

PROVIDING FOR CONSIDERATION OF H.R. 3762, PENSION  
SECURITY ACT OF 2002

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APRIL 10, 2002.—Referred to the House Calendar and ordered to be printed

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Mr. SESSIONS, from the Committee on Rules,  
submitted the following

R E P O R T

[To accompany H. Res. 386]

The Committee on Rules, having had under consideration House Resolution 386, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 3762, the Pension Security Act of 2002, under a modified closed rule. The rule waives all points of order against consideration of the bill.

The rule provides two hours of debate in the House equally divided among and controlled by the chairmen and ranking minority members of the Committees on Education and the Workforce and Ways and Means. The rule provides that in lieu of the amendment recommended by the Committee on Education and the Workforce now printed in the bill, the amendment in the nature of a substitute printed in part A of this report shall be considered as adopted. The rule waives all points of order against the bill, as amended.

The rule makes in order the amendment printed in part B of this report, if offered by Representative George Miller of California or Representative Rangel of New York or a designee, which shall be considered as read, and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent. The rule waives all points of order against the amendment printed in part B of this report.

Finally, the rule provides one motion to recommit with or without instructions.

The waiver of all points of order includes a waiver of clause 5(a) of rule XXI (prohibiting tax or tariff provisions in a bill not reported by a committee with jurisdiction over revenue measures).

## COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

*Rules Committee record vote No. 65*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Mrs. Slaughter.

Summary of motion: To make in order the amendment offered by Mr. Cardin, which consists of the text of H.R. 3669 as reported by the Committee on Ways and Means.

Results: Defeated 2 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 66*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Mrs. Slaughter.

Summary of motion: To make in order the amendment offered by Mr. Conyers which establishes a new bureau within the Department of Justice to prosecute crimes involving pension fraud, creates a new 10-year felony for defrauding shareholders of publicly-traded companies, clarifies current criminal laws relating to the destruction or fabrication of evidence, and provides whistleblower protection to employees of publicly-traded companies.

Results: Defeated 2 to 7.

Vote by members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 67*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Mrs. Slaughter.

Summary of motion: To make in order the amendment offered by Mr. Holt, which would reduce vesting to one year.

Results: Defeated 2 to 7.

Vote by members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 68*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Mr. Hastings.

Summary of motion: To make in order the amendment offered by Mr. Gutknecht, which requires that healthy companies, when changing their pension plan formula provide 90 days notice of any pension plan change to all workers and give fully vested employees the choice of staying in their current plan or switching to the new amended plan. Exempts companies in financial distress from pen-

alties, while otherwise healthy companies will be subject to an excise tax should they violate the provisions of this bill. Distress is to be determined by the Secretary of the Treasury, and generally follows the guidelines for distress criteria set out in ERISA: liquidation in bankruptcy or insolvency proceedings; reorganization in bankruptcy or insolvency proceedings; and plan termination requires to enable payment of debts while staying in business or to avoid unreasonably burdensome pension costs caused by declining workforce.

Results: Defeated 2 to 7.

Vote by members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 69*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Mr. Hastings.

Summary of motion: To make in order the amendment offered by Mr. Bentsen, which prohibits employers from unilaterally issuing a freeze or lockdown to prevent an employee from selling company stock contained in the employee's 401k or Employee Stock Ownership Plans (ESOPs) retirement savings account. Further, it provides that the Secretary of Labor could grant an exemption to the general prohibition if the employer meets the following strict standard. The employer must submit a petition setting out the reasons for pursuing a lockdown (i.e. change in trusteeship or plan management) and establish that a lockdown is administratively feasible, in the interests of the plan, its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan. If the Secretary of Labor grants an exemption, employees must receive written notice of the lockdown at least 90 days before it takes effect. Should the Secretary of Labor grant an exemption in emergency circumstances, the notice requirements could be waived.

Results: Defeated 2 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 70*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Hastings.

Summary of motion: To make in order the amendment offered by Mr. Bentsen, which provides that plan fiduciaries that knowingly misrepresent the present or expected valuation of employer securities would be actionable breaches of fiduciary duty under ERISA, would be held personally liable for the losses incurred as a result of this deception. Further, it provides that these claims would survive bankruptcy proceedings, should the employer (or other plan fiduciary) seek such protection and would be treated as "priority: in the bankruptcy court, eligible for full reimbursement ahead of unsecured creditors.

Results: Defeated 2 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 71*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Mr. Hastings.

Summary of motion: To make in order the amendment offered by Mr. Bentsen, which would hold accountable company insiders who knowingly misrepresent the value of employer securities to employees.

Results: Defeated 2 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 72*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Mr. Hastings.

Summary of motion: To make in order the amendment offered by Mr. Tierney, which provides that employers may only provide independent advice to employees.

Results: Defeated 2 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

*Rules Committee record vote No. 73*

Date: April 10, 2002.

Measure: H.R. 3762.

Motion by: Mr. Hastings.

Summary of motion: To make in order the amendment offered by Mr. Roemer and Mr. McCollum, which provides warning notice of excessive stock holdings. If an employee elects to invest 25% or more of his or her individual stock account in employer stock or his or her account exceeds 25% employer stock holdings, then the pension plan administrator would be required to notify the individual and in future communications periodically, but not less than quarterly, of the risks of a lack of diversification. Such notice shall be understandable to the average individual.

Results: Defeated 2 to 7.

Vote by Members: Goss—Nay; Linder—Nay; Hastings (WA)—Nay; Myrick—Nay; Sessions—Nay; Reynolds—Nay; Slaughter—Yea; Hastings (FL)—Yea; Dreier—Nay.

AMENDMENTS MADE IN ORDER UNDER THE RULE

Summaries derived from information provided by sponsors.

*Part A—Summary of Amendment to be Considered as Adopted*

*Investment Education and Benefit Statement:* The bill requires the plan administrator to provide a quarterly notice to plan participants and beneficiaries of the value of investments allocated to their individual account, including their rights to diversify any as-

sets held in employer securities. The notice will also include an explanation of the importance of a diversified investment portfolio including a risk of holding substantial portions of a portfolio in any one security, such as employer securities. The Secretary shall issue guidance and model notices that include the value of investments, the rights of employees to diversify any employer securities and an explanation of the importance of a diversified investment portfolio. Initial guidance will be no later than January 1, 2003. The Secretary may also issue interim model guidance. Notice may be electronic if reasonably accessible to the recipient. Current law provides for an annual notice of benefits and no investment education.

*Blackout Notices:* The bill requires a new notice 30 days prior to any suspension of participant and beneficiaries ability to direct or diversify assets. The notice must contain the reasons for the suspension, as well as a statement that the administrator has evaluated the reasonableness of the expected period, and a statement that the participant should evaluate the appropriateness of their current investment decisions in light of their ability to direct or diversify assets during the expected period of suspension. The bill requires that plan administrators shall determine prior to distributing notice that any suspension, limitation or restriction is reasonable. The bill clarifies that notice is required only for suspensions longer than three consecutive calendar days and provides for specific exceptions to the 30 day rule. In the event of a qualified domestic relations order, or a blackout period caused by a merger or acquisition, only those employees who are impacted by the event will receive the notice. The bill provides that the Secretary shall issue guidance and model notices that include the above factors and such other provisions the Secretary may specify. Initial guidance will be no later than January 1, 2003. The Secretary may issue interim model guidance. The bill clarifies that notice may be electronic if reasonably accessible to the recipient. The bill provides that the Secretary may provide for additional exceptions to the requirements that are in the interest of participants and beneficiaries.

*Inapplicability of Relief from Fiduciary Liability During Suspension of Ability of Participants to Direct Investments—404(c):* The bill explains fiduciary duty during blackout period. It clarifies that fiduciaries are not liable for losses provided that fiduciaries satisfy the requirements of this title. Relevant considerations in determining the satisfaction of fiduciary duty are also added, such as the provision of the blackout notice, the fiduciary's consideration of the reasonableness of the period of suspension, and the fiduciary's actions solely in the interest of participants and beneficiaries.

*Diversification:* The bill ensures that all employees contributions to pension plans will be immediately diversifiable. The bill provides for a five year transition rule for the allowable diversification of employer securities held in individual account plans as of the date of enactment. The bill provides for the option of a rolling three-year diversification of employer securities. In this case employer securities may be diversified three years after the calendar quarter in which they were contributed. The bill exempts individual account plans that do not hold employer securities that are readily tradable on an established securities market.

*Investment Advice:* The bill includes the text of H.R. 2269, the Retirement Security Advice Act, which provides increased availability of investment advisors to assist plan participants in making good decisions about their retirement assets. Employees will also be able to use pre-tax dollars to obtain their own investment advice.

*Parity for Employees During Blackout:* The bill amends Section 16 the Securities and Exchange Act of 1934 to prohibit company executives and insiders from purchasing or selling any employer securities while plan participants and beneficiaries are precluded from directing or diversifying their accounts during a “blackout” period.

*Additional Provisions:* Extends the 30-year treasury funding relief to plan years 2001 through 2003. Provides permanent funding relief for certain frozen pension plans maintained by intercity bus lines. Includes “Byrd droppings” (ERISA only) from H.R. 10 (Portman-Cardin pension reform).

*Part B—Summary of Amendment Made in Order*

George Miller/Rangel Democrat Substitute: Executive Accountability. Notice to employees when executives are dumping company stock. Requires plan participants to be notified of any significant sales of employer stock by executives or plan fiduciaries. Significant stock sales are sales of \$100,000 or more either per transaction or in the aggregate.

Honest, Accurate and Timely Information for Employees. Pension plans would be prohibited from giving misleading information; requires regular benefit statements to workers, including notice about the importance of diversification; provides at least 30-day advance notice of plan lockdowns, including the right to make investment changes that are implemented before a lockdown imposes civil penalties for failure to provide accurate information to employees. Require notice of the importance of diversification when more than 10% of an employee’s account is invested in employer stock.

Un-biased, Independent Investment Advice. Provides for independent financial advice for employees when company stock is offered as an investment option under the plan.

Gives Employees a Voice on Pension Boards. Requires pension plans to include rank and file employees on Pension Boards, where critical decisions about workers’ retirement security are made.

Lockout Restrictions. Prohibit executives from bailing out of employer stock they own if the rank and file employees are prohibited from selling their stock under the pension plan.

Parity of Benefits for Executives and Rank and File workers. Closes current law loophole that provides special treatment for executive pension plans.

Given Employees Control Over Their Retirement Savings. Gives employees the right to diversify company-matched stock after 3 years of plan participation. This enables employees to safeguard against future losses.

Additional Protections for Workers’ Pension Benefits. Requires plan fiduciaries to secure insurance in an amount sufficient to cover benefits under the plan; gives employees the right to be made whole in court for 401k plan abuses; prohibits companies from forcing workers to waive their right to bring a claim under ERISA; enhances Department of Labor assistance; protects whistleblowers,

and provides for a study of defined contribution plans insurance system.

Tougher Criminal Enforcement. This substitute toughens criminals penalties for fiduciaries who violate workers' pension rights. (60 minutes)

#### PART A—TEXT OF AMENDMENT CONSIDERED AS ADOPTED

Strike all after the enacting clause and insert the following:

##### SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Pension Security Act of 2002”.

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

Sec. 1. Short title and table of contents.

##### TITLE I—IMPROVEMENTS IN PENSION SECURITY

- Sec. 101. Periodic pension benefits statements.
- Sec. 102. Protection from suspensions, limitations, or restrictions on ability of participant or beneficiary to direct or diversify plan assets.
- Sec. 103. Informational and educational support for pension plan fiduciaries.
- Sec. 104. Diversification requirements for defined contribution plans that hold employer securities.
- Sec. 105. Prohibited transaction exemption for the provision of investment advice.
- Sec. 106. Study regarding impact on retirement savings of participants and beneficiaries by requiring consultants to advise plan fiduciaries of individual account plans.
- Sec. 107. Treatment of qualified retirement planning services.
- Sec. 108. Insider trades during pension fund blackout periods prohibited.
- Sec. 109. Effective dates of title and related rules.

##### TITLE II—OTHER PROVISIONS RELATING TO PENSIONS

- Sec. 201. Amendments to Retirement Protection Act of 1994.
- Sec. 202. Reporting simplification.
- Sec. 203. Improvement of Employee Plans Compliance Resolution System.
- Sec. 204. Flexibility in nondiscrimination, coverage, and line of business rules.
- Sec. 205. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 206. Notice and consent period regarding distributions.
- Sec. 207. Annual report dissemination.
- Sec. 208. Technical corrections to Saver Act.
- Sec. 209. Missing participants.
- Sec. 210. Reduced PBGC premium for new plans of small employers.
- Sec. 211. Reduction of additional PBGC premium for new and small plans.
- Sec. 212. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 213. Substantial owner benefits in terminated plans.
- Sec. 214. Benefit suspension notice.
- Sec. 215. Studies.
- Sec. 216. Interest rate range for additional funding requirements.
- Sec. 217. Provisions relating to plan amendments.

##### TITLE III—STOCK OPTIONS

- Sec. 301. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

##### TITLE IV—SOCIAL SECURITY AND MEDICARE HELD HARMLESS

- Sec. 401. Protection of Social Security and Medicare.

## TITLE I—IMPROVEMENTS IN PENSION SECURITY

### SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.

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

(1) REQUIREMENTS.—

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

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

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

“(ii) to each plan beneficiary upon written request, and

“(iii) in the case of an applicable individual account plan, to each plan participant (and to each beneficiary with a right to direct investments) at least quarterly.

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

“(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

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

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

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

“(i) the total benefits accrued, and

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

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

“(C) may be provided in written form or in electronic or other appropriate form to the extent that such form is reasonably accessible to the recipient.

“(3) In the case of an applicable individual account plan, the requirements of paragraph (1)(A) shall be treated as met if the quarterly statement (together with the information required in subparagraphs (A) and (B) of subsection (d)(1)) is available electronically in reasonably accessible form, and the participant or beneficiary is provided at least once each year a notice that such statement (together with such information) is available in such form. Such notice shall be in written, electronic, or other appropriate form.

“(4)(A) 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 the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

“(B) 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).”.

(B) CONFORMING AMENDMENTS.—

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

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

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

(2) INFORMATION REQUIRED FROM APPLICABLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of such Act (as amended by paragraph (1)) is amended further by adding at the end the following new subsection:

“(d)(1) The statements required to be provided at least quarterly under subsection (a) shall include (together with the information required in subsection (a)) the following:

“(A) the value of investments allocated to the individual account, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and an explanation of any limitations or restrictions on the right of the participant or beneficiary to direct an investment; and

“(B) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a discussion of the risk of holding more than 25 percent of a portfolio in the security of any one entity, such as employer securities.

“(2) The value of any employer securities that are not readily tradable on an established securities market that is required to be reported under paragraph (1)(A) may be determined by using the most recent valuation of the employer securities.

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

(3) DEFINITION OF APPLICABLE INDIVIDUAL ACCOUNT PLAN.—

Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

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

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

“(B) The term ‘one-participant retirement plan’ means a retirement plan that—

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

“(I) covered only the employer (and the employer’s spouse) and the employer owned the entire business (whether or not incorporated), or

“(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation),

“(ii) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business,

“(iii) does not provide benefits to anyone except the employer (and the employer’s spouse) or the partners (and their spouses),

“(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

“(v) does not cover a business that leases employees.”.

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

(A) in subsection (a)(6), by striking “(5), or (6)” and inserting “(5), (6), or (7)”;

(B) by redesignating paragraph (7) of subsection (c) as paragraph (8); and

(C) by inserting after paragraph (6) of subsection (c) the following new paragraph:

“(7) The Secretary may assess a civil penalty against any plan administrator of up to \$1,000 a day from the date of such plan administrator’s failure or refusal to provide participants or beneficiaries with a benefit statement on at least a quarterly basis in accordance with section 105(a)(1)(A)(iii).”.

(5) MODEL STATEMENTS.—The Secretary of Labor shall, not later than January 1, 2003, issue initial guidance and a model benefit statement, written in a manner calculated to be understood by the average plan participant, that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

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

(1) PROVISION OF INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

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

“(1) IN GENERAL.—The plan administrator of an applicable pension plan shall provide to each applicable individual an investment education notice described in paragraph (2) at the time of the enrollment of the applicable individual in the plan and not less often than annually thereafter.

“(2) INVESTMENT EDUCATION NOTICE.—An investment education notice is described in this paragraph if such notice contains—

“(A) an explanation, for the long-term retirement security of participants and beneficiaries, of generally accepted investment principles, including principles of risk management and diversification, and

“(B) a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities.

“(3) UNDERSTANDABILITY.—Each notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with guidance provided by the Secretary) to allow recipients to understand such notice.

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

“(5) DEFINITIONS.—For purposes of this subsection—

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

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

“(ii) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under a qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

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

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

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

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

which permits any participant to direct the investment of some or all of his account in the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant. Such term shall not include a one-participant retirement plan or a plan to which section 105 of the Employee Retirement Income Security Act of 1974 applies.

“(C) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—The term ‘one-participant retirement plan’ means a retirement plan that—

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

“(I) covered only the employer (and the employer’s spouse) and the employer owned the entire business (whether or not incorporated), or

“(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation),

“(ii) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the business,

“(iii) does not provide benefits to anyone except the employer (and the employer’s spouse) or the partners (and their spouses),

“(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

“(v) does not cover a business that leases employees.

“(6) CROSS REFERENCE.—

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

(2) PENALTY FOR FAILURE TO PROVIDE NOTICE.—Section 6652 of such Code (relating to failure to file certain information returns, registration statements, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

“(m) FAILURE TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—In the case of each failure to provide a written explanation as required by section 414(w) with respect to an applicable individual (as defined in such section), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to \$100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed \$50,000.”.

**SEC. 102. PROTECTION FROM SUSPENSIONS, LIMITATIONS, OR RESTRICTIONS ON ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT OR DIVERSIFY PLAN ASSETS.**

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

(1) NOTICE REQUIREMENTS.—

(A) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

(i) by redesignating the second subsection (h) as subsection (j); and

(ii) by inserting after the first subsection (h) the following new subsection:

“(i) NOTICE OF SUSPENSION, LIMITATION, OR RESTRICTION ON ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT INVESTMENTS IN INDIVIDUAL ACCOUNT PLAN.—

“(1) DUTIES OF PLAN ADMINISTRATOR.—

“(A) IN GENERAL.—In the case of any action having the effect of temporarily suspending, limiting, or restricting any ability of participants or beneficiaries under an applicable individual account plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days, the plan administrator shall—

“(i) in advance of taking such action, determine, in accordance with the requirements of part 4, that the expected period of suspension, limitation, or restriction is reasonable, and

“(ii) after making the determination under subparagraph (A) and in advance of taking such action, notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

“(B) EXCEPTIONS.—Subparagraph (A) does not apply in connection with any 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), or

“(ii) to the extent the suspension, limitation, or restriction is a change to the terms of the plan disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.

“(C) BUSINESS DAY.—For purposes of subparagraph (A), under regulations prescribed by the Secretary, the term ‘business day’ means—

“(i) in the case of a security which is traded on an established security market, any day on which such security may be traded on the principal securities market of such security, and

“(ii) in the case of a security which is not traded on an established security market, any calendar day.

“(2) NOTICE REQUIREMENTS.—

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

“(i) the reasons for the suspension, limitation, or restriction,

“(ii) an identification of the investments affected,

“(iii) the expected period of the suspension, limitation, or restriction,

“(iv) a statement that the plan administrator has evaluated the reasonableness of the expected period of suspension, limitation, or restriction,

“(v) a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the expected period of suspension, limitation, or restriction, and

“(vi) such other matters as the Secretary may include in the model notices issued under subparagraph (E).

“(B) PROVISION OF NOTICE.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan at least 30 days in advance of the action suspending, limiting, or restricting the ability of the participants or beneficiaries to direct or diversify assets.

“(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

“(i) a fiduciary of the plan determines, in writing, that a deferral of the suspension, limitation, or restriction would violate the requirements of subparagraph (A) or (B) of section 404(a)(1), or

“(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the suspension, limitation, or restriction is impracticable.

“(D) WRITTEN NOTICE.—The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

“(E) MODEL NOTICES.—The Secretary shall issue model notices which meet the requirements of this paragraph.

“(3) EXCEPTION FOR SUSPENSIONS, LIMITATIONS, OR RESTRICTIONS WITH LIMITED APPLICABILITY.—In any case in which the suspension, limitation, or restriction described in paragraph (1)—

“(A) applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 206(d)(3)(K)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i)), or

“(B) applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction,

the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to all the individuals referred to in subparagraph (A) or (B) to whom the suspension, limitation, or restriction applies as soon as reasonably practicable.

“(4) CHANGES IN PERIOD OF SUSPENSION, LIMITATION, OR RESTRICTION.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the period of the suspension, limitation, or restriction (specified in such notice pursuant to paragraph (2)(A)(iii)) on the right of a participant or beneficiary to direct or diversify assets, the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended suspension, limitation, or restriction, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (vi) of paragraph (2)(A).

“(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

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

(B) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.—

The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 101(i)(6) of the Employee Retirement Income Security Act of 1974 (as added by this subsection) not later than January 1, 2003. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(2) CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 502 of such Act (as amended by section 101(a)(4)) is amended further—

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

(B) by redesignating paragraph (8) of subsection (c) as paragraph (9); and

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

“(8) The Secretary may assess a civil penalty against a plan administrator of up to \$100 a day from the date of the plan administrator’s failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.”.

(3) INAPPLICABILITY OF RELIEF FROM FIDUCIARY LIABILITY DURING SUSPENSION OF ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT INVESTMENTS.—Section 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is amended—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by inserting “(A)” after “(c)(1)”;

(B) in subparagraph (A)(ii) (as redesignated by subparagraph (A)), by inserting before the period the following: “, except that this clause shall not apply in connection with such participant or beneficiary for any period during which the ability of such participant or beneficiary to di-

rect the investment of the assets in his or her account is suspended by a plan sponsor or fiduciary”; and

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

“(B) If the person referred to in subparagraph (A)(ii) meets the requirements of this title in connection with authorizing the suspension, such person shall not be liable under this title for any loss occurring during the suspension as a result of any exercise by the participant or beneficiary of control over assets in his or her account prior to the suspension. Matters to be considered in determining whether such person has satisfied the requirements of this title include whether such person—

“(i) has considered the reasonableness of the expected period of the suspension as required under section 101(i)(1)(A)(i),

“(ii) has provided the notice required under section 101(i)(1)(A)(ii), and

“(iii) has acted in accordance with the requirements of subsection (a) in determining whether to enter into the suspension.

“(C) Any limitation or restriction that may govern the frequency of transfers between investment vehicles shall not be treated as a suspension referred to in subparagraph (A)(ii) to the extent such limitation or restriction is disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.”

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

(1) EXCISE TAX ON FAILURE OF PENSION PLANS TO PROVIDE NOTICE OF TRANSACTION RESTRICTION PERIODS.—

(A) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

**“SEC. 4980H. FAILURE OF APPLICABLE PLANS TO PROVIDE NOTICE OF TRANSACTION RESTRICTION PERIODS.**

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

“(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be \$100.

“(c) LIMITATIONS ON AMOUNT OF TAX.—

“(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

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

“(B) such person provides the notice described in subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed and at least 1 business day before the beginning of the transaction restriction period.

“(2) TAX NOT TO APPLY WHEN PROVIDING NOTICE NOT REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) if, in the case of the occurrence of an unforeseeable event, it

is not reasonably practicable to provide such notice before the beginning of the transaction restriction period.

“(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

“(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer 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 other than a multiemployer plan, the employer.

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

“(e) NOTICE OF TRANSACTION RESTRICTION PERIOD.—

“(1) IN GENERAL.—The plan administrator of an applicable pension plan shall provide written notice of any transaction restriction period to each applicable individual to whom the transaction restriction period applies (and to each employee organization representing such applicable individuals).

“(2) UNDERSTANDABILITY.—The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with guidance provided by the Secretary) to allow recipients to understand the timing and effect of such transaction restriction period.

“(3) TIMING OF NOTICE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the notice required by paragraph (1) shall be provided at least 30 days before the beginning of the transaction restriction period.

“(B) DISPOSITION OF STOCK OR ASSETS.—

“(i) IN GENERAL.—If, in connection with the major corporate disposition by a corporation maintaining an applicable pension plan, there is the possibility of a transaction restriction period—

“(I) the notice required by paragraph (1) shall be provided at least 30 days before the date of such disposition, and

“(II) no other notice shall be required by paragraph (1) with respect to such period if notice is

provided pursuant to subclause (I) and such period begins not more than 30 days after the date of such disposition.

Subclause (I) shall not apply if the plan administrator has a substantial basis to believe that there will be no transaction restriction period in connection with the disposition.

“(ii) MAJOR CORPORATE DISPOSITION.—For purposes of clause (i), the term ‘major corporate disposition’ means, with respect to a corporation—

“(I) the disposition of substantially all of the stock of such corporation or a subsidiary thereof, or

“(II) the disposition of substantially all of the assets used in a trade or business of such corporation or subsidiary.

“(iii) NONCORPORATE ENTITIES.—Rules similar to the rules of this subparagraph shall apply to entities that are not corporations.

“(4) FORM AND MANNER OF NOTICE.—The notice required by this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the applicable individual.

“(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

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

“(A) any participant in the applicable pension plan, and

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

“(C) any beneficiary of a deceased participant or alternate payee.

“(2) APPLICABLE PENSION PLAN.—

“(A) IN GENERAL.—The term ‘applicable pension plan’ means—

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

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

which maintains accounts for participants under the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant.

“(B) EXCEPTION.—Such term shall not include a one-participant retirement plan (as defined in section 4980G(f)(3)).

“(3) TRANSACTION RESTRICTION PERIOD.—

“(A) IN GENERAL.—The term ‘transaction restriction period’ means, with respect to an applicable pension plan, a period beginning on a day in which there is a substantial reduction in rights described in subparagraph (B) which are not restored as of the beginning of the 3rd day following the day of such reduction.

“(B) RIGHTS DESCRIBED.—For purposes of this paragraph, rights described in this section with respect to an applicable pension plan are rights under such plan of 1 or more applicable individuals to direct investments in such plan, to obtain loans from such plan, or to obtain distributions from such plan.

“(C) SPECIAL RULE FOR EMPLOYER SECURITIES.—For purposes of this paragraph—

“(i) IN GENERAL.—In the case of rights relating to directing investments out of employer securities, such rights shall be treated as substantially reduced if such rights are significantly restricted for at least 3 consecutive business days.

“(ii) BUSINESS DAY.—For purposes of clause (i), under regulations prescribed by the Secretary, the term ‘business day’ means—

“(I) in the case of a security which is traded on an established security market, any day on which such security may be traded on the principal securities market of such security, and

“(II) in the case of a security which is not traded on an established security market, any calendar day.

“(iii) EMPLOYER SECURITIES.—For purposes of this subparagraph, the term ‘employer securities’ shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

“(D) EXCEPTIONS.—Rights which are substantially reduced by reason of the application of securities laws or other circumstances specified by the Secretary in regulations shall not be taken into account for purposes of this paragraph.”

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

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

(3) GUIDANCE.—The Secretary of the Treasury, in consultation with the Secretary of Labor, shall issue guidance in carrying out section 4980H of the Internal Revenue Code of 1986 (as added by this section). Such guidance—

(A) in the case of a reduction of rights relating to the direction of investments out of employer securities, shall be issued by November 1, 2002 (or, if later, the 60th day after the date of the enactment of this Act), and

(B) in any other case, shall be issued not later than 120 days after the date of the enactment of this Act.

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

Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

“(e) The Secretary shall establish a program under which information and educational resources shall be made available on an ongoing basis to persons serving as fiduciaries under employee pension benefit plans so as to assist such persons in diligently and effectively carrying out their fiduciary duties in accordance with this part.”.

**SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.**

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

- (1) by redesignating subsection (j) as subsection (k); and
- (2) by inserting after subsection (i) the following new subsection:

“(j) DIVERSIFICATION REQUIREMENTS FOR INDIVIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURITIES.—

“(1) IN GENERAL.—An applicable individual account plan shall meet the requirements of paragraphs (2) and (3).

“(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual may elect to direct the plan to divest any such securities in the individual’s account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

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

“(A) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals to which paragraph (2) applies) which is invested in employer securities, a plan meets the requirements of this paragraph if, under the plan—

“(i) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual’s account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4), or

“(ii) with respect to any employer security allocated to an applicable individual’s account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

“(B) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of subparagraph (A), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 203(b)) were taken into account under paragraph (6)(B)(i).

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

“(A) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics, and

“(B) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities occurring no less frequently than on a quarterly basis.

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

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

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

“(i) any participant in the plan, and

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

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

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

“(E) EMPLOYEE STOCK OWNERSHIP PLAN.—The term ‘employee stock ownership plan’ shall have the same meaning given to such term by section 4975(e)(7) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).

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

“(6) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This subsection shall not apply with respect to a plan if there is no class of stock issued by any employer maintaining the plan (or by a corporation which is an affiliate of any such employer, as defined in section 407(d)(7) as in effect on the date of the enactment of this subsection) that is readily tradable on an established securities market.

“(7) TRANSITION RULE.—

“(A) IN GENERAL.—In the case of any individual account plan which, on the first day of the first plan year to which this subsection applies, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this subsection, this subsection shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

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

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

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

- “(i) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) as of the date of the enactment of this paragraph, and
- “(ii) such elective deferrals.

“(D) COORDINATION WITH PRIOR ELECTIONS.—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this subsection was undertaken pursuant to other applicable Federal law prior to such date, the applicable percentage (as determined without regard to this subparagraph) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

“(8) REGULATIONS.—The Secretary of the Treasury shall prescribe regulations under this subsection in consultation with the Secretary of Labor.”

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

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

“(35) DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.—

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

“(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual in such plan may elect

to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

“(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—

“(i) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals to which subparagraph (B) applies) which is invested in employer securities, a plan meets the requirements of this subparagraph if, under the plan—

“(I) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D), or

“(II) with respect to any employer security allocated to an applicable individual's account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

“(ii) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of clause (i), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 411(a)) were taken into account under subparagraph (F)(ii)(I).

“(D) INVESTMENT OPTIONS.—The requirements of this subparagraph are met if—

“(i) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics, and

“(ii) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities occurring no less frequently than on a quarterly basis.

“(E) DEFINITIONS AND RULES.—For purposes of this paragraph—

“(i) APPLICABLE DEFINED CONTRIBUTION PLAN.—The term ‘applicable defined contribution plan’ means any defined contribution plan, except that such term does not include an employee stock ownership plan (within

the meaning of section 4975(e)(7)) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2).

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

“(I) any participant in the plan, and

“(II) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.

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

“(iv) EMPLOYER SECURITY.—The term ‘employer security’ shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of this paragraph).

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

“(vi) ELECTIONS.—Elections under this paragraph may be made not less frequently than quarterly.

“(F) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This paragraph shall not apply with respect to a plan if there is no class of stock issued by any employer maintaining the plan that is readily tradable on an established securities market.

“(G) TRANSITION RULE.—

“(i) IN GENERAL.—In the case of any defined contribution plan which, on the effective date of this subsection, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this paragraph, this paragraph shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be as follows:

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

“(iii) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—For purposes of

clause (i), the applicable percentage shall be 100 percent with respect to—

“(I) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) of the Employee Retirement Income Security Act of 1974 as of the date of the enactment of this paragraph, and

“(II) such elective deferrals.

“(iv) CONTRIBUTIONS HELD WITHIN AN ESOP.—In the case of contributions (other than elective deferrals and employee contributions) held within an employee stock ownership plan, in the case of the 1st and 2nd plan years referred to in the table in clause (ii), the applicable percentage shall be the greater of the amount determined under clause (ii) or the percentage determined under paragraph (28) (determined as if paragraph (28) applied to a plan described in this paragraph).

“(v) COORDINATION WITH PRIOR ELECTIONS UNDER PARAGRAPH (28).—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this paragraph was undertaken pursuant to an election under paragraph (28) prior to such date, the applicable percentage (as determined without regard to this clause) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

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

(2) CONFORMING AMENDMENTS.—

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

“(D) APPLICATION.—This paragraph shall not apply to a plan to which paragraph (35) applies.”.

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

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

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and section 109, the amendments made by this section shall apply to plan years beginning after December 31, 2002, and with respect to employer securities allocated to accounts before, on, or after the date of the enactment of this Act.

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

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

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

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

“(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

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

“(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

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

“(B) The transactions described in this subparagraph are the following:

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

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

“(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.”.

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

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

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

“(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may con-

sist of notification by means of electronic communication)—

“(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

“(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

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

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

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

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

“(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

“(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

“(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

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

“(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

“(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

“(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

“(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF

**MATERIAL CHANGE.**—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

“(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

“(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

“(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

“(4) **MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.**—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

“(5) **EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.**—

“(A) **IN GENERAL.**—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

“(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

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

“(B) **CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.**—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other

person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

“(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

“(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

“(A) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

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

“(ii) a bank or similar financial institution referred to in section 408(b)(4), but only if the advice is provided through a trust department of the bank or similar financial institution which is subject to periodic examination and review by Federal or State banking authorities,

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

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

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

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

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

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

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

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

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

(B) in paragraph (15), by striking the period at the end and inserting “; or”; and

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

“(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B), in any case in which—

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

“(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

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

(2) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

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

“(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

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

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

“(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

“(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

“(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

“(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

“(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

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

“(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

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

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

“(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

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

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

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

“(C) STANDARDS FOR PRESENTATION OF INFORMATION.—

The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries

of the information required to be provided in the notification.

“(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

“(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

“(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

“(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

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

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

“(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

“(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

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

“(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

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

“(i) FIDUCIARY ADVISER.—The term ‘fiduciary adviser’ means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

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

“(II) a bank or similar financial institution referred to in subsection (d)(4), but only if the advice is provided through a trust department of the bank or similar financial institution which is subject to periodic examination and review by Federal or State banking authorities,

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

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

“(V) an affiliate of a person described in any of subclauses (I) through (IV), or

“(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

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

“(iii) REGISTERED REPRESENTATIVE.—The term ‘registered representative’ of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).”.

**SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT SAVINGS OF PARTICIPANTS AND BENEFICIARIES BY REQUIRING CONSULTANTS TO ADVISE PLAN FIDUCIARIES OF INDIVIDUAL ACCOUNT PLANS.**

(a) **STUDY.**—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor shall undertake a study of the costs and benefits to participants and beneficiaries of requiring independent consultants to advise plan fiduciaries in connection with individual account plans. In conducting such study, the Secretary shall consider—

(1) the benefits to plan participants and beneficiaries of engaging independent advisers to provide investment and other advice regarding the assets of the plan to persons who have fiduciary duties with respect to the management or disposition of such assets,

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

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

(4) the availability of qualified independent consultants to serve the needs of individual account plan fiduciaries in the United States,

(5) the impact of the additional fiduciary duty of an independent advisor on the strict fiduciary obligations of plan fiduciaries,

(6) the impact of new requirements (consulting fees, reporting requirements, and new plan duties to prudently identify and contract with qualified independent consultants) on the availability of individual account plans, and

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

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

**SEC. 107. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.**

(a) **IN GENERAL.**—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

“(4) **NO CONSTRUCTIVE RECEIPT.**—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer’s qualified employer plan.”.

(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),”.

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

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

**SEC. 108. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.**

(a) PROHIBITION.—It shall be unlawful for any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or who is a director or an officer of the issuer of such security, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of any issuer (other than an exempted security), during any blackout period with respect to such equity security.

(b) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this section shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purposes of this subsection.

(c) RULEMAKING PERMITTED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

(d) As used in this section:

(1) BENEFICIAL OWNER.—The term “beneficial owner” has the meaning provided such term in rules or regulations issued by the Commission under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p).

(2) BLACKOUT PERIOD.—The term “blackout period” with respect to the equity securities of any issuer—

(A) means any period during which the ability of at least fifty percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase (or otherwise acquire) or sell (or otherwise transfer) an interest in any equity of such issuer is suspended by the issuer or a fiduciary of the plan; but

(B) does not include—

(i) a period in which the employees of an issuer may not allocate their interests in the individual account plan due to an express investment restriction—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before joining the individual account plan or as a subsequent amendment to the plan;

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an applicable individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction.

(3) COMMISSION.—The term “Commission” means the Securities and Exchange Commission.

(4) INDIVIDUAL ACCOUNT PLAN.—The term “individual account plan” has the meaning provided such term in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

(5) ISSUER.—The term “issuer” shall have the meaning set forth in section 2(a)(4) of the Securities Act of 1933 (15 U.S.C. 77b(a)(4)).

**SEC. 109. EFFECTIVE DATES OF TITLE AND RELATED RULES.**

(a) IN GENERAL.—Except as otherwise provided in this title or in subsection (b), the amendments made by this title shall apply with respect to plan years beginning on or after January 1, 2003.

(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for “January 1, 2003” the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2004, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 2005.

(c) PLAN AMENDMENTS.—If the amendments made by sections 101, 102, 103, and 104 of this Act require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 2005, if—

(1) during the period after such amendments made by such sections take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments made by such sections, and

(2) such plan amendment applies retroactively to the period after such amendments made by such sections take effect and before such first plan year.

(d) AMENDMENTS RELATING TO INVESTMENT ADVICE.—The amendments made by section 104 shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 or section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2003.

## **TITLE II—OTHER PROVISIONS RELATING TO PENSIONS**

### **SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT OF 1994.**

(a) TRANSITION RULE MADE PERMANENT.—Paragraph (1) of section 769(c) of the Retirement Protection Act of 1994 is amended—

(1) by striking “transition” each place it appears in the heading and the text, and

(2) by striking “for any plan year beginning after 1996 and before 2010”.

(b) SPECIAL RULES.—Paragraph (2) of section 769(c) of the Retirement Protection Act of 1994 is amended to read as follows:

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

“(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

“(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

“(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2001.

### **SEC. 202. REPORTING SIMPLIFICATION.**

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

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

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term “one-participant retirement plan” means a retirement plan that—

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

(i) covered only the employer (and the employer’s spouse) and the employer owned the entire business (whether or not incorporated); or

(ii) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation);

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

(C) does not provide benefits to anyone except the employer (and the employer's spouse) or the partners (and their spouses);

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

(E) does not cover a business that leases employees.

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(4) EFFECTIVE DATE.—The provisions of this subsection shall apply to plan years beginning on or after January 1, 2002.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case of plan years beginning after December 31, 2003, the Secretary of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 employees on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

**SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.**

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;

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

(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.

The Secretary of the Treasury shall have full authority to effectuate the foregoing with respect to 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.

**SEC. 204. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, AND LINE OF BUSINESS RULES.**

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the

requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if—

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

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

Subparagraph (B) shall only apply to the extent provided by the Secretary.

(2) EFFECTIVE DATES.—

(A) REGULATIONS.—The regulation required by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under paragraph (1)(A) shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(b) COVERAGE TEST.—

(1) IN GENERAL.—Section 410(b)(1) of the Internal Revenue Code of 1986 (relating to minimum coverage requirements) is amended by adding at the end the following:

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

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

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

“(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.”.

(2) EFFECTIVE DATES.—

(A) IN GENERAL.—The amendment made by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under regulations prescribed by the Secretary under section 410(b)(1)(D) of the Internal Revenue Code of 1986 shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(c) LINE OF BUSINESS RULES.—The Secretary of the Treasury shall, on or before December 31, 2003, modify the existing regulations issued under section 414(r) of the Internal Revenue Code of 1986 in order to expand (to the extent that the Secretary determines appropriate) the ability of a pension plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

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

(a) **IN GENERAL.**—

(1) Subparagraph (G) of section 401(a)(5) of the Internal Revenue Code of 1986 and subparagraph (H) of section 401(a)(26) of such Code are each amended by striking “section 414(d)” and all that follows and inserting “section 414(d).”.

(2) Subparagraph (G) of section 401(k)(3) of the Internal Revenue Code of 1986 and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 are each amended by striking “maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)”.

(b) **CONFORMING AMENDMENTS.**—

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

(2) The heading for subparagraph (H) of section 401(a)(26) of such Code is amended to read as follows: “EXCEPTION FOR GOVERNMENTAL PLANS.—”.

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

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

**SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.**

(a) **EXPANSION OF PERIOD.**—

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

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

(B) **MODIFICATION OF REGULATIONS.**—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute “180 days” for “90 days” each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) **AMENDMENT OF ERISA.**—

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

(B) **MODIFICATION OF REGULATIONS.**—The Secretary of the Treasury shall modify the regulations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to the extent that they relate to sections 203(e) and 205 of such Act to substitute “180 days” for “90 days” each place it appears.

(3) **EFFECTIVE DATE.**—The amendments made by paragraphs (1)(A) and (2)(A) and the modifications required by paragraphs (1)(B) and (2)(B) shall apply to years beginning after December 31, 2002.

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

(1) **IN GENERAL.**—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Rev-

enue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) **EFFECTIVE DATE.**—

(A) **IN GENERAL.**—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2002.

(B) **REASONABLE NOTICE.**—In the case of any description of such consequences made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor description under paragraph (1), a plan shall not be treated as failing to satisfy the requirements of section 411(a)(11) of such Code or section 205 of such Act by reason of the failure to provide the information required by the modifications made under paragraph (1) if the Administrator of such plan makes a reasonable attempt to comply with such requirements.

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

(a) **REPORT AVAILABLE THROUGH ELECTRONIC MEANS.**—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by adding at the end the following new sentence: “The requirement to furnish information under the previous sentence with respect to an employee pension benefit plan shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.”

(b) **EFFECTIVE DATE.**—The amendment made by this section shall apply to reports for years beginning after December 31, 2002.

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

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

(1) in subsection (a), by striking “2001 and 2005 on or after September 1 of each year involved” and inserting “2002, 2006, and 2010”;

(2) in subsection (b), by adding at the end the following new sentence: “To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with any appropriate, qualified entity.”;

(3) in subsection (e)(2)—

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

(B) by striking subparagraph (F) and inserting the following:

“(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate.”;

- (C) by redesignating subparagraph (G) as subparagraph (J); and
- (D) by inserting after subparagraph (F) the following new subparagraphs:
- “(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;
- “(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;
- “(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and”;
- (4) in subsection (e)(3)—
- (A) by striking “There shall be not more than 200 additional participants.” in subparagraph (A) and inserting “The participants in the National Summit shall also include additional participants appointed under this subparagraph.”;
- (B) by striking “one-half shall be appointed by the President,” in subparagraph (A)(i) and inserting “not more than 100 participants shall be appointed under this clause by the President.”;
- (C) by striking “one-half shall be appointed by the elected leaders of Congress” in subparagraph (A)(ii) and inserting “not more than 100 participants shall be appointed under this clause by the elected leaders of Congress”;
- (D) by redesignating subparagraph (B) as subparagraph (C); and
- (E) by inserting after subparagraph (A) the following new subparagraph:
- “(B) PRESIDENTIAL AUTHORITY FOR ADDITIONAL APPOINTMENTS.—The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this subparagraph additional participants to the National Summit. The number of such additional participants appointed under this subparagraph may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by an organization referred to in subsection (b) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.”;
- (5) in subsection (e)(3)(C) (as redesignated), by striking “January 31, 1998” and inserting “3 months before the convening of each summit;”
- (6) in subsection (f)(1)(C), by inserting “, no later than 90 days prior to the date of the commencement of the National Summit,” after “comment”;

(7) in subsection (g), by inserting “, in consultation with the congressional leaders specified in subsection (e)(2),” after “report” the first place it appears;

(8) in subsection (i)—

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

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

“(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.”; and

(9) in subsection (k)—

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

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

**SEC. 209. MISSING PARTICIPANTS.**

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

“(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

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

“(1) TRANSFER TO CORPORATION.—The plan administrator of a plan described in paragraph (4) may elect to transfer a missing participant’s benefits to the corporation upon termination of the plan.

“(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

“(A) to the corporation, or

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

“(3) PAYMENT BY THE CORPORATION.—If benefits of a missing participant were transferred to the corporation under paragraph (1), the corporation shall, upon location of the participant or beneficiary, pay to the participant or beneficiary the amount transferred (or the appropriate survivor benefit) either—

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

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

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

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

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

“(ii) which is not a plan described in paragraphs (2) through (11) of section 4021(b), and  
 “(B) at the time the assets are to be distributed upon termination, the plan—

“(i) has missing participants, and

“(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

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

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

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

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

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to distributions made after final regulations implementing subsections (c) and (d) of section 4050 of the Employee Retirement Income Security Act of 1974 (as added by subsection (a)), respectively, are prescribed.

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

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

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

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

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

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

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

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

“(ii)(I) For purposes of this paragraph, the term ‘small employer’ means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

“(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of

such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans first effective after December 31, 2002.

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

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

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

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

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

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

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

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

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

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

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

(2) by inserting after subparagraph (F) the following new subparagraph:

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

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

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans first effective after December 31, 2002.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2002.

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

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

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

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

“(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).”.

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

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

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

“(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—

“(i) owns the entire interest in an unincorporated trade or business,

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

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

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

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

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

“(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.”.

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

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

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

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

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

“(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.”

(c) CONFORMING AMENDMENTS.—

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

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

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

“(d) For purposes of subsection (b)(9), the term ‘substantial owner’ means an individual who, at any time during the 60-month period ending on the date the determination is being made—

“(1) owns the entire interest in an unincorporated trade or business,

“(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

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

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

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

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2002, and

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

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2003.

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

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

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

(2) in the case of any employee who is not described in paragraph (1)—

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

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

(b) EFFECTIVE DATE.—The modification made under this section shall apply to plan years beginning after December 31, 2002.

**SEC. 215. STUDIES.**

(a) MODEL SMALL EMPLOYER GROUP PLANS STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall conduct a study to determine—

(1) the most appropriate form or forms of—

(A) employee pension benefit plans which would—

(i) be simple in form and easily maintained by multiple small employers, and

(ii) provide for ready portability of benefits for all participants and beneficiaries,

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

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

(2) appropriate methods and strategies for making pension plan coverage described in paragraph (1) more widely available to American workers.

(b) MATTERS TO BE CONSIDERED.—In conducting the study under subsection (a), the Secretary of Labor shall consider the adequacy and availability of existing employee pension benefit plans and the extent to which existing models may be modified to be more accessible to both employees and employers.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor shall report the results of the study under subsection (a), together with the Secretary's recommendations, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate. Such recommendations shall include one or more model plans described in subsection (a)(1)(A) and model alternative arrangements described in subsections (a)(1)(B) and (a)(1)(C) which may serve as the basis for appropriate administrative or legislative action.

(d) STUDY ON EFFECT OF LEGISLATION.—Not later than 5 years after the date of the enactment of this Act, the Secretary of Labor shall submit to the Committee on Education and the Workforce of

the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report on the effect of the provisions of this Act and title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001 on pension plan coverage, including any change in—

- (1) the extent of pension plan coverage for low and middle-income workers,
- (2) the levels of pension plan benefits generally,
- (3) the quality of pension plan coverage generally,
- (4) workers' access to and participation in pension plans, and
- (5) retirement security.

**SEC. 216. INTEREST RATE RANGE FOR ADDITIONAL FUNDING REQUIREMENTS.**

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

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

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

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

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

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

(d) **EFFECTIVE DATE.**—The amendments made by this section shall take effect as if included in the amendments made by section 405 of the Job Creation and Worker Assistance Act of 2002.

**SEC. 217. PROVISIONS RELATING TO PLAN AMENDMENTS.**

(a) **IN GENERAL.**—If this section applies to any plan or contract amendment—

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

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

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

(1) **IN GENERAL.**—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this title or title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this title or such title VI, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2005.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting “2007” for “2005”.

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

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

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

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

(B) such plan or contract amendment applies retroactively for such period.

## TITLE III—STOCK OPTIONS

### SEC. 301. 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 end of paragraph (21) and inserting “; or”, and by inserting after paragraph (21) the following new paragraph: “(22) remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

“(B) any disposition by the individual of such stock.”.

(B) Section 209(a) of the Social Security Act is amended by striking “or” at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting “; or”, and by inserting after paragraph (18) the following new paragraph:

“(19) Remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

“(B) any disposition by the individual of such stock.”.

(2) RAILROAD RETIREMENT TAXES.—Subsection (e) of section 3231 of such Code is amended by adding at the end the following new paragraph:

“(11) QUALIFIED STOCK OPTIONS.—The term ‘compensation’ shall not include any remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

“(B) any disposition by the individual of such stock.”.

(3) UNEMPLOYMENT TAXES.—Section 3306(b) of such Code (relating to definition of wages) is amended by striking “or” at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting “; or”, and by inserting after paragraph (17) the following new paragraph:

“(18) remuneration on account of—

“(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

“(B) any disposition by the individual of such stock.”.

(b) WAGE WITHHOLDING NOT REQUIRED ON DISQUALIFYING DISPOSITIONS.—Section 421(b) of such Code (relating to effect of disqualifying dispositions) is amended by adding at the end the following new sentence: “No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.”.

(c) WAGE WITHHOLDING NOT REQUIRED ON COMPENSATION WHERE OPTION PRICE IS BETWEEN 85 PERCENT AND 100 PERCENT OF VALUE OF STOCK.—Section 423(c) of such Code (relating to special rule where option price is between 85 percent and 100 percent of value of stock) is amended by adding at the end the following new sentence: “No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act.

## **TITLE IV—SOCIAL SECURITY AND MEDICARE HELD HARMLESS**

### **SEC. 401. PROTECTION OF SOCIAL SECURITY AND MEDICARE.**

The amounts transferred to any trust fund under the Social Security Act shall be determined as if this Act had not been enacted.

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PART B—TEXT OF AMENDMENT MADE IN ORDER UNDER  
THE RULE

AN AMENDMENT IN THE NATURE OF A SUBSTITUTE TO BE OFFERED  
BY REPRESENTATIVE GEORGE MILLER OF CALIFORNIA OR REP-  
RESENTATIVE RANGEL OF NEW YORK OR A DESIGNEE, DEBATABLE  
FOR 60 MINUTES

Strike all after the enacting clause and insert the following:

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

(a) **SHORT TITLE.**—This Act may be cited as the “Employee Pension Freedom Act of 2002”.

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

Sec. 1. Short title and table of contents.

**TITLE I—IMPROVEMENTS IN DISCLOSURE**

Sec. 101. Pension benefit information.

Sec. 102. Immediate warning of excessive stock holdings.

Sec. 103. Additional fiduciary protections relating to lockdowns.

Sec. 104. Report to participants and beneficiaries of trades in employer securities.

Sec. 105. Provision to participants and beneficiaries of material investment information in accurate form.

Sec. 106. Enforcement of information and disclosure requirements.

**TITLE II—DIVERSIFICATION REQUIREMENTS**

Sec. 201. Freedom to make investment decisions with plan assets.

Sec. 202. Effective date of title.

**TITLE III—EMPLOYEE REPRESENTATION**

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

**TITLE IV—EXECUTIVE PARITY**

Sec. 401. Inclusion in gross income of funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock.

Sec. 402. Insider trades during pension fund blackout periods prohibited.

**TITLE V—INCREASED ACCOUNTABILITY**

Sec. 501. Bonding or insurance adequate to protect interest of participants and beneficiaries.

Sec. 502. Liability for breach of fiduciary duty.

Sec. 503. Preservation of rights or claims.

Sec. 504. Office of Pension Participant Advocacy.

Sec. 505. Additional criminal penalties.

Sec. 506. Study regarding insurance system for individual account plans.

**TITLE VI—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES**

Sec. 601. Independent investment advice.

Sec. 602. Tax treatment of qualified retirement planning services.

**TITLE VII—GENERAL PROVISIONS**

Sec. 701. General effective date.

Sec. 702. Plan amendments.

**TITLE I—IMPROVEMENTS IN  
DISCLOSURE**

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

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

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

(A) by striking “shall furnish to any plan participant or beneficiary who so requests in writing,” and inserting “shall furnish at least once every 3 years, in the case of a participant in a defined benefit plan who has attained age 35, and annually, in the case of an individual account plan, to each plan participant, and shall furnish to any plan participant or beneficiary who so requests,” and

(B) by adding at the end the following flush sentence:  
 “Information furnished under the preceding sentence to a participant in a defined benefit plan (other than at the request of the participant) may be based on reasonable estimates determined under regulations prescribed by the Secretary.”

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

“(e)(1) The Secretary of Labor shall develop a model benefit statement which shall be used by plan administrators in complying with the requirements of subsection (a). Such statement shall include—

“(A) the amount of nonforfeitable accrued benefits as of the statement date which is payable at normal retirement age under the plan,

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

“(C) the amount or percentage of any reduction due to integration of the benefit with the participant’s Social Security benefits or similar governmental benefits,

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

“(E) the percentage of the net return on investment of plan assets for the preceding plan year (or, with respect to investments directed by the participant, the net return on investment of plan assets for such year so directed), itemized with respect to each type of investment, and, stated separately, the administrative and transaction fees incurred in connection with each such type of investment, and

“(F) in the case of an individual account plan, the amount and percentage of assets in the individual account that consists of employer securities and employer real property (as defined in paragraphs (1) and (2), respectively, of section 407(d)), as determined as of the most recent valuation date of the plan.

“(2) The Secretary shall also develop a separate notice, which shall be included by the plan administrator with the information furnished pursuant to subsection (a), which advises participants and beneficiaries of generally accepted investment principles, including principles of risk management and diversification for long-term retirement security and the risks of holding substantial assets in a single asset such as employer securities.”

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

“(d) Each administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall furnish to any plan

participant or beneficiary who so requests in writing, a statement described in subsection (a).”.

(b) DISCLOSURE OF BENEFIT CALCULATIONS.—

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

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

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

“(b)(1) In the case of a participant or beneficiary who is entitled to a distribution of a benefit under an employee pension benefit plan, the administrator of such plan shall provide to the participant or beneficiary the information described in paragraph (2) upon the written request of the participant or beneficiary.

“(2) The information described in this paragraph includes—

“(A) a worksheet explaining how the amount of the distribution was calculated and stating the assumptions used for such calculation,

“(B) upon written request of the participant or beneficiary, any documents relating to the calculation (if available), and

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

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

(2) CONFORMING AMENDMENTS.—

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

(B) Section 105(c) of such Act (as redesignated by paragraph (1)(A) of this subsection) is amended by inserting “or (b)” after “subsection (a)”.

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

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

(1) EXCISE TAX ON FAILURE OF DEFINED CONTRIBUTION PLANS TO PROVIDE NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

**“SEC. 4980I. FAILURE OF DEFINED CONTRIBUTION PLANS TO PROVIDE NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.**

“(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any defined contribution plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

“(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be \$1,000 for each day on which such failure is not corrected.

“(c) LIMITATIONS ON AMOUNT OF TAX.—

“(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

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

“(B) such person provides the notice described in subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

“(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

“(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer 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.

“(3) 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 other than a multiemployer plan, the employer.

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

“(e) REQUIREMENTS RELATING TO NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.—The plan administrator of any defined contribution plan shall provide annually a separate notice which advises participants and beneficiaries of generally accepted investment principles, including principles of risk management and diversification for long-term retirement security and the risks of holding substantial assets in a single asset such as employer securities.”

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

“Sec. 4980I. Failure of defined contribution plans to provide notice of generally accepted investment principles.”

#### **SEC. 102. IMMEDIATE WARNING OF EXCESSIVE STOCK HOLDINGS.**

Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) (as amended by section 101 of this Act) is amended further by adding at the end the following new subsection:

“(g)(1) Upon receipt of information by the plan administrator of an individual account plan indicating that the individual account of any participant which had not been excessively invested in employer securities is excessively invested in such securities (or that

such account, as initially invested, is excessively invested in employer securities), the plan administrator shall immediately provide to the participant a separate, written statement—

“(A) indicating that the participant’s account has become excessively invested in employer securities,

“(B) setting forth the notice described in subsection (e)(7), and

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

In any case in which such a separate, written statement is required to be provided to a participant under this paragraph, each statement issued to such participant pursuant to subsection (a) thereafter shall also contain such separate, written statement until the plan administrator is made aware that such participant’s account has ceased to be excessively invested in employer securities or the employee, in writing, waives the receipt of the notice and acknowledges understanding the importance of diversification.

“(2) Each notice required under this subsection shall be provided in a form and manner which shall be prescribed in regulations of the Secretary. Such regulations shall provide for inclusion in the notice a prominent reference to the risks of large losses in assets available for retirement from excessive investment in employer securities.

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

**SEC. 103. ADDITIONAL FIDUCIARY PROTECTIONS RELATING TO LOCKDOWNS.**

(a) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

“(e)(1) In the case of any eligible individual account plan (as defined in section 407(d)(3)) no lockdown may take effect until at least 30 days after written notice of such lockdown is provided by the plan administrator to such participant or beneficiary (and to each employee organization representing any such participant).

“(2) Subject to such regulations as the Secretary may prescribe, the requirements of paragraph (1) shall not apply in cases of emergency.

“(3) A plan described in paragraph (1) shall provide that each participant and beneficiary required to receive a notice under paragraph (1)(A) is entitled to direct the plan to divest within 3 business days (but in no event later than the beginning of the lockdown) any security or other property in which any assets allocated to the account of such individual are invested and to reinvest such assets in any other investment option offered under the plan.

“(4) For purposes of this subsection, the term ‘lockdown’ means any temporary lockdown, blackout, or freeze with respect to, suspension of, or similar limitation on the ability of a participant or beneficiary to exercise control over the assets in his or her account as otherwise generally provided under the plan (as determined

under regulations of the Secretary), including the ability to direct investments, obtain loans, or obtain distributions.”.

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

(1) EXCISE TAX ON FAILURES WITH RESPECT TO LOCKDOWNS.—

Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

**“SEC. 4980G. FAILURE OF DEFINED CONTRIBUTION PLANS WITH RESPECT TO LOCKDOWNS.**

“(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any defined contribution plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

“(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be \$100.

“(c) LIMITATIONS ON AMOUNT OF TAX.—

“(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

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

“(B) such person meets the requirements of subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

“(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

“(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer 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.

“(3) 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 other than a multiemployer plan, the employer.

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

“(e) REQUIREMENTS RELATING TO LOCKDOWNS.—

“(1) IN GENERAL.—In the case of any defined contribution plan no lockdown may take effect until at least 30 days after

written notice of such lockdown is provided by the plan administrator to each participant or beneficiary (and to each employee organization representing any such participant).

“(2) EXCEPTION FOR EMERGENCY.—Subject to such regulations as the Secretary may prescribe, the requirements of paragraph (1) shall not apply in cases of emergency.

“(3) REQUIREMENT RELATING TO DIVESTMENT.—A plan described in paragraph (1) shall provide that each participant and beneficiary required to receive a notice under paragraph (1)(A) is entitled to direct the plan to divest within 3 business days (but in no event later than the beginning of the lockdown) any security or other property in which any assets allocated to the account of such individual are invested and to reinvest such assets in any other investment option offered under the plan.

“(4) LOCKDOWN DEFINED.—For purposes of this subsection, the term ‘lockdown’ means any temporary lockdown, blackout, or freeze with respect to, suspension of, or similar limitation on the ability of a participant or beneficiary to exercise control over the assets in his or her account as otherwise generally provided under the plan (as determined under regulations of the Secretary), including the ability to direct investments, obtain loans, or obtain distributions.”.

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

“Sec. 4980G. Failure of defined contribution plans with respect to lockdowns.”.

**SEC. 104. REPORT TO PARTICIPANTS AND BENEFICIARIES OF TRADES IN EMPLOYER SECURITIES.**

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

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

“(A) such transaction is required under section 16 of the Securities Exchange Act of 1934 to be reported by such person to the Securities and Exchange Commission, or

“(B) such person is a named fiduciary of the plan, such person shall comply with the requirements of paragraph (2).

“(2) A person described in paragraph (1) complies with the requirements of this paragraph in connection with a transaction described in paragraph (1) if such person provides to the plan administrator of the plan a written notification of the transaction not later than 1 business day after the date of the transaction.

“(3)(A) If the plan administrator is made aware, on the basis of notifications received pursuant to paragraph (2) or otherwise, that the proceeds from any transaction described in paragraph (1), constituting direct or indirect sales of employer securities by any person described in paragraph (1), exceed \$100,000, the plan adminis-

trator of the plan shall provide to each participant and beneficiary a notification of such transaction. Such notification shall be in writing, except that such notification may be in electronic or other form to the extent that such form is reasonably accessible to the participant or beneficiary.

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

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

“(4) Each notification required under paragraph (2) or (3) shall be made in such form and manner as may be prescribed in regulations of the Secretary and shall include the number of shares involved in each transaction and the price per share, and the notification required under paragraph (3) shall be written in language designed to be understood by the average plan participant. The Secretary may provide by regulation, in consultation with the Securities and Exchange Commission, for exemptions from the requirements of this subsection with respect to specified types of transactions to the extent that such exemptions are consistent with the best interests of plan participants and beneficiaries. Such exemptions may relate to transactions involving reinvestment plans, stock splits, stock dividends, qualified domestic relations orders, and similar matters.

“(5) For purposes of this subsection, the term ‘employer security’ has the meaning provided in section 407(d)(1).”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to transactions occurring on or after July 1, 2002.

**SEC. 105. PROVISION TO PARTICIPANTS AND BENEFICIARIES OF MATERIAL INVESTMENT INFORMATION IN ACCURATE FORM.**

Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

“(4) The plan sponsor and plan administrator of a pension plan described in paragraph (1) shall have a fiduciary duty to ensure that each participant and beneficiary under the plan, in connection with the investment by the participant or beneficiary of plan assets in the exercise of his or her control over assets in his account, is provided with all material investment information regarding investment of such assets to the extent that the provision of such information is generally required to be disclosed by the plan sponsor to investors in connection with such an investment under applicable securities laws. The provision by the plan sponsor or plan administrator of any misleading investment information shall be treated as a violation of this paragraph.”.

**SEC. 106. ENFORCEMENT OF INFORMATION AND DISCLOSURE REQUIREMENTS.**

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

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph:

“(7) The Secretary may assess a civil penalty against any person required to provide any notification under the provisions of section 104(d), any statement under the provisions of subsection (a), (d), or (f) of section 105, any information under the provisions of section 404(c)(4), or any notice under the provisions of section 404(f)(1) of up to \$1,000 a day from the date of any failure by such person to provide such notification, statement, information, or notice in accordance with such provisions.”.

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

## **TITLE II—DIVERSIFICATION REQUIREMENTS**

**SEC. 201. FREEDOM TO MAKE INVESTMENT DECISIONS WITH PLAN ASSETS.**

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) (as amended by section 103) is amended further by adding at the end the following new subsection:

“(f)(1)(A)(i) Subject to clause (ii), an individual account plan under which a participant or beneficiary is permitted to exercise control over assets in his or her account shall provide that—

“(I) any such participant or beneficiary has the right to allocate all assets in his or her account (and any portion thereof) attributable to employee contributions to any investment option provided under the plan, and

“(II) any such participant who has completed 3 years of service (as defined in section 203(b)(2)) with the employer, or any such beneficiary of such a participant, has the right to allocate all assets in his or her account (and any portion thereof) attributable to employer contributions to any investment option provided under the plan.

The application of any penalty or any restriction based on age or years of service in connection with any exercise of such right as provided under this clause shall be construed as a violation of this clause.

“(ii) Clause (i) shall apply only to so much of a nonforfeitable accrued benefit as consists of employer securities which are readily tradable on an established securities market.

“(B)(i) Except as provided in clause (ii), within 5 days after the date of any election by a participant or beneficiary allocating his or her nonforfeitable accrued benefit to any investment option provided under the plan, the plan administrator shall take such actions as are necessary to effectuate such allocation.

“(ii) In any case in which the plan provides for elections periodically during prescribed periods, the 5-day period described in clause (i) shall commence at the end of each such prescribed period.

“(C) Nothing in this paragraph shall be construed to limit the authority of a plan to impose limitations on the portion of plan assets in any account which may be invested in employer securities to the extent that any such limitation is consistent with this title and not more restrictive than is permitted under this title.

“(2) Not later than 30 days prior to the date on which the right of a participant under an individual account plan to his or her accrued benefit becomes nonforfeitable, the plan administrator shall provide to such participant and his or her beneficiaries a written notice—

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

“(B) describing the importance of diversifying the investment of account assets.”.

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

(1) EXCISE TAX ON FAILURE TO PERMIT DIVERSIFICATION OF EMPLOYER SECURITIES.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

**“SEC. 4980H. FAILURE OF DEFINED CONTRIBUTION PLANS TO PERMIT DIVERSIFICATION OF EMPLOYER SECURITIES.**

“(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any defined contribution plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

“(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be \$1,000 for each day for which the failure is not corrected.

“(c) LIMITATIONS ON AMOUNT OF TAX.—

“(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

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

“(B) such person meets the requirements of subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

“(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

“(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer 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.

“(3) 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 other than a multiemployer plan, the employer.

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

“(e) REQUIREMENTS RELATING TO DIVERSIFICATION OF EMPLOYER SECURITY.—

“(1) IN GENERAL.—The requirements of this subsection are the requirements of paragraphs (2), (3), and (4).

“(2) RIGHT TO DIRECT INVESTMENTS.—

“(A) IN GENERAL.—Subject to subparagraph (B), a plan meets the requirements of this paragraph if, under the plan—

“(i) any participant or beneficiary who is permitted to exercise control over assets in his or her account has the right to allocate all assets in his or her account (and any portion thereof) attributable to employee contributions to any investment option provided under the plan, and

“(ii) any such participant who has completed 3 years of service (as defined in section 411(a)(5)) with the employer, or any such beneficiary of such a participant, has the right to allocate all assets in his or her account (and any portion thereof) attributable to employer contributions to any investment option provided under the plan.

The application of any penalty or any restriction based on age or years of service in connection with any exercise of such right as provided under this clause shall be construed as a violation of this clause.

“(B) LIMITATION TO READILY TRADABLE EMPLOYER SECURITIES.—Subparagraph (A) shall apply only to so much of a nonforfeitable accrued benefit as consists of employer securities which are readily tradable on an established securities market.

“(3) PROMPT COMPLIANCE WITH DIRECTIONS TO ALLOCATE INVESTMENTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), a plan meets the requirements of this paragraph if the plan provides that, within 5 days after the date of any election by a participant or beneficiary allocating his or her nonforfeitable accrued benefit to any investment option provided under the plan, the plan administrator shall take such actions as are necessary to effectuate such allocation.

“(B) SPECIAL RULE FOR PERIODIC ELECTIONS.—In any case in which the plan provides for elections periodically during prescribed periods, the 5-day period described in

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

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

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

“(B) describing the importance of diversifying the investment of account assets.

“(5) PRESERVATION OF AUTHORITY OF PLAN TO LIMIT INVESTMENT.—Nothing in this subsection shall be construed to limit the authority of a plan to impose limitations on the portion of plan assets in any account which may be invested in employer securities.”.

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

“Sec. 4980H. Failure of defined contribution plans to permit diversification of employer securities.”.

(c) RECOMMENDATIONS RELATING TO NON-PUBLICLY TRADED STOCK.—Within 1 year after the date of the enactment of this Act, the Secretary of Labor and the Secretary of the Treasury shall jointly transmit to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate their recommendations regarding legislative changes relating to treatment, under section 404(e) of the Employee Retirement Income Security Act of 1974 and section 401(a)(35) of the Internal Revenue Code of 1986 (as added by this section), of individual account plans under which a participant or beneficiary is permitted to exercise control over assets in his or her account, in cases in which such assets do not include employer securities which are readily tradable under an established securities market.

**SEC. 202. EFFECTIVE DATE OF TITLE.**

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this title shall apply with respect to plan years beginning on or after January 1, 2003.

(b) DELAYED EFFECTIVE DATE FOR EXISTING HOLDINGS.—In any case in which a portion of the nonforfeitable accrued benefit of a participant or beneficiary is held in the form of employer securities (as defined in section 407(d)(1) of the Employee Retirement Income Security Act of 1974) immediately before the first date of the first plan year to which the amendments made by this title apply, such portion shall be taken into account only with respect to plan years beginning on or after January 1, 2004.

## **TITLE III—EMPLOYEE REPRESENTATION**

### **SEC. 301. PARTICIPATION OF PARTICIPANTS IN TRUSTEESHIP OF INDIVIDUAL ACCOUNT PLANS.**

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

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

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

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

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

“(B)(i) Except as provided in clause (ii), in any case in which the plan is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and one or more employers, the trustees representing the interests of the participants and their beneficiaries shall be designated by such employee organizations.

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

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

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

“(D) The Secretary shall provide by regulation for the appointment of a neutral individual, in accordance with the procedures under section 203(f) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as necessary to resolve tie votes by the trustees.”.

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

## TITLE IV—EXECUTIVE PARITY

**SEC. 401. INCLUSION IN GROSS INCOME OF FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.**

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

**“SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.**

“(a) IN GENERAL.—If an employer maintains a defined contribution plan to which employer contributions are made in the form of employer stock and such employer maintains a funded deferred compensation plan—

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

“(2) the tax treatment of any amount made available under the plan to a corporate insider or beneficiary shall be determined under section 72 (relating to annuities, etc.).

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

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

“(A) the employee’s rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the employer, and

“(B) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the employer (without being restricted to the provision of benefits under the plan), and

“(C) the amounts referred to in subparagraph (B) are available to satisfy the claims of the employer’s general creditors at all times (not merely after bankruptcy or insolvency).

Such term shall not include a qualified employer plan.

“(2) SPECIAL RULES.—

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

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

“(ii) the plan does not permit the acceleration of the time such deferred compensation is paid by reason of any event.

If the employer and employee agree to a modification of the plan that accelerates the time for payment of any deferred compensation, then all compensation previously deferred under the plan shall be includible in gross income for the taxable year during which such modification takes effect and the taxpayer shall pay interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income in the taxable years deferred.

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

“(i) the employee has no beneficial interest in the trust,

“(ii) assets in the trust are available to satisfy claims of general creditors at all times (not merely after bankruptcy or insolvency), and

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

“(c) CORPORATE INSIDER.—For purposes of this section, the term ‘corporate insider’ means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.

“(d) OTHER DEFINITIONS.—For purposes of this section—

“(1) PLAN INCLUDES ARRANGEMENTS, ETC.—The term ‘plan’ includes any agreement or arrangement.

“(2) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person’s rights to such compensation are conditioned upon the future performance of substantial services by any individual.”

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

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

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

**SEC. 402. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.**

(a) PROHIBITION.—It shall be unlawful for any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) or who is a director or an officer of the issuer of such security, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of any issuer (other than an exempted security), during any blackout period with respect to such equity security.

(b) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or

other transfer) in violation of this section shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purposes of this subsection.

(c) RULEMAKING PERMITTED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

(d) As used in this section:

(1) BENEFICIAL OWNER.—The term “beneficial owner” has the meaning provided such term in rules or regulations issued by the Commission under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p).

(2) BLACKOUT PERIOD.—The term “blackout period” with respect to the equity securities of any issuer—

(A) means any period during which the ability of at least fifty percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase (or otherwise acquire) or sell (or otherwise transfer) an interest in any equity of such issuer is suspended by the issuer or a fiduciary of the plan; but

(B) does not include—

(i) a period in which the employees of an issuer may not allocate their interests in the individual account plan due to an express investment restriction—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before joining the individual account plan or as a subsequent amendment to the plan;

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an applicable individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction.

(3) COMMISSION.—The term “Commission” means the Securities and Exchange Commission.

(4) INDIVIDUAL ACCOUNT PLAN.—The term “individual account plan” has the meaning provided such term in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

(5) ISSUER.—The term “issuer” shall have the meaning set forth in section 2(a)(4) of the Securities Act of 1933 (15 U.S.C. 77b(a)(4)).

## **TITLE V—INCREASED ACCOUNTABILITY**

### **SEC. 501. BONDING OR INSURANCE ADEQUATE TO PROTECT INTEREST OF PARTICIPANTS AND BENEFICIARIES.**

Section 412 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112) is amended by adding at the end the following new subsection:

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

### **SEC. 502. LIABILITY FOR BREACH OF FIDUCIARY DUTY.**

(a) LIABILITY FOR PARTICIPATING IN OR CONCEALING FIDUCIARY BREACH.—

(1) APPLICATION TO PARTICIPANTS AND BENEFICIARIES OF 401(k) PLANS.—

(A) IN GENERAL.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1101 et seq.) is amended by adding after section 409 the following new section:

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

“(a) Any person who is a fiduciary with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code of 1986 who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to each participant and beneficiary of the plan any losses to such participant or beneficiary resulting from each such breach, and to restore to such participant or beneficiary any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

“(b) The right of participants and beneficiaries under subsection (a) to sue for breach of fiduciary duty with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of such Code shall be in addition to all existing rights that participants and beneficiaries have under section 409, section 502, and any other provision of this title, and shall not be construed to give rise to any inference that such rights do not already exist under section 409, section 502, or any other provision of this title.

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

(B) CONFORMING AMENDMENT.—The table of contents for part 4 of subtitle B of title I of such Act is amended by inserting the following new item after the item relating to section 409:

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

(2) INSIDER LIABILITY.—

(A) IN GENERAL.—Section 409 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1109) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

“(b)(1)(A) If an insider with respect to the plan sponsor of an employer individual account plan that holds employer securities that are readily tradable on an established securities market—

“(i) knowingly participates in a breach of fiduciary responsibility to which subsection (a) applies, or

“(ii) knowingly undertakes to conceal such a breach, such insider shall be personally liable under this subsection for such breach in the same manner as the fiduciary who commits such breach.

“(B) For purposes of subparagraph (A), the term ‘insider’ means, with respect to any plan sponsor of a plan to which subparagraph (A) applies—

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

“(ii) any independent qualified public accountant of the plan or of the plan sponsor.

(3) Any relief provided under this subsection or section 409A—

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

“(B) to a participant or beneficiary shall be payable to the individual account plan on behalf of such participant or beneficiary unless such plan has been terminated.”

(B) CONFORMING AMENDMENT.—Section 409(c) of such Act (29 U.S.C. 1109(c)), as redesignated by subparagraph (A), is amended by inserting before the period the following: “, unless such liability arises under subsection (b)”.

(b) MAINTENANCE OF FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)) is amended by inserting before the period the following: “, except that this subparagraph shall not be construed to exempt any fiduciary from liability for any violation of subsection (e) or (f)”.

**SEC. 503. PRESERVATION OF RIGHTS OR CLAIMS.**

Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

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

“(2) Paragraph (1) shall not apply to an agreement providing for arbitration or participation in any other nonjudicial procedure to

resolve a dispute if the agreement is entered into knowingly and voluntarily by the parties involved after the dispute has arisen or is pursuant to the terms of a collective bargaining agreement.”.

**SEC. 504. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

(a) IN GENERAL.—Title III of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 3001 et seq.) is amended by adding at the end the following:

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

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

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

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

The Pension Participant Advocate shall report directly to the Secretary and shall be entitled to compensation at the same rate as the highest rate of basic pay established for the Senior Executive Service under section 5382 of title 5, United States Code.

“(b) FUNCTIONS OF OFFICE.—It shall be the function of the Office of Pension Participant Advocacy to—

“(1) evaluate the efforts of the Federal Government, business, and financial, professional, retiree, labor, women’s, and other appropriate organizations in assisting and protecting pension plan participants, including—

“(A) serving as a focal point for, and actively seeking out, the receipt of information with respect to the policies and activities of the Federal Government, business, and such organizations which affect such participants,

“(B) identifying significant problems for pension plan participants and the capabilities of the Federal Government, business, and such organizations to address such problems, and

“(C) developing proposals for changes in such policies and activities to correct such problems, and communicating such changes to the appropriate officials,

“(2) promote the expansion of pension plan coverage and the receipt of promised benefits by increasing the awareness of the general public of the value of pension plans and by protecting the rights of pension plan participants, including—

“(A) enlisting the cooperation of the public and private sectors in disseminating information, and

“(B) forming private-public partnerships and other efforts to assist pension plan participants in receiving their benefits,

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

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

“(5) developing needed information with respect to pension plans, including information on the types of existing pension plans, levels of employer and employee contributions, vesting status, accumulated benefits, benefits received, and forms of benefits, and

“(6) pursuing claims on behalf of participants and beneficiaries and providing appropriate assistance in the resolution of disputes between participants and beneficiaries and pension plans, including assistance in obtaining settlement agreements.

“(c) REPORTS.—

“(1) ANNUAL REPORT.—Not later than December 31 of each calendar year, the Pension Participant Advocate shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on its activities during the fiscal year ending in the calendar year. Such report shall—

“(A) identify significant problems the Advocate has identified,

“(B) include specific legislative and regulatory changes to address the problems, and

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

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

“(2) SPECIFIC REPORTS.—The Pension Participant Advocate shall report to the Secretary or any other appropriate official any time the Advocate identifies a problem which may be corrected by the Secretary or such official.

“(3) REPORTS TO BE SUBMITTED DIRECTLY.—The report required under paragraph (1) shall be provided directly to the committees of Congress without any prior review or comment than the Secretary or any other Federal officer or employee.

“(d) SPECIFIC POWERS.—

“(1) RECEIPT OF INFORMATION.—Subject to such confidentiality requirements as may be appropriate, the Secretary and other Federal officials shall, upon request, provide such information (including plan documents) as may be necessary to enable the Pension Participant Advocate to carry out the Advocate’s responsibilities under this section.

“(2) APPEARANCES.—The Pension Participant Advocate may represent the views and interests of pension plan participants before any Federal agency, including, upon request of a participant, in any proceeding involving the participant.

“(3) CONTRACTING AUTHORITY.—In carrying out responsibilities under subsection (b)(5), the Pension Participant Advocate may, in addition to any other authority provided by law—

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

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

(b) CONFORMING AMENDMENT.—The table of contents for title III of such Act is amended by adding at the end the following:

“Subtitle C—Office of Pension Participant Advocacy

“3051. Office of Pension Participant Advocacy.”

(c) **EFFECTIVE DATE.**—The amendment made by this section shall take effect on January 1, 2003.

**SEC. 505. ADDITIONAL CRIMINAL PENALTIES.**

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

- (1) by inserting “(a)” after “SEC. 501.”;
- (2) by striking “\$5,000” and inserting “\$50,000” and by striking “\$100,000” and inserting “\$500,000”; and
- (3) by adding at the end the following new subsection:

“(b) Any person described in subsection (a) of 402 of the Employee Pension Freedom Act of 2002 who willfully violates such section or section 104(d) or causes an individual account plan to fail to meet the requirements of section 409A of the Internal Revenue Code of 1986 shall upon conviction be fined not more than \$500,000 or imprisoned not more than one year, or both.”.

**SEC. 506. STUDY REGARDING INSURANCE SYSTEM FOR INDIVIDUAL ACCOUNT PLANS.**

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

- (1) the feasibility and impact of such a system, and
- (2) options for developing such a system.

(b) **REPORT.**—Not later than 3 years after the date of the enactment of this Act, the Corporation shall report the results of its study, together with any recommendations for legislative changes, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate.

## **TITLE VI—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES**

**SEC. 601. INDEPENDENT INVESTMENT ADVICE.**

(a) **IN GENERAL.**—Section 404(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)(1)) (as amended by section 102(c)) is amended further—

- (1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by inserting “(A)” after “(c)(1)”;
- (2) by adding at the end the following new subparagraphs:
 

“(B)(i) In the case of a pension plan described in subparagraph (A) which provides investment in employer securities as at least one option for investment of plan assets at the direction of the participant or beneficiary, such plan shall make available to the participant or beneficiary the services of a qualified fiduciary adviser for purposes of providing investment advice described in section 3(21)(A)(ii) regarding investment in such securities.

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

“(I) the plan provides for selection and monitoring of such adviser in a prudent and effective manner, and

“(II) such adviser is a named fiduciary under the plan in connection with the provision of such advice.

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

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

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

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

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

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

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

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

“(II) if not registered as an investment adviser under such Act by reason of section 203A(a)(1) of such Act (15 U.S.C. 80b–3a(a)(1)), is registered under the laws of the State in which the fiduciary maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary’s registration under the laws of such State, also filed a copy of such form with the Secretary,

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

“(IV) is a bank or similar financial institution referred to in section 408(b)(4),

“(V) is an insurance company qualified to do business under the laws of a State, or

“(VI) is any other comparable entity which satisfies such criteria as the Secretary determines appropriate.

“(iii) A person meets the additional requirements of this clause if every individual who is employed (or otherwise compensated) by such person and whose scope of duties includes the provision of qualified investment advice on behalf of such person to any participant or beneficiary is—

“(I) a registered representative of such person,

“(II) an individual described in subclause (I), (II), or (III) of clause (i), or

“(III) such other comparable qualified individual as may be designated in regulations of the Secretary.”

(b) MAINTENANCE OF FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)) is amended by inserting before the period the following: “, except that this subparagraph shall not be construed to exempt any fiduciary from liability for any violation of this section”.

**SEC. 602. TAX TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.**

(a) **IN GENERAL.**—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

“(4) **NO CONSTRUCTIVE RECEIPT.**—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer’s qualified employer plan.”.

(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),”.

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

(c) **EFFECTIVE DATE.**—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

**TITLE VII—GENERAL PROVISIONS****SEC. 701. GENERAL EFFECTIVE DATE.**

(a) **IN GENERAL.**—Except as otherwise provided in this Act, the amendments made by this Act shall apply with respect to plan years beginning on or after January 1, 2003.

(b) **SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.**—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for “January 1, 2003” the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2004, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 2005.

**SEC. 702. PLAN AMENDMENTS.**

If any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date specified in section 601, if—

(1) during the period after such amendment made by this Act takes effect and before such first plan year, the plan is op-

erated in accordance with the requirements of such amendment made by this Act, and

(2) such plan amendment applies retroactively to the period after such amendment made by this Act takes effect and before such first plan year.

