

107TH CONGRESS
1ST SESSION

H. R. 3445

To amend the Employee Retirement Income Security Act of 1974 to improve the retirement security of American families.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 11, 2001

Mr. ANDREWS (for himself, Mr. GEORGE MILLER of California, Mr. KILDEE, Mr. OWENS, Mr. PAYNE, Mrs. MINK of Hawaii, Mr. SCOTT, Ms. WOOLSEY, Ms. RIVERS, Mr. HINOJOSA, Mr. TIERNEY, Mr. KIND, Ms. SANCHEZ, Mr. FORD, Mr. KUCINICH, Mr. HOLT, Ms. SOLIS, and Ms. MCCOLLUM) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Armed Services, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Employee Retirement Income Security Act of 1974 to improve the retirement security of American families.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Retirement Enhancement Act of 2001”.

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVED PARTICIPATION AND VESTING

- Sec. 101. Minimum coverage requirements.
 Sec. 102. Minimum participation requirements.
 Sec. 103. Faster vesting of benefits under defined contribution plans.
 Sec. 104. Model small employer group pension plan.
 Sec. 105. Enforcement under ERISA of requirements for simplified employee pensions.

TITLE II—IMPROVED PENSION PROTECTIONS FOR WOMEN

- Sec. 201. Elimination of integration with workers' compensation and similar benefits.
 Sec. 202. Spousal consent required for distributions from defined contribution plans.
 Sec. 203. Modifications of joint and survivor annuity requirements.
 Sec. 204. Division of pension benefits upon divorce.
 Sec. 205. Periods of family and medical leave treated as hours of service for pension participation and vesting.
 Sec. 206. Right of spouse to know distribution information.
 Sec. 207. Repeal of reduction in military survivor benefit plan annuities at age 62.
 Sec. 208. Survivor annuities for widows, widowers, and former spouses of Federal employees who die before attaining age for deferred annuity under Civil Service Retirement System.
 Sec. 209. Order of precedence for disposition of amounts remaining in the thrift savings account of a Federal employee (or former employee) who dies before making an effective election controlling such disposition.
 Sec. 210. Interest on amounts paid to make up for certain civil service annuity benefits wrongfully denied.
 Sec. 211. Amendments relating to effective date provision of the Civil Service Retirement Spouse Equity Act of 1984.

TITLE III—SIMPLIFIED INVESTMENT STANDARDS

- Sec. 301. Exemption from prohibited transaction rules for emergent transactions.
 Sec. 302. Prohibited transaction exemption for the provision of investment advice.
 Sec. 303. Participation of participants in trusteeship of defined contribution plans.
 Sec. 304. Diversification in defined contribution plan investments.
 Sec. 305. Removal of \$500,000 cap on bonding requirement.
 Sec. 306. Disclosure regarding investments and voting of proxies.

TITLE IV—IMPROVEMENTS IN PENSION INFORMATION AND ENFORCEMENT

- Sec. 401. Periodic pension benefit statements.

- Sec. 402. Disclosures to Secretary of Labor relating to plan termination and relating to plan sponsors after acquisition or merger of plans.
- Sec. 403. Disclosure of operating income of employers adjusted so as to exclude certain components mandated in FASB rules governing accounting for defined benefit pension plans.
- Sec. 404. Specific information regarding multiemployer plans included in annual report.
- Sec. 405. Limited scope audits.
- Sec. 406. Reporting and enforcement requirements for employee benefit plans.
- Sec. 407. Study of pension trends and characteristics.
- Sec. 408. Early resolution program for pension benefit claims.
- Sec. 409. De novo review of benefit determinations.
- Sec. 410. Allowable relief.
- Sec. 411. Assessment by Secretary of Labor of penalties for failures to meet disclosure requirements.
- Sec. 412. Missing participants.
- Sec. 413. Fiduciary duties with respect to changes in investment options.
- Sec. 414. Secretary of Labor required to provide assistance.
- Sec. 415. Exclusivity of powers and procedures applicable to rights or claims.

TITLE V—IMPROVED PENSION PROTECTIONS FOR THE CHANGING WORKFORCE

- Sec. 501. Loans from retirement plans for health insurance and job training expenses.
- Sec. 502. Automatic rollover upon mandatory distribution in excess of \$1,000.
- Sec. 503. Prompt distribution from defined contribution plans upon termination of participant's covered employment.
- Sec. 504. Extended period for recoupment of overpayments.

TITLE VI—GENERAL PROVISIONS

- Sec. 601. General effective date.
- Sec. 602. Plan amendments.

1 **TITLE I—IMPROVED** 2 **PARTICIPATION AND VESTING** 3 **SEC. 101. MINIMUM COVERAGE REQUIREMENTS.**

4 (a) IN GENERAL.—Part 2 of subtitle B of title I of
5 the Employee Retirement Income Security Act of 1974
6 (29 U.S.C. 201 et seq.) is amended by inserting after sec-
7 tion 201 the following new section:

1 “MINIMUM COVERAGE REQUIREMENTS

2 “SEC. 201A. (a) GENERAL RULE.—Each pension
3 plan maintained by an employer shall benefit all employees
4 of the employer.

5 “(b) EXCLUSION OF CERTAIN EMPLOYEES.—For
6 purposes of this section, there shall be excluded from
7 consideration—

8 “(1) employees who are included in a unit of
9 employees covered by an agreement which, as deter-
10 mined in accordance with regulations issued by the
11 Secretary, constitutes a collective bargaining agree-
12 ment between employee representatives and one or
13 more employers, if there is evidence that retirement
14 benefits were the subject of good faith bargaining
15 between such employee representatives and such em-
16 ployer or employers,

17 “(2) in the case of a trust established or main-
18 tained pursuant to an agreement which, as deter-
19 mined in accordance with regulations issued by the
20 Secretary, constitutes a collective bargaining agree-
21 ment between airline pilots represented in accord-
22 ance with title II of the Railway Labor Act and one
23 or more employers, all employees not covered by
24 such agreement, and

1 “(3) employees who are nonresident aliens and
2 who receive no earned income (within the meaning
3 of section 911(d)(2) of the Internal Revenue Code of
4 1986) from the employer which constitutes income
5 from sources within the United States (within the
6 meaning of section 861(a)(3) of such Code).

7 Paragraph (1) shall not apply with respect to coverage of
8 employees under a plan pursuant to an agreement under
9 such paragraph. Paragraph (2) shall not apply in the case
10 of a plan which provides contributions or benefits for em-
11 ployees whose principal duties are not customarily per-
12 formed aboard aircraft in flight.

13 “(c) EXCLUSION OF EMPLOYEES NOT MEETING AGE
14 AND SERVICE REQUIREMENTS.—

15 “(1) IN GENERAL.—If a plan—

16 “(A) prescribes, consistent with section
17 202(a), minimum age and service requirements
18 as a condition of participation, and

19 “(B) excludes all employees not meeting
20 such requirements from participation,
21 then such employees shall be excluded from consider-
22 ation for purposes of this section.

23 “(2) REQUIREMENTS MAY BE MET SEPARATELY
24 WITH RESPECT TO EXCLUDED GROUP.—If employees
25 not meeting the minimum age or service require-

1 ments of section 202(a)(1) (without regard to sub-
2 paragraph (B) thereof) are covered under a plan of
3 the employer which meets the requirements of sub-
4 section (a) separately with respect to such employ-
5 ees, such employees may be excluded from consider-
6 ation in determining whether any plan of the em-
7 ployer meets the requirements of subsection (a).

8 “(3) REQUIREMENTS NOT TREATED AS BEING
9 MET BEFORE ENTRY DATE.—An employee shall not
10 be treated as meeting the age and service require-
11 ments described in this subsection until the first
12 date on which, under the plan, any employee with
13 the same age and service would be eligible to com-
14 mence participation in the plan.

15 “(d) LINE OF BUSINESS EXCEPTION.—

16 “(1) IN GENERAL.—If, under section 414(r) of
17 the Internal Revenue Code of 1986, an employer is
18 treated as operating separate lines of business for a
19 year, the employer may apply the requirements of
20 this section for such year separately with respect to
21 employees in each separate line of business.

22 “(2) PLAN MUST BE NONDISCRIMINATORY.—
23 Paragraph (1) shall not apply with respect to any
24 plan maintained by an employer unless such plan
25 benefits such employees as qualify under a classifica-

1 tion set up by the employer and found by the Sec-
 2 retary of the Treasury not to be discriminatory in
 3 favor of highly compensated employees.

4 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
 5 poses of this section—

6 “(1) HIGHLY COMPENSATED EMPLOYEE.—The
 7 term ‘highly compensated employee’ has the mean-
 8 ing given such term by section 414(q) of the Inter-
 9 nal Revenue Code of 1986.

10 “(2) AGGREGATION RULES.—An employer may
 11 elect to designate—

12 “(A) 2 or more trusts,

13 “(B) 1 or more trusts and 1 or more annu-
 14 ity plans, or

15 “(C) 2 or more annuity plans,

16 as part of 1 plan to determine whether the require-
 17 ments of this section are met with respect to such
 18 plan.

19 “(3) SPECIAL RULES FOR CERTAIN DISPOS-
 20 ITIONS OR ACQUISITIONS.—

21 “(A) IN GENERAL.—If a person becomes,
 22 or ceases to be, a member of a group described
 23 in subsection (b), (c), (m), or (o) of section 414
 24 of such Code, then the requirements of this sec-
 25 tion shall be treated as having been met during

1 the transition period with respect to any plan
2 covering employees of such person or any other
3 member of such group if—

4 “(i) such requirements were met im-
5 mediately before each such change, and

6 “(ii) the coverage under such plan is
7 not significantly changed during the transi-
8 tion period (other than by reason of the
9 change in members of a group) or such
10 plan meets such other requirements as the
11 Secretary of the Treasury may prescribe
12 by regulation.

13 “(B) TRANSITION PERIOD.—For purposes
14 of subparagraph (A), the term ‘transition pe-
15 riod’ means the period—

16 “(i) beginning on the date of the
17 change in members of a group, and

18 “(ii) ending on the last day of the 1st
19 plan year beginning after the date of such
20 change.

21 “(4) ELIGIBILITY TO CONTRIBUTE.—In the
22 case of contributions which are subject to section
23 401(k) or 401(m) of the Internal Revenue Code of
24 1986, employees who are eligible to contribute (or

1 elect to have contributions made on their behalf)
 2 shall be treated as benefiting under the plan.

3 “(5) REGULATIONS.—The Secretary of the
 4 Treasury shall prescribe such regulations as may be
 5 necessary or appropriate to carry out the purposes
 6 of this section.”

7 (b) EMPLOYER MAY NOT REQUEST EMPLOYEE TO
 8 WAIVE RIGHTS.—Section 203 of such Act (29 U.S.C.
 9 1053) is amended by adding at the end the following new
 10 subsection:

11 “(f) An employer may not request an employee to
 12 waive any right of coverage under, or participation in, any
 13 pension plan which is granted by this title.”

14 **SEC. 102. MINIMUM PARTICIPATION REQUIREMENTS.**

15 (a) IN GENERAL.—Sections 202(a)(3), 203(b)(2),
 16 and 204(b)(4) of the Employee Retirement Income Secu-
 17 rity Act of 1974 (29 U.S.C. 1052(a)(3), 1053(b)(2), and
 18 1054(b)(4)) are each amended by striking “1,000 hours”
 19 each place it appears and inserting “750 hours”.

20 (b) CONFORMING AMENDMENTS.—

21 (1) Sections 202(a)(3)(D), 203(b)(2)(D), and
 22 204(b)(4)(E) (29 U.S.C. 1052(a)(3)(D),
 23 1053(b)(2)(D), and 1054(b)(4)(E)) are each amend-
 24 ed by striking “125 days” and inserting “94 days”.

1 (2) Sections 202(b)(5)(B) and 203(b)(3)(E)(ii)
 2 (29 U.S.C. 1052(b)(5)(B) and 1053(b)(3)(E)(ii))
 3 are each amended by striking “501 hours” and in-
 4 serting “376 hours”.

5 (3) Section 203(b)(3)(A) (29 U.S.C.
 6 1053(b)(3)(A)) is amended by striking “500 hours”
 7 and inserting “375 hours”.

8 **SEC. 103. FASTER VESTING OF BENEFITS UNDER DEFINED**
 9 **CONTRIBUTION PLANS.**

10 Paragraph (2) of section 203(a) of the Employee Re-
 11 tirement Income Security Act of 1974 (29 U.S.C.
 12 1053(a)) is amended by striking subparagraphs (A) and
 13 (B) and inserting the following:

14 “(A) A plan satisfies the requirements of
 15 this subparagraph if an employee has a non-
 16 forfeitable right to 100 percent of the employ-
 17 ee’s accrued benefit derived from employer
 18 contributions—

19 “(i) in the case of a defined benefit
 20 plan, as of completion by the employee of
 21 at least 5 years of service, or

22 “(ii) in the case of a defined contribu-
 23 tion plan, as of completion by the employee
 24 of at least 3 years of service.

1 “(B) A plan satisfies the requirements of
 2 this subparagraph if an employee has a non-
 3 forfeitable right to a percentage of the employ-
 4 ee’s accrued benefit derived from employer con-
 5 tributions determined under the applicable table
 6 set forth in clause (i) or (ii).

7 “(i) In the case of a defined benefit
 8 plan, the applicable table is the following:

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

9 “(ii) In the case of a defined contribu-
 10 tion plan, the applicable table is the fol-
 11 lowing:

“Years of service:	The nonforfeitable percentage is:
1	20
2	40
3	60
4	80
5 or more	100.”.

12 **SEC. 104. MODEL SMALL EMPLOYER GROUP PENSION**
 13 **PLAN.**

14 (a) IN GENERAL.—Section 206 of the Employee Re-
 15 tirement Income Security Act of 1974 (29 U.S.C. 1056)
 16 is amended by adding at the end the following new sub-
 17 section:

18 “(g) MODEL SIMPLIFIED GROUP PENSION PLANS.—

1 “(1) ESTABLISHMENT OF MODEL PLAN.—The
2 Secretary, in consultation with the Secretary of the
3 Treasury, shall prescribe by regulations one or more
4 model simplified group pension plans which would—

5 “(A) provide simplicity and minimal ad-
6 ministrative responsibilities to employers and
7 provide adequate retirement benefits to employ-
8 ees upon adoption by an employer, including
9 models which could be established by a group of
10 small employers, an employee association, an
11 employer association, or a financial institution,

12 “(B) cover all employees of the employer,

13 “(C) accept contributions from successive
14 employers,

15 “(D) readily permit and accept rollovers to
16 and from other qualified plans (as defined in
17 section 203(e)(2)), and

18 “(E) constitute a plan meeting the require-
19 ments of this Act and Internal Revenue Code of
20 1986.

21 In devising a model pension plan, the Secretary shall
22 consider the adequacy of existing simplified em-
23 ployee pension plan alternatives and may make rec-
24 ommendations to adopt such plans as model sim-
25 plified plans.

1 “(2) ADVERTISEMENT OF MODEL PLAN.—The
2 Secretary, in consultation with the Secretary of the
3 Treasury and the Administrator of the Small Busi-
4 ness Administration, shall advertise the model plans
5 developed pursuant to paragraph (1), including
6 through contracts (to the extent provided in appro-
7 priation Acts) with applicable organizations, to en-
8 sure that small employers and their employees are
9 apprised of the availability of administratively simple
10 single and group pension plans.”.

11 (b) EXEMPTION OF PLAN SPONSOR FROM FIDU-
12 CIARY LIABILITY.—Section 404(a) of such Act (29 U.S.C.
13 1104(a)) is amended by adding at the end the following
14 new paragraph:

15 “(3) A plan sponsor of an employee benefit plan shall
16 not be liable under this part in connection with such plan
17 for any act or practice by such plan sponsor consistent
18 with the requirements of such plan if such plan conforms
19 to the terms of a model simplified group pension plan pre-
20 scribed pursuant to section 206(g).”.

21 (c) INITIAL REGULATIONS.—Regulations under sec-
22 tion 206(g) of the Employee Retirement Income Security
23 Act of 1974 (added by this section) for the first model
24 simplified pension plans shall be issued within 12 months
25 of the date of the enactment of this Act.

1 (d) STUDY.—Not later than 3 years after the date
 2 of the enactment of this Act, the Secretary of Labor and
 3 the Secretary of the Treasury shall conduct a joint study
 4 to determine the feasibility of permitting non-highly com-
 5 pensated employees whose employer does not cover them
 6 under a pension plan, and other non-covered individuals,
 7 to seek an automatic payroll deduction or other deferral
 8 mechanism to make contributions to a pension plan con-
 9 forming to the the requirements of a model simplified
 10 group pension plan developed pursuant to section 206(g)
 11 of the Employee Retirement Income Security Act of 1974
 12 or to similar pension plans. Such Secretaries shall submit
 13 a joint report to the Congress describing the results of
 14 such study and making such recommendations as the Sec-
 15 retaries determine necessary or appropriate.

16 **SEC. 105. ENFORCEMENT UNDER ERISA OF REQUIREMENTS**
 17 **FOR SIMPLIFIED EMPLOYEE PENSIONS.**

18 Subtitle A of title III of the Employee Retirement
 19 Income Security Act of 1974 is amended by adding after
 20 section 3004 (29 U.S.C. 1204) the following new section:

21 “TREATMENT OF SIMPLIFIED EMPLOYEE PENSIONS

22 “SEC. 3005. For purposes of part 5 of subtitle B of
 23 title I, the requirements of section 408(k) of the Internal
 24 Revenue Code of 1986 relating to simplified employee pen-
 25 sions (as defined in section 408(k)(1) of such Code) shall
 26 be treated as requirements of title I applicable to employee

1 pension benefit plans (as defined in section 3(2)) which
 2 are such simplified employee pensions.”.

3 **TITLE II—IMPROVED PENSION** 4 **PROTECTIONS FOR WOMEN**

5 **SEC. 201. ELIMINATION OF INTEGRATION WITH WORKERS’** 6 **COMPENSATION AND SIMILAR BENEFITS.**

7 Section 206 of the Employee Retirement Income Se-
 8 curity Act of 1974 (as amended by section 104(a)) is
 9 amended further by adding at the end the following new
 10 subsection:

11 “(h) INTEGRATION WITH WORKERS’ COMPENSATION
 12 AND SIMILAR BENEFITS PRECLUDED.—Benefits under an
 13 employee pension benefit plan may not vary based on the
 14 amount of benefits received by a participant or beneficiary
 15 under an applicable worker’s compensation law, unemploy-
 16 ment compensation law, or disability insurance law, or on
 17 whether the participant or beneficiary is entitled to such
 18 benefits.”.

19 **SEC. 202. SPOUSAL CONSENT REQUIRED FOR DISTRIBU-** 20 **TIONS FROM DEFINED CONTRIBUTION** 21 **PLANS.**

22 (a) IN GENERAL.—Section 205(b) of the Employee
 23 Retirement Income Security Act of 1974 (29 U.S.C.
 24 1055(b)) is amended to read as follows:

1 “(b)(1) This section shall apply to any defined benefit
2 plan and to any individual account plan.

3 “(2) This section shall not apply to a plan which the
4 Secretary of the Treasury or his delegate has determined
5 is a plan described in section 404(c) of the Internal Rev-
6 enue Code of 1986 (or a continuation thereof) in which
7 participation is substantially limited to individuals who,
8 before January 1, 1976, ceased employment covered by
9 the plan.”

10 (b) HARDSHIP DISTRIBUTION.—Section 205 of such
11 Act (29 U.S.C. 1055) is amended by adding at the end
12 the following new subsection:

13 “(m) This section shall not apply to a hardship dis-
14 tribution under section 401(k)(2)(B)(i)(IV) of the Internal
15 Revenue Code of 1986.”

16 (c) SPECIAL RULE FOR CASH-OUTS.—Section 205(g)
17 of such Act (29 U.S.C. 1055(g)) is amended by adding
18 at the end the following new paragraph:

19 “(4) SPECIAL RULE FOR DEFINED CONTRIBU-
20 TION PLANS.—

21 “(A) IN GENERAL.—In the case of an indi-
22 vidual account plan, notwithstanding paragraph
23 (2), if the present value of the qualified joint
24 and survivor annuity or the qualified preretire-
25 ment survivor annuity exceeds \$10,000, the

plan may immediately distribute 50 percent of the present value of such annuity to each spouse, subject to the requirements of section 203(f) as if each spouse were a participant.

“(B) EXCEPTION.—The plan may distribute a different percentage of the present value of an annuity to each spouse if a court order or contractual agreement between the spouses provides for such different percentage.”

SEC. 203. MODIFICATIONS OF JOINT AND SURVIVOR ANNUITY REQUIREMENTS.

(a) AMOUNT OF ANNUITY.—

(1) IN GENERAL.—Paragraph (1) of section 205(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(a)) is amended by inserting “or, at the election of the participant, shall be provided in the form of a qualified joint and 75 percent survivor annuity” after “survivor annuity,”.

(2) DEFINITION.—Subsection (d) of section 205 of such Act (29 U.S.C. 1055) is amended—

(A) by redesignating paragraphs (1) and

(2) as subparagraphs (A) and (B), respectively,

(B) by inserting “(1)” after “(d)”, and

(C) by adding, after subparagraph B, the

following new paragraph:

1 “(2) For purposes of this section, the term ‘qualified
2 joint and 75 percent survivor annuity’ means a joint and
3 survivor annuity under which the survivor annuity for the
4 life of the surviving spouse is equal to at least 75 percent
5 of the amount of the annuity which is payable during the
6 joint lives of the participant and spouse.”

7 (3) CONFORMING AMENDMENTS.—

8 (A) Paragraph (1) of section 205(c) of
9 such Act (29 U.S.C. 1055) is amended by in-
10 sserting “or qualified joint and 75 percent sur-
11 vivor annuity” after “qualified joint and sur-
12 vivor annuity”.

13 (B) Subsection (e)(1) of such Act is
14 amended by inserting “or, if the participant has
15 so elected, a qualified joint and 75 percent sur-
16 vivor annuity” after “qualified joint and sur-
17 vivor annuity” each time it appears.

18 (b) ILLUSTRATION REQUIREMENT.—Clause (i) of
19 section 205(c)(3)(A) of such Act (29 U.S.C.
20 1055(c)(3)(A)) is amended to read as follows:

21 “(i) the terms and conditions of each qualified
22 joint and survivor annuity and qualified joint and 75
23 percent survivor annuity offered, accompanied by an
24 illustration of the benefits under each such annuity
25 for the particular participant and spouse and an ac-

1 knowledge form to be signed by the participant
 2 and the spouse that they have read and considered
 3 the illustration before any form of retirement benefit
 4 is chosen.”.

5 **SEC. 204. DIVISION OF PENSION BENEFITS UPON DIVORCE.**

6 (a) IN GENERAL.—Section 206(d)(3) of the Em-
 7 ployee Retirement Income Security Act of 1974 (29
 8 U.S.C. 1056(d)(3)) is amended by redesignating subpara-
 9 graph (N) as subparagraph (O) and by inserting after
 10 subparagraph (M) the following new subparagraph:

11 “(N) SPECIAL RULES AND PROCEDURES
 12 FOR DOMESTIC RELATIONS ORDERS NOT SPECI-
 13 FIFYING DIVISION OF PENSION BENEFITS.—

14 “(i) IN GENERAL.—In any case in
 15 which—

16 “(I) a domestic relations order
 17 (including an annulment or other
 18 order of marital dissolution) relates to
 19 provision of marital property with re-
 20 spect to a marriage of at least 5 years
 21 duration between an individual who is
 22 a participant in a pension plan and
 23 such individual’s former spouse,

24 “(II) such order, and all prior or-
 25 ders (if any) described in subclause

1 (I) relating to such marriage, do not
2 specifically provide that pension bene-
3 fits were considered by the parties
4 and that no division of such benefits
5 is intended,

6 “(III) such order is not a quali-
7 fied domestic relations order (as de-
8 termined without regard to this sub-
9 paragraph) and there is no other prior
10 qualified domestic relations order
11 issued in connection with the dissolu-
12 tion of the marriage to which such
13 order relates, and

14 “(IV) the former spouse notifies
15 the plan within the period prescribed
16 under clause (vii) that the former
17 spouse is entitled to benefits under
18 the plan in accordance with the provi-
19 sions of this subparagraph,

20 such domestic relations order shall be
21 treated as a qualified domestic relations
22 order for purposes of this paragraph.

23 “(ii) AMOUNT OF BENEFIT.—Any do-
24 mestic relations order treated as a quali-
25 fied domestic relations order under clause

1 (i) shall be treated as specifying that the
2 former spouse is entitled to the applicable
3 percentage of the marital share of the par-
4 ticipant's accrued benefit.

5 “(iii) MARITAL SHARE.—For purposes
6 of clause (ii), the marital share of a par-
7 ticipant's accrued benefit is an amount
8 equal to the product of—

9 “(I) such benefit as of the date
10 of the first payment under the plan
11 (to the extent such accrued benefit is
12 vested on the date of the dissolution
13 of the marriage or any later date),
14 and

15 “(II) a fraction, the numerator of
16 which is the period of participation by
17 the participant under the plan start-
18 ing with the date of marriage and
19 ending with the date of dissolution of
20 marriage, and the denominator of
21 which is the total period of participa-
22 tion by the participant under the plan.

23 “(iv) APPLICABLE PERCENTAGE.—
24 For purposes of clause (ii), the applicable
25 percentage is—

1 “(I) except as provided in sub-
2 clause (II), 50 percent, and

3 “(II) in the case of a participant
4 who fails to provide the plan with no-
5 tice of a domestic relations order
6 within the time prescribed under
7 clause (v), 67 percent.

8 “(v) NOTICE BY PARTICIPANT.—Each
9 participant in a pension plan shall, within
10 60 days after the dissolution of the mar-
11 riage of the participant—

12 “(I) notify the plan administrator
13 of the plan of such dissolution, and

14 “(II) provide to the plan adminis-
15 trator a copy of the domestic relations
16 order (including an annulment or
17 other order of marital dissolution)
18 providing for such dissolution and the
19 last known address of the partici-
20 pant’s former spouse.

21 “(vi) NOTICE BY PLAN ADMINIS-
22 TRATOR.—Each plan administrator receiv-
23 ing notice under clause (v) shall promptly
24 notify the former spouse of a participant of
25 such spouse’s rights under this subpara-

graph, including the time period within which such spouse is required to notify the plan of the spouse's intention to claim rights under this subparagraph.

“(vii) NOTICE BY FORMER SPOUSE.—

A former spouse may notify the plan administrator of such spouse's intent to claim rights under this subparagraph at any time before the last day of the 1-year period following receipt of notice under clause (vi).

“(viii) COORDINATION WITH PLAN

PROCEDURES.—The determination under subparagraph (G)(i)(II) with respect to a domestic relations order to which this subparagraph applies shall be made within a reasonable period of time after the plan administrator receives the notice described in clause (vii).

“(ix) INTERPRETATION AS QUALIFIED

DOMESTIC RELATIONS ORDER.—Each plan shall establish reasonable rules for determining how any such deemed domestic relations order is to be interpreted under the plan so as to constitute a qualified domestic relations order that satisfies subpara-

1 graphs (C) through (E) (and a copy of
2 such rules shall be provided to such former
3 spouse promptly after delivery of the di-
4 vorce decree). Such rules—

5 “(I) may delay the effect of such
6 an order until the earlier of the date
7 the participant is fully vested or has
8 terminated employment,

9 “(II) may allow the former
10 spouse to be distributed immediately,

11 “(III) shall permit the former
12 spouse to be paid not later than the
13 earliest retirement age under the plan
14 or the participant’s death,

15 “(IV) may require the submitter
16 of the divorce decree to present a
17 marriage certificate or other evidence
18 of the marriage date to assist in ben-
19 efit calculations, and

20 “(V) may conform to the rules
21 applicable to qualified domestic rela-
22 tions orders regarding form or type of
23 benefit.”

24 (b) EFFECTIVE DATE.—The amendment made by
25 this section shall apply with respect to notifications made

1 by former spouses pursuant to section 206(d)(3)(N)(vii)
2 of the Employee Retirement Income Security Act of 1974
3 after December 31, 2001.

4 **SEC. 205. PERIODS OF FAMILY AND MEDICAL LEAVE**
5 **TREATED AS HOURS OF SERVICE FOR PEN-**
6 **SION PARTICIPATION AND VESTING.**

7 (a) PARTICIPATION.—

8 (1) IN GENERAL.—Paragraph (3) of section
9 202(a) of the Employee Retirement Income Security
10 Act of 1974 (relating to minimum participation
11 standards) is amended by adding at the end the fol-
12 lowing new subparagraph:

13 “(E)(i) For purposes of this subsection, in the case
14 of an individual who is absent from work on leave required
15 to be given to such individual under the Family and Med-
16 ical Leave Act of 1993, the plan shall treat as hours of
17 service—

18 “(I) the hours of service which otherwise would
19 normally have been credited to such individual but
20 for such absence, or

21 “(II) in any case in which the plan is unable to
22 determine the hours described in subclause (I), 8
23 hours of service per day of absence.

24 “(ii) The hours described in clause (i) shall be treated
25 as hours of service as provided in this subparagraph—

1 “(I) only in the year in which the absence from
 2 work begins, if section 203(b)(2)(E)(ii)(I) requires
 3 hours to be credited to the year in which the absence
 4 from work begins, or

5 “(II) in any other case, in the immediately fol-
 6 lowing year.”

7 (2) COORDINATION WITH TREATMENT OF MA-
 8 TERNITY AND PATERNITY ABSENCES UNDER BREAK
 9 IN SERVICE RULES.—Subparagraph (A) of section
 10 202(b)(5) of such Act is amended by adding at the
 11 end of clause (i) the following new sentence: “The
 12 preceding sentence shall apply to an absence from
 13 work only if no part of such absence is required to
 14 be given under the Family and Medical Leave Act
 15 of 1993.”

16 (b) VESTING.—

17 (1) IN GENERAL.—Paragraph (2) of section
 18 203(b) of such Act (relating to minimum vesting
 19 standards) is amended by adding at the end the fol-
 20 lowing new subparagraph:

21 “(E)(i) For purposes of this subsection, in the case
 22 of an individual who is absent from work on leave required
 23 to be given to such individual under the Family and Med-
 24 ical Leave Act of 1993, the plan shall treat as hours of
 25 service—

1 “(I) the hours of service which otherwise would
2 normally have been credited to such individual but
3 for such absence, or

4 “(II) in any case in which the plan is unable to
5 determine the hours described in subclause (I), 8
6 hours of service per day of absence.

7 “(ii) The hours described in clause (i) shall be treated
8 as hours of service as provided in this subparagraph—

9 “(I) only in the year in which the absence from
10 work begins, if the participant’s rights in his ac-
11 crued benefit derived from employer contributions
12 are to any extent not nonforfeitable and the partici-
13 pant would have a year of service solely because the
14 period of absence is treated as hours of service as
15 provided in clause (i); or

16 “(II) in any other case, in the immediately fol-
17 lowing year.”

18 (2) COORDINATION WITH TREATMENT OF MA-
19 TERNITY AND PATERNITY ABSENCES UNDER BREAK
20 IN SERVICE RULES.—Clause (i) of section
21 203(b)(3)(E) of such Act is amended by adding at
22 the end of clause (i) the following new sentence:
23 “The preceding sentence shall apply to an absence
24 from work only if no part of such absence is re-

1 quired to be given under the Family and Medical
2 Leave Act of 1993.”

3 (c) APPLICATION TO CURRENT EMPLOYEES.—The
4 amendments made by this section shall not apply to any
5 employee who does not have at least 1 hour of service in
6 any plan year beginning after December 31, 2001.

7 **SEC. 206. RIGHT OF SPOUSE TO KNOW DISTRIBUTION IN-**
8 **FORMATION.**

9 Paragraph (3) of section 205(c) of the Employee Re-
10 tirement Income Security Act of 1974 (29 U.S.C.
11 1055(c)(3)) is amended by adding at the end the following
12 new subparagraph:

13 “(C) EXPLANATION TO SPOUSE.—At the
14 time a plan provides a participant with a writ-
15 ten explanation under subparagraph (A) or (B),
16 such plan shall provide a copy of such expla-
17 nation to such participant’s spouse. If the last
18 known address of the spouse is the same as the
19 last known address of the participant, the re-
20 quirement of the preceding sentence shall be
21 treated as met if the copy referred to in the
22 preceding sentence is included in a single mail-
23 ing made to such address and addressed to both
24 such participant and spouse.”.

1 **SEC. 207. REPEAL OF REDUCTION IN MILITARY SURVIVOR**
2 **BENEFIT PLAN ANNUITIES AT AGE 62.**

3 (a) COMPUTATION OF ANNUITY FOR A SPOUSE,
4 FORMER SPOUSE, OR CHILD.—Subsection (a) of section
5 1451 of title 10, United States Code, is amended—

6 (1) in paragraph (1), by striking “shall be de-
7 termined as follows:” and all that follows and insert-
8 ing the following: “shall be the amount equal to 55
9 percent of the base amount.”;

10 (2) in paragraph (2), by striking “shall be de-
11 termined as follows:” and all that follows and insert-
12 ing the following: “shall be the amount equal to a
13 percentage of the base amount that is less than 55
14 percent and is determined under subsection (f).”.

15 (b) ANNUITIES FOR SURVIVORS OF CERTAIN PER-
16 SONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY
17 FOR SBP.—Subsection (c)(1) of such section is amended
18 by striking “shall be determined as follows:” and all that
19 follows and inserting the following: “shall be the amount
20 equal to 55 percent of the retired pay to which the member
21 or former member would have been entitled if the member
22 or former member had been entitled to that pay based
23 upon his years of active service when he died.”.

24 (c) REPEAL OF REQUIREMENT FOR REDUCTION.—
25 Such section is further amended by striking subsection
26 (d).

1 (d) REPEAL OF UNNECESSARY SUPPLEMENTAL
 2 SBP.—(1) Subchapter III of chapter 73 of title 10,
 3 United States Code, is repealed.

4 (2) The table of subchapters at the beginning of such
 5 chapter is amended by striking the item relating to sub-
 6 chapter III.

7 (e) EFFECTIVE DATE.—The amendments made by
 8 this section shall take effect on October 1, 2001, and shall
 9 apply with respect to annuity payments for months begin-
 10 ning on or after that date.

11 **SEC. 208. SURVIVOR ANNUITIES FOR WIDOWS, WIDOWERS,**
 12 **AND FORMER SPOUSES OF FEDERAL EM-**
 13 **PLOYEES WHO DIE BEFORE ATTAINING AGE**
 14 **FOR DEFERRED ANNUITY UNDER CIVIL**
 15 **SERVICE RETIREMENT SYSTEM.**

16 (a) BENEFITS FOR WIDOW OR WIDOWER.—Section
 17 8341(f) of title 5, United States Code, is amended—

18 (1) in the matter preceding paragraph (1) by—

19 (A) by inserting “a former employee sepa-
 20 rated from the service with title to deferred an-
 21 nuity from the Fund dies before having estab-
 22 lished a valid claim for annuity and is survived
 23 by a spouse, or if” before “a Member”; and

24 (B) by inserting “of such former employee
 25 or Member” after “the surviving spouse”;

1 (2) in paragraph (1)—

2 (A) by inserting “former employee or” be-
3 fore “Member commencing”; and

4 (B) by inserting “former employee or” be-
5 fore “Member dies”; and

6 (3) in the undesignated sentence following para-
7 graph (2)—

8 (A) in the matter preceding subparagraph

9 (A) by inserting “former employee or” before
10 “Member”; and

11 (B) in subparagraph (B) by inserting
12 “former employee or” before “Member”.

13 (b) BENEFITS FOR FORMER SPOUSE.—Section
14 8341(h) of title 5, United States Code, is amended—

15 (1) in paragraph (1)—

16 (A) by redesignating such paragraph as
17 paragraph (1)(A); and

18 (B) by adding at the end the following:

19 “(B) Subject to paragraphs (2) through (5) of this
20 subsection, a former spouse of a former employee who dies
21 after having separated from the service with title to a de-
22 ferred annuity under section 8338(a) but before having
23 established a valid claim for annuity is entitled to a sur-
24 vivor annuity under this subsection, if and to the extent
25 expressly provided for in an election under section

1 8339(j)(3) of this title, or in the terms of any decree of
2 divorce or annulment or any court order or court-approved
3 property settlement agreement incident to such decree.”;
4 and

5 (2) in paragraph (2)—

6 (A) in subparagraph (A)(ii) by striking “or
7 annuitant,” and inserting “annuitant, or former
8 employee”; and

9 (B) in subparagraph (B)(iii) by inserting
10 “former employee or” before “Member”.

11 (c) PROTECTION OF SURVIVOR BENEFIT RIGHTS.—
12 Section 8339(j)(3) of title 5, United States Code, is
13 amended by adding at the end the following: “The Office
14 shall provide by regulation for the application of this sub-
15 section to the widow, widower, or surviving former spouse
16 of a former employee who dies after having separated from
17 the service with title to a deferred annuity under section
18 8338(a) but before having established a valid claim for
19 annuity.”.

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall take effect on the date of the enactment
22 of this Act and shall apply only in the case of a former
23 employee who dies on or after such date.

1 **SEC. 209. ORDER OF PRECEDENCE FOR DISPOSITION OF**
2 **AMOUNTS REMAINING IN THE THRIFT SAV-**
3 **INGS ACCOUNT OF A FEDERAL EMPLOYEE**
4 **(OR FORMER EMPLOYEE) WHO DIES BEFORE**
5 **MAKING AN EFFECTIVE ELECTION CONTROL-**
6 **LING SUCH DISPOSITION.**

7 (a) IN GENERAL.—Section 8433(e) of title 5, United
8 States Code, is amended—

9 (1) by striking “(e)” and inserting “(e)(1)”;

10 (2) by striking all that follows “paid” and in-
11 serting “in accordance with paragraph (2).”; and

12 (3) by adding at the end the following:

13 “(2) An amount under paragraph (1) shall be paid
14 in a manner consistent with the provisions of section
15 8424(d), except that, in applying the order of precedence
16 under such provisions—

17 “(A) the widow or widower of the decedent shall
18 be the first party entitled to receive (instead of any
19 designated beneficiary); and

20 “(B) if there is no widow or widower, the party
21 next entitled to receive shall be the beneficiary or
22 beneficiaries designated by the employee or Member
23 (or former employee or Member) in accordance with
24 the procedures that would otherwise normally apply,
25 subject to such additional conditions as the Execu-
26 tive Director shall by regulation prescribe based on

1 section 205(c)(2) of the Employee Retirement In-
 2 come Security Act of 1974.”.

3 (b) EFFECTIVE DATE.—This section and the amend-
 4 ment made by this section shall take effect on the 90th
 5 day after the date of the enactment of this Act, and shall
 6 apply in the case of any individual who dies on or after
 7 such 90th day.

8 **SEC. 210. INTEREST ON AMOUNTS PAID TO MAKE UP FOR**
 9 **CERTAIN CIVIL SERVICE ANNUITY BENEFITS**
 10 **WRONGFULLY DENIED.**

11 (a) IN GENERAL.—Chapter 77 of title 5, United
 12 States Code, is amended by adding at the end the fol-
 13 lowing:

14 **“§ 7704. Interest on amounts paid to make up for cer-**
 15 **tain annuity benefits wrongfully denied**

16 “(a) In the case of an individual who, on the basis
 17 of a timely appeal to the Merit Systems Protection Board
 18 under section 8347(d) or 8461(e), or petition for judicial
 19 review under section 7703 from a final order or decision
 20 of the Board in any such appeal, is found by the relevant
 21 authority—

22 “(1) to have been affected by an erroneous ap-
 23 plication or interpretation of subchapter III of chap-
 24 ter 83, chapter 84, or any other provision of law (or
 25 any rule or regulation relating thereto), and

1 “(2) to be entitled to receive an amount equal
 2 to all or any part of an annuity not paid to such in-
 3 dividual as a result of such erroneous application or
 4 interpretation,
 5 the amount under paragraph (2) may, in the discretion
 6 of such authority, be made payable with interest.

7 “(b) Any such interest—

8 “(1) shall be computed in such manner as the
 9 Merit Systems Protection Board or the court (as the
 10 case may be) considers appropriate; and

11 “(2) shall be payable out of the Civil Service
 12 Retirement and Disability Fund.

13 “(c) For purposes of this section, the term ‘annuity’
 14 means any annuity (including a survivor annuity) payable
 15 out of the Civil Service Retirement and Disability Fund.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 8348(a)(1)(A) of title 5, United
 18 States Code, is amended by striking “Fund;” and
 19 inserting “Fund (including any interest payable
 20 under section 7704);”.

21 (2) The analysis for chapter 77 of title 5,
 22 United States Code, is amended by adding at the
 23 end the following:

“7704. Interest on amounts paid to make up for certain annuity benefits wrong-
 fully denied.”.

1 **SEC. 211. AMENDMENTS RELATING TO EFFECTIVE DATE**
2 **PROVISION OF THE CIVIL SERVICE RETIRE-**
3 **MENT SPOUSE EQUITY ACT OF 1984.**

4 (a) **ELIMINATION OF CERTAIN BARS TO ELIGI-**
5 **BILITY.**—Section 4(b) of the Civil Service Retirement
6 Spouse Equity Act of 1984 (5 U.S.C. 8341 note) is
7 amended—

8 (1) in paragraph (1)(B)(i), by striking “after
9 September 14, 1978, and”; and

10 (2) by repealing paragraph (4).

11 (b) **NEW DEADLINE FOR APPLICATIONS.**—

12 (1) **IN GENERAL.**—Section 4(b)(1)(B)(iv) of the
13 Civil Service Retirement Spouse Equity Act of 1984
14 is amended by striking “May 7, 1989” and inserting
15 “May 7, 2002”.

16 (2) **AUTHORITY TO WAIVE DEADLINE.**—Section
17 4(b) of the Civil Service Retirement Spouse Equity
18 Act of 1984 is amended by adding at the end the
19 following:

20 “(6)(A) The Director of the Office of Personnel Man-
21 agement may waive the deadline under paragraph
22 (1)(B)(iv) in any case in which the Director determines
23 that the circumstances so warrant.

24 “(B) In making a determination under this para-
25 graph, one of the factors which may be taken into account

1 is whether the individual involved has previously submitted
 2 a timely application under this section—

3 “(i) which was denied; but

4 “(ii) which, based on criteria applied under this
 5 section pursuant to changes in law subsequent to the
 6 denial, would have been approved.”.

7 **TITLE III—SIMPLIFIED** 8 **INVESTMENT STANDARDS**

9 **SEC. 301. EXEMPTION FROM PROHIBITED TRANSACTION**

10 **RULES FOR EMERGENT TRANSACTIONS.**

11 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 12 INCOME SECURITY ACT OF 1974.—Section 408 of the
 13 Employee Retirement Income Security Act of 1974 (29
 14 U.S.C. 1108) is amended by adding at the end the fol-
 15 lowing new subsection:

16 “(g)(1) Pursuant to regulations issued by the Sec-
 17 retary, a transaction between an employee benefit plan
 18 and an eligible person constituting the purchase or sale
 19 of a financial product which is in violation of a restriction
 20 imposed by section 406 or 407(a) shall be exempted under
 21 subsection (a) from treatment as a violation of such re-
 22 striction if—

23 “(A) prior to engaging in the transaction, the
 24 plan acquires from the eligible person a qualifying
 25 guarantee, consisting of a letter of credit or other

1 form of written guarantee, issued by a bank or simi-
2 lar financial institution (other than the eligible per-
3 son requesting the exemption or an affiliate) regu-
4 lated and supervised by, and subject to periodic ex-
5 amination by, an agency of a State or of the Federal
6 Government, in a stated amount equal, as of the
7 close of business on the day preceding the trans-
8 action, to not less than 100 percent of the amount
9 of plan assets involved in the transaction, plus inter-
10 est on that amount at a rate determined by the par-
11 ties to the transaction, or in the absence of such de-
12 termination, an interest rate equal to the under-
13 payment rate defined in section 6621(a)(2) of the
14 Internal Revenue Code of 1986;

15 “(B) the eligible person receives in such trans-
16 action not more than reasonable compensation;

17 “(C) such transaction is expressly approved by
18 an independent fiduciary who has investment au-
19 thority with respect to the plan assets involved in
20 the transaction;

21 “(D) within 60 days after the transaction, the
22 eligible person submits to the Secretary an applica-
23 tion for an exemption under subsection (a) from
24 such restriction;

1 “(E) immediately after the acquisition of the fi-
2 nancial product—

3 “(i) the fair market value of such financial
4 product does not exceed 1 percent of the fair
5 market value of the assets of the plan, and

6 “(ii) the aggregate fair market value of all
7 outstanding financial products acquired by the
8 plan from the eligible person pursuant to this
9 subsection does not exceed 5 percent of the fair
10 market value of the assets of the plan;

11 “(F) the Secretary determines not to grant the
12 exemption; and

13 “(G) the transaction is reversed within 60 days
14 after the date of the Secretary’s determination.

15 “(2) For purposes of this subsection—

16 “(A) a guarantee referred to in paragraph (1)
17 is ‘qualifying’ if such guarantee is irrevocable and,
18 under the terms of the guarantee—

19 “(i) if the Secretary grants the exemption,
20 the guarantee may expire without any payments
21 made to the plan, and

22 “(ii) if the Secretary determines not to
23 grant the exemption, the plan has the uncondi-
24 tional right to apply the amounts under the
25 guarantee to any losses suffered and to the pay-

1 ment of interest determined under paragraph
2 (1); and

3 “(B) the term ‘eligible person’ means a person
4 that—

5 “(i) consists of—

6 “(I) a bank as defined in section
7 202(a)(2) of the Investment Advisers Act
8 of 1940,

9 “(II) an investment adviser registered
10 under the Investment Advisers Act of
11 1940,

12 “(III) an insurance company which is
13 qualified to do business in more than one
14 State, or

15 “(IV) a broker-dealer registered under
16 the Securities Exchange Act of 1934,

17 “(ii) has shareholders’ or partners’ equity
18 in excess of \$1,000,000, and

19 “(iii) is not described in section 411.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 this section shall apply with respect to transactions occur-
22 ring after December 31, 2001.

1 **SEC. 302. PROHIBITED TRANSACTION EXEMPTION FOR THE**
2 **PROVISION OF INVESTMENT ADVICE.**

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

5 (1) IN GENERAL.—Section 408(b) of the Em-
6 ployee Retirement Income Security Act of 1974 (29
7 U.S.C. 1108(b)) is amended by adding at the end
8 the following new paragraph:

9 “(14)(A) Any transaction described in subpara-
10 graph (B) in connection with the provision of invest-
11 ment advice described in section 3(21)(A)(ii), in any
12 case in which—

13 “(i) the plan provides for individual ac-
14 counts and permits a participant or beneficiary
15 to exercise control over assets in his or her ac-
16 count,

17 “(ii) the advice is qualified investment ad-
18 vice provided to a participant or beneficiary of
19 the plan by a fiduciary adviser in connection
20 with any sale, acquisition, or holding of a secu-
21 rity or other property for purposes of invest-
22 ment of plan assets, and

23 “(iii) the requirements of subsection (g)
24 are met in connection with each instance of the
25 provision of the advice.

1 “(B) The transactions described in this sub-
2 paragraph are the following:

3 “(i) the provision of the advice to the par-
4 ticipant or beneficiary;

5 “(ii) the sale, acquisition, or holding of a
6 security or other property (including any lend-
7 ing of money or other extension of credit associ-
8 ated with the sale, acquisition, or holding of a
9 security or other property) pursuant to the ad-
10 vice; and

11 “(iii) the direct or indirect receipt of fees
12 or other compensation by the fiduciary adviser
13 or an affiliate thereof (or any employee, agent,
14 or registered representative of the fiduciary ad-
15 viser or affiliate) in connection with the provi-
16 sion of the advice.”.

17 (2) REQUIREMENTS.—Section 408 of such Act
18 is amended further by adding at the end the fol-
19 lowing new subsection:

20 “(g) REQUIREMENTS FOR EXEMPTION FROM PRO-
21 HIBITED TRANSACTIONS WITH RESPECT TO PROVISION
22 OF INVESTMENT ADVICE.—

23 “(1) IN GENERAL.—The requirements of this
24 subsection are met in connection with the provision
25 of qualified investment advice provided to a partici-

1 pant or beneficiary of an employee benefit plan by
2 a fiduciary adviser with respect to the plan in con-
3 nection with any sale, acquisition, or holding of a se-
4 curity or other property for purposes of investment
5 of amounts held by the plan, if the requirements of
6 the following subparagraphs are met:

7 “(A) WRITTEN DISCLOSURES.—At a time
8 contemporaneous with the provision of the ad-
9 vice in connection with the sale, acquisition, or
10 holding of the security or other property, the fi-
11 duciary adviser shall provide to the recipient of
12 the advice a clear and conspicuous notification,
13 written in a manner to be reasonably under-
14 stood by the average plan participant pursuant
15 to regulations which shall be prescribed by the
16 Secretary (including mathematical examples), of
17 the following:

18 “(i) INTERESTS HELD BY THE FIDU-
19 CIARY ADVISER.—Any interest of the fidu-
20 ciary adviser in, or any affiliation or con-
21 tractual relationship of the fiduciary ad-
22 viser (or affiliates thereof) with any third
23 party having an interest in, the security or
24 other property.

1 “(ii) RELATED FEES OR COMPENSA-
2 TION IN CONNECTION WITH THE PROVI-
3 SION OF THE ADVICE.—All fees or other
4 compensation relating to the advice (in-
5 cluding fees or other compensation
6 itemized with respect to each security or
7 other property with respect to which the
8 advice is provided) that the fiduciary ad-
9 viser (or any affiliate thereof) is to receive
10 (including compensation provided by any
11 third party) in connection with the provi-
12 sion of the advice or in connection with the
13 sale, acquisition, or holding of the security
14 or other property.

15 “(iii) ONGOING FEES OR COMPENSA-
16 TION IN CONNECTION WITH THE SECURITY
17 OR PROPERTY INVOLVED.—All fees or
18 other compensation that the fiduciary ad-
19 viser (or any affiliate thereof) is to receive,
20 on an ongoing basis, in connection with
21 any security or other property with respect
22 to which the fiduciary adviser gives the ad-
23 vice.

24 “(iv) APPLICABLE LIMITATIONS ON
25 SCOPE OF ADVICE.—Any limitation placed

1 (in accordance with the requirements of
2 this subsection) on the scope of the advice
3 to be provided by the fiduciary adviser with
4 respect to the sale, acquisition, or holding
5 of the security or other property.

6 “(v) TYPES OF SERVICES GENERALLY
7 OFFERED.—The types of services offered
8 by the fiduciary adviser in connection with
9 the provision of qualified investment advice
10 by the fiduciary adviser.

11 “(vi) FIDUCIARY STATUS OF THE FI-
12 DUCIARY ADVISER.—That the fiduciary ad-
13 visor is a fiduciary of the plan.

14 “(B) DISCLOSURE BY FIDUCIARY ADVISER
15 IN ACCORDANCE WITH APPLICABLE SECURITIES
16 LAWS.—The fiduciary adviser shall provide ap-
17 propriate disclosure, in connection with the sale,
18 acquisition, or holding of the security or other
19 property, in accordance with all applicable secu-
20 rities laws.

21 “(C) TRANSACTION OCCURRING SOLELY AT
22 DIRECTION OF RECIPIENT OF ADVICE.—The
23 sale, acquisition, or holding of the security or
24 other property shall occur solely at the direction
25 of the recipient of the advice.

1 “(D) REASONABLE COMPENSATION.—The
2 compensation received by the fiduciary adviser
3 and affiliates thereof in connection with the
4 sale, acquisition, or holding of the security or
5 other property shall be reasonable.

6 “(E) ARM’S LENGTH TRANSACTION.—The
7 terms of the sale, acquisition, or holding of the
8 security or other property shall be at least as
9 favorable to the plan as an arm’s length trans-
10 action would be.

11 “(2) CONTINUED AVAILABILITY OF INFORMA-
12 TION FOR AT LEAST 1 YEAR.—The requirements of
13 paragraph (1)(A) shall be deemed not to have been
14 met in connection with the initial or any subsequent
15 provision of advice described in paragraph (1) if, at
16 any time during the 1-year period following the pro-
17 vision of the advice, the fiduciary adviser fails to
18 maintain the information described in clauses (i)
19 through (iv) of subparagraph (A) in currently accu-
20 rate form or to make the information available, upon
21 request and without charge, to the recipient of the
22 advice.

23 “(3) EVIDENCE OF COMPLIANCE MAINTAINED
24 FOR AT LEAST 6 YEARS.—A fiduciary adviser re-
25 ferred to in paragraph (1) who has provided advice

1 referred to in such paragraph shall, for a period of
2 not less than 6 years after the provision of the ad-
3 vice, maintain any records necessary for determining
4 whether the requirements of the preceding provisions
5 of this subsection and of subsection (b)(14) have
6 been met. A transaction prohibited under section
7 406 shall not be considered to have occurred solely
8 because the records are lost or destroyed prior to the
9 end of the 6-year period due to circumstances be-
10 yond the control of the fiduciary adviser.

11 “(4) MODEL DISCLOSURE FORMS.—The Sec-
12 retary shall prescribe regulations setting forth model
13 disclosure forms to assist fiduciary advisers in com-
14 plying with the disclosure requirements of under this
15 subsection.

16 “(5) EXEMPTION FOR EMPLOYERS CON-
17 TRACTING FOR QUALIFIED INVESTMENT ADVICE.—

18 “(A) RELIANCE ON CONTRACTUAL AR-
19 RANGEMENTS.—Subject to subparagraph (B), a
20 plan sponsor or other person who is a fiduciary
21 (other than a fiduciary adviser) shall not be
22 treated as failing to meet the requirements of
23 this part solely by reason of the provision of
24 qualified investment advice (or solely by reason

1 of contracting for or otherwise arranging for
2 the provision of the investment advice), if—

3 “(i) the advice is provided by a fidu-
4 ciary adviser pursuant to an arrangement
5 between the plan sponsor or other fidu-
6 ciary and the fiduciary adviser for the pro-
7 vision by the fiduciary adviser of qualified
8 investment advice, and

9 “(ii) the terms of the arrangement re-
10 quire compliance by the fiduciary adviser
11 with the requirements of this subsection.

12 “(B) CONTINUED DUTY FOR EMPLOYER TO
13 PRUDENTLY SELECT AND REVIEW FIDUCIARY
14 ADVISERS.—Nothing in subparagraph (A) shall
15 be construed to exempt a plan sponsor or other
16 person who is a fiduciary from any requirement
17 of this part for the prudent selection and peri-
18 odic review of a fiduciary adviser with whom
19 the plan sponsor or other person enters into an
20 arrangement for the provision of qualified in-
21 vestment advice. The plan sponsor or other per-
22 son who is a fiduciary shall not be liable under
23 this part with respect to the specific qualified
24 investment advice given by the fiduciary adviser
25 to any particular recipient of the advice. Pursu-

1 ant to regulations which shall be prescribed by
2 the Secretary, the fiduciary adviser shall pro-
3 vide appropriate disclosures to the plan sponsor
4 to enable the plan sponsor to fulfill its fiduciary
5 responsibilities under this part. In connection
6 with the provision of the advice by a fiduciary
7 adviser on an ongoing basis, such regulations
8 shall provide for such disclosures on at least an
9 annual basis.

10 “(C) PLAN ASSETS MAY BE USED TO PAY
11 REASONABLE EXPENSES.—Nothing in this part
12 shall be construed to preclude the use of plan
13 assets to pay for reasonable expenses in pro-
14 viding qualified investment advice.

15 “(6) ANNUAL REVIEWS BY THE SECRETARY.—
16 The Secretary shall conduct annual reviews of ran-
17 domly selected fiduciary advisers providing qualified
18 investment advice to participants and beneficiaries.
19 In the case of each review, the Secretary shall review
20 the following:

21 “(A) COMPLIANCE BY ADVICE COMPUTER
22 MODELS WITH GENERALLY ACCEPTED INVEST-
23 MENT MANAGEMENT PRINCIPLES.—The extent
24 to which advice computer models employed by

1 the fiduciary adviser comply with generally ac-
2 cepted investment management principles.

3 “(B) COMPLIANCE WITH DISCLOSURE RE-
4 QUIREMENTS.—The extent to which disclosures
5 provided by the fiduciary adviser have complied
6 with the requirements of this subsection.

7 “(C) EXTENT OF VIOLATIONS.—The ex-
8 tent to which any violations of fiduciary duties
9 have occurred in connection with the provision
10 of the advice.

11 “(D) EXTENT OF REPORTED COM-
12 PLAINTS.—The extent to which complaints to
13 relevant agencies have been made in connection
14 with the provision of the advice.

15 Any proprietary information obtained by the Sec-
16 retary shall be treated as confidential.

17 “(7) DUTY OF CONFLICTED FIDUCIARY AD-
18 VISER TO PROVIDE FOR ALTERNATIVE INDE-
19 PENDENT ADVICE.—

20 “(A) IN GENERAL.—In connection with
21 any qualified investment advice provided by a
22 fiduciary adviser to a participant or beneficiary
23 regarding any security or other property, if the
24 fiduciary adviser—

1 “(i) has an interest in the security or
2 other property, or

3 “(ii) has an affiliation or contractual
4 relationship with any third party that has
5 an interest in the security or other prop-
6 erty,

7 the requirements of paragraph (1) shall be
8 treated as not met in connection with the advice
9 unless the fiduciary adviser has arranged, as an
10 alternative to the advice that would otherwise
11 be provided by the fiduciary advisor, for quali-
12 fied investment advice with respect to the secu-
13 rity or other property provided by at least one
14 alternative investment adviser meeting the re-
15 quirements of subparagraph (B).

16 “(B) INDEPENDENCE AND QUALIFICA-
17 TIONS OF ALTERNATIVE INVESTMENT AD-
18 VISER.—Any alternative investment adviser
19 whose qualified investment advice is arranged
20 for by a fiduciary adviser pursuant to subpara-
21 graph (A)—

22 “(i) shall have no material interest in,
23 and no material affiliation or contractual
24 relationship with any third party having a
25 material interest in, the security or other

1 property with respect to which the invest-
2 ment adviser is providing the advice, and

3 “(ii) shall meet the requirements of a
4 fiduciary adviser under paragraph (8)(A),
5 except that an alternative investment ad-
6 viser may not be a fiduciary of the plan
7 other than in connection with the provision
8 of the advice.

9 “(C) SCOPE AND FEES OF ALTERNATIVE
10 INVESTMENT ADVICE.—Any qualified invest-
11 ment advice provided pursuant to this para-
12 graph by an alternative investment adviser shall
13 be of the same type and scope, and provided
14 under the same terms and conditions (including
15 no additional charge to the participant or bene-
16 ficiary), as apply with respect to the qualified
17 investment advice to be provided by the fidu-
18 ciary adviser.

19 “(8) FIDUCIARY ADVISER DEFINED.—For pur-
20 poses of this subsection and subsection (b)(14)—

21 “(A) IN GENERAL.—The term ‘fiduciary
22 adviser’ means, with respect to a plan, a person
23 who—

24 “(i) is a fiduciary of the plan by rea-
25 son of the provision of qualified investment

1 advice by such person to a participant or
2 beneficiary,

3 “(ii) meets the qualifications of sub-
4 paragraph (B), and

5 “(iii) meets the additional require-
6 ments of subparagraph (C).

7 “(B) QUALIFICATIONS.—A person meets
8 the qualifications of this subparagraph if such
9 person—

10 “(i) is registered as an investment ad-
11 viser under the Investment Advisers Act of
12 1940 (15 U.S.C. 80b–1 et seq.),

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

1 “(iii) is registered as a broker or deal-
2 er under the Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.),

4 “(iv) is a bank or similar financial in-
5 stitution referred to in section 408(b)(4),

6 “(v) is an insurance company quali-
7 fied to do business under the laws of a
8 State, or

9 “(vi) is any other comparable entity
10 which satisfies such criteria as the Sec-
11 retary determines appropriate.

12 “(C) ADDITIONAL REQUIREMENTS WITH
13 RESPECT TO CERTAIN EMPLOYEES OR OTHER
14 AGENTS OF CERTAIN ADVISERS.—A person
15 meets the additional requirements of this sub-
16 paragraph if every individual who is employed
17 (or otherwise compensated) by such person and
18 whose scope of duties includes the provision of
19 qualified investment advice on behalf of such
20 person to any participant or beneficiary is—

21 “(i) a registered representative of
22 such person,

23 “(ii) an individual described in sub-
24 clause (I), (II), or (III) of subparagraph
25 (A)(ii), or

1 “(iii) such other comparable qualified
2 individual as may be designated in regula-
3 tions of the Secretary.

4 “(9) ADDITIONAL DEFINITIONS.—For purposes
5 of this subsection and subsection (b)(14)—

6 “(A) QUALIFIED INVESTMENT ADVICE.—
7 The term ‘qualified investment advice’ means,
8 in connection with a participant or beneficiary,
9 investment advice referred to in section
10 3(21)(A)(ii) which—

11 “(i) consists of an individualized rec-
12 ommendation to the participant or bene-
13 ficiary with respect to the purchase, sale,
14 or retention of securities or other property
15 for the individual account of the partici-
16 pant or beneficiary, in accordance with
17 generally accepted investment management
18 principles, and

19 “(ii) takes into account all investment
20 options under the plan.

21 “(B) AFFILIATE.—The term ‘affiliate’ of
22 another entity means an affiliated person of
23 such entity (as defined in section 2(a)(3) of the
24 Investment Company Act of 1940 (15 U.S.C.
25 80a–2(a)(3))).

1 “(C) REGISTERED REPRESENTATIVE.—

2 The term ‘registered representative’ of another
 3 entity means a person described in section
 4 3(a)(18) of the Securities Exchange Act of
 5 1934 (15 U.S.C. 78c(a)(18)) (substituting such
 6 entity for the broker or dealer referred to in
 7 such section) or a person described in section
 8 202(a)(17) of the Investment Advisers Act of
 9 1940 (15 U.S.C. 80b–2(a)(17)) (substituting
 10 such entity for the investment adviser referred
 11 to in such section).”.

12 (b) ENFORCEMENT.—

13 (1) LIABILITY FOR BREACH.—

14 (A) LIABILITY IN CONNECTION WITH INDIVIDUAL ACCOUNT PLANS.—Section 409 of such
 15 Act (29 U.S.C. 1109) is amended by adding at
 16 the end the following new subsection:
 17 “(c)(1) In any case in which the provision by a fiduciary adviser of qualified investment advice to a participant or beneficiary regarding any security or other property consists of a breach described in subsection (a), the fiduciary adviser shall be personally liable to make good to the individual account of the participant or beneficiary any losses to the individual account resulting from the breach, and to restore to the individual account any profits

18 “(c)(1) In any case in which the provision by a fiduciary adviser of qualified investment advice to a participant or beneficiary regarding any security or other property consists of a breach described in subsection (a), the fiduciary adviser shall be personally liable to make good to the individual account of the participant or beneficiary any losses to the individual account resulting from the breach, and to restore to the individual account any profits

1 of the fiduciary adviser which have been made through use
2 of assets of the individual account by—

3 “(A) the fiduciary adviser, or

4 “(B) any other party with respect to whom a
5 material affiliation or contractual relationship of the
6 fiduciary adviser resulted in a violation of section
7 408(g)(1)(A) in connection with the advice.

8 “(2) In the case of any action under this title by a
9 participant or beneficiary against a fiduciary adviser for
10 relief under this subsection in connection with the provi-
11 sion of any qualified investment advice—

12 “(A) if the participant or beneficiary shows that
13 the fiduciary adviser had any interest in, or had any
14 affiliation or contractual relationship with a third
15 party having an interest in, the security or other
16 property, there shall be a presumption (rebuttable by
17 a preponderance of the evidence) that the fiduciary
18 adviser failed to meet the requirements of subpara-
19 graphs (A) and (B) of section 404(a)(1) in connec-
20 tion with the provision of the advice, and

21 “(B) the dispute may be settled by arbitration,
22 but only pursuant to terms and conditions estab-
23 lished by agreement entered into voluntarily by both
24 parties after the commencement of the dispute.

1 “(3) For purposes of this subsection, the terms ‘fidu-
 2 ciary adviser’ and ‘qualified investment advice’ shall have
 3 the meanings provided such terms in subparagraphs (A)
 4 and (B), respectively, of section 406(g)(7).”.

5 (B) LIMITATION ON EXEMPTION FROM LI-
 6 ABILITY.—Section 403(c) of such Act (29
 7 U.S.C. 1104(c)) is amended—

8 (i) by redesignating paragraph (2) as
 9 paragraph (3) (and by adjusting the
 10 margination of such paragraph to full
 11 measure and adjusting the margination of
 12 subparagraphs (A) through (B) thereof ac-
 13 cordingly); and

14 (ii) by inserting after paragraph (1)
 15 the following new paragraph:

16 “(2)(A) In any case in which—

17 “(i) a participant or beneficiary exercises con-
 18 trol over the assets in his or her account by means
 19 of a sale, acquisition, or holding of a security or
 20 other property with regard to which qualified invest-
 21 ment advice was provided by a fiduciary adviser, and

22 “(ii) any transaction in connection with the ex-
 23 ercise of such control is not a prohibited transaction
 24 solely by reason of section 408(b)(14), paragraph

1 (1) shall not apply with respect to the fiduciary ad-
2 viser in connection with the provision of the advice.

3 “(B) For purposes of this subsection, the terms ‘fidu-
4 ciary adviser’ and ‘qualified investment advice’ shall have
5 the meanings provided such terms in subparagraphs (A)
6 and (B), respectively, of section 408(g)(7).”.

7 (2) ATTORNEY’S FEES.—Section 502(g) of such
8 Act (29 U.S.C. 1132(g)) is amended—

9 (A) in paragraph (1), by inserting “or (3)”
10 after “paragraph (2)”; and

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

13 “(3) In any action under this title by the participant
14 or beneficiary against a fiduciary adviser for relief under
15 section 409(c) in which the plaintiff prevails, the court
16 shall allow a reasonable attorney’s fee and costs of action
17 to the prevailing plaintiff.”.

18 (3) APPLICABILITY OF STATE FRAUD LAWS.—
19 Section 514(b) of such Act (29 U.S.C. 1144(b)) is
20 amended—

21 (A) by redesignating paragraph (9) as
22 paragraph (10); and

23 (B) by inserting after paragraph (8) the
24 following new paragraph:

1 “(9) Nothing in this title shall be construed to super-
 2 sede any State action for fraud against a fiduciary adviser
 3 for any act or failure to act by the fiduciary adviser consti-
 4 tuting a violation of section 409(c).”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply with respect to advice referred to
 7 in section 3(21)(A)(ii) of the Employee Retirement In-
 8 come Security Act of 1974 provided on or after January
 9 1, 2002.

10 **SEC. 303. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**
 11 **SHIP OF DEFINED CONTRIBUTION PLANS.**

12 (a) IN GENERAL.—Section 403(a) of the Employee
 13 Retirement Income Security Act of 1974 (29 U.S.C.
 14 1103(a)) is amended—

15 (1) by redesignating paragraphs (1) and (2) as
 16 subparagraphs (A) and (B), respectively;

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

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

20 “(2)(A) Subject to subparagraph (B), the assets of
 21 a single-employer plan which is a defined contribution plan
 22 and under which some or all of the assets are derived from
 23 employee contributions shall be held in trust by a joint
 24 board of trustees, which shall consist of two or more trust-
 25 ees representing on an equal basis the interests of the em-

1 ployer or employers maintaining the plan and the interests
2 of the participants and their beneficiaries.

3 “(B) This paragraph shall apply for any plan year
4 only if a majority of the participants of the defined con-
5 tribution plan indicates to the plan administrator, in such
6 form and manner as shall be prescribed in regulations of
7 the Secretary, its intention to have this paragraph so
8 apply.

9 “(C)(i) Except as provided in clause (ii), in any case
10 in which the plan is maintained pursuant to one or more
11 collective bargaining agreements between one or more em-
12 ployee organizations and one or more employers, the trust-
13 ees representing the interests of the participants and their
14 beneficiaries shall be designated by such employee organi-
15 zations.

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

22 “(iii) In any case in which clause (i) does not apply
23 with respect to a single-employer plan because the plan
24 is not described in clause (i) or because of a waiver filed
25 pursuant to clause (ii), the trustee or trustees representing

1 the interests of the participants and their beneficiaries
2 shall be selected in accordance with regulations of the Sec-
3 retary. Such regulations may provide for selection of trust-
4 ees by the employer, but only from individuals who have
5 been demonstrated to be independent and to have no con-
6 flict of interest. An individual shall not be treated as ineli-
7 gible for selection as trustee solely because such individual
8 is an employee of the plan sponsor, except that the em-
9 ployee so selected may not be a highly compensated em-
10 ployee (as defined in section 414(q) of the Internal Rev-
11 enue Code of 1986).

12 “(iv) The Secretary shall provide by regulation for
13 the appointment of a neutral, in accordance with the pro-
14 cedures under section 203(f) of the Labor Management
15 Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as
16 necessary to resolve tie votes by the trustees.”.

17 (b) REGULATIONS.—The Secretary of Labor shall
18 prescribe the initial regulations necessary to carry out the
19 provisions of such amendments not later than 90 days
20 after the date of the enactment of this Act.

21 **SEC. 304. DIVERSIFICATION IN DEFINED CONTRIBUTION**
22 **INVESTMENTS.**

23 (a) EFFECTIVE DIRECTION OF INVESTMENT BY PAR-
24 TICIPANTS AND BENEFICIARIES.—Section 407(d)(3) of
25 the Employee Retirement Income Security Act of 1974

1 (29 U.S.C. 1107(d)(3)) is amended by adding at the end
2 the following:

3 “(D)(i) The term ‘eligible individual account
4 plan’ does not include that portion of a profit-shar-
5 ing plan that consists of employer contributions (in-
6 cluding elective deferrals (as defined in section
7 402(g)(3) of the Internal Revenue Code of 1986)
8 pursuant to a qualified cash or deferred arrange-
9 ment (as defined in section 401(k) of such Code))
10 and earnings allocable thereto, if—

11 “(I) under the documents and instruments
12 governing the plan, such contributions (or earn-
13 ings allocable thereto) are required to be in-
14 vested at the direction of a person other than
15 the participant on whose behalf such contribu-
16 tions are made to the plan (or the participant’s
17 beneficiary), or

18 “(II) the documents and instruments gov-
19 erning the plan do not provide for effective im-
20 plementation of investments directed by such a
21 participant (or beneficiary) within 3 years after
22 such direction is made known to the plan.

23 “(ii) For purposes of subsection (a), such por-
24 tion shall be treated as a separate plan.

1 “(iii) This subparagraph shall not apply to an
2 individual account plan if the fair market value of
3 the assets of all individual account plans maintained
4 by the employer equals not more than 10 percent of
5 the fair market value of the assets of all pension
6 plans maintained by the employer.

7 “(iv) This subparagraph shall not apply to an
8 individual account plan that is an employee stock
9 ownership plan as defined in section 409(a) or
10 4975(e)(7) of the Internal Revenue Code or that is
11 a stock bonus plan.”.

12 (b) DIVERSIFICATION OF INVESTMENTS UNDER EM-
13 PLOYEE STOCK OWNERSHIP PLANS BY PARTICIPANTS
14 AND BENEFICIARIES OVER 55 YEARS OF AGE.—Section
15 206 of such Act (29 U.S.C. 1056) (as amended by sections
16 104 and 201) is amended further by adding at the end
17 the following new subsection:

18 “(i) DIVERSIFICATION OF INVESTMENTS UNDER EM-
19 PLOYEE STOCK OWNERSHIP PLANS BY PARTICIPANTS
20 AND BENEFICIARIES OVER 55 YEARS OF AGE.—

21 “(1) IN GENERAL.—An employee stock owner-
22 ship plan shall provide that each qualified partici-
23 pant may elect within 90 days after the close of each
24 plan year in the qualified election period to direct
25 the plan as to the investment of at least 25 percent

1 of the participant's account in the plan (to the ex-
2 tent such portion exceeds the amount to which a
3 prior election under this subsection applies). In the
4 case of the election year in which the participant can
5 make the participant's last election, the preceding
6 sentence shall be applied by substituting '50 percent'
7 for '25 percent'.

8 “(2) METHOD OF MEETING REQUIREMENTS.—

9 A plan shall be treated as meeting the requirements
10 of paragraph (1) if—

11 “(A) the portion of the participant's ac-
12 count covered by the election under paragraph
13 (1) is distributed within 90 days after the pe-
14 riod during which the election may be made, or

15 “(B) the plan offers at least 3 investment
16 options (not inconsistent with regulations pre-
17 scribed by the Secretary of the Treasury) to
18 each participant making an election under para-
19 graph (1) and within 90 days after the period
20 during which the election may be made, the
21 plan invests the portion of the participant's ac-
22 count covered by the election in accordance with
23 such election.

24 “(3) DEFINITIONS.—For purposes of this
25 subsection—

1 “(A) EMPLOYEE STOCK OWNERSHIP
2 PLAN.—The term ‘employee stock ownership
3 plan’ means a defined contribution plan which
4 is an employee stock ownership plan (within the
5 meaning of section 4975(e)(7) of the Internal
6 Revenue Code of 1986) or which meets the re-
7 quirements of section 409(a) of such Code.

8 “(B) QUALIFIED PARTICIPANT.—The term
9 ‘qualified participant’ means any participant
10 who has completed at least 10 years of partici-
11 pation under the plan and has attained age 55.

12 “(C) QUALIFIED ELECTION PERIOD.—The
13 term ‘qualified election period’ means the 6-
14 plan-year period beginning with the later of—

15 “(i) the first plan year in which the
16 individual first became a qualified partici-
17 pant, or

18 “(ii) the first plan year beginning
19 after December 31, 2001.

20 For purposes of the preceding sentence, an em-
21 ployer may elect to treat an individual first be-
22 coming a qualified participant in the first plan
23 year beginning in 2002 as having become a par-
24 ticipant in the first plan year beginning in
25 2003.”.

1 **SEC. 305. REMOVAL OF \$500,000 CAP ON BONDING REQUIRE-**
2 **MENT.**

3 Section 412(a) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1112(a)) is amended, in
5 the matter following paragraph (2), by striking “nor more
6 than \$500,000” and all that follows through “preceding
7 sentence”.

8 **SEC. 306. DISCLOSURE REGARDING INVESTMENTS AND**
9 **VOTING OF PROXIES.**

10 (a) IN GENERAL.—Section 101 of the Employee Re-
11 tirement Income Security Act of 1974 (29 U.S.C. 1021)
12 is amended by inserting after subsection (e) the following
13 new subsection:

14 “(f) DISCLOSURE REGARDING INVESTMENTS AND
15 VOTING OF PROXIES.—

16 “(1) IN GENERAL.—Within 30 days after re-
17 ceipt by the plan administrator of a written request
18 by a participant or beneficiary for relevant and spe-
19 cific information regarding—

20 “(A) the nature or extent of any particular
21 investment of plan assets occurring on a par-
22 ticular date specified in the request, or

23 “(B) the manner in which any right to
24 vote in connection with such investment has
25 been exercised by or under the plan,

1 the plan administrator shall furnish such informa-
2 tion in writing to such participant or beneficiary.
3 The administrator may make a reasonable charge to
4 cover the cost of furnishing such information.

5 “(2) STANDARDS AND REVIEW.—The Secretary
6 shall by regulation prescribe—

7 “(A) standards which must be met by re-
8 quests made pursuant to this subsection, in-
9 cluding standards relating to relevancy and
10 specificity of the information requested, the
11 specificity by which the investment must be
12 identified in the request, and the reasonableness
13 of charges made for furnishing the information,
14 and

15 “(B) procedures by which plan administra-
16 tors may rely on such standards in declining re-
17 quests for information which fail to meet such
18 standards, including methods for obtaining
19 timely and binding determinations by the Sec-
20 retary regarding whether such standards are
21 being met by particular requests.”.

22 (b) ENFORCEMENT.—Section 502(c)(1) of such Act
23 (29 U.S.C. 1132(c)(1)) is amended by striking “section
24 101(e)(1)” and inserting “subsection (e)(1) or (f)(1) of
25 section 101”.

1 (c) CONFORMING AMENDMENT.—Section 101(h)(1)
 2 of such Act (29 U.S.C. 1021(h)(1)) is amended by insert-
 3 ing “or subsection (f)” after “this subsection”.

4 (d) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply with respect to written requests
 6 received after December 31, 2001.

7 **TITLE IV—IMPROVEMENTS IN**
 8 **PENSION INFORMATION AND**
 9 **ENFORCEMENT**

10 **SEC. 401. PENSION BENEFIT STATEMENTS.**

11 (a) STATEMENTS REQUIRED ON PERIODIC BASIS.—

12 (1) IN GENERAL.—Subsection (a) of section
 13 105 of the Employee Retirement Income Security
 14 Act of 1974 (29 U.S.C. 1025) is amended—

15 (A) by striking “shall furnish to any plan
 16 participant or beneficiary who so requests in
 17 writing,” and inserting “shall furnish at least
 18 once every 3 years, in the case of a participant
 19 in a defined benefit plan who has attained age
 20 35, and annually, in the case of a defined con-
 21 tribution plan, to each plan participant, and
 22 shall furnish to any plan participant or bene-
 23 ficiary who so requests,” and

24 (B) by adding at the end the following
 25 flush sentence:

1 “Information furnished under the preceding sentence to
2 a participant in a defined benefit plan (other than at the
3 request of the participant) may be based on reasonable
4 estimates determined under regulations prescribed by the
5 Secretary.”.

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

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

13 (b) INFORMATION ON INVESTMENT PERFORM-
14 ANCE.—Section 105(a) of such Act (29 U.S.C. 1025(a))
15 is amended—

16 (1) in paragraph (1), by striking “and”;

17 (2) in paragraph (2), by striking the period at
18 the end and inserting “, and”; and

19 (3) by adding at the end the following new
20 paragraph:

21 “(3) the percentage of the net return on invest-
22 ment of plan assets for the preceding plan year (or,
23 with respect to investments directed by the partici-
24 pant, the net return on investment of plan assets for
25 such year so directed), and, stated separately, the

1 administrative and transaction fees incurred in con-
2 nection with such investment.”.

3 (c) MODEL STATEMENTS.—The Secretary of Labor
4 shall develop a model benefit statement to be used by plan
5 administrators in complying with the requirements of sec-
6 tion 105(a) of the Employee Retirement Income Security
7 Act of 1974. Such statement shall include—

8 (1) the amount of nonforfeitable accrued bene-
9 fits as of the statement date which is payable at nor-
10 mal retirement age under the plan,

11 (2) the amount of accrued benefits which are
12 forfeitable but which may become nonforfeitable
13 under the terms of the plan,

14 (3) the amount or percentage of any reduction
15 due to integration of the benefit with the partici-
16 pant’s Social Security benefits or similar govern-
17 mental benefits,

18 (4) information on how to contact the Social
19 Security Administration to obtain a participant’s
20 personal earnings and benefit estimate statement,
21 and

22 (5) information on early retirement benefit and
23 joint and survivor annuity reductions.

24 (d) DISCLOSURE OF BENEFIT CALCULATIONS.—

1 (1) IN GENERAL.—Section 105 of such Act (as
2 amended by subsections (a) and (b)) is amended
3 further—

4 (A) by redesignating subsections (b), (c),
5 and (d) as subsections (c), (d), and (e), respec-
6 tively; and

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

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

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

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

20 “(B) upon written request of the participant or
21 beneficiary, any documents relating to the calcula-
22 tion (if available), and

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

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

4 (2) CONFORMING AMENDMENTS.—

5 (A) Section 101(a)(2) of such Act (29
 6 U.S.C. 1021(a)(2)) is amended by striking
 7 “105(a) and (c)” and inserting “105(a), (b),
 8 and (d)”.

9 (B) Section 105(c) of such Act (as redesign-
 10 nated by paragraph (1)(A) of this subsection) is
 11 amended by inserting “or (b)” after “subsection
 12 (a)”.

13 (C) Section 106(b) of such Act (29 U.S.C.
 14 1026(b)) is amended by striking “sections
 15 105(a) and 105(c)” and inserting “subsections
 16 (a), (b), and (d) of section 105”.

17 **SEC. 402. DISCLOSURES TO SECRETARY OF LABOR RELAT-**
 18 **ING TO PLAN TERMINATION AND RELATING**
 19 **TO PLAN SPONSORS AFTER ACQUISITION OR**
 20 **MERGER OF PLANS.**

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

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

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

3 “(d)(1) The administrator of any employee benefit
 4 plan subject to this part shall file with the Secretary a
 5 written notice of—

6 “(A) the termination of the plan, or

7 “(B) in connection with any plan that is ac-
 8 quired by or merged with another plan, the name
 9 and address of the sponsor of the acquired or
 10 merged plan.

11 “(2) The notice required under paragraph (1) shall
 12 be filed with the Secretary not later than 60 days after
 13 the effective date of the termination, acquisition, or merg-
 14 er.”.

15 (b) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply with respect to terminations, acqui-
 17 sitions, and mergers occurring after December 31, 2001.

18 **SEC. 403. DISCLOSURE OF OPERATING INCOME OF EM-**
 19 **PLOYERS ADJUSTED SO AS TO EXCLUDE CER-**
 20 **TAIN COMPONENTS MANDATED IN FASB**
 21 **RULES GOVERNING ACCOUNTING FOR DE-**
 22 **FINED BENEFIT PENSION PLANS.**

23 (a) MATTERS TO BE INCLUDED IN ANNUAL RE-
 24 PORT.—Section 103(c) of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1023(c)) is
2 amended—

3 (1) by redesignating paragraph (5) as para-
4 graph (6); and

5 (2) by inserting after paragraph (4) the fol-
6 lowing new paragraph:

7 “(5) In the case of a pension plan that is a de-
8 fined benefit plan, the amount of the annual oper-
9 ating income of each employer maintaining the plan,
10 as shown on the employer’s most recent annual fi-
11 nancial statement, together with such amount as ad-
12 justed by excluding all components of net benefit
13 cost other than the service cost component.”.

14 (b) INFORMATION TO BE PROVIDED ANNUALLY TO
15 PARTICIPANTS AND BENEFICIARIES.—Section 104(b)(3)
16 of such Act (29 U.S.C. 1024(b)(3)) is amended by adding
17 at the end the following new sentence: “In the case of a
18 defined benefit plan, such other material shall include the
19 information described in paragraph (5) of section 103(c),
20 together with an explanation, written in a manner cal-
21 culated to be understood by the average plan participant,
22 of such information, of the service cost component in-
23 cluded in the adjusted amount of annual operating income
24 reported pursuant to such paragraph, and of each compo-

1 nent excluded from such adjusted amount of annual oper-
2 ating income.”.

3 **SEC. 404. SPECIFIC INFORMATION REGARDING MULTIEM-**
4 **PLOYER PLANS INCLUDED IN ANNUAL RE-**
5 **PORT.**

6 Section 103 of the Employee Retirement Income Se-
7 curity Act of 1974 (29 U.S.C. 1023) is amended by adding
8 at the end the following new subsection:

9 “(f) With respect to a pension plan that is a multiem-
10 ployer plan, an annual report under this section shall in-
11 clude the following information regarding each contrib-
12 uting employer:

13 “(1) the employer’s name,

14 “(2) the employer’s taxpayer identification
15 number,

16 “(3) the contract period relating to the plan,
17 and

18 “(4) the amount contributed by the employer
19 for the year.”.

20 **SEC. 405. LIMITED SCOPE AUDITS.**

21 Subparagraph (C) of section 103(a)(3) of the Em-
22 ployee Retirement Income Security Act of 1974 (29
23 U.S.C. 1023(a)(3)(C)) is amended to read as follows:

24 “(C)(i) Subject to clause (ii), the opinion required by
25 subparagraph (A) need not be expressed as to any state-

1 ments required by subsection (b)(3)(G) prepared by a
2 bank or similar institution or insurance carrier regulated
3 and supervised and subject to periodic examination by a
4 State or Federal agency if no less than ninety-five (95)
5 percent of the plan's assets have a readily ascertainable
6 market value at the end of the plan year for which the
7 opinion is being offered, and if such statements—

8 “(I) are certified by the bank, similar institu-
9 tion or insurance carrier as complete and accurate,

10 “(II) certify the current value of each asset,

11 “(III) include a representation that, within the
12 eighteen month period preceding the date of its cer-
13 tification, an independent, qualified public account-
14 ant who has satisfied the requirements of subsection
15 (D), has issued a report, in accordance with gen-
16 erally accepted auditing standards, to the bank or
17 similar institution or insurance carrier, stating that
18 its internal controls and procedures or the internal
19 controls and procedures of any affiliated entity, as
20 they pertain to the execution, maintenance of ac-
21 countability, recording and processing of trans-
22 actions related to plan or participant recordkeeping,
23 are adequate, and

24 “(IV) are made a part of the annual report.

1 “(ii) To the extent that the processing of transactions
2 related to plan or participant recordkeeping is performed
3 by an entity unaffiliated with the bank or similar institu-
4 tion or insurance carrier, clause(i) shall not apply unless
5 the plan has obtained a representation from the entity
6 that, within the eighteen month period preceding the date
7 of the opinion, an independent, qualified public accountant
8 who has satisfied the requirements of subsection (D), has
9 issued a report, in accordance with generally accepted au-
10 diting standards, to the entity stating that its internal
11 controls and procedures, as they pertain to the execution,
12 maintenance of accountability, recording and processing of
13 transactions related to plan or participant recordkeeping,
14 are adequate.

15 “(iii) For purposes of this subparagraph (C), the
16 term ‘readily ascertainable market value’ means a value
17 that can be readily determined on an established securities
18 market or in accordance with regulations promulgated by
19 the Secretary.”.

20 **SEC. 406. REPORTING AND ENFORCEMENT REQUIREMENTS**
21 **FOR EMPLOYEE BENEFIT PLANS.**

22 (a) IN GENERAL.—Part 1 of subtitle B of title I of
23 the Employee Retirement Income Security Act of 1974
24 (29 U.S.C. 1021 et seq.) is amended—

1 (1) by redesignating section 111 as section 112,
2 and

3 (2) inserting after section 110 the following
4 new section:

5 “DIRECT REPORTING OF CERTAIN EVENTS

6 “SEC. 111. (a) REQUIRED NOTIFICATIONS.—

7 “(1) NOTIFICATIONS BY PLAN ADMINIS-
8 TRATOR.—The administrator of an employee benefit
9 plan, within 5 business days after the administrator
10 determines that there is evidence (or after the ad-
11 ministrator is notified under paragraph (2)) that an
12 irregularity may have occurred with respect to the
13 plan, shall—

14 “(A) notify the Secretary of the irregu-
15 larity in writing; and

16 “(B) furnish a copy of such notification to
17 the accountant who is currently engaged under
18 section 103(a)(3)(A).

19 “(2) NOTIFICATIONS BY ACCOUNTANT.—

20 “(A) IN GENERAL.—An accountant en-
21 gaged by the administrator of an employee ben-
22 efit plan under section 103(a)(3)(A), within 5
23 business days after the accountant in connec-
24 tion with such engagement determines that
25 there is evidence that an irregularity may have
26 occurred with respect to the plan, shall—

1 “(i) notify the plan administrator of
2 the irregularity in writing, or

3 “(ii) if the accountant determines that
4 there is evidence that the irregularity may
5 have involved an individual who is the plan
6 administrator or who is a senior official of
7 the plan administrator, notify the Sec-
8 retary of the irregularity in writing.

9 “(B) NOTIFICATION UPON FAILURE OF
10 PLAN ADMINISTRATOR TO NOTIFY.—If an ac-
11 countant who has provided notification to the
12 plan administrator pursuant to subparagraph
13 (A)(i) does not receive a copy of the administra-
14 tor’s notification to the Secretary required
15 under paragraph (1)(B) within the 5-business-
16 day period specified therein, the accountant
17 shall furnish to the Secretary a copy of the ac-
18 countant’s notification made to the plan admin-
19 istrator on the next business day following such
20 period.

21 “(3) IRREGULARITY DEFINED.—

22 “(A) For purposes of this subsection, the
23 term ‘irregularity’ means--

24 “(i) a theft, embezzlement, or a viola-
25 tion of section 664 of title 18, United

1 States Code (relating to theft or embezzle-
2 ment from an employee benefit plan);

3 “(ii) an extortion or a violation of sec-
4 tion 1951 of title 18, United States Code
5 (relating to interference with commerce by
6 threats or violence);

7 “(iii) a bribery, a kickback, or a viola-
8 tion of section 1954 of title 18, United
9 States Code (relating to offer, acceptance,
10 or solicitation to influence operations of an
11 employee benefit plan);

12 “(iv) a violation of section 1027 of
13 title 18, United States Code (relating to
14 false statements and concealment of facts
15 in relation to employer benefit plan
16 records); or—

17 “(v) a violation of section 411, 501, or
18 511 of this title (relating to criminal viola-
19 tions).

20 “(B) The term ‘irregularity’ does not in-
21 clude any act or omission described in this
22 paragraph involving less than \$1,000 unless
23 there is reason to believe that the act or omis-
24 sion may bear on the integrity of plan manage-
25 ment.

1 “(b) NOTIFICATION UPON TERMINATION OF EN-
2 GAGEMENT OF ACCOUNTANT.—

3 “(1) NOTIFICATION BY PLAN ADMINIS-
4 TRATOR.—Within 5 business days after the termi-
5 nation of an engagement under section 103(a)(3)(A)
6 with respect to an employee benefit plan, the admin-
7 istrator of such plan shall—

8 “(A) notify the Secretary in writing of
9 such termination, giving the reasons for such
10 termination, and

11 “(B) furnish the accountant whose engage-
12 ment was terminated with a copy of the notifi-
13 cation sent to the Secretary.

14 “(2) NOTIFICATION BY ACCOUNTANT.—If the
15 accountant referred to in paragraph (1)(B) has not
16 received a copy of the administrator’s notification to
17 the Secretary as required under paragraph (1)(B),
18 or if the accountant disagrees with the reasons given
19 in the notification of termination of the engagement
20 for auditing services, the accountant shall notify the
21 Secretary in writing of the termination, giving the
22 reasons for the termination, within 10 business days
23 after the termination of the engagement.

24 “(c) DETERMINATION OF PERIODS REQUIRED FOR
25 NOTIFICATION.—In determining whether a notification re-

1 quired under this section with respect to any act or omis-
2 sion has been made within the required number of busi-
3 ness days—

4 “(1) the day on which such act or omission be-
5 gins shall not be included; and

6 “(2) Saturdays, Sundays, and legal holidays
7 shall not be included.

8 For purposes of this subsection, the term ‘legal holiday’
9 means any Federal legal holiday and any other day ap-
10 pointed as a holiday by the State in which the person re-
11 sponsible for making the notification principally conducts
12 business.

13 “(d) IMMUNITY FOR GOOD FAITH NOTIFICATION.—
14 Except as provided in this Act, no accountant or plan ad-
15 ministrator shall be liable to any person for any finding,
16 conclusion, or statement made in any notification made
17 pursuant to subsections (a)(2) or (b)(2), or pursuant to
18 any regulations issued under those subsections, if the find-
19 ing, conclusion, or statement is made in good faith.”.

20 (b) CIVIL PENALTY.—

21 (1) IN GENERAL.—Section 502(c) (29 U.S.C.
22 1132(c)) is amended by inserting after paragraph
23 (6) the following new paragraph:

24 “(7)(A) The Secretary may assess a civil penalty of
25 up to \$50,000 against any administrator who fails to pro-

1 vide the Secretary with any notification as required under
2 section 111.

3 “(B) The Secretary may assess a civil penalty of up
4 to \$50,000 against any accountant who knowingly and
5 willfully fails to provide the Secretary with any notification
6 as required under section 111.”.

7 (2) CONFORMING AMENDMENT.—Section
8 502(a)(6) (29 U.S.C. 1132(a)(6)) as amended by
9 section 101(e)(2)A(i) of the Health Insurance Port-
10 ability and Accountability Act of 1996, is amended
11 by striking “or (5)” and inserting “(5), or (7)”.

12 (c) CLERICAL AMENDMENTS.—

13 (1) Section 514(d)(29 U.S.C. 114(d)) is amend-
14 ed by striking “111” and inserting “112”.

15 (2) The table of contents in section 1 is amend-
16 ed by striking the item relating to section 111 and
17 inserting the following new items:

“Sec. 111. Direct reporting of certain events.

“Sec. 112. Repeal and effective date.”.

18 (d) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to any irregularity or
20 termination of engagement described in the amendments,
21 but only if the 5-day period described in the amendments
22 in connection with the irregularity or termination com-
23 mences at least 90 days after the date of the enactment
24 of this Act.

1 **SEC. 407. STUDY OF PENSION TRENDS AND CHARACTERIS-**
2 **TICS.**

3 (a) IN GENERAL.—Section 513 of the Employee Re-
4 tirement Income Security Act of 1974 (29 U.S.C. 1143)
5 is amended by adding at the end the following new sub-
6 section:

7 “(d) PENSION SURVEYS.—

8 “(1) IN GENERAL.—The Secretary shall submit
9 to each House of the Congress, before the close of
10 the second session of each Congress, a report, based
11 on a study of current statistical and survey data,
12 which describes dominant and emerging trends and
13 characteristics of the private pension system, so as
14 to ensure that the Congress is provided with periodic
15 and timely information regarding such system.

16 “(2) INCLUDED INFORMATION.—Each report
17 submitted pursuant to paragraph (1) shall include,
18 but not be limited to, information relating to exist-
19 ing pension plans regarding—

20 “(A) the types of such plans,

21 “(B) the level of employer and employee
22 contributions,

23 “(C) vesting status,

24 “(D) accrued benefits,

25 “(E) benefit receipt, and

26 “(F) form of benefit payments.

1 Such information shall be presented by category in
 2 connection with cohorts defined on the basis of ap-
 3 propriate attributes of the participants involved, in-
 4 cluding gender, age, race, and income.

5 “(3) IDENTIFICATION OF BARRIERS TO PEN-
 6 SION RECEIPT.—Each report submitted pursuant to
 7 paragraph (1) shall also include information which
 8 summarizes the types of problems that plan partici-
 9 pants and beneficiaries experience in connection with
 10 the receipt of promised retirement benefits.”.

11 (b) INITIAL REPORT.—The initial report submitted
 12 pursuant to section 513(d) of the Employee Retirement
 13 Income Security Act of 1974 shall be submitted not later
 14 than the close of the second session of the 107th Congress.

15 **SEC. 408. EARLY RESOLUTION PROGRAM FOR PENSION**
 16 **BENEFIT CLAIMS.**

17 (a) IN GENERAL.—Section 503 of the Employee Re-
 18 tirement Income Security Act of 1974 (29 U.S.C. 1133)
 19 is amended—

20 (1) by adding at the end of the heading the fol-
 21 lowing: “AND EARLY RESOLUTION OF PENSION
 22 CLAIMS”;

23 (2) by inserting “(a) IN GENERAL.—” after
 24 “SEC. 503.”; and

1 (3) by adding at the end the following new sub-
2 section:

3 “(b) EARLY RESOLUTION PROGRAM FOR PENSION
4 BENEFIT CLAIMS.—

5 “(1) IN GENERAL.—The Secretary shall estab-
6 lish, in consultation with national bar and arbitra-
7 tion associations and other interested organizations,
8 an early resolution program for mediation of dis-
9 putes regarding claims for benefits which have been
10 denied under pension plans.

11 “(2) MEDIATORS.—The program shall provide
12 for recruitment of mediators to serve under the pro-
13 gram from individuals who have the requisite exper-
14 tise for such service. The program shall provide for
15 ongoing training for all mediators in employee bene-
16 fits law as determined necessary. Upon submission
17 of a claim to mediation proceedings under this sub-
18 section, the program shall provide for appointment
19 of a mediator, from the roster of mediators serving
20 under the program, to act as the mediator with re-
21 gard to the claim. Such appointment shall be
22 through a random selection procedure which shall be
23 prescribed in regulations.

24 “(3) FEES.—The Secretary shall assess fees as
25 necessary from each party to cover the costs of par-

1 participation in the program. The Secretary may reduce
2 or waive a fee on the basis of inability to pay.

3 “(4) INITIATION OF PROCEEDINGS.—A claim-
4 ant with a dispute which is eligible under the pro-
5 gram for submission to mediation thereunder may
6 elect to commence proceedings under the program
7 by means of filing under the program an election for
8 mediation of the dispute. An election to commence
9 mediation proceedings under the program shall be in
10 such form and manner as the Secretary may pre-
11 scribe. Any such election shall in all cases be vol-
12 untary, and any provision of the plan or other ar-
13 rangement which has the effect of providing for the
14 commencement of such proceedings other than by
15 means of voluntary election by the claimant shall be
16 null and void as a matter of law.

17 “(5) PARTICIPATION IN PROCEEDINGS.—Upon
18 receipt of the election to commence proceedings, the
19 program shall provide for participation by all rel-
20 evant parties. Each such party shall participate, and
21 cooperate fully, in the proceedings. The plan admin-
22 istrator shall ensure that a copy of the written
23 record of any claims procedure completed by the
24 plan pursuant to subsection (a) and all relevant plan
25 documents are presented to the mediator within 30

1 days after commencement of the proceedings. The
2 program shall provide for appropriate confidentiality
3 of the proceedings.

4 “(6) TIME LIMIT FOR PROCEEDINGS.—The me-
5 diation proceedings under the program with respect
6 to the claim in dispute shall be completed within 30
7 days after compilation of all relevant plan documents
8 relating to the claim has been achieved.

9 “(7) PROCESS NONBINDING.—Findings and
10 conclusions made in the mediation proceedings
11 under the program shall be treated as advisory in
12 nature and nonbinding. Except as provided in para-
13 graph (8), the rights of the parties under this title
14 shall not be affected by participation in the medi-
15 ation proceedings under the program.

16 “(8) RESOLUTION THROUGH SETTLEMENT
17 AGREEMENT.—If a case is settled through participa-
18 tion in the mediation proceedings under the pro-
19 gram, the mediator shall assist the parties in draw-
20 ing up an agreement which shall constitute, upon
21 signature of the parties, a binding contract between
22 the parties, which shall be enforceable under section
23 502 as if the terms of such agreement were terms
24 of the plan.

1 “(9) OVERSIGHT.—The Secretary shall provide
2 for ongoing oversight of the program so as to ensure
3 that proceedings are conducted equitably and that
4 mediators meet prescribed standards of performance.
5 The Secretary shall monitor and record the results
6 of mediation proceedings conducted under the pro-
7 gram so as to enable comprehensive evaluation of
8 the effectiveness of the program as a means of alter-
9 native dispute resolution.

10 “(10) NOTICE.—The Secretary shall—

11 “(A) notify individuals of the program or
12 other sources of assistance in resolving benefits
13 claim disputes, and

14 “(B) provide model information with re-
15 spect to the program to be included in all sum-
16 mary plan descriptions and benefit determina-
17 tions.”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply with respect to claims arising on
20 or after December 31, 2001.

21 **SEC. 409. REVIEW OF BENEFIT DETERMINATIONS.**

22 (a) DE NOVO REVIEW.—

23 (1) INTERNAL REVIEW.—Section 503 of the
24 Employee Retirement Income Security Act of 1974
25 (29 U.S.C. 1133) is amended—

1 (A) by inserting “(a)” after “SEC. 503.”;

2 (B) by redesignating paragraph (1) and

3 (2) as subparagraphs (A) and (B), respectively;

4 and

5 (C) by adding at the end the following new

6 paragraph:

7 “(2) Any review required under paragraph (1)(B)—

8 “(A) shall be de novo, and

9 “(B) shall be conducted by an individual who

10 did not make the initial decision denying the claim

11 and who is authorized to approve payment of the

12 claim.”.

13 (2) COURT REVIEW.—Section 502(e) of such

14 Act (29 U.S.C. 1132(e)) is amended by adding at

15 the end the following new paragraph:

16 “(2) Notwithstanding any provision by the plan for

17 the exercise by a fiduciary of discretionary authority with

18 respect to any benefit determination, in any action under

19 paragraph (1)(B) or (3) of subsection (a) or in any other

20 action under this section to review a final benefit deter-

21 mination under the plan, the review by the court shall be

22 de novo, and the court may review all evidence pre-

23 sented.”.

24 (b) APPLICATION OF COMMON LAW PRINCIPLES OF

25 CONTRACT INTERPRETATION.—Section 502(e) of such

1 Act (as amended by subsection (a)(2)) is amended further
 2 by adding at the end thereof the following new paragraph:

3 “(3) In interpreting the terms of an employee benefit
 4 plan under this section, the court shall employ such com-
 5 mon law principles of contract interpretation as are deter-
 6 mined appropriate by the court. Nothing in this title shall
 7 preclude the Federal courts from developing and applying
 8 Federal common law for purposes of this paragraph which
 9 is consistent with the provisions of this title.”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply with respect to causes of action
 12 arising after December 31, 2001.

13 **SEC. 410. ALLOWABLE RELIEF.**

14 (a) PRE-JUDGMENT INTEREST, ATTORNEY FEES,
 15 AND COSTS OF ACTION.—

16 (1) PRE-JUDGMENT INTEREST ON UNPAID BEN-
 17 EFITS.—Section 502(a)(1)(B) of the Employee Re-
 18 tirement Income Security Act of 1974 (29 U.S.C.
 19 1132(a)(1)(B)) is amended by inserting “(together
 20 with reasonable pre-judgment interest on unpaid
 21 pension plan benefits)” after “to recover benefits
 22 due to him under the terms of his plan”.

23 (2) ATTORNEY FEES AND COSTS OF ACTION.—
 24 Section 502(g) of such Act (29 U.S.C. 1132(g)) is
 25 amended—

1 (A) in paragraph (1), by inserting “or (3)”
2 after “paragraph (2)”; and

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

5 “(3) In any action or settlement proceeding under
6 this title with respect to an employee pension benefit plan
7 brought by a participant or beneficiary under such plan
8 in which the participant or beneficiary prevails or substan-
9 tially prevails, the participant or beneficiary shall be enti-
10 tled to reasonable attorney’s fees, reasonable expert wit-
11 ness fees, and other reasonable costs relating to the ac-
12 tion.”.

13 (b) ALLOWANCE FOR LEGAL RELIEF.—Section
14 502(a) of such Act (29 U.S.C. 1132(a)) is amended, in
15 paragraphs (3)(B), (5)(B), and (8)(B), by inserting “legal
16 or” before “equitable” each place it appears.

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply with respect to causes of action
19 arising after December 31, 2001.

20 **SEC. 411. ASSESSMENT BY SECRETARY OF LABOR OF PEN-**
21 **ALTIES FOR FAILURES TO MEET DISCLOSURE**
22 **REQUIREMENTS.**

23 (a) IN GENERAL.—Section 502(c) of the Employee
24 Retirement Income Security Act of 1974 (29 U.S.C.
25 1132(c)) is amended to read as follows:

1 “(c)(1) The Secretary may assess a civil penalty
2 against any person of up to \$1,000 a day from the date
3 of any failure or refusal by such person described in para-
4 graph (2).

5 “(2) A failure or refusal described in this paragraph
6 is any of the following:

7 “(A) A failure or refusal by a plan adminis-
8 trator to comply with a request for any information
9 which such administrator is required by this title to
10 furnish to a participant or beneficiary by mailing the
11 material requested to the last known address of the
12 requesting participant or beneficiary within 30 days
13 after such request.

14 “(B) A failure or refusal by a plan adminis-
15 trator to file the annual report required to be filed
16 with the Secretary under section 101(b)(4). For pur-
17 poses of this subparagraph, an annual report that
18 has been rejected under section 104(a)(4) for failure
19 to provide material information shall not be treated
20 as having been filed with the Secretary.

21 “(C) A failure or refusal by an employer main-
22 taining a plan to meet the notice requirement of sec-
23 tion 101(d) with respect to any participant or bene-
24 ficiary.

1 “(D) A failure or refusal by a plan adminis-
2 trator to meet the requirements of section 101(e)(1)
3 with respect to a participant or beneficiary.

4 “(E) A failure or refusal by an employer main-
5 taining a plan to meet the requirements of section
6 101(e)(2) with respect to any person.

7 “(F) A failure or refusal by any person to meet
8 the requirements of section 101(f)(1).

9 “(G) A failure or refusal by any person to file
10 the information required to be filed by such person
11 with the Secretary under regulations prescribed pur-
12 suant to section 101(g).

13 “(H) A failure or refusal by a plan adminis-
14 trator to furnish documents to the Secretary, as re-
15 quested by the Secretary under section 104(a)(6),
16 within 30 days after such a request.

17 “(I) A failure or refusal by a plan adminis-
18 trator to meet the requirements of paragraph (1) or
19 (4) of section 606.

20 “(3) For purposes of this subsection, each violation
21 described in paragraph (2) with respect to any single par-
22 ticipant, beneficiary, or other person shall be treated as
23 a separate violation.

24 “(4) In the case of any failure or refusal described
25 in paragraph subparagraph (A), (C), or (I) of paragraph

1 (2) by any administrator or employer with respect to any
2 participant, beneficiary, or other person, such adminis-
3 trator or employer may, in the court's discretion, be liable
4 to such participant, beneficiary, or other person in the
5 amount of up to \$1,000 a day from the date of such fail-
6 ure or refusal. Any liability under this paragraph shall be
7 in addition to any liability imposed under paragraph (1).

8 “(5) In addition to any liability imposed under para-
9 graph (1) or (4), the court may in its discretion order such
10 other relief as it deems proper.

11 “(6) No liability may be imposed on any person under
12 this subsection for any failure resulting from matters rea-
13 sonably beyond the control of such person.

14 “(7) The Secretary and the Secretary of Health and
15 Human Services shall maintain such ongoing consultation
16 as may be necessary and appropriate to coordinate en-
17 forcement under this subsection with enforcement under
18 section 1144(c)(8) of the Social Security Act.”.

19 (b) CONFORMING AMENDMENT.—Section 502(a)(6)
20 of such Act (29 U.S.C. 1132(a)(6)) is amended by striking
21 “under paragraph (2), (4), (5), or (6) of subsection (c)
22 or under subsection (i) or (l)” and inserting “under sub-
23 section (c), (i), or (l)”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to failures and refus-
 3 als occurring after December 31, 2001.

4 **SEC. 412. MISSING PARTICIPANTS.**

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

10 “(c) MULTIEMPLOYER PLANS.—The corporation
 11 shall prescribe rules similar to the rules in subsection (a)
 12 for multiemployer plans covered by this title that termi-
 13 nate under section 4041A.

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

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

19 “(2) INFORMATION TO THE CORPORATION.—To
 20 the extent provided in regulations, the plan adminis-
 21 trator of a plan described in paragraph (4) shall,
 22 upon termination of the plan, provide the corpora-
 23 tion information with respect to benefits of a miss-
 24 ing participant if the plan transfers such benefits—

25 “(A) to the corporation, or

1 “(B) to an entity other than the corpora-
2 tion or a plan described in paragraph (4)(B)(ii).

3 “(3) PAYMENT BY THE CORPORATION.—If ben-
4 efits of a missing participant were transferred to the
5 corporation under paragraph (1), the corporation
6 shall, upon location of the participant or beneficiary,
7 pay to the participant or beneficiary the amount
8 transferred (or the appropriate survivor benefit)
9 either—

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

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

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

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

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

20 “(ii) which is not a plan described in
21 paragraphs (2) through (11) of section
22 4021(b), and

23 “(B) at the time the assets are to be dis-
24 tributed upon termination, the plan—

25 “(i) has missing participants, and

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

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

8 (b) CONFORMING AMENDMENTS.—Section 206(f) of
 9 the Employee Retirement Income Security Act of 1974
 10 (29 U.S.C. 1056(f)) is amended—

11 (1) by striking “title IV” and inserting “section
 12 4050”, and

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

14 (c) EFFECTIVE DATE.—The amendments made by
 15 this section shall apply to distributions made after 1 year
 16 after the date of the enactment of this Act.

17 **SEC. 413. FIDUCIARY DUTIES WITH RESPECT TO CHANGES**
 18 **IN INVESTMENT OPTIONS.**

19 (a) IN GENERAL.—Section 403(c) of the Employee
 20 Retirement Income Security Act of 1974 (29 U.S.C.
 21 1104(c)) is amended by adding at the end the following
 22 new paragraph:

23 “(3) For purposes of paragraph (1), in the case of
 24 any pension plan amendment changing investment options
 25 under the plan, the plan shall not be treated as permitting

1 a participant or beneficiary to exercise control over assets
 2 in his or her account unless, under the terms of such
 3 amendment, the participant or beneficiary is permitted to
 4 retain any existing investment option with respect to any
 5 assets in his or her account invested pursuant to such op-
 6 tion until such assets are otherwise invested by the partici-
 7 pant or beneficiary.”.

8 (b) EFFECTIVE DATE.—The amendment made by
 9 this section shall apply with respect to plan amendments
 10 adopted after the date of the enactment of this Act.

11 **SEC. 414. DEPARTMENT OF LABOR REQUIRED TO PROVIDE**
 12 **ASSISTANCE.**

13 Section 506 of the Employee Retirement Income Se-
 14 curity Act of 1974 (29 U.S.C. 1136) is amended by adding
 15 at the end the following new subsection:

16 “(d) ASSISTANCE PROVIDED BY THE SECRETARY TO
 17 PARTICIPANTS, BENEFICIARIES, AND EMPLOYEE BEN-
 18 EFIT PLANS.—

19 “(1) IN GENERAL.—The Secretary of Labor
 20 shall—

21 “(A) establish a program to assist partici-
 22 pants and beneficiaries in understanding their
 23 rights to benefits under employee benefit plans,
 24 and

1 “(B) to the extent feasible, assist partici-
2 pants in obtaining such benefits, by means of—

3 “(i) the program established pursuant
4 to subparagraph (A), and

5 “(ii) civil actions under section 502.

6 “(2) INTERAGENCY PROGRAM.—In addition to
7 the program established pursuant to paragraph (1),
8 the Secretary, together with the Secretary of the
9 Treasury and the heads of such other appropriate
10 Federal agencies as the Secretary deems appro-
11 priate, shall establish a program which shall provide
12 for—

13 “(A) appropriate coordination of assistance
14 to participants and beneficiaries in pursuing
15 benefit claims and obtaining necessary docu-
16 ments for such purpose, and

17 “(B) the issuance and publication of co-
18 ordinated opinions and advice on applicable
19 Federal law and regulations, and

20 “(C) the referral of benefit claims to ap-
21 propriate Internal Revenue Service district of-
22 fices to promote compliance with applicable
23 Federal law and regulations and to regional of-
24 fices of the Department of Labor to promote
25 protection of individual benefit rights.

1 “(3) OMBUDSMAN.—The Secretary shall des-
2 ignate an employee to serve as ombudsman in the
3 Department of Labor for purposes of coordinating
4 and supervising the program the efforts of the De-
5 partment in carrying out the provisions of this sub-
6 section.

7 “(4) VOLUNARY ASSISTANCE FUND.—

8 “(A) IN GENERAL.—The Secretary shall
9 establish a voluntary assistance fund which
10 shall consist of voluntary contributions from
11 employers, employee benefit plans, and other in-
12 dividuals for the purpose of assisting the De-
13 partment of Labor in carrying out the provi-
14 sions of this subsection.

15 “(B) USE OF FUNDS.—Amounts received
16 into the fund shall be held in a separate trust
17 fund and shall be available for the sole purpose
18 of carrying out the provisions of this subsection.

19 “(5) ANNUAL REPORTS.—Not later than De-
20 cember 31, 2001, and annually thereafter, the Sec-
21 retary shall report to each House of the Congress
22 on—

23 “(A) progress made in carrying out the
24 provisions of this subsection, and

1 “(B) the receipts and disbursements of the
2 voluntary assistance fund for the preceding fis-
3 cal year.

4 The report shall include any recommendations of the
5 Secretary for improving the programs established
6 under this subsection and with respect to the feasi-
7 bility and appropriateness of requiring mandatory
8 contributions to the fund.”.

9 **SEC. 415. EXCLUSIVITY OF POWERS AND PROCEDURES AP-**
10 **PLICABLE TO RIGHTS OR CLAIMS.**

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

14 “(n) Notwithstanding any Federal statute of general
15 applicability that would modify any of the powers and pro-
16 cedures expressly applicable to a right or claim arising
17 under this title and that is not expressly incorporated by
18 a provision of this title, such powers and procedures shall
19 be the exclusive powers and procedures applicable to such
20 right or such claim unless after such right or such claim
21 arises the claimant voluntarily enters into an agreement
22 to resolve such right or such claim through arbitration or
23 another procedure.”.

1 **TITLE V—IMPROVED PENSION**
2 **PROTECTIONS FOR THE**
3 **CHANGING WORKFORCE**

4 **SEC. 501. LOANS FROM RETIREMENT PLANS FOR HEALTH**
5 **INSURANCE AND JOB TRAINING EXPENSES.**

6 (a) IN GENERAL.—Section 206 of the Employee Re-
7 tirement Income Security Act of 1974 (29 U.S.C. 1056)
8 (as amended by sections 104, 201, and 308) is amended
9 further by adding at the end the following new subsection:

10 “(j) LOANS FROM RETIREMENT PLANS FOR HEALTH
11 INSURANCE AND JOB TRAINING EXPENSES.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of this subsection, a pension plan shall
14 provide that a participant or beneficiary who is in-
15 voluntarily separated from employment may, on the
16 date of such separation, obtain a loan from the plan
17 the proceeds of which are to be used within 6
18 months after the date of such loan—

19 “(A) for payments for insurance which
20 constitutes medical care for the participant and
21 the participant’s spouse and dependents, or

22 “(B) for job training expenses.

23 “(2) QUALIFIED LOAN.—For purposes of this
24 subsection, the term ‘qualified loan’ means a loan—

1 “(A) which by its terms requires interest
2 on the loan to accrue not less frequently than
3 monthly,

4 “(B) which by its terms requires—

5 “(i) repayment to begin not later than
6 18 months after the date of the loan, and

7 “(ii) repayment in full not later the
8 date which is 36 months after the date of
9 the loan, and

10 “(C) which bears interest from the date of
11 the loan at a rate not less than 2 percentage
12 points below, and not more than 2 percentage
13 points above, the rate for comparable United
14 States Treasury obligations on such date.

15 “(3) LIMITATION ON AMOUNT OF LOANS.—The
16 aggregate amount of borrowings for a plan year
17 shall not exceed the sum of the amount of accruals
18 (other than contributions) during the plan year prior
19 to the plan year in which the loan is made.

20 “(4) LIMITATION ON NUMBER OF LOANS.—Not
21 more than 3 loans to an individual under this sub-
22 section may be outstanding at any time.

23 “(5) DELINQUENCIES TREATED AS DISTRIBUTION.—Any amount required to be paid by a partici-
24 pant or beneficiary under paragraph (2)(B) during
25

1 any plan year which is not paid at the time required
 2 to be paid, and any amount remaining unpaid as of
 3 the beginning of the plan year beginning after the
 4 period described in paragraph (2)(B)(ii), shall be
 5 treated as distributed during such plan year to the
 6 participant or beneficiary.”.

7 (b) PROHIBITED TRANSACTION EXEMPTION.—Sec-
 8 tion 408(b) of such Act (29 U.S.C. 1108(b)) is amended
 9 by adding at the end the following new paragraph:

10 “(14) Any loan made by the plan to a disquali-
 11 fied person who is a participant or beneficiary of the
 12 plan if such loan—

13 “(A) is for the payment of health insur-
 14 ance premiums or job training expenses, and

15 “(B) meets the requirements of section
 16 206(j).”.

17 (c) EFFECTIVE DATE.—The amendments made by
 18 this section shall apply to loans made after the effective
 19 date specified in section 601.

20 **SEC. 502. AUTOMATIC ROLLOVER UPON MANDATORY DIS-**
 21 **TRIBUTION IN EXCESS OF \$1,000.**

22 Section 206 of the Employee Retirement Income Se-
 23 curity Act of 1974 (29 U.S.C. 1056) (as amended by sec-
 24 tions 104, 201, 308, and 501) is amended further by add-
 25 ing at the end the following new subsection:

1 “(k) DIRECT TRANSFERS OF MANDATORY DISTRIBUTIONS IN EXCESS OF \$1,000—

2 “(1) IN GENERAL.—A pension plan shall provide that if—

3 “(A) a distribution described in paragraph
4 (2) is made, and

5 “(B) the distributee does not elect to have
6 such distribution paid directly to an eligible retirement plan and does not elect to receive the
7 distribution directly,

8 the plan administrator shall make such transfer to
9 an individual retirement plan of a designated trustee
10 or issuer and shall notify the distributee in writing
11 (either separately or as part of a notice required
12 under section 402(f) of the Internal Revenue Code
13 of 1986) that the distribution may be transferred to
14 another individual retirement plan.

15 “(2) DISTRIBUTION DESCRIBED.—A distribution from a plan is described in this paragraph if
16 such distribution is an immediate distribution of the
17 entire nonforfeitable accrued benefit of the participant and is in excess of \$1,000.

18 “(3) DEFINITIONS.—For purposes of this
19 subsection—

1 “(A) ELIGIBLE RETIREMENT PLAN.—The
 2 term ‘eligible retirement plan’ has the meaning
 3 given such term by section 402(c)(8)(B) of the
 4 Internal Revenue Code of 1986, except that a
 5 qualified trust under section 401(a) of such
 6 Code shall be considered an eligible retirement
 7 plan only if it is a defined contribution plan,
 8 the terms of which permit the acceptance of
 9 rollover distributions.

10 “(B) INDIVIDUAL RETIREMENT PLAN.—
 11 The term ‘individual retirement plan’ has the
 12 meaning given such term by section
 13 7701(a)(37) of the Internal Revenue Code of
 14 1986.”.

15 **SEC. 503. PROMPT DISTRIBUTION FROM DEFINED CON-**
 16 **TRIBUTION PLANS UPON TERMINATION OF**
 17 **PARTICIPANT’S COVERED EMPLOYMENT.**

18 Section 206(a) of the Employee Retirement Income
 19 Security Act of 1974 (29 U.S.C. 1056(a)) is amended—

20 (1) by redesignating paragraphs (1), (2), and
 21 (3) as subparagraphs (A), (B), and (C), respectively,
 22 and by inserting “(1)” after “(a)”;

23 (2) in the first sentence, by striking “pension
 24 plan” and inserting “defined benefit plan”;

1 (3) in the second sentence, by striking “In the
2 case of a plan” and inserting “In the case of a de-
3 fined benefit plan”; and

4 (4) by adding at the end the following new
5 paragraph:

6 “(2)(A) Except as provided in subparagraph (B),
7 each defined contribution plan shall provide that, unless
8 the participant otherwise elects—

9 “(i) the payment of benefits under the plan to
10 the participant will begin not later than the 60th
11 day after the close of the plan year in which occurs
12 the date on which the participant attains the earlier
13 of age 65 or the normal retirement age specified
14 under the plan, and

15 “(ii) in any case in which the participant termi-
16 nates his service with the employer prior to the date
17 described in clause (i), the participant’s accrued ben-
18 efit shall be distributed, in the form of one or more
19 rollover contributions under section 402(c),
20 403(a)(4), or 403(b)(8) of the Internal Revenue
21 Code of 1986, clause (ii), (iii), or (iv) of section
22 408(d)(3)(A) of such Code, section 411(a)(12) of
23 such Code, or section 457(e)(16) of such Code, not
24 later than the 60th day after the date of the partici-
25 pant’s termination of such service.

1 “(B) In any case in which immediate valuation of the
 2 participant’s accrued benefit is not practicable, the plan
 3 may provide for a period of more than 60 days in lieu
 4 of the 60-day period described in clauses (i) and (ii) of
 5 subparagraph (A), except that any such longer period pro-
 6 vided by the plan may not extend beyond 60 days after
 7 the applicable valuation date under the plan.”.

8 **SEC. 504. EXTENDED PERIOD FOR RECOUPMENT OF OVER-**
 9 **PAYMENTS.**

10 Section 206 of the Employee Retirement Income Se-
 11 curity Act of 1974 (29 U.S.C. 1056) (as amended by sec-
 12 tions 104, 201, 308, 501(a), and 502) is amended further
 13 by adding at the end the following new subsection:

14 “(1) RECOUPMENT OF BENEFIT OVERPAYMENTS.—

15 “(1) MINIMUM PERIOD FOR RECOUPMENT.—

16 Any minimum period specified by an employee pen-
 17 sion benefit plan during which an overpayment of
 18 benefits under the plan must be repaid to the plan
 19 may not be less than the 5-year period beginning on
 20 the date of the overpayment.

21 “(2) WAIVER PERMITTED.—Nothing in this
 22 title shall be construed to preclude the waiver by any
 23 fiduciary on behalf of the plan of any overpayment
 24 of benefits to a participant or beneficiary in any case
 25 in which such participant or beneficiary is without

1 fault if recovery of the overpayment would defeat the
2 purpose of this title or would be against equity and
3 good conscience, and any such waiver may not be
4 precluded under the terms of the plan. In making
5 for purposes of this subsection any determination of
6 whether any participant or beneficiary is without
7 fault, the fiduciary shall specifically take into ac-
8 count any physical, mental, educational, or linguistic
9 limitation such participant or beneficiary may have
10 (including any lack of facility with the English lan-
11 guage).”.

12 **TITLE VI—GENERAL** 13 **PROVISIONS**

14 **SEC. 601. GENERAL EFFECTIVE DATE.**

15 (a) IN GENERAL.—Except as otherwise provided in
16 this Act, and subject to subsection (b), the amendments
17 made by this Act shall apply with respect to plan years
18 beginning on or after January 1, 2002.

19 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
20 PLANS.—In the case of a plan maintained pursuant to 1
21 or more collective bargaining agreements between em-
22 ployee representatives and 1 or more employers ratified
23 on or before the date of the enactment of this Act, sub-
24 section (a) shall be applied to benefits pursuant to, and
25 individuals covered by, any such agreement by substituting

1 for “January 1, 2002” the date of the commencement of
2 the first plan year beginning on or after the earlier of—

3 (1) the later of—

4 (A) January 1, 2003, or

5 (B) 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 after the date of the enactment of this Act),
9 or

10 (2) January 1, 2004.

11 **SEC. 602. PLAN AMENDMENTS.**

12 If any amendment made by this Act requires an
13 amendment to any plan, such plan amendment shall not
14 be required to be made before the first plan year beginning
15 on or after January 1, 2004, if—

16 (1) during the period after such amendment
17 made by this Act takes effect and before such first
18 plan year, the plan is operated in accordance with
19 the requirements of such amendment made by this
20 Act, and

21 (2) such plan amendment applies retroactively
22 to the period after such amendment made by this
23 Act takes effect and such first plan year.

○