plan—

24 “(i) the accrued benefit, any death or
25 disability benefit, and any social security

1 supplement described in the last sentence
2 of section 3(22) of each participant shall
3 be frozen at the amount of such benefit or
4 supplement as of the end of the preceding
5 plan year, determined without regard to
6 any plan amendment adopted during the
7 preceding plan year which increased any
8 such benefit or supplement and determined
9 after the application of this clause, and

10 “(ii) all other benefits provided under
11 the plan shall be eliminated,

12 but only to the extent the freezing or elimi-
13 nation of such benefits would have been per-
14 mitted under section 204(g) if they had been
15 implemented by a plan amendment adopted at
16 the end of the preceding plan year, and

17 “(C) the plan may not make any payments
18 described in section 206(e)(2) to any partici-
19 pant or beneficiary whose annuity starting date
20 occurs during the plan year.

21 Subparagraph (C) shall apply to any plan year be-
22 ginning after such plan year and before the 1st plan
23 year following such plan year for which the plan is
24 not a financially distressed plan.

1 “(2) SPECIAL RULES IF FUNDING INCREASES
2 TO AT LEAST 50 PERCENT.—If a plan is a financially
3 distressed plan for any plan year but the funded
4 current liability percentage as of the beginning of
5 the preceding plan year is at least 50 percent—

6 “(A) an amendment described in para-
7 graph (1)(A) may take effect but only if the
8 funded current liability percentage as of the end
9 of the plan year is projected (taking into the ac-
10 count the effect of the amendment) to be at
11 least 50 percent, and

12 “(B) the requirements of paragraph (1)(B)
13 shall not apply with respect to the plan year or
14 any preceding plan year.

15 “(3) SPECIAL RULES.—For purposes of this
16 subsection—

17 “(A) IMPERMISSIBLE AMENDMENTS.—If a
18 plan adopts an amendment in violation of para-
19 graph (1)(A) or (2)(A), the provisions of the
20 plan shall be applied without regard to the
21 amendment.

22 “(B) COLLECTIVELY BARGAINED PLANS.—
23 In the case of a plan maintained pursuant to a
24 collective bargaining agreement between em-
25 ployee representatives and the employer and in

1 effect before the beginning of the first plan year
2 of any continuous period of 1 or more plan
3 years for which a plan is a financially distressed
4 plan, this paragraph shall not be applied to
5 benefits pursuant to, and individuals covered
6 by, such agreement for plan years beginning be-
7 fore the date on which such collective bar-
8 gaining agreement terminates (determined with-
9 out regard to any extension thereof).

10 “(4) NOTICE REQUIREMENTS.—

11 “(A) IN GENERAL.—The plan adminis-
12 trator of a plan which is a financially distressed
13 plan for any year shall, at least 45 days before
14 the beginning of the plan year, notify each plan
15 participant or beneficiary, each labor organiza-
16 tion representing such participants or bene-
17 ficiaries, and the Pension Benefit Guaranty
18 Corporation that—

19 “(i) the plan is treated as a financially
20 distressed plan for purposes of this sub-
21 section and the reasons why it is so treat-
22 ed, and

23 “(ii) the restrictions applicable to the
24 plan under this subsection for the plan
25 year.

1 The Secretary of the Treasury may provide for
2 the coordination of the notice under this sub-
3 section with the notice under section 204(h).

4 “(B) FORM AND MANNER.—Any notice
5 under subparagraph (A)—

6 “(i) shall be provided in a form and
7 manner prescribed by the Secretary of the
8 Treasury,

9 “(ii) shall be written in a manner so
10 as to be understood by the average plan
11 participant, and

12 “(iii) may be provided in written, elec-
13 tronic, or other appropriate form to the ex-
14 tent such form is reasonably accessible to
15 persons to whom the notice is required to
16 be provided.

17 “(5) FINANCIALLY DISTRESSED PLAN.—For
18 purposes of this subsection—

19 “(A) IN GENERAL.—A plan shall be treat-
20 ed as a financially distressed plan for any plan
21 year if—

22 “(i) the plan sponsor during any 2 of
23 the 5 plan years immediately preceding
24 such plan year has an outstanding debt in-
25 strument which is rated speculative grade

1 or lower by 1 or more nationally recognized
2 statistical rating organizations for cor-
3 porate bonds, and

4 “(ii) the funded current liability per-
5 centage of the plan as of the beginning of
6 the plan year preceding such plan year is
7 less than 50 percent.

8 The Secretary of the Treasury shall prescribe
9 rules for the application of clause (i) in cases
10 where outstanding debt instruments of the plan
11 sponsor are not rated.

12 “(B) FINANCIAL STATUS MUST IMPROVE
13 FOR AT LEAST 5 YEARS.—

14 “(i) IN GENERAL.—Notwithstanding
15 subparagraph (A), if a plan is treated
16 under subparagraph (A) as a financially
17 distressed plan for 1 or more plan years,
18 the plan shall continue to be treated as a
19 financially distressed plan for subsequent
20 plan years beginning before the first plan
21 year after the close of the first period de-
22 scribed in clause (ii).

23 “(ii) 5-YEAR PERIOD.—A period de-
24 scribed in this clause is any 5-consecutive-
25 plan year period if during each of the 5

1 plan years in the period the plan sponsor
2 did not have an outstanding debt instru-
3 ment described in subparagraph (A)(i) or
4 during each of such 5 plan years the plan
5 was not described in subparagraph (A)(ii).

6 “(6) FUNDED CURRENT LIABILITY PERCENT-
7 AGE.—For purposes of this subsection the term
8 ‘funded current liability percentage’ has the meaning
9 given such term by section 302(d)(8)(B), except that
10 the current liability used in computing such percent-
11 age shall be determined by only taking into account
12 vested benefits and by using the interest rate de-
13 scribed in section 4006(a)(3)(E)(iii)(II) and the fair
14 market value of the plan assets.”

15 (2) ENFORCEMENT.—Section 502(c)(3) of such
16 Act (29 U.S.C. 1132(c)(3)) is amended by inserting
17 “206(g)(4) or” before “302(d)(12)(E)”.

18 (c) FUNDING RECOMMENDATIONS.—The Secretary
19 of the Treasury shall, not later than December 31, 2004,
20 submit to the Committees on Ways and Means and Edu-
21 cation and the Workforce of the House of Representatives
22 and the Committees on Finance and Health, Education,
23 Labor, and Pensions of the Senate the Secretary’s rec-
24 ommendations for future changes to the pension plan
25 funding requirements to strengthen the funded status of

1 pension plans, including recommendations relating to the
2 disclosure by pension plans of their funded status.

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by
5 this section shall apply to plan years beginning after
6 December 31, 2006.

7 (2) RULES.—The Secretary of the Treasury
8 shall, not later than December 31, 2005, publish
9 such rules as are necessary to carry out the amend-
10 ments made by this section.

11 (3) COLLECTIVE BARGAINING AGREEMENTS.—
12 In the case of a plan maintained pursuant to 1 or
13 more collective bargaining agreements between em-
14 ployee representatives and 1 or more employers rati-
15 fied by the date of the enactment of this Act, the
16 amendments made by this section shall not apply to
17 employees covered by any such agreement for plan
18 years beginning before the later of—

19 (A) the date on which the last of such col-
20 lective bargaining agreements terminates (de-
21 termined without regard to any extension there-
22 of on or after such date of enactment); or

23 (B) January 1, 2007.

1 **SEC. 409. UPDATING DEDUCTION RULES FOR COMBINA-**
2 **TION OF PLANS.**

3 (a) **IN GENERAL.**—Subparagraph (C) of section
4 404(a)(7) of the Internal Revenue Code of 1986 (relating
5 to limitation on deductions where combination of defined
6 contribution plan and defined benefit plan) is amended by
7 adding after clause (ii) the following new clause:

8 “(iii) **LIMITATION.**—In the case of
9 employer contributions to 1 or more de-
10 fined contribution plans, this paragraph
11 shall only apply to the extent that such
12 contributions exceed 6 percent of the com-
13 pensation otherwise paid or accrued during
14 the taxable year to the beneficiaries under
15 such plans. For purposes of this clause,
16 amounts carried over from preceding tax-
17 able years under subparagraph (B) shall
18 be treated as employer contributions to 1
19 or more defined contributions to the extent
20 attributable to employer contributions to
21 such plans in such preceding taxable
22 years.”

23 (b) **CONFORMING AMENDMENT.**—Subparagraph (A)
24 of section 4972(c)(6) of such Code (relating to nondeduct-
25 ible contributions) is amended to read as follows:

1 “(A) so much of the contributions to 1 or
 2 more defined contribution plans which are not
 3 deductible when contributed solely because of
 4 section 404(a)(7) as does not exceed the
 5 amount of contributions described in section
 6 401(m)(4)(A).”

7 (c) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to contributions for taxable years
 9 beginning after December 31, 2004.

10 **Subtitle B—Improvements in** 11 **Portability and Distribution Rules**

12 **SEC. 411. CLARIFICATIONS REGARDING PURCHASE OF PER-** 13 **MISSIVE SERVICE CREDIT.**

14 (a) IN GENERAL.—Section 415(n) of the Internal
 15 Revenue Code of 1986 (relating to special rules for the
 16 purchase of permissive service credit) is amended—

17 (1) by striking “employee” in paragraph (1)
 18 and inserting “participant”, and

19 (2) by adding at the end of paragraph (3)(A)
 20 the following new flush sentence:

21 “Such term may include service credit for peri-
 22 ods for which there is no performance of serv-
 23 ice, and notwithstanding clause (ii), may in-
 24 clude service credited in order to provide an in-

1 creased benefit for service credit which a partic-
2 ipant is receiving under the plan.”

3 (b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE
4 TRANSFERS.—Section 415(n)(3) of such Code is amended
5 by adding at the end the following new subparagraph:

6 “(D) SPECIAL RULES FOR TRUSTEE-TO-
7 TRUSTEE TRANSFERS.—In the case of a trust-
8 ee-to-trustee transfer to which section
9 403(b)(13)(A) or 457(e)(17)(A) applies (with-
10 out regard to whether the transfer is made be-
11 tween plans maintained by the same em-
12 ployer)—

13 “(i) the limitations of subparagraph
14 (B) shall not apply in determining whether
15 the transfer is for the purchase of permis-
16 sive service credit, and

17 “(ii) the distribution rules applicable
18 under this title to the defined benefit gov-
19 ernmental plan to which any amounts are
20 so transferred shall apply to such amounts
21 and any benefits attributable to such
22 amounts.”

23 (c) NONQUALIFIED SERVICE.—Section 415(n)(3) of
24 such Code is amended—

1 (1) by striking “permissive service credit attrib-
2 utable to nonqualified service” each place it appears
3 in subparagraph (B) and inserting “nonqualified
4 service credit”,

5 (2) by striking so much of subparagraph (C) as
6 precedes clause (i) and inserting:

7 “(C) NONQUALIFIED SERVICE CREDIT.—

8 For purposes of subparagraph (B), the term
9 ‘nonqualified service credit’ means permissive
10 service credit other than that allowed with re-
11 spect to—”, and

12 (3) by striking “elementary or secondary edu-
13 cation (through grade 12), as determined under
14 State law” and inserting “elementary or secondary
15 education (through grade 12), or a comparable level
16 of education, as determined under the applicable law
17 of the jurisdiction in which the service was per-
18 formed”.

19 (d) EFFECTIVE DATES.—

20 (1) IN GENERAL.—The amendments made by
21 subsections (a) and (c) shall take effect as if in-
22 cluded in the amendments made by section 1526 of
23 the Taxpayer Relief Act of 1997.

24 (2) SUBSECTION (b).—The amendments made
25 by subsection (b) shall take effect as if included in

1 the amendments made by section 647 of the Eco-
2 nomic Growth and Tax Relief Reconciliation Act of
3 2001.

4 **SEC. 412. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**
5 **ANNUITY CONTRACTS.**

6 (a) IN GENERAL.—Subparagraph (A) of section
7 402(c)(2) (maximum amount which may be rolled over)
8 is amended—

9 (1) by striking “which is part of a plan which
10 is a defined contribution plan and which agrees to
11 separately account” and inserting “or to an annuity
12 contract described in section 403(b) and such trust
13 or contract provides for separate accounting”; and

14 (2) by inserting “(and earnings thereon)” after
15 “so transferred”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 subsection (a) shall apply to taxable years beginning after
18 December 31, 2004.

19 **SEC. 413. CLARIFICATION OF MINIMUM DISTRIBUTION**
20 **RULES.**

21 The Secretary of the Treasury shall issue regulations
22 under which a governmental plan (as defined in section
23 414(d) of the Internal Revenue Code of 1986) shall, for
24 all years to which section 401(a)(9) of such Code applies
25 to such plan, be treated as having complied with such sec-

1 tion 401(a)(9) if such plan complies with a reasonable
 2 good faith interpretation of such section 401(a)(9).

3 **SEC. 414. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**
 4 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**
 5 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**
 6 **PLOYEES.**

7 (a) IN GENERAL.—Section 72(t) of the Internal Rev-
 8 enue Code of 1986 (relating to subsection not to apply
 9 to certain distributions) is amended by adding at the end
 10 the following new paragraph:

11 “(10) DISTRIBUTIONS TO QUALIFIED PUBLIC
 12 SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

13 “(A) IN GENERAL.—In the case of a dis-
 14 tribution to a qualified public safety employee
 15 from a governmental plan (within the meaning
 16 of section 414(d)) which is a defined benefit
 17 plan, paragraph (2)(A)(v) shall be applied by
 18 substituting ‘age 50’ for ‘age 55’.

19 “(B) QUALIFIED PUBLIC SAFETY EM-
 20 PLOYEE.—For purposes of this paragraph, the
 21 term ‘qualified public safety employee’ means
 22 any employee of a State or political subdivision
 23 of a State who provides police protection, fire-
 24 fighting services, or emergency medical services

1 for any area within the jurisdiction of such
2 State or political subdivision.”

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to distributions after the date of
5 the enactment of this Act.

6 **SEC. 415. ALLOW ROLLOVERS BY NONSPOUSE BENE-**
7 **FICIARIES OF CERTAIN RETIREMENT PLAN**
8 **DISTRIBUTIONS.**

9 (a) **IN GENERAL.**—

10 (1) **QUALIFIED PLANS.**—Section 402(c) of the
11 Internal Revenue Code of 1986 (relating to rollovers
12 from exempt trusts) is amended by adding at the
13 end the following new paragraph:

14 “(11) **DISTRIBUTIONS TO INHERITED INDI-**
15 **VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-**
16 **FICIARY.**—

17 “(A) **IN GENERAL.**—If, with respect to any
18 portion of a distribution from an eligible retire-
19 ment plan of a deceased employee, a direct
20 trustee-to-trustee transfer is made to an indi-
21 vidual retirement plan described in clause (i) or
22 (ii) of paragraph (8)(B) established for the pur-
23 poses of receiving the distribution on behalf of
24 an individual who is a designated beneficiary
25 (as defined by section 401(a)(9)(E)) of the em-

1 ployee and who is not the surviving spouse of
2 the employee—

3 “(i) the transfer shall be treated as an
4 eligible rollover distribution for purposes of
5 this subsection,

6 “(ii) the individual retirement plan
7 shall be treated as an inherited individual
8 retirement account or individual retirement
9 annuity (within the meaning of section
10 408(d)(3)(C)) for purposes of this title,
11 and

12 “(iii) section 401(a)(9)(B) (other than
13 clause (iv) thereof) shall apply to such
14 plan.

15 “(B) CERTAIN TRUSTS TREATED AS BENE-
16 FICIARIES.—For purposes of this paragraph, to
17 the extent provided in rules prescribed by the
18 Secretary, a trust maintained for the benefit of
19 one or more designated beneficiaries shall be
20 treated in the same manner as a designated
21 beneficiary.”

22 (2) SECTION 403(a) PLANS.—Subparagraph (B)
23 of section 403(a)(4) of such Code (relating to roll-
24 over amounts) is amended by inserting “and (11)”
25 after “(7)”.

1 “(ii) 5-YEAR VESTING.—A plan satis-
 2 fies the requirements of this clause if an
 3 employee who has completed at least 5
 4 years of service has a nonforfeitable right
 5 to 100 percent of the employee’s accrued
 6 benefit derived from employer contribu-
 7 tions.

8 “(iii) 3 TO 7 YEAR VESTING.—A plan
 9 satisfies the requirements of this clause if
 10 an employee has a nonforfeitable right to
 11 a percentage of the employee’s accrued
 12 benefit derived from employer contribu-
 13 tions determined under the following table:

“Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

14 “(B) DEFINED CONTRIBUTION PLANS.—

15 “(i) IN GENERAL.—In the case of a
 16 defined contribution plan, a plan satisfies
 17 the requirements of this paragraph if it
 18 satisfies the requirements of clause (ii) or
 19 (iii).

20 “(ii) 3-YEAR VESTING.—A plan satis-
 21 fies the requirements of this clause if an
 22 employee who has completed at least 3

1 years of service has a nonforfeitable right
 2 to 100 percent of the employee’s accrued
 3 benefit derived from employer contribu-
 4 tions.

5 “(iii) 2 TO 6 YEAR VESTING.—A plan
 6 satisfies the requirements of this clause if
 7 an employee has a nonforfeitable right to
 8 a percentage of the employee’s accrued
 9 benefit derived from employer contribu-
 10 tions determined under the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.”

11 (2) CONFORMING AMENDMENT.—Section
 12 411(a) of such Code (relating to general rule for
 13 minimum vesting standards) is amended by striking
 14 paragraph (12).

15 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 16 INCOME SECURITY ACT OF 1974.—

17 (1) IN GENERAL.—Paragraph (2) of section
 18 203(a) of the Employee Retirement Income Security
 19 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to
 20 read as follows:

1 “(2)(A)(i) In the case of a defined benefit plan,
 2 a plan satisfies the requirements of this paragraph
 3 if it satisfies the requirements of clause (ii) or (iii).

4 “(ii) A plan satisfies the requirements of this
 5 clause if an employee who has completed at least 5
 6 years of service has a nonforfeitable right to 100
 7 percent of the employee’s accrued benefit derived
 8 from employer contributions.

9 “(iii) A plan satisfies the requirements of this
 10 clause if an employee has a nonforfeitable right to
 11 a percentage of the employee’s accrued benefit de-
 12 rived from employer contributions determined under
 13 the following table:

“Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

14 “(B)(i) In the case of an individual account
 15 plan, a plan satisfies the requirements of this para-
 16 graph if it satisfies the requirements of clause (ii) or
 17 (iii).

18 “(ii) A plan satisfies the requirements of this
 19 clause if an employee who has completed at least 3
 20 years of service has a nonforfeitable right to 100
 21 percent of the employee’s accrued benefit derived
 22 from employer contributions.

1 “(iii) A plan satisfies the requirements of this
2 clause if an employee has a nonforfeitable right to
3 a percentage of the employee’s accrued benefit de-
4 rived from employer contributions determined under
5 the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.”

6 (2) CONFORMING AMENDMENT.—Section
7 203(a) of such Act is amended by striking para-
8 graph (4).

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the amendments made by this section
12 shall apply to contributions for plan years beginning
13 after December 31, 2004.

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

1 (A) the later of—

2 (i) the date on which the last of such
3 collective bargaining agreements termi-
4 nates (determined without regard to any
5 extension thereof on or after such date of
6 the enactment); or

7 (ii) January 1, 2005; or

8 (B) January 1, 2007.

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

15 **SEC. 417. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**
16 **PLANS TO ROTH IRAS.**

17 (a) IN GENERAL.—Subsection (e) of section 408A of
18 the Internal Revenue Code of 1986 (defining qualified roll-
19 over contribution) is amended to read as follows:

20 “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For
21 purposes of this section, the term ‘qualified rollover con-
22 tribution’ means a rollover contribution—

23 “(1) to a Roth IRA from another such account,

24 “(2) from an eligible retirement plan, but only

25 if—

1 “(A) in the case of an individual retire-
2 ment plan, such rollover contribution meets the
3 requirements of section 408(d)(3), and

4 “(B) in the case of any eligible retirement
5 plan (as defined in section 402(c)(8)(B) other
6 than clauses (i) and (ii) thereof), such rollover
7 contribution meets the requirements of section
8 402(c), 403(b)(8), or 457(e)(16), as applicable.

9 For purposes of section 408(d)(3)(B), there shall be dis-
10 regarded any qualified rollover contribution from an indi-
11 vidual retirement plan (other than a Roth IRA) to a Roth
12 IRA.”

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 408A(c)(3)(B) of such Code is
15 amended—

16 (A) in the text by striking “individual re-
17 tirement plan” and inserting “an eligible retire-
18 ment plan (as defined by section
19 402(c)(8)(B))”, and

20 (B) in the heading by striking “IRA” and
21 inserting “ELIGIBLE RETIREMENT PLAN”.

22 (2) Section 408A(d)(3) of such Code is amend-
23 ed—

1 (A) in subparagraph (A), by striking “sec-
2 tion 408(d)(3)” inserting “sections 402(c),
3 403(b)(8), 408(d)(3), and 457(e)(16)”,

4 (B) in subparagraph (B), by striking “in-
5 dividual retirement plan” and inserting “eligible
6 retirement plan (as defined by section
7 402(c)(8)(B))”,

8 (C) in subparagraph (D), by inserting “or
9 6047” after “408(i)”,

10 (D) in subparagraph (D), by striking “or
11 both” and inserting “persons subject to section
12 6047(d)(1), or all of the foregoing persons”,
13 and

14 (E) in the heading, by striking “IRA” and
15 inserting “ELIGIBLE RETIREMENT PLAN”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to distributions after December 31,
18 2004.

19 **SEC. 418. ELIMINATION OF HIGHER PENALTY ON CERTAIN**
20 **SIMPLE PLAN DISTRIBUTIONS.**

21 (a) IN GENERAL.—Subsection (t) of section 72 of the
22 Internal Revenue Code of 1986 (relating to 10-percent ad-
23 ditional tax on early distributions from qualified retire-
24 ment plans), as amended by section 414, is amended by
25 striking paragraph (6) and redesignating paragraphs (7),

1 (8), (9), and (10) as paragraphs (6), (7), (8), and (9),
2 respectively.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 72(t)(2)(E) of such Code is amend-
5 ed by striking “paragraph (7)” and inserting “para-
6 graph (6)”.

7 (2) Section 72(t)(2)(F) of such Code is amend-
8 ed by striking “paragraph (8)” and inserting “para-
9 graph (7)”.

10 (3) Section 408(d)(3)(G) of such Code is
11 amended by striking “applies” and inserting “ap-
12 plied on the day before the date of the enactment of
13 the National Employee Savings and Trust Equity
14 Guarantee Act of 2004”.

15 (4) Section 457(a)(2) of such Code is amended
16 by striking “section 72(t)(9)” and inserting “section
17 72(t)(8)”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to years beginning after December
20 31, 2004.

21 **SEC. 419. SIMPLE PLAN PORTABILITY.**

22 (a) REPEAL OF LIMITATION.—Paragraph (3) of sec-
23 tion 408(d) of the Internal Revenue Code of 1986 (relat-
24 ing to rollover contributions), as amended by this Act, is
25 amended by striking subparagraph (G) and redesignating

1 subparagraphs (H) and (I) as subparagraphs (G) and (H),
2 respectively.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to years beginning after December
5 31, 2004.

6 **SEC. 420. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**
7 **MENT PLANS.**

8 An individual shall not be precluded from partici-
9 pating in an eligible deferred compensation plan by reason
10 of having received a distribution under section 457(e)(9)
11 of the Internal Revenue Code of 1986, as in effect prior
12 to the enactment of the Small Business Job Protection
13 Act of 1996.

14 **SEC. 421. TRANSFERS TO THE PBGC.**

15 (a) **MANDATORY DISTRIBUTIONS TO PBGC.**—Clause
16 (i) of section 401(a)(31)(B) of the Internal Revenue Code
17 of 1986 (relating to general rule for certain mandatory
18 distributions) is amended by inserting “to the Pension
19 Benefit Guaranty Corporation in accordance with section
20 4050(e) of the Employee Retirement Income Security Act
21 of 1974 or” after “such transfer”.

22 (b) **TAX TREATMENT OF DISTRIBUTIONS.**—Subpara-
23 graph (B) of section 401(a)(31) of such Code is amended
24 by adding at the end the following new clause:

1 “(iii) INCOME TAX TREATMENT OF
2 TRANSFERS TO PBGC.—For purposes of
3 determining the income tax treatment re-
4 lating to transfers to the Pension Benefit
5 Guaranty Corporation under clause (i)—

6 “(I) the transfer of amounts to
7 the Pension Benefit Guaranty Cor-
8 poration pursuant to clause (i) shall
9 be treated as a transfer to an indi-
10 vidual retirement plan under such
11 clause, and

12 “(II) the distribution of such
13 amounts from the Pension Benefit
14 Guaranty Corporation shall be treated
15 as a distribution from an individual
16 retirement plan.”

17 (c) MISSING PARTICIPANTS AND BENEFICIARIES.—
18 Section 4050 of the Employee Retirement Income Security
19 Act of 1974 (29 U.S.C. 1350), as amended by section 435,
20 is amended by redesignating subsection (e) as subsection
21 (f) and by inserting after subsection (d) the following new
22 subsection:

23 “(e) INVOLUNTARY CASHOUTS.—

24 “(1) PAYMENT BY THE CORPORATION.—If ben-
25 efits under a plan described in paragraph (3) were

1 transferred to the corporation under section
2 401(a)(31)(B) of the Internal Revenue Code of
3 1986, the corporation shall, upon application filed by
4 the participant or beneficiary with the corporation in
5 such form and manner as may be prescribed in regu-
6 lations of the corporation, pay to the participant or
7 beneficiary the amount transferred (or the appro-
8 priate survivor benefit) either—

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

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

12 “(2) INFORMATION TO THE CORPORATION.—To
13 the extent provided in regulations, the plan adminis-
14 trator of a plan described in paragraph (3) shall,
15 upon a transfer of benefits to the corporation under
16 section 401(a)(31)(B) of such Code, provide the cor-
17 poration information with respect to benefits of the
18 participant or beneficiary so transferred.

19 “(3) PLANS DESCRIBED.—A plan is described
20 in this paragraph if the plan is a pension plan (with-
21 in the meaning of section 3(2))—

22 “(A) which provides for mandatory dis-
23 tributions under section 401(a)(31)(B) of the
24 Internal Revenue Code of 1986, and

1 “(B) which is not a plan described in para-
2 graphs (2) through (11) of section 4021(b).

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

6 (d) EFFECTIVE DATES.—

7 (1) INTERNAL REVENUE CODE PROVISIONS.—
8 The amendments made by subsections (a) and (b)
9 shall take effect as if included in the amendments
10 made by section 657 of the Economic Growth and
11 Tax Relief Reconciliation Act of 2001.

12 (2) EMPLOYEE RETIREMENT INCOME SECURITY
13 ACT OF 1974 PROVISIONS.—The amendments made
14 by subsection (c) shall apply to distributions made
15 after final regulations implementing subsection (e)
16 of section 4050 of the Employee Retirement Income
17 Security Act of 1974 (as added by subsection (c))
18 are prescribed.

19 (3) REGULATIONS.—The Pension Benefit Guar-
20 anty Corporation shall issue regulations necessary to
21 carry out the amendments made by subsection (c)
22 not later than December 31, 2004.

1 **Subtitle C—Administrative**
2 **Provisions**

3 **SEC. 431. EMPLOYEE PLANS COMPLIANCE RESOLUTION**
4 **SYSTEM.**

5 (a) IN GENERAL.—The Secretary of the Treasury
6 shall have full authority to establish and implement the
7 Employee Plans Compliance Resolution System (or any
8 successor program) and any other employee plans correc-
9 tion policies, including the authority to waive income, ex-
10 cise, or other taxes to ensure that any tax, penalty, or
11 sanction is not excessive and bears a reasonable relation-
12 ship to the nature, extent, and severity of the failure.

13 (b) IMPROVEMENTS.—The Secretary of the Treasury
14 shall continue to update and improve the Employee Plans
15 Compliance Resolution System (or any successor pro-
16 gram), giving special attention to—

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

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

23 (3) extending the duration of the self-correction
24 period under the Self-Correction Program for signifi-
25 cant compliance failures;

1 (4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

2
3
4 (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

8 **SEC. 432. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
9 **MORATORIUM ON APPLICATION OF CERTAIN**
10 **NONDISCRIMINATION RULES APPLICABLE TO**
11 **STATE AND LOCAL PLANS.**

12 (a) IN GENERAL.—The following provisions are each
13 amended by striking “maintained by a State or local gov-
14 ernment or political subdivision thereof (or agency or in-
15 strumentality thereof)”:

16 (1) Section 401(a)(5)(G) of the Internal Rev-
17 enue Code of 1986.

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

19 (3) Section 401(k)(3)(G) of such Code.

20 (4) Section 1505(d)(2) of the Taxpayer Relief
21 Act of 1997.

22 (b) CONFORMING AMENDMENTS.—

23 (1) The heading for section 401(a)(5)(G) of
24 such Code is amended to read as follows: “GOVERN-
25 MENTAL PLANS.—”.

1 (2) The heading for section 401(a)(26)(H) of
2 such Code is amended to read as follows: “EXCEP-
3 TION FOR GOVERNMENTAL PLANS.—”.

4 (3) Section 401(k)(3)(G) of such Code is
5 amended by inserting “GOVERNMENTAL PLANS.—”
6 after “(G)”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to plan years beginning after De-
9 cember 31, 2004.

10 **SEC. 433. NOTICE AND CONSENT PERIOD REGARDING DIS-**
11 **TRIBUTIONS.**

12 (a) EXPANSION OF PERIOD.—

13 (1) AMENDMENT OF INTERNAL REVENUE
14 CODE.—

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

18 (B) MODIFICATION OF REGULATIONS.—

19 The Secretary of the Treasury shall modify the
20 regulations under sections 402(f), 411(a)(11),
21 and 417 of the Internal Revenue Code of 1986
22 by substituting “180 days” for “90 days” each
23 place it appears in Treasury Regulations sec-
24 tions 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-
25 1(b).

1 (2) AMENDMENT OF ERISA.—

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

6 (B) MODIFICATION OF REGULATIONS.—

7 The Secretary of the Treasury shall modify the
8 regulations under part 2 of subtitle B of title
9 I of the Employee Retirement Income Security
10 Act of 1974 relating to sections 203(e) and 205
11 of such Act by substituting “180 days” for “90
12 days” each place it appears.

13 (3) EFFECTIVE DATE.—The amendments and
14 modifications made or required by this subsection
15 shall apply to years beginning after December 31,
16 2004.

17 (b) NOTIFICATION OF RIGHT TO DEFER.—

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

1 (2) EFFECTIVE DATE.—

2 (A) IN GENERAL.—The modifications re-
3 quired by paragraph (1) shall apply to years be-
4 ginning after December 31, 2004.

5 (B) REASONABLE NOTICE.—A plan shall
6 not be treated as failing to meet the require-
7 ments of section 411(a)(11) of such Code or
8 section 205 of such Act with respect to any de-
9 scription of consequences described in para-
10 graph (1) made within 90 days after the Sec-
11 retary of the Treasury issues the modifications
12 required by paragraph (1) if the plan adminis-
13 trator makes a reasonable attempt to comply
14 with such requirements.

15 **SEC. 434. REPORTING SIMPLIFICATION.**

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

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

24 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
25 FINED.—For purposes of this subsection, the term

1 “one-participant retirement plan” means a retire-
2 ment plan with respect to which the following re-
3 quirements are met:

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

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

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

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

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

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

1 (E) the plan does not cover a business that
2 uses the services of leased employees (within
3 the meaning of section 414(n) of such Code).

4 For purposes of this paragraph, the term “partner”
5 includes a 2-percent shareholder (as defined in sec-
6 tion 1372(b) of such Code) of an S corporation.

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

11 (4) EFFECTIVE DATE.—The provisions of this
12 subsection shall apply to plan years beginning on or
13 after January 1, 2004.

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

23 **SEC. 435. MISSING PARTICIPANTS.**

24 (a) IN GENERAL.—Section 4050 of the Employee Re-
25 tirement Income Security Act of 1974 (29 U.S.C. 1350)

1 is amended by redesignating subsection (c) as subsection
2 (e) and by inserting after subsection (b) the following new
3 subsections:

4 “(c) **MULTIEMPLOYER PLANS.**—The corporation
5 shall prescribe rules similar to the rules in subsection (a)
6 for multiemployer plans covered by this title that termi-
7 nate under section 4041A.

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

9 “(1) **TRANSFER TO CORPORATION.**—The plan
10 administrator of a plan described in paragraph (4)
11 may elect to transfer a missing participant’s benefits
12 to the corporation upon termination of the plan.

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

19 “(A) to the corporation, or

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

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

1 pay to the participant or beneficiary the amount
2 transferred (or the appropriate survivor benefit) ei-
3 ther—

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

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

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

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

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

14 “(ii) which is not a plan described in
15 paragraphs (2) through (11) of section
16 4021(b), and

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

19 “(i) has missing participants, and

20 “(ii) has not provided for the transfer
21 of assets to pay the benefits of all missing
22 participants to another pension plan (with-
23 in the meaning of section 3(2)).

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

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

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

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

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

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

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

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to plans first effective after Decem-
11 ber 31, 2004.

12 **SEC. 437. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
13 **NEW AND SMALL PLANS.**

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

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

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

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

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

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

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

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

14 (b) SMALL PLANS.—Paragraph (3) of section
15 4006(a) of the Employee Retirement Income Security Act
16 of 1974 (29 U.S.C. 1306(a)), as amended by section
17 436(b), is amended—

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

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

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

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

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

13 (c) EFFECTIVE DATES.—

14 (1) SUBSECTION (a).—The amendments made
15 by subsection (a) shall apply to plans first effective
16 after December 31, 2004.

17 (2) SUBSECTION (b).—The amendments made
18 by subsection (b) shall apply to plan years beginning
19 after December 31, 2004.

20 **SEC. 438. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
21 **PREMIUM OVERPAYMENT REFUNDS.**

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

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

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

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

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

15 **SEC. 439. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
16 **PLANS.**

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

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

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

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

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

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

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

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

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

1 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

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

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

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

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

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

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

3 (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

8 (d) EFFECTIVE DATES.—

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

12 (A) under section 4041(c) of the Employee
13 Retirement Income Security Act of 1974 (29
14 U.S.C. 1341(c)) with respect to which notices
15 of intent to terminate are provided under sec-
16 tion 4041(a)(2) of such Act (29 U.S.C.
17 1341(a)(2)) after December 31, 2004, and

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

22 (2) CONFORMING AMENDMENTS.—The amend-
23 ments made by subsection (c) shall take effect on
24 January 1, 2005.

1 **SEC. 440. VOLUNTARY EARLY RETIREMENT INCENTIVE AND**
2 **EMPLOYMENT RETENTION PLANS MAIN-**
3 **TAINED BY LOCAL EDUCATIONAL AGENCIES**
4 **AND OTHER ENTITIES.**

5 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE
6 PLANS.—

7 (1) TREATMENT AS PLAN PROVIDING SEVER-
8 ANCE PAY.—Section 457(e)(11) of the Internal Rev-
9 enue Code of 1986 (relating to certain plans ex-
10 cluded) is amended by adding at the end the fol-
11 lowing new subparagraph:

12 “(D) CERTAIN VOLUNTARY EARLY RETIRE-
13 MENT INCENTIVE PLANS.—

14 “(i) IN GENERAL.—If an applicable
15 voluntary early retirement incentive plan—

16 “(I) makes payments or supple-
17 ments as an early retirement benefit,
18 a retirement-type subsidy, or a benefit
19 described in the last sentence of sec-
20 tion 411(a)(9), and

21 “(II) such payments or supple-
22 ments are made in coordination with
23 a defined benefit plan which is de-
24 scribed in section 401(a) and includes
25 a trust exempt from tax under section
26 501(a) and which is maintained by an

1 eligible employer described in para-
2 graph (1)(A) or by an education asso-
3 ciation described in clause (ii)(II),
4 such applicable plan shall be treated for
5 purposes of subparagraph (A)(i) as a bona
6 fide severance pay plan with respect to
7 such payments or supplements to the ex-
8 tent such payments or supplements could
9 otherwise have been provided under such
10 defined benefit plan (determined as if sec-
11 tion 411 applied to such defined benefit
12 plan).

13 “(ii) APPLICABLE VOLUNTARY EARLY
14 RETIREMENT INCENTIVE PLAN.—For pur-
15 poses of this subparagraph, the term ‘ap-
16 plicable voluntary early retirement incen-
17 tive plan’ means a voluntary early retire-
18 ment incentive plan maintained by—

19 “(I) a local educational agency
20 (as defined in section 9101 of the Ele-
21 mentary and Secondary Education
22 Act of 1965 (20 U.S.C. 7801)), or

23 “(II) an education association
24 which principally represents employees
25 of 1 or more agencies described in

1 subclause (I) and which is described
2 in section 501(c) (5) or (6) and ex-
3 empt from tax under section 501(a).”

4 (2) AGE DISCRIMINATION IN EMPLOYMENT
5 ACT.—Section 4(l)(1) of the Age Discrimination in
6 Employment Act of 1967 (29 U.S.C. 623(l)(1)) is
7 amended—

8 (A) by inserting “(A)” after “(1)”,

9 (B) by redesignating subparagraphs (A)
10 and (B) as clauses (i) and (ii), respectively,

11 (C) by redesignating clauses (i) and (ii) of
12 subparagraph (B) (as in effect before the
13 amendments made by subparagraph (B)) as
14 subclauses (I) and (II), respectively, and

15 (D) by adding at the end the following:

16 “(B) A voluntary early retirement incen-
17 tive plan that—

18 “(i) is maintained by—

19 “(I) a local educational agency
20 (as defined in section 9101 of the Ele-
21 mentary and Secondary Education
22 Act of 1965 (20 U.S.C. 7801), or

23 “(II) an education association
24 which principally represents employees
25 of 1 or more agencies described in

1 subclause (I) and which is described
2 in section 501(e) (5) or (6) of the In-
3 ternal Revenue Code of 1986 and ex-
4 empt from taxation under section
5 501(a) of such Code, and

6 “(ii) makes payments or supplements
7 described in subclauses (I) and (II) of sub-
8 paragraph (A)(ii) in coordination with a
9 defined benefit plan (as so defined) main-
10 tained by an eligible employer described in
11 section 457(e)(1)(A) of such Code or by an
12 education association described in clause
13 (i)(II),

14 shall be treated solely for purposes of subpara-
15 graph (A)(ii) as if it were a part of the defined
16 benefit plan with respect to such payments or
17 supplements. Payments or supplements under
18 such a voluntary early retirement incentive plan
19 shall not constitute severance pay for purposes
20 of section 4(l)(2) of the Age Discrimination in
21 Employment Act (29 U.S.C. 623(l)(2)).”

22 (b) EMPLOYMENT RETENTION PLANS.—

23 (1) IN GENERAL.—Section 457(f)(2) of the In-
24 ternal Revenue Code of 1986 (relating to exceptions)
25 is amended by striking “and” at the end of subpara-

1 graph (D), by striking the period at the end of sub-
2 paragraph (E) and inserting “, and”, and by adding
3 at the end the following:

4 “(F) that portion of any applicable employ-
5 ment retention plan described in paragraph (4)
6 with respect to any participant.”

7 (2) DEFINITIONS AND RULES RELATING TO EM-
8 PLOYMENT RETENTION PLANS.—Section 457(f) of
9 such Code is amended by adding at the end the fol-
10 lowing new paragraph:

11 “(4) EMPLOYMENT RETENTION PLANS.—For
12 purposes of paragraph (2)(F)—

13 “(A) IN GENERAL.—The portion of an ap-
14 plicable employment retention plan described in
15 this paragraph with respect to any participant
16 is that portion of the plan which provides bene-
17 fits payable to the participant not in excess of
18 twice the applicable dollar limit determined
19 under subsection (e)(15).

20 “(B) OTHER RULES.—

21 “(i) LIMITATION.—Paragraph (2)(F)
22 shall only apply to the portion of the plan
23 described in subparagraph (A) for years
24 preceding the year in which such portion is

1 paid or otherwise made available to the
2 participant.

3 “(ii) TREATMENT.—A plan shall not
4 be treated for purposes of this title as pro-
5 viding for the deferral of compensation for
6 any year with respect to the portion of the
7 plan described in subparagraph (A).

8 “(C) APPLICABLE EMPLOYMENT RETEN-
9 TION PLAN.—The term ‘applicable employment
10 retention plan’ means an employment retention
11 plan maintained by—

12 “(i) a local educational agency (as de-
13 fined in section 9101 of the Elementary
14 and Secondary Education Act of 1965 (20
15 U.S.C. 7801), or

16 “(ii) an education association which
17 principally represents employees of 1 or
18 more agencies described in clause (i) and
19 which is described in section 501(c) (5) or
20 (6) and exempt from taxation under sec-
21 tion 501(a).

22 “(D) EMPLOYMENT RETENTION PLAN.—
23 The term ‘employment retention plan’ means a
24 plan to pay, upon termination of employment,
25 compensation to an employee of a local edu-

1 cational agency or education association de-
2 scribed in subparagraph (C) for purposes of—

3 “(i) retaining the services of the em-
4 ployee, or

5 “(ii) rewarding such employee for the
6 employee’s service with 1 or more such
7 agencies or associations.”

8 (c) COORDINATION WITH ERISA.—Section 3(2)(B)
9 of the Employee Retirement Income Security Act of 1974
10 (29 U.S.C. 1002(2)(B)) is amended by adding at the end
11 the following: “An applicable voluntary early retirement
12 incentive plan (as defined in section 457(e)(11)(D)(ii) of
13 the Internal Revenue Code of 1986) making payments or
14 supplements described in section 457(e)(11)(D)(i) of such
15 Code, and an applicable employment retention plan (as de-
16 fined in section 457(f)(4)(C) of such Code) making pay-
17 ments of benefits described in section 457(f)(4)(A) of such
18 Code, shall, for purposes of this title, be treated as a wel-
19 fare plan (and not a pension plan) with respect to such
20 payments and supplements.”

21 (d) EFFECTIVE DATES.—

22 (1) IN GENERAL.—The amendments made by
23 this Act shall take effect on the date of the enact-
24 ment of this Act.

1 (2) TAX AMENDMENTS.—The amendments
2 made by subsections (a)(1) and (b) shall apply to
3 taxable years ending after the date of the enactment
4 of this Act.

5 (3) ERISA AMENDMENTS.—The amendment
6 made by subsection (c) shall apply to plan years
7 ending after the date of the enactment of this Act.

8 (4) CONSTRUCTION.—Nothing in the amend-
9 ments made by this section shall alter or affect the
10 construction of the Internal Revenue Code of 1986,
11 the Employee Retirement Income Security Act of
12 1974, or the Age Discrimination in Employment Act
13 of 1967 as applied to any plan, arrangement, or con-
14 duct to which such amendments do not apply.

15 **SEC. 441. ACCELERATION OF COMPUTATION OF BENEFITS**
16 **ATTRIBUTABLE TO RECOVERIES OF EM-**
17 **PLOYER LIABILITY.**

18 (a) MODIFICATION OF AVERAGE RECOVERY PER-
19 CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-
20 ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS
21 AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the
22 Employee Retirement Income Security Act of 1974 (29
23 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

24 “(ii) notices of intent to terminate
25 were provided (or in the case of a termi-

1 nation by the corporation, a notice of de-
2 termination under section 4042 was
3 issued) during the 5-Federal fiscal year pe-
4 riod ending with the third fiscal year pre-
5 ceding the fiscal year in which occurs the
6 date of the notice of intent to terminate
7 (or the notice of determination under sec-
8 tion 4042) with respect to the plan termi-
9 nation for which the recovery ratio is being
10 determined.”

11 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR
12 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
13 PARTICIPANTS AND BENEFICIARIES.—Section 4044 of the
14 Employee Retirement Income Security Act of 1974 (29
15 U.S.C. 1362) is amended by adding at the end the fol-
16 lowing new subsection:

17 “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR
18 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
19 PARTICIPANTS AND BENEFICIARIES.—

20 “(1) IN GENERAL.—In the case of a terminated
21 plan, the value of the recovery of liability under sec-
22 tion 4062(c) allocable as a plan asset under this sec-
23 tion for purposes of determining the amount of ben-
24 efits payable by the corporation shall be determined
25 by multiplying—

1 “(A) the amount of liability under section
2 4062(c) as of the termination date of the plan,
3 by

4 “(B) the applicable section 4062(c) recov-
5 ery ratio.

6 “(2) SECTION 4062(c) RECOVERY RATIO.—For
7 purposes of this subsection—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (C), the term ‘section 4062(c) re-
10 covery ratio’ means the average, determined
11 with respect to prior plan terminations de-
12 scribed in subparagraph (B), of the ratio
13 which—

14 “(i) the value of the recovery under
15 section 4062(c) determined by the corpora-
16 tion in connection with any such prior ter-
17 mination, bears to

18 “(ii) the amount of liability under sec-
19 tion 4062(c) with respect to such plans as
20 of the termination date in connection with
21 any such prior termination.

22 “(B) PRIOR TERMINATIONS.—A plan ter-
23 mination described in this subparagraph is a
24 termination with respect to which—

1 “(i) the value of recoveries under sec-
2 tion 4062(c) have been determined by the
3 corporation, and

4 “(ii) notices of intent to terminate
5 were provided (or in the case of a termi-
6 nation by the corporation, a notice of de-
7 termination under section 4042 was
8 issued) during the 5-Federal fiscal year pe-
9 riod ending with the third fiscal year pre-
10 ceding the fiscal year in which occurs the
11 date of the notice of intent to terminate
12 (or the notice of determination under sec-
13 tion 4042) with respect to the plan termi-
14 nation for which the recovery ratio is being
15 determined.

16 “(C) EXCEPTION.—In the case of a termi-
17 nated plan with respect to which the out-
18 standing amount of benefit liabilities exceeds
19 \$20,000,000, the term ‘section 4062(c) recovery
20 ratio’ means, with respect to the termination of
21 such plan, the ratio of—

22 “(i) the value of the recoveries on be-
23 half of the plan under section 4062(c), to

24 “(ii) the amount of the liability owed
25 under section 4062(c) as of the date of

1 plan termination to the trustee appointed
2 under section 4042 (b) or (c).

3 “(3) SUBSECTION NOT TO APPLY.—This sub-
4 section shall not apply with respect to the deter-
5 mination of—

6 “(A) whether the amount of outstanding
7 benefit liabilities exceeds \$20,000,000, or

8 “(B) the amount of any liability under sec-
9 tion 4062 to the corporation or the trustee ap-
10 pointed under section 4042 (b) or (c).

11 “(4) DETERMINATIONS.—Determinations under
12 this subsection shall be made by the corporation.
13 Such determinations shall be binding unless shown
14 by clear and convincing evidence to be unreasonable.”

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply for any termination for which no-
17 tices of intent to terminate are provided (or in the case
18 of a termination by the corporation, a notice of determina-
19 tion under section 4042 is issued) on or after the date
20 which is 30 days after the date of enactment of this sec-
21 tion.

1 **SEC. 442. MULTIEMPLOYER PLAN FUNDING AND SOLVENCY**

2 **NOTICES.**

3 (a) IN GENERAL.—Section 101(f) of the Employee
4 Retirement Income Security Act of 1974 (29 U.S.C.
5 1021(f)) is amended to read as follows:

6 “(f) MULTIEMPLOYER DEFINED BENEFIT PLAN
7 FUNDING AND SOLVENCY NOTICES.—

8 “(1) IN GENERAL.—The administrator of a de-
9 fined benefit plan which is a multiemployer plan
10 shall provide to each plan participant and bene-
11 ficiary, to each labor organization representing such
12 participants or beneficiaries, and to each employer
13 that has an obligation to contribute under the
14 plan—

15 “(A) a plan funding notice for each plan
16 year, and

17 “(B) if, for any plan year, the value of the
18 plan’s assets is less than an amount equal to 5
19 times the amount of benefit payments, a multi-
20 employer plan solvency notice.

21 “(2) INFORMATION CONTAINED IN NOTICES.—

22 “(A) IDENTIFYING INFORMATION.—Each
23 notice required under paragraph (1) shall con-
24 tain identifying information, including the name
25 of the plan, the address and phone number of
26 the plan administrator and the plan’s principal

1 administrative officer, each plan sponsor’s em-
2 ployer identification number, and the plan num-
3 ber of the plan.

4 “(B) SPECIFIC INFORMATION RELATING
5 TO FUNDING NOTICE.—A plan funding notice
6 under paragraph (1)(A) shall include—

7 “(i) a statement as to whether the
8 plan’s funded current liability percentage
9 (as defined in section 302(d)(9)(C)) for the
10 plan year to which the notice relates is at
11 least 100 percent (and, if not, the actual
12 percentage), and

13 “(ii) a general description of the bene-
14 fits under the plan which are eligible to be
15 guaranteed by the Pension Benefit Guar-
16 anty Corporation, along with an expla-
17 nation of the limitations on the guarantee
18 and the circumstances under which such
19 limitations apply.

20 “(C) SPECIFIC INFORMATION RELATING TO
21 SOLVENCY NOTICE.—A plan solvency notice
22 under paragraph (1)(B) shall include—

23 “(i) a statement of the value of the
24 plan’s assets, the amount of benefit pay-
25 ments, and the ratio of the assets to the

1 payments for the plan year to which the
2 notice relates,

3 “(ii) a summary of the rules gov-
4 erning insolvent multiemployer plans, in-
5 cluding the limitations on benefit payments
6 and any potential benefit reductions and
7 suspensions (and the potential effects of
8 such limitations, reductions, and suspen-
9 sions on the plan), and

10 “(iii) a general description of the ben-
11 efits under the plan which are eligible to be
12 guaranteed by the Pension Benefit Guar-
13 anty Corporation, along with an expla-
14 nation of the limitations on the guarantee
15 and the circumstances under which such
16 limitations apply.

17 “(D) OTHER INFORMATION.—Each notice
18 under paragraph (1) shall include any addi-
19 tional information which the plan administrator
20 elects to include.

21 “(3) TIME FOR PROVIDING NOTICE.—Any no-
22 tice under paragraph (1) shall be provided no later
23 than two months after the deadline (including exten-
24 sions) for filing the annual report for the plan year
25 to which the notice relates and may be issued to-

1 together with another document, including the sum-
2 mary annual report required under section
3 104(b)(3). The notices under paragraph (1) (A) and
4 (B) for any plan year may be provided together.

5 “(4) FORM AND MANNER.—Any notice under
6 paragraph (1)—

7 “(A) shall be provided in a form and man-
8 ner prescribed in regulations of the Pension
9 Benefit Guaranty Corporation,

10 “(B) shall be written in a manner so as to
11 be understood by the average plan participant,
12 and

13 “(C) may be provided in written, elec-
14 tronic, or other appropriate form to the extent
15 such form is reasonably accessible to plan par-
16 ticipants and beneficiaries.”

17 (b) EFFECTIVE DATE.—The amendment made by
18 this section shall apply to plan years beginning after De-
19 cember 31, 2005.

20 **SEC. 443. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**
21 **TION AS A RESULT OF PENSION ROLLOVERS.**

22 (a) IN GENERAL.—Section 3304(a) of the Internal
23 Revenue Code of 1986 (relating to requirements for State
24 unemployment laws) is amended by adding at the end the
25 following new flush sentence:

1 “Compensation shall not be reduced under paragraph (15)
 2 for any pension, retirement or retired pay, annuity, or
 3 similar payment which is not includible in gross income
 4 of the individual for the taxable year in which paid because
 5 it was part of a rollover distribution.”

6 (b) EFFECTIVE DATE.—The amendment made by
 7 this section shall apply to weeks beginning on or after the
 8 date of the enactment of this Act.

9 **SEC. 444. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**
 10 **ERNMENTAL SECTION 457 PLANS.**

11 (a) IN GENERAL.—Section 641(f) of the Economic
 12 Growth and Tax Relief Reconciliation Act of 2001 is
 13 amended by adding at the end the following new para-
 14 graph:

15 “(4) TRANSITION RULE FOR CERTAIN GOVERN-
 16 MENTAL PLANS.—In the case of distributions from
 17 an eligible deferred compensation plan of an em-
 18 ployer described in section 457(e)(1)(A) of the Inter-
 19 nal Revenue Code of 1986 which are made after De-
 20 cember 31, 2001, and which are part of a series of
 21 distributions which—

22 “(A) began before January 1, 2002, and

23 “(B) are payable for 10 years or less,

1 the Internal Revenue Code of 1986 may be applied
2 to such distributions without regard to the amend-
3 ments made by subsection (a)(1)(D).”

4 (b) EFFECTIVE DATE.—The amendment made by
5 subsection (a) shall take effect as if included in the provi-
6 sions of section 641 of the Economic Growth and Tax Re-
7 lief Reconciliation Act of 2001.

8 **SEC. 445. MINIMUM COST REQUIREMENTS.**

9 (a) IN GENERAL.—Section 420(c)(3)(E) of the Inter-
10 nal Revenue Code of 1986 is amended by adding at the
11 end the following new clause:

12 “(ii) INSIGNIFICANT COST REDUC-
13 TIONS PERMITTED.—An employer shall not
14 be treated as failing to meet the require-
15 ments of this paragraph for any taxable
16 year if, in lieu of any reduction of retiree
17 health coverage permitted under the regu-
18 lations prescribed under clause (i), the em-
19 ployer reduces applicable employer cost by
20 an amount not in excess of the reduction
21 in costs which would have occurred if the
22 employer had made the maximum permis-
23 sible reduction in retiree health coverage
24 under such regulations. In applying such
25 regulations to any subsequent taxable year,

1 any reduction in applicable employer cost
2 under this clause shall be treated as if it
3 were an equivalent reduction in retiree
4 health coverage.”

5 (b) CONFORMING AMENDMENT.—Section
6 420(c)(3)(E) of such Code is amended by striking “The
7 Secretary” and inserting:

8 “(i) IN GENERAL.—The Secretary”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years ending after the
11 date of the enactment of this Act.

12 **Subtitle D—Studies**

13 **SEC. 451. JOINT STUDY ON REVITALIZING DEFINED BEN-** 14 **EFIT PLANS.**

15 (a) STUDY.—As soon as practicable after the date of
16 the enactment of this Act, the Secretary of the Treasury,
17 the Secretary of Labor, and the Executive Director of the
18 Pension Benefit Guaranty Corporation shall jointly under-
19 take a study on ways to revitalize interest in defined ben-
20 efit plans among employers. In conducting such study, the
21 Secretaries and the Executive Director shall consider—

22 (1) ways to encourage the establishment of de-
23 fined benefit plans by small- and mid-sized employ-
24 ers,

1 (2) ways to encourage the continued mainte-
2 nance of defined benefit plans by larger employers,
3 and

4 (3) legislative proposals to accomplish the objec-
5 tives described in paragraphs (1) and (2).

6 (b) REPORT.—Not later than 2 years after the date
7 of the enactment of this Act, the Secretaries and the Exec-
8 utive Director shall report the results of the study, to-
9 gether with any recommendations for legislative changes,
10 to the Committees on Ways and Means and Education and
11 the Workforce of the House of Representatives and the
12 Committees on Finance and Health, Education, Labor,
13 and Pensions of the Senate.

14 **SEC. 452. STUDY ON FLOOR-OFFSET ESOPS.**

15 (a) STUDY.—As soon as practicable after the date of
16 the enactment of this Act, the Secretary of the Treasury
17 and the Pension Benefit Guaranty Corporation shall un-
18 dertake a study to determine the number of floor-offset
19 employee stock ownership plans still in existence and the
20 extent to which such plans pose a risk to plan participants
21 or beneficiaries and to the Corporation. Such study shall
22 consider legislative proposals to address such risks.

23 (b) REPORT.—Not later than 1 year after the date
24 of the enactment of this Act, the Secretary and the Cor-
25 poration shall report the results of the study, together

1 with any recommendations for legislative changes, to the
 2 Committees on Ways and Means and Education and the
 3 Workforce of the House of Representatives and the Com-
 4 mittees on Finance and Health, Education, Labor, and
 5 Pensions of the Senate.

6 **Subtitle E—Other Provisions**

7 **SEC. 461. ALLOWANCE OF CATCHUP PAYMENTS.**

8 (a) IN GENERAL.—Section 219(b)(5) of the Internal
 9 Revenue Code of 1986 (relating to deductible amount) is
 10 amended by redesignating subparagraph (C) as subpara-
 11 graph (D) and by inserting after subparagraph (B) the
 12 following new subparagraph:

13 “(C) CATCHUP CONTRIBUTIONS FOR CER-
 14 TAIN INDIVIDUALS.—

15 “(i) IN GENERAL.—In the case of an
 16 eligible individual who elects to make a
 17 qualified retirement contribution in addi-
 18 tion to the deductible amount determined
 19 under subparagraph (A)—

20 “(I) the deductible amount for
 21 any taxable year shall be increased by
 22 an amount equal to 3 times the appli-
 23 cable amount determined under sub-
 24 paragraph (B) for such taxable year,
 25 and

1 “(II) subparagraph (B) shall not
2 apply.

3 “(ii) ELIGIBLE INDIVIDUAL.—For
4 purposes of this subparagraph, the term
5 ‘eligible individual’ means, with respect to
6 any taxable year, any individual who was a
7 qualified participant in a qualified cash or
8 deferred arrangement (as defined in sec-
9 tion 401(k)) of an employer described in
10 clause (ii) under which the employer
11 matched at least 50 percent of the employ-
12 ee’s contributions to such arrangement
13 with stock of such employer.

14 “(iii) EMPLOYER DESCRIBED.—An
15 employer is described in this clause if, in
16 any taxable year preceding the taxable year
17 described in clause (ii)—

18 “(I) such employer (or any con-
19 trolling corporation of such employer)
20 was a debtor in a case under title 11
21 of the United States Code, or similar
22 Federal or State law, and

23 “(II) such employer (or any other
24 person) was subject to an indictment

1 or conviction resulting from business
2 transactions related to such case.

3 “(iv) QUALIFIED PARTICIPANT.—For
4 purposes of clause (ii), the term ‘qualified
5 participant’ means any eligible individual
6 who was a participant in the cash or de-
7 ferred arrangement described in clause (i)
8 on the date that is 6 months before the fil-
9 ing of the case described in clause (iii).

10 “(v) TERMINATION.—This subpara-
11 graph shall not apply to taxable years be-
12 ginning after December 31, 2008.”

13 (b) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2003.

16 **SEC. 462. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH**
17 **RESPECT TO S CORPORATION STOCK.**

18 (a) IN GENERAL.—Section 4975(d) of the Internal
19 Revenue Code of 1986 is amended by adding at the end
20 the following new flush sentences:

21 “A plan shall not be treated as violating the requirements
22 of section 401, 409, or subsection (e)(7), or as engaging
23 in a prohibited transaction for purposes of paragraph (3),
24 merely by reason of any distribution described in section
25 1368(a) with respect to S corporation stock which con-

1 stitutes qualifying employer securities if the distribution
 2 is, in accordance with the plan provisions, used to make
 3 payments on a loan described in paragraph (3) the pro-
 4 ceeds of which were used to acquire the qualifying em-
 5 ployer securities (whether or not allocated to participants).
 6 The preceding sentence shall not apply in the case of a
 7 distribution which is paid with respect to any employer
 8 security which is allocated to a participant unless the plan
 9 provides that employer securities with a fair market value
 10 of not less than the amount of such distribution are allo-
 11 cated to such participant for the year which (but for the
 12 preceding sentence) such distribution would have been al-
 13 located to such participant.”

14 (b) EFFECTIVE DATE.—The amendment made by
 15 this section shall take effect on January 1, 1998.

16 **SEC. 463. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**
 17 **TIEMPLOYER HEALTH PLAN.**

18 (a) IN GENERAL.—Section 420(e) of the Internal
 19 Revenue Code of 1986 (relating to definitions and special
 20 rules) is amended by adding at the end the following new
 21 paragraph:

22 “(5) APPLICATION TO MULTIEMPLOYER
 23 PLAN.—In the case of any plan to which section
 24 404(c) applies (or any successor plan primarily cov-

1 ering employees in the building and construction in-
2 dustry)—

3 “(A) the prohibition under subsection (a)
4 on the application of this section to a multiem-
5 ployer plan shall not apply, and

6 “(B) this section shall be applied to any
7 such plan—

8 “(i) by treating any reference in this
9 section to an employer as a reference to all
10 employers maintaining the plan (or, if ap-
11 propriate, the plan sponsor), and

12 “(ii) in accordance with such modi-
13 fications of this section (and the provisions
14 of this title and the Employee Retirement
15 Income Security Act of 1974 relating to
16 this section) as the Secretary determines
17 appropriate to reflect the fact the plan is
18 not maintained by a single employer.”

19 (b) AMENDMENTS OF ERISA.—

20 (1) Section 101(e)(3) of the Employee Retire-
21 ment Income Security Act of 1974 (29 U.S.C.
22 1021(e)(3)) is amended by striking “Pension Fund-
23 ing Equity Act of 2004” and inserting “National
24 Employee Savings and Trust Equity Guarantee Act
25 of 2004”.

1 (2) Section 403(c)(1) of such Act (29 U.S.C.
2 1103(c)(1)) is amended by striking “Pension Fund-
3 ing Equity Act of 2004” and inserting “National
4 Employee Savings and Trust Equity Guarantee Act
5 of 2004”.

6 (3) Section 408(b)(13) of such Act (29 U.S.C.
7 1108(b)(13)) is amended by striking “Pension
8 Funding Equity Act of 2004” and inserting “Na-
9 tional Employee Savings and Trust Equity Guar-
10 antee Act of 2004”.

11 (c) EFFECTIVE DATE.—The amendment made by
12 this section shall apply to transfers made in taxable years
13 beginning after December 31, 2004.

14 **Subtitle F—Plan Amendments**

15 **SEC. 471. PROVISIONS RELATING TO PLAN AMENDMENTS.**

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

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

22 (2) except as provided by the Secretary of the
23 Treasury, such plan shall not fail to meet the re-
24 quirements of section 411(d)(6) of the Internal Rev-
25 enue Code of 1986 and section 204(g) of the Em-

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

3 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

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

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

13 (B) on or before the last day of the first
14 plan year beginning on or after January 1,
15 2006, or such later date as the Secretary of the
16 Treasury may prescribe.

17 In the case of a governmental plan (as defined in
18 section 414(d) of the Internal Revenue Code of
19 1986), subparagraph (B) shall be applied by sub-
20 stituting the date which is 2 years after the date
21 otherwise applied under subparagraph (B).

22 (2) CONDITIONS.—This section shall not apply
23 to any amendment unless—

24 (A) during the period—

1 (i) beginning on the date the legisla-
2 tive or regulatory amendment described in
3 paragraph (1)(A) takes effect (or in the
4 case of a plan or contract amendment not
5 required by such legislative or regulatory
6 amendment, the effective date specified by
7 the plan), and

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

12 the plan or contract is operated as if such plan
13 or contract amendment were in effect; and

14 (B) such plan or contract amendment ap-
15 plies retroactively for such period.

1 **TITLE V—PROVISIONS RELAT-**
2 **ING TO EXECUTIVES AND**
3 **STOCK OPTIONS**

4 **Subtitle A—Provisions Relating to**
5 **Executives**

6 **SEC. 501. REPEAL OF 1978 REVENUE ACT LIMITATION ON**
7 **SECRETARY OF THE TREASURY'S AUTHORITY**
8 **TO DETERMINE YEAR OF INCLUSION OF**
9 **AMOUNTS UNDER PRIVATE DEFERRED COM-**
10 **PENSATION PLANS.**

11 (a) REPEAL.—Section 132 of the Revenue Act of
12 1978 (Public Law 95–600) is repealed.

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

16 **SEC. 502. TREATMENT OF NONQUALIFIED DEFERRED COM-**
17 **PENSATION PLANS.**

18 (a) IN GENERAL.—Subpart A of part I of subchapter
19 D of chapter 1 is amended by adding at the end the fol-
20 lowing new section:

21 **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED**
22 **COMPENSATION UNDER NONQUALIFIED DE-**
23 **FERRED COMPENSATION PLANS.**

24 “(a) RULES RELATING TO CONSTRUCTIVE RE-
25 CEIPT.—

1 “(1) IN GENERAL.—

2 “(A) GROSS INCOME INCLUSION.—If at
3 any time during a taxable year a nonqualified
4 deferred compensation plan—

5 “(i) fails to meet the requirements of
6 paragraphs (2), (3), (4), and (5), or

7 “(ii) is not operated in accordance
8 with such requirements,

9 all compensation deferred under the plan for
10 the taxable year and all preceding taxable years
11 shall be includible in gross income for the tax-
12 able year to the extent not subject to a substan-
13 tial risk of forfeiture and not previously in-
14 cluded in gross income.

15 “(B) INTEREST AND ADDITIONAL TAX
16 PAYABLE WITH RESPECT TO PREVIOUSLY DE-
17 FERRED COMPENSATION.—

18 “(i) IN GENERAL.—If compensation is
19 required to be included in gross income
20 under subparagraph (A) for a taxable year,
21 the tax imposed by this chapter for the
22 taxable year of inclusion shall be increased
23 by the sum of—

24 “(I) the amount of interest deter-
25 mined under clause (ii), and

1 “(II) an amount equal to 10 per-
2 cent of the compensation which is re-
3 quired to be included in gross income.

4 “(ii) INTEREST.—For purposes of
5 clause (i), the interest determined under
6 this clause for any taxable year is the
7 amount of interest at the underpayment
8 rate on the underpayments that would have
9 occurred had the deferred compensation
10 been includible in gross income for the tax-
11 able year in which first deferred or, if later,
12 the first taxable year in which such deferred
13 compensation is not subject to a substantial
14 risk of forfeiture.

15 “(2) DISTRIBUTIONS.—

16 “(A) IN GENERAL.—The requirements of
17 this paragraph are met if the plan provides that
18 compensation deferred under the plan may not
19 be distributed earlier than—

20 “(i) except as provided in subpara-
21 graph (B)(i), separation from service (as
22 determined by the Secretary),

23 “(ii) the date the participant becomes
24 disabled (within the meaning of subpara-
25 graph (C)),

1 “(iii) death,

2 “(iv) a specified time (or pursuant to
3 a fixed schedule) specified under the plan
4 as of the date of the deferral of such com-
5 pensation,

6 “(v) to the extent provided by the
7 Secretary, a change in the ownership or ef-
8 fective control of the corporation, or in the
9 ownership of a substantial portion of the
10 assets of the corporation, or

11 “(vi) the occurrence of an unforesee-
12 able emergency.

13 “(B) SPECIAL RULES.—

14 “(i) SEPARATION FROM SERVICE OF
15 SPECIFIED EMPLOYEES.—In the case of
16 specified employees, the requirement of
17 subparagraph (A)(i) is met only if distribu-
18 tions may not be made earlier than 6
19 months after the date of separation from
20 service. For purposes of the preceding sen-
21 tence, a specified employee is a key em-
22 ployee (as defined in section 416(i)) of a
23 corporation the stock in which is publicly
24 traded on an established securities market
25 or otherwise.

1 “(ii) CHANGES IN OWNERSHIP OR
2 CONTROL.—In the case of a participant
3 who is subject to the requirements of sec-
4 tion 16(a) of the Securities Exchange Act
5 of 1934, the requirement of subparagraph
6 (A)(v) is met only if distributions may not
7 be made earlier than 1 year after the date
8 of the change in ownership or effective
9 control.

10 “(iii) UNFORESEEABLE EMER-
11 GENCY.—For purposes of subparagraph
12 (A)(vi)—

13 “(I) IN GENERAL.—The term
14 ‘unforeseeable emergency’ means a se-
15 vere financial hardship to the partici-
16 pant or beneficiary resulting from a
17 sudden and unexpected illness or acci-
18 dent of the participant or beneficiary,
19 the participant’s or beneficiary’s
20 spouse, or the participant’s or bene-
21 ficiary’s dependent (as defined in sec-
22 tion 152(a)), loss of the participant’s
23 or beneficiary’s property due to cas-
24 ualty, or other similar extraordinary
25 and unforeseeable circumstances aris-

1 ing as a result of events beyond the
2 control of the participant or bene-
3 ficiary.

4 “(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subpara-
5 graph (A)(vi) is met only if, as deter-
6 mined under regulations of the Sec-
7 retary, the amounts distributed with
8 respect to an emergency do not exceed
9 the amounts necessary to satisfy such
10 emergency plus amounts necessary to
11 pay taxes reasonably anticipated as a
12 result of the distribution, after taking
13 into account the extent to which such
14 hardship is or may be relieved through
15 reimbursement or compensation by in-
16 surance or otherwise or by liquidation
17 of the participant’s or beneficiary’s as-
18 sets (to the extent the liquidation of
19 such assets would not itself cause se-
20 vere financial hardship).

21
22 “(C) DISABLED.—For purposes of sub-
23 paragraph (A)(ii), a participant shall be consid-
24 ered disabled if the participant—

1 “(i) is unable to engage in any sub-
2 stantial gainful activity by reason of any
3 medically determinable physical or mental
4 impairment which can be expected to result
5 in death or can be expected to last for a
6 continuous period of not less than 12
7 months, or

8 “(ii) is, by reason of any medically de-
9 terminable physical or mental impairment
10 which can be expected to result in death or
11 can be expected to last for a continuous
12 period of not less than 12 months, receiv-
13 ing income replacement benefits for a pe-
14 riod of not less than 3 months under an
15 accident and health plan covering employ-
16 ees of the participant’s employer.

17 “(3) INVESTMENT OPTIONS.—The requirements
18 of this paragraph are met if the plan provides that
19 the investment options a participant may elect under
20 the plan—

21 “(A) are comparable to the investment op-
22 tions which a participant may elect under the
23 defined contribution plan of the employer
24 which—

1 “(i) meets the requirement of section
2 401(a) and includes a trust exempt from
3 taxation under section 501(a), and

4 “(ii) has the fewest investment op-
5 tions, or

6 “(B) if there is no such defined contribu-
7 tion plan, meet such requirements as the Sec-
8 retary may prescribe (including requirements
9 limiting such options to permissible investment
10 options specified by the Secretary).

11 “(4) ACCELERATION OF BENEFITS.—The re-
12 quirements of this paragraph are met if the plan
13 does not permit the acceleration of the time or
14 schedule of any payment under the plan, except as
15 provided by the Secretary in regulations.

16 “(5) ELECTIONS.—

17 “(A) IN GENERAL.—The requirements of
18 this paragraph are met if the requirements of
19 subparagraphs (B) and (C) are met.

20 “(B) INITIAL DEFERRAL DECISION.—The
21 requirements of this subparagraph are met if
22 the plan provides that compensation for services
23 performed during a taxable year may be de-
24 ferred at the participant’s election only if the
25 election to defer such compensation is made

1 during the preceding taxable year or at such
2 other time as provided in regulations. In the
3 case of the first year in which a participant be-
4 comes eligible to participate in the plan, such
5 election may be made with respect to services to
6 be performed subsequent to the election within
7 30 days after the date the participant becomes
8 eligible to participate in such plan.

9 “(C) CHANGES IN TIME AND FORM OF DIS-
10 TRIBUTION.—The requirements of this subpara-
11 graph are met if, in the case of a plan which
12 permits under a subsequent election a delay in
13 a payment or a change in the form of pay-
14 ment—

15 “(i) the plan requires that such elec-
16 tion may not take effect until at least 12
17 months after the date on which the elec-
18 tion is made,

19 “(ii) in the case an election related to
20 a payment not described in clause (ii), (iii),
21 or (vi) of paragraph (2)(A), the plan re-
22 quires that the first payment with respect
23 to which such election is made be deferred
24 for a period of not less than 5 years from

1 the date such payment would otherwise
2 have been made, and

3 “(iii) the plan requires that any elec-
4 tion related to a payment described in
5 paragraph (2)(A)(iv) may not be made less
6 than 12 months prior to the date of the
7 first scheduled payment under such para-
8 graph.

9 A plan shall be treated as failing to meet the
10 requirements of this subparagraph if the plan
11 permits more than 1 subsequent election to
12 delay any payment.

13 “(b) RULES RELATING TO FUNDING.—

14 “(1) OFFSHORE PROPERTY IN A TRUST.—In
15 the case of assets set aside (directly or indirectly) in
16 a trust (or other arrangement determined by the
17 Secretary) for purposes of paying deferred com-
18 pensation under a nonqualified deferred compensa-
19 tion plan, such assets shall be treated for purposes
20 of section 83 as property transferred in connection
21 with the performance of services whether or not such
22 assets are available to satisfy claims of general credi-
23 tors—

24 “(A) at the time set aside if such assets
25 are located outside of the United States, or

1 “(B) at the time transferred if such assets
2 are subsequently transferred outside of the
3 United States.

4 This paragraph shall not apply to assets located in
5 a foreign jurisdiction if substantially all of the serv-
6 ices to which the nonqualified deferred compensation
7 relates are performed in such jurisdiction.

8 “(2) EMPLOYER’S FINANCIAL HEALTH.—In the
9 case of a nonqualified deferred compensation plan,
10 there is a transfer of property within the meaning
11 of section 83 as of the earlier of—

12 “(A) the date on which the plan first pro-
13 vides that assets will become restricted to the
14 provision of benefits under the plan in connec-
15 tion with a change in the employer’s financial
16 health, or

17 “(B) the date on which assets are so re-
18 stricted.

19 “(3) INCOME INCLUSION FOR OFFSHORE
20 TRUSTS AND EMPLOYER’S FINANCIAL HEALTH.—For
21 each taxable year that assets treated as transferred
22 under this subsection remain set aside in a trust or
23 other arrangement subject to paragraph (1) or (2),
24 any increase in value in, or earnings with respect to,
25 such assets shall be treated as an additional transfer

1 of property under this subsection (to the extent not
2 previously included in income).

3 “(4) INTEREST ON TAX LIABILITY PAYABLE
4 WITH RESPECT TO TRANSFERRED PROPERTY.—

5 “(A) IN GENERAL.—If amounts are re-
6 quired to be included in gross income by reason
7 of paragraph (1) or (2) for a taxable year, the
8 tax imposed by this chapter for such taxable
9 year shall be increased by the sum of—

10 “(i) the amount of interest determined
11 under subparagraph (B), and

12 “(ii) an amount equal to 10 percent of
13 the amounts required to be included in
14 gross income.

15 “(B) INTEREST.—For purposes of sub-
16 paragraph (A), the interest determined under
17 this subparagraph for any taxable year is the
18 amount of interest at the underpayment rate on
19 the underpayments that would have occurred
20 had the amounts so required to be included in
21 gross income by paragraph (1) or (2) been in-
22 cludible in gross income for the taxable year in
23 which first deferred or, if later, the first taxable
24 year in which such amounts are not subject to
25 a substantial risk of forfeiture.

1 “(c) NO INFERENCE ON EARLIER INCOME INCLU-
2 SION.—Nothing in this section shall be construed to pre-
3 vent the inclusion of amounts in gross income under any
4 other provision of this chapter or any other rule of law
5 earlier than the time provided in this section. Any amount
6 included in gross income under this section shall not be
7 required to be included in gross income under any other
8 provision of this chapter or any other rule of law later
9 than the time provided in this section.

10 “(d) OTHER DEFINITIONS AND SPECIAL RULES.—
11 For purposes of this section—

12 “(1) NONQUALIFIED DEFERRED COMPENSA-
13 TION PLAN.—The term ‘nonqualified deferred com-
14 pensation plan’ means any plan that provides for the
15 deferral of compensation, other than—

16 “(A) a qualified employer plan, and

17 “(B) any bona fide vacation leave, sick
18 leave, compensatory time, disability pay, or
19 death benefit plan.

20 “(2) QUALIFIED EMPLOYER PLAN.—The term
21 ‘qualified employer plan’ means—

22 “(A) any plan, contract, pension, account,
23 or trust described in subparagraph (A) or (B)
24 of section 219(g)(5), and

1 “(B) any eligible deferred compensation
2 plan (within the meaning of section 457(b)) of
3 an employer described in section 457(e)(1)(A).

4 “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—
5 The term ‘plan’ includes any agreement or arrange-
6 ment, including an agreement or arrangement that
7 includes one person.

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

14 “(5) TREATMENT OF EARNINGS.—References to
15 deferred compensation shall be treated as including
16 references to income (whether actual or notional) at-
17 tributable to such compensation or such income.

18 “(e) REGULATIONS.—The Secretary shall prescribe
19 such regulations as may be necessary or appropriate to
20 carry out the purposes of this section, including regula-
21 tions—

22 “(1) providing for the determination of
23 amounts of deferral in the case of a nonqualified de-
24 ferred compensation plan which is a defined benefit
25 plan,

1 “(2) relating to changes in the ownership and
2 control of a corporation or assets of a corporation
3 for purposes of subsection (a)(2)(A)(v),

4 “(3) exempting arrangements from the applica-
5 tion of subsection (b) if such arrangements will not
6 result in an improper deferral of United States tax
7 and will not result in assets being effectively beyond
8 the reach of creditors,

9 “(4) defining financial health for purposes of
10 subsection (b)(2), and

11 “(5) disregarding a substantial risk of for-
12 feiture in cases where necessary to carry out the
13 purposes of this section.”

14 (b) APPLICATION OF GOLDEN PARACHUTE PAYMENT
15 PROVISIONS.—Section 280G of such Code (relating to
16 golden parachute payments) is amended by redesignating
17 subsection (e) as subsection (f) and by inserting after sub-
18 section (d) the following new subsection:

19 “(e) SPECIAL RULES FOR CERTAIN PAYMENTS FROM
20 NONQUALIFIED DEFERRED COMPENSATION PLANS.—

21 “(1) IN GENERAL.—Notwithstanding any other
22 provision of this section, an applicable payment shall
23 be treated as an excess parachute payment for pur-
24 poses of this section and section 4999.

1 “(2) COORDINATION WITH OTHER PAY-
2 MENTS.—

3 “(A) APPLICABLE PAYMENTS WHICH ARE
4 PARACHUTE PAYMENTS.—If any applicable pay-
5 ment is a parachute payment (determined with-
6 out regard to subsection (b)(2)(A)(ii)), then, ex-
7 cept as provided in paragraph (4), this section
8 shall be applied to such payment in the same
9 manner as if this subsection had not been en-
10 acted.

11 “(B) APPLICABLE PAYMENTS WHICH ARE
12 NOT PARACHUTE PAYMENTS.—An applicable
13 payment not described in subparagraph (A)
14 shall be taken into account in determining
15 whether any payment described in subpara-
16 graph (A) or any payment which is not an ap-
17 plicable payment is a parachute payment under
18 subsection (b)(2).

19 “(C) COORDINATION.—If the application
20 of this paragraph results in an excess parachute
21 payment, any tax under section 4999 on the ex-
22 cess parachute payment shall be in addition to
23 the tax imposed by reason of paragraph (1).

24 “(3) APPLICABLE PAYMENT.—For purposes of
25 this subsection, the term ‘applicable payment’ means

1 any distribution (including any distribution treated
2 as a parachute payment without regard to this sub-
3 section) from a nonqualified deferred compensation
4 plan (as defined in section 409A(d)) which is
5 made—

6 “(A) to a participant who is subject to the
7 requirements of section 16(a) of the Securities
8 Exchange Act of 1934, and

9 “(B) during the 1-year period following a
10 change in the ownership or effective control of
11 the corporation or in the ownership of a substan-
12 tial portion of the assets of the corporation.

13 Such terms shall not include any distribution by rea-
14 son of the death of the participant or the participant
15 becoming disabled (within the meaning of section
16 409A(a)(2)(C)).

17 “(4) NO DOUBLE COUNTING.—Under regula-
18 tions, proper adjustments shall be made in the appli-
19 cation of this subsection to prevent a deduction from
20 being disallowed more than once.”

21 (c) W-2 FORMS.—

22 (1) IN GENERAL.—Subsection (a) of section
23 6051 (relating to receipts for employees) is amended
24 by striking “and” at the end of paragraph (11), by
25 striking the period at the end of paragraph (12) and

1 inserting “, and”, and by inserting after paragraph
2 (12) the following new paragraph:

3 “(13) the total amount of deferrals under a
4 nonqualified deferred compensation plan (within the
5 meaning of section 409A(d)).”

6 (2) THRESHOLD.—Subsection (a) of section
7 6051 is amended by adding at the end the following:
8 “In the case of the amounts required to be shown
9 by paragraph (13), the Secretary may (by regula-
10 tion) establish a minimum amount of deferrals below
11 which paragraph (13) does not apply.”

12 (d) CONFORMING AND CLERICAL AMENDMENTS.—

13 (1) Section 414(b) is amended by inserting
14 “409A,” after “408(p),”.

15 (2) Section 414(c) is amended by inserting
16 “409A,” after “408(p),”.

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

“Sec. 409A. Inclusion in gross income of deferred compensation
under nonqualified deferred compensation plans.”

20 (e) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by
22 this section shall apply to amounts deferred in tax-
23 able years beginning after December 31, 2004.

1 (2) EARNINGS ATTRIBUTABLE TO AMOUNT PRE-
2 VIOUSLY DEFERRED.—The amendments made by
3 this section shall apply to earnings on deferred com-
4 pensation only to the extent that such amendments
5 apply to such compensation.

6 (f) GUIDANCE RELATING TO CHANGE OF OWNER-
7 SHIP OR CONTROL.—Not later than 90 days after the date
8 of the enactment of this Act, the Secretary of the Treasury
9 shall issue guidance on what constitutes a change in own-
10 ership or effective control for purposes of section 409A
11 of the Internal Revenue Code of 1986, as added by this
12 section.

13 (g) GUIDANCE RELATING TO TERMINATION OF CER-
14 TAIN EXISTING ARRANGEMENTS.—Not later than 90 days
15 after the date of the enactment of this Act, the Secretary
16 of the Treasury shall issue guidance providing a limited
17 period during which an individual participating in a non-
18 qualified deferred compensation plan adopted on or before
19 December 31, 2004, may, without violating the require-
20 ments of paragraphs (2), (3), (4), and (5) of section
21 409A(a) of the Internal Revenue Code of 1986 (as added
22 by this section), terminate participation or cancel an out-
23 standing deferral election with regard to amounts earned
24 after December 31, 2004, if such amounts are includible
25 in income as earned.

1 **SEC. 503. PROHIBITION ON DEFERRAL OF GAIN FROM THE**
2 **EXERCISE OF STOCK OPTIONS AND RE-**
3 **STRICTED STOCK GAINS THROUGH DE-**
4 **FERRED COMPENSATION ARRANGEMENTS.**

5 (a) IN GENERAL.—Section 83 (relating to property
6 transferred in connection with performance of services) is
7 amending by adding at the end the following new sub-
8 section:

9 “(i) PROHIBITION ON ADDITIONAL DEFERRAL
10 THROUGH DEFERRED COMPENSATION ARRANGE-
11 MENTS.—Except as provided by the Secretary, if a tax-
12 payer exchanges—

13 “(1) an option to purchase employer securi-
14 ties—

15 “(A) to which subsection (a) applies, or

16 “(B) which is described in subsection
17 (e)(3), or

18 “(2) employer securities or any other property
19 based on employer securities transferred to the tax-
20 payer,

21 for a right to receive future payments, then, notwith-
22 standing any other provision of this title, there shall be
23 included in gross income for the taxable year of the ex-
24 change an amount equal to the present value of such right
25 (or such other amount as the Secretary may specify). For

1 purposes of this subsection, the term ‘employer securities’
2 includes any security issued by the employer.”

3 (b) CONTROLLED GROUP RULES.—Section 414(t)(2)
4 is amended by inserting “83(i),” after “79,”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to any exchange after December
7 31, 2004.

8 **SEC. 504. INCREASE IN WITHHOLDING FROM SUPPLE-**
9 **MENTAL WAGE PAYMENTS IN EXCESS OF**
10 **\$1,000,000.**

11 (a) IN GENERAL.—If an employer elects under
12 Treasury Regulation 31.3402(g)-1 to determine the
13 amount to be deducted and withheld from any supple-
14 mental wage payment by using a flat percentage rate, the
15 rate to be used in determining the amount to be so de-
16 ducted and withheld shall not be less than 28 percent (or
17 the corresponding rate in effect under section 1(i)(2) of
18 the Internal Revenue Code of 1986 for taxable years be-
19 ginning in the calendar year in which the payment is
20 made).

21 (b) SPECIAL RULE FOR LARGE PAYMENTS.—

22 (1) IN GENERAL.—Notwithstanding subsection
23 (a), if the supplemental wage payment, when added
24 to all such payments previously made by the em-
25 ployer to the employee during the calendar year, ex-

1 ceeds \$1,000,000, the rate used with respect to such
2 excess shall be equal to the maximum rate of tax in
3 effect under section 1 of such Code for taxable years
4 beginning in such calendar year.

5 (2) AGGREGATION.—All persons treated as a
6 single employer under subsection (a) or (b) of sec-
7 tion 52 of the Internal Revenue Code of 1986 shall
8 be treated as a single employer for purposes of this
9 subsection.

10 (c) CONFORMING AMENDMENT.—Section 13273 of
11 the Revenue Reconciliation Act of 1993 (Public Law 103–
12 66) is repealed.

13 (d) EFFECTIVE DATE.—The provisions of, and the
14 amendment made by, this section shall apply to payments
15 made after December 31, 2003.

16 **Subtitle B—Stock Options**

17 **SEC. 511. EXCLUSION OF INCENTIVE STOCK OPTIONS AND** 18 **EMPLOYEE STOCK PURCHASE PLAN STOCK** 19 **OPTIONS FROM WAGES.**

20 (a) EXCLUSION FROM EMPLOYMENT TAXES.—

21 (1) SOCIAL SECURITY TAXES.—

22 (A) Section 3121(a) of the Internal Rev-
23 enue Code of 1986 (relating to definition of
24 wages) is amended by striking “or” at the end
25 of paragraph (20), by striking the period at the

1 end of paragraph (21) and inserting “; or”, and
2 by inserting after paragraph (21) the following
3 new paragraph:

4 “(22) remuneration on account of—

5 “(A) a transfer of a share of stock to any
6 individual pursuant to an exercise of an incen-
7 tive stock option (as defined in section 422(b))
8 or under an employee stock purchase plan (as
9 defined in section 423(b)), or

10 “(B) any disposition by the individual of
11 such stock.”

12 (B) Section 209(a) of the Social Security
13 Act is amended by striking “or” at the end of
14 paragraph (17), by striking the period at the
15 end of paragraph (18) and inserting “; or”, and
16 by inserting after paragraph (18) the following
17 new paragraph:

18 “(19) Remuneration on account of—

19 “(A) a transfer of a share of stock to any
20 individual pursuant to an exercise of an incen-
21 tive stock option (as defined in section 422(b)
22 of the Internal Revenue Code of 1986) or under
23 an employee stock purchase plan (as defined in
24 section 423(b) of such Code), or

1 “(B) any disposition by the individual of
2 such stock.”

3 (2) RAILROAD RETIREMENT TAXES.—Sub-
4 section (e) of section 3231 of such Code is amended
5 by adding at the end the following new paragraph:

6 “(12) QUALIFIED STOCK OPTIONS.—The term
7 ‘compensation’ shall not include any remuneration
8 on account of—

9 “(A) a transfer of a share of stock to any
10 individual pursuant to an exercise of an incen-
11 tive stock option (as defined in section 422(b))
12 or under an employee stock purchase plan (as
13 defined in section 423(b)), or

14 “(B) any disposition by the individual of
15 such stock.”

16 (3) UNEMPLOYMENT TAXES.—Section 3306(b)
17 of such Code (relating to definition of wages) is
18 amended by striking “or” at the end of paragraph
19 (17), by striking the period at the end of paragraph
20 (18) and inserting “; or”, and by inserting after
21 paragraph (18) the following new paragraph:

22 “(19) remuneration on account of—

23 “(A) a transfer of a share of stock to any
24 individual pursuant to an exercise of an incen-
25 tive stock option (as defined in section 422(b))

1 or under an employee stock purchase plan (as
2 defined in section 423(b)), or

3 “(B) any disposition by the individual of
4 such stock.”

5 (b) WAGE WITHHOLDING NOT REQUIRED ON DIS-
6 QUALIFYING DISPOSITIONS.—Section 421(b) of the Inter-
7 nal Revenue Code of 1986 (relating to effect of disquali-
8 fying dispositions) is amended by adding at the end the
9 following new sentence: “No amount shall be required to
10 be deducted and withheld under chapter 24 with respect
11 to any increase in income attributable to a disposition de-
12 scribed in the preceding sentence.”

13 (c) WAGE WITHHOLDING NOT REQUIRED ON COM-
14 PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-
15 CENT AND 100 PERCENT OF VALUE OF STOCK.—Section
16 423(c) of the Internal Revenue Code of 1986 (relating to
17 special rule where option price is between 85 percent and
18 100 percent of value of stock) is amended by adding at
19 the end the following new sentence: “No amount shall be
20 required to be deducted and withheld under chapter 24
21 with respect to any amount treated as compensation under
22 this subsection.”

1 **SEC. 512. TREATMENT OF SALE OF STOCK ACQUIRED PUR-**
2 **SUANT TO EXERCISE OF STOCK OPTIONS TO**
3 **COMPLY WITH CONFLICT-OF-INTEREST RE-**
4 **QUIREMENTS.**

5 (a) IN GENERAL.—Section 421 of the Internal Rev-
6 enue Code of 1986 (relating to general rules for certain
7 stock options) is amended by adding at the end the fol-
8 lowing new subsection:

9 “(d) CERTAIN SALES TO COMPLY WITH CONFLICT-
10 OF-INTEREST REQUIREMENTS.—If—

11 “(1) a share of stock is transferred to an eligi-
12 ble person (as defined in section 1043(b)(1)) pursu-
13 ant to such person’s exercise of an option to which
14 this part applies, and

15 “(2) such share is disposed of by such person
16 pursuant to a certificate of divestiture (as defined in
17 section 1043(b)(2)),

18 such disposition shall be treated as meeting the require-
19 ments of section 422(a)(1) or 423(a)(1), whichever is ap-
20 plicable.”

21 (b) EFFECTIVE DATE.—The amendment made by
22 this section shall apply to sales after the date of the enact-
23 ment of this Act.

1 **TITLE VI—WOMEN’S PENSION**
2 **PROTECTION**

3 **SEC. 600. SHORT TITLE.**

4 This title may be cited as the “Women’s Pension Pro-
5 tection Act of 2004”.

6 **Subtitle A—Study of Spousal Con-**
7 **sent for Distributions From De-**
8 **defined Contribution Plans**

9 **SEC. 601. JOINT STUDY OF APPLICATION OF SPOUSAL CON-**
10 **SENT RULES TO DEFINED CONTRIBUTION**
11 **PLANS.**

12 (a) **STUDY.**—The Secretary of Labor and the Sec-
13 retary of the Treasury shall jointly conduct a study of the
14 feasibility and desirability of extending the application of
15 the requirements of section 205 of the Employee Retire-
16 ment Income Security Act of 1974 and sections
17 401(a)(11) and 417 of the Internal Revenue Code of 1986
18 (relating to spousal consent requirements) to defined con-
19 tribution plans to which such requirements do not apply.
20 Such study shall include consideration of—

21 (1) any modifications of such requirements that
22 are necessary to apply such requirements to such
23 plans, and

1 (2) the feasibility of providing notice and spousal
2 al consent in 1 or more electronic forms that are ca-
3 pable of authentication.

4 (b) REPORT.—Not later than 2 years after the date
5 of the enactment of this Act, the Secretaries shall report
6 the results of the study, together with any recommenda-
7 tions for legislative changes, to the Committees on Ways
8 and Means and Education and the Workforce of the
9 House of Representatives and the Committees on Finance
10 and Health, Education, Labor, and Pensions of the Sen-
11 ate.

12 **Subtitle B—Division of Pension** 13 **Benefits Upon Divorce**

14 **SEC. 611. REGULATIONS ON TIME AND ORDER OF**
15 **ISSUANCE OF DOMESTIC RELATIONS OR-**
16 **DERS.**

17 Not later than 1 year after the date of the enactment
18 of this Act, the Secretary of Labor shall issue regulations
19 under section 206(d)(3) of the Employee Retirement Secu-
20 rity Act of 1974 and section 414(p) of the Internal Rev-
21 enue Code of 1986 which clarify that—

22 (1) a domestic relations order otherwise meet-
23 ing the requirements to be a qualified domestic rela-
24 tions order, including the requirements of section
25 206(d)(3)(D) of such Act and section 414(p)(3) of

1 such Code, shall not fail to be treated as a qualified
 2 domestic relations order solely because—

3 (A) the order is issued after, or revises, an-
 4 other domestic relations order or qualified do-
 5 mestic relations order; or

6 (B) of the time at which it is issued; and

7 (2) any order described in paragraph (1) shall
 8 be subject to the same requirements and protections
 9 which apply to qualified domestic relations orders,
 10 including the provisions of section 206(d)(3)(H) of
 11 such Act and section 414(p)(7) of such Code.

12 **Subtitle C—Railroad Retirement**

13 **SEC. 621. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-** 14 **ROAD RETIREMENT ANNUITIES INDE-** 15 **PENDENT OF ACTUAL ENTITLEMENT OF EM-** 16 **PLOYEE.**

17 (a) IN GENERAL.—Section 2 of the Railroad Retire-
 18 ment Act of 1974 (45 U.S.C. 231a) is amended—

19 (1) in subsection (c)(4)(i), by striking “(A) is
 20 entitled to an annuity under subsection (a)(1) and
 21 (B)”;

22 (2) in subsection (e)(5), by striking “or di-
 23 vorced wife” the second place it appears.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect 1 year after the date of the
3 enactment of this Act.

4 **SEC. 622. EXTENSION OF TIER II RAILROAD RETIREMENT**
5 **BENEFITS TO SURVIVING FORMER SPOUSES**
6 **PURSUANT TO DIVORCE AGREEMENTS.**

7 (a) IN GENERAL.—Section 5 of the Railroad Retire-
8 ment Act of 1974 (45 U.S.C. 231d) is amended by adding
9 at the end the following:

10 “(d) Notwithstanding any other provision of law, the
11 payment of any portion of an annuity computed under sec-
12 tion 3(b) to a surviving former spouse in accordance with
13 a court decree of divorce, annulment, or legal separation
14 or the terms of any court-approved property settlement
15 incident to any such court decree shall not be terminated
16 upon the death of the individual who performed the service
17 with respect to which such annuity is so computed unless
18 such termination is otherwise required by the terms of
19 such court decree.”

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall take effect 1 year after the date of the
22 enactment of this Act.

1 **Subtitle D—Modifications of Joint**
2 **and Survivor Annuity Require-**
3 **ments**

4 **SEC. 631. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**
5 **NUITY OPTION.**

6 (a) AMENDMENTS TO ERISA.—

7 (1) ELECTION OF SURVIVOR ANNUITY.—Section
8 205(c)(1)(A) of the Employee Retirement Income
9 Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is
10 amended—

11 (A) in clause (i), by striking “, and” and
12 inserting a comma;

13 (B) by redesignating clause (ii) as clause
14 (iii); and

15 (C) by inserting after clause (i) the fol-
16 lowing:

17 “(ii) if the participant elects a waiver
18 under clause (i), may elect the qualified op-
19 tional survivor annuity at any time during the
20 applicable election period, and”.

21 (2) DEFINITION.—Section 205(d) of such Act
22 (29 U.S.C. 1055(d)) is amended—

23 (A) by inserting “(1)” after “(d)”;

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

4 (C) by adding at the end the following:

5 “(2)(A) For purposes of this section, the term ‘quali-
6 fied optional survivor annuity’ means an annuity—

7 “(i) for the life of the participant with a sur-
8 vivor annuity for the life of the spouse which is equal
9 to the applicable percentage of the amount of the an-
10 nuity which is payable during the joint lives of the
11 participant and the spouse, and

12 “(ii) which is the actuarial equivalent of a sin-
13 gle annuity for the life of the participant.

14 Such term also includes any annuity in a form having the
15 effect of an annuity described in the preceding sentence.

16 “(B)(i) For purposes of subparagraph (A), if the sur-
17 vivor annuity percentage—

18 “(I) is less than 75 percent, the applicable per-
19 centage is 75 percent, and

20 “(II) is greater than or equal to 75 percent, the
21 applicable percentage is 50 percent.

22 “(ii) For purposes of clause (i), the term ‘survivor
23 annuity percentage’ means the percentage which the sur-
24 vivor annuity under the plan’s qualified joint and survivor

1 annuity bears to the annuity payable during the joint lives
2 of the participant and the spouse.”

3 (3) NOTICE.—Section 205(c)(3)(A)(i) of such
4 Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-
5 serting “and of the qualified optional survivor annu-
6 ity” after “annuity”.

7 (b) AMENDMENTS TO INTERNAL REVENUE CODE.—

8 (1) ELECTION OF SURVIVOR ANNUITY.—Section
9 417(a)(1)(A) of the Internal Revenue Code of 1986
10 is amended—

11 (A) in clause (i), by striking “, and” and
12 inserting a comma;

13 (B) by redesignating clause (ii) as clause
14 (iii); and

15 (C) by inserting after clause (i) the fol-
16 lowing:

17 “(ii) if the participant elects a waiver
18 under clause (i), may elect the qualified op-
19 tional survivor annuity at any time during the
20 applicable election period, and”.

21 (2) DEFINITION.—Section 417 of such Code is
22 amended by adding at the end the following:

23 “(i) DEFINITION OF QUALIFIED OPTIONAL SUR-
24 VIVOR ANNUITY.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, the term ‘qualified optional survivor annuity’
3 means an annuity—

4 “(A) for the life of the participant with a
5 survivor annuity for the life of the spouse which
6 is equal to the applicable percentage of the
7 amount of the annuity which is payable during
8 the joint lives of the participant and the spouse,
9 and

10 “(B) which is the actuarial equivalent of a
11 single annuity for the life of the participant.

12 Such term also includes any annuity in a form hav-
13 ing the effect of an annuity described in the pre-
14 ceding sentence.

15 “(2) APPLICABLE PERCENTAGE.—

16 “(A) IN GENERAL.—For purposes of para-
17 graph (1), if the survivor annuity percentage—

18 “(i) is less than 75 percent, the appli-
19 cable percentage is 75 percent, and

20 “(ii) is greater than or equal to 75
21 percent, the applicable percentage is 50
22 percent.

23 “(B) SURVIVOR ANNUITY PERCENTAGE.—

24 For purposes of subparagraph (A), the term
25 ‘survivor annuity percentage’ means the per-

1 centage which the survivor annuity under the
2 plan’s qualified joint and survivor annuity bears
3 to the annuity payable during the joint lives of
4 the participant and the spouse.”

5 (3) NOTICE.—Section 417(a)(3)(A)(i) of such
6 Code is amended by inserting “and of the qualified
7 optional survivor annuity” after “annuity”.

8 (c) EFFECTIVE DATES.—

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

12 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
13 GAINED PLANS.—In the case of a plan maintained
14 pursuant to 1 or more collective bargaining agree-
15 ments between employee representatives and 1 or
16 more employers ratified on or before the date of the
17 enactment of this Act, the amendments made by this
18 section shall apply to the first plan year beginning
19 on or after the earlier of—

20 (A) the later of—

21 (i) January 1, 2005, or

22 (ii) the date on which the last of such
23 collective bargaining agreements termi-
24 nates (determined without regard to any

1 extension thereof after the date of enact-
2 ment of this Act), or

3 (B) January 1, 2006.

4 **TITLE VII—TAX COURT PENSION**
5 **AND COMPENSATION**

6 **SEC. 700. AMENDMENT OF 1986 CODE.**

7 Except as otherwise expressly provided, whenever in
8 this title an amendment or repeal is expressed in terms
9 of an amendment to, or repeal of, a section or other provi-
10 sion, the reference shall be considered to be made to a
11 section or other provision of the Internal Revenue Code
12 of 1986.

13 **SEC. 701. ANNUITIES FOR SURVIVORS OF TAX COURT**
14 **JUDGES WHO ARE ASSASSINATED.**

15 (a) **ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-**
16 **TION.**—Subsection (h) of section 7448 (relating to annu-
17 ities to surviving spouses and dependent children of
18 judges) is amended to read as follows:

19 “(h) **ENTITLEMENT TO ANNUITY.**—

20 “(1) **IN GENERAL.**—

21 “(A) **ANNUITY TO SURVIVING SPOUSE.**—If
22 a judge described in paragraph (2) is survived
23 by a surviving spouse but not by a dependent
24 child, there shall be paid to such surviving
25 spouse an annuity beginning with the day of the

1 death of the judge or following the surviving
2 spouse's attainment of the age of 50 years,
3 whichever is the later, in an amount computed
4 as provided in subsection (m).

5 “(B) ANNUITY TO CHILD.—If such a judge
6 is survived by a surviving spouse and a depend-
7 ent child or children, there shall be paid to such
8 surviving spouse an immediate annuity in an
9 amount computed as provided in subsection (m),
10 and there shall also be paid to or on behalf of
11 each such child an immediate annuity equal to
12 the lesser of—

13 “(i) 10 percent of the average annual
14 salary of such judge (determined in accord-
15 ance with subsection (m)), or

16 “(ii) 20 percent of such average an-
17 nual salary, divided by the number of such
18 children.

19 “(C) ANNUITY TO SURVIVING DEPENDENT
20 CHILDREN.—If such a judge leaves no surviving
21 spouse but leaves a surviving dependent child or
22 children, there shall be paid to or on behalf of
23 each such child an immediate annuity equal to
24 the lesser of—

1 “(i) 20 percent of the average annual
2 salary of such judge (determined in accord-
3 ance with subsection (m)), or

4 “(ii) 40 percent of such average an-
5 nual salary, divided by the number of such
6 children.

7 “(2) COVERED JUDGES.—Paragraph (1) applies
8 to any judge electing under subsection (b)—

9 “(A) who dies while a judge after having
10 rendered at least 5 years of civilian service com-
11 puted as prescribed in subsection (n), for the
12 last 5 years of which the salary deductions pro-
13 vided for by subsection (c)(1) or the deposits
14 required by subsection (d) have actually been
15 made or the salary deductions required by the
16 civil service retirement laws have actually been
17 made, or

18 “(B) who dies by assassination after hav-
19 ing rendered less than 5 years of civilian service
20 computed as prescribed in subsection (n) if, for
21 the period of such service, the salary deductions
22 provided for by subsection (c)(1) or the deposits
23 required by subsection (d) have actually been
24 made.

25 “(3) TERMINATION OF ANNUITY.—

1 “(A) IN THE CASE OF A SURVIVING
2 SPOUSE.—The annuity payable to a surviving
3 spouse under this subsection shall be terminable
4 upon such surviving spouse’s death or such sur-
5 viving spouse’s remarriage before attaining age
6 55.

7 “(B) IN THE CASE OF A CHILD.—The an-
8 nuity payable to a child under this subsection
9 shall be terminable upon (i) the child attaining
10 the age of 18 years, (ii) the child’s marriage, or
11 (iii) the child’s death, whichever first occurs, ex-
12 cept that if such child is incapable of self-sup-
13 port by reason of mental or physical disability
14 the child’s annuity shall be terminable only
15 upon death, marriage, or recovery from such
16 disability.

17 “(C) IN THE CASE OF A DEPENDENT
18 CHILD AFTER DEATH OF SURVIVING SPOUSE.—
19 In case of the death of a surviving spouse of a
20 judge leaving a dependent child or children of
21 the judge surviving such spouse, the annuity of
22 such child or children shall be recomputed and
23 paid as provided in paragraph (1)(C).

24 “(D) RECOMPUTATION.—In any case in
25 which the annuity of a dependent child is termi-

1 nated under this subsection, the annuities of
 2 any remaining dependent child or children,
 3 based upon the service of the same judge, shall
 4 be recomputed and paid as though the child
 5 whose annuity was so terminated had not sur-
 6 vived such judge.

7 “(4) SPECIAL RULE FOR ASSASSINATED
 8 JUDGES.—In the case of a survivor or survivors of
 9 a judge described in paragraph (2)(B), there shall be
 10 deducted from the annuities otherwise payable under
 11 this section an amount equal to—

12 “(A) the amount of salary deductions pro-
 13 vided for by subsection (c)(1) that would have
 14 been made if such deductions had been made
 15 for 5 years of civilian service computed as pre-
 16 scribed in subsection (n) before the judge’s
 17 death, reduced by

18 “(B) the amount of such salary deductions
 19 that were actually made before the date of the
 20 judge’s death.”

21 (b) DEFINITION OF ASSASSINATION.—Section
 22 7448(a) (relating to definitions) is amended by adding at
 23 the end the following new paragraph:

24 “(8) The terms ‘assassinated’ and ‘assassina-
 25 tion’ mean the killing of a judge that is motivated

1 by the performance by that judge of his or her offi-
2 cial duties.”

3 (c) DETERMINATION OF ASSASSINATION.—Sub-
4 section (i) of section 7448 is amended—

5 (1) by striking the subsection heading and in-
6 serting the following:

7 “(i) DETERMINATIONS BY CHIEF JUDGE.—

8 “(1) DEPENDENCY AND DISABILITY.—”,

9 (2) by moving the text 2 ems to the right, and

10 (3) by adding at the end the following new
11 paragraph:

12 “(2) ASSASSINATION.—The chief judge shall
13 determine whether the killing of a judge was an as-
14 sassination, subject to review only by the Tax Court.
15 The head of any Federal agency that investigates
16 the killing of a judge shall provide information to
17 the chief judge that would assist the chief judge in
18 making such a determination.”

19 (d) COMPUTATION OF ANNUITIES.—Subsection (m)
20 of section 7448 is amended—

21 (1) by striking the subsection heading and in-
22 serting the following:

23 “(m) COMPUTATION OF ANNUITIES.—

24 “(1) IN GENERAL.—”,

25 (2) by moving the text 2 ems to the right, and

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

3 “(2) ASSASSINATED JUDGES.—In the case of a
4 judge who is assassinated and who has served less
5 than 3 years, the annuity of the surviving spouse of
6 such judge shall be based upon the average annual
7 salary received by such judge for judicial service.”

8 (e) OTHER BENEFITS.—Section 7448 is amended by
9 adding at the end the following:

10 “(u) OTHER BENEFITS.—In the case of a judge who
11 is assassinated, an annuity shall be paid under this section
12 notwithstanding a survivor’s eligibility for or receipt of
13 benefits under chapter 81 of title 5, United States Code,
14 except that the annuity for which a surviving spouse is
15 eligible under this section shall be reduced to the extent
16 that the total benefits paid under this section and chapter
17 81 of that title for any year would exceed the current sal-
18 ary for that year of the office of the judge.”

19 **SEC. 702. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**
20 **JUDICIAL SURVIVOR ANNUITIES.**

21 (a) IN GENERAL.—Subsection (s) of section 7448
22 (relating to annuities to surviving spouses and dependent
23 children of judges) is amended to read as follows:

24 “(s) INCREASES IN SURVIVOR ANNUITIES.—Each
25 time that an increase is made under section 8340(b) of

1 title 5, United States Code, in annuities payable under
2 subchapter III of chapter 83 of that title, each annuity
3 payable from the survivors annuity fund under this section
4 shall be increased at the same time by the same percent-
5 age by which annuities are increased under such section
6 8340(b).”

7 (b) EFFECTIVE DATE.—The amendment made by
8 this section shall apply with respect to increases made
9 under section 8340(b) of title 5, United States Code, in
10 annuities payable under subchapter III of chapter 83 of
11 that title, taking effect after the date of the enactment
12 of this Act.

13 **SEC. 703. LIFE INSURANCE COVERAGE FOR TAX COURT**
14 **JUDGES.**

15 (a) IN GENERAL.—Section 7447 (relating to retire-
16 ment of judges) is amended by adding at the end the fol-
17 lowing new subsection:

18 “(j) LIFE INSURANCE COVERAGE.—For purposes of
19 chapter 87 of title 5, United States Code (relating to life
20 insurance), any individual who is serving as a judge of
21 the Tax Court or who is retired under this section is
22 deemed to be an employee who is continuing in active em-
23 ployment.”

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply to any individual serving as a judge

1 of the United States Tax Court or to any retired judge
2 of the United States Tax Court on the date of the enact-
3 ment of this Act.

4 **SEC. 704. COST OF LIFE INSURANCE COVERAGE FOR TAX**
5 **COURT JUDGES AGE 65 OR OVER.**

6 Section 7472 (relating to expenditures) is amended
7 by inserting after the first sentence the following new sen-
8 tence: “Notwithstanding any other provision of law, the
9 Tax Court is authorized to pay on behalf of its judges,
10 age 65 or over, any increase in the cost of Federal Em-
11 ployees’ Group Life Insurance imposed after April 24,
12 1999, including any expenses generated by such payments,
13 as authorized by the chief judge in a manner consistent
14 with such payments authorized by the Judicial Conference
15 of the United States pursuant to section 604(a)(5) of title
16 28, United States Code.”

17 **SEC. 705. MODIFICATION OF TIMING OF LUMP-SUM PAY-**
18 **MENT OF JUDGES’ ACCRUED ANNUAL LEAVE.**

19 (a) IN GENERAL.—Section 7443 (relating to mem-
20 bership of the Tax Court) is amended by adding at the
21 end the following new subsection:

22 “(h) LUMP-SUM PAYMENT OF JUDGES’ ACCRUED
23 ANNUAL LEAVE.—Notwithstanding the provisions of sec-
24 tions 5551 and 6301 of title 5, United States Code, when
25 an individual subject to the leave system provided in chap-

1 ter 63 of that title is appointed by the President to be
2 a judge of the Tax Court, the individual shall be entitled
3 to receive, upon appointment to the Tax Court, a lump-
4 sum payment from the Tax Court of the accumulated and
5 accrued current annual leave standing to the individual's
6 credit as certified by the agency from which the individual
7 resigned.”

8 (b) EFFECTIVE DATE.—The amendment made by
9 this section shall apply to any judge of the United States
10 Tax Court who has an outstanding leave balance on the
11 date of the enactment of this Act and to any individual
12 appointed by the President to serve as a judge of the
13 United States Tax Court after such date.

14 **SEC. 706. PARTICIPATION OF TAX COURT JUDGES IN THE**
15 **THRIFT SAVINGS PLAN.**

16 (a) IN GENERAL.—Section 7447 (relating to retire-
17 ment of judges), as amended by this Act, is amended by
18 adding at the end the following new subsection:

19 “(k) THRIFT SAVINGS PLAN.—

20 “(1) ELECTION TO CONTRIBUTE.—

21 “(A) IN GENERAL.—A judge of the Tax
22 Court may elect to contribute to the Thrift Sav-
23 ings Fund established by section 8437 of title
24 5, United States Code.

1 “(B) PERIOD OF ELECTION.—An election
2 may be made under this paragraph only during
3 a period provided under section 8432(b) of title
4 5, United States Code, for individuals subject to
5 chapter 84 of such title.

6 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—
7 Except as otherwise provided in this subsection, the
8 provisions of subchapters III and VII of chapter 84
9 of title 5, United States Code, shall apply with re-
10 spect to a judge who makes an election under para-
11 graph (1).

12 “(3) SPECIAL RULES.—

13 “(A) AMOUNT CONTRIBUTED.—The
14 amount contributed by a judge to the Thrift
15 Savings Fund in any pay period shall not ex-
16 ceed the maximum percentage of such judge’s
17 basic pay for such period as allowable under
18 section 8440f of title 5, United States Code.
19 Basic pay does not include any retired pay paid
20 pursuant to this section.

21 “(B) CONTRIBUTIONS FOR BENEFIT OF
22 JUDGE.—No contributions may be made for the
23 benefit of a judge under section 8432(c) of title
24 5, United States Code.

1 “(C) APPLICABILITY OF SECTION 8433(b)
2 OF TITLE 5 WHETHER OR NOT JUDGE RE-
3 TIRES.—Section 8433(b) of title 5, United
4 States Code, applies with respect to a judge
5 who makes an election under paragraph (1) and
6 who either—

7 “(i) retires under subsection (b), or

8 “(ii) ceases to serve as a judge of the
9 Tax Court but does not retire under sub-
10 section (b).

11 Retirement under subsection (b) is a separation
12 from service for purposes of subchapters III
13 and VII of chapter 84 of that title.

14 “(D) APPLICABILITY OF SECTION
15 8351(b)(5) OF TITLE 5.—The provisions of sec-
16 tion 8351(b)(5) of title 5, United States Code,
17 shall apply with respect to a judge who makes
18 an election under paragraph (1).

19 “(E) EXCEPTION.—Notwithstanding sub-
20 paragraph (C), if any judge retires under this
21 section, or resigns without having met the age
22 and service requirements set forth under sub-
23 section (b)(2), and such judge’s nonforfeitable
24 account balance is less than an amount that the
25 Executive Director of the Office of Personnel

1 Management prescribes by regulation, the Exec-
2utive Director shall pay the nonforfeitable ac-
3count balance to the participant in a single pay-
4ment.”

5 (b) EFFECTIVE DATE.—The amendment made by
6 this section shall take effect on the date of the enactment
7 of this Act, except that United States Tax Court judges
8 may only begin to participate in the Thrift Savings Plan
9 at the next open season beginning after such date.

10 **SEC. 707. EXEMPTION OF TEACHING COMPENSATION OF**
11 **RETIRED JUDGES FROM LIMITATION ON**
12 **OUTSIDE EARNED INCOME.**

13 (a) IN GENERAL.—Section 7447 (relating to retire-
14ment of judges), as amended by this Act, is amended by
15 adding at the end the following new subsection:

16 “(1) TEACHING COMPENSATION OF RETIRED
17 JUDGES.—For purposes of the limitation under section
18 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.
19 App.), any compensation for teaching approved under sec-
20 tion 502(a)(5) of such Act shall not be treated as outside
21 earned income when received by a judge of the Tax Court
22 who has retired under subsection (b) for teaching per-
23 formed during any calendar year for which such a judge
24 has met the requirements of subsection (c), as certified
25 by the chief judge of the Tax Court.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to any individual serving as a re-
3 tired judge of the United States Tax Court on or after
4 the date of the enactment of this Act.

5 **SEC. 708. GENERAL PROVISIONS RELATING TO MAG-**
6 **ISTRATE JUDGES OF THE TAX COURT.**

7 (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO
8 MAGISTRATE JUDGE OF THE TAX COURT.—The heading
9 of section 7443A is amended to read as follows:

10 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

11 (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-
12 section (a) of section 7443A is amended to read as follows:

13 “(a) APPOINTMENT, TENURE, AND REMOVAL.—

14 “(1) APPOINTMENT.—The chief judge may,
15 from time to time, appoint and reappoint magistrate
16 judges of the Tax Court for a term of 8 years. The
17 magistrate judges of the Tax Court shall proceed
18 under such rules as may be promulgated by the Tax
19 Court.

20 “(2) REMOVAL.—Removal of a magistrate
21 judge of the Tax Court during the term for which
22 he or she is appointed shall be only for incom-
23 petency, misconduct, neglect of duty, or physical or
24 mental disability, but the office of a magistrate
25 judge of the Tax Court shall be terminated if the

1 judges of the Tax Court determine that the services
2 performed by the magistrate judge of the Tax Court
3 are no longer needed. Removal shall not occur unless
4 a majority of all the judges of the Tax Court concur
5 in the order of removal. Before any order of removal
6 shall be entered, a full specification of the charges
7 shall be furnished to the magistrate judge of the Tax
8 Court, and he or she shall be accorded by the judges
9 of the Tax Court an opportunity to be heard on the
10 charges.”

11 (c) SALARY.—Section 7443A(d) (relating to salary)
12 is amended by striking “90” and inserting “92”.

13 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-
14 SIONS.—Section 7443A is amended by adding at the end
15 the following new subsection:

16 “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-
17 SIONS.—

18 “(1) IN GENERAL.—A magistrate judge of the
19 Tax Court appointed under this section shall be ex-
20 empt from the provisions of subchapter I of chapter
21 63 of title 5, United States Code.

22 “(2) TREATMENT OF UNUSED LEAVE.—

23 “(A) AFTER SERVICE AS MAGISTRATE
24 JUDGE.—If an individual who is exempted
25 under paragraph (1) from the subchapter re-

1 ferred to in such paragraph was previously sub-
2 ject to such subchapter and, without a break in
3 service, again becomes subject to such sub-
4 chapter on completion of the individual's service
5 as a magistrate judge, the unused annual leave
6 and sick leave standing to the individual's cred-
7 it when such individual was exempted from this
8 subchapter is deemed to have remained to the
9 individual's credit.

10 “(B) COMPUTATION OF ANNUITY.—In
11 computing an annuity under section 8339 of
12 title 5, United States Code, the total service of
13 an individual specified in subparagraph (A) who
14 retires on an immediate annuity or dies leaving
15 a survivor or survivors entitled to an annuity
16 includes, without regard to the limitations im-
17 posed by subsection (f) of such section 8339,
18 the days of unused sick leave standing to the
19 individual's credit when such individual was ex-
20 empted from subchapter I of chapter 63 of title
21 5, United States Code, except that these days
22 will not be counted in determining average pay
23 or annuity eligibility.

24 “(C) LUMP SUM PAYMENT.—Any accumu-
25 lated and current accrued annual leave or vaca-

1 tion balances credited to a magistrate judge as
2 of the date of the enactment of this subsection
3 shall be paid in a lump sum at the time of separa-
4 tion from service pursuant to the provisions
5 and restrictions set forth in section 5551 of title
6 5, United States Code, and related provisions re-
7 ferred to in such section.”

8 (e) CONFORMING AMENDMENTS.—

9 (1) The heading of subsection (b) of section
10 7443A is amended by striking “SPECIAL TRIAL
11 JUDGES” and inserting “MAGISTRATE JUDGES OF
12 THE TAX COURT”.

13 (2) Section 7443A(b) is amended by striking
14 “special trial judges of the court” and inserting
15 “magistrate judges of the Tax Court”.

16 (3) Subsections (c) and (d) of section 7443A
17 are amended by striking “special trial judge” and
18 inserting “magistrate judge of the Tax Court” each
19 place it appears.

20 (4) Section 7443A(e) is amended by striking
21 “special trial judges” and inserting “magistrate
22 judges of the Tax Court”.

23 (5) Section 7456(a) is amended by striking
24 “special trial judge” each place it appears and in-
25 serting “magistrate judge”.

1 (6) Subsection (c) of section 7471 is amend-
2 ed—

3 (A) by striking the subsection heading and
4 inserting “MAGISTRATE JUDGES OF THE TAX
5 COURT.—”, and

6 (B) by striking “special trial judges” and
7 inserting “magistrate judges”.

8 **SEC. 709. ANNUITIES TO SURVIVING SPOUSES AND DE-**
9 **PENDENT CHILDREN OF MAGISTRATE**
10 **JUDGES OF THE TAX COURT.**

11 (a) DEFINITIONS.—Section 7448(a) (relating to defi-
12 nitions), as amended by this Act, is amended by redesignig-
13 nating paragraphs (5), (6), (7), and (8) as paragraphs (7),
14 (8), (9), and (10), respectively, and by inserting after
15 paragraph (4) the following new paragraphs:

16 “(5) The term ‘magistrate judge’ means a judi-
17 cial officer appointed pursuant to section 7443A, in-
18 cluding any individual receiving an annuity under
19 section 7443B, or chapters 83 or 84, as the case
20 may be, of title 5, United States Code, whether or
21 not performing judicial duties under section 7443C.

22 “(6) The term ‘magistrate judge’s salary’
23 means the salary of a magistrate judge received
24 under section 7443A(d), any amount received as an
25 annuity under section 7443B, or chapters 83 or 84,

1 as the case may be, of title 5, United States Code,
2 and compensation received under section 7443C.”

3 (b) ELECTION.—Subsection (b) of section 7448 (re-
4 lating to annuities to surviving spouses and dependent
5 children of judges) is amended—

6 (1) by striking the subsection heading and in-
7 serting the following:

8 “(b) ELECTION.—

9 “(1) JUDGES.—”,

10 (2) by moving the text 2 ems to the right, and

11 (3) by adding at the end the following new
12 paragraph:

13 “(2) MAGISTRATE JUDGES.—Any magistrate
14 judge may by written election filed with the chief
15 judge bring himself or herself within the purview of
16 this section. Such election shall be filed not later
17 than the later of 6 months after—

18 “(A) 6 months after the date of the enact-
19 ment of this paragraph,

20 “(B) the date the judge takes office, or

21 “(C) the date the judge marries.”

22 (c) CONFORMING AMENDMENTS.—

23 (1) The heading of section 7448 is amended by
24 inserting “**AND MAGISTRATE JUDGES**” after
25 “**JUDGES**”.

1 (2) The item relating to section 7448 in the
2 table of sections for part I of subchapter C of chap-
3 ter 76 is amended by inserting “and magistrate
4 judges” after “judges”.

5 (3) Subsections (c)(1), (d), (f), (g), (h), (j),
6 (m), (n), and (u) of section 7448, as amended by
7 this Act, are each amended—

8 (A) by inserting “or magistrate judge”
9 after “judge” each place it appears other than
10 in the phrase “chief judge”, and

11 (B) by inserting “or magistrate judge’s”
12 after “judge’s” each place it appears.

13 (4) Section 7448(c) is amended—

14 (A) in paragraph (1), by striking “Tax
15 Court judges” and inserting “Tax Court judi-
16 cial officers”,

17 (B) in paragraph (2)—

18 (i) in subparagraph (A), by inserting
19 “and section 7443A(d)” after “(a)(4)”,
20 and

21 (ii) in subparagraph (B), by striking
22 “subsection (a)(4)” and inserting “sub-
23 sections (a)(4) and (a)(6)”.

24 (5) Section 7448(g) is amended by inserting
25 “or section 7443B” after “section 7447” each place

1 it appears, and by inserting “or an annuity” after
2 “retired pay”.

3 (6) Section 7448(j)(1) is amended—

4 (A) in subparagraph (A), by striking
5 “service or retired” and inserting “service, re-
6 tired”, and by inserting “, or receiving any an-
7 nuity under section 7443B or chapters 83 or 84
8 of title 5, United States Code,” after “section
9 7447”, and

10 (B) in the last sentence, by striking “sub-
11 sections (a) (6) and (7)” and inserting “para-
12 graphs (8) and (9) of subsection (a)”.

13 (7) Section 7448(m)(1), as amended by this
14 Act, is amended—

15 (A) by inserting “or any annuity under
16 section 7443B or chapters 83 or 84 of title 5,
17 United States Code” after “7447(d)”, and

18 (B) by inserting “or 7443B(m)(1)(B) after
19 “7447(f)(4)”.

20 (8) Section 7448(n) is amended by inserting
21 “his years of service pursuant to any appointment
22 under section 7443A,” after “of the Tax Court,”.

23 (9) Section 3121(b)(5)(E) is amended by in-
24 serting “or magistrate judge” before “of the United
25 States Tax Court”.

1 such magistrate judge's lifetime, an annuity equal to that
2 portion of the salary being received at the time the mag-
3 istrate judge leaves office which the aggregate number of
4 years of service, not to exceed 14, bears to 14, if—

5 “(1) such magistrate judge has served at least
6 1 full term as a magistrate judge, and

7 “(2) not earlier than 9 months before the date
8 on which the term of office of such magistrate judge
9 expires, and not later than 6 months before such
10 date, such magistrate judge notified the chief judge
11 of the Tax Court in writing that such magistrate
12 judge was willing to accept reappointment to the po-
13 sition in which such magistrate judge was serving.

14 “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate
15 judge of the Tax Court to whom this section applies and
16 who retires after serving at least 8 years, whether continu-
17 ously or otherwise, as such a magistrate judge shall, sub-
18 ject to subsection (f), be entitled to receive, upon attaining
19 the age of 65 years and during the remainder of the mag-
20 istrate judge's lifetime, an annuity equal to that portion
21 of the salary being received at the time the magistrate
22 judge leaves office which the aggregate number of years
23 of service, not to exceed 14, bears to 14. Such annuity
24 shall be reduced by $\frac{1}{6}$ of 1 percent for each full month
25 such magistrate judge was under the age of 65 at the time

1 the magistrate judge left office, except that such reduction
2 shall not exceed 20 percent.

3 “(d) RETIREMENT FOR DISABILITY.—A magistrate
4 judge of the Tax Court to whom this section applies, who
5 has served at least 5 years, whether continuously or other-
6 wise, as such a magistrate judge and who retires or is re-
7 moved from office upon the sole ground of mental or phys-
8 ical disability shall, subject to subsection (f), be entitled
9 to receive, during the remainder of the magistrate judge’s
10 lifetime, an annuity equal to 40 percent of the salary being
11 received at the time of retirement or removal or, in the
12 case of a magistrate judge who has served for at least 10
13 years, an amount equal to that proportion of the salary
14 being received at the time of retirement or removal which
15 the aggregate number of years of service, not to exceed
16 14, bears to 14.

17 “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate
18 judge of the Tax Court who is entitled to an annuity under
19 this section is also entitled to a cost-of-living adjustment
20 in such annuity, calculated and payable in the same man-
21 ner as adjustments under section 8340(b) of title 5,
22 United States Code, except that any such annuity, as in-
23 creased under this subsection, may not exceed the salary
24 then payable for the position from which the magistrate
25 judge retired or was removed.

1 “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-
2 ITIES.—

3 “(1) IN GENERAL.—A magistrate judge of the
4 Tax Court shall be entitled to an annuity under this
5 section if the magistrate judge elects an annuity
6 under this section by notifying the chief judge of the
7 Tax Court not later than the later of—

8 “(A) 5 years after the magistrate judge of
9 the Tax Court begins judicial service, or

10 “(B) 5 years after the date of the enact-
11 ment of this subsection.

12 Such notice shall be given in accordance with proce-
13 dures prescribed by the Tax Court.

14 “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—
15 A magistrate judge who elects to receive an annuity
16 under this section shall not be entitled to receive—

17 “(A) any annuity to which such magistrate
18 judge would otherwise have been entitled under
19 subchapter III of chapter 83, or under chapter
20 84 (except for subchapters III and VII), of title
21 5, United States Code, for service performed as
22 a magistrate or otherwise,

23 “(B) an annuity or salary in senior status
24 or retirement under section 371 or 372 of title
25 28, United States Code,

1 “(C) retired pay under section 7447, or

2 “(D) retired pay under section 7296 of
3 title 38, United States Code.

4 “(3) COORDINATION WITH TITLE 5.—A mag-
5 istrate judge of the Tax Court who elects to receive
6 an annuity under this section—

7 “(A) shall not be subject to deductions and
8 contributions otherwise required by section
9 8334(a) of title 5, United States Code,

10 “(B) shall be excluded from the operation
11 of chapter 84 (other than subchapters III and
12 VII) of such title 5, and

13 “(C) is entitled to a lump-sum credit under
14 section 8342(a) or 8424 of such title 5, as the
15 case may be.

16 “(g) CALCULATION OF SERVICE.—For purposes of
17 calculating an annuity under this section—

18 “(1) service as a magistrate judge of the Tax
19 Court to whom this section applies may be credited,
20 and

21 “(2) each month of service shall be credited as
22 $\frac{1}{12}$ of a year, and the fractional part of any month
23 shall not be credited.

24 “(h) COVERED POSITIONS AND SERVICE.—This sec-
25 tion applies to any magistrate judge of the Tax Court or

1 special trial judge of the Tax Court appointed under this
2 subchapter, but only with respect to service as such a mag-
3 istrate judge or special trial judge after a date not earlier
4 than 9½ years before the date of the enactment of this
5 subsection.

6 “(i) PAYMENTS PURSUANT TO COURT ORDER.—

7 “(1) IN GENERAL.—Payments under this sec-
8 tion which would otherwise be made to a magistrate
9 judge of the Tax Court based upon his or her service
10 shall be paid (in whole or in part) by the chief judge
11 of the Tax Court to another person if and to the ex-
12 tent expressly provided for in the terms of any court
13 decree of divorce, annulment, or legal separation, or
14 the terms of any court order or court-approved prop-
15 erty settlement agreement incident to any court de-
16 cree of divorce, annulment, or legal separation. Any
17 payment under this paragraph to a person bars re-
18 covery by any other person.

19 “(2) REQUIREMENTS FOR PAYMENT.—Para-
20 graph (1) shall apply only to payments made by the
21 chief judge of the Tax Court after the date of re-
22 ceipt by the chief judge of written notice of such de-
23 cree, order, or agreement, and such additional infor-
24 mation as the chief judge may prescribe.

1 “(3) COURT DEFINED.—For purposes of this
2 subsection, the term ‘court’ means any court of any
3 State, the District of Columbia, the Commonwealth
4 of Puerto Rico, Guam, the Northern Mariana Is-
5 lands, or the Virgin Islands, and any Indian tribal
6 court or courts of Indian offense.

7 “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-
8 ITS.—

9 “(1) DEDUCTIONS.—Beginning with the next
10 pay period after the chief judge of the Tax Court re-
11 ceives a notice under subsection (f) that a mag-
12 istrate judge of the Tax Court has elected an annu-
13 ity under this section, the chief judge shall deduct
14 and withhold 1 percent of the salary of such mag-
15 istrate judge. Amounts shall be so deducted and
16 withheld in a manner determined by the chief judge.
17 Amounts deducted and withheld under this sub-
18 section shall be deposited in the Treasury of the
19 United States to the credit of the Tax Court Judi-
20 cial Officers’ Retirement Fund. Deductions under
21 this subsection from the salary of a magistrate judge
22 shall terminate upon the retirement of the mag-
23 istrate judge or upon completion of 14 years of serv-
24 ice for which contributions under this section have
25 been made, whether continuously or otherwise, as

1 calculated under subsection (g), whichever occurs
2 first.

3 “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF
4 CLAIMS.—Each magistrate judge of the Tax Court
5 who makes an election under subsection (f) shall be
6 deemed to consent and agree to the deductions from
7 salary which are made under paragraph (1). Pay-
8 ment of such salary less such deductions (and any
9 deductions made under section 7448) is a full and
10 complete discharge and acquittance of all claims and
11 demands for all services rendered by such magistrate
12 judge during the period covered by such payment,
13 except the right to those benefits to which the mag-
14 istrate judge is entitled under this section (and sec-
15 tion 7448).

16 “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-
17 istrate judge of the Tax Court who makes an election
18 under subsection (f) may deposit, for service performed
19 before such election for which contributions may be made
20 under this section, an amount equal to 1 percent of the
21 salary received for that service. Credit for any period cov-
22 ered by that service may not be allowed for purposes of
23 an annuity under this section until a deposit under this
24 subsection has been made for that period.

1 “(1) INDIVIDUAL RETIREMENT RECORDS.—The
2 amounts deducted and withheld under subsection (j), and
3 the amounts deposited under subsection (k), shall be cred-
4 ited to individual accounts in the name of each magistrate
5 judge of the Tax Court from whom such amounts are re-
6 ceived, for credit to the Tax Court Judicial Officers’ Re-
7 tirement Fund.

8 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

9 “(1) 1-YEAR FORFEITURE FOR FAILURE TO
10 PERFORM JUDICIAL DUTIES.—Subject to paragraph
11 (3), any magistrate judge of the Tax Court who re-
12 tires under this section and who fails to perform ju-
13 dicial duties required of such individual by section
14 7443C shall forfeit all rights to an annuity under
15 this section for a 1-year period which begins on the
16 1st day on which such individual fails to perform
17 such duties.

18 “(2) PERMANENT FORFEITURE OF RETIRED
19 PAY WHERE CERTAIN NON-GOVERNMENT SERVICES
20 PERFORMED.—Subject to paragraph (3), any mag-
21 istrate judge of the Tax Court who retires under this
22 section and who thereafter performs (or supervises
23 or directs the performance of) legal or accounting
24 services in the field of Federal taxation for the indi-
25 vidual’s client, the individual’s employer, or any of

1 such employer’s clients, shall forfeit all rights to an
2 annuity under this section for all periods beginning
3 on or after the first day on which the individual per-
4 forms (or supervises or directs the performance of)
5 such services. The preceding sentence shall not apply
6 to any civil office or employment under the Govern-
7 ment of the United States.

8 “(3) FORFEITURES NOT TO APPLY WHERE IN-
9 DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-
10 ITY.—

11 “(A) IN GENERAL.—If a magistrate judge
12 of the Tax Court makes an election under this
13 paragraph—

14 “(i) paragraphs (1) and (2) (and sec-
15 tion 7443C) shall not apply to such mag-
16 istrate judge beginning on the date such
17 election takes effect, and

18 “(ii) the annuity payable under this
19 section to such magistrate judge, for peri-
20 ods beginning on or after the date such
21 election takes effect, shall be equal to the
22 annuity to which such magistrate judge is
23 entitled on the day before such effective
24 date.

1 “(B) ELECTION REQUIREMENTS.—An elec-
2 tion under subparagraph (A)—

3 “(i) may be made by a magistrate
4 judge of the Tax Court eligible for retire-
5 ment under this section, and

6 “(ii) shall be filed with the chief judge
7 of the Tax Court.

8 Such an election, once it takes effect, shall be
9 irrevocable.

10 “(C) EFFECTIVE DATE OF ELECTION.—
11 Any election under subparagraph (A) shall take
12 effect on the first day of the first month fol-
13 lowing the month in which the election is made.

14 “(4) ACCEPTING OTHER EMPLOYMENT.—Any
15 magistrate judge of the Tax Court who retires under
16 this section and thereafter accepts compensation for
17 civil office or employment under the United States
18 Government (other than for the performance of
19 functions as a magistrate judge of the Tax Court
20 under section 7443C) shall forfeit all rights to an
21 annuity under this section for the period for which
22 such compensation is received. For purposes of this
23 paragraph, the term ‘compensation’ includes retired
24 pay or salary received in retired status.

25 “(n) LUMP-SUM PAYMENTS.—

1 “(1) ELIGIBILITY.—

2 “(A) IN GENERAL.—Subject to paragraph
3 (2), an individual who serves as a magistrate
4 judge of the Tax Court and—

5 “(i) who leaves office and is not re-
6 appointed as a magistrate judge of the Tax
7 Court for at least 31 consecutive days,

8 “(ii) who files an application with the
9 chief judge of the Tax Court for payment
10 of a lump-sum credit,

11 “(iii) is not serving as a magistrate
12 judge of the Tax Court at the time of fil-
13 ing of the application, and

14 “(iv) will not become eligible to re-
15 ceive an annuity under this section within
16 31 days after filing the application,

17 is entitled to be paid the lump-sum credit. Pay-
18 ment of the lump-sum credit voids all rights to
19 an annuity under this section based on the serv-
20 ice on which the lump-sum credit is based, until
21 that individual resumes office as a magistrate
22 judge of the Tax Court.

23 “(B) PAYMENT TO SURVIVORS.—Lump-
24 sum benefits authorized by subparagraphs (C),
25 (D), and (E) of this paragraph shall be paid to

1 the person or persons surviving the magistrate
2 judge of the Tax Court and alive on the date
3 title to the payment arises, in the order of pre-
4 cedence set forth in subsection (o) of section 376
5 of title 28, United States Code, and in accord-
6 ance with the last 2 sentences of paragraph (1)
7 of that subsection. For purposes of the pre-
8 ceeding sentence, the term ‘judicial official’ as
9 used in subsection (o) of such section 376 shall
10 be deemed to mean ‘magistrate judge of the
11 Tax Court’ and the terms ‘Administrative Of-
12 fice of the United States Courts’ and ‘Director
13 of the Administrative Office of the United
14 States Courts’ shall be deemed to mean ‘chief
15 judge of the Tax Court’.

16 “(C) PAYMENT UPON DEATH OF JUDGE
17 BEFORE RECEIPT OF ANNUITY.—If a mag-
18 istrate judge of the Tax Court dies before re-
19 ceiving an annuity under this section, the lump-
20 sum credit shall be paid.

21 “(D) PAYMENT OF ANNUITY REMAIN-
22 DER.—If all annuity rights under this section
23 based on the service of a deceased magistrate
24 judge of the Tax Court terminate before the

1 total annuity paid equals the lump-sum credit,
2 the difference shall be paid.

3 “(E) PAYMENT UPON DEATH OF JUDGE
4 DURING RECEIPT OF ANNUITY.—If a magistrate
5 judge of the Tax Court who is receiving an an-
6 nuity under this section dies, any accrued annu-
7 ity benefits remaining unpaid shall be paid.

8 “(F) PAYMENT UPON TERMINATION.—Any
9 accrued annuity benefits remaining unpaid on
10 the termination, except by death, of the annuity
11 of a magistrate judge of the Tax Court shall be
12 paid to that individual.

13 “(G) PAYMENT UPON ACCEPTING OTHER
14 EMPLOYMENT.—Subject to paragraph (2), a
15 magistrate judge of the Tax Court who forfeits
16 rights to an annuity under subsection (m)(4)
17 before the total annuity paid equals the lump-
18 sum credit shall be entitled to be paid the dif-
19 ference if the magistrate judge of the Tax
20 Court files an application with the chief judge
21 of the Tax Court for payment of that dif-
22 ference. A payment under this subparagraph
23 voids all rights to an annuity on which the pay-
24 ment is based.

25 “(2) SPOUSES AND FORMER SPOUSES.—

1 “(A) IN GENERAL.—Payment of the lump-
2 sum credit under paragraph (1)(A) or a pay-
3 ment under paragraph (1)(G)—

4 “(i) may be made only if any current
5 spouse and any former spouse of the mag-
6 istrate judge of the Tax Court are notified
7 of the magistrate judge’s application, and

8 “(ii) shall be subject to the terms of
9 a court decree of divorce, annulment, or
10 legal separation, or any court or court ap-
11 proved property settlement agreement inci-
12 dent to such decree, if—

13 “(I) the decree, order, or agree-
14 ment expressly relates to any portion
15 of the lump-sum credit or other pay-
16 ment involved, and

17 “(II) payment of the lump-sum
18 credit or other payment would extin-
19 guish entitlement of the magistrate
20 judge’s spouse or former spouse to
21 any portion of an annuity under sub-
22 section (i).

23 “(B) NOTIFICATION.—Notification of a
24 spouse or former spouse under this paragraph
25 shall be made in accordance with such proce-

1 dures as the chief judge of the Tax Court shall
2 prescribe. The chief judge may provide under
3 such procedures that subparagraph (A)(i) may
4 be waived with respect to a spouse or former
5 spouse if the magistrate judge establishes to the
6 satisfaction of the chief judge that the where-
7 abouts of such spouse or former spouse cannot
8 be determined.

9 “(C) RESOLUTION OF 2 OR MORE OR-
10 DERS.—The chief judge shall prescribe proce-
11 dures under which this paragraph shall be ap-
12 plied in any case in which the chief judge re-
13 ceives 2 or more orders or decrees described in
14 subparagraph (A).

15 “(3) DEFINITION.—For purposes of this sub-
16 section, the term ‘lump-sum credit’ means the
17 unrefunded amount consisting of—

18 “(A) retirement deductions made under
19 this section from the salary of a magistrate
20 judge of the Tax Court,

21 “(B) amounts deposited under subsection
22 (k) by a magistrate judge of the Tax Court cov-
23 ering earlier service, and

24 “(C) interest on the deductions and depos-
25 its which, for any calendar year, shall be equal

1 to the overall average yield to the Tax Court
2 Judicial Officers' Retirement Fund during the
3 preceding fiscal year from all obligations pur-
4 chased by the Secretary during such fiscal year
5 under subsection (o); but does not include inter-
6 est—

7 “(i) if the service covered thereby ag-
8 gregates 1 year or less, or

9 “(ii) for the fractional part of a
10 month in the total service.

11 “(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT
12 FUND.—

13 “(1) ESTABLISHMENT.—There is established in
14 the Treasury a fund which shall be known as the
15 ‘Tax Court Judicial Officers' Retirement Fund’.
16 Amounts in the Fund are authorized to be appro-
17 priated for the payment of annuities, refunds, and
18 other payments under this section.

19 “(2) INVESTMENT OF FUND.—The Secretary
20 shall invest, in interest bearing securities of the
21 United States, such currently available portions of
22 the Tax Court Judicial Officers' Retirement Fund as
23 are not immediately required for payments from the
24 Fund. The income derived from these investments
25 constitutes a part of the Fund.

1 “(3) UNFUNDED LIABILITY.—

2 “(A) IN GENERAL.—There are authorized
3 to be appropriated to the Tax Court Judicial
4 Officers’ Retirement Fund amounts required to
5 reduce to zero the unfunded liability of the
6 Fund.

7 “(B) UNFUNDED LIABILITY.—For pur-
8 poses of subparagraph (A), the term ‘unfunded
9 liability’ means the estimated excess, deter-
10 mined on an annual basis in accordance with
11 the provisions of section 9503 of title 31,
12 United States Code, of the present value of all
13 benefits payable from the Tax Court Judicial
14 Officers’ Retirement Fund over the sum of—

15 “(i) the present value of deductions to
16 be withheld under this section from the fu-
17 ture basic pay of magistrate judges of the
18 Tax Court, plus

19 “(ii) the balance in the Fund as of the
20 date the unfunded liability is determined.

21 “(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

22 “(1) ELECTION TO CONTRIBUTE.—

23 “(A) IN GENERAL.—A magistrate judge of
24 the Tax Court who elects to receive an annuity
25 under this section or under section 711 of the

1 National Employee Savings and Trust Equity
2 Guarantee Act of 2004 may elect to contribute
3 an amount of such individual's basic pay to the
4 Thrift Savings Fund established by section
5 8437 of title 5, United States Code.

6 “(B) PERIOD OF ELECTION.—An election
7 may be made under this paragraph only during
8 a period provided under section 8432(b) of title
9 5, United States Code, for individuals subject to
10 chapter 84 of such title.

11 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—
12 Except as otherwise provided in this subsection, the
13 provisions of subchapters III and VII of chapter 84
14 of title 5, United States Code, shall apply with re-
15 spect to a magistrate judge who makes an election
16 under paragraph (1).

17 “(3) SPECIAL RULES.—

18 “(A) AMOUNT CONTRIBUTED.—The
19 amount contributed by a magistrate judge to
20 the Thrift Savings Fund in any pay period shall
21 not exceed the maximum percentage of such
22 judge's basic pay for such pay period as allow-
23 able under section 8440f of title 5, United
24 States Code.

1 “(B) CONTRIBUTIONS FOR BENEFIT OF
2 JUDGE.—No contributions may be made for the
3 benefit of a magistrate judge under section
4 8432(c) of title 5, United States Code.

5 “(C) APPLICABILITY OF SECTION 8433(b)
6 OF TITLE 5.—Section 8433(b) of title 5, United
7 States Code, applies with respect to a mag-
8 istrate judge who makes an election under para-
9 graph (1) and—

10 “(i) who retires entitled to an imme-
11 diate annuity under this section (including
12 a disability annuity under subsection (d) of
13 this section) or section 711 of the National
14 Employee Savings and Trust Equity Guar-
15 antee Act of 2004,

16 “(ii) who retires before attaining age
17 65 but is entitled, upon attaining age 65,
18 to an annuity under this section or section
19 711 of the National Employee Savings and
20 Trust Equity Guarantee Act of 2004, or

21 “(iii) who retires before becoming en-
22 titled to an immediate annuity, or an an-
23 nuity upon attaining age 65, under this
24 section or section 711 of the National Em-

1 ployee Savings and Trust Equity Guar-
2 antee Act of 2004.

3 “(D) SEPARATION FROM SERVICE.—With
4 respect to a magistrate judge to whom this sub-
5 section applies, retirement under this section or
6 section 711 of the National Employee Savings
7 and Trust Equity Guarantee Act of 2004 is a
8 separation from service for purposes of sub-
9 chapters III and VII of chapter 84 of title 5,
10 United States Code.

11 “(4) DEFINITIONS.—For purposes of this sub-
12 section, the terms ‘retirement’ and ‘retire’ include
13 removal from office under section 7443A(a)(2) on
14 the sole ground of mental or physical disability.

15 “(5) OFFSET.—In the case of a magistrate
16 judge who receives a distribution from the Thrift
17 Savings Fund and who later receives an annuity
18 under this section, that annuity shall be offset by an
19 amount equal to the amount which represents the
20 Government’s contribution to that person’s Thrift
21 Savings Account, without regard to earnings attrib-
22 utable to that amount. Where such an offset would
23 exceed 50 percent of the annuity to be received in
24 the first year, the offset may be divided equally over

1 the first 2 years in which that person receives the
2 annuity.

3 “(6) EXCEPTION.—Notwithstanding clauses (i)
4 and (ii) of paragraph (3)(C), if any magistrate judge
5 retires under circumstances making such magistrate
6 judge eligible to make an election under subsection
7 (b) of section 8433 of title 5, United States Code,
8 and such magistrate judge’s nonforfeitable account
9 balance is less than an amount that the Executive
10 Director of the Office of Personnel Management pre-
11 scribes by regulation, the Executive Director shall
12 pay the nonforfeitable account balance to the partici-
13 pant in a single payment.”

14 (b) CONFORMING AMENDMENT.—The table of sec-
15 tion for part I of subchapter C of chapter 76 is amended
16 by inserting after the item relating to section 7443A the
17 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax
Court.”

18 **SEC. 711. INCUMBENT MAGISTRATE JUDGES OF THE TAX**
19 **COURT.**

20 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND
21 SECTION 7443B OF THE INTERNAL REVENUE CODE OF
22 1986.—A magistrate judge of the United States Tax
23 Court in active service on the date of the enactment of
24 this Act shall, subject to subsection (b), be entitled, in lieu

1 of the annuity otherwise provided under the amendments
2 made by this title, to—

3 (1) an annuity under subchapter III of chapter
4 83, or under chapter 84 (except for subchapters III
5 and VII), of title 5, United States Code, as the case
6 may be, for creditable service before the date on
7 which service would begin to be credited for pur-
8 poses of paragraph (2), and

9 (2) an annuity calculated under subsection (b)
10 or (c) and subsection (g) of section 7443B of the In-
11 ternal Revenue Code of 1986, as added by this Act,
12 for any service as a magistrate judge of the United
13 States Tax Court or special trial judge of the United
14 States Tax Court but only with respect to service as
15 such a magistrate judge or special trial judge after
16 a date not earlier than 9½ years prior to the date
17 of the enactment of this Act (as specified in the elec-
18 tion pursuant to subsection (b)) for which deduc-
19 tions and deposits are made under subsections (j)
20 and (k) of such section 7443B, as applicable, with-
21 out regard to the minimum number of years of serv-
22 ice as such a magistrate judge of the United States
23 Tax Court, except that—

24 (A) in the case of a magistrate judge who
25 retired with less than 8 years of service, the an-

1 nuity under subsection (c) of such section
2 7443B shall be equal to that proportion of the
3 salary being received at the time the magistrate
4 judge leaves office which the years of service
5 bears to 14, subject to a reduction in accord-
6 ance with subsection (c) of such section 7443B
7 if the magistrate judge is under age 65 at the
8 time he or she leaves office, and

9 (B) the aggregate amount of the annuity
10 initially payable on retirement under this sub-
11 section may not exceed the rate of pay for the
12 magistrate judge which is in effect on the day
13 before the retirement becomes effective.

14 (b) FILING OF NOTICE OF ELECTION.—A magistrate
15 judge of the United States Tax Court shall be entitled to
16 an annuity under this section only if the magistrate judge
17 files a notice of that election with the chief judge of the
18 United States Tax Court specifying the date on which
19 service would begin to be credited under section 7443B
20 of the Internal Revenue Code of 1986, as added by this
21 Act, in lieu of chapter 83 or chapter 84 of title 5, United
22 States Code. Such notice shall be filed in accordance with
23 such procedures as the chief judge of the United States
24 Tax Court shall prescribe.

1 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-
2 istrate judge of the United States Tax Court who makes
3 an election under subsection (b) shall be entitled to a
4 lump-sum credit under section 8342 or 8424 of title 5,
5 United States Code, as the case may be, for any service
6 which is covered under section 7443B of the Internal Rev-
7 enue Code of 1986, as added by this Act, pursuant to that
8 election, and with respect to which any contributions were
9 made by the magistrate judge under the applicable provi-
10 sions of title 5, United States Code.

11 (d) RECALL.—With respect to any magistrate judge
12 of the United States Tax Court receiving an annuity under
13 this section who is recalled to serve under section 7443C
14 of the Internal Revenue Code of 1986, as added by this
15 Act—

16 (1) the amount of compensation which such re-
17 called magistrate judge receives under such section
18 7443C shall be calculated on the basis of the annu-
19 ity received under this section, and

20 (2) such recalled magistrate judge of the United
21 States Tax Court may serve as a reemployed annu-
22 itant to the extent otherwise permitted under title 5,
23 United States Code.

24 Section 7443B(m)(4) of the Internal Revenue Code of
25 1986, as added by this Act, shall not apply with respect

1 to service as a reemployed annuitant described in para-
2 graph (2).

3 **SEC. 712. PROVISIONS FOR RECALL.**

4 (a) IN GENERAL.—Part I of subchapter C of chapter
5 76, as amended by this Act, is amended by inserting after
6 section 7443B the following new section:

7 **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**
8 **COURT.**

9 “(a) RECALLING OF RETIRED MAGISTRATE
10 JUDGES.—Any individual who has retired pursuant to sec-
11 tion 7443B or the applicable provisions of title 5, United
12 States Code, upon reaching the age and service require-
13 ments established therein, may at or after retirement be
14 called upon by the chief judge of the Tax Court to perform
15 such judicial duties with the Tax Court as may be re-
16 quested of such individual for any period or periods speci-
17 fied by the chief judge; except that in the case of any such
18 individual—

19 “(1) the aggregate of such periods in any 1 cal-
20 endar year shall not (without such individual’s con-
21 sent) exceed 90 calendar days, and

22 “(2) such individual shall be relieved of per-
23 forming such duties during any period in which ill-
24 ness or disability precludes the performance of such
25 duties.

1 Any act, or failure to act, by an individual performing ju-
2 dicial duties pursuant to this subsection shall have the
3 same force and effect as if it were the act (or failure to
4 act) of a magistrate judge of the Tax Court.

5 “(b) COMPENSATION.—For the year in which a pe-
6 riod of recall occurs, the magistrate judge shall receive,
7 in addition to the annuity provided under the provisions
8 of section 7443B or under the applicable provisions of title
9 5, United States Code, an amount equal to the difference
10 between that annuity and the current salary of the office
11 to which the magistrate judge is recalled. The annuity of
12 the magistrate judge who completes that period of service,
13 who is not recalled in a subsequent year, and who retired
14 under section 7443B, shall be equal to the salary in effect
15 at the end of the year in which the period of recall oc-
16 curred for the office from which such individual retired.

17 “(c) RULEMAKING AUTHORITY.—The provisions of
18 this section may be implemented under such rules as may
19 be promulgated by the Tax Court.”

20 (b) CONFORMING AMENDMENT.—The table of sec-
21 tions for part I of subchapter C of chapter 76, as amended
22 by this Act, is amended by inserting after the item relating
23 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”

1 **SEC. 713. EFFECTIVE DATE.**

2 Except as otherwise provided, the amendments made
3 by this title shall take effect on the date of the enactment
4 of this Act.

5 **TITLE VIII—OTHER PROVISIONS**

6 **Subtitle A—General Provisions**

7 **SEC. 801. CERTAIN POSTSECONDARY EDUCATIONAL BENE-**
8 **FITS PROVIDED BY AN EMPLOYER TO CHIL-**
9 **DREN OF EMPLOYEES EXCLUDABLE FROM**
10 **GROSS INCOME UNDER EDUCATIONAL AS-**
11 **SISTANCE PROGRAMS.**

12 (a) IN GENERAL.—Section 127 of the Internal Rev-
13 enue Code of 1986 (relating to educational assistance pro-
14 grams) is amended by redesignating subsection (d) as sub-
15 section (e), and inserting after subsection (e) the fol-
16 lowing:

17 “(d) POST SECONDARY EDUCATIONAL BENEFITS
18 PROVIDED TO CHILDREN OF EMPLOYEES.—

19 “(1) IN GENERAL.—For purposes of this sec-
20 tion, educational assistance provided by the employer
21 to a child (as defined in section 151(c)(3)) of an em-
22 ployee of such employer pursuant to an educational
23 assistance program shall be treated as educational
24 assistance provided for the exclusive benefit of the
25 employee.

1 “(2) DOLLAR LIMITATIONS.—The amount ex-
2 cluded from the gross income of the employee by
3 reason of paragraph (1) for a taxable year with re-
4 spect to amounts provided to each child of such em-
5 ployee shall not exceed \$1,000.

6 “(3) LIMITATION ON EDUCATIONAL ASSIST-
7 ANCE.—Paragraph (1) shall only apply to expenses
8 paid or incurred in connection with the enrollment
9 or attendance of a child of an employee at an edu-
10 cational institution described in section 529(e)(5).

11 “(4) TERMINATION.—This subsection shall not
12 apply to taxable years beginning after December 31,
13 2005.”

14 (b) NO EXEMPTION FOR EMPLOYMENT TAXES.—

15 (1) IN GENERAL.—Each of the following provi-
16 sions of the Internal Revenue Code of 1986 are
17 amended by inserting “(without regard to subsection
18 (d))” after “127”:

19 (A) Section 3121(a)(18).

20 (B) Section 3231(e)(6).

21 (C) Section 3306(b)(13).

22 (2) SOCIAL SECURITY ACT.—Section 209(a)(15)
23 of the Social Security Act is amended by inserting
24 “(without regard to subsection (d))” after “127”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to taxable years beginning after
3 December 31, 2004.

4 **SEC. 802. EXCLUSION FOR PAYMENTS TO INDIVIDUALS**
5 **UNDER NATIONAL HEALTH SERVICE CORPS**
6 **LOAN REPAYMENT PROGRAM AND CERTAIN**
7 **STATE LOAN REPAYMENT PROGRAMS.**

8 (a) IN GENERAL.—Section 108(f) of the Internal
9 Revenue Code of 1986 (relating to student loans) is
10 amended by adding at the end the following new para-
11 graph:

12 “(4) PAYMENTS UNDER NATIONAL HEALTH
13 SERVICE CORPS LOAN REPAYMENT PROGRAM AND
14 CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In
15 the case of an individual, gross income shall not in-
16 clude any amount received under section 338B(g) of
17 the Public Health Service Act or under a State pro-
18 gram described in section 338I of such Act.”

19 (b) TREATMENT FOR PURPOSES OF EMPLOYMENT
20 TAXES.—Each of the following provisions of the Internal
21 Revenue Code of 1986 is amended by inserting
22 “108(f)(4),” after “74(c),”:

- 23 (1) Section 3121(a)(20).
24 (2) Section 3231(e)(5).
25 (3) Section 3306(b)(16).

1 (4) Section 3401(a)(19).

2 (5) Section 209(a)(17) of the Social Security
3 Act.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to amounts received by an indi-
6 vidual in taxable years beginning after December 31,
7 2004.

8 **SEC. 803. EXCLUSION FOR GROUP LEGAL SERVICES.**

9 (a) ALLOWANCE OF EXCLUSION.—Section 120(e) of
10 the Internal Revenue Code of 1986 (relating to termi-
11 nation) is amended to read as follows:

12 “(e) APPLICATION.—This section and section
13 501(c)(20) shall apply to taxable years beginning after
14 December 31, 2004, and before January 1, 2006.”

15 (b) REPEAL OF LIMITATION.—Section 120(a) of such
16 Code is amended by striking the last sentence.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to taxable years beginning after
19 December 31, 2004.

20 **SEC. 804. TRANSFER OF EXCESS FUNDS FROM BLACK LUNG**
21 **DISABILITY TRUSTS TO UNITED MINE WORK-**
22 **ERS OF AMERICA COMBINED BENEFIT FUND.**

23 (a) IN GENERAL.—So much of section 501(c)(21)(C)
24 of the Internal Revenue Code of 1986 (relating to black

1 lung disability trusts) as precedes the last sentence is
2 amended to read as follows:

3 “(C) Payments described in subparagraph
4 (A)(i)(IV) may be made from such trust during
5 a taxable year only to the extent that the aggregate
6 amount of such payments during such taxable
7 year does not exceed the excess (if any), as
8 of the close of the preceding taxable year, of—

9 “(i) the fair market value of the as-
10 sets of the trust, over

11 “(ii) 110 percent of the present value
12 of the liability described in subparagraph
13 (A)(i)(I) of such person.”

14 (b) TRANSFER.—Section 9705 of such Code (relating
15 to transfer) is amended by adding at the end the following
16 new subsection:

17 “(c) TRANSFER FROM BLACK LUNG DISABILITY
18 TRUSTS.—

19 “(1) IN GENERAL.—The Secretary shall trans-
20 fer each fiscal year to the Fund from the general
21 fund of the Treasury an amount which the Secretary
22 estimates to be the additional amounts received in
23 the Treasury for that fiscal year by reason of the
24 amendment made by section 804(a) of the National
25 Employee Savings and Trust Equity Guarantee Act

1 of 2004. The Secretary shall adjust the amount
2 transferred for any year to the extent necessary to
3 correct errors in any estimate for any prior year.

4 “(2) USE OF FUNDS.—Any amount transferred
5 to the Combined Fund under paragraph (1) shall be
6 used to proportionately reduce the unassigned bene-
7 ficiary premium under section 9704(a)(3) of each
8 assigned operator for the plan year in which trans-
9 ferred.”

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

13 **Subtitle B—Revenue Provisions**

14 **SEC. 811. APPLICATION OF BASIS RULES TO NONRESIDENT** 15 **ALIENS.**

16 (a) IN GENERAL.—Section 72 of the Internal Rev-
17 enue Code of 1986 (relating to annuities and certain pro-
18 ceeds of endowment and life insurance contracts) is
19 amended by redesignating subsection (w) as subsection (x)
20 and by inserting after subsection (v) the following new
21 subsection:

22 “(w) APPLICATION OF BASIS RULES TO NON-
23 RESIDENT ALIENS.—

24 “(1) IN GENERAL.—Notwithstanding any other
25 provision of this section, for purposes of determining

1 the portion of any distribution which is includible in
2 gross income of a distributee who is a citizen or resi-
3 dent of the United States, the investment in the con-
4 tract shall not include any applicable nontaxable
5 contributions or applicable nontaxable earnings.

6 “(2) APPLICABLE NONTAXABLE CONTRIBU-
7 TION.—For purposes of this subsection, the term
8 ‘applicable nontaxable contribution’ means any em-
9 ployer or employee contribution—

10 “(A) which was made with respect to com-
11 pensation—

12 “(i) for labor or personal services per-
13 formed by an employee who, at the time
14 the labor or services were performed, was
15 a nonresident alien for purposes of the
16 laws of the United States in effect at such
17 time, and

18 “(ii) which is treated as from sources
19 without the United States, and

20 “(B) which was not subject to income tax
21 under the laws of the United States or any for-
22 eign country.

23 “(3) APPLICABLE NONTAXABLE EARNINGS.—
24 For purposes of this subsection, the term ‘applicable
25 nontaxable earnings’ means earnings—

1 “(A) which are paid or accrued with re-
2 spect to any employer or employee contribution
3 which was made with respect to compensation
4 for labor or personal services performed by an
5 employee,

6 “(B) with respect to which the employee
7 was at the time the earnings were paid or ac-
8 crued a nonresident alien for purposes of the
9 laws of the United States, and

10 “(C) which were not subject to income tax
11 under the laws of the United States or any for-
12 eign country.

13 “(4) REGULATIONS.—The Secretary shall pre-
14 scribe such regulations as may be necessary to carry
15 out the provisions of this subsection, including regu-
16 lations treating contributions and earnings as not
17 subject to tax under the laws of any foreign country
18 where appropriate to carry out the purposes of this
19 subsection.”

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

1 **SEC. 812. TREATMENT OF DEATH BENEFITS FROM COR-**
2 **PORATE-OWNED LIFE INSURANCE.**

3 (a) IN GENERAL.—Section 101 of the Internal Rev-
4 enue Code of 1986 (relating to certain death benefits) is
5 amended by adding at the end the following new sub-
6 section:

7 “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED
8 LIFE INSURANCE CONTRACTS.—

9 “(1) GENERAL RULE.—In the case of an em-
10 ployer-owned life insurance contract, the amount ex-
11 cluded from gross income of an applicable policy-
12 holder by reason of paragraph (1) of subsection (a)
13 shall not exceed an amount equal to the sum of the
14 premiums and other amounts paid by the policy-
15 holder for the contract.

16 “(2) EXCEPTIONS.—In the case of an employer-
17 owned life insurance contract with respect to which
18 the notice and consent requirements of paragraph
19 (4) are met, paragraph (1) shall not apply to any of
20 the following:

21 “(A) EXCEPTIONS BASED ON INSURED’S
22 STATUS.—Any amount received by reason of
23 the death of an insured who, with respect to an
24 applicable policyholder—

1 “(i) was an employee at any time dur-
2 ing the 12-month period before the in-
3 sured’s death, or

4 “(ii) is, at the time the contract is
5 issued—

6 “(I) a director,

7 “(II) a highly compensated em-
8 ployee within the meaning of section
9 414(q) (without regard to paragraph
10 (1)(B)(ii) thereof), or

11 “(III) a highly compensated indi-
12 vidual within the meaning of section
13 105(h)(5), except that ‘35 percent’
14 shall be substituted for ‘25 percent’ in
15 subparagraph (C) thereof.

16 “(B) EXCEPTION FOR AMOUNTS PAID TO
17 INSURED’S HEIRS.—Any amount received by
18 reason of the death of an insured to the ex-
19 tent—

20 “(i) the amount is paid to a member
21 of the family (within the meaning of sec-
22 tion 267(c)(4)) of the insured, any indi-
23 vidual who is the designated beneficiary of
24 the insured under the contract (other than
25 the applicable policyholder), a trust estab-

1 lished for the benefit of any such member
 2 of the family or designated beneficiary, or
 3 the estate of the insured, or

4 “(ii) the amount is used to purchase
 5 an equity (or capital or profits) interest in
 6 the applicable policyholder from any person
 7 described in clause (i).

8 “(3) EMPLOYER-OWNED LIFE INSURANCE CON-
 9 TRACT.—

10 “(A) IN GENERAL.—For purposes of this
 11 subsection, the term ‘employer-owned life insur-
 12 ance contract’ means a life insurance contract
 13 which—

14 “(i) is owned by a person engaged in
 15 a trade or business and under which such
 16 person (or a related person described in
 17 subparagraph (B)(ii)) is directly or indi-
 18 rectly a beneficiary under the contract, and

19 “(ii) covers the life of an insured who
 20 is an employee with respect to the trade or
 21 business of the applicable policyholder on
 22 the date the contract is issued.

23 For purposes of the preceding sentence, if cov-
 24 erage for each insured under a master contract
 25 is treated as a separate contract for purposes of

1 sections 817(h), 7702, and 7702A, coverage for
2 each such insured shall be treated as a separate
3 contract.

4 “(B) APPLICABLE POLICYHOLDER.—For
5 purposes of this subsection—

6 “(i) IN GENERAL.—The term ‘applica-
7 ble policyholder’ means, with respect to
8 any employer-owned life insurance con-
9 tract, the person described in subpara-
10 graph (A)(i) which owns the contract.

11 “(ii) RELATED PERSONS.—The term
12 ‘applicable policyholder’ includes any per-
13 son which—

14 “(I) bears a relationship to the
15 person described in clause (i) which is
16 specified in section 267(b) or
17 707(b)(1), or

18 “(II) is engaged in trades or
19 businesses with such person which are
20 under common control (within the
21 meaning of subsection (a) or (b) of
22 section 52).

23 “(4) NOTICE AND CONSENT REQUIREMENTS.—
24 The notice and consent requirements of this para-

1 graph are met if, before the issuance of the contract,
2 the employee—

3 “(A) is notified in writing that the applica-
4 ble policyholder intends to insure the employee’s
5 life and the maximum face amount for which
6 the employee could be insured at the time the
7 contract was issued,

8 “(B) provides written consent to being in-
9 sured under the contract and that such cov-
10 erage may continue after the insured terminates
11 employment, and

12 “(C) is informed in writing that an appli-
13 cable policyholder will be a beneficiary of any
14 proceeds payable upon the death of the em-
15 ployee.

16 “(5) DEFINITIONS.—For purposes of this sub-
17 section—

18 “(A) EMPLOYEE.—The term ‘employee’ in-
19 cludes an officer, director, and highly com-
20 pensated employee (within the meaning of sec-
21 tion 414(q)).

22 “(B) INSURED.—The term ‘insured’
23 means, with respect to an employer-owned life
24 insurance contract, an individual covered by the
25 contract who is a United States citizen or resi-

1 dent. In the case of a contract covering the
2 joint lives of 2 individuals, references to an in-
3 sured include both of the individuals.”.

4 (b) REPORTING REQUIREMENTS.—Subpart A of part
5 III of subchapter A of chapter 61 of the Internal Revenue
6 Code of 1986 (relating to information concerning persons
7 subject to special provisions) is amended by inserting after
8 section 6039H the following new section:

9 **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**
10 **EMPLOYER-OWNED LIFE INSURANCE CON-**
11 **TRACTS.**

12 “(a) IN GENERAL.—Every applicable policyholder
13 owning 1 or more employer-owned life insurance contracts
14 issued after the date of the enactment of this section shall
15 file a return (at such time and in such manner as the
16 Secretary shall by regulations prescribe) showing for each
17 year such contracts are owned—

18 “(1) the number of employees of the applicable
19 policyholder at the end of the year,

20 “(2) the number of such employees insured
21 under such contracts at the end of the year,

22 “(3) the total amount of insurance in force at
23 the end of the year under such contracts,

24 “(4) the name, address, and taxpayer identifica-
25 tion number of the applicable policyholder and the

1 type of business in which the policyholder is en-
2 gaged, and

3 “(5) that the applicable policyholder has a valid
4 consent for each insured employee (or, if all such
5 consents are not obtained, the number of insured em-
6 ployees for whom such consent was not obtained).

7 “(b) RECORDKEEPING REQUIREMENT.—Each appli-
8 cable policyholder owning 1 or more employer-owned life
9 insurance contracts during any year shall keep such
10 records as may be necessary for purposes of determining
11 whether the requirements of this section and section
12 101(j) are met.

13 “(c) DEFINITIONS.—Any term used in this section
14 which is used in section 101(j) shall have the same mean-
15 ing given such term by section 101(j).”.

16 (c) CONFORMING AMENDMENTS.—

17 (1) Paragraph (1) of section 101(a) of the In-
18 ternal Revenue Code of 1986 is amended by striking
19 “and subsection (f)” and inserting “subsection (f),
20 and subsection (j)”.

21 (2) The table of sections for subpart A of part
22 III of subchapter A of chapter 61 of such Code is
23 amended by inserting after the item relating to sec-
24 tion 6039H the following new item:

“Sec. 6039I. Returns and records with respect to employer-
owned life insurance contracts.”

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to life insurance contracts issued
3 after the date of the enactment of this Act, except for a
4 contract issued after such date pursuant to an exchange
5 described in section 1035 of the Internal Revenue Code
6 of 1986 for a contract issued on or prior to that date.
7 For purposes of the preceding sentence, any material in-
8 crease in the death benefit or other material change shall
9 cause the contract to be treated as a new contract except
10 that, in the case of a master contract (within the meaning
11 of section 264(f)(4)(E) of such Code), the addition of cov-
12 ered lives shall be treated as a new contract only with re-
13 spect to such additional covered lives.

14 **SEC. 813. REPORTING OF TAXABLE MERGERS AND ACQUI-**
15 **TIONS.**

16 (a) IN GENERAL.—Subpart B of part III of sub-
17 chapter A of chapter 61 is amended by inserting after sec-
18 tion 6043 the following new section:

19 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

20 “(a) IN GENERAL.—The acquiring corporation in any
21 taxable acquisition shall make a return (according to the
22 forms or regulations prescribed by the Secretary) setting
23 forth—

24 “(1) a description of the acquisition,

1 “(2) the name and address of each shareholder
2 of the acquired corporation who is required to recog-
3 nize gain (if any) as a result of the acquisition,

4 “(3) the amount of money and the fair market
5 value of other property transferred to each such
6 shareholder as part of such acquisition, and

7 “(4) such other information as the Secretary
8 may prescribe.

9 To the extent provided by the Secretary, the requirements
10 of this section applicable to the acquiring corporation shall
11 be applicable to the acquired corporation and not to the
12 acquiring corporation.

13 “(b) NOMINEE REPORTING.—Any person who holds
14 stock as a nominee for another person shall furnish in the
15 manner prescribed by the Secretary to such other person
16 the information provided by the corporation under sub-
17 section (d).

18 “(c) TAXABLE ACQUISITION.—For purposes of this
19 section, the term ‘taxable acquisition’ means any acquisi-
20 tion by a corporation of stock in or property of another
21 corporation if any shareholder of the acquired corporation
22 is required to recognize gain (if any) as a result of such
23 acquisition.

24 “(d) STATEMENTS TO BE FURNISHED TO SHARE-
25 HOLDERS.—Every person required to make a return under

1 subsection (a) shall furnish to each shareholder whose
2 name is required to be set forth in such return a written
3 statement showing—

4 “(1) the name, address, and phone number of
5 the information contact of the person required to
6 make such return,

7 “(2) the information required to be shown on
8 such return with respect to such shareholder, and

9 “(3) such other information as the Secretary
10 may prescribe.

11 The written statement required under the preceding sen-
12 tence shall be furnished to the shareholder on or before
13 January 31 of the year following the calendar year during
14 which the taxable acquisition occurred.”.

15 (b) ASSESSABLE PENALTIES.—

16 (1) Subparagraph (B) of section 6724(d)(1)
17 (defining information return) is amended by redesignig-
18 nating clauses (ii) through (xviii) as clauses (iii)
19 through (xix), respectively, and by inserting after
20 clause (i) the following new clause:

21 “(ii) section 6043A(a) (relating to re-
22 turns relating to taxable mergers and ac-
23 quisitions),”.

24 (2) Paragraph (2) of section 6724(d) (relating
25 to definitions) is amended by redesignating subpara-

1 graphs (F) through (BB) as subparagraphs (G)
2 through (CC), respectively, and by inserting after
3 subparagraph (E) the following new subparagraph:

4 “(F) subsections (b) and (d) of section
5 6043A (relating to returns relating to taxable
6 mergers and acquisitions).”.

7 (c) CLERICAL AMENDMENT.—The table of sections
8 for subpart B of part III of subchapter A of chapter 61
9 is amended by inserting after the item relating to section
10 6043 the following new item:

“Sec. 6043A. Returns relating to taxable mergers and acquisitions.”

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

Calendar No. 516

108TH CONGRESS
2^D SESSION

S. 2424

[Report No. 108-266]

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

MAY 14, 2004

Read twice and placed on the calendar