

Calendar No. \_\_\_\_\_

108TH CONGRESS  
2D SESSION

**S.** \_\_\_\_\_

[Report No. 108-\_\_\_\_]

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IN THE SENATE OF THE UNITED STATES

MAY \_\_\_\_ (legislative day, \_\_\_\_\_), 2004

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

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**A BILL**

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

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

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

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

5 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

TITLE I—DIVERSIFICATION OF PENSION PLAN ASSETS

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

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

TITLE II—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

Sec. 201. Periodic pension benefit statements.

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

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

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

Sec. 205. Treatment of qualified retirement planning services.

TITLE III—PROTECTION OF PENSION PLAN PARTICIPANTS

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

TITLE IV—OTHER PROVISIONS RELATING TO PENSIONS

Subtitle A—Provisions Relating to Pension Plan Funding

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

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

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

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

PART II—OTHER PROVISIONS

Sec. 406. Deficit reduction contribution.

Sec. 407. Deduction limits for plan contributions.

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

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

Subtitle B—Improvements in Portability and Distribution Rules

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

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

Sec. 413. Clarification of minimum distribution rules.

## 3

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

## Subtitle C—Administrative Provisions

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

## Subtitle D—Studies

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

## Subtitle E—Other Provisions

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

## Subtitle F—Plan Amendments

- Sec. 471. Provisions relating to plan amendments.

TITLE V—PROVISIONS RELATING TO EXECUTIVES AND STOCK  
OPTIONS

## Subtitle A—Provisions Relating to Executives

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

## Subtitle B—Stock Options

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

## TITLE VI—WOMEN'S PENSION PROTECTION

- Sec. 600. Short title.

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

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

## Subtitle B—Division of Pension Benefits Upon Divorce

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

## Subtitle C—Railroad Retirement

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

## Subtitle D—Modifications of Joint and Survivor Annuity Requirements

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

## TITLE VII—TAX COURT PENSION AND COMPENSATION

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

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

TITLE VIII—OTHER PROVISIONS

Subtitle A—General Provisions

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

Subtitle B—Revenue Provisions

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

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

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

6             (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

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

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

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

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

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

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

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

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

10           “(D) INVESTMENT OPTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (2) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(4) INVESTMENT OPTIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

6 (B) December 31, 2005.

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

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

13 (i) December 31, 2006, or

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

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

23 (i) consist of preferred stock, and

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

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

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

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

16          (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

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

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

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

3 “(b) AMOUNT OF TAX.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           (b) AMENDMENTS OF ERISA.—

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

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

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

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

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

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

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

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

8 (d) EFFECTIVE DATES.—

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

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

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

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

24 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—



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

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

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

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

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

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

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

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

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

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

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

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

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

8           “(e) REQUIREMENTS TO PROVIDE PENSION BEN-  
9 EFIT STATEMENTS.—

10           “(1) REQUIREMENTS.—

11           “(A) DEFINED CONTRIBUTION PLAN.—

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

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

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

1                   “(iii) upon written request to a plan  
2                   beneficiary who is not a participant or ben-  
3                   eficiary described in clause (i) or (ii), ex-  
4                   cept that this subparagraph shall apply to  
5                   only 1 request during any 12-month pe-  
6                   riod.

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

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

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

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

25                  “(2) STATEMENTS.—

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

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

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

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

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

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

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

23           “(B) ADDITIONAL INFORMATION.—In the  
24 case of a defined contribution plan, any pension

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

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

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

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

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

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

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

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

12           “(3) DEFINED BENEFIT PLANS.—

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

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

1           in which no employee or former employee bene-  
2           fits (within the meaning of section 410(b))  
3           under the plan need not be taken into account  
4           in determining the 3-year period under para-  
5           graph (1)(B)(i).

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

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

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

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

1 'church plan' have the meanings given such terms by  
2 section 414.”

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

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

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

10 (b) AMENDMENTS OF ERISA.—

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

14 “(a) REQUIREMENTS TO PROVIDE PENSION BEN-  
15 EFIT STATEMENTS.—

16 “(1) REQUIREMENTS.—

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

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

1           “(ii) at least once each calendar year  
2           to a participant or beneficiary who has his  
3           or her own account under the plan but  
4           does not have the right to direct the invest-  
5           ment of assets in that account, and

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

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

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

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

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

1           “(2) STATEMENTS.—

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

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

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

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

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

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

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

1           “(B) ADDITIONAL INFORMATION.—In the  
2 case of an individual account plan, any pension  
3 benefit statement under clause (i) or (ii) of  
4 paragraph (1)(A) shall include—

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

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

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

22           “(II) a notice that investments in  
23 any individual account may not be  
24 adequately diversified if the value of  
25 any investment in the account exceeds

1                   20 percent of the fair market value of  
2                   all investments in the account.

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

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

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

14                  “(3) DEFINED BENEFIT PLANS.—

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

1           “(B) YEARS IN WHICH NO BENEFITS AC-  
2 CRUE.—The Secretary may provide that years  
3 in which no employee or former employee bene-  
4 fits (within the meaning of section 410(b) of  
5 the Internal Revenue Code of 1986) under the  
6 plan need not be taken into account in deter-  
7 mining the 3-year period under paragraph  
8 (1)(B)(i).”

9           (2) CONFORMING AMENDMENTS.—

10           (A) Section 105 of the Employee Retirement  
11 Income Security Act of 1974 (29 U.S.C.  
12 1025) is amended by striking subsection (d).

13           (B) Section 105(b) of such Act (29 U.S.C.  
14 1025(b)) is amended to read as follows:

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

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

24           (c) MODEL STATEMENTS.—The Secretary of Labor  
25 shall, within 180 days after the date of the enactment of

1 this section, develop 1 or more model benefit statements  
2 that are written in a manner calculated to be understood  
3 by the average plan participant and that may be used by  
4 plan administrators in complying with the requirements  
5 of section 4980H of the Internal Revenue Code of 1986  
6 and section 105 of the Employee Retirement Income Secu-  
7 rity Act of 1974.

8 (d) EFFECTIVE DATE.—

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

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

21 (A) the later of—

22 (i) December 31, 2005, or

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

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

3 (B) December 31, 2006.

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

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

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

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

21 (2) **BASIC INVESTMENT GUIDELINES.—**Section  
22 4980I(e) of such Code, as so added, is amended by  
23 adding at the end the following new paragraph:

24 “(5) **BASIC INVESTMENT GUIDELINES.—**

1           “(A) IN GENERAL.—The Secretary shall,  
2           in consultation with the Secretary of Labor, de-  
3           velop and make available to defined contribu-  
4           tion plans for distribution under paragraph  
5           (1)(A) a model form containing basic guidelines  
6           for investing for retirement. Except as other-  
7           wise provided by the Secretary, such guidelines  
8           shall include—

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

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

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

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

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

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

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

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

23                  The Secretary of Labor shall develop an Inter-  
24                  net site which an individual may use in making

1 such calculations and the address for such site  
2 shall be included with the form.

3 “(C) PUBLIC COMMENT.—The Secretary  
4 shall provide at least 90 days for public com-  
5 ment before publishing final notice of the model  
6 form.

7 “(D) RULES RELATING TO FORM AND  
8 STATEMENT.—The model form under subpara-  
9 graph (A)—

10 “(i) shall be written in a manner cal-  
11 culated to be understood by the average  
12 plan participant, and

13 “(ii) may be delivered in written, elec-  
14 tronic, or other appropriate form to the ex-  
15 tent such form is reasonably accessible to  
16 participants and beneficiaries.”

17 (3) CONFORMING AMENDMENTS.—Section  
18 4980I of such Code is amended—

19 (A) by adding at the end of subsection  
20 (e)(3) the following new subparagraph:

21 “(C) SEPARATE APPLICATION.—This para-  
22 graph shall be applied separately to failures to  
23 meet the requirements of subsection (e)(1)(A)  
24 to provide pension benefit statements and fail-  
25 ures to meet the requirements of subsection

1 (e)(1)(A) to provide model forms containing  
2 basic investment guidelines.”;

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

5 (C) by inserting “or model form containing  
6 basic investment guidelines” after “statement”  
7 in subsection (e)(4).

8 (b) ADEQUATE INVESTMENT EDUCATION.—

9 (1) IN GENERAL.—Section 104 of the Employee  
10 Retirement Income Security Act of 1974 (29 U.S.C.  
11 1024), as amended by section 102, is amended by  
12 redesignating subsection (e) as subsection (f) and by  
13 inserting after subsection (d) the following new sub-  
14 section:

15 “(e) BASIC INVESTMENT GUIDELINES.—

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

24 “(2) MODEL FORM.—

1           “(A) IN GENERAL.—The Secretary of the  
2 Treasury, in consultation with the Secretary,  
3 shall develop and make available to individual  
4 account plans for distribution under paragraph  
5 (1) a model form containing basic guidelines for  
6 investing for retirement. Except as otherwise  
7 provided by the Secretary of the Treasury, such  
8 guidelines shall include—

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

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

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

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

1                   “(v) such other information related to  
2                   individual investing as the Secretary of the  
3                   Treasury determines appropriate.

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

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

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

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

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

3                   “(A) shall be written in a manner cal-  
4                   culated to be understood by the average plan  
5                   participant, and

6                   “(B) may be delivered in written, elec-  
7                   tronic, or other appropriate form to the extent  
8                   such form is reasonably accessible to partici-  
9                   pants and beneficiaries.”

10           (2) ENFORCEMENT.—Section 502(e)(7) of such  
11           Act (29 U.S.C. 1132(e)(7)), as amended by section  
12           102, is amended by striking “section 104(d)” and  
13           inserting “subsection (d) or (e) of section 104”.

14           (c) EFFECTIVE DATE.—

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

18                   (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
19                   GAINED AGREEMENTS.—In the case of a plan main-  
20                   tained pursuant to 1 or more collective bargaining  
21                   agreements between employee representatives and 1  
22                   or more employers ratified on or before the date of  
23                   the enactment of this Act, paragraph (1) shall be  
24                   applied to benefits pursuant to, and individuals cov-

1           ered by, any such agreement by substituting for  
2           “December 31, 2004” the earlier of—

3                   (A) the later of—

4                           (i) December 31, 2005, or

5                           (ii) the date on which the last of such  
6           collective bargaining agreements termi-  
7           nates (determined without regard to any  
8           extension thereof after such date of enact-  
9           ment), or

10                   (B) December 31, 2006.

11 **SEC. 203. MATERIAL INFORMATION RELATING TO INVEST-**  
12 **MENT IN EMPLOYER SECURITIES.**

13           (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

14                   (1) IN GENERAL.—Section 4980H(e) of the In-  
15           ternal Revenue Code of 1986, as added by section  
16           102, is amended—

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

19           “(e) NOTICE REQUIREMENTS.—

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

21                           (B) by redesignating paragraphs (1) and  
22           (2) as subparagraphs (A) and (B) and adjust-  
23           ing all margins accordingly, and

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

1           “(2) MATERIAL INFORMATION.—

2                   “(A) IN GENERAL.—The administrator of  
3 a defined contribution plan (other than a one-  
4 participant retirement plan) shall provide to  
5 each participant and beneficiary who has the  
6 right to direct the investment of assets in his or  
7 her account in employer securities with all re-  
8 ports, proxy statements, and other communica-  
9 tions regarding investment of such assets in  
10 employer securities to the extent that such re-  
11 ports, statements, and communications are re-  
12 quired to be provided by the plan sponsor to in-  
13 vestors in connection with such an investment  
14 under applicable securities laws. Such reports,  
15 statements, and communications may be deliv-  
16 ered in written, electronic, or other appropriate  
17 form to the extent such form is reasonably ac-  
18 cessible to participants and beneficiaries.

19                   “(B) PLAN SPONSOR.—If any information  
20 required to be provided under paragraph (1) is  
21 maintained by the plan sponsor, the plan spon-  
22 sor shall transmit such information to the plan  
23 administrator.”

24           “(2) CONFORMING AMENDMENTS.—

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

4 “(C) SEPARATE APPLICATION.—This para-  
5 graph shall be applied separately for failures to  
6 meet the requirements of subsection (e)(1) and  
7 failures to meet the requirements of subsection  
8 (e)(2).”

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

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

21 (b) AMENDMENTS OF ERISA.—

22 (1) IN GENERAL.—Section 104 of the Employee  
23 Retirement Income Security Act of 1974 (29 U.S.C.  
24 1024) as amended by sections 102 and 202, is  
25 amended by redesignating subsection (f) as sub-

1 section (g) and by inserting after subsection (e) the  
2 following new subsection:

3 “(f) PROVIDING OF MATERIAL INFORMATION.—

4 “(1) IN GENERAL.—The administrator of an in-  
5 dividual account plan (other than a one-participant  
6 retirement plan described in section 101(i)(8)(B))  
7 shall provide to each participant and beneficiary who  
8 has the right to direct the investment of assets in  
9 his or her account in employer securities with all re-  
10 ports, proxy statements, and other communications  
11 regarding investment of such assets in employer se-  
12 curities to the extent that such reports, statements,  
13 and communications are required to be provided by  
14 the plan sponsor to investors in connection with such  
15 an investment under applicable securities laws. Such  
16 reports, statements, and communications may be de-  
17 livered in written, electronic, or other appropriate  
18 form to the extent such form is reasonably accessible  
19 to participants and beneficiaries.

20 “(2) PLAN SPONSOR.—If any information re-  
21 quired to be provided under paragraph (1) is main-  
22 tained by the plan sponsor, the plan sponsor shall  
23 transmit such information to the plan adminis-  
24 trator.”

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

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

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

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

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

13           (c) EFFECTIVE DATE.—

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

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

- 1 (A) the later of—
- 2 (i) December 31, 2004, or
- 3 (ii) the date on which the last of such
- 4 collective bargaining agreements termi-
- 5 nates (determined without regard to any
- 6 extension thereof after such date of enact-
- 7 ment), or
- 8 (B) December 31, 2005.

9 **SEC. 204. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**

10 **NATING INDEPENDENT INVESTMENT ADVIS-**

11 **ERS.**

12 (a) IN GENERAL.—Section 404 of the Employee Re-

13 tirement Income Security Act of 1974 (29 U.S.C. 1104)

14 is amended by adding at the end the following new sub-

15 section:

16 “(e) INDEPENDENT INVESTMENT ADVISER.—

17 “(1) IN GENERAL.—In the case of an individual

18 account plan which permits a plan participant or

19 beneficiary to direct the investment of the assets in

20 his or her account, if a plan sponsor or other person

21 who is a fiduciary designates and monitors a quali-

22 fied investment adviser pursuant to the requirements

23 of paragraph (3), such fiduciary—

24 “(A) shall be deemed to have satisfied the

25 requirements under this section for the prudent

1 designation and periodic review of an invest-  
2 ment adviser with whom the plan sponsor or  
3 other person who is a fiduciary enters into an  
4 arrangement for the provision of advice referred  
5 to in section 3(21)(A)(ii),

6 “(B) shall not be liable under this section  
7 for any loss, or by reason of any breach, with  
8 respect to the provision of investment advice  
9 given by such adviser to any plan participant or  
10 beneficiary, and

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

16 “(2) QUALIFIED INVESTMENT ADVISER.—

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

20 “(i) who is a fiduciary of the plan by  
21 reason of the provision of investment ad-  
22 vice by such person to a plan participant  
23 or beneficiary;

24 “(ii) who—

1           “(I) is registered as an invest-  
2           ment adviser under the Investment  
3           Advisers Act of 1940 (15 U.S.C. 80b-  
4           1 et seq.),

5           “(II) is registered as an invest-  
6           ment adviser under the laws of the  
7           State in which such adviser maintains  
8           the principal office and place of busi-  
9           ness of such adviser, but only if such  
10          State laws are consistent with section  
11          203A of the Investment Advisers Act  
12          of 1940 (15 U.S.C. 80b-3a),

13          “(III) is a bank or similar finan-  
14          cial institution referred to in section  
15          408(b)(4),

16          “(IV) is an insurance company  
17          qualified to do business under the  
18          laws of a State, or

19          “(V) is any other comparably  
20          qualified entity which satisfies such  
21          criteria as the Secretary determines  
22          appropriate, consistent with the pur-  
23          poses of this subsection, and

24          “(iii) who meets the requirements of  
25          subparagraph (B).

1           “(B) ADVISER REQUIREMENTS.—The re-  
2           quirements of this subparagraph are met if  
3           every individual employed (or otherwise com-  
4           pensated) by a person described in subpara-  
5           graph (A)(ii) who provides investment advice on  
6           behalf of such person to any plan participant or  
7           beneficiary is—

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

10                   “(ii) an individual described in sub-  
11                   clause (II) of subparagraph (A)(ii), but  
12                   only if such State has an examination re-  
13                   quirement to qualify for registration,

14                   “(iii) registered as a broker or dealer  
15                   under the Securities Exchange Act of 1934  
16                   (15 U.S.C. 78a et seq.),

17                   “(iv) a registered representative as de-  
18                   scribed in section 3(a)(18) of the Securi-  
19                   ties Exchange Act of 1934 (15 U.S.C.  
20                   78c(a)(18)) or section 202(a)(17) of the  
21                   Investment Advisers Act of 1940 (15  
22                   U.S.C. 80b-2(a)(17)), or

23                   “(v) any other comparably qualified  
24                   individual who satisfies such criteria as the  
25                   Secretary determines appropriate, con-

1                   sistent with the purposes of this sub-  
2                   section.

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

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

11                  “(i) is and remains a qualified invest-  
12                  ment adviser,

13                  “(ii) acknowledges that the investment  
14                  adviser is a fiduciary with respect to the  
15                  plan and is solely responsible for its invest-  
16                  ment advice,

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

1           “(iv) will, in providing investment ad-  
2           vice to any participant or beneficiary, con-  
3           sider any employer securities or employer  
4           real property allocated to his or her ac-  
5           count, and

6           “(v) has the necessary insurance cov-  
7           erage (as determined by the Secretary) for  
8           any claim by any plan participant or bene-  
9           ficiary,

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

18          “(C) the plan sponsor or other person who  
19          is a fiduciary in designating a qualified invest-  
20          ment adviser, within 30 days of having informa-  
21          tion brought to its attention that the invest-  
22          ment adviser is no longer qualified or that a  
23          substantial number of plan participants or  
24          beneficiaries have raised concerns about the

1 services being provided by the investment  
2 adviser—

3 “(i) investigates such information and  
4 concerns, and

5 “(ii) determines that there is no mate-  
6 rial reason not to continue the designation  
7 of the adviser as a qualified investment ad-  
8 viser.

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

13 “(A) The contract with the plan sponsor or  
14 other person who is a fiduciary for the services  
15 to be provided by the investment adviser to the  
16 plan participants and beneficiaries.

17 “(B) A disclosure as to any fees or other  
18 compensation that will be received by the in-  
19 vestment adviser for the provision of such in-  
20 vestment advice and as to any fees and other  
21 compensation that will be received as a result of  
22 a participant’s investment election.

23 “(C) The Uniform Application for Invest-  
24 ment Adviser Registration as filed with the Se-  
25 curities and Exchange Commission or a sub-



1 vided by an eligible investment advisor and  
2 compensation which would otherwise be includ-  
3 ible in the gross income of such employee. The  
4 preceding sentence shall apply to highly com-  
5 pensated employees only if the choice described  
6 in such sentence is available on substantially  
7 the same terms to each member of the group of  
8 employees normally provided education and in-  
9 formation regarding the employer's qualified  
10 employer plan.

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

15 “(C) ELIGIBLE INVESTMENT ADVISER.—  
16 For purposes of this paragraph, the term ‘eligi-  
17 ble investment adviser’ means, with respect to  
18 a plan, a person—

19 “(i) who—

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

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

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

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

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

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

18 “(ii) who meets the requirements of  
19 subparagraph (D).

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

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

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

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

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

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

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

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

1 (b) CONFORMING AMENDMENTS.—

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

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

7 (3) Section 415(c)(3)(D)(ii) of such Code is  
8 amended by inserting “132(m)(4),” after  
9 “132(f)(4),”.

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

13 **TITLE III—PROTECTION OF**  
14 **PENSION PLAN PARTICIPANTS**

15 **SEC. 301. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**  
16 **BLACKOUT PERIODS.**

17 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

18 (1) EXCISE TAX.—

19 (A) IN GENERAL.—Chapter 43 of the In-  
20 ternal Revenue Code of 1986 (relating to quali-  
21 fied pension, etc., plans), as amended by this  
22 Act, is amended by adding at the end the fol-  
23 lowing new section:

1 **“SEC. 4980J. FAILURE OF CERTAIN DEFINED CONTRIBU-**  
2 **TION PLANS TO PROVIDE NOTICE OF BLACK-**  
3 **OUT PERIODS.**

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

8 “(b) AMOUNT OF TAX.—

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

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

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

21 “(1) TAX NOT TO APPLY WHERE FAILURE NOT  
22 DISCOVERED AND REASONABLE DILIGENCE EXER-  
23 CISED.—No tax shall be imposed by subsection (a)  
24 on any failure during any period for which it is es-  
25 tablished to the satisfaction of the Secretary that  
26 any person subject to liability for tax under sub-

1 section (d) did not know that the failure existed and  
2 exercised reasonable diligence to meet the require-  
3 ments of subsection (e).

4 “(2) TAX NOT TO APPLY TO FAILURES COR-  
5 RECTED AS SOON AS REASONABLY PRACTICABLE.—  
6 No tax shall be imposed by subsection (a) on any  
7 failure if—

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

12 “(B) such person provides the notice de-  
13 scribed in subsection (e) as soon as reasonably  
14 practicable after the first date such person  
15 knew, or exercising reasonable diligence should  
16 have known, that such failure existed.

17 “(3) OVERALL LIMITATION FOR UNINTEN-  
18 TIONAL FAILURES.—

19 “(A) IN GENERAL.—If the person subject  
20 to liability for tax under subsection (d) exer-  
21 cised reasonable diligence to meet the require-  
22 ments of subsection (e), the tax imposed by  
23 subsection (a) for failures during the taxable  
24 year of the employer (or, in the case of a multi-  
25 employer plan, the taxable year of the trust

1 forming part of the plan) shall not exceed  
2 \$500,000. For purposes of the preceding sen-  
3 tence, all multiemployer plans of which the  
4 same trust forms a part shall be treated as 1  
5 plan.

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

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

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

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

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

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

4           “(e) NOTICE OF BLACKOUT PERIODS TO PARTICI-  
5           PANT OR BENEFICIARY UNDER DEFINED CONTRIBUTION  
6           PLAN.—

7           “(1) IN GENERAL.—

8           “(A) DUTIES OF PLAN ADMINISTRATOR.—

9           In advance of the commencement of any black-  
10          out period with respect to a defined contribu-  
11          tion plan, the plan administrator shall notify  
12          the plan participants and beneficiaries who are  
13          affected by such action in accordance with this  
14          subsection.

15          “(B) SPECIAL RULE FOR CERTAIN ANNU-  
16          ITIES.—In the case of an annuity contract or  
17          custodial account described in section 403(b)  
18          which is not a plan established or maintained  
19          by the employer, the notice shall be furnished  
20          by the issuer of the contract, the custodian of  
21          the account, or such other person as is specified  
22          by the Secretary.

23          “(2) NOTICE REQUIREMENTS.—

24          “(A) IN GENERAL.—The notices described  
25          in paragraph (1) shall be written in a manner

1           calculated to be understood by the average plan  
2           participant and shall include—

3                   “(i) the reasons for the blackout pe-  
4                   riod,

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

7                   “(iii) the expected beginning date and  
8                   length of the blackout period,

9                   “(iv) in the case of investments af-  
10                  fected, a statement that the participant or  
11                  beneficiary should evaluate the appro-  
12                  priateness of their current investment deci-  
13                  sions in light of their inability to direct or  
14                  diversify assets credited to their accounts  
15                  during the blackout period, and

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

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

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

3                   “(i) a deferral of the blackout period  
4                   would violate the requirements of subpara-  
5                   graph (A) or (B) of section 404(a)(1) of  
6                   the Employee Retirement Income Security  
7                   Act of 1974, and a fiduciary of the plan  
8                   reasonably so determines in writing, or

9                   “(ii) the inability to provide the 30-  
10                  day advance notice is due to events that  
11                  were unforeseeable or circumstances be-  
12                  yond the reasonable control of the plan ad-  
13                  ministrator, and a fiduciary of the plan  
14                  reasonably so determines in writing,

15                  subparagraph (B) shall not apply, and the no-  
16                  tice shall be furnished to all participants and  
17                  beneficiaries under the plan to whom the black-  
18                  out period applies as soon as reasonably pos-  
19                  sible under the circumstances unless such a no-  
20                  tice in advance of the termination of the black-  
21                  out period is impracticable.

22                  “(D) WRITTEN NOTICE.—The notice re-  
23                  quired to be provided under this subsection  
24                  shall be in writing, except that such notice may  
25                  be in electronic or other form to the extent that

1 such form is reasonably accessible to the recipi-  
2 ent.

3 “(E) NOTICE TO ISSUERS OF EMPLOYER  
4 SECURITIES SUBJECT TO BLACKOUT PERIOD.—

5 In the case of any blackout period in connection  
6 with a defined contribution plan, the plan ad-  
7 ministrator shall provide timely notice of such  
8 blackout period to the issuer of any employer  
9 securities subject to such blackout period.

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

1           “(4) CHANGES IN LENGTH OF BLACKOUT PE-  
2           RIOD.—If, following the furnishing of the notice pur-  
3           suant to this subsection, there is a change in the be-  
4           ginning date or length of the blackout period (speci-  
5           fied in such notice pursuant to paragraph  
6           (2)(A)(iii)), the administrator shall provide affected  
7           participants and beneficiaries notice of the change as  
8           soon as reasonably practicable. In relation to the ex-  
9           tended blackout period, such notice shall meet the  
10          requirements of paragraph (2)(D) and shall specify  
11          any material change in the matters referred to in  
12          clauses (i) through (v) of paragraph (2)(A).

13           “(5) REGULATORY EXCEPTIONS.—The Sec-  
14          retary of Labor may provide by regulation for addi-  
15          tional exceptions to the requirements of this sub-  
16          section which the Secretary of Labor determines are  
17          in the interests of participants and beneficiaries.

18           “(6) GUIDANCE AND MODEL NOTICES.—The  
19          Secretary of Labor shall issue guidance and model  
20          notices which meet the requirements of this sub-  
21          section.

22           “(7) BLACKOUT PERIOD.—For purposes of this  
23          subsection—

24                   “(A) IN GENERAL.—The term ‘blackout  
25                   period’ means, in connection with a defined con-

1           tribution plan, any period for which any ability  
2           of participants or beneficiaries under the plan,  
3           which is otherwise available under such plan, to  
4           direct or diversify assets credited to their ac-  
5           counts, to obtain loans from the plan, or to ob-  
6           tain distributions from the plan is temporarily  
7           suspended, limited, or restricted, if such sus-  
8           pension, limitation, or restriction is for any pe-  
9           riod of more than 3 consecutive business days.

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

13                   “(i) which occurs by reason of the ap-  
14                   plication of the securities laws (as defined  
15                   in section 3(a)(47) of the Securities Ex-  
16                   change Act of 1934),

17                   “(ii) which is a change to the plan  
18                   which provides for a regularly scheduled  
19                   suspension, limitation, or restriction which  
20                   is disclosed to participants or beneficiaries  
21                   through any summary of material modi-  
22                   fications, any materials describing specific  
23                   investment alternatives under the plan, or  
24                   any changes thereto, or

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

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

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

13                   “(B) EXCEPTION FOR ONE-PARTICIPANT  
14 RETIREMENT PLAN.—This section shall not  
15 apply to a one-participant retirement plan (as  
16 defined in section 401(a)(35)(E)(iv)).

17                   “(C) EXCEPTION FOR GOVERNMENTAL  
18 AND CHURCH PLANS.—This section shall not  
19 apply to governmental and church plans. For  
20 purposes of this subparagraph, the terms ‘gov-  
21 ernmental plan’ and ‘church plan’ have the  
22 meanings given such terms by section 414.”

23                   “(B) AGGREGATION.—Section 414(t) of  
24 such Code, as amended by this Act, is amended

1 by striking “or 4980I” and inserting “4980I, or  
2 4980J”.

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

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

6 (2) EFFECTIVE DATE.—The amendments made  
7 by this subsection shall apply to failures after the  
8 date of the enactment of this Act.

9 (b) AMENDMENTS OF ERISA.—

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

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

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

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

19 “(I) covered only one individual  
20 (or the individual and the individual’s  
21 spouse) and the individual owned 100  
22 percent of the plan sponsor (whether  
23 or not incorporated), or

1                   “(II) covered only one or more  
2                   partners (or partners and their  
3                   spouses) in the plan sponsor,”

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

7                   (D) by striking “leases employees” in  
8                   paragraph (8)(B)(v) and inserting “uses the  
9                   services of leased employees (within the mean-  
10                  ing of section 414(n) of the Internal Revenue  
11                  Code of 1986)”, and

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

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

18                  (2) EFFECTIVE DATE.—The amendments made  
19                  by this subsection shall take effect as if included in  
20                  the provisions of section 306 of Public Law 107–204  
21                  (116 Stat. 745 et seq.).

1     **TITLE IV—OTHER PROVISIONS**  
2             **RELATING TO PENSIONS**  
3     **Subtitle A—Provisions Relating to**  
4             **Pension Plan Funding**

5     **PART I—REPLACEMENT OF INTEREST RATE ON**  
6             **30-YEAR TREASURY SECURITIES**

7     **SEC. 401. REPLACEMENT OF 30-YEAR TREASURY RATE FOR**  
8             **PURPOSES OF FUNDING AND PBGC PREMIUM**  
9             **RATES.**

10     (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

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

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

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

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

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

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

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

16                 “(A) DETERMINATION OF RATE.—

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

22                 “(ii) PERMISSIBLE RANGE.—For pur-  
23                 poses of clause (i), the term ‘permissible  
24                 range’ means a rate of interest which is  
25                 not more than, and not more than 10 per-

1 cent below, the weighted average of con-  
2 servative long-term corporate bond rates  
3 during the 4-year period ending on the last  
4 day before the beginning of the plan year.

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

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

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

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

1 The Secretary shall publish any yield curve pre-  
2 scribed under this paragraph and the method by  
3 which the yield curve was established.

4 “(3) PHASE-IN YIELD CURVE METHOD.—

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

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

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

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

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

21 “(4) SIMPLIFIED METHODS.—

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

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

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

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

23          (b) AMENDMENTS OF ERISA.—

24                 (1) IN GENERAL.—Section 302(b)(5)(B) of the  
25          Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1082(b)(5)(B)) is amended to read as  
2 follows:

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

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

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

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

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

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

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

5                           “(A) DETERMINATION OF RATE.—

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

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

19                                   “(B) CONSERVATIVE LONG-TERM COR-  
20 PORATE BOND RATES.—The Secretary of the  
21 Treasury shall, by regulation, prescribe a meth-  
22 od for periodically determining conservative  
23 long-term corporate bond rates for purposes of  
24 this paragraph. Such rates shall reflect rates of  
25 interest on amounts invested in high-quality,

1 long-term corporate bonds and shall be based  
2 on the use of 1 or more indices, as determined  
3 from time to time by the Secretary of the  
4 Treasury.

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

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

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

15 The Secretary of the Treasury shall publish any  
16 yield curve prescribed under this paragraph and the  
17 method by which the yield curve was established.

18 “(3) PHASE-IN YIELD CURVE METHOD.—

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

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

1                   “(ii) the product of the current liabil-  
 2                   ity determined by using the interest rate  
 3                   rules described in paragraph (1) and a per-  
 4                   centage equal to 100 percent minus the ap-  
 5                   plicable percentage.

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

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

10                   “(4) SIMPLIFIED METHODS.—

11                   “(A) ESTABLISHMENT BY SECRETARY.—  
 12                   The Secretary of the Treasury shall prescribe 1  
 13                   or more simplified methods under which current  
 14                   liability can be determined by substituting any  
 15                   such method for the yield curve method for pur-  
 16                   poses of paragraphs (2) and (3).

17                   “(B) USE OF SIMPLIFIED METHOD.—A  
 18                   plan (other than a multiemployer plan) may use  
 19                   a simplified method established under subpara-  
 20                   graph (A) if, on each day during the preceding  
 21                   plan year, the plan had no more than 100 par-  
 22                   ticipants. The aggregation rule under sub-

1 section (d)(6)(C) shall apply for purposes of  
2 this subparagraph.”

3 (3) ADDITIONAL FUNDING REQUIREMENTS.—  
4 Section 302(d)(7)(C)(i) of such Act (29 U.S.C.  
5 1082(d)(7)(C)(i)) is amended to read as follows:

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

11 (4) PBGC PREMIUM RATES.—

12 (A) IN GENERAL.—Section  
13 4006(a)(3)(E)(iii)(II) of such Act (29 U.S.C.  
14 1306(a)(3)(E)(iii)(II)) is amended to read as  
15 follows:

16 “(II) For purposes of deter-  
17 mining unfunded current liability  
18 under subclause (I), current liability  
19 for any plan year shall be determined  
20 under the rules or method provided  
21 under section 302(b)(5) for the plan  
22 year, except that for purposes of plan  
23 years beginning in 2004, 2005, or  
24 2006, the interest rate used shall be  
25 the conservative long-term corporate

1 bond rate for the month preceding the  
2 month in which the plan year begins.  
3 For purposes of the preceding sen-  
4 tence, a plan may, in lieu of the yield  
5 curve method, use a simplified method  
6 under section 302(h)(4) in applying  
7 paragraph (2) or (3) of section  
8 302(h).”

9 (B) CONFORMING AMENDMENTS.—Section  
10 4006(a)(3)(E)(iii) of such Act (29 U.S.C.  
11 1306(a)(3)(E)(iii)) is amended by striking sub-  
12 clauses (III), (IV), and (V).

13 (c) CONFORMING CHANGES REGARDING QUARTERLY  
14 CONTRIBUTIONS.—

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

20 (2) AMENDMENT OF ERISA.—Section  
21 302(e)(1)(B) of the Employee Retirement Income  
22 Security Act of 1974 (29 U.S.C. 1082(e)(1)(B)) is  
23 amended by striking “(including adjustments under  
24 subsection (b)(5)(B))”.

25 (d) EFFECTIVE DATES.—

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

5           (2) LOOKBACK RULES.—For purposes of apply-  
6           ing subsections (d)(9)(B) and (e)(1) of section 302  
7           of the Employee Retirement Income Security Act of  
8           1974 and subsections (l)(9)(B) and (m)(1) of section  
9           412 of the Internal Revenue Code of 1986 to plan  
10          years beginning after December 31, 2003, the  
11          amendments made by this section may be applied as  
12          if such amendments had been in effect for all prior  
13          plan years. The Secretary of the Treasury may pre-  
14          scribe simplified assumptions which may be used in  
15          applying the amendments made by this section to  
16          such prior plan years.

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

19          (a) AMENDMENTS OF INTERNAL REVENUE CODE.—  
20          Section 417(e)(3)(A) of the Internal Revenue Code of  
21          1986 (relating to determination of present value) is  
22          amended—

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

1                   “(I) the phase-in yield curve  
2 method in the case of plan years be-  
3 ginning in 2007, 2008, 2009, or  
4 2010, and

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

7                   (2) by striking subclause (II) of clause (ii) and  
8 inserting:

9                   “(II) YIELD CURVE METHODS.—  
10 The terms ‘yield curve method’ and  
11 ‘phase-in yield curve method’ have the  
12 meanings given such terms by para-  
13 graphs (2) and (3) of section 412(o),  
14 respectively, except that each such  
15 paragraph shall be applied by sub-  
16 stituting ‘present value’ for ‘current  
17 liability’ and in applying paragraph  
18 (3)(A)(ii) of section 412(o), the an-  
19 nual rate of interest on 30-year  
20 Treasury securities shall be sub-  
21 stituted for the interest rate under  
22 section 412(o)(1). A plan may, in lieu  
23 of the yield curve method, use a sim-  
24 plified method under section

1 412(o)(4) for purposes of applying  
2 such paragraphs.”

3 (b) AMENDMENTS OF ERISA.—Section 205(g)(3)(A)  
4 of the Employee Retirement Income Security Act of 1974  
5 (29 U.S.C. 1055(g)(3)) is amended—

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

8 “(I) the phase-in yield curve  
9 method in the case of plan years be-  
10 ginning in 2007, 2008, 2009, or  
11 2010, and

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

14 (2) by striking subclause (II) of clause (ii) and  
15 inserting:

16 “(II) YIELD CURVE METHODS.—  
17 The terms ‘yield curve method’ and  
18 ‘phase-in yield curve method’ have the  
19 meanings given such terms by para-  
20 graphs (2) and (3) of section 302(h),  
21 respectively, except that each such  
22 paragraph shall be applied by sub-  
23 stituting ‘present value’ for ‘current  
24 liability’ and in applying paragraph  
25 (3)(A)(ii) of section 302(h), the an-

1 nual rate of interest on 30-year  
2 Treasury securities shall be sub-  
3 stituted for the interest rate under  
4 section 302(h)(1). A plan may, in lieu  
5 of the yield curve method, use a sim-  
6 plified method under section  
7 302(h)(4) for purposes of applying  
8 such paragraphs.”

9 (c) EFFECTIVE DATES.—

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

13 (2) SPECIAL RULE FOR CERTAIN OPTIONAL  
14 BENEFITS.—If—

15 (A) for the last plan year of a plan begin-  
16 ning in 2003, the plan provides that the appli-  
17 cable interest rate under section 417(e)(3) of  
18 the Internal Revenue Code of 1986 and section  
19 205(g)(3) of Employee Retirement Income Se-  
20 curity Act of 1974 shall be used for purposes  
21 of determining the amount of a benefit (other  
22 than the accrued benefit) to which such sections  
23 417(e)(3) and 205(g)(3) do not apply, and

24 (B) such plan is amended to provide that  
25 a rate other than the applicable interest rate

1           shall be used for such purposes and the first  
2           plan year for which such amendment is effective  
3           begins no later than January 1, 2007,  
4           such plan shall not fail to meet the requirements of  
5           section 411(d)(6) of the Internal Revenue Code of  
6           1986 and section 204(g) of Employee Retirement  
7           Income Security Act of 1974 by reason of such  
8           amendment.

9   **SEC. 403. SECTION 415 LIMITATION ON DEFINED BENEFIT**  
10                           **PLANS.**

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

14                           “(ii) For purposes of adjusting any  
15                           benefit under subparagraph (B) for any  
16                           form of benefit subject to section  
17                           417(e)(3), ‘5.5 percent’ shall be sub-  
18                           stituted for ‘5 percent’ in clause (i).”

19           (b) EFFECTIVE DATES.—

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

23                           (2) TRANSITION RULE FOR 2004 AND 2005.—In  
24 the case of any year beginning in 2004 or 2005, the  
25 amendment made by this section shall not apply if

1 a greater benefit would be permitted if section  
2 415(b)(2)(E)(ii) of such Code were applied without  
3 regard to the amendment.

## 4 **PART II—OTHER PROVISIONS**

### 5 **SEC. 406. DEFICIT REDUCTION CONTRIBUTION.**

6 (a) AMENDMENT OF 1986 CODE.—Section  
7 412(l)(12) of the Internal Revenue Code of 1986 (relating  
8 to applicability of subsection) is amended to read as fol-  
9 lows:

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

16 (b) AMENDMENT OF ERISA.—Section 302(d)(12) of  
17 the Employee Retirement Income Security Act of 1974  
18 (29 U.S.C. 1082(d)(9)) is amended to read as follows:

19 “(12) EXCEPTION FOR PLANS MEETING RE-  
20 QUIREMENTS IN 2000.—If this subsection did not  
21 apply to any plan year of a plan beginning in 2000  
22 (determined without regard to paragraph (6)), this  
23 subsection shall not apply to such plan for any plan  
24 year beginning in 2004, 2005, or 2006.”

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

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

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

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to years beginning after December  
14 31, 2003.

15 **SEC. 408. BENEFIT LIMITATIONS FOR CERTAIN FINAN-**  
16 **CIALLY DISTRESSED PLANS.**

17 (a) INTERNAL REVENUE CODE OF 1986.—Section  
18 401(a) of the Internal Revenue Code of 1986 (relating to  
19 qualified pension, profit-sharing, and stock bonus plans),  
20 as amended by this Act, is amended by adding after para-  
21 graph (35) the following new paragraph:

22 “(36) BENEFIT LIMITATIONS FOR CERTAIN FI-  
23 NANCIALY DISTRESSED PLANS.—

24 “(A) IN GENERAL.—Notwithstanding any  
25 other provision of this part, if a defined benefit  
26 plan to which the requirements of section 412(l)

1 apply is a financially distressed plan for any  
2 plan year, a trust forming part of the plan shall  
3 not be treated as a qualified trust under this  
4 section unless—

5 “(i) no amendment to the plan takes  
6 effect during the plan year if such amend-  
7 ment increases liabilities of the plan by  
8 reason of increases in benefits, any change  
9 in the accrual of benefits, or any change in  
10 the rate at which benefits become non-  
11 forfeitable,

12 “(ii) notwithstanding any other provi-  
13 sion of the plan—

14 “(I) the accrued benefit, any  
15 death or disability benefit, and any so-  
16 cial security supplement described in  
17 the last sentence of section 411(a)(9)  
18 of each participant are frozen at the  
19 amount of such benefit or supplement  
20 as of the end of the preceding plan  
21 year, determined without regard to  
22 any plan amendment adopted during  
23 the preceding plan year which in-  
24 creased any such benefit or supple-

1                   ment and determined after the appli-  
2                   cation of this subclause, and

3                   “**(II)** all other benefits provided  
4                   under the plan are eliminated,  
5                   but only to the extent the freezing or elimi-  
6                   nation of such benefits would have been  
7                   permitted under section 411(d)(6) if they  
8                   had been implemented by a plan amend-  
9                   ment adopted at the end of the preceding  
10                  plan year, and

11                  “(iii) no payments described in para-  
12                  graph (32)(B) are made to any participant  
13                  or beneficiary whose annuity starting date  
14                  occurs during the plan year.

15                  Clause (iii) shall apply to any plan year begin-  
16                  ning after such plan year and before the 1st  
17                  plan year following such plan year for which the  
18                  plan is not a financially distressed plan.

19                  “(B) **SPECIAL RULES IF FUNDING IN-**  
20                  **CREASES TO AT LEAST 50 PERCENT.**—If a plan  
21                  is a financially distressed plan for any plan year  
22                  but the funded current liability percentage as of  
23                  the beginning of the preceding plan year is at  
24                  least 50 percent—

1           “(i) an amendment described in sub-  
2 paragraph (A)(i) may take effect but only  
3 if the funded current liability percentage  
4 as of the end of the plan year is projected  
5 (taking into the account the effect of the  
6 amendment) to be at least 50 percent, and

7           “(ii) the requirements of subpara-  
8 graph (A)(ii) shall not apply with respect  
9 to the plan year or any preceding plan  
10 year.

11           “(C) SPECIAL RULES.—For purposes of  
12 this paragraph—

13           “(i) IMPERMISSIBLE AMENDMENTS.—  
14 If a plan adopts an amendment in violation  
15 of subparagraph (A)(i) or (B)(i), the provi-  
16 sions of the plan shall be applied without  
17 regard to the amendment.

18           “(ii) COLLECTIVELY BARGAINED  
19 PLANS.—In the case of a plan maintained  
20 pursuant to a collective bargaining agree-  
21 ment between employee representatives  
22 and the employer and in effect before the  
23 beginning of the first plan year of any con-  
24 tinuous period of 1 or more plan years for  
25 which a plan is a financially distressed

1 plan, this paragraph shall not be applied to  
2 benefits pursuant to, and individuals cov-  
3 ered by, such agreement for plan years be-  
4 ginning before the date on which such col-  
5 lective bargaining agreement terminates  
6 (determined without regard to any exten-  
7 sion thereof).

8 “(D) FINANCIALLY DISTRESSED PLAN.—  
9 For purposes of this paragraph—

10 “(i) IN GENERAL.—A plan shall be  
11 treated as a financially distressed plan for  
12 any plan year if—

13 “(I) the plan sponsor during any  
14 2 of the 5 plan years immediately pre-  
15 ceding such plan year has an out-  
16 standing debt instrument which is  
17 rated speculative grade or lower by 1  
18 or more nationally recognized statis-  
19 tical rating organizations for cor-  
20 porate bonds, and

21 “(II) the funded current liability  
22 percentage of the plan as of the begin-  
23 ning of the plan year preceding such  
24 plan year is less than 50 percent.

1           The Secretary shall prescribe rules for the  
2           application of subclause (I) in cases where  
3           outstanding debt instruments of the plan  
4           sponsor are not rated.

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

7                           “(I) IN GENERAL.—Notwith-  
8           standing clause (i), if a plan is treated  
9           under clause (i) as a financially dis-  
10          tressed plan for 1 or more plan years,  
11          the plan shall continue to be treated  
12          as a financially distressed plan for  
13          subsequent plan years beginning be-  
14          fore the first plan year after the close  
15          of the first period described in sub-  
16          clause (II).

17                           “(II) 5-YEAR PERIOD.—A period  
18          described in this subparagraph is a 5-  
19          consecutive-plan year period if during  
20          each of the 5 plan years in the period  
21          the plan sponsor did not have an out-  
22          standing debt obligation described in  
23          clause (i)(I) or during each of such 5  
24          plan years the plan was not described  
25          in clause (i)(II).

1           “(E) FUNDED CURRENT LIABILITY PER-  
2           CENTAGE.—For purposes of this paragraph, the  
3           term ‘funded current liability percentage’ has  
4           the meaning given such term by section  
5           412(l)(8)(B), except that the current liability  
6           used in computing such percentage shall be de-  
7           termined by only taking into account vested  
8           benefits and by using the interest rate described  
9           in section 4006(a)(3)(E)(iii)(II) of the Em-  
10          ployee Retirement Income Security Act of 1974  
11          and the fair market value of the plan assets.”

12          (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT  
13          OF 1974.—

14               (1) IN GENERAL.—Section 206 of the Employee  
15          Retirement Income Security Act of 1974 (29 U.S.C.  
16          1056) is amended by adding at the end the following  
17          new subsection:

18          “(g) BENEFIT LIMITATIONS FOR CERTAIN FINAN-  
19          CIALLY DISTRESSED PLANS.—

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

24                       “(A) no amendment to the plan shall take  
25                       effect during the plan year if such amendment

1 increases liabilities of the plan by reason of in-  
2 creases in benefits, any change in the accrual of  
3 benefits, or any change in the rate at which  
4 benefits become nonforfeitable,

5 “(B) notwithstanding any other provision  
6 of the plan—

7 “(i) the accrued benefit, any death or  
8 disability benefit, and any social security  
9 supplement described in the last sentence  
10 of section 3(22) of each participant shall  
11 be frozen at the amount of such benefit or  
12 supplement as of the end of the preceding  
13 plan year, determined without regard to  
14 any plan amendment adopted during the  
15 preceding plan year which increased any  
16 such benefit or supplement and determined  
17 after the application of this clause, and

18 “(ii) all other benefits provided under  
19 the plan shall be eliminated,

20 but only to the extent the freezing or elimi-  
21 nation of such benefits would have been per-  
22 mitted under section 204(g) if they had been  
23 implemented by a plan amendment adopted at  
24 the end of the preceding plan year, and

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

5           Subparagraph (C) shall apply to any plan year be-  
6           ginning after such plan year and before the 1st plan  
7           year following such plan year for which the plan is  
8           not a financially distressed plan.

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

14                 “(A) an amendment described in para-  
15                 graph (1)(A) may take effect but only if the  
16                 funded current liability percentage as of the end  
17                 of the plan year is projected (taking into the ac-  
18                 count the effect of the amendment) to be at  
19                 least 50 percent, and

20                 “(B) the requirements of paragraph (1)(B)  
21                 shall not apply with respect to the plan year or  
22                 any preceding plan year.

23           “(3) SPECIAL RULES.—For purposes of this  
24          subsection—

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

6           “(B) COLLECTIVELY BARGAINED PLANS.—  
7 In the case of a plan maintained pursuant to a  
8 collective bargaining agreement between em-  
9 ployee representatives and the employer and in  
10 effect before the beginning of the first plan year  
11 of any continuous period of 1 or more plan  
12 years for which a plan is a financially distressed  
13 plan, this paragraph shall not be applied to  
14 benefits pursuant to, and individuals covered  
15 by, such agreement for plan years beginning be-  
16 fore the date on which such collective bar-  
17 gaining agreement terminates (determined with-  
18 out regard to any extension thereof).

19           “(4) NOTICE REQUIREMENTS.—

20           “(A) IN GENERAL.—The plan adminis-  
21 trator of a plan which is a financially distressed  
22 plan for any year shall, at least 45 days before  
23 the beginning of the plan year, notify each plan  
24 participant or beneficiary, each labor organiza-  
25 tion representing such participants or bene-

1           ficiaries, and the Pension Benefit Guaranty  
2           Corporation that—

3                   “(i) the plan is treated as a financially  
4                   distressed plan for purposes of this sub-  
5                   section and the reasons why it is so treat-  
6                   ed, and

7                   “(ii) the restrictions applicable to the  
8                   plan under this subsection for the plan  
9                   year.

10           The Secretary of the Treasury may provide for  
11           the coordination of the notice under this sub-  
12           section with the notice under section 204(h).

13                   “(B) FORM AND MANNER.—Any notice  
14                   under subparagraph (A)—

15                   “(i) shall be provided in a form and  
16                   manner prescribed by the Secretary of the  
17                   Treasury,

18                   “(ii) shall be written in a manner so  
19                   as to be understood by the average plan  
20                   participant, and

21                   “(iii) may be provided in written, elec-  
22                   tronic, or other appropriate form to the ex-  
23                   tent such form is reasonably accessible to  
24                   persons to whom the notice is required to  
25                   be provided.

1           “(5) FINANCIALLY DISTRESSED PLAN.—For  
2 purposes of this subsection—

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

6           “(i) the plan sponsor during any 2 of  
7 the 5 plan years immediately preceding  
8 such plan year has an outstanding debt in-  
9 strument which is rated speculative grade  
10 or lower by 1 or more nationally recognized  
11 statistical rating organizations for cor-  
12 porate bonds, and

13           “(ii) the funded current liability per-  
14 centage of the plan as of the beginning of  
15 the plan year preceding such plan year is  
16 less than 50 percent.

17           The Secretary of the Treasury shall prescribe  
18 rules for the application of clause (i) in cases  
19 where outstanding debt instruments of the plan  
20 sponsor are not rated.

21           “(B) FINANCIAL STATUS MUST IMPROVE  
22 FOR AT LEAST 5 YEARS.—

23           “(i) IN GENERAL.—Notwithstanding  
24 subparagraph (A), if a plan is treated  
25 under subparagraph (A) as a financially

1           distressed plan for 1 or more plan years,  
2           the plan shall continue to be treated as a  
3           financially distressed plan for subsequent  
4           plan years beginning before the first plan  
5           year after the close of the first period de-  
6           scribed in clause (ii).

7                   “(ii) 5-YEAR PERIOD.—A period de-  
8                   scribed in this clause is any 5-consecutive-  
9                   plan year period if during each of the 5  
10                  plan years in the period the plan sponsor  
11                  did not have an outstanding debt instru-  
12                  ment described in subparagraph (A)(i) or  
13                  during each of such 5 plan years the plan  
14                  was not described in subparagraph (A)(ii).

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

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

4       (c) FUNDING RECOMMENDATIONS.—The Secretary  
5       of the Treasury shall, not later than December 31, 2004,  
6       submit to the Committees on Ways and Means and Edu-  
7       cation and the Workforce of the House of Representatives  
8       and the Committees on Finance and Health, Education,  
9       Labor, and Pensions of the Senate the Secretary’s rec-  
10      ommendations for future changes to the pension plan  
11      funding requirements to strengthen the funded status of  
12      pension plans, including recommendations relating to the  
13      disclosure by pension plans of their funded status.

14      (d) EFFECTIVE DATES.—

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

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

22           (3) COLLECTIVE BARGAINING AGREEMENTS.—  
23      In the case of a plan maintained pursuant to 1 or  
24      more collective bargaining agreements between em-  
25      ployee representatives and 1 or more employers rati-

1       fied by the date of the enactment of this Act, the  
2       amendments made by this section shall not apply to  
3       employees covered by any such agreement for plan  
4       years beginning before the later of—

5               (A) the date on which the last of such col-  
6               lective bargaining agreements terminates (de-  
7               termined without regard to any extension there-  
8               of on or after such date of enactment); or

9               (B) January 1, 2007.

10 **SEC. 409. UPDATING DEDUCTION RULES FOR COMBINA-**  
11 **TION OF PLANS.**

12       (a) **IN GENERAL.**—Subparagraph (C) of section  
13 404(a)(7) of the Internal Revenue Code of 1986 (relating  
14 to limitation on deductions where combination of defined  
15 contribution plan and defined benefit plan) is amended by  
16 adding after clause (ii) the following new clause:

17               “(iii) **LIMITATION.**—In the case of  
18               employer contributions to 1 or more de-  
19               fined contribution plans, this paragraph  
20               shall only apply to the extent that such  
21               contributions exceed 6 percent of the com-  
22               pensation otherwise paid or accrued during  
23               the taxable year to the beneficiaries under  
24               such plans. For purposes of this clause,  
25               amounts carried over from preceding tax-

1           able years under subparagraph (B) shall  
2           be treated as employer contributions to 1  
3           or more defined contributions to the extent  
4           attributable to employer contributions to  
5           such plans in such preceding taxable  
6           years.”

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

10                   “(A) so much of the contributions to 1 or  
11           more defined contribution plans which are not  
12           deductible when contributed solely because of  
13           section 404(a)(7) as does not exceed the  
14           amount of contributions described in section  
15           401(m)(4)(A).”

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

19           **Subtitle B—Improvements in**  
20           **Portability and Distribution Rules**

21           **SEC. 411. CLARIFICATIONS REGARDING PURCHASE OF PER-**  
22           **MISSIVE SERVICE CREDIT.**

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

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

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

5 “Such term may include service credit for peri-  
6 ods for which there is no performance of serv-  
7 ice, and notwithstanding clause (ii), may in-  
8 clude service credited in order to provide an in-  
9 creased benefit for service credit which a partic-  
10 ipant is receiving under the plan.”

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

14 “(D) SPECIAL RULES FOR TRUSTEE-TO-  
15 TRUSTEE TRANSFERS.—In the case of a trust-  
16 ee-to-trustee transfer to which section  
17 403(b)(13)(A) or 457(e)(17)(A) applies (with-  
18 out regard to whether the transfer is made be-  
19 tween plans maintained by the same em-  
20 ployer)—

21 “(i) the limitations of subparagraph  
22 (B) shall not apply in determining whether  
23 the transfer is for the purchase of permis-  
24 sive service credit, and

1                   “(ii) the distribution rules applicable  
2                   under this title to the defined benefit gov-  
3                   ernmental plan to which any amounts are  
4                   so transferred shall apply to such amounts  
5                   and any benefits attributable to such  
6                   amounts.”

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

9           (1) by striking “permissive service credit attrib-  
10           utable to nonqualified service” each place it appears  
11           in subparagraph (B) and inserting “nonqualified  
12           service credit”,

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

15                   “(C) NONQUALIFIED SERVICE CREDIT.—  
16           For purposes of subparagraph (B), the term  
17           ‘nonqualified service credit’ means permissive  
18           service credit other than that allowed with re-  
19           spect to—”, and

20           (3) by striking “elementary or secondary edu-  
21           cation (through grade 12), as determined under  
22           State law” and inserting “elementary or secondary  
23           education (through grade 12), or a comparable level  
24           of education, as determined under the applicable law

1 of the jurisdiction in which the service was per-  
2 formed”.

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by  
5 subsections (a) and (c) shall take effect as if in-  
6 cluded in the amendments made by section 1526 of  
7 the Taxpayer Relief Act of 1997.

8 (2) SUBSECTION (b).—The amendments made  
9 by subsection (b) shall take effect as if included in  
10 the amendments made by section 647 of the Eco-  
11 nomic Growth and Tax Relief Reconciliation Act of  
12 2001.

13 **SEC. 412. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**  
14 **ANNUITY CONTRACTS.**

15 (a) IN GENERAL.—Subparagraph (A) of section  
16 402(c)(2) (maximum amount which may be rolled over)  
17 is amended—

18 (1) by striking “which is part of a plan which  
19 is a defined contribution plan and which agrees to  
20 separately account” and inserting “or to an annuity  
21 contract described in section 403(b) and such trust  
22 or contract provides for separate accounting”; and

23 (2) by inserting “(and earnings thereon)” after  
24 “so transferred”.

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

4 **SEC. 413. CLARIFICATION OF MINIMUM DISTRIBUTION**  
5 **RULES.**

6 The Secretary of the Treasury shall issue regulations  
7 under which a governmental plan (as defined in section  
8 414(d) of the Internal Revenue Code of 1986) shall, for  
9 all years to which section 401(a)(9) of such Code applies  
10 to such plan, be treated as having complied with such sec-  
11 tion 401(a)(9) if such plan complies with a reasonable  
12 good faith interpretation of such section 401(a)(9).

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

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

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

23 “(A) IN GENERAL.—In the case of a dis-  
24 tribution to a qualified public safety employee  
25 from a governmental plan (within the meaning

1 of section 414(d)) which is a defined benefit  
2 plan, paragraph (2)(A)(v) shall be applied by  
3 substituting ‘age 50’ for ‘age 55’.

4 “(B) QUALIFIED PUBLIC SAFETY EM-  
5 PLOYEE.—For purposes of this paragraph, the  
6 term ‘qualified public safety employee’ means  
7 any employee of a State or political subdivision  
8 of a State who provides police protection, fire-  
9 fighting services, or emergency medical services  
10 for any area within the jurisdiction of such  
11 State or political subdivision.”

12 (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to distributions after the date of  
14 the enactment of this Act.

15 **SEC. 415. ALLOW ROLLOVERS BY NONSPOUSE BENE-**  
16 **FICIARIES OF CERTAIN RETIREMENT PLAN**  
17 **DISTRIBUTIONS.**

18 (a) IN GENERAL.—

19 (1) QUALIFIED PLANS.—Section 402(c) of the  
20 Internal Revenue Code of 1986 (relating to rollovers  
21 from exempt trusts) is amended by adding at the  
22 end the following new paragraph:

23 “(11) DISTRIBUTIONS TO INHERITED INDI-  
24 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-  
25 FICIARY.—

1           “(A) IN GENERAL.—If, with respect to any  
2           portion of a distribution from an eligible retire-  
3           ment plan of a deceased employee, a direct  
4           trustee-to-trustee transfer is made to an indi-  
5           vidual retirement plan described in clause (i) or  
6           (ii) of paragraph (8)(B) established for the pur-  
7           poses of receiving the distribution on behalf of  
8           an individual who is a designated beneficiary  
9           (as defined by section 401(a)(9)(E)) of the em-  
10          ployee and who is not the surviving spouse of  
11          the employee—

12                   “(i) the transfer shall be treated as an  
13                   eligible rollover distribution for purposes of  
14                   this subsection,

15                   “(ii) the individual retirement plan  
16                   shall be treated as an inherited individual  
17                   retirement account or individual retirement  
18                   annuity (within the meaning of section  
19                   408(d)(3)(C)) for purposes of this title,  
20                   and

21                   “(iii) section 401(a)(9)(B) (other than  
22                   clause (iv) thereof) shall apply to such  
23                   plan.

24           “(B) CERTAIN TRUSTS TREATED AS BENE-  
25          FICIARIES.—For purposes of this paragraph, to

1 the extent provided in rules prescribed by the  
2 Secretary, a trust maintained for the benefit of  
3 one or more designated beneficiaries shall be  
4 treated in the same manner as a designated  
5 beneficiary.”

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

10 (3) SECTION 403(b) PLANS.—Subparagraph (B)  
11 of section 403(b)(8) of such Code (relating to roll-  
12 over amounts) is amended by striking “and (9)” and  
13 inserting “, (9), and (11)”.

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

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

21 **SEC. 416. FASTER VESTING OF EMPLOYER NONELECTIVE**  
22 **CONTRIBUTIONS.**

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

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

5                   “(2) EMPLOYER CONTRIBUTIONS.—

6                           “(A) DEFINED BENEFIT PLANS.—

7                                   “(i) IN GENERAL.—In the case of a  
 8                                   defined benefit plan, a plan satisfies the  
 9                                   requirements of this paragraph if it satis-  
 10                                  fies the requirements of clause (ii) or (iii).

11                                   “(ii) 5-YEAR VESTING.—A plan satis-  
 12                                   fies the requirements of this clause if an  
 13                                   employee who has completed at least 5  
 14                                   years of service has a nonforfeitable right  
 15                                   to 100 percent of the employee’s accrued  
 16                                   benefit derived from employer contribu-  
 17                                   tions.

18                                   “(iii) 3 TO 7 YEAR VESTING.—A plan  
 19                                   satisfies the requirements of this clause if  
 20                                   an employee has a nonforfeitable right to  
 21                                   a percentage of the employee’s accrued  
 22                                   benefit derived from employer contribu-  
 23                                   tions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60

6 .....	80
7 or more .....	100.

1                   “(B) DEFINED CONTRIBUTION PLANS.—

2                   “ (i) IN GENERAL.—In the case of a  
3                   defined contribution plan, a plan satisfies  
4                   the requirements of this paragraph if it  
5                   satisfies the requirements of clause (ii) or  
6                   (iii).

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

14                  “ (iii) 2 TO 6 YEAR VESTING.—A plan  
15                  satisfies the requirements of this clause if  
16                  an employee has a nonforfeitable right to  
17                  a percentage of the employee’s accrued  
18                  benefit derived from employer contribu-  
19                  tions determined under the following table:

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

20                  (2) CONFORMING AMENDMENT.—Section  
21                  411(a) of such Code (relating to general rule for

1 minimum vesting standards) is amended by striking  
2 paragraph (12).

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

5 (1) IN GENERAL.—Paragraph (2) of section  
6 203(a) of the Employee Retirement Income Security  
7 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to  
8 read as follows:

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

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

17 “(iii) A plan satisfies the requirements of this  
18 clause if an employee has a nonforfeitable right to  
19 a percentage of the employee’s accrued benefit de-  
20 rived from employer contributions determined under  
21 the following table:

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

1           “(B)(i) In the case of an individual account  
 2 plan, a plan satisfies the requirements of this para-  
 3 graph if it satisfies the requirements of clause (ii) or  
 4 (iii).

5           “(ii) A plan satisfies the requirements of this  
 6 clause if an employee who has completed at least 3  
 7 years of service has a nonforfeitable right to 100  
 8 percent of the employee’s accrued benefit derived  
 9 from employer contributions.

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

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

15           (2) CONFORMING AMENDMENT.—Section  
 16 203(a) of such Act is amended by striking para-  
 17 graph (4).

18           (c) EFFECTIVE DATES.—

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

1           (2) COLLECTIVE BARGAINING AGREEMENTS.—

2           In the case of a plan maintained pursuant to one or  
3           more collective bargaining agreements between em-  
4           ployee representatives and one or more employers  
5           ratified before the date of the enactment of this Act,  
6           the amendments made by this section shall not apply  
7           to contributions on behalf of employees covered by  
8           any such agreement for plan years beginning before  
9           the earlier of—

10                   (A) the later of—

11                           (i) the date on which the last of such  
12                           collective bargaining agreements termi-  
13                           nates (determined without regard to any  
14                           extension thereof on or after such date of  
15                           the enactment); or

16                           (ii) January 1, 2005; or

17                   (B) January 1, 2007.

18           (3) SERVICE REQUIRED.—With respect to any  
19           plan, the amendments made by this section shall not  
20           apply to any employee before the date that such em-  
21           ployee has 1 hour of service under such plan in any  
22           plan year to which the amendments made by this  
23           section apply.

1 **SEC. 417. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
2 **PLANS TO ROTH IRAS.**

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

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

9 “(1) to a Roth IRA from another such account,  
10 “(2) from an eligible retirement plan, but only  
11 if—

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

15 “(B) in the case of any eligible retirement  
16 plan (as defined in section 402(c)(8)(B) other  
17 than clauses (i) and (ii) thereof), such rollover  
18 contribution meets the requirements of section  
19 402(c), 403(b)(8), or 457(e)(16), as applicable.

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

24 (b) CONFORMING AMENDMENTS.—

25 (1) Section 408A(c)(3)(B) of such Code is  
26 amended—

1 (A) in the text by striking “individual re-  
2 tirement plan” and inserting “an eligible retire-  
3 ment plan (as defined by section  
4 402(c)(8)(B))”, and

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

7 (2) Section 408A(d)(3) of such Code is  
8 amended—

9 (A) in subparagraph (A), by striking “sec-  
10 tion 408(d)(3)” inserting “sections 402(c),  
11 403(b)(8), 408(d)(3), and 457(e)(16)”,

12 (B) in subparagraph (B), by striking “in-  
13 dividual retirement plan” and inserting “eligible  
14 retirement plan (as defined by section  
15 402(c)(8)(B))”,

16 (C) in subparagraph (D), by inserting “or  
17 6047” after “408(i)”,

18 (D) in subparagraph (D), by striking “or  
19 both” and inserting “persons subject to section  
20 6047(d)(1), or all of the foregoing persons”,  
21 and

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

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to distributions after December 31,  
3 2004.

4 **SEC. 418. ELIMINATION OF HIGHER PENALTY ON CERTAIN**  
5 **SIMPLE PLAN DISTRIBUTIONS.**

6 (a) IN GENERAL.—Subsection (t) of section 72 of the  
7 Internal Revenue Code of 1986 (relating to 10-percent ad-  
8 ditional tax on early distributions from qualified retire-  
9 ment plans), as amended by section 414, is amended by  
10 striking paragraph (6) and redesignating paragraphs (7),  
11 (8), (9), and (10) as paragraphs (6), (7), (8), and (9),  
12 respectively.

13 (b) CONFORMING AMENDMENTS.—

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

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

20 (3) Section 408(d)(3)(G) of such Code is  
21 amended by striking “applies” and inserting “ap-  
22 plied on the day before the date of the enactment of  
23 the National Employee Savings and Trust Equity  
24 Guarantee Act of 2004)”.

1           (4) Section 457(a)(2) of such Code is amended  
2           by striking “section 72(t)(9)” and inserting “section  
3           72(t)(8)”.

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

7 **SEC. 419. SIMPLE PLAN PORTABILITY.**

8           (a) REPEAL OF LIMITATION.—Paragraph (3) of sec-  
9 tion 408(d) of the Internal Revenue Code of 1986 (relat-  
10 ing to rollover contributions), as amended by this Act, is  
11 amended by striking subparagraph (G) and redesignating  
12 subparagraphs (H) and (I) as subparagraphs (G) and (H),  
13 respectively.

14           (b) EFFECTIVE DATE.—The amendment made by  
15 this section shall apply to years beginning after December  
16 31, 2004.

17 **SEC. 420. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**  
18 **MENT PLANS.**

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

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

2 (a) **MANDATORY DISTRIBUTIONS TO PBGC.**—Clause  
3 (i) of section 401(a)(31)(B) of the Internal Revenue Code  
4 of 1986 (relating to general rule for certain mandatory  
5 distributions) is amended by inserting “to the Pension  
6 Benefit Guaranty Corporation in accordance with section  
7 4050(e) of the Employee Retirement Income Security Act  
8 of 1974 or” after “such transfer”.

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

12 “(iii) **INCOME TAX TREATMENT OF**  
13 **TRANSFERS TO PBGC.**—For purposes of  
14 determining the income tax treatment re-  
15 lating to transfers to the Pension Benefit  
16 Guaranty Corporation under clause (i)—

17 “(I) the transfer of amounts to  
18 the Pension Benefit Guaranty Cor-  
19 poration pursuant to clause (i) shall  
20 be treated as a transfer to an indi-  
21 vidual retirement plan under such  
22 clause, and

23 “(II) the distribution of such  
24 amounts from the Pension Benefit  
25 Guaranty Corporation shall be treated

1 as a distribution from an individual  
2 retirement plan.”

3 (c) MISSING PARTICIPANTS AND BENEFICIARIES.—

4 Section 4050 of the Employee Retirement Income Security  
5 Act of 1974 (29 U.S.C. 1350), as amended by section 435,  
6 is amended by redesignating subsection (e) as subsection  
7 (f) and by inserting after subsection (d) the following new  
8 subsection:

9 “(e) INVOLUNTARY CASHOUTS.—

10 “(1) PAYMENT BY THE CORPORATION.—If ben-  
11 efits under a plan described in paragraph (3) were  
12 transferred to the corporation under section  
13 401(a)(31)(B) of the Internal Revenue Code of  
14 1986, the corporation shall, upon application filed by  
15 the participant or beneficiary with the corporation in  
16 such form and manner as may be prescribed in regu-  
17 lations of the corporation, pay to the participant or  
18 beneficiary the amount transferred (or the appro-  
19 priate survivor benefit) either—

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

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

23 “(2) INFORMATION TO THE CORPORATION.—To  
24 the extent provided in regulations, the plan adminis-  
25 trator of a plan described in paragraph (3) shall,

1       upon a transfer of benefits to the corporation under  
2       section 401(a)(31)(B) of such Code, provide the cor-  
3       poration information with respect to benefits of the  
4       participant or beneficiary so transferred.

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

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

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

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

16       (d) EFFECTIVE DATES.—

17          (1) INTERNAL REVENUE CODE PROVISIONS.—  
18       The amendments made by subsections (a) and (b)  
19       shall take effect as if included in the amendments  
20       made by section 657 of the Economic Growth and  
21       Tax Relief Reconciliation Act of 2001.

22          (2) EMPLOYEE RETIREMENT INCOME SECURITY  
23       ACT OF 1974 PROVISIONS.—The amendments made  
24       by subsection (c) shall apply to distributions made  
25       after final regulations implementing subsection (e)

1 of section 4050 of the Employee Retirement Income  
2 Security Act of 1974 (as added by subsection (e))  
3 are prescribed.

4 (3) REGULATIONS.—The Pension Benefit Guar-  
5 anty Corporation shall issue regulations necessary to  
6 carry out the amendments made by subsection (e)  
7 not later than December 31, 2004.

## 8 **Subtitle C—Administrative** 9 **Provisions**

### 10 **SEC. 431. EMPLOYEE PLANS COMPLIANCE RESOLUTION** 11 **SYSTEM.**

12 (a) IN GENERAL.—The Secretary of the Treasury  
13 shall have full authority to establish and implement the  
14 Employee Plans Compliance Resolution System (or any  
15 successor program) and any other employee plans correc-  
16 tion policies, including the authority to waive income, ex-  
17 cise, or other taxes to ensure that any tax, penalty, or  
18 sanction is not excessive and bears a reasonable relation-  
19 ship to the nature, extent, and severity of the failure.

20 (b) IMPROVEMENTS.—The Secretary of the Treasury  
21 shall continue to update and improve the Employee Plans  
22 Compliance Resolution System (or any successor pro-  
23 gram), giving special attention to—

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

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

7 (3) extending the duration of the self-correction  
8 period under the Self-Correction Program for signifi-  
9 cant compliance failures;

10 (4) expanding the availability to correct insig-  
11 nificant compliance failures under the Self-Correc-  
12 tion Program during audit; and

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

17 **SEC. 432. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
18 **MORATORIUM ON APPLICATION OF CERTAIN**  
19 **NONDISCRIMINATION RULES APPLICABLE TO**  
20 **STATE AND LOCAL PLANS.**

21 (a) IN GENERAL.—The following provisions are each  
22 amended by striking “maintained by a State or local gov-  
23 ernment or political subdivision thereof (or agency or in-  
24 strumentality thereof)”:



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

4 (B) MODIFICATION OF REGULATIONS.—  
5 The Secretary of the Treasury shall modify the  
6 regulations under sections 402(f), 411(a)(11),  
7 and 417 of the Internal Revenue Code of 1986  
8 by substituting “180 days” for “90 days” each  
9 place it appears in Treasury Regulations sec-  
10 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–  
11 1(b).

12 (2) AMENDMENT OF ERISA.—

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

17 (B) MODIFICATION OF REGULATIONS.—  
18 The Secretary of the Treasury shall modify the  
19 regulations under part 2 of subtitle B of title  
20 I of the Employee Retirement Income Security  
21 Act of 1974 relating to sections 203(e) and 205  
22 of such Act by substituting “180 days” for “90  
23 days” each place it appears.

24 (3) EFFECTIVE DATE.—The amendments and  
25 modifications made or required by this subsection

1 shall apply to years beginning after December 31,  
2 2004.

3 (b) NOTIFICATION OF RIGHT TO DEFER.—

4 (1) IN GENERAL.—The Secretary of the Treas-  
5 ury shall modify the regulations under section  
6 411(a)(11) of the Internal Revenue Code of 1986  
7 and under section 205 of the Employee Retirement  
8 Income Security Act of 1974 to provide that the de-  
9 scription of a participant's right, if any, to defer re-  
10 ceipt of a distribution shall also describe the con-  
11 sequences of failing to defer such receipt.

12 (2) EFFECTIVE DATE.—

13 (A) IN GENERAL.—The modifications re-  
14 quired by paragraph (1) shall apply to years be-  
15 ginning after December 31, 2004.

16 (B) REASONABLE NOTICE.—A plan shall  
17 not be treated as failing to meet the require-  
18 ments of section 411(a)(11) of such Code or  
19 section 205 of such Act with respect to any de-  
20 scription of consequences described in para-  
21 graph (1) made within 90 days after the Sec-  
22 retary of the Treasury issues the modifications  
23 required by paragraph (1) if the plan adminis-  
24 trator makes a reasonable attempt to comply  
25 with such requirements.

1 **SEC. 434. REPORTING SIMPLIFICATION.**

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

4 (1) IN GENERAL.—The Secretary of the Treas-  
5 ury and the Secretary of Labor shall modify the re-  
6 quirements for filing annual returns with respect to  
7 one-participant retirement plans to ensure that such  
8 plans with assets of \$250,000 or less as of the close  
9 of the plan year need not file a return for that year.

10 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
11 FINED.—For purposes of this subsection, the term  
12 “one-participant retirement plan” means a retire-  
13 ment plan with respect to which the following re-  
14 quirements are met:

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

16 (i) the plan covered only one indi-  
17 vidual (or the individual and the individ-  
18 ual’s spouse) and the individual owned 100  
19 percent of the plan sponsor (whether or  
20 not incorporated), or

21 (ii) the plan covered only one or more  
22 partners (or partners and their spouses) in  
23 the plan sponsor;

24 (B) the plan meets the minimum coverage  
25 requirements of section 410(b) of the Internal  
26 Revenue Code of 1986 without being combined

1 with any other plan of the business that covers  
2 the employees of the business;

3 (C) the plan does not provide benefits to  
4 anyone except the individual (and the individ-  
5 ual's spouse) or the partners (and their  
6 spouses);

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

11 (E) the plan does not cover a business that  
12 uses the services of leased employees (within  
13 the meaning of section 414(n) of such Code).

14 For purposes of this paragraph, the term "partner"  
15 includes a 2-percent shareholder (as defined in sec-  
16 tion 1372(b) of such Code) of an S corporation.

17 (3) OTHER DEFINITIONS.—Terms used in para-  
18 graph (2) which are also used in section 414 of the  
19 Internal Revenue Code of 1986 shall have the re-  
20 spective meanings given such terms by such section.

21 (4) EFFECTIVE DATE.—The provisions of this  
22 subsection shall apply to plan years beginning on or  
23 after January 1, 2004.

24 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
25 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case

1 of plan years beginning after December 31, 2004, the Sec-  
2 retary of the Treasury and the Secretary of Labor shall  
3 provide for the filing of a simplified annual return for any  
4 retirement plan which covers less than 25 employees on  
5 the first day of a plan year and which meets the require-  
6 ments described in subparagraphs (B), (D), and (E) of  
7 subsection (a)(2).

8 **SEC. 435. MISSING PARTICIPANTS.**

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

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

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

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

23 “(2) INFORMATION TO THE CORPORATION.—To  
24 the extent provided in regulations, the plan adminis-  
25 trator of a plan described in paragraph (4) shall,

1 upon termination of the plan, provide the corpora-  
2 tion information with respect to benefits of a miss-  
3 ing participant if the plan transfers such benefits—

4 “(A) to the corporation, or

5 “(B) to an entity other than the corpora-  
6 tion or a plan described in paragraph (4)(B)(ii).

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

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

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

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

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

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

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

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

6                   “(i) has missing participants, and

7                   “(ii) has not provided for the transfer  
8                   of assets to pay the benefits of all missing  
9                   participants to another pension plan (with-  
10                  in the meaning of section 3(2)).

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

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

16                  (1) by striking “title IV” and inserting “section  
17                  4050”; and

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

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

1 **SEC. 436. REDUCED PBGC PREMIUM FOR NEW PLANS OF**  
2 **SMALL EMPLOYERS.**

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

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

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

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

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

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

24 “(F)(i) For purposes of this paragraph, a single-em-  
25 ployer plan maintained by a contributing sponsor shall be  
26 treated as a new single-employer plan for each of its first

1 5 plan years if, during the 36-month period ending on the  
2 date of the adoption of such plan, the sponsor or any  
3 member of such sponsor's controlled group (or any prede-  
4 cessor of either) did not establish or maintain a plan to  
5 which this title applies with respect to which benefits were  
6 accrued for substantially the same employees as are in the  
7 new single-employer plan.

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

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

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to plans first effective after Decem-  
21 ber 31, 2004.

22 **SEC. 437. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**  
23 **NEW AND SMALL PLANS.**

24 (a) NEW PLANS.—Subparagraph (E) of section  
25 4006(a)(3) of the Employee Retirement Income Security

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

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

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

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

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

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

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

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

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

1 of 1974 (29 U.S.C. 1306(a)), as amended by section  
2 436(b), is amended—

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

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

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

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

23 (c) EFFECTIVE DATES.—

1           (1) SUBSECTION (a).—The amendments made  
2           by subsection (a) shall apply to plans first effective  
3           after December 31, 2004.

4           (2) SUBSECTION (b).—The amendments made  
5           by subsection (b) shall apply to plan years beginning  
6           after December 31, 2004.

7   **SEC. 438. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**  
8                           **PREMIUM OVERPAYMENT REFUNDS.**

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

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

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

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

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

1 **SEC. 439. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**  
2 **PLANS.**

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

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

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

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

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

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

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

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

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

12 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

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

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

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

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

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

15 (c) CONFORMING AMENDMENTS.—

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

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

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

23           “(d) For purposes of subsection (b)(9), the term ‘sub-  
24 stantial owner’ means an individual who, at any time dur-

1 ing the 60-month period ending on the date the determina-  
2 tion is being made—

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

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

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

13 For purposes of paragraph (3), the constructive ownership  
14 rules of section 1563(e) of the Internal Revenue Code of  
15 1986 shall apply (determined without regard to section  
16 1563(e)(3)(C)).”

17 (2) Section 4043(c)(7) of such Act (29 U.S.C.  
18 1343(c)(7)) is amended by striking “section  
19 4022(b)(6)” and inserting “section 4021(d)”.

20 (d) EFFECTIVE DATES.—

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

24 (A) under section 4041(c) of the Employee  
25 Retirement Income Security Act of 1974 (29

1 U.S.C. 1341(c)) with respect to which notices  
2 of intent to terminate are provided under sec-  
3 tion 4041(a)(2) of such Act (29 U.S.C.  
4 1341(a)(2)) after December 31, 2004, and

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

9 (2) CONFORMING AMENDMENTS.—The amend-  
10 ments made by subsection (c) shall take effect on  
11 January 1, 2005.

12 **SEC. 440. VOLUNTARY EARLY RETIREMENT INCENTIVE AND**  
13 **EMPLOYMENT RETENTION PLANS MAIN-**  
14 **TAINED BY LOCAL EDUCATIONAL AGENCIES**  
15 **AND OTHER ENTITIES.**

16 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE  
17 PLANS.—

18 (1) TREATMENT AS PLAN PROVIDING SEVER-  
19 ANCE PAY.—Section 457(e)(11) of the Internal Rev-  
20 enue Code of 1986 (relating to certain plans ex-  
21 cluded) is amended by adding at the end the fol-  
22 lowing new subparagraph:

23 “(D) CERTAIN VOLUNTARY EARLY RETIRE-  
24 MENT INCENTIVE PLANS.—

1                   “(i) IN GENERAL.—If an applicable  
2                   voluntary early retirement incentive plan—  
3                   “(I) makes payments or supple-  
4                   ments as an early retirement benefit,  
5                   a retirement-type subsidy, or a benefit  
6                   described in the last sentence of sec-  
7                   tion 411(a)(9), and  
8                   “(II) such payments or supple-  
9                   ments are made in coordination with  
10                  a defined benefit plan which is de-  
11                  scribed in section 401(a) and includes  
12                  a trust exempt from tax under section  
13                  501(a) and which is maintained by an  
14                  eligible employer described in para-  
15                  graph (1)(A) or by an education asso-  
16                  ciation described in clause (ii)(II),  
17                  such applicable plan shall be treated for  
18                  purposes of subparagraph (A)(i) as a bona  
19                  fide severance pay plan with respect to  
20                  such payments or supplements to the ex-  
21                  tent such payments or supplements could  
22                  otherwise have been provided under such  
23                  defined benefit plan (determined as if sec-  
24                  tion 411 applied to such defined benefit  
25                  plan).

1                   “(ii) APPLICABLE VOLUNTARY EARLY  
2                   RETIREMENT INCENTIVE PLAN.—For pur-  
3                   poses of this subparagraph, the term ‘ap-  
4                   plicable voluntary early retirement incen-  
5                   tive plan’ means a voluntary early retire-  
6                   ment incentive plan maintained by—

7                                 “(I) a local educational agency  
8                                 (as defined in section 9101 of the Ele-  
9                                 mentary and Secondary Education  
10                                Act of 1965 (20 U.S.C. 7801)), or

11                               “(II) an education association  
12                               which principally represents employees  
13                               of 1 or more agencies described in  
14                               subclause (I) and which is described  
15                               in section 501(c) (5) or (6) and ex-  
16                               empt from tax under section 501(a).”

17                   (2) AGE DISCRIMINATION IN EMPLOYMENT  
18                   ACT.—Section 4(l)(1) of the Age Discrimination in  
19                   Employment Act of 1967 (29 U.S.C. 623(l)(1)) is  
20                   amended—

21                               (A) by inserting “(A)” after “(1)”,

22                               (B) by redesignating subparagraphs (A)  
23                               and (B) as clauses (i) and (ii), respectively,

24                               (C) by redesignating clauses (i) and (ii) of  
25                               subparagraph (B) (as in effect before the

1 amendments made by subparagraph (B)) as  
2 subclauses (I) and (II), respectively, and

3 (D) by adding at the end the following:

4 “(B) A voluntary early retirement incen-  
5 tive plan that—

6 “(i) is maintained by—

7 “(I) a local educational agency  
8 (as defined in section 9101 of the Ele-  
9 mentary and Secondary Education  
10 Act of 1965 (20 U.S.C. 7801), or

11 “(II) an education association  
12 which principally represents employees  
13 of 1 or more agencies described in  
14 subclause (I) and which is described  
15 in section 501(c) (5) or (6) of the In-  
16 ternal Revenue Code of 1986 and ex-  
17 empt from taxation under section  
18 501(a) of such Code, and

19 “(ii) makes payments or supplements  
20 described in subclauses (I) and (II) of sub-  
21 paragraph (A)(ii) in coordination with a  
22 defined benefit plan (as so defined) main-  
23 tained by an eligible employer described in  
24 section 457(e)(1)(A) of such Code or by an

1 education association described in clause  
2 (i)(II),  
3 shall be treated solely for purposes of subpara-  
4 graph (A)(ii) as if it were a part of the defined  
5 benefit plan with respect to such payments or  
6 supplements. Payments or supplements under  
7 such a voluntary early retirement incentive plan  
8 shall not constitute severance pay for purposes  
9 of section 4(l)(2) of the Age Discrimination in  
10 Employment Act (29 U.S.C. 623(l)(2)).”

11 (b) EMPLOYMENT RETENTION PLANS.—

12 (1) IN GENERAL.—Section 457(f)(2) of the In-  
13 ternal Revenue Code of 1986 (relating to exceptions)  
14 is amended by striking “and” at the end of subpara-  
15 graph (D), by striking the period at the end of sub-  
16 paragraph (E) and inserting “, and”, and by adding  
17 at the end the following:

18 “(F) that portion of any applicable employ-  
19 ment retention plan described in paragraph (4)  
20 with respect to any participant.”

21 (2) DEFINITIONS AND RULES RELATING TO EM-  
22 PLOYMENT RETENTION PLANS.—Section 457(f) of  
23 such Code is amended by adding at the end the fol-  
24 lowing new paragraph:

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

3           “(A) IN GENERAL.—The portion of an ap-  
4 plicable employment retention plan described in  
5 this paragraph with respect to any participant  
6 is that portion of the plan which provides bene-  
7 fits payable to the participant not in excess of  
8 twice the applicable dollar limit determined  
9 under subsection (e)(15).

10           “(B) OTHER RULES.—

11           “(i) LIMITATION.—Paragraph (2)(F)  
12 shall only apply to the portion of the plan  
13 described in subparagraph (A) for years  
14 preceding the year in which such portion is  
15 paid or otherwise made available to the  
16 participant.

17           “(ii) TREATMENT.—A plan shall not  
18 be treated for purposes of this title as pro-  
19 viding for the deferral of compensation for  
20 any year with respect to the portion of the  
21 plan described in subparagraph (A).

22           “(C) APPLICABLE EMPLOYMENT RETEN-  
23 TION PLAN.—The term ‘applicable employment  
24 retention plan’ means an employment retention  
25 plan maintained by—

1           “(i) a local educational agency (as de-  
2           fined in section 9101 of the Elementary  
3           and Secondary Education Act of 1965 (20  
4           U.S.C. 7801), or

5           “(ii) an education association which  
6           principally represents employees of 1 or  
7           more agencies described in clause (i) and  
8           which is described in section 501(c) (5) or  
9           (6) and exempt from taxation under sec-  
10          tion 501(a).

11          “(D) EMPLOYMENT RETENTION PLAN.—  
12          The term ‘employment retention plan’ means a  
13          plan to pay, upon termination of employment,  
14          compensation to an employee of a local edu-  
15          cational agency or education association de-  
16          scribed in subparagraph (C) for purposes of—

17                 “(i) retaining the services of the em-  
18                 ployee, or

19                 “(ii) rewarding such employee for the  
20                 employee’s service with 1 or more such  
21                 agencies or associations.”

22          (c) COORDINATION WITH ERISA.—Section 3(2)(B)  
23          of the Employee Retirement Income Security Act of 1974  
24          (29 U.S.C. 1002(2)(B)) is amended by adding at the end  
25          the following: “An applicable voluntary early retirement

1 incentive plan (as defined in section 457(e)(11)(D)(ii) of  
2 the Internal Revenue Code of 1986) making payments or  
3 supplements described in section 457(e)(11)(D)(i) of such  
4 Code, and an applicable employment retention plan (as de-  
5 fined in section 457(f)(4)(C) of such Code) making pay-  
6 ments of benefits described in section 457(f)(4)(A) of such  
7 Code, shall, for purposes of this title, be treated as a wel-  
8 fare plan (and not a pension plan) with respect to such  
9 payments and supplements.”

10 (d) EFFECTIVE DATES.—

11 (1) IN GENERAL.—The amendments made by  
12 this Act shall take effect on the date of the enact-  
13 ment of this Act.

14 (2) TAX AMENDMENTS.—The amendments  
15 made by subsections (a)(1) and (b) shall apply to  
16 taxable years ending after the date of the enactment  
17 of this Act.

18 (3) ERISA AMENDMENTS.—The amendment  
19 made by subsection (c) shall apply to plan years  
20 ending after the date of the enactment of this Act.

21 (4) CONSTRUCTION.—Nothing in the amend-  
22 ments made by this section shall alter or affect the  
23 construction of the Internal Revenue Code of 1986,  
24 the Employee Retirement Income Security Act of  
25 1974, or the Age Discrimination in Employment Act

1 of 1967 as applied to any plan, arrangement, or con-  
2 duct to which such amendments do not apply.

3 **SEC. 441. ACCELERATION OF COMPUTATION OF BENEFITS**  
4 **ATTRIBUTABLE TO RECOVERIES OF EM-**  
5 **PLOYER LIABILITY.**

6 (a) MODIFICATION OF AVERAGE RECOVERY PER-  
7 CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-  
8 ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS  
9 AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the  
10 Employee Retirement Income Security Act of 1974 (29  
11 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

12 “(ii) notices of intent to terminate  
13 were provided (or in the case of a termi-  
14 nation by the corporation, a notice of de-  
15 termination under section 4042 was  
16 issued) during the 5-Federal fiscal year pe-  
17 riod ending with the third fiscal year pre-  
18 ceding the fiscal year in which occurs the  
19 date of the notice of intent to terminate  
20 (or the notice of determination under sec-  
21 tion 4042) with respect to the plan termi-  
22 nation for which the recovery ratio is being  
23 determined.”

24 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR  
25 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO

1 PARTICIPANTS AND BENEFICIARIES.—Section 4044 of the  
2 Employee Retirement Income Security Act of 1974 (29  
3 U.S.C. 1362) is amended by adding at the end the fol-  
4 lowing new subsection:

5 “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR  
6 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
7 PARTICIPANTS AND BENEFICIARIES.—

8 “(1) IN GENERAL.—In the case of a terminated  
9 plan, the value of the recovery of liability under sec-  
10 tion 4062(c) allocable as a plan asset under this sec-  
11 tion for purposes of determining the amount of ben-  
12 efits payable by the corporation shall be determined  
13 by multiplying—

14 “(A) the amount of liability under section  
15 4062(c) as of the termination date of the plan,  
16 by

17 “(B) the applicable section 4062(c) recov-  
18 ery ratio.

19 “(2) SECTION 4062(c) RECOVERY RATIO.—For  
20 purposes of this subsection—

21 “(A) IN GENERAL.—Except as provided in  
22 subparagraph (C), the term ‘section 4062(c) re-  
23 covery ratio’ means the average, determined  
24 with respect to prior plan terminations de-

1           scribed in subparagraph (B), of the ratio  
2           which—

3                   “(i) the value of the recovery under  
4                   section 4062(c) determined by the corpora-  
5                   tion in connection with any such prior ter-  
6                   mination, bears to

7                   “(ii) the amount of liability under sec-  
8                   tion 4062(c) with respect to such plans as  
9                   of the termination date in connection with  
10                  any such prior termination.

11               “(B) PRIOR TERMINATIONS.—A plan ter-  
12               mination described in this subparagraph is a  
13               termination with respect to which—

14                   “(i) the value of recoveries under sec-  
15                   tion 4062(c) have been determined by the  
16                   corporation, and

17                   “(ii) notices of intent to terminate  
18                   were provided (or in the case of a termi-  
19                   nation by the corporation, a notice of de-  
20                   termination under section 4042 was  
21                   issued) during the 5-Federal fiscal year pe-  
22                   riod ending with the third fiscal year pre-  
23                   ceding the fiscal year in which occurs the  
24                   date of the notice of intent to terminate  
25                   (or the notice of determination under sec-

1                   tion 4042) with respect to the plan termi-  
2                   nation for which the recovery ratio is being  
3                   determined.

4                   “(C) EXCEPTION.—In the case of a termi-  
5                   nated plan with respect to which the out-  
6                   standing amount of benefit liabilities exceeds  
7                   \$20,000,000, the term ‘section 4062(c) recovery  
8                   ratio’ means, with respect to the termination of  
9                   such plan, the ratio of—

10                   “(i) the value of the recoveries on be-  
11                   half of the plan under section 4062(c), to

12                   “(ii) the amount of the liability owed  
13                   under section 4062(c) as of the date of  
14                   plan termination to the trustee appointed  
15                   under section 4042 (b) or (c).

16                   “(3) SUBSECTION NOT TO APPLY.—This sub-  
17                   section shall not apply with respect to the deter-  
18                   mination of—

19                   “(A) whether the amount of outstanding  
20                   benefit liabilities exceeds \$20,000,000, or

21                   “(B) the amount of any liability under sec-  
22                   tion 4062 to the corporation or the trustee ap-  
23                   pointed under section 4042 (b) or (c).

24                   “(4) DETERMINATIONS.—Determinations under  
25                   this subsection shall be made by the corporation.

1       Such determinations shall be binding unless shown  
2       by clear and convincing evidence to be unreason-  
3       able.”

4       (c) **EFFECTIVE DATE.**—The amendments made by  
5 this section shall apply for any termination for which no-  
6 tices of intent to terminate are provided (or in the case  
7 of a termination by the corporation, a notice of determina-  
8 tion under section 4042 is issued) on or after the date  
9 which is 30 days after the date of enactment of this sec-  
10 tion.

11 **SEC. 442. MULTIEMPLOYER PLAN FUNDING AND SOLVENCY**

12                   **NOTICES.**

13       (a) **IN GENERAL.**—Section 101(f) of the Employee  
14 Retirement Income Security Act of 1974 (29 U.S.C.  
15 1021(f)) is amended to read as follows:

16       “(f) **MULTIEMPLOYER DEFINED BENEFIT PLAN**  
17 **FUNDING AND SOLVENCY NOTICES.**—

18           “(1) **IN GENERAL.**—The administrator of a de-  
19 fined benefit plan which is a multiemployer plan  
20 shall provide to each plan participant and bene-  
21 ficiary, to each labor organization representing such  
22 participants or beneficiaries, and to each employer  
23 that has an obligation to contribute under the  
24 plan—

1           “(A) a plan funding notice for each plan  
2 year, and

3           “(B) if, for any plan year, the value of the  
4 plan’s assets is less than an amount equal to 5  
5 times the amount of benefit payments, a multi-  
6 employer plan solvency notice.

7           “(2) INFORMATION CONTAINED IN NOTICES.—

8           “(A) IDENTIFYING INFORMATION.—Each  
9 notice required under paragraph (1) shall con-  
10 tain identifying information, including the name  
11 of the plan, the address and phone number of  
12 the plan administrator and the plan’s principal  
13 administrative officer, each plan sponsor’s em-  
14 ployer identification number, and the plan num-  
15 ber of the plan.

16           “(B) SPECIFIC INFORMATION RELATING  
17 TO FUNDING NOTICE.—A plan funding notice  
18 under paragraph (1)(A) shall include—

19           “(i) a statement as to whether the  
20 plan’s funded current liability percentage  
21 (as defined in section 302(d)(9)(C)) for the  
22 plan year to which the notice relates is at  
23 least 100 percent (and, if not, the actual  
24 percentage), and

1           “(ii) a general description of the bene-  
2           fits under the plan which are eligible to be  
3           guaranteed by the Pension Benefit Guar-  
4           anty Corporation, along with an expla-  
5           nation of the limitations on the guarantee  
6           and the circumstances under which such  
7           limitations apply.

8           “(C) SPECIFIC INFORMATION RELATING TO  
9           SOLVENCY NOTICE.—A plan solvency notice  
10          under paragraph (1)(B) shall include—

11           “(i) a statement of the value of the  
12           plan’s assets, the amount of benefit pay-  
13           ments, and the ratio of the assets to the  
14           payments for the plan year to which the  
15           notice relates,

16           “(ii) a summary of the rules gov-  
17           erning insolvent multiemployer plans, in-  
18           cluding the limitations on benefit payments  
19           and any potential benefit reductions and  
20           suspensions (and the potential effects of  
21           such limitations, reductions, and suspen-  
22           sions on the plan), and

23           “(iii) a general description of the ben-  
24           efits under the plan which are eligible to be  
25           guaranteed by the Pension Benefit Guar-

1           anty Corporation, along with an expla-  
2           nation of the limitations on the guarantee  
3           and the circumstances under which such  
4           limitations apply.

5           “(D) OTHER INFORMATION.—Each notice  
6           under paragraph (1) shall include any addi-  
7           tional information which the plan administrator  
8           elects to include.

9           “(3) TIME FOR PROVIDING NOTICE.—Any no-  
10          tice under paragraph (1) shall be provided no later  
11          than two months after the deadline (including exten-  
12          sions) for filing the annual report for the plan year  
13          to which the notice relates and may be issued to-  
14          gether with another document, including the sum-  
15          mary annual report required under section  
16          104(b)(3). The notices under paragraph (1) (A) and  
17          (B) for any plan year may be provided together.

18          “(4) FORM AND MANNER.—Any notice under  
19          paragraph (1)—

20                 “(A) shall be provided in a form and man-  
21                 ner prescribed in regulations of the Pension  
22                 Benefit Guaranty Corporation,

23                 “(B) shall be written in a manner so as to  
24                 be understood by the average plan participant,  
25                 and



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

3           “(4) **TRANSITION RULE FOR CERTAIN GOVERN-**  
4           **MENTAL PLANS.**—In the case of distributions from  
5           an eligible deferred compensation plan of an em-  
6           ployer described in section 457(e)(1)(A) of the Inter-  
7           nal Revenue Code of 1986 which are made after De-  
8           cember 31, 2001, and which are part of a series of  
9           distributions which—

10                   “(A) began before January 1, 2002, and

11                   “(B) are payable for 10 years or less,  
12           the Internal Revenue Code of 1986 may be applied  
13           to such distributions without regard to the amend-  
14           ments made by subsection (a)(1)(D).”

15           (b) **EFFECTIVE DATE.**—The amendment made by  
16           subsection (a) shall take effect as if included in the provi-  
17           sions of section 641 of the Economic Growth and Tax Re-  
18           lief Reconciliation Act of 2001.

19 **SEC. 445. MINIMUM COST REQUIREMENTS.**

20           (a) **IN GENERAL.**—Section 420(c)(3)(E) of the Inter-  
21           nal Revenue Code of 1986 is amended by adding at the  
22           end the following new clause:

23                   “(ii) **INSIGNIFICANT COST REDUC-**  
24                   **TIONS PERMITTED.**—An employer shall not  
25                   be treated as failing to meet the require-

1           ments of this paragraph for any taxable  
2           year if, in lieu of any reduction of retiree  
3           health coverage permitted under the regu-  
4           lations prescribed under clause (i), the em-  
5           ployer reduces applicable employer cost by  
6           an amount not in excess of the reduction  
7           in costs which would have occurred if the  
8           employer had made the maximum permis-  
9           sible reduction in retiree health coverage  
10          under such regulations. In applying such  
11          regulations to any subsequent taxable year,  
12          any reduction in applicable employer cost  
13          under this clause shall be treated as if it  
14          were an equivalent reduction in retiree  
15          health coverage.”

16          (b)       CONFORMING        AMENDMENT.—Section  
17   420(c)(3)(E) of such Code is amended by striking “The  
18   Secretary” and inserting:

19                   “(i) IN GENERAL.—The Secretary”.

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

## **Subtitle D—Studies**

1  
2 **SEC. 451. JOINT STUDY ON REVITALIZING DEFINED BEN-**  
3 **EFIT PLANS.**

4 (a) STUDY.—As soon as practicable after the date of  
5 the enactment of this Act, the Secretary of the Treasury,  
6 the Secretary of Labor, and the Executive Director of the  
7 Pension Benefit Guaranty Corporation shall jointly under-  
8 take a study on ways to revitalize interest in defined ben-  
9 efit plans among employers. In conducting such study, the  
10 Secretaries and the Executive Director shall consider—

11 (1) ways to encourage the establishment of de-  
12 fined benefit plans by small- and mid-sized employ-  
13 ers,

14 (2) ways to encourage the continued mainte-  
15 nance of defined benefit plans by larger employers,  
16 and

17 (3) legislative proposals to accomplish the objec-  
18 tives described in paragraphs (1) and (2).

19 (b) REPORT.—Not later than 2 years after the date  
20 of the enactment of this Act, the Secretaries and the Exec-  
21 utive Director shall report the results of the study, to-  
22 gether with any recommendations for legislative changes,  
23 to the Committees on Ways and Means and Education and  
24 the Workforce of the House of Representatives and the

1 Committees on Finance and Health, Education, Labor,  
2 and Pensions of the Senate.

3 **SEC. 452. STUDY ON FLOOR-OFFSET ESOPS.**

4 (a) STUDY.—As soon as practicable after the date of  
5 the enactment of this Act, the Secretary of the Treasury  
6 and the Pension Benefit Guaranty Corporation shall un-  
7 dertake a study to determine the number of floor-offset  
8 employee stock ownership plans still in existence and the  
9 extent to which such plans pose a risk to plan participants  
10 or beneficiaries and to the Corporation. Such study shall  
11 consider legislative proposals to address such risks.

12 (b) REPORT.—Not later than 1 year after the date  
13 of the enactment of this Act, the Secretary and the Cor-  
14 poration shall report the results of the study, together  
15 with any recommendations for legislative changes, to the  
16 Committees on Ways and Means and Education and the  
17 Workforce of the House of Representatives and the Com-  
18 mittees on Finance and Health, Education, Labor, and  
19 Pensions of the Senate.

20 **Subtitle E—Other Provisions**

21 **SEC. 461. ALLOWANCE OF CATCHUP PAYMENTS.**

22 (a) IN GENERAL.—Section 219(b)(5) of the Internal  
23 Revenue Code of 1986 (relating to deductible amount) is  
24 amended by redesignating subparagraph (C) as subpara-

1 graph (D) and by inserting after subparagraph (B) the  
2 following new subparagraph:

3 “(C) CATCHUP CONTRIBUTIONS FOR CER-  
4 TAIN INDIVIDUALS.—

5 “(i) IN GENERAL.—In the case of an  
6 eligible individual who elects to make a  
7 qualified retirement contribution in addi-  
8 tion to the deductible amount determined  
9 under subparagraph (A)—

10 “(I) the deductible amount for  
11 any taxable year shall be increased by  
12 an amount equal to 3 times the appli-  
13 cable amount determined under sub-  
14 paragraph (B) for such taxable year,  
15 and

16 “(II) subparagraph (B) shall not  
17 apply.

18 “(ii) ELIGIBLE INDIVIDUAL.—For  
19 purposes of this subparagraph, the term  
20 ‘eligible individual’ means, with respect to  
21 any taxable year, any individual who was a  
22 qualified participant in a qualified cash or  
23 deferred arrangement (as defined in sec-  
24 tion 401(k)) of an employer described in  
25 clause (ii) under which the employer

1 matched at least 50 percent of the employ-  
2 ee's contributions to such arrangement  
3 with stock of such employer.

4 “(iii) EMPLOYER DESCRIBED.—An  
5 employer is described in this clause if, in  
6 any taxable year preceding the taxable year  
7 described in clause (ii)—

8 “(I) such employer (or any con-  
9 trolling corporation of such employer)  
10 was a debtor in a case under title 11  
11 of the United States Code, or similar  
12 Federal or State law, and

13 “(II) such employer (or any other  
14 person) was subject to an indictment  
15 or conviction resulting from business  
16 transactions related to such case.

17 “(iv) QUALIFIED PARTICIPANT.—For  
18 purposes of clause (ii), the term ‘qualified  
19 participant’ means any eligible individual  
20 who was a participant in the cash or de-  
21 ferred arrangement described in clause (i)  
22 on the date that is 6 months before the fil-  
23 ing of the case described in clause (iii).

1                   “(v) TERMINATION.—This subpara-  
2                   graph shall not apply to taxable years be-  
3                   ginning after December 31, 2008.”

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

7 **SEC. 462. TREATMENT OF DISTRIBUTIONS BY ESOPS WITH**  
8                   **RESPECT TO S CORPORATION STOCK.**

9           (a) IN GENERAL.—Section 4975(d) of the Internal  
10 Revenue Code of 1986 is amended by adding at the end  
11 the following new flush sentences:

12 “A plan shall not be treated as violating the requirements  
13 of section 401, 409, or subsection (e)(7), or as engaging  
14 in a prohibited transaction for purposes of paragraph (3),  
15 merely by reason of any distribution described in section  
16 1368(a) with respect to S corporation stock which con-  
17 stitutes qualifying employer securities if the distribution  
18 is, in accordance with the plan provisions, used to make  
19 payments on a loan described in paragraph (3) the pro-  
20 ceeds of which were used to acquire the qualifying em-  
21 ployer securities (whether or not allocated to participants).  
22 The preceding sentence shall not apply in the case of a  
23 distribution which is paid with respect to any employer  
24 security which is allocated to a participant unless the plan  
25 provides that employer securities with a fair market value

1 of not less than the amount of such distribution are allo-  
2 cated to such participant for the year which (but for the  
3 preceding sentence) such distribution would have been al-  
4 located to such participant.”

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

7 **SEC. 463. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**  
8 **TIEMPLOYER HEALTH PLAN.**

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

13 “(5) APPLICATION TO MULTIEMPLOYER  
14 PLAN.—In the case of any plan to which section  
15 404(c) applies (or any successor plan primarily cov-  
16 ering employees in the building and construction in-  
17 dustry)—

18 “(A) the prohibition under subsection (a)  
19 on the application of this section to a multiem-  
20 ployer plan shall not apply, and

21 “(B) this section shall be applied to any  
22 such plan—

23 “(i) by treating any reference in this  
24 section to an employer as a reference to all

1 employers maintaining the plan (or, if ap-  
2 propriate, the plan sponsor), and

3 “(ii) in accordance with such modi-  
4 fications of this section (and the provisions  
5 of this title and the Employee Retirement  
6 Income Security Act of 1974 relating to  
7 this section) as the Secretary determines  
8 appropriate to reflect the fact the plan is  
9 not maintained by a single employer.”

10 (b) AMENDMENTS OF ERISA.—

11 (1) Section 101(e)(3) of the Employee Retirement  
12 Income Security Act of 1974 (29 U.S.C.  
13 1021(e)(3)) is amended by striking “Pension Fund-  
14 ing Equity Act of 2004” and inserting “National  
15 Employee Savings and Trust Equity Guarantee Act  
16 of 2004”.

17 (2) Section 403(c)(1) of such Act (29 U.S.C.  
18 1103(c)(1)) is amended by striking “Pension Fund-  
19 ing Equity Act of 2004” and inserting “National  
20 Employee Savings and Trust Equity Guarantee Act  
21 of 2004”.

22 (3) Section 408(b)(13) of such Act (29 U.S.C.  
23 1108(b)(13)) is amended by striking “Pension  
24 Funding Equity Act of 2004” and inserting “Na-

1 tional Employee Savings and Trust Equity Guar-  
2 antee Act of 2004”.

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

## 6 **Subtitle F—Plan Amendments**

### 7 **SEC. 471. PROVISIONS RELATING TO PLAN AMENDMENTS.**

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

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

14 (2) except as provided by the Secretary of the  
15 Treasury, such plan shall not fail to meet the re-  
16 quirements of section 411(d)(6) of the Internal Rev-  
17 enue Code of 1986 and section 204(g) of the Em-  
18 ployee Retirement Income Security Act of 1974 by  
19 reason of such amendment.

20 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

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

24 (A) pursuant to any amendment made by  
25 this Act or the Economic Growth and Tax Re-

1            lief Reconciliation Act of 2001, or pursuant to  
2            any regulation issued by the Secretary of the  
3            Treasury or the Secretary of Labor under such  
4            Acts, and

5            (B) on or before the last day of the first  
6            plan year beginning on or after January 1,  
7            2006, or such later date as the Secretary of the  
8            Treasury may prescribe.

9            In the case of a governmental plan (as defined in  
10           section 414(d) of the Internal Revenue Code of  
11           1986), subparagraph (B) shall be applied by sub-  
12           stituting the date which is 2 years after the date  
13           otherwise applied under subparagraph (B).

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

16           (A) during the period—

17           (i) beginning on the date the legisla-  
18           tive or regulatory amendment described in  
19           paragraph (1)(A) takes effect (or in the  
20           case of a plan or contract amendment not  
21           required by such legislative or regulatory  
22           amendment, the effective date specified by  
23           the plan), and

24           (ii) ending on the date described in  
25           paragraph (1)(B) (or, if earlier, the date

1           the plan or contract amendment is adopt-  
2           ed),  
3           the plan or contract is operated as if such plan  
4           or contract amendment were in effect; and  
5           (B) such plan or contract amendment ap-  
6           plies retroactively for such period.

7   **TITLE V—PROVISIONS RELAT-**  
8   **ING TO EXECUTIVES AND**  
9   **STOCK OPTIONS**  
10 **Subtitle A—Provisions Relating to**  
11 **Executives**

12 **SEC. 501. REPEAL OF 1978 REVENUE ACT LIMITATION ON**  
13 **SECRETARY OF THE TREASURY'S AUTHORITY**  
14 **TO DETERMINE YEAR OF INCLUSION OF**  
15 **AMOUNTS UNDER PRIVATE DEFERRED COM-**  
16 **PENSATION PLANS.**

17       (a) REPEAL.—Section 132 of the Revenue Act of  
18 1978 (Public Law 95–600) is repealed.

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

1 **SEC. 502. TREATMENT OF NONQUALIFIED DEFERRED COM-**  
2 **PENSATION PLANS.**

3 (a) IN GENERAL.—Subpart A of part I of subchapter  
4 D of chapter 1 is amended by adding at the end the fol-  
5 lowing new section:

6 **“SEC. 409A. INCLUSION IN GROSS INCOME OF DEFERRED**  
7 **COMPENSATION UNDER NONQUALIFIED DE-**  
8 **FERRED COMPENSATION PLANS.**

9 “(a) RULES RELATING TO CONSTRUCTIVE RE-  
10 CEIPT.—

11 “(1) IN GENERAL.—

12 “(A) GROSS INCOME INCLUSION.—If at  
13 any time during a taxable year a nonqualified  
14 deferred compensation plan—

15 “(i) fails to meet the requirements of  
16 paragraphs (2), (3), (4), and (5), or

17 “(ii) is not operated in accordance  
18 with such requirements,

19 all compensation deferred under the plan for  
20 the taxable year and all preceding taxable years  
21 shall be includible in gross income for the tax-  
22 able year to the extent not subject to a substan-  
23 tial risk of forfeiture and not previously in-  
24 cluded in gross income.

1           “(B) INTEREST AND ADDITIONAL TAX  
2 PAYABLE WITH RESPECT TO PREVIOUSLY DE-  
3 FERRED COMPENSATION.—

4           “(i) IN GENERAL.—If compensation is  
5 required to be included in gross income  
6 under subparagraph (A) for a taxable year,  
7 the tax imposed by this chapter for the  
8 taxable year of inclusion shall be increased  
9 by the sum of—

10           “(I) the amount of interest deter-  
11 mined under clause (ii), and

12           “(II) an amount equal to 10 per-  
13 cent of the compensation which is re-  
14 quired to be included in gross income.

15           “(ii) INTEREST.—For purposes of  
16 clause (i), the interest determined under  
17 this clause for any taxable year is the  
18 amount of interest at the underpayment  
19 rate on the underpayments that would  
20 have occurred had the deferred compensa-  
21 tion been includible in gross income for the  
22 taxable year in which first deferred or, if  
23 later, the first taxable year in which such  
24 deferred compensation is not subject to a  
25 substantial risk of forfeiture.

1 “(2) DISTRIBUTIONS.—

2 “(A) IN GENERAL.—The requirements of  
3 this paragraph are met if the plan provides that  
4 compensation deferred under the plan may not  
5 be distributed earlier than—

6 “(i) except as provided in subpara-  
7 graph (B)(i), separation from service (as  
8 determined by the Secretary),

9 “(ii) the date the participant becomes  
10 disabled (within the meaning of subpara-  
11 graph (C)),

12 “(iii) death,

13 “(iv) a specified time (or pursuant to  
14 a fixed schedule) specified under the plan  
15 as of the date of the deferral of such com-  
16 pensation,

17 “(v) to the extent provided by the  
18 Secretary, a change in the ownership or ef-  
19 fective control of the corporation, or in the  
20 ownership of a substantial portion of the  
21 assets of the corporation, or

22 “(vi) the occurrence of an unforesee-  
23 able emergency.

24 “(B) SPECIAL RULES.—

1           “(i) SEPARATION FROM SERVICE OF  
2 SPECIFIED EMPLOYEES.—In the case of  
3 specified employees, the requirement of  
4 subparagraph (A)(i) is met only if distribu-  
5 tions may not be made earlier than 6  
6 months after the date of separation from  
7 service. For purposes of the preceding sen-  
8 tence, a specified employee is a key em-  
9 ployee (as defined in section 416(i)) of a  
10 corporation the stock in which is publicly  
11 traded on an established securities market  
12 or otherwise.

13           “(ii) CHANGES IN OWNERSHIP OR  
14 CONTROL.—In the case of a participant  
15 who is subject to the requirements of sec-  
16 tion 16(a) of the Securities Exchange Act  
17 of 1934, the requirement of subparagraph  
18 (A)(v) is met only if distributions may not  
19 be made earlier than 1 year after the date  
20 of the change in ownership or effective  
21 control.

22           “(iii) UNFORESEEABLE EMER-  
23 GENCY.—For purposes of subparagraph  
24 (A)(vi)—

1                   “(I) IN GENERAL.—The term  
2                   ‘unforeseeable emergency’ means a se-  
3                   vere financial hardship to the partici-  
4                   pant or beneficiary resulting from a  
5                   sudden and unexpected illness or acci-  
6                   dent of the participant or beneficiary,  
7                   the participant’s or beneficiary’s  
8                   spouse, or the participant’s or bene-  
9                   ficiary’s dependent (as defined in sec-  
10                  tion 152(a)), loss of the participant’s  
11                  or beneficiary’s property due to cas-  
12                  ualty, or other similar extraordinary  
13                  and unforeseeable circumstances aris-  
14                  ing as a result of events beyond the  
15                  control of the participant or bene-  
16                  ficiary.

17                  “(II) LIMITATION ON DISTRIBUTIONS.—The requirement of subpara-  
18                  graph (A)(vi) is met only if, as deter-  
19                  mined under regulations of the Sec-  
20                  retary, the amounts distributed with  
21                  respect to an emergency do not exceed  
22                  the amounts necessary to satisfy such  
23                  emergency plus amounts necessary to  
24                  pay taxes reasonably anticipated as a  
25

1 result of the distribution, after taking  
2 into account the extent to which such  
3 hardship is or may be relieved  
4 through reimbursement or compensa-  
5 tion by insurance or otherwise or by  
6 liquidation of the participant's or  
7 beneficiary's assets (to the extent the  
8 liquidation of such assets would not  
9 itself cause severe financial hardship).

10 “(C) DISABLED.—For purposes of sub-  
11 paragraph (A)(ii), a participant shall be consid-  
12 ered disabled if the participant—

13 “(i) is unable to engage in any sub-  
14 stantial gainful activity by reason of any  
15 medically determinable physical or mental  
16 impairment which can be expected to result  
17 in death or can be expected to last for a  
18 continuous period of not less than 12  
19 months, or

20 “(ii) is, by reason of any medically de-  
21 terminable physical or mental impairment  
22 which can be expected to result in death or  
23 can be expected to last for a continuous  
24 period of not less than 12 months, receiv-  
25 ing income replacement benefits for a pe-

1                   riod of not less than 3 months under an  
2                   accident and health plan covering employ-  
3                   ees of the participant's employer.

4                   “(3) INVESTMENT OPTIONS.—The requirements  
5                   of this paragraph are met if the plan provides that  
6                   the investment options a participant may elect under  
7                   the plan—

8                   “(A) are comparable to the investment op-  
9                   tions which a participant may elect under the  
10                  defined contribution plan of the employer  
11                  which—

12                  “(i) meets the requirement of section  
13                  401(a) and includes a trust exempt from  
14                  taxation under section 501(a), and

15                  “(ii) has the fewest investment op-  
16                  tions, or

17                  “(B) if there is no such defined contribu-  
18                  tion plan, meet such requirements as the Sec-  
19                  retary may prescribe (including requirements  
20                  limiting such options to permissible investment  
21                  options specified by the Secretary).

22                  “(4) ACCELERATION OF BENEFITS.—The re-  
23                  quirements of this paragraph are met if the plan  
24                  does not permit the acceleration of the time or

1 schedule of any payment under the plan, except as  
2 provided by the Secretary in regulations.

3 “(5) ELECTIONS.—

4 “(A) IN GENERAL.—The requirements of  
5 this paragraph are met if the requirements of  
6 subparagraphs (B) and (C) are met.

7 “(B) INITIAL DEFERRAL DECISION.—The  
8 requirements of this subparagraph are met if  
9 the plan provides that compensation for services  
10 performed during a taxable year may be de-  
11 ferred at the participant’s election only if the  
12 election to defer such compensation is made  
13 during the preceding taxable year or at such  
14 other time as provided in regulations. In the  
15 case of the first year in which a participant be-  
16 comes eligible to participate in the plan, such  
17 election may be made with respect to services to  
18 be performed subsequent to the election within  
19 30 days after the date the participant becomes  
20 eligible to participate in such plan.

21 “(C) CHANGES IN TIME AND FORM OF DIS-  
22 TRIBUTION.—The requirements of this subpara-  
23 graph are met if, in the case of a plan which  
24 permits under a subsequent election a delay in

1 a payment or a change in the form of  
2 payment—

3 “(i) the plan requires that such elec-  
4 tion may not take effect until at least 12  
5 months after the date on which the elec-  
6 tion is made,

7 “(ii) in the case an election related to  
8 a payment not described in clause (ii), (iii),  
9 or (vi) of paragraph (2)(A), the plan re-  
10 quires that the first payment with respect  
11 to which such election is made be deferred  
12 for a period of not less than 5 years from  
13 the date such payment would otherwise  
14 have been made, and

15 “(iii) the plan requires that any elec-  
16 tion related to a payment described in  
17 paragraph (2)(A)(iv) may not be made less  
18 than 12 months prior to the date of the  
19 first scheduled payment under such para-  
20 graph.

21 A plan shall be treated as failing to meet the  
22 requirements of this subparagraph if the plan  
23 permits more than 1 subsequent election to  
24 delay any payment.

25 “(b) RULES RELATING TO FUNDING.—

1           “(1) OFFSHORE PROPERTY IN A TRUST.—In  
2           the case of assets set aside (directly or indirectly) in  
3           a trust (or other arrangement determined by the  
4           Secretary) for purposes of paying deferred com-  
5           pensation under a nonqualified deferred compensa-  
6           tion plan, such assets shall be treated for purposes  
7           of section 83 as property transferred in connection  
8           with the performance of services whether or not such  
9           assets are available to satisfy claims of general  
10          creditors—

11                   “(A) at the time set aside if such assets  
12                   are located outside of the United States, or

13                   “(B) at the time transferred if such assets  
14                   are subsequently transferred outside of the  
15                   United States.

16          This paragraph shall not apply to assets located in  
17          a foreign jurisdiction if substantially all of the serv-  
18          ices to which the nonqualified deferred compensation  
19          relates are performed in such jurisdiction.

20           “(2) EMPLOYER’S FINANCIAL HEALTH.—In the  
21          case of a nonqualified deferred compensation plan,  
22          there is a transfer of property within the meaning  
23          of section 83 as of the earlier of—

24                   “(A) the date on which the plan first pro-  
25                   vides that assets will become restricted to the

1 provision of benefits under the plan in connec-  
2 tion with a change in the employer's financial  
3 health, or

4 “(B) the date on which assets are so re-  
5 stricted.

6 “(3) INCOME INCLUSION FOR OFFSHORE  
7 TRUSTS AND EMPLOYER'S FINANCIAL HEALTH.—For  
8 each taxable year that assets treated as transferred  
9 under this subsection remain set aside in a trust or  
10 other arrangement subject to paragraph (1) or (2),  
11 any increase in value in, or earnings with respect to,  
12 such assets shall be treated as an additional transfer  
13 of property under this subsection (to the extent not  
14 previously included in income).

15 “(4) INTEREST ON TAX LIABILITY PAYABLE  
16 WITH RESPECT TO TRANSFERRED PROPERTY.—

17 “(A) IN GENERAL.—If amounts are re-  
18 quired to be included in gross income by reason  
19 of paragraph (1) or (2) for a taxable year, the  
20 tax imposed by this chapter for such taxable  
21 year shall be increased by the sum of—

22 “(i) the amount of interest determined  
23 under subparagraph (B), and

1                   “(ii) an amount equal to 10 percent of  
2                   the amounts required to be included in  
3                   gross income.

4                   “(B) INTEREST.—For purposes of sub-  
5                   paragraph (A), the interest determined under  
6                   this subparagraph for any taxable year is the  
7                   amount of interest at the underpayment rate on  
8                   the underpayments that would have occurred  
9                   had the amounts so required to be included in  
10                  gross income by paragraph (1) or (2) been in-  
11                  cludible in gross income for the taxable year in  
12                  which first deferred or, if later, the first taxable  
13                  year in which such amounts are not subject to  
14                  a substantial risk of forfeiture.

15                  “(c) NO INFERENCE ON EARLIER INCOME INCLU-  
16                  SION.—Nothing in this section shall be construed to pre-  
17                  vent the inclusion of amounts in gross income under any  
18                  other provision of this chapter or any other rule of law  
19                  earlier than the time provided in this section. Any amount  
20                  included in gross income under this section shall not be  
21                  required to be included in gross income under any other  
22                  provision of this chapter or any other rule of law later  
23                  than the time provided in this section.

24                  “(d) OTHER DEFINITIONS AND SPECIAL RULES.—  
25                  For purposes of this section—

1           “(1) NONQUALIFIED DEFERRED COMPENSA-  
2           TION PLAN.—The term ‘nonqualified deferred com-  
3           pensation plan’ means any plan that provides for the  
4           deferral of compensation, other than—

5                   “(A) a qualified employer plan, and

6                   “(B) any bona fide vacation leave, sick  
7           leave, compensatory time, disability pay, or  
8           death benefit plan.

9           “(2) QUALIFIED EMPLOYER PLAN.—The term  
10          ‘qualified employer plan’ means—

11                   “(A) any plan, contract, pension, account,  
12           or trust described in subparagraph (A) or (B)  
13           of section 219(g)(5), and

14                   “(B) any eligible deferred compensation  
15           plan (within the meaning of section 457(b)) of  
16           an employer described in section 457(e)(1)(A).

17          “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—  
18          The term ‘plan’ includes any agreement or arrange-  
19          ment, including an agreement or arrangement that  
20          includes one person.

21          “(4) SUBSTANTIAL RISK OF FORFEITURE.—The  
22          rights of a person to compensation are subject to a  
23          substantial risk of forfeiture if such person’s rights  
24          to such compensation are conditioned upon the fu-

1       ture performance of substantial services by any indi-  
2       vidual.

3               “(5) TREATMENT OF EARNINGS.—References to  
4       deferred compensation shall be treated as including  
5       references to income (whether actual or notional) at-  
6       tributable to such compensation or such income.

7               “(e) REGULATIONS.—The Secretary shall prescribe  
8       such regulations as may be necessary or appropriate to  
9       carry out the purposes of this section, including  
10       regulations—

11              “(1) providing for the determination of  
12       amounts of deferral in the case of a nonqualified de-  
13       ferred compensation plan which is a defined benefit  
14       plan,

15              “(2) relating to changes in the ownership and  
16       control of a corporation or assets of a corporation  
17       for purposes of subsection (a)(2)(A)(v),

18              “(3) exempting arrangements from the applica-  
19       tion of subsection (b) if such arrangements will not  
20       result in an improper deferral of United States tax  
21       and will not result in assets being effectively beyond  
22       the reach of creditors,

23              “(4) defining financial health for purposes of  
24       subsection (b)(2), and

1           “(5) disregarding a substantial risk of for-  
2           feiture in cases where necessary to carry out the  
3           purposes of this section.”

4           (b) APPLICATION OF GOLDEN PARACHUTE PAYMENT  
5 PROVISIONS.—Section 280G of such Code (relating to  
6 golden parachute payments) is amended by redesignating  
7 subsection (e) as subsection (f) and by inserting after sub-  
8 section (d) the following new subsection:

9           “(e) SPECIAL RULES FOR CERTAIN PAYMENTS FROM  
10 NONQUALIFIED DEFERRED COMPENSATION PLANS.—

11           “(1) IN GENERAL.—Notwithstanding any other  
12           provision of this section, an applicable payment shall  
13           be treated as an excess parachute payment for pur-  
14           poses of this section and section 4999.

15           “(2) COORDINATION WITH OTHER PAY-  
16           MENTS.—

17           “(A) APPLICABLE PAYMENTS WHICH ARE  
18           PARACHUTE PAYMENTS.—If any applicable pay-  
19           ment is a parachute payment (determined with-  
20           out regard to subsection (b)(2)(A)(ii)), then, ex-  
21           cept as provided in paragraph (4), this section  
22           shall be applied to such payment in the same  
23           manner as if this subsection had not been en-  
24           acted.

1           “(B) APPLICABLE PAYMENTS WHICH ARE  
2 NOT PARACHUTE PAYMENTS.—An applicable  
3 payment not described in subparagraph (A)  
4 shall be taken into account in determining  
5 whether any payment described in subpara-  
6 graph (A) or any payment which is not an ap-  
7 plicable payment is a parachute payment under  
8 subsection (b)(2).

9           “(C) COORDINATION.—If the application  
10 of this paragraph results in an excess parachute  
11 payment, any tax under section 4999 on the ex-  
12 cess parachute payment shall be in addition to  
13 the tax imposed by reason of paragraph (1).

14           “(3) APPLICABLE PAYMENT.—For purposes of  
15 this subsection, the term ‘applicable payment’ means  
16 any distribution (including any distribution treated  
17 as a parachute payment without regard to this sub-  
18 section) from a nonqualified deferred compensation  
19 plan (as defined in section 409A(d)) which is  
20 made—

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

24           “(B) during the 1-year period following a  
25 change in the ownership or effective control of

1           the corporation or in the ownership of a sub-  
2           stantial portion of the assets of the corporation.  
3       Such terms shall not include any distribution by rea-  
4       son of the death of the participant or the participant  
5       becoming disabled (within the meaning of section  
6       409A(a)(2)(C)).

7           “(4) NO DOUBLE COUNTING.—Under regula-  
8       tions, proper adjustments shall be made in the appli-  
9       cation of this subsection to prevent a deduction from  
10      being disallowed more than once.”

11      (c) W-2 FORMS.—

12           (1) IN GENERAL.—Subsection (a) of section  
13      6051 (relating to receipts for employees) is amended  
14      by striking “and” at the end of paragraph (11), by  
15      striking the period at the end of paragraph (12) and  
16      inserting “, and”, and by inserting after paragraph  
17      (12) the following new paragraph:

18           “(13) the total amount of deferrals under a  
19      nonqualified deferred compensation plan (within the  
20      meaning of section 409A(d)).”

21           (2) THRESHOLD.—Subsection (a) of section  
22      6051 is amended by adding at the end the following:  
23      “In the case of the amounts required to be shown  
24      by paragraph (13), the Secretary may (by regula-

1           tion) establish a minimum amount of deferrals below  
2           which paragraph (13) does not apply.”

3           (d) CONFORMING AND CLERICAL AMENDMENTS.—

4                 (1) Section 414(b) is amended by inserting  
5                 “409A,” after “408(p),”.

6                 (2) Section 414(c) is amended by inserting  
7                 “409A,” after “408(p),”.

8                 (3) The table of sections for such subpart A is  
9                 amended by adding at the end the following new  
10                item:

“Sec. 409A. Inclusion in gross income of deferred compensation  
under nonqualified deferred compensation plans.”

11           (e) EFFECTIVE DATE.—

12                 (1) IN GENERAL.—The amendments made by  
13                 this section shall apply to amounts deferred in tax-  
14                 able years beginning after December 31, 2004.

15                 (2) EARNINGS ATTRIBUTABLE TO AMOUNT PRE-  
16                 VIOUSLY DEFERRED.—The amendments made by  
17                 this section shall apply to earnings on deferred com-  
18                 pensation only to the extent that such amendments  
19                 apply to such compensation.

20           (f) GUIDANCE RELATING TO CHANGE OF OWNER-  
21           SHIP OR CONTROL.—Not later than 90 days after the date  
22           of the enactment of this Act, the Secretary of the Treasury  
23           shall issue guidance on what constitutes a change in own-  
24           ership or effective control for purposes of section 409A

1 of the Internal Revenue Code of 1986, as added by this  
2 section.

3 (g) **GUIDANCE RELATING TO TERMINATION OF CER-**  
4 **TAIN EXISTING ARRANGEMENTS.**—Not later than 90 days  
5 after the date of the enactment of this Act, the Secretary  
6 of the Treasury shall issue guidance providing a limited  
7 period during which an individual participating in a non-  
8 qualified deferred compensation plan adopted on or before  
9 December 31, 2004, may, without violating the require-  
10 ments of paragraphs (2), (3), (4), and (5) of section  
11 409A(a) of the Internal Revenue Code of 1986 (as added  
12 by this section), terminate participation or cancel an out-  
13 standing deferral election with regard to amounts earned  
14 after December 31, 2004, if such amounts are includible  
15 in income as earned.

16 **SEC. 503. PROHIBITION ON DEFERRAL OF GAIN FROM THE**  
17 **EXERCISE OF STOCK OPTIONS AND RE-**  
18 **STRICTED STOCK GAINS THROUGH DE-**  
19 **FERRED COMPENSATION ARRANGEMENTS.**

20 (a) **IN GENERAL.**—Section 83 (relating to property  
21 transferred in connection with performance of services) is  
22 amending by adding at the end the following new sub-  
23 section:

24 “(i) **PROHIBITION ON ADDITIONAL DEFERRAL**  
25 **THROUGH DEFERRED COMPENSATION ARRANGE-**

1 MENTS.—Except as provided by the Secretary, if a tax-  
2 payer exchanges—

3           “(1) an option to purchase employer  
4 securities—

5                   “(A) to which subsection (a) applies, or

6                   “(B) which is described in subsection  
7 (e)(3), or

8           “(2) employer securities or any other property  
9 based on employer securities transferred to the tax-  
10 payer,

11 for a right to receive future payments, then, notwith-  
12 standing any other provision of this title, there shall be  
13 included in gross income for the taxable year of the ex-  
14 change an amount equal to the present value of such right  
15 (or such other amount as the Secretary may specify). For  
16 purposes of this subsection, the term ‘employer securities’  
17 includes any security issued by the employer.”

18           (b) CONTROLLED GROUP RULES.—Section 414(t)(2)  
19 is amended by inserting “83(i),” after “79,”.

20           (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall apply to any exchange after December  
22 31, 2004.

1 **SEC. 504. INCREASE IN WITHHOLDING FROM SUPPLE-**  
2 **MENTAL WAGE PAYMENTS IN EXCESS OF**  
3 **\$1,000,000.**

4 (a) IN GENERAL.—If an employer elects under  
5 Treasury Regulation 31.3402(g)–1 to determine the  
6 amount to be deducted and withheld from any supple-  
7 mental wage payment by using a flat percentage rate, the  
8 rate to be used in determining the amount to be so de-  
9 ducted and withheld shall not be less than 28 percent (or  
10 the corresponding rate in effect under section 1(i)(2) of  
11 the Internal Revenue Code of 1986 for taxable years be-  
12 ginning in the calendar year in which the payment is  
13 made).

14 (b) SPECIAL RULE FOR LARGE PAYMENTS.—

15 (1) IN GENERAL.—Notwithstanding subsection  
16 (a), if the supplemental wage payment, when added  
17 to all such payments previously made by the em-  
18 ployer to the employee during the calendar year, ex-  
19 ceeds \$1,000,000, the rate used with respect to such  
20 excess shall be equal to the maximum rate of tax in  
21 effect under section 1 of such Code for taxable years  
22 beginning in such calendar year.

23 (2) AGGREGATION.—All persons treated as a  
24 single employer under subsection (a) or (b) of sec-  
25 tion 52 of the Internal Revenue Code of 1986 shall

1 be treated as a single employer for purposes of this  
2 subsection.

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

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

## 9 **Subtitle B—Stock Options**

### 10 **SEC. 511. EXCLUSION OF INCENTIVE STOCK OPTIONS AND** 11 **EMPLOYEE STOCK PURCHASE PLAN STOCK** 12 **OPTIONS FROM WAGES.**

13 (a) EXCLUSION FROM EMPLOYMENT TAXES.—

14 (1) SOCIAL SECURITY TAXES.—

15 (A) Section 3121(a) of the Internal Rev-  
16 enue Code of 1986 (relating to definition of  
17 wages) is amended by striking “or” at the end  
18 of paragraph (20), by striking the period at the  
19 end of paragraph (21) and inserting “; or”, and  
20 by inserting after paragraph (21) the following  
21 new paragraph:

22 “(22) remuneration on account of—

23 “(A) a transfer of a share of stock to any  
24 individual pursuant to an exercise of an incen-  
25 tive stock option (as defined in section 422(b))

1 or under an employee stock purchase plan (as  
2 defined in section 423(b)), or

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

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

11 “(19) Remuneration on account of—

12 “(A) a transfer of a share of stock to any  
13 individual pursuant to an exercise of an incen-  
14 tive stock option (as defined in section 422(b)  
15 of the Internal Revenue Code of 1986) or under  
16 an employee stock purchase plan (as defined in  
17 section 423(b) of such Code), or

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

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

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

1           “(A) a transfer of a share of stock to any  
2 individual pursuant to an exercise of an incen-  
3 tive stock option (as defined in section 422(b))  
4 or under an employee stock purchase plan (as  
5 defined in section 423(b)), or

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

8           (3) UNEMPLOYMENT TAXES.—Section 3306(b)  
9 of such Code (relating to definition of wages) is  
10 amended by striking “or” at the end of paragraph  
11 (17), by striking the period at the end of paragraph  
12 (18) and inserting “; or”, and by inserting after  
13 paragraph (18) the following new paragraph:

14           “(19) remuneration on account of—

15           “(A) a transfer of a share of stock to any  
16 individual pursuant to an exercise of an incen-  
17 tive stock option (as defined in section 422(b))  
18 or under an employee stock purchase plan (as  
19 defined in section 423(b)), or

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

22           (b) WAGE WITHHOLDING NOT REQUIRED ON DIS-  
23 QUALIFYING DISPOSITIONS.—Section 421(b) of the Inter-  
24 nal Revenue Code of 1986 (relating to effect of disquali-  
25 fying dispositions) is amended by adding at the end the

1 following new sentence: “No amount shall be required to  
2 be deducted and withheld under chapter 24 with respect  
3 to any increase in income attributable to a disposition de-  
4 scribed in the preceding sentence.”

5 (c) WAGE WITHHOLDING NOT REQUIRED ON COM-  
6 PENSATION WHERE OPTION PRICE IS BETWEEN 85 PER-  
7 CENT AND 100 PERCENT OF VALUE OF STOCK.—Section  
8 423(c) of the Internal Revenue Code of 1986 (relating to  
9 special rule where option price is between 85 percent and  
10 100 percent of value of stock) is amended by adding at  
11 the end the following new sentence: “No amount shall be  
12 required to be deducted and withheld under chapter 24  
13 with respect to any amount treated as compensation under  
14 this subsection.”

15 **SEC. 512. TREATMENT OF SALE OF STOCK ACQUIRED PUR-**  
16 **SUANT TO EXERCISE OF STOCK OPTIONS TO**  
17 **COMPLY WITH CONFLICT-OF-INTEREST RE-**  
18 **QUIREMENTS.**

19 (a) IN GENERAL.—Section 421 of the Internal Rev-  
20 enue Code of 1986 (relating to general rules for certain  
21 stock options) is amended by adding at the end the fol-  
22 lowing new subsection:

23 “(d) CERTAIN SALES TO COMPLY WITH CONFLICT-  
24 OF-INTEREST REQUIREMENTS.—If—



1 **Subtitle A—Study of Spousal Con-**  
2 **sent for Distributions From De-**  
3 **defined Contribution Plans**

4 **SEC. 601. JOINT STUDY OF APPLICATION OF SPOUSAL CON-**  
5 **SENT RULES TO DEFINED CONTRIBUTION**  
6 **PLANS.**

7 (a) STUDY.—The Secretary of Labor and the Sec-  
8 retary of the Treasury shall jointly conduct a study of the  
9 feasibility and desirability of extending the application of  
10 the requirements of section 205 of the Employee Retire-  
11 ment Income Security Act of 1974 and sections  
12 401(a)(11) and 417 of the Internal Revenue Code of 1986  
13 (relating to spousal consent requirements) to defined con-  
14 tribution plans to which such requirements do not apply.  
15 Such study shall include consideration of—

16 (1) any modifications of such requirements that  
17 are necessary to apply such requirements to such  
18 plans, and

19 (2) the feasibility of providing notice and spous-  
20 al consent in 1 or more electronic forms that are ca-  
21 pable of authentication.

22 (b) REPORT.—Not later than 2 years after the date  
23 of the enactment of this Act, the Secretaries shall report  
24 the results of the study, together with any recommenda-  
25 tions for legislative changes, to the Committees on Ways

1 and Means and Education and the Workforce of the  
2 House of Representatives and the Committees on Finance  
3 and Health, Education, Labor, and Pensions of the Sen-  
4 ate.

5 **Subtitle B—Division of Pension**  
6 **Benefits Upon Divorce**

7 **SEC. 611. REGULATIONS ON TIME AND ORDER OF**  
8 **ISSUANCE OF DOMESTIC RELATIONS OR-**  
9 **DERS.**

10 Not later than 1 year after the date of the enactment  
11 of this Act, the Secretary of Labor shall issue regulations  
12 under section 206(d)(3) of the Employee Retirement Secu-  
13 rity Act of 1974 and section 414(p) of the Internal Rev-  
14 enue Code of 1986 which clarify that—

15 (1) a domestic relations order otherwise meet-  
16 ing the requirements to be a qualified domestic rela-  
17 tions order, including the requirements of section  
18 206(d)(3)(D) of such Act and section 414(p)(3) of  
19 such Code, shall not fail to be treated as a qualified  
20 domestic relations order solely because—

21 (A) the order is issued after, or revises, an-  
22 other domestic relations order or qualified do-  
23 mestic relations order; or

24 (B) of the time at which it is issued; and

1           (2) any order described in paragraph (1) shall  
2           be subject to the same requirements and protections  
3           which apply to qualified domestic relations orders,  
4           including the provisions of section 206(d)(3)(H) of  
5           such Act and section 414(p)(7) of such Code.

## 6           **Subtitle C—Railroad Retirement**

### 7           **SEC. 621. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-** 8                           **ROAD    RETIREMENT    ANNUITIES    INDE-** 9                           **PENDENT OF ACTUAL ENTITLEMENT OF EM-** 10                          **PLOYEE.**

11           (a) **IN GENERAL.**—Section 2 of the Railroad Retire-  
12           ment Act of 1974 (45 U.S.C. 231a) is amended—

13                       (1) in subsection (c)(4)(i), by striking “(A) is  
14                       entitled to an annuity under subsection (a)(1) and  
15                       (B)”;

16                       (2) in subsection (e)(5), by striking “or di-  
17                       vorced wife” the second place it appears.

18           (b) **EFFECTIVE DATE.**—The amendments made by  
19           this section shall take effect 1 year after the date of the  
20           enactment of this Act.

1 **SEC. 622. EXTENSION OF TIER II RAILROAD RETIREMENT**  
2 **BENEFITS TO SURVIVING FORMER SPOUSES**  
3 **PURSUANT TO DIVORCE AGREEMENTS.**

4 (a) **IN GENERAL.**—Section 5 of the Railroad Retire-  
5 ment Act of 1974 (45 U.S.C. 231d) is amended by adding  
6 at the end the following:

7 “(d) Notwithstanding any other provision of law, the  
8 payment of any portion of an annuity computed under sec-  
9 tion 3(b) to a surviving former spouse in accordance with  
10 a court decree of divorce, annulment, or legal separation  
11 or the terms of any court-approved property settlement  
12 incident to any such court decree shall not be terminated  
13 upon the death of the individual who performed the service  
14 with respect to which such annuity is so computed unless  
15 such termination is otherwise required by the terms of  
16 such court decree.”

17 (b) **EFFECTIVE DATE.**—The amendment made by  
18 this section shall take effect 1 year after the date of the  
19 enactment of this Act.

20 **Subtitle D—Modifications of Joint**  
21 **and Survivor Annuity Require-**  
22 **ments**

23 **SEC. 631. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**  
24 **NUITY OPTION.**

25 (a) **AMENDMENTS TO ERISA.**—

1           (1) ELECTION OF SURVIVOR ANNUITY.—Section  
2           205(c)(1)(A) of the Employee Retirement Income  
3           Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is  
4           amended—

5                   (A) in clause (i), by striking “, and” and  
6           inserting a comma;

7                   (B) by redesignating clause (ii) as clause  
8           (iii); and

9                   (C) by inserting after clause (i) the fol-  
10          lowing:

11                   “(ii) if the participant elects a waiver  
12          under clause (i), may elect the qualified op-  
13          tional survivor annuity at any time during the  
14          applicable election period, and”.

15          (2) DEFINITION.—Section 205(d) of such Act  
16          (29 U.S.C. 1055(d)) is amended—

17                   (A) by inserting “(1)” after “(d)”;

18                   (B) by redesignating paragraphs (1) and  
19          (2) as subparagraphs (A) and (B), respectively;  
20          and

21                   (C) by adding at the end the following:

22                   “(2)(A) For purposes of this section, the term ‘quali-  
23          fied optional survivor annuity’ means an annuity—

24                           “(i) for the life of the participant with a sur-  
25          vivor annuity for the life of the spouse which is

1 equal to the applicable percentage of the amount of  
2 the annuity which is payable during the joint lives  
3 of the participant and the spouse, and

4 “(ii) which is the actuarial equivalent of a sin-  
5 gular annuity for the life of the participant.

6 Such term also includes any annuity in a form having the  
7 effect of an annuity described in the preceding sentence.

8 “(B)(i) For purposes of subparagraph (A), if the sur-  
9 vivor annuity percentage—

10 “(I) is less than 75 percent, the applicable per-  
11 centage is 75 percent, and

12 “(II) is greater than or equal to 75 percent, the  
13 applicable percentage is 50 percent.

14 “(ii) For purposes of clause (i), the term ‘survivor  
15 annuity percentage’ means the percentage which the sur-  
16 vivor annuity under the plan’s qualified joint and survivor  
17 annuity bears to the annuity payable during the joint lives  
18 of the participant and the spouse.”

19 (3) NOTICE.—Section 205(c)(3)(A)(i) of such  
20 Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-  
21 serting “and of the qualified optional survivor annu-  
22 ity” after “annuity”.

23 (b) AMENDMENTS TO INTERNAL REVENUE CODE.—

1           (1) ELECTION OF SURVIVOR ANNUITY.—Section  
2           417(a)(1)(A) of the Internal Revenue Code of 1986  
3           is amended—

4                   (A) in clause (i), by striking “, and” and  
5           inserting a comma;

6                   (B) by redesignating clause (ii) as clause  
7           (iii); and

8                   (C) by inserting after clause (i) the fol-  
9           lowing:

10                   “(ii) if the participant elects a waiver  
11           under clause (i), may elect the qualified op-  
12           tional survivor annuity at any time during the  
13           applicable election period, and”.

14           (2) DEFINITION.—Section 417 of such Code is  
15           amended by adding at the end the following:

16           “(i) DEFINITION OF QUALIFIED OPTIONAL SUR-  
17           VIVOR ANNUITY.—

18                   “(1) IN GENERAL.—For purposes of this sec-  
19           tion, the term ‘qualified optional survivor annuity’  
20           means an annuity—

21                   “(A) for the life of the participant with a  
22           survivor annuity for the life of the spouse which  
23           is equal to the applicable percentage of the  
24           amount of the annuity which is payable during

1 the joint lives of the participant and the spouse,  
2 and

3 “(B) which is the actuarial equivalent of a  
4 single annuity for the life of the participant.

5 Such term also includes any annuity in a form hav-  
6 ing the effect of an annuity described in the pre-  
7 ceding sentence.

8 “(2) APPLICABLE PERCENTAGE.—

9 “(A) IN GENERAL.—For purposes of para-  
10 graph (1), if the survivor annuity percentage—

11 “(i) is less than 75 percent, the appli-  
12 cable percentage is 75 percent, and

13 “(ii) is greater than or equal to 75  
14 percent, the applicable percentage is 50  
15 percent.

16 “(B) SURVIVOR ANNUITY PERCENTAGE.—

17 For purposes of subparagraph (A), the term  
18 ‘survivor annuity percentage’ means the per-  
19 centage which the survivor annuity under the  
20 plan’s qualified joint and survivor annuity bears  
21 to the annuity payable during the joint lives of  
22 the participant and the spouse.”

23 (3) NOTICE.—Section 417(a)(3)(A)(i) of such  
24 Code is amended by inserting “and of the qualified  
25 optional survivor annuity” after “annuity”.

1 (c) EFFECTIVE DATES.—

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

5 (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
6 GAINED PLANS.—In the case of a plan maintained  
7 pursuant to 1 or more collective bargaining agree-  
8 ments between employee representatives and 1 or  
9 more employers ratified on or before the date of the  
10 enactment of this Act, the amendments made by this  
11 section shall apply to the first plan year beginning  
12 on or after the earlier of—

13 (A) the later of—

14 (i) January 1, 2005, or

15 (ii) the date on which the last of such  
16 collective bargaining agreements termi-  
17 nates (determined without regard to any  
18 extension thereof after the date of enact-  
19 ment of this Act), or

20 (B) January 1, 2006.

21 **TITLE VII—TAX COURT PENSION**  
22 **AND COMPENSATION**

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

24 Except as otherwise expressly provided, whenever in  
25 this title an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-  
2 sion, the reference shall be considered to be made to a  
3 section or other provision of the Internal Revenue Code  
4 of 1986.

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

7 (a) **ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-**  
8 **TION.**—Subsection (h) of section 7448 (relating to annu-  
9 ities to surviving spouses and dependent children of  
10 judges) is amended to read as follows:

11 “(h) **ENTITLEMENT TO ANNUITY.**—

12 “(1) **IN GENERAL.**—

13 “(A) **ANNUITY TO SURVIVING SPOUSE.**—If  
14 a judge described in paragraph (2) is survived  
15 by a surviving spouse but not by a dependent  
16 child, there shall be paid to such surviving  
17 spouse an annuity beginning with the day of the  
18 death of the judge or following the surviving  
19 spouse’s attainment of the age of 50 years,  
20 whichever is the later, in an amount computed  
21 as provided in subsection (m).

22 “(B) **ANNUITY TO CHILD.**—If such a judge  
23 is survived by a surviving spouse and a depend-  
24 ent child or children, there shall be paid to such  
25 surviving spouse an immediate annuity in an

1 amount computed as provided in subsection  
2 (m), and there shall also be paid to or on behalf  
3 of each such child an immediate annuity equal  
4 to the lesser of—

5 “(i) 10 percent of the average annual  
6 salary of such judge (determined in accord-  
7 ance with subsection (m)), or

8 “(ii) 20 percent of such average an-  
9 nual salary, divided by the number of such  
10 children.

11 “(C) ANNUITY TO SURVIVING DEPENDENT  
12 CHILDREN.—If such a judge leaves no surviving  
13 spouse but leaves a surviving dependent child or  
14 children, there shall be paid to or on behalf of  
15 each such child an immediate annuity equal to  
16 the lesser of—

17 “(i) 20 percent of the average annual  
18 salary of such judge (determined in accord-  
19 ance with subsection (m)), or

20 “(ii) 40 percent of such average an-  
21 nual salary, divided by the number of such  
22 children.

23 “(2) COVERED JUDGES.—Paragraph (1) applies  
24 to any judge electing under subsection (b)—

1           “(A) who dies while a judge after having  
2 rendered at least 5 years of civilian service com-  
3 puted as prescribed in subsection (n), for the  
4 last 5 years of which the salary deductions pro-  
5 vided for by subsection (c)(1) or the deposits  
6 required by subsection (d) have actually been  
7 made or the salary deductions required by the  
8 civil service retirement laws have actually been  
9 made, or

10           “(B) who dies by assassination after hav-  
11 ing rendered less than 5 years of civilian service  
12 computed as prescribed in subsection (n) if, for  
13 the period of such service, the salary deductions  
14 provided for by subsection (c)(1) or the deposits  
15 required by subsection (d) have actually been  
16 made.

17           “(3) TERMINATION OF ANNUITY.—

18           “(A) IN THE CASE OF A SURVIVING  
19 SPOUSE.—The annuity payable to a surviving  
20 spouse under this subsection shall be terminable  
21 upon such surviving spouse’s death or such sur-  
22 viving spouse’s remarriage before attaining age  
23 55.

24           “(B) IN THE CASE OF A CHILD.—The an-  
25 nuity payable to a child under this subsection

1 shall be terminable upon (i) the child attaining  
2 the age of 18 years, (ii) the child's marriage, or  
3 (iii) the child's death, whichever first occurs, ex-  
4 cept that if such child is incapable of self-sup-  
5 port by reason of mental or physical disability  
6 the child's annuity shall be terminable only  
7 upon death, marriage, or recovery from such  
8 disability.

9 “(C) IN THE CASE OF A DEPENDENT  
10 CHILD AFTER DEATH OF SURVIVING SPOUSE.—  
11 In case of the death of a surviving spouse of a  
12 judge leaving a dependent child or children of  
13 the judge surviving such spouse, the annuity of  
14 such child or children shall be recomputed and  
15 paid as provided in paragraph (1)(C).

16 “(D) RECOMPUTATION.—In any case in  
17 which the annuity of a dependent child is termi-  
18 nated under this subsection, the annuities of  
19 any remaining dependent child or children,  
20 based upon the service of the same judge, shall  
21 be recomputed and paid as though the child  
22 whose annuity was so terminated had not sur-  
23 vived such judge.

24 “(4) SPECIAL RULE FOR ASSASSINATED  
25 JUDGES.—In the case of a survivor or survivors of

1 a judge described in paragraph (2)(B), there shall be  
2 deducted from the annuities otherwise payable under  
3 this section an amount equal to—

4 “(A) the amount of salary deductions pro-  
5 vided for by subsection (c)(1) that would have  
6 been made if such deductions had been made  
7 for 5 years of civilian service computed as pre-  
8 scribed in subsection (n) before the judge’s  
9 death, reduced by

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

13 (b) DEFINITION OF ASSASSINATION.—Section  
14 7448(a) (relating to definitions) is amended by adding at  
15 the end the following new paragraph:

16 “(8) The terms ‘assassinated’ and ‘assassina-  
17 tion’ mean the killing of a judge that is motivated  
18 by the performance by that judge of his or her offi-  
19 cial duties.”

20 (c) DETERMINATION OF ASSASSINATION.—Sub-  
21 section (i) of section 7448 is amended—

22 (1) by striking the subsection heading and in-  
23 serting the following:

24 “(i) DETERMINATIONS BY CHIEF JUDGE.—

25 “(1) DEPENDENCY AND DISABILITY.—”,

1           (2) by moving the text 2 ems to the right, and  
2           (3) by adding at the end the following new  
3 paragraph:

4           “(2) ASSASSINATION.—The chief judge shall  
5 determine whether the killing of a judge was an as-  
6 sassinatio, subject to review only by the Tax Court.  
7 The head of any Federal agency that investigates  
8 the killing of a judge shall provide information to  
9 the chief judge that would assist the chief judge in  
10 making such a determination.”

11          (d) COMPUTATION OF ANNUITIES.—Subsection (m)  
12 of section 7448 is amended—

13           (1) by striking the subsection heading and in-  
14 sserting the following:

15          “(m) COMPUTATION OF ANNUITIES.—

16           “(1) IN GENERAL.—”,

17           (2) by moving the text 2 ems to the right, and

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

20           “(2) ASSASSINATED JUDGES.—In the case of a  
21 judge who is assassinated and who has served less  
22 than 3 years, the annuity of the surviving spouse of  
23 such judge shall be based upon the average annual  
24 salary received by such judge for judicial service.”

1 (e) OTHER BENEFITS.—Section 7448 is amended by  
2 adding at the end the following:

3 “(u) OTHER BENEFITS.—In the case of a judge who  
4 is assassinated, an annuity shall be paid under this section  
5 notwithstanding a survivor’s eligibility for or receipt of  
6 benefits under chapter 81 of title 5, United States Code,  
7 except that the annuity for which a surviving spouse is  
8 eligible under this section shall be reduced to the extent  
9 that the total benefits paid under this section and chapter  
10 81 of that title for any year would exceed the current sal-  
11 ary for that year of the office of the judge.”

12 **SEC. 702. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
13 **JUDICIAL SURVIVOR ANNUITIES.**

14 (a) IN GENERAL.—Subsection (s) of section 7448  
15 (relating to annuities to surviving spouses and dependent  
16 children of judges) is amended to read as follows:

17 “(s) INCREASES IN SURVIVOR ANNUITIES.—Each  
18 time that an increase is made under section 8340(b) of  
19 title 5, United States Code, in annuities payable under  
20 subchapter III of chapter 83 of that title, each annuity  
21 payable from the survivors annuity fund under this section  
22 shall be increased at the same time by the same percent-  
23 age by which annuities are increased under such section  
24 8340(b).”



1 **SEC. 704. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
2 **COURT JUDGES AGE 65 OR OVER.**

3 Section 7472 (relating to expenditures) is amended  
4 by inserting after the first sentence the following new sen-  
5 tence: “Notwithstanding any other provision of law, the  
6 Tax Court is authorized to pay on behalf of its judges,  
7 age 65 or over, any increase in the cost of Federal Em-  
8 ployees’ Group Life Insurance imposed after April 24,  
9 1999, including any expenses generated by such payments,  
10 as authorized by the chief judge in a manner consistent  
11 with such payments authorized by the Judicial Conference  
12 of the United States pursuant to section 604(a)(5) of title  
13 28, United States Code.”

14 **SEC. 705. MODIFICATION OF TIMING OF LUMP-SUM PAY-**  
15 **MENT OF JUDGES’ ACCRUED ANNUAL LEAVE.**

16 (a) IN GENERAL.—Section 7443 (relating to mem-  
17 bership of the Tax Court) is amended by adding at the  
18 end the following new subsection:

19 “(h) LUMP-SUM PAYMENT OF JUDGES’ ACCRUED  
20 ANNUAL LEAVE.—Notwithstanding the provisions of sec-  
21 tions 5551 and 6301 of title 5, United States Code, when  
22 an individual subject to the leave system provided in chap-  
23 ter 63 of that title is appointed by the President to be  
24 a judge of the Tax Court, the individual shall be entitled  
25 to receive, upon appointment to the Tax Court, a lump-  
26 sum payment from the Tax Court of the accumulated and

1 accrued current annual leave standing to the individual's  
2 credit as certified by the agency from which the individual  
3 resigned.”

4 (b) EFFECTIVE DATE.—The amendment made by  
5 this section shall apply to any judge of the United States  
6 Tax Court who has an outstanding leave balance on the  
7 date of the enactment of this Act and to any individual  
8 appointed by the President to serve as a judge of the  
9 United States Tax Court after such date.

10 **SEC. 706. PARTICIPATION OF TAX COURT JUDGES IN THE**  
11 **THRIFT SAVINGS PLAN.**

12 (a) IN GENERAL.—Section 7447 (relating to retire-  
13 ment of judges), as amended by this Act, is amended by  
14 adding at the end the following new subsection:

15 “(k) THRIFT SAVINGS PLAN.—

16 “(1) ELECTION TO CONTRIBUTE.—

17 “(A) IN GENERAL.—A judge of the Tax  
18 Court may elect to contribute to the Thrift Sav-  
19 ings Fund established by section 8437 of title  
20 5, United States Code.

21 “(B) PERIOD OF ELECTION.—An election  
22 may be made under this paragraph only during  
23 a period provided under section 8432(b) of title  
24 5, United States Code, for individuals subject to  
25 chapter 84 of such title.

1           “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

2           Except as otherwise provided in this subsection, the  
3           provisions of subchapters III and VII of chapter 84  
4           of title 5, United States Code, shall apply with re-  
5           spect to a judge who makes an election under para-  
6           graph (1).

7           “(3) SPECIAL RULES.—

8           “(A)     AMOUNT     CONTRIBUTED.—The  
9           amount contributed by a judge to the Thrift  
10          Savings Fund in any pay period shall not ex-  
11          ceed the maximum percentage of such judge’s  
12          basic pay for such period as allowable under  
13          section 8440f of title 5, United States Code.  
14          Basic pay does not include any retired pay paid  
15          pursuant to this section.

16          “(B) CONTRIBUTIONS FOR BENEFIT OF  
17          JUDGE.—No contributions may be made for the  
18          benefit of a judge under section 8432(c) of title  
19          5, United States Code.

20          “(C) APPLICABILITY OF SECTION 8433(b)  
21          OF TITLE 5 WHETHER OR NOT JUDGE RE-  
22          TIRES.—Section 8433(b) of title 5, United  
23          States Code, applies with respect to a judge  
24          who makes an election under paragraph (1) and  
25          who either—

1                   “(i) retires under subsection (b), or  
2                   “(ii) ceases to serve as a judge of the  
3                   Tax Court but does not retire under sub-  
4                   section (b).

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

8                   “(D) APPLICABILITY OF SECTION 8351(b)(5)  
9                   OF TITLE 5.—The provisions of section  
10                  8351(b)(5) of title 5, United States Code, shall  
11                  apply with respect to a judge who makes an  
12                  election under paragraph (1).

13                  “(E) EXCEPTION.—Notwithstanding sub-  
14                  paragraph (C), if any judge retires under this  
15                  section, or resigns without having met the age  
16                  and service requirements set forth under sub-  
17                  section (b)(2), and such judge’s nonforfeitable  
18                  account balance is less than an amount that the  
19                  Executive Director of the Office of Personnel  
20                  Management prescribes by regulation, the Exec-  
21                  utive Director shall pay the nonforfeitable ac-  
22                  count balance to the participant in a single pay-  
23                  ment.”

24                  (b) EFFECTIVE DATE.—The amendment made by  
25                  this section shall take effect on the date of the enactment

1 of this Act, except that United States Tax Court judges  
2 may only begin to participate in the Thrift Savings Plan  
3 at the next open season beginning after such date.

4 **SEC. 707. EXEMPTION OF TEACHING COMPENSATION OF**  
5 **RETIRED JUDGES FROM LIMITATION ON**  
6 **OUTSIDE EARNED INCOME.**

7 (a) IN GENERAL.—Section 7447 (relating to retire-  
8 ment of judges), as amended by this Act, is amended by  
9 adding at the end the following new subsection:

10 “(1) TEACHING COMPENSATION OF RETIRED  
11 JUDGES.—For purposes of the limitation under section  
12 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.  
13 App.), any compensation for teaching approved under sec-  
14 tion 502(a)(5) of such Act shall not be treated as outside  
15 earned income when received by a judge of the Tax Court  
16 who has retired under subsection (b) for teaching per-  
17 formed during any calendar year for which such a judge  
18 has met the requirements of subsection (c), as certified  
19 by the chief judge of the Tax Court.”

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to any individual serving as a re-  
22 tired judge of the United States Tax Court on or after  
23 the date of the enactment of this Act.

1 **SEC. 708. GENERAL PROVISIONS RELATING TO MAG-**  
2 **ISTRATE JUDGES OF THE TAX COURT.**

3 (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO  
4 MAGISTRATE JUDGE OF THE TAX COURT.—The heading  
5 of section 7443A is amended to read as follows:

6 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

7 (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-  
8 section (a) of section 7443A is amended to read as follows:

9 “(a) APPOINTMENT, TENURE, AND REMOVAL.—

10 “(1) APPOINTMENT.—The chief judge may,  
11 from time to time, appoint and reappoint magistrate  
12 judges of the Tax Court for a term of 8 years. The  
13 magistrate judges of the Tax Court shall proceed  
14 under such rules as may be promulgated by the Tax  
15 Court.

16 “(2) REMOVAL.—Removal of a magistrate  
17 judge of the Tax Court during the term for which  
18 he or she is appointed shall be only for incom-  
19 petency, misconduct, neglect of duty, or physical or  
20 mental disability, but the office of a magistrate  
21 judge of the Tax Court shall be terminated if the  
22 judges of the Tax Court determine that the services  
23 performed by the magistrate judge of the Tax Court  
24 are no longer needed. Removal shall not occur unless  
25 a majority of all the judges of the Tax Court concur  
26 in the order of removal. Before any order of removal

1 shall be entered, a full specification of the charges  
2 shall be furnished to the magistrate judge of the Tax  
3 Court, and he or she shall be accorded by the judges  
4 of the Tax Court an opportunity to be heard on the  
5 charges.”

6 (c) SALARY.—Section 7443A(d) (relating to salary)  
7 is amended by striking “90” and inserting “92”.

8 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-  
9 SIONS.—Section 7443A is amended by adding at the end  
10 the following new subsection:

11 “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-  
12 SIONS.—

13 “(1) IN GENERAL.—A magistrate judge of the  
14 Tax Court appointed under this section shall be ex-  
15 empt from the provisions of subchapter I of chapter  
16 63 of title 5, United States Code.

17 “(2) TREATMENT OF UNUSED LEAVE.—

18 “(A) AFTER SERVICE AS MAGISTRATE  
19 JUDGE.—If an individual who is exempted  
20 under paragraph (1) from the subchapter re-  
21 ferred to in such paragraph was previously sub-  
22 ject to such subchapter and, without a break in  
23 service, again becomes subject to such sub-  
24 chapter on completion of the individual’s service  
25 as a magistrate judge, the unused annual leave

1 and sick leave standing to the individual's cred-  
2 it when such individual was exempted from this  
3 subchapter is deemed to have remained to the  
4 individual's credit.

5 “(B) COMPUTATION OF ANNUITY.—In  
6 computing an annuity under section 8339 of  
7 title 5, United States Code, the total service of  
8 an individual specified in subparagraph (A) who  
9 retires on an immediate annuity or dies leaving  
10 a survivor or survivors entitled to an annuity  
11 includes, without regard to the limitations im-  
12 posed by subsection (f) of such section 8339,  
13 the days of unused sick leave standing to the  
14 individual's credit when such individual was ex-  
15 empted from subchapter I of chapter 63 of title  
16 5, United States Code, except that these days  
17 will not be counted in determining average pay  
18 or annuity eligibility.

19 “(C) LUMP SUM PAYMENT.—Any accumu-  
20 lated and current accrued annual leave or vaca-  
21 tion balances credited to a magistrate judge as  
22 of the date of the enactment of this subsection  
23 shall be paid in a lump sum at the time of sepa-  
24 ration from service pursuant to the provisions  
25 and restrictions set forth in section 5551 of

1 title 5, United States Code, and related provi-  
2 sions referred to in such section.”

3 (e) CONFORMING AMENDMENTS.—

4 (1) The heading of subsection (b) of section  
5 7443A is amended by striking “SPECIAL TRIAL  
6 JUDGES” and inserting “MAGISTRATE JUDGES OF  
7 THE TAX COURT”.

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

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

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

18 (5) Section 7456(a) is amended by striking  
19 “special trial judge” each place it appears and in-  
20 serting “magistrate judge”.

21 (6) Subsection (c) of section 7471 is  
22 amended—

23 (A) by striking the subsection heading and  
24 inserting “MAGISTRATE JUDGES OF THE TAX  
25 COURT.—”, and

1 (B) by striking “special trial judges” and  
2 inserting “magistrate judges”.

3 **SEC. 709. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
4 **PENDENT CHILDREN OF MAGISTRATE**  
5 **JUDGES OF THE TAX COURT.**

6 (a) DEFINITIONS.—Section 7448(a) (relating to defi-  
7 nitions), as amended by this Act, is amended by redesignig-  
8 nating paragraphs (5), (6), (7), and (8) as paragraphs (7),  
9 (8), (9), and (10), respectively, and by inserting after  
10 paragraph (4) the following new paragraphs:

11 “(5) The term ‘magistrate judge’ means a judi-  
12 cial officer appointed pursuant to section 7443A, in-  
13 cluding any individual receiving an annuity under  
14 section 7443B, or chapters 83 or 84, as the case  
15 may be, of title 5, United States Code, whether or  
16 not performing judicial duties under section 7443C.

17 “(6) The term ‘magistrate judge’s salary’  
18 means the salary of a magistrate judge received  
19 under section 7443A(d), any amount received as an  
20 annuity under section 7443B, or chapters 83 or 84,  
21 as the case may be, of title 5, United States Code,  
22 and compensation received under section 7443C.”

23 (b) ELECTION.—Subsection (b) of section 7448 (re-  
24 lating to annuities to surviving spouses and dependent  
25 children of judges) is amended—

1           (1) by striking the subsection heading and in-  
2           serting the following:

3           “(b) ELECTION.—

4           “    (1) JUDGES.—”,

5           (2) by moving the text 2 ems to the right, and

6           (3) by adding at the end the following new  
7           paragraph:

8           “    (2) MAGISTRATE JUDGES.—Any magistrate  
9           judge may by written election filed with the chief  
10          judge bring himself or herself within the purview of  
11          this section. Such election shall be filed not later  
12          than the later of 6 months after—

13                   “(A) 6 months after the date of the enact-  
14                   ment of this paragraph,

15                   “(B) the date the judge takes office, or

16                   “(C) the date the judge marries.”

17          (c) CONFORMING AMENDMENTS.—

18           (1) The heading of section 7448 is amended by  
19           inserting “**AND MAGISTRATE JUDGES**” after  
20           “**JUDGES**”.

21           (2) The item relating to section 7448 in the  
22           table of sections for part I of subchapter C of chap-  
23           ter 76 is amended by inserting “and magistrate  
24           judges” after “judges”.

1           (3) Subsections (c)(1), (d), (f), (g), (h), (j),  
2 (m), (n), and (u) of section 7448, as amended by  
3 this Act, are each amended—

4           (A) by inserting “or magistrate judge”  
5 after “judge” each place it appears other than  
6 in the phrase “chief judge”, and

7           (B) by inserting “or magistrate judge’s”  
8 after “judge’s” each place it appears.

9           (4) Section 7448(c) is amended—

10           (A) in paragraph (1), by striking “Tax  
11 Court judges” and inserting “Tax Court judi-  
12 cial officers”,

13           (B) in paragraph (2)—

14           (i) in subparagraph (A), by inserting  
15 “and section 7443A(d)” after “(a)(4)”,  
16 and

17           (ii) in subparagraph (B), by striking  
18 “subsection (a)(4)” and inserting “sub-  
19 sections (a)(4) and (a)(6)”.

20           (5) Section 7448(g) is amended by inserting  
21 “or section 7443B” after “section 7447” each place  
22 it appears, and by inserting “or an annuity” after  
23 “retired pay”.

24           (6) Section 7448(j)(1) is amended—

1 (A) in subparagraph (A), by striking  
2 “service or retired” and inserting “service, re-  
3 tired”, and by inserting “, or receiving any an-  
4 nuity under section 7443B or chapters 83 or 84  
5 of title 5, United States Code,” after “section  
6 7447”, and

7 (B) in the last sentence, by striking “sub-  
8 sections (a)(6) and (7)” and inserting “para-  
9 graphs (8) and (9) of subsection (a)”.

10 (7) Section 7448(m)(1), as amended by this  
11 Act, is amended—

12 (A) by inserting “or any annuity under  
13 section 7443B or chapters 83 or 84 of title 5,  
14 United States Code” after “7447(d)”, and

15 (B) by inserting “or 7443B(m)(1)(B) after  
16 “7447(f)(4)”.

17 (8) Section 7448(n) is amended by inserting  
18 “his years of service pursuant to any appointment  
19 under section 7443A,” after “of the Tax Court,”.

20 (9) Section 3121(b)(5)(E) is amended by in-  
21 serting “or magistrate judge” before “of the United  
22 States Tax Court”.

23 (10) Section 210(a)(5)(E) of the Social Secu-  
24 rity Act is amended by inserting “or magistrate  
25 judge” before “of the United States Tax Court”.

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

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

5 **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
6 **THE TAX COURT.**

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

16 “(b) RETIREMENT UPON FAILURE OF REAPPOINT-  
17 MENT.—A magistrate judge of the Tax Court to whom  
18 this section applies who is not reappointed following the  
19 expiration of the term of office of such magistrate judge  
20 and who retires upon the completion of the term shall,  
21 subject to subsection (f), be entitled to receive, upon at-  
22 taining the age of 65 years and during the remainder of  
23 such magistrate judge’s lifetime, an annuity equal to that  
24 portion of the salary being received at the time the mag-  
25 istrate judge leaves office which the aggregate number of  
26 years of service, not to exceed 14, bears to 14, if—

1           “(1) such magistrate judge has served at least  
2           1 full term as a magistrate judge, and

3           “(2) not earlier than 9 months before the date  
4           on which the term of office of such magistrate judge  
5           expires, and not later than 6 months before such  
6           date, such magistrate judge notified the chief judge  
7           of the Tax Court in writing that such magistrate  
8           judge was willing to accept reappointment to the po-  
9           sition in which such magistrate judge was serving.

10          “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate  
11          judge of the Tax Court to whom this section applies and  
12          who retires after serving at least 8 years, whether continu-  
13          ously or otherwise, as such a magistrate judge shall, sub-  
14          ject to subsection (f), be entitled to receive, upon attaining  
15          the age of 65 years and during the remainder of the mag-  
16          istrate judge’s lifetime, an annuity equal to that portion  
17          of the salary being received at the time the magistrate  
18          judge leaves office which the aggregate number of years  
19          of service, not to exceed 14, bears to 14. Such annuity  
20          shall be reduced by  $\frac{1}{6}$  of 1 percent for each full month  
21          such magistrate judge was under the age of 65 at the time  
22          the magistrate judge left office, except that such reduction  
23          shall not exceed 20 percent.

24          “(d) RETIREMENT FOR DISABILITY.—A magistrate  
25          judge of the Tax Court to whom this section applies, who

1 has served at least 5 years, whether continuously or other-  
2 wise, as such a magistrate judge and who retires or is re-  
3 moved from office upon the sole ground of mental or phys-  
4 ical disability shall, subject to subsection (f), be entitled  
5 to receive, during the remainder of the magistrate judge's  
6 lifetime, an annuity equal to 40 percent of the salary being  
7 received at the time of retirement or removal or, in the  
8 case of a magistrate judge who has served for at least 10  
9 years, an amount equal to that proportion of the salary  
10 being received at the time of retirement or removal which  
11 the aggregate number of years of service, not to exceed  
12 14, bears to 14.

13       “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate  
14 judge of the Tax Court who is entitled to an annuity under  
15 this section is also entitled to a cost-of-living adjustment  
16 in such annuity, calculated and payable in the same man-  
17 ner as adjustments under section 8340(b) of title 5,  
18 United States Code, except that any such annuity, as in-  
19 creased under this subsection, may not exceed the salary  
20 then payable for the position from which the magistrate  
21 judge retired or was removed.

22       “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-  
23 ITIES.—

24               “(1) IN GENERAL.—A magistrate judge of the  
25 Tax Court shall be entitled to an annuity under this

1 section if the magistrate judge elects an annuity  
2 under this section by notifying the chief judge of the  
3 Tax Court not later than the later of—

4 “(A) 5 years after the magistrate judge of  
5 the Tax Court begins judicial service, or

6 “(B) 5 years after the date of the enact-  
7 ment of this subsection.

8 Such notice shall be given in accordance with proce-  
9 dures prescribed by the Tax Court.

10 “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—

11 A magistrate judge who elects to receive an annuity  
12 under this section shall not be entitled to receive—

13 “(A) any annuity to which such magistrate  
14 judge would otherwise have been entitled under  
15 subchapter III of chapter 83, or under chapter  
16 84 (except for subchapters III and VII), of title  
17 5, United States Code, for service performed as  
18 a magistrate or otherwise,

19 “(B) an annuity or salary in senior status  
20 or retirement under section 371 or 372 of title  
21 28, United States Code,

22 “(C) retired pay under section 7447, or

23 “(D) retired pay under section 7296 of  
24 title 38, United States Code.

1           “(3) COORDINATION WITH TITLE 5.—A mag-  
2           istrate judge of the Tax Court who elects to receive  
3           an annuity under this section—

4                   “(A) shall not be subject to deductions and  
5                   contributions otherwise required by section  
6                   8334(a) of title 5, United States Code,

7                   “(B) shall be excluded from the operation  
8                   of chapter 84 (other than subchapters III and  
9                   VII) of such title 5, and

10                   “(C) is entitled to a lump-sum credit under  
11                   section 8342(a) or 8424 of such title 5, as the  
12                   case may be.

13           “(g) CALCULATION OF SERVICE.—For purposes of  
14           calculating an annuity under this section—

15                   “(1) service as a magistrate judge of the Tax  
16                   Court to whom this section applies may be credited,  
17                   and

18                   “(2) each month of service shall be credited as  
19                    $\frac{1}{12}$  of a year, and the fractional part of any month  
20                   shall not be credited.

21           “(h) COVERED POSITIONS AND SERVICE.—This sec-  
22           tion applies to any magistrate judge of the Tax Court or  
23           special trial judge of the Tax Court appointed under this  
24           subchapter, but only with respect to service as such a mag-  
25           istrate judge or special trial judge after a date not earlier

1 than 9½ years before the date of the enactment of this  
2 subsection.

3 “(i) PAYMENTS PURSUANT TO COURT ORDER.—

4 “(1) IN GENERAL.—Payments under this sec-  
5 tion which would otherwise be made to a magistrate  
6 judge of the Tax Court based upon his or her service  
7 shall be paid (in whole or in part) by the chief judge  
8 of the Tax Court to another person if and to the ex-  
9 tent expressly provided for in the terms of any court  
10 decree of divorce, annulment, or legal separation, or  
11 the terms of any court order or court-approved prop-  
12 erty settlement agreement incident to any court de-  
13 cree of divorce, annulment, or legal separation. Any  
14 payment under this paragraph to a person bars re-  
15 covery by any other person.

16 “(2) REQUIREMENTS FOR PAYMENT.—Para-  
17 graph (1) shall apply only to payments made by the  
18 chief judge of the Tax Court after the date of re-  
19 ceipt by the chief judge of written notice of such de-  
20 cree, order, or agreement, and such additional infor-  
21 mation as the chief judge may prescribe.

22 “(3) COURT DEFINED.—For purposes of this  
23 subsection, the term ‘court’ means any court of any  
24 State, the District of Columbia, the Commonwealth  
25 of Puerto Rico, Guam, the Northern Mariana Is-

1 lands, or the Virgin Islands, and any Indian tribal  
2 court or courts of Indian offense.

3 “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-  
4 ITS.—

5 “(1) DEDUCTIONS.—Beginning with the next  
6 pay period after the chief judge of the Tax Court re-  
7 ceives a notice under subsection (f) that a mag-  
8 istrate judge of the Tax Court has elected an annu-  
9 ity under this section, the chief judge shall deduct  
10 and withhold 1 percent of the salary of such mag-  
11 istrate judge. Amounts shall be so deducted and  
12 withheld in a manner determined by the chief judge.  
13 Amounts deducted and withheld under this sub-  
14 section shall be deposited in the Treasury of the  
15 United States to the credit of the Tax Court Judi-  
16 cial Officers’ Retirement Fund. Deductions under  
17 this subsection from the salary of a magistrate judge  
18 shall terminate upon the retirement of the mag-  
19 istrate judge or upon completion of 14 years of serv-  
20 ice for which contributions under this section have  
21 been made, whether continuously or otherwise, as  
22 calculated under subsection (g), whichever occurs  
23 first.

24 “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF  
25 CLAIMS.—Each magistrate judge of the Tax Court

1       who makes an election under subsection (f) shall be  
2       deemed to consent and agree to the deductions from  
3       salary which are made under paragraph (1). Pay-  
4       ment of such salary less such deductions (and any  
5       deductions made under section 7448) is a full and  
6       complete discharge and acquittance of all claims and  
7       demands for all services rendered by such magistrate  
8       judge during the period covered by such payment,  
9       except the right to those benefits to which the mag-  
10      istrate judge is entitled under this section (and sec-  
11      tion 7448).

12      “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-  
13      istrate judge of the Tax Court who makes an election  
14      under subsection (f) may deposit, for service performed  
15      before such election for which contributions may be made  
16      under this section, an amount equal to 1 percent of the  
17      salary received for that service. Credit for any period cov-  
18      ered by that service may not be allowed for purposes of  
19      an annuity under this section until a deposit under this  
20      subsection has been made for that period.

21      “(l) INDIVIDUAL RETIREMENT RECORDS.—The  
22      amounts deducted and withheld under subsection (j), and  
23      the amounts deposited under subsection (k), shall be cred-  
24      ited to individual accounts in the name of each magistrate  
25      judge of the Tax Court from whom such amounts are re-

1 ceived, for credit to the Tax Court Judicial Officers' Re-  
2 tirement Fund.

3 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

4 “(1) 1-YEAR FORFEITURE FOR FAILURE TO  
5 PERFORM JUDICIAL DUTIES.—Subject to paragraph  
6 (3), any magistrate judge of the Tax Court who re-  
7 tires under this section and who fails to perform ju-  
8 dicial duties required of such individual by section  
9 7443C shall forfeit all rights to an annuity under  
10 this section for a 1-year period which begins on the  
11 1st day on which such individual fails to perform  
12 such duties.

13 “(2) PERMANENT FORFEITURE OF RETIRED  
14 PAY WHERE CERTAIN NON-GOVERNMENT SERVICES  
15 PERFORMED.—Subject to paragraph (3), any mag-  
16 istrate judge of the Tax Court who retires under this  
17 section and who thereafter performs (or supervises  
18 or directs the performance of) legal or accounting  
19 services in the field of Federal taxation for the indi-  
20 vidual's client, the individual's employer, or any of  
21 such employer's clients, shall forfeit all rights to an  
22 annuity under this section for all periods beginning  
23 on or after the first day on which the individual per-  
24 forms (or supervises or directs the performance of)  
25 such services. The preceding sentence shall not apply

1 to any civil office or employment under the Govern-  
2 ment of the United States.

3 “(3) FORFEITURES NOT TO APPLY WHERE IN-  
4 DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-  
5 ITY.—

6 “(A) IN GENERAL.—If a magistrate judge  
7 of the Tax Court makes an election under this  
8 paragraph—

9 “(i) paragraphs (1) and (2) (and sec-  
10 tion 7443C) shall not apply to such mag-  
11 istrate judge beginning on the date such  
12 election takes effect, and

13 “(ii) the annuity payable under this  
14 section to such magistrate judge, for peri-  
15 ods beginning on or after the date such  
16 election takes effect, shall be equal to the  
17 annuity to which such magistrate judge is  
18 entitled on the day before such effective  
19 date.

20 “(B) ELECTION REQUIREMENTS.—An elec-  
21 tion under subparagraph (A)—

22 “(i) may be made by a magistrate  
23 judge of the Tax Court eligible for retire-  
24 ment under this section, and

1                   “(ii) shall be filed with the chief judge  
2                   of the Tax Court.

3                   Such an election, once it takes effect, shall be  
4                   irrevocable.

5                   “(C) EFFECTIVE DATE OF ELECTION.—  
6                   Any election under subparagraph (A) shall take  
7                   effect on the first day of the first month fol-  
8                   lowing the month in which the election is made.

9                   “(4) ACCEPTING OTHER EMPLOYMENT.—Any  
10                  magistrate judge of the Tax Court who retires under  
11                  this section and thereafter accepts compensation for  
12                  civil office or employment under the United States  
13                  Government (other than for the performance of  
14                  functions as a magistrate judge of the Tax Court  
15                  under section 7443C) shall forfeit all rights to an  
16                  annuity under this section for the period for which  
17                  such compensation is received. For purposes of this  
18                  paragraph, the term ‘compensation’ includes retired  
19                  pay or salary received in retired status.

20                  “(n) LUMP-SUM PAYMENTS.—

21                  “(1) ELIGIBILITY.—

22                  “(A) IN GENERAL.—Subject to paragraph  
23                  (2), an individual who serves as a magistrate  
24                  judge of the Tax Court and—

1                   “(i) who leaves office and is not re-  
2                   appointed as a magistrate judge of the Tax  
3                   Court for at least 31 consecutive days,

4                   “(ii) who files an application with the  
5                   chief judge of the Tax Court for payment  
6                   of a lump-sum credit,

7                   “(iii) is not serving as a magistrate  
8                   judge of the Tax Court at the time of fil-  
9                   ing of the application, and

10                   “(iv) will not become eligible to re-  
11                   ceive an annuity under this section within  
12                   31 days after filing the application,

13                   is entitled to be paid the lump-sum credit. Pay-  
14                   ment of the lump-sum credit voids all rights to  
15                   an annuity under this section based on the serv-  
16                   ice on which the lump-sum credit is based, until  
17                   that individual resumes office as a magistrate  
18                   judge of the Tax Court.

19                   “(B) PAYMENT TO SURVIVORS.—Lump-  
20                   sum benefits authorized by subparagraphs (C),  
21                   (D), and (E) of this paragraph shall be paid to  
22                   the person or persons surviving the magistrate  
23                   judge of the Tax Court and alive on the date  
24                   title to the payment arises, in the order of prec-  
25                   edence set forth in subsection (o) of section 376

1 of title 28, United States Code, and in accord-  
2 ance with the last 2 sentences of paragraph (1)  
3 of that subsection. For purposes of the pre-  
4 ceding sentence, the term ‘judicial official’ as  
5 used in subsection (o) of such section 376 shall  
6 be deemed to mean ‘magistrate judge of the  
7 Tax Court’ and the terms ‘Administrative Of-  
8 fice of the United States Courts’ and ‘Director  
9 of the Administrative Office of the United  
10 States Courts’ shall be deemed to mean ‘chief  
11 judge of the Tax Court’.

12 “(C) PAYMENT UPON DEATH OF JUDGE  
13 BEFORE RECEIPT OF ANNUITY.—If a mag-  
14 istrate judge of the Tax Court dies before re-  
15 ceiving an annuity under this section, the lump-  
16 sum credit shall be paid.

17 “(D) PAYMENT OF ANNUITY REMAIN-  
18 DER.—If all annuity rights under this section  
19 based on the service of a deceased magistrate  
20 judge of the Tax Court terminate before the  
21 total annuity paid equals the lump-sum credit,  
22 the difference shall be paid.

23 “(E) PAYMENT UPON DEATH OF JUDGE  
24 DURING RECEIPT OF ANNUITY.—If a magistrate  
25 judge of the Tax Court who is receiving an an-



1                   istrate judge of the Tax Court are notified  
2                   of the magistrate judge’s application, and  
3                   “(ii) shall be subject to the terms of  
4                   a court decree of divorce, annulment, or  
5                   legal separation, or any court or court ap-  
6                   proved property settlement agreement inci-  
7                   dent to such decree, if—

8                   “(I) the decree, order, or agree-  
9                   ment expressly relates to any portion  
10                  of the lump-sum credit or other pay-  
11                  ment involved, and

12                  “(II) payment of the lump-sum  
13                  credit or other payment would extin-  
14                  guish entitlement of the magistrate  
15                  judge’s spouse or former spouse to  
16                  any portion of an annuity under sub-  
17                  section (i).

18                  “(B) NOTIFICATION.—Notification of a  
19                  spouse or former spouse under this paragraph  
20                  shall be made in accordance with such proce-  
21                  dures as the chief judge of the Tax Court shall  
22                  prescribe. The chief judge may provide under  
23                  such procedures that subparagraph (A)(i) may  
24                  be waived with respect to a spouse or former  
25                  spouse if the magistrate judge establishes to the

1 satisfaction of the chief judge that the where-  
2 abouts of such spouse or former spouse cannot  
3 be determined.

4 “(C) RESOLUTION OF 2 OR MORE OR-  
5 DERS.—The chief judge shall prescribe proce-  
6 dures under which this paragraph shall be ap-  
7 plied in any case in which the chief judge re-  
8 ceives 2 or more orders or decrees described in  
9 subparagraph (A).

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

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

16 “(B) amounts deposited under subsection  
17 (k) by a magistrate judge of the Tax Court cov-  
18 ering earlier service, and

19 “(C) interest on the deductions and depos-  
20 its which, for any calendar year, shall be equal  
21 to the overall average yield to the Tax Court  
22 Judicial Officers’ Retirement Fund during the  
23 preceding fiscal year from all obligations pur-  
24 chased by the Secretary during such fiscal year

1 under subsection (o); but does not include  
2 interest—

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

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

7 “(o) TAX COURT JUDICIAL OFFICERS’ RETIREMENT  
8 FUND.—

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

15 “(2) INVESTMENT OF FUND.—The Secretary  
16 shall invest, in interest bearing securities of the  
17 United States, such currently available portions of  
18 the Tax Court Judicial Officers’ Retirement Fund as  
19 are not immediately required for payments from the  
20 Fund. The income derived from these investments  
21 constitutes a part of the Fund.

22 “(3) UNFUNDED LIABILITY.—

23 “(A) IN GENERAL.—There are authorized  
24 to be appropriated to the Tax Court Judicial  
25 Officers’ Retirement Fund amounts required to

1           reduce to zero the unfunded liability of the  
2           Fund.

3           “(B) UNFUNDED LIABILITY.—For pur-  
4           poses of subparagraph (A), the term ‘unfunded  
5           liability’ means the estimated excess, deter-  
6           mined on an annual basis in accordance with  
7           the provisions of section 9503 of title 31,  
8           United States Code, of the present value of all  
9           benefits payable from the Tax Court Judicial  
10          Officers’ Retirement Fund over the sum of—

11                   “(i) the present value of deductions to  
12                   be withheld under this section from the fu-  
13                   ture basic pay of magistrate judges of the  
14                   Tax Court, plus

15                   “(ii) the balance in the Fund as of the  
16                   date the unfunded liability is determined.

17          “(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

18                   “(1) ELECTION TO CONTRIBUTE.—

19                   “(A) IN GENERAL.—A magistrate judge of  
20                   the Tax Court who elects to receive an annuity  
21                   under this section or under section 711 of the  
22                   National Employee Savings and Trust Equity  
23                   Guarantee Act of 2004 may elect to contribute  
24                   an amount of such individual’s basic pay to the

1 Thrift Savings Fund established by section  
2 8437 of title 5, United States Code.

3 “(B) PERIOD OF ELECTION.—An election  
4 may be made under this paragraph only during  
5 a period provided under section 8432(b) of title  
6 5, United States Code, for individuals subject to  
7 chapter 84 of such title.

8 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—  
9 Except as otherwise provided in this subsection, the  
10 provisions of subchapters III and VII of chapter 84  
11 of title 5, United States Code, shall apply with re-  
12 spect to a magistrate judge who makes an election  
13 under paragraph (1).

14 “(3) SPECIAL RULES.—

15 “(A) AMOUNT CONTRIBUTED.—The  
16 amount contributed by a magistrate judge to  
17 the Thrift Savings Fund in any pay period shall  
18 not exceed the maximum percentage of such  
19 judge’s basic pay for such pay period as allow-  
20 able under section 8440f of title 5, United  
21 States Code.

22 “(B) CONTRIBUTIONS FOR BENEFIT OF  
23 JUDGE.—No contributions may be made for the  
24 benefit of a magistrate judge under section  
25 8432(c) of title 5, United States Code.

1           “(C) APPLICABILITY OF SECTION 8433(b)  
2 OF TITLE 5.—Section 8433(b) of title 5, United  
3 States Code, applies with respect to a mag-  
4 istrate judge who makes an election under para-  
5 graph (1) and—

6           “(i) who retires entitled to an imme-  
7 diate annuity under this section (including  
8 a disability annuity under subsection (d) of  
9 this section) or section 711 of the National  
10 Employee Savings and Trust Equity Guar-  
11 antee Act of 2004,

12           “(ii) who retires before attaining age  
13 65 but is entitled, upon attaining age 65,  
14 to an annuity under this section or section  
15 711 of the National Employee Savings and  
16 Trust Equity Guarantee Act of 2004, or

17           “(iii) who retires before becoming en-  
18 titled to an immediate annuity, or an an-  
19 nuity upon attaining age 65, under this  
20 section or section 711 of the National Em-  
21 ployee Savings and Trust Equity Guar-  
22 antee Act of 2004.

23           “(D) SEPARATION FROM SERVICE.—With  
24 respect to a magistrate judge to whom this sub-  
25 section applies, retirement under this section or

1 section 711 of the National Employee Savings  
2 and Trust Equity Guarantee Act of 2004 is a  
3 separation from service for purposes of sub-  
4 chapters III and VII of chapter 84 of title 5,  
5 United States Code.

6 “(4) DEFINITIONS.—For purposes of this sub-  
7 section, the terms ‘retirement’ and ‘retire’ include  
8 removal from office under section 7443A(a)(2) on  
9 the sole ground of mental or physical disability.

10 “(5) OFFSET.—In the case of a magistrate  
11 judge who receives a distribution from the Thrift  
12 Savings Fund and who later receives an annuity  
13 under this section, that annuity shall be offset by an  
14 amount equal to the amount which represents the  
15 Government’s contribution to that person’s Thrift  
16 Savings Account, without regard to earnings attrib-  
17 utable to that amount. Where such an offset would  
18 exceed 50 percent of the annuity to be received in  
19 the first year, the offset may be divided equally over  
20 the first 2 years in which that person receives the  
21 annuity.

22 “(6) EXCEPTION.—Notwithstanding clauses (i)  
23 and (ii) of paragraph (3)(C), if any magistrate judge  
24 retires under circumstances making such magistrate  
25 judge eligible to make an election under subsection

1 (b) of section 8433 of title 5, United States Code,  
2 and such magistrate judge's nonforfeitable account  
3 balance is less than an amount that the Executive  
4 Director of the Office of Personnel Management pre-  
5 scribes by regulation, the Executive Director shall  
6 pay the nonforfeitable account balance to the partici-  
7 pant in a single payment."

8 (b) CONFORMING AMENDMENT.—The table of sec-  
9 tion for part I of subchapter C of chapter 76 is amended  
10 by inserting after the item relating to section 7443A the  
11 following new item:

"Sec. 7443B. Retirement for magistrate judges of the Tax  
Court."

12 **SEC. 711. INCUMBENT MAGISTRATE JUDGES OF THE TAX**  
13 **COURT.**

14 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND  
15 SECTION 7443B OF THE INTERNAL REVENUE CODE OF  
16 1986.—A magistrate judge of the United States Tax  
17 Court in active service on the date of the enactment of  
18 this Act shall, subject to subsection (b), be entitled, in lieu  
19 of the annuity otherwise provided under the amendments  
20 made by this title, to—

21 (1) an annuity under subchapter III of chapter  
22 83, or under chapter 84 (except for subchapters III  
23 and VII), of title 5, United States Code, as the case  
24 may be, for creditable service before the date on

1       which service would begin to be credited for pur-  
2       poses of paragraph (2), and

3               (2) an annuity calculated under subsection (b)  
4       or (c) and subsection (g) of section 7443B of the In-  
5       ternal Revenue Code of 1986, as added by this Act,  
6       for any service as a magistrate judge of the United  
7       States Tax Court or special trial judge of the United  
8       States Tax Court but only with respect to service as  
9       such a magistrate judge or special trial judge after  
10      a date not earlier than 9½ years prior to the date  
11      of the enactment of this Act (as specified in the elec-  
12      tion pursuant to subsection (b)) for which deduc-  
13      tions and deposits are made under subsections (j)  
14      and (k) of such section 7443B, as applicable, with-  
15      out regard to the minimum number of years of serv-  
16      ice as such a magistrate judge of the United States  
17      Tax Court, except that—

18               (A) in the case of a magistrate judge who  
19              retired with less than 8 years of service, the an-  
20              nuity under subsection (c) of such section  
21              7443B shall be equal to that proportion of the  
22              salary being received at the time the magistrate  
23              judge leaves office which the years of service  
24              bears to 14, subject to a reduction in accord-  
25              ance with subsection (c) of such section 7443B

1 if the magistrate judge is under age 65 at the  
2 time he or she leaves office, and

3 (B) the aggregate amount of the annuity  
4 initially payable on retirement under this sub-  
5 section may not exceed the rate of pay for the  
6 magistrate judge which is in effect on the day  
7 before the retirement becomes effective.

8 (b) FILING OF NOTICE OF ELECTION.—A magistrate  
9 judge of the United States Tax Court shall be entitled to  
10 an annuity under this section only if the magistrate judge  
11 files a notice of that election with the chief judge of the  
12 United States Tax Court specifying the date on which  
13 service would begin to be credited under section 7443B  
14 of the Internal Revenue Code of 1986, as added by this  
15 Act, in lieu of chapter 83 or chapter 84 of title 5, United  
16 States Code. Such notice shall be filed in accordance with  
17 such procedures as the chief judge of the United States  
18 Tax Court shall prescribe.

19 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-  
20 istrate judge of the United States Tax Court who makes  
21 an election under subsection (b) shall be entitled to a  
22 lump-sum credit under section 8342 or 8424 of title 5,  
23 United States Code, as the case may be, for any service  
24 which is covered under section 7443B of the Internal Rev-  
25 enue Code of 1986, as added by this Act, pursuant to that

1 election, and with respect to which any contributions were  
2 made by the magistrate judge under the applicable provi-  
3 sions of title 5, United States Code.

4 (d) RECALL.—With respect to any magistrate judge  
5 of the United States Tax Court receiving an annuity under  
6 this section who is recalled to serve under section 7443C  
7 of the Internal Revenue Code of 1986, as added by this  
8 Act—

9 (1) the amount of compensation which such re-  
10 called magistrate judge receives under such section  
11 7443C shall be calculated on the basis of the annu-  
12 ity received under this section, and

13 (2) such recalled magistrate judge of the United  
14 States Tax Court may serve as a reemployed annu-  
15 itant to the extent otherwise permitted under title 5,  
16 United States Code.

17 Section 7443B(m)(4) of the Internal Revenue Code of  
18 1986, as added by this Act, shall not apply with respect  
19 to service as a reemployed annuitant described in para-  
20 graph (2).

21 **SEC. 712. PROVISIONS FOR RECALL.**

22 (a) IN GENERAL.—Part I of subchapter C of chapter  
23 76, as amended by this Act, is amended by inserting after  
24 section 7443B the following new section:

1 **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**  
2 **COURT.**

3 “(a) RECALLING OF RETIRED MAGISTRATE  
4 JUDGES.—Any individual who has retired pursuant to sec-  
5 tion 7443B or the applicable provisions of title 5, United  
6 States Code, upon reaching the age and service require-  
7 ments established therein, may at or after retirement be  
8 called upon by the chief judge of the Tax Court to perform  
9 such judicial duties with the Tax Court as may be re-  
10 quested of such individual for any period or periods speci-  
11 fied by the chief judge; except that in the case of any such  
12 individual—

13 “(1) the aggregate of such periods in any 1 cal-  
14 endar year shall not (without such individual’s con-  
15 sent) exceed 90 calendar days, and

16 “(2) such individual shall be relieved of per-  
17 forming such duties during any period in which ill-  
18 ness or disability precludes the performance of such  
19 duties.

20 Any act, or failure to act, by an individual performing ju-  
21 dicial duties pursuant to this subsection shall have the  
22 same force and effect as if it were the act (or failure to  
23 act) of a magistrate judge of the Tax Court.

24 “(b) COMPENSATION.—For the year in which a pe-  
25 riod of recall occurs, the magistrate judge shall receive,  
26 in addition to the annuity provided under the provisions

1 of section 7443B or under the applicable provisions of title  
2 5, United States Code, an amount equal to the difference  
3 between that annuity and the current salary of the office  
4 to which the magistrate judge is recalled. The annuity of  
5 the magistrate judge who completes that period of service,  
6 who is not recalled in a subsequent year, and who retired  
7 under section 7443B, shall be equal to the salary in effect  
8 at the end of the year in which the period of recall oc-  
9 curred for the office from which such individual retired.

10 “(c) RULEMAKING AUTHORITY.—The provisions of  
11 this section may be implemented under such rules as may  
12 be promulgated by the Tax Court.”

13 (b) CONFORMING AMENDMENT.—The table of sec-  
14 tions for part I of subchapter C of chapter 76, as amended  
15 by this Act, is amended by inserting after the item relating  
16 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”

17 **SEC. 713. EFFECTIVE DATE.**

18 Except as otherwise provided, the amendments made  
19 by this title shall take effect on the date of the enactment  
20 of this Act.

1 **TITLE VIII—OTHER PROVISIONS**

2 **Subtitle A—General Provisions**

3 **SEC. 801. CERTAIN POSTSECONDARY EDUCATIONAL BENE-**  
4 **FITS PROVIDED BY AN EMPLOYER TO CHIL-**  
5 **DREN OF EMPLOYEES EXCLUDABLE FROM**  
6 **GROSS INCOME UNDER EDUCATIONAL AS-**  
7 **SISTANCE PROGRAMS.**

8 (a) IN GENERAL.—Section 127 of the Internal Rev-  
9 enue Code of 1986 (relating to educational assistance pro-  
10 grams) is amended by redesignating subsection (d) as sub-  
11 section (e), and inserting after subsection (e) the fol-  
12 lowing:

13 “(d) POST SECONDARY EDUCATIONAL BENEFITS  
14 PROVIDED TO CHILDREN OF EMPLOYEES.—

15 “(1) IN GENERAL.—For purposes of this sec-  
16 tion, educational assistance provided by the employer  
17 to a child (as defined in section 151(c)(3)) of an em-  
18 ployee of such employer pursuant to an educational  
19 assistance program shall be treated as educational  
20 assistance provided for the exclusive benefit of the  
21 employee.

22 “(2) DOLLAR LIMITATIONS.—The amount ex-  
23 cluded from the gross income of the employee by  
24 reason of paragraph (1) for a taxable year with re-

1       spect to amounts provided to each child of such em-  
2       ployee shall not exceed \$1,000.

3           “(3) LIMITATION ON EDUCATIONAL ASSIST-  
4       ANCE.—Paragraph (1) shall only apply to expenses  
5       paid or incurred in connection with the enrollment  
6       or attendance of a child of an employee at an edu-  
7       cational institution described in section 529(e)(5).

8           “(4) TERMINATION.—This subsection shall not  
9       apply to taxable years beginning after December 31,  
10       2005.”

11       (b) NO EXEMPTION FOR EMPLOYMENT TAXES.—

12           (1) IN GENERAL.—Each of the following provi-  
13       sions of the Internal Revenue Code of 1986 are  
14       amended by inserting “(without regard to subsection  
15       (d))” after “127”:

16                   (A) Section 3121(a)(18).

17                   (B) Section 3231(e)(6).

18                   (C) Section 3306(b)(13).

19           (2) SOCIAL SECURITY ACT.—Section 209(a)(15)  
20       of the Social Security Act is amended by inserting  
21       “(without regard to subsection (d))” after “127”.

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

1 **SEC. 802. EXCLUSION FOR PAYMENTS TO INDIVIDUALS**  
2 **UNDER NATIONAL HEALTH SERVICE CORPS**  
3 **LOAN REPAYMENT PROGRAM AND CERTAIN**  
4 **STATE LOAN REPAYMENT PROGRAMS.**

5 (a) IN GENERAL.—Section 108(f) of the Internal  
6 Revenue Code of 1986 (relating to student loans) is  
7 amended by adding at the end the following new para-  
8 graph:

9 “(4) PAYMENTS UNDER NATIONAL HEALTH  
10 SERVICE CORPS LOAN REPAYMENT PROGRAM AND  
11 CERTAIN STATE LOAN REPAYMENT PROGRAMS.—In  
12 the case of an individual, gross income shall not in-  
13 clude any amount received under section 338B(g) of  
14 the Public Health Service Act or under a State pro-  
15 gram described in section 338I of such Act.”

16 (b) TREATMENT FOR PURPOSES OF EMPLOYMENT  
17 TAXES.—Each of the following provisions of the Internal  
18 Revenue Code of 1986 is amended by inserting  
19 “108(f)(4),” after “74(c),”:

20 (1) Section 3121(a)(20).

21 (2) Section 3231(e)(5).

22 (3) Section 3306(b)(16).

23 (4) Section 3401(a)(19).

24 (5) Section 209(a)(17) of the Social Security  
25 Act.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to amounts received by an indi-  
3 vidual in taxable years beginning after December 31,  
4 2004.

5 **SEC. 803. EXCLUSION FOR GROUP LEGAL SERVICES.**

6 (a) ALLOWANCE OF EXCLUSION.—Section 120(e) of  
7 the Internal Revenue Code of 1986 (relating to termi-  
8 nation) is amended to read as follows:

9 “(e) APPLICATION.—This section and section  
10 501(c)(20) shall apply to taxable years beginning after  
11 December 31, 2004, and before January 1, 2006.”

12 (b) REPEAL OF LIMITATION.—Section 120(a) of such  
13 Code is amended by striking the last sentence.

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

17 **SEC. 804. TRANSFER OF EXCESS FUNDS FROM BLACK LUNG**

18 **DISABILITY TRUSTS TO UNITED MINE WORK-**

19 **ERS OF AMERICA COMBINED BENEFIT FUND.**

20 (a) IN GENERAL.—So much of section 501(c)(21)(C)  
21 of the Internal Revenue Code of 1986 (relating to black  
22 lung disability trusts) as precedes the last sentence is  
23 amended to read as follows:

24 “(C) Payments described in subparagraph

25 (A)(i)(IV) may be made from such trust during

1 a taxable year only to the extent that the aggregate amount of such payments during such taxable year does not exceed the excess (if any), as of the close of the preceding taxable year, of—

2 “(i) the fair market value of the assets of the trust, over

3 “(ii) 110 percent of the present value of the liability described in subparagraph (A)(i)(I) of such person.”

4 (b) TRANSFER.—Section 9705 of such Code (relating to transfer) is amended by adding at the end the following new subsection:

5 “(c) TRANSFER FROM BLACK LUNG DISABILITY TRUSTS.—

6 “(1) IN GENERAL.—The Secretary shall transfer each fiscal year to the Fund from the general fund of the Treasury an amount which the Secretary estimates to be the additional amounts received in the Treasury for that fiscal year by reason of the amendment made by section 804(a) of the National Employee Savings and Trust Equity Guarantee Act of 2004. The Secretary shall adjust the amount transferred for any year to the extent necessary to correct errors in any estimate for any prior year.

1           “(2) USE OF FUNDS.—Any amount transferred  
2           to the Combined Fund under paragraph (1) shall be  
3           used to proportionately reduce the unassigned bene-  
4           ficiary premium under section 9704(a)(3) of each  
5           assigned operator for the plan year in which trans-  
6           ferred.”

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

## 10           **Subtitle B—Revenue Provisions**

### 11           **SEC. 811. APPLICATION OF BASIS RULES TO NONRESIDENT**

#### 12                           **ALIENS.**

13           (a) IN GENERAL.—Section 72 of the Internal Rev-  
14           enue Code of 1986 (relating to annuities and certain pro-  
15           ceeds of endowment and life insurance contracts) is  
16           amended by redesignating subsection (w) as subsection (x)  
17           and by inserting after subsection (v) the following new  
18           subsection:

19           “(w) APPLICATION OF BASIS RULES TO NON-  
20           RESIDENT ALIENS.—

21                           “(1) IN GENERAL.—Notwithstanding any other  
22           provision of this section, for purposes of determining  
23           the portion of any distribution which is includible in  
24           gross income of a distributee who is a citizen or resi-  
25           dent of the United States, the investment in the con-

1       tract shall not include any applicable nontaxable  
2       contributions or applicable nontaxable earnings.

3           “(2) APPLICABLE NONTAXABLE CONTRIBU-  
4       TION.—For purposes of this subsection, the term  
5       ‘applicable nontaxable contribution’ means any em-  
6       ployer or employee contribution—

7           “(A) which was made with respect to  
8       compensation—

9           “(i) for labor or personal services per-  
10       formed by an employee who, at the time  
11       the labor or services were performed, was  
12       a nonresident alien for purposes of the  
13       laws of the United States in effect at such  
14       time, and

15          “(ii) which is treated as from sources  
16       without the United States, and

17          “(B) which was not subject to income tax  
18       under the laws of the United States or any for-  
19       eign country.

20          “(3) APPLICABLE NONTAXABLE EARNINGS.—  
21       For purposes of this subsection, the term ‘applicable  
22       nontaxable earnings’ means earnings—

23          “(A) which are paid or accrued with re-  
24       spect to any employer or employee contribution  
25       which was made with respect to compensation

1 for labor or personal services performed by an  
2 employee,

3 “(B) with respect to which the employee  
4 was at the time the earnings were paid or ac-  
5 crued a nonresident alien for purposes of the  
6 laws of the United States, and

7 “(C) which were not subject to income tax  
8 under the laws of the United States or any for-  
9 eign country.

10 “(4) REGULATIONS.—The Secretary shall pre-  
11 scribe such regulations as may be necessary to carry  
12 out the provisions of this subsection, including regu-  
13 lations treating contributions and earnings as not  
14 subject to tax under the laws of any foreign country  
15 where appropriate to carry out the purposes of this  
16 subsection.”

17 (b) EFFECTIVE DATE.—The amendments made by  
18 this section shall apply to distributions on or after the date  
19 of the enactment of this Act.

20 **SEC. 812. TREATMENT OF DEATH BENEFITS FROM COR-**  
21 **PORATE-OWNED LIFE INSURANCE.**

22 (a) IN GENERAL.—Section 101 of the Internal Rev-  
23 enue Code of 1986 (relating to certain death benefits) is  
24 amended by adding at the end the following new sub-  
25 section:

1           “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED  
2 LIFE INSURANCE CONTRACTS.—

3           “(1) GENERAL RULE.—In the case of an em-  
4 ployer-owned life insurance contract, the amount ex-  
5 cluded from gross income of an applicable policy-  
6 holder by reason of paragraph (1) of subsection (a)  
7 shall not exceed an amount equal to the sum of the  
8 premiums and other amounts paid by the policy-  
9 holder for the contract.

10           “(2) EXCEPTIONS.—In the case of an employer-  
11 owned life insurance contract with respect to which  
12 the notice and consent requirements of paragraph  
13 (4) are met, paragraph (1) shall not apply to any of  
14 the following:

15           “(A) EXCEPTIONS BASED ON INSURED’S  
16 STATUS.—Any amount received by reason of  
17 the death of an insured who, with respect to an  
18 applicable policyholder—

19           “(i) was an employee at any time dur-  
20 ing the 12-month period before the in-  
21 sured’s death, or

22           “(ii) is, at the time the contract is  
23 issued—

24           “(I) a director,

1                   “(II) a highly compensated em-  
2                   ployee within the meaning of section  
3                   414(q) (without regard to paragraph  
4                   (1)(B)(ii) thereof), or

5                   “(III) a highly compensated indi-  
6                   vidual within the meaning of section  
7                   105(h)(5), except that ‘35 percent’  
8                   shall be substituted for ‘25 percent’ in  
9                   subparagraph (C) thereof.

10                   “(B) EXCEPTION FOR AMOUNTS PAID TO  
11                   INSURED’S HEIRS.—Any amount received by  
12                   reason of the death of an insured to the  
13                   extent—

14                   “(i) the amount is paid to a member  
15                   of the family (within the meaning of sec-  
16                   tion 267(c)(4)) of the insured, any indi-  
17                   vidual who is the designated beneficiary of  
18                   the insured under the contract (other than  
19                   the applicable policyholder), a trust estab-  
20                   lished for the benefit of any such member  
21                   of the family or designated beneficiary, or  
22                   the estate of the insured, or

23                   “(ii) the amount is used to purchase  
24                   an equity (or capital or profits) interest in

1           the applicable policyholder from any person  
2           described in clause (i).

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

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

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

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

18       For purposes of the preceding sentence, if cov-  
19       erage for each insured under a master contract  
20       is treated as a separate contract for purposes of  
21       sections 817(h), 7702, and 7702A, coverage for  
22       each such insured shall be treated as a separate  
23       contract.

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

1                   “(i) IN GENERAL.—The term ‘applica-  
2                   ble policyholder’ means, with respect to  
3                   any employer-owned life insurance con-  
4                   tract, the person described in subpara-  
5                   graph (A)(i) which owns the contract.

6                   “(ii) RELATED PERSONS.—The term  
7                   ‘applicable policyholder’ includes any per-  
8                   son which—

9                   “(I) bears a relationship to the  
10                  person described in clause (i) which is  
11                  specified in section 267(b) or  
12                  707(b)(1), or

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

18                  “(4) NOTICE AND CONSENT REQUIREMENTS.—  
19                  The notice and consent requirements of this para-  
20                  graph are met if, before the issuance of the contract,  
21                  the employee—

22                  “(A) is notified in writing that the applica-  
23                  ble policyholder intends to insure the employee’s  
24                  life and the maximum face amount for which

1 the employee could be insured at the time the  
2 contract was issued,

3 “(B) provides written consent to being in-  
4 sured under the contract and that such cov-  
5 erage may continue after the insured terminates  
6 employment, and

7 “(C) is informed in writing that an appli-  
8 cable policyholder will be a beneficiary of any  
9 proceeds payable upon the death of the em-  
10 ployee.

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

13 “(A) EMPLOYEE.—The term ‘employee’ in-  
14 cludes an officer, director, and highly com-  
15 pensated employee (within the meaning of sec-  
16 tion 414(q)).

17 “(B) INSURED.—The term ‘insured’  
18 means, with respect to an employer-owned life  
19 insurance contract, an individual covered by the  
20 contract who is a United States citizen or resi-  
21 dent. In the case of a contract covering the  
22 joint lives of 2 individuals, references to an in-  
23 sured include both of the individuals.”.

24 (b) REPORTING REQUIREMENTS.—Subpart A of part  
25 III of subchapter A of chapter 61 of the Internal Revenue

1 Code of 1986 (relating to information concerning persons  
2 subject to special provisions) is amended by inserting after  
3 section 6039H the following new section:

4 **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**  
5 **EMPLOYER-OWNED LIFE INSURANCE CON-**  
6 **TRACTS.**

7 “(a) IN GENERAL.—Every applicable policyholder  
8 owning 1 or more employer-owned life insurance contracts  
9 issued after the date of the enactment of this section shall  
10 file a return (at such time and in such manner as the  
11 Secretary shall by regulations prescribe) showing for each  
12 year such contracts are owned—

13 “(1) the number of employees of the applicable  
14 policyholder at the end of the year,

15 “(2) the number of such employees insured  
16 under such contracts at the end of the year,

17 “(3) the total amount of insurance in force at  
18 the end of the year under such contracts,

19 “(4) the name, address, and taxpayer identifica-  
20 tion number of the applicable policyholder and the  
21 type of business in which the policyholder is en-  
22 gaged, and

23 “(5) that the applicable policyholder has a valid  
24 consent for each insured employee (or, if all such

1 consents are not obtained, the number of insured  
2 employees for whom such consent was not obtained).

3 “(b) RECORDKEEPING REQUIREMENT.—Each appli-  
4 cable policyholder owning 1 or more employer-owned life  
5 insurance contracts during any year shall keep such  
6 records as may be necessary for purposes of determining  
7 whether the requirements of this section and section  
8 101(j) are met.

9 “(c) DEFINITIONS.—Any term used in this section  
10 which is used in section 101(j) shall have the same mean-  
11 ing given such term by section 101(j).”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) Paragraph (1) of section 101(a) of the In-  
14 ternal Revenue Code of 1986 is amended by striking  
15 “and subsection (f)” and inserting “subsection (f),  
16 and subsection (j)”.

17 (2) The table of sections for subpart A of part  
18 III of subchapter A of chapter 61 of such Code is  
19 amended by inserting after the item relating to sec-  
20 tion 6039H the following new item:

“Sec. 6039I. Returns and records with respect to employer-  
owned life insurance contracts.”.

21 (d) EFFECTIVE DATE.—The amendments made by  
22 this section shall apply to life insurance contracts issued  
23 after the date of the enactment of this Act, except for a  
24 contract issued after such date pursuant to an exchange

1 described in section 1035 of the Internal Revenue Code  
2 of 1986 for a contract issued on or prior to that date.  
3 For purposes of the preceding sentence, any material in-  
4 crease in the death benefit or other material change shall  
5 cause the contract to be treated as a new contract except  
6 that, in the case of a master contract (within the meaning  
7 of section 264(f)(4)(E) of such Code), the addition of cov-  
8 ered lives shall be treated as a new contract only with re-  
9 spect to such additional covered lives.

10 **SEC. 813. REPORTING OF TAXABLE MERGERS AND ACQUISI-**  
11 **TIONS.**

12 (a) IN GENERAL.—Subpart B of part III of sub-  
13 chapter A of chapter 61 is amended by inserting after sec-  
14 tion 6043 the following new section:

15 **“SEC. 6043A. TAXABLE MERGERS AND ACQUISITIONS.**

16 “(a) IN GENERAL.—The acquiring corporation in any  
17 taxable acquisition shall make a return (according to the  
18 forms or regulations prescribed by the Secretary) setting  
19 forth—

20 “(1) a description of the acquisition,

21 “(2) the name and address of each shareholder  
22 of the acquired corporation who is required to recog-  
23 nize gain (if any) as a result of the acquisition,

1           “(3) the amount of money and the fair market  
2           value of other property transferred to each such  
3           shareholder as part of such acquisition, and

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

6           To the extent provided by the Secretary, the requirements  
7           of this section applicable to the acquiring corporation shall  
8           be applicable to the acquired corporation and not to the  
9           acquiring corporation.

10          “(b) NOMINEE REPORTING.—Any person who holds  
11          stock as a nominee for another person shall furnish in the  
12          manner prescribed by the Secretary to such other person  
13          the information provided by the corporation under sub-  
14          section (d).

15          “(c) TAXABLE ACQUISITION.—For purposes of this  
16          section, the term ‘taxable acquisition’ means any acquisi-  
17          tion by a corporation of stock in or property of another  
18          corporation if any shareholder of the acquired corporation  
19          is required to recognize gain (if any) as a result of such  
20          acquisition.

21          “(d) STATEMENTS TO BE FURNISHED TO SHARE-  
22          HOLDERS.—Every person required to make a return under  
23          subsection (a) shall furnish to each shareholder whose  
24          name is required to be set forth in such return a written  
25          statement showing—

1           “(1) the name, address, and phone number of  
2           the information contact of the person required to  
3           make such return,

4           “(2) the information required to be shown on  
5           such return with respect to such shareholder, and

6           “(3) such other information as the Secretary  
7           may prescribe.

8           The written statement required under the preceding sen-  
9           tence shall be furnished to the shareholder on or before  
10          January 31 of the year following the calendar year during  
11          which the taxable acquisition occurred.”.

12          (b) ASSESSABLE PENALTIES.—

13                 (1) Subparagraph (B) of section 6724(d)(1)  
14                 (defining information return) is amended by redesignig-  
15                 nating clauses (ii) through (xviii) as clauses (iii)  
16                 through (xix), respectively, and by inserting after  
17                 clause (i) the following new clause:

18                         “(ii) section 6043A(a) (relating to re-  
19                         turns relating to taxable mergers and ac-  
20                         quisitions),”.

21                 (2) Paragraph (2) of section 6724(d) (relating  
22                 to definitions) is amended by redesignating subpara-  
23                 graphs (F) through (BB) as subparagraphs (G)  
24                 through (CC), respectively, and by inserting after  
25                 subparagraph (E) the following new subparagraph:

1                   “(F) subsections (b) and (d) of section  
2                   6043A (relating to returns relating to taxable  
3                   mergers and acquisitions).”.

4           (c) CLERICAL AMENDMENT.—The table of sections  
5 for subpart B of part III of subchapter A of chapter 61  
6 is amended by inserting after the item relating to section  
7 6043 the following new item:

                  “Sec. 6043A. Returns relating to taxable mergers and acqui-  
                  sitions.”.

8           (d) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply to acquisitions after the date of  
10 the enactment of this Act.