

**Calendar No. 516**

108TH CONGRESS  
2D SESSION

**S. 2424**

**[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.

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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

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**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 freedom 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 PBGC premium rates.

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

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



defined contribution plan which holds any publicly traded employer securities.

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

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

“(II) such plan is a separate plan for purposes of section 414(l) with respect to any other defined benefit plan or defined contribution plan maintained by the same employer or employers.

“(iii) EXCEPTION FOR ONE PARTICIPANT PLANS.—Such term does not include a one-participant retirement plan.

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

“(I) on the first day of the plan 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-

poration, has issued any publicly traded employer security, and

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

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

“(I) ‘controlled group of corporations’ has the meaning given such term by section 1563(a), except that ‘50 percent’ shall be substituted for ‘80 percent’ each place it appears,

“(II) ‘employer corporation’ means a corporation which is an employer maintaining the plan, and

“(III) ‘parent corporation’ has the meaning given such term by section 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:

<b>“Plan year to which subpara- The applicable percentage is:</b>	
<b>graph (C) applies:</b>	
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.—

“(A) IN GENERAL.—The requirements of this paragraph are met if the plan offers not less than 3 investment options, other than employer securities or employer real property, to which an applicable individual may direct the proceeds from the divestment of employer securities or employer real property pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics.

“(B) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

“(i) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this paragraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

“(ii) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this paragraph if the plan imposes restrictions or conditions 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 SECU-  
25 RITIES.—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

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

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

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

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

“(1) In the case of a plan not described in 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                   eficiary 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

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

“(i) the value of each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan, including the value of any assets held in the form of employer securities or employer real property, without regard to whether such securities or real property were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and

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

“(I) an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment, and

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

“(C) ALTERNATIVE NOTICE.—The requirements of subparagraph (A)(i)(II) are met if, at least annually and in accordance with requirements of the Secretary, the plan—

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

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

“(3) DEFINED BENEFIT PLANS.—

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

“(B) YEARS IN WHICH NO BENEFITS ACCRUE.—The Secretary may provide that years

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

(2) CONFORMING AMENDMENTS.—

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

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

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

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

(c) MODEL STATEMENTS.—The Secretary of Labor shall, within 180 days after the date of the enactment of this section, develop 1 or more model benefit statements 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-

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

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

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

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

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

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

“(B) CALCULATION INFORMATION.—The model form under subparagraph (A) shall include addresses for Internet sites, and a worksheet, which a participant or beneficiary may use to calculate—

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

“(ii) other important amounts relating to retirement savings, including the amount which a participant or beneficiary would be required to save annually to provide a retirement income equal to various percentages of their current salary (adjusted for expected growth prior to retirement).

The Secretary of Labor shall develop an Internet site which an individual may use in making such calculations and the address for such site shall be included with the form.

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

ment before publishing final notice of the model form.

“(D) RULES RELATING TO FORM AND STATEMENT.—The model form under subparagraph (A)—

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

“(ii) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to participants and beneficiaries.”

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

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

“(C) SEPARATE APPLICATION.—This paragraph shall be applied separately to failures to meet the requirements of subsection (e)(1)(A) to provide pension benefit statements and failures to meet the requirements of subsection (e)(1)(A) to provide model forms containing basic investment guidelines.”;

(B) by inserting “or model form” after “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-



nates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2006.

**SEC. 203. MATERIAL INFORMATION RELATING TO INVESTMENT IN EMPLOYER SECURITIES.**

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Section 4980H(e) of the Internal Revenue Code of 1986, as added by section 102, is amended—

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

“(e) NOTICE REQUIREMENTS.—

“(1) NOTICE OF RIGHT TO DIVEST.—Not”,

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B) and adjusting all margins accordingly, and

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

“(2) MATERIAL INFORMATION.—

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

her account in employer securities with all reports, proxy statements, and other communications regarding investment of such assets in employer securities to the extent that such reports, statements, and communications are required to be provided by the plan sponsor to investors in connection with such an investment under applicable securities laws. Such reports, statements, and communications may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to participants and beneficiaries.

“(B) PLAN SPONSOR.—If any information required to be provided under paragraph (1) is maintained by the plan sponsor, the plan sponsor shall transmit such information to the plan administrator.”

(2) CONFORMING AMENDMENTS.—

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

“(C) SEPARATE APPLICATION.—This paragraph shall be applied separately for failures to meet the requirements of subsection (e)(1) and

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

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

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

(b) AMENDMENTS OF ERISA.—

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

“(f) PROVIDING OF MATERIAL INFORMATION.—

“(1) IN GENERAL.—The administrator of an in-  
dividual account plan (other than a one-participant  
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

only if such State has an examination requirement to qualify for registration,

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

“(iv) a registered representative as described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), or

“(v) any other comparably qualified individual who satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this paragraph.

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

(b) CONFORMING AMENDMENTS.—

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

(2) Section 414(s)(2) of such Code is amended 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-

pension, limitation, or restriction is for any period of more than 3 consecutive business days.

“(B) EXCLUSIONS.—The term ‘blackout period’ does not include a suspension, limitation, or restriction—

“(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934),

“(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

“(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 414(p)(8)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 414(p)(1)(A)).

“(8) DEFINED CONTRIBUTION PLAN TO WHICH 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-

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

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

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

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

## **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 PBGC PREMIUM RATES.**

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Section 412(b)(5)(B) of the Internal Revenue Code of 1986 is amended to read as follows:

“(B) DETERMINATION OF CURRENT LIABILITY.—Notwithstanding subsection (c)(3), a plan’s current liability (including for purposes of determining a plan’s required contribution under subsection (l)) for any plan year shall be determined—

“(i) in the case of plan years beginning in 2004, 2005, or 2006, by using an interest rate determined in accordance with the rules prescribed under subsection (o)(1),

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

“(iii) in the case of plan years beginning after 2010, by using the yield curve method (as defined in subsection (o)(2)).”

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

“(o) RULES RELATING TO CURRENT LIABILITY DETERMINATIONS.—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:

<b>“In the case of years beginning in—</b>	<b>The applicable percentage is—</b>
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:

<b>“In the case of years beginning in—</b>	<b>The applicable percentage is—</b>
2007 .....	20
2008 .....	40

<b>“In the case of years beginning in—</b>	<b>The applicable percentage is—</b>
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

under clause (i) as a financially distressed plan for 1 or more plan years, the plan shall continue to be treated as a financially distressed plan for subsequent plan years beginning before the first plan year after the close of the first period described in subclause (II).

“(II) 5-YEAR PERIOD.—A period described in this subparagraph is a 5-consecutive-plan year period if during each of the 5 plan years in the period the plan sponsor did not have an outstanding debt obligation described in clause (i)(I) or during each of such 5 plan years the plan was not described in clause (i)(II).

“(E) FUNDED CURRENT LIABILITY PERCENTAGE.—For purposes of this paragraph, the term ‘funded current liability percentage’ has the meaning given such term by section 412(l)(8)(B), except that the current liability used in computing such percentage shall be determined by only taking into account vested 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-

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

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

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

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

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

“(B) QUALIFIED PUBLIC SAFETY EM-  
PLOYEE.—For purposes of this paragraph, the  
term ‘qualified public safety employee’ means  
any employee of a State or political subdivision  
of a State who provides police protection, fire-  
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 INDIV-**  
15 **IDUAL 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           (3) SECTION 403(b) PLANS.—Subparagraph (B)  
 2           of section 403(b)(8) of such Code (relating to roll-  
 3           over amounts) is amended by striking “and (9)” and  
 4           inserting “, (9), and (11)”.

5           (4) SECTION 457 PLANS.—Subparagraph (B) of  
 6           section 457(e)(16) of such Code (relating to rollover  
 7           amounts) is amended by striking “and (9)” and in-  
 8           serting “, (9), and (11)”.

9           (b) EFFECTIVE DATE.—The amendments made by  
 10          this section shall apply to distributions after December 31,  
 11          2004.

12   **SEC. 416. FASTER VESTING OF EMPLOYER NONELECTIVE**  
 13                           **CONTRIBUTIONS.**

14          (a) AMENDMENTS TO THE INTERNAL REVENUE  
 15          CODE OF 1986.—

16           (1) IN GENERAL.—Paragraph (2) of section  
 17          411(a) of the Internal Revenue Code of 1986 (relat-  
 18          ing to employer contributions) is amended to read as  
 19          follows:

20                   “(2) EMPLOYER CONTRIBUTIONS.—

21                           “(A) DEFINED BENEFIT PLANS.—

22                                   “(i) IN GENERAL.—In the case of a  
 23                                   defined benefit plan, a plan satisfies the  
 24                                   requirements of this paragraph if it satis-  
 25                                   fies the requirements of clause (ii) or (iii).

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:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
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

years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

“(iii) 2 TO 6 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

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

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

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

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

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
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:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
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.

## **Subtitle C—Administrative Provisions**

### **SEC. 431. EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.**

(a) IN GENERAL.—The Secretary of the Treasury shall have full authority to establish and implement the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, excise, or other taxes to ensure that any tax, penalty, or sanction is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

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

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

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

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

1 (4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

2 (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.

3 **SEC. 432. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
 4 **MORATORIUM ON APPLICATION OF CERTAIN**  
 5 **NONDISCRIMINATION RULES APPLICABLE TO**  
 6 **STATE AND LOCAL PLANS.**

7 (a) IN GENERAL.—The following provisions are each amended by striking “maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)”:

8 (1) Section 401(a)(5)(G) of the Internal Revenue Code of 1986.

9 (2) Section 401(a)(26)(H) of such Code.

10 (3) Section 401(k)(3)(G) of such Code.

11 (4) Section 1505(d)(2) of the Taxpayer Relief Act of 1997.

12 (b) CONFORMING AMENDMENTS.—

13 (1) The heading for section 401(a)(5)(G) of such Code is amended to read as follows: “GOVERNMENTAL 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           “(5) CERTAIN PROVISIONS NOT TO APPLY.—  
2       Subsections (a)(1) and (a)(3) shall not apply to a  
3       plan described in paragraph (4).”

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

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

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

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

15   **SEC. 436. REDUCED PBGC PREMIUM FOR NEW PLANS OF**  
16                           **SMALL EMPLOYERS.**

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

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

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

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

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

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

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

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

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

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

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

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).”

15 SEC. 439. SUBSTANTIAL OWNER BENEFITS IN TERMINATED  
16 PLANS.

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



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(c) (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-



graph (D), by striking the period at the end of subparagraph (E) and inserting “, and”, and by adding at the end the following:

“(F) that portion of any applicable employment retention plan described in paragraph (4) with respect to any participant.”

(2) DEFINITIONS AND RULES RELATING TO EMPLOYMENT RETENTION PLANS.—Section 457(f) of such Code is amended by adding at the end the following new paragraph:

“(4) EMPLOYMENT RETENTION PLANS.—For purposes of paragraph (2)(F)—

“(A) IN GENERAL.—The portion of an applicable employment retention plan described in this paragraph with respect to any participant is that portion of the plan which provides benefits payable to the participant not in excess of twice the applicable dollar limit determined under subsection (e)(15).

“(B) OTHER RULES.—

“(i) LIMITATION.—Paragraph (2)(F) shall only apply to the portion of the plan described in subparagraph (A) for years 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       gether 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-

stitutes qualifying employer securities if the distribution is, in accordance with the plan provisions, used to make payments on a loan described in paragraph (3) the proceeds of which were used to acquire the qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.”

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on January 1, 1998.

**SEC. 463. TRANSFER OF EXCESS PENSION ASSETS TO MULTIEMPLOYER HEALTH PLAN.**

(a) IN GENERAL.—Section 420(e) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

“(5) APPLICATION TO MULTIEMPLOYER PLAN.—In the case of any plan to which section 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).

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



any distribution (including any distribution treated as a parachute payment without regard to this subsection) from a nonqualified deferred compensation plan (as defined in section 409A(d)) which is made—

“(A) to a participant who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934, and

“(B) during the 1-year period following a change in the ownership or effective control of the corporation or in the ownership of a substantial portion of the assets of the corporation.

Such terms shall not include any distribution by reason of the death of the participant or the participant becoming disabled (within the meaning of section 409A(a)(2)(C)).

“(4) NO DOUBLE COUNTING.—Under regulations, proper adjustments shall be made in the application of this subsection to prevent a deduction from being disallowed more than once.”

(c) W-2 FORMS.—

(1) IN GENERAL.—Subsection (a) of section 6051 (relating to receipts for employees) is amended by striking “and” at the end of paragraph (11), by 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-

ceeds \$1,000,000, the rate used with respect to such excess shall be equal to the maximum rate of tax in effect under section 1 of such Code for taxable years beginning in such calendar year.

(2) AGGREGATION.—All persons treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer for purposes of this subsection.

(c) CONFORMING AMENDMENT.—Section 13273 of the Revenue Reconciliation Act of 1993 (Public Law 103–66) is repealed.

(d) EFFECTIVE DATE.—The provisions of, and the amendment made by, this section shall apply to payments made after December 31, 2003.

## **Subtitle B—Stock Options**

### **SEC. 511. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES.**

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking “or” at the end 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

extension thereof after the date of enactment of this Act), or

(B) January 1, 2006.

## **TITLE VII—TAX COURT PENSION AND COMPENSATION**

### **SEC. 700. AMENDMENT OF 1986 CODE.**

Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

### **SEC. 701. ANNUITIES FOR SURVIVORS OF TAX COURT JUDGES WHO ARE ASSASSINATED.**

(a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINATION.—Subsection (h) of section 7448 (relating to annuities to surviving spouses and dependent children of judges) is amended to read as follows:

“(h) ENTITLEMENT TO ANNUITY.—

“(1) IN GENERAL.—

“(A) ANNUITY TO SURVIVING SPOUSE.—If a judge described in paragraph (2) is survived by a surviving spouse but not by a dependent child, there shall be paid to such surviving 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-

nated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

“(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be deducted from the annuities otherwise payable under this section an amount equal to—

“(A) the amount of salary deductions provided for by subsection (c)(1) that would have been made if such deductions had been made for 5 years of civilian service computed as prescribed in subsection (n) before the judge’s death, reduced by

“(B) the amount of such salary deductions that were actually made before the date of the judge’s death.”

(b) DEFINITION OF ASSASSINATION.—Section 7448(a) (relating to definitions) is amended by adding at the end the following new paragraph:

“(8) The terms ‘assassinated’ and ‘assassination’ 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.

“(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

“(i) retires under subsection (b), or

“(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

“(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code, shall apply with respect to a judge who makes an election under paragraph (1).

“(E) EXCEPTION.—Notwithstanding subparagraph (C), if any judge retires under this section, or resigns without having met the age and service requirements set forth under subsection (b)(2), and such judge’s nonforfeitable account balance is less than an amount that the Executive Director of the Office of Personnel

1 Management prescribes by regulation, the Exec-  
 2 utive Director shall pay the nonforfeitable ac-  
 3 count balance to the participant in a single pay-  
 4 ment.”

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-  
 14 ment of judges), as amended by this Act, is amended by  
 15 adding at the end the following new subsection:

16 “(l) 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-

ferred to in such paragraph was previously subject to such subchapter and, without a break in service, again becomes subject to such subchapter on completion of the individual's service as a magistrate judge, the unused annual leave and sick leave standing to the individual's credit when such individual was exempted from this subchapter is deemed to have remained to the individual's credit.

“(B) COMPUTATION OF ANNUITY.—In computing an annuity under section 8339 of title 5, United States Code, the total service of an individual specified in subparagraph (A) who retires on an immediate annuity or dies leaving a survivor or survivors entitled to an annuity includes, without regard to the limitations imposed by subsection (f) of such section 8339, the days of unused sick leave standing to the individual's credit when such individual was exempted from subchapter I of chapter 63 of title 5, United States Code, except that these days will not be counted in determining average pay or annuity eligibility.

“(C) LUMP SUM PAYMENT.—Any accumulated and current accrued annual leave or vaca-

tion balances credited to a magistrate judge as of the date of the enactment of this subsection shall be paid in a lump sum at the time of separation from service pursuant to the provisions and restrictions set forth in section 5551 of title 5, United States Code, and related provisions referred to in such section.”

(e) CONFORMING AMENDMENTS.—

(1) The heading of subsection (b) of section 7443A is amended by striking “SPECIAL TRIAL JUDGES” and inserting “MAGISTRATE JUDGES OF THE TAX COURT”.

(2) Section 7443A(b) is amended by striking “special trial judges of the court” and inserting “magistrate judges of the Tax Court”.

(3) Subsections (c) and (d) of section 7443A are amended by striking “special trial judge” and inserting “magistrate judge of the Tax Court” each place it appears.

(4) Section 7443A(e) is amended by striking “special trial judges” and inserting “magistrate judges of the Tax Court”.

(5) Section 7456(a) is amended by striking “special trial judge” each place it appears and inserting “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 redesign-  
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           (10) Section 210(a)(5)(E) of the Social Secu-  
2       rity Act is amended by inserting “or magistrate  
3       judge” before “of the United States Tax Court”.

4   **SEC. 710. RETIREMENT AND ANNUITY PROGRAM.**

5       (a) RETIREMENT AND ANNUITY PROGRAM.—Part I  
6   of subchapter C of chapter 76 is amended by inserting  
7   after section 7443A the following new section:

8   **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
9                           **THE TAX COURT.**

10       “(a) RETIREMENT BASED ON YEARS OF SERVICE.—  
11   A magistrate judge of the Tax Court to whom this section  
12   applies and who retires from office after attaining the age  
13   of 65 years and serving at least 14 years, whether continu-  
14   ously or otherwise, as such magistrate judge shall, subject  
15   to subsection (f), be entitled to receive, during the remain-  
16   der of the magistrate judge’s lifetime, an annuity equal  
17   to the salary being received at the time the magistrate  
18   judge leaves office.

19       “(b) RETIREMENT UPON FAILURE OF REAPPOINT-  
20   MENT.—A magistrate judge of the Tax Court to whom  
21   this section applies who is not reappointed following the  
22   expiration of the term of office of such magistrate judge  
23   and who retires upon the completion of the term shall,  
24   subject to subsection (f), be entitled to receive, upon at-  
25   taining the age of 65 years and during the remainder of

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       “(l) 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 ceding 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-

dures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

“(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe procedures under which this paragraph shall be applied in any case in which the chief judge receives 2 or more orders or decrees described in subparagraph (A).

“(3) DEFINITION.—For purposes of this subsection, the term ‘lump-sum credit’ means the unrefunded amount consisting of—

“(A) retirement deductions made under this section from the salary of a magistrate judge of the Tax Court,

“(B) amounts deposited under subsection (k) by a magistrate judge of the Tax Court covering earlier service, and

“(C) interest on the deductions and deposits which, for any calendar year, shall be equal



to the overall average yield to the Tax Court  
 Judicial Officers' Retirement Fund during the  
 preceding fiscal year from all obligations pur-  
 chased by the Secretary during such fiscal year  
 under subsection (o); but does not include inter-  
 est—

“(i) if the service covered thereby ag-  
 gregates 1 year or less, or

“(ii) for the fractional part of a  
 month in the total service.

“(o) TAX COURT JUDICIAL OFFICERS' RETIREMENT  
 FUND.—

“(1) ESTABLISHMENT.—There is established in  
 the Treasury a fund which shall be known as the  
 ‘Tax Court Judicial Officers' Retirement Fund’.  
 Amounts in the Fund are authorized to be appro-  
 priated for the payment of annuities, refunds, and  
 other payments under this section.

“(2) INVESTMENT OF FUND.—The Secretary  
 shall invest, in interest bearing securities of the  
 United States, such currently available portions of  
 the Tax Court Judicial Officers' Retirement Fund as  
 are not immediately required for payments from the  
 Fund. The income derived from these investments  
 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           employee 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 aggre-  
 6           gate amount of such payments during such tax-  
 7           able 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-

lished for the benefit of any such member  
of the family or designated beneficiary, or  
the estate of the insured, or

“(ii) the amount is used to purchase  
an equity (or capital or profits) interest in  
the applicable policyholder from any person  
described in clause (i).

“(3) EMPLOYER-OWNED LIFE INSURANCE CON-  
TRACT.—

“(A) IN GENERAL.—For purposes of this  
subsection, the term ‘employer-owned life insur-  
ance contract’ means a life insurance contract  
which—

“(i) is owned by a person engaged in  
a trade or business and under which such  
person (or a related person described in  
subparagraph (B)(ii)) is directly or indi-  
rectly a beneficiary under the contract, and

“(ii) covers the life of an insured who  
is an employee with respect to the trade or  
business of the applicable policyholder on  
the date the contract is issued.

For purposes of the preceding sentence, if cov-  
erage for each insured under a master contract  
is treated as a separate contract for purposes of

sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

“(B) APPLICABLE POLICYHOLDER.—For purposes of this subsection—

“(i) IN GENERAL.—The term ‘applicable policyholder’ means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

“(ii) RELATED PERSONS.—The term ‘applicable policyholder’ includes any person which—

“(I) bears a relationship to the person described in clause (i) which is specified in section 267(b) or 707(b)(1), or

“(II) is engaged in trades or businesses with such person which are under common control (within the meaning of subsection (a) or (b) of section 52).

“(4) NOTICE AND CONSENT REQUIREMENTS.—

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 ACQUISI-**  
 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 redesign-  
 18 ating 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  
2D 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