

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 219

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

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IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2005

Mr. GRASSLEY (for himself and Mr. BAUCUS) introduced the following bill;  
which was read twice and referred to the Committee on Finance

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## A BILL

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

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “National Employee Savings and Trust Equity Guarantee  
 4 Act of 2005”.

5 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

**TITLE I—PROVISIONS RELATING TO INVESTMENT OF  
 PARTICIPANTS’ ACCOUNTS**

**SUBTITLE A—DIVERSIFICATION OF PENSION PLAN ASSETS**

Sec. 101. Defined contribution plans required to provide employees with freedom  
 to invest their plan assets.

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

**SUBTITLE B—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS**

Sec. 111. Periodic pension benefit statements.

Sec. 112. Defined contribution plans required to provide adequate investment  
 education to participants.

Sec. 113. Material information relating to investment in employer securities.

Sec. 114. Fiduciary rules for plan sponsors designating independent investment  
 advisers.

Sec. 115. Treatment of qualified retirement planning services.

**SUBTITLE C—PROTECTION OF PENSION PLAN PARTICIPANTS**

Sec. 121. Notice to participants or beneficiaries of blackout periods.

Sec. 122. Allowance of catchup payments.

**TITLE II—PROVISIONS RELATING TO FUNDING, DEDUCTIONS,  
 AND THE PENSION BENEFIT GUARANTY CORPORATION**

**SUBTITLE A—REPLACEMENT OF INTEREST RATE ON 30-YEAR TREASURY  
 SECURITIES**

Sec. 201. Replacement of 30-year Treasury rate for purposes of funding and  
 PBGC premium rates.

Sec. 202. Replacement of 30-year Treasury rate for calculating lump-sum dis-  
 tributions.

Sec. 203. Section 415 limitation on defined benefit plans.

**SUBTITLE B—PROVISIONS RELATING TO PENSION PLAN FUNDING AND  
 DEDUCTIONS**

Sec. 211. Deduction limits for plan contributions.

Sec. 212. Benefit limitations for certain financially distressed plans.

Sec. 213. Updating deduction rules for combination of plans.

**SUBTITLE C—PROVISIONS RELATING TO THE PENSION BENEFIT GUARANTY  
 CORPORATION**

- Sec. 221. PBGC premiums for new plans of small employers.
- Sec. 222. Additional PBGC premium for new and small plans.
- Sec. 223. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 224. Substantial owner benefits in terminated plans.
- Sec. 225. Acceleration of computation of benefits attributable to recoveries of employer liability.

#### SUBTITLE D—STUDIES

- Sec. 231. Joint study on revitalizing defined benefit plans.
- Sec. 232. Study on floor-offset ESOPs.

#### TITLE III—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

- Sec. 301. Clarifications regarding purchase of permissive service credit.
- Sec. 302. Allow rollover of after-tax amounts in annuity contracts.
- Sec. 303. Clarification of minimum distribution rules.
- Sec. 304. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
- Sec. 305. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
- Sec. 306. Faster vesting of employer nonelective contributions.
- Sec. 307. Allow direct rollovers from retirement plans to Roth IRAs.
- Sec. 308. Elimination of higher penalty on certain simple plan distributions.
- Sec. 309. Simple plan portability.
- Sec. 310. Eligibility for participation in retirement plans.
- Sec. 311. Transfers to the PBGC.
- Sec. 312. Missing participants.

#### TITLE IV—ADMINISTRATIVE PROVISIONS

- Sec. 401. Employee Plans Compliance Resolution System.
- Sec. 402. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 403. Notice and consent period regarding distributions.
- Sec. 404. Reporting simplification.
- Sec. 405. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 406. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 407. Withholding on distributions from governmental Section 457 plans.
- Sec. 408. Provisions relating to plan amendments.

#### TITLE V—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

##### SUBTITLE A—STUDY OF SPOUSAL CONSENT FOR DISTRIBUTIONS FROM DEFINED CONTRIBUTION PLANS

- Sec. 501. Joint study of application of spousal consent rules to defined contribution plans.

##### SUBTITLE B—DIVISION OF PENSION BENEFITS UPON DIVORCE

Sec. 511. Regulations on time and order of issuance of domestic relations orders.

#### SUBTITLE C—RAILROAD RETIREMENT

Sec. 521. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.

Sec. 522. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.

#### SUBTITLE D—MODIFICATIONS OF JOINT AND SURVIVOR ANNUITY REQUIREMENTS

Sec. 531. Requirement for additional survivor annuity option.

#### TITLE VI—TAX COURT PENSION AND COMPENSATION

Sec. 600. Amendment of 1986 Code.

Sec. 601. Annuities for survivors of Tax Court judges who are assassinated.

Sec. 602. Cost-of-Living adjustments for Tax Court judicial survivor annuities.

Sec. 603. Life insurance coverage for Tax Court judges.

Sec. 604. Cost of life insurance coverage for Tax Court judges age 65 or over.

Sec. 605. Modification of timing of Lump-Sum Payment of judges' accrued annual leave.

Sec. 606. Participation of Tax Court judges in the Thrift Savings Plan.

Sec. 607. Exemption of teaching compensation of retired judges from limitation on outside earned income.

Sec. 608. General provisions relating to Magistrate Judges of the Tax Court.

Sec. 609. Annuities to surviving spouses and dependent children of Magistrate Judges of the Tax Court.

Sec. 610. Retirement and annuity Program.

Sec. 611. Incumbent Magistrate Judges of the Tax Court.

Sec. 612. Provisions for recall.

Sec. 613. Effective date.

#### TITLE VII—OTHER PROVISIONS

Sec. 701. Transfer of excess pension assets to multiemployer health plan.

Sec. 702. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.

Sec. 703. Treatment of death benefits from corporate-owned life insurance.

1 **TITLE I—PROVISIONS RELATING**  
2 **TO INVESTMENT OF PARTICI-**  
3 **PANTS’ ACCOUNTS**

4 **Subtitle A—Diversification of**  
5 **Pension Plan Assets**

6 **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
7 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**  
8 **VEST THEIR PLAN ASSETS.**

9 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

15 “(35) DIVERSIFICATION REQUIREMENTS FOR  
16 CERTAIN DEFINED CONTRIBUTION PLANS.—

17 “(A) IN GENERAL.—A trust which is part  
18 of an applicable defined contribution plan shall  
19 not be treated as a qualified trust unless the  
20 plan meets the diversification requirements of  
21 subparagraphs (B), (C), and (D).

22 “(B) EMPLOYEE CONTRIBUTIONS AND  
23 ELECTIVE DEFERRALS INVESTED IN EMPLOYER  
24 SECURITIES OR REAL PROPERTY.—In the case  
25 of the portion of an applicable individual’s ac-

1 count attributable to employee contributions  
2 and elective deferrals which is invested in em-  
3 ployer securities or employer real property, a  
4 plan meets the requirements of this subpara-  
5 graph if the applicable individual may elect to  
6 direct the plan to divest any such securities or  
7 real property and to reinvest an equivalent  
8 amount in other investment options meeting the  
9 requirements of subparagraph (D).

10 “(C) EMPLOYER CONTRIBUTIONS IN-  
11 VESTED IN EMPLOYER SECURITIES OR REAL  
12 PROPERTY.—In the case of the portion of the  
13 account attributable to employer contributions  
14 other than elective deferrals which is invested in  
15 employer securities or employer real property, a  
16 plan meets the requirements of this subpara-  
17 graph if each applicable individual who—

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

20 “(ii) is a beneficiary of a participant  
21 described in clause (i) or of a deceased  
22 participant,

23 may elect to direct the plan to divest any such  
24 securities or real property and to reinvest an

1 equivalent amount in other investment options  
2 meeting the requirements of subparagraph (D).

3 “(D) INVESTMENT OPTIONS.—

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

15 “(ii) TREATMENT OF CERTAIN RE-  
16 STRICTIONS AND CONDITIONS.—

17 “(I) TIME FOR MAKING INVEST-  
18 MENT CHOICES.—A plan shall not be  
19 treated as failing to meet the require-  
20 ments of this subparagraph merely be-  
21 cause the plan limits the time for di-  
22 vestment and reinvestment to peri-  
23 odic, reasonable opportunities occur-  
24 ring no less frequently than quarterly.

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

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

17                         “(i) IN GENERAL.—The term ‘applica-  
18                         ble defined contribution plan’ means any  
19                         defined contribution plan which holds any  
20                         publicly traded employer securities.

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

24                                 “(I) there are no contributions to  
25                                 such plan (or earnings thereunder)



1 which are held within such plan and  
2 are subject to subsection (k) or (m),  
3 and

4 “(II) such plan is a separate plan  
5 for purposes of section 414(l) with re-  
6 spect to any other defined benefit plan  
7 or defined contribution plan main-  
8 tained by the same employer or em-  
9 ployers.

10 “(iii) EXCEPTION FOR ONE PARTICI-  
11 PANT PLANS.—Such term does not include  
12 a one-participant retirement plan.

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

17 “(I) on the first day of the plan  
18 year covered only one individual (or  
19 the individual and the individual’s  
20 spouse) and the individual owned 100  
21 percent of the plan sponsor (whether  
22 or not incorporated), or covered only  
23 one or more partners (or partners and  
24 their spouses) in the plan sponsor,

1           “(II) meets the minimum cov-  
2           erage requirements of section 410(b)  
3           without being combined with any  
4           other plan of the business that covers  
5           the employees of the business,

6           “(III) does not provide benefits  
7           to anyone except the individual (and  
8           the individual’s spouse) or the part-  
9           ners (and their spouses),

10          “(IV) does not cover a business  
11          that is a member of an affiliated serv-  
12          ice group, a controlled group of cor-  
13          porations, or a group of businesses  
14          under common control, and

15          “(V) does not cover a business  
16          that uses the services of leased em-  
17          ployees (within the meaning of section  
18          414(n)).

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

23          “(F) CERTAIN PLANS TREATED AS HOLD-  
24          ING PUBLICLY TRADED EMPLOYER SECURI-  
25          TIES.—

1           “(i) IN GENERAL.—Except as pro-  
2           vided in regulations or in clause (ii), a plan  
3           holding employer securities which are not  
4           publicly traded employer securities shall be  
5           treated as holding publicly traded employer  
6           securities if any employer corporation, or  
7           any member of a controlled group of cor-  
8           porations which includes such employer  
9           corporation, has issued a class of stock  
10          which is a publicly traded employer secu-  
11          rity.

12          “(ii) EXCEPTION FOR CERTAIN CON-  
13          TROLLED GROUPS WITH PUBLICLY TRAD-  
14          ED SECURITIES.—Clause (i) shall not  
15          apply to a plan if—

16                 “(I) no employer corporation, or  
17                 parent corporation of an employer  
18                 corporation, has issued any publicly  
19                 traded employer security, and

20                 “(II) no employer corporation, or  
21                 parent corporation of an employer  
22                 corporation, has issued any special  
23                 class of stock which grants particular  
24                 rights to, or bears particular risks for,  
25                 the holder or issuer with respect to

1 any corporation described in clause (i)  
2 which has issued any publicly traded  
3 employer security.

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

6 “(I) ‘controlled group of corpora-  
7 tions’ has the meaning given such  
8 term by section 1563(a), except that  
9 ‘50 percent’ shall be substituted for  
10 ‘80 percent’ each place it appears,

11 “(II) ‘employer corporation’  
12 means a corporation which is an em-  
13 ployer maintaining the plan, and

14 “(III) ‘parent corporation’ has  
15 the meaning given such term by sec-  
16 tion 424(e).

17 “(G) OTHER DEFINITIONS.—For purposes  
18 of this paragraph—

19 “(i) APPLICABLE INDIVIDUAL.—The  
20 term ‘applicable individual’ means—

21 “(I) any participant in the plan,  
22 and

23 “(II) any beneficiary who has an  
24 account under the plan with respect to

1           which the beneficiary is entitled to ex-  
2           ercise the rights of a participant.

3           “(ii) ELECTIVE DEFERRAL.—The  
4           term ‘elective deferral’ means an employer  
5           contribution described in section  
6           402(g)(3)(A).

7           “(iii) EMPLOYER SECURITY.—The  
8           term ‘employer security’ has the meaning  
9           given such term by section 407(d)(1) of  
10          the Employee Retirement Income Security  
11          Act of 1974.

12          “(iv) EMPLOYER REAL PROPERTY.—  
13          The term ‘employer real property’ has the  
14          meaning given such term by section  
15          407(d)(2) of the Employee Retirement In-  
16          come Security Act of 1974.

17          “(v) EMPLOYEE STOCK OWNERSHIP  
18          PLAN.—The term ‘employee stock owner-  
19          ship plan’ has the meaning given such  
20          term by section 4975(e)(7).

21          “(vi) PUBLICLY TRADED EMPLOYER  
22          SECURITIES.—The term ‘publicly traded  
23          employer securities’ means employer secu-  
24          rities which are readily tradable on an es-  
25          tablished securities market.

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

4           “(H) TRANSITION RULE FOR SECURITIES  
5           OR REAL PROPERTY ATTRIBUTABLE TO EM-  
6           PLOYER CONTRIBUTIONS.—

7           “(i) RULES PHASED IN OVER 3  
8           YEARS.—

9           “(I) IN GENERAL.—In the case  
10           of the portion of an account to which  
11           subparagraph (C) applies and which  
12           consists of employer securities or em-  
13           ployer real property acquired in a plan  
14           year beginning before January 1,  
15           2006, subparagraph (C) shall only  
16           apply to the applicable percentage of  
17           such securities or real property. This  
18           subparagraph shall be applied sepa-  
19           rately with respect to each class of se-  
20           curities and employer real property.

21           “(II) EXCEPTION FOR CERTAIN  
22           PARTICIPANTS AGED 55 OR OVER.—  
23           Subclause (I) shall not apply to an  
24           applicable individual who is a partici-  
25           pant who has attained age 55 and

1 completed at least 3 years of service  
2 before the first plan year beginning  
3 after December 31, 2005.

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

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

7 (2) CONFORMING AMENDMENTS.—

8 (A) Section 401(a)(28)(B) of such Code  
9 (relating to additional requirements relating to  
10 employee stock ownership plans) is amended by  
11 adding at the end the following new clause:

12 “(v) EXCEPTION.—This subparagraph  
13 shall not apply to an applicable defined  
14 contribution plan (as defined in paragraph  
15 (35)(E)).”

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

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

1 (b) AMENDMENTS OF ERISA.—Section 204 of the  
2 Employee Retirement Income Security Act of 1974 (29  
3 U.S.C. 1054) is amended by redesignating subsection (j)  
4 as subsection (k) and by inserting after subsection (i) the  
5 following new subsection:

6 “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN  
7 INDIVIDUAL ACCOUNT PLANS.—

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

11 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-  
12 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-  
13 TIES OR REAL PROPERTY.—In the case of the por-  
14 tion of an applicable individual’s account attrib-  
15 utable to employee contributions and elective defer-  
16 rals which is invested in employer securities or em-  
17 ployer real property, a plan meets the requirements  
18 of this paragraph if the applicable individual may  
19 elect to direct the plan to divest any such securities  
20 or real property and to reinvest an equivalent  
21 amount in other investment options meeting the re-  
22 quirements of paragraph (4).

23 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN  
24 EMPLOYER SECURITIES OR REAL PROPERTY.—In the  
25 case of the portion of the account attributable to



1 employer contributions other than elective deferrals  
2 which is invested in employer securities or employer  
3 real property, a plan meets the requirements of this  
4 paragraph if each applicable individual who—

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

7 “(B) is a beneficiary of a participant de-  
8 scribed in subparagraph (A) or of a deceased  
9 participant,

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

14 “(4) INVESTMENT OPTIONS.—

15 “(A) IN GENERAL.—The requirements of  
16 this paragraph are met if the plan offers not  
17 less than 3 investment options, other than em-  
18 ployer securities or employer real property, to  
19 which an applicable individual may direct the  
20 proceeds from the divestment of employer secu-  
21 rities or employer real property pursuant to this  
22 subsection, each of which is diversified and has  
23 materially different risk and return characteris-  
24 tics.

1           “(B) TREATMENT OF CERTAIN RESTRIC-  
2           TIONS AND CONDITIONS.—

3           “(i) TIME FOR MAKING INVESTMENT  
4           CHOICES.—A plan shall not be treated as  
5           failing to meet the requirements of this  
6           paragraph merely because the plan limits  
7           the time for divestment and reinvestment  
8           to periodic, reasonable opportunities occur-  
9           ring no less frequently than quarterly.

10          “(ii) CERTAIN RESTRICTIONS AND  
11          CONDITIONS NOT ALLOWED.—Except as  
12          provided in regulations, a plan shall not  
13          meet the requirements of this paragraph if  
14          the plan imposes restrictions or conditions  
15          with respect to the investment of employer  
16          securities or employer real property which  
17          are not imposed on the investment of other  
18          assets of the plan. This subparagraph shall  
19          not apply to any restrictions or conditions  
20          imposed by reason of the application of se-  
21          curities laws.

22          “(5) APPLICABLE INDIVIDUAL ACCOUNT  
23          PLAN.—For purposes of this subsection—

24                 “(A) IN GENERAL.—The term ‘applicable  
25                 individual account plan’ means any individual

1 account plan (as defined in section 3(34)) which  
2 holds any publicly traded employer securities.

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

6 “(i) there are no contributions to such  
7 plan (or earnings thereunder) which are  
8 held within such plan and are subject to  
9 subsection (k) or (m) of section 401 of the  
10 Internal Revenue Code of 1986, and

11 “(ii) such plan is a separate plan (for  
12 purposes of section 414(l) of such Code)  
13 with respect to any other defined benefit  
14 plan or individual account plan maintained  
15 by the same employer or employers.

16 “(C) EXCEPTION FOR ONE PARTICIPANT  
17 PLANS.—Such term shall not include a one-par-  
18 ticipant retirement plan (as defined in section  
19 101(i)(8)(B)).

20 “(D) CERTAIN PLANS TREATED AS HOLD-  
21 ING PUBLICLY TRADED EMPLOYER SECURI-  
22 TIES.—

23 “(i) IN GENERAL.—Except as pro-  
24 vided in regulations or in clause (ii), a plan  
25 holding employer securities which are not

1 publicly traded employer securities shall be  
2 treated as holding publicly traded employer  
3 securities if any employer corporation, or  
4 any member of a controlled group of cor-  
5 porations which includes such employer  
6 corporation, has issued a class of stock  
7 which is a publicly traded employer secu-  
8 rity.

9 “(ii) EXCEPTION FOR CERTAIN CON-  
10 TROLLED GROUPS WITH PUBLICLY TRAD-  
11 ED SECURITIES.—Clause (i) shall not  
12 apply to a plan if—

13 “(I) no employer corporation, or  
14 parent corporation of an employer  
15 corporation, has issued any publicly  
16 traded employer security, and

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

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

3           “(I) ‘controlled group of corpora-  
4 tions’ has the meaning given such  
5 term by section 1563(a) of the Inter-  
6 nal Revenue Code of 1986, except  
7 that ‘50 percent’ shall be substituted  
8 for ‘80 percent’ each place it appears,

9           “(II) ‘employer corporation’  
10 means a corporation which is an em-  
11 ployer maintaining the plan, and

12           “(III) ‘parent corporation’ has  
13 the meaning given such term by sec-  
14 tion 424(e) of such Code.

15           “(6) OTHER DEFINITIONS.—For purposes of  
16 this paragraph—

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

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

20           “(ii) any beneficiary who has an ac-  
21 count under the plan with respect to which  
22 the beneficiary is entitled to exercise the  
23 rights of a participant.

24           “(B) ELECTIVE DEFERRAL.—The term  
25 ‘elective deferral’ means an employer contribu-

1           tion described in section 402(g)(3)(A) of the In-  
2           ternal Revenue Code of 1986.

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

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

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

13          “(F) PUBLICLY TRADED EMPLOYER SECUR-  
14          ITIES.—The term ‘publicly traded employer  
15          securities’ means employer securities which are  
16          readily tradable on an established securities  
17          market.

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

21          “(7) TRANSITION RULE FOR SECURITIES OR  
22          REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-  
23          TRIBUTIONS.—

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

1                   “(i) IN GENERAL.—In the case of the  
 2                   portion of an account to which paragraph  
 3                   (3) applies and which consists of employer  
 4                   securities or employer real property ac-  
 5                   quired in a plan year beginning before  
 6                   January 1, 2006, paragraph (3) shall only  
 7                   apply to the applicable percentage of such  
 8                   securities or real property. This subpara-  
 9                   graph shall be applied separately with re-  
 10                  spect to each class of securities and em-  
 11                  ployer real property.

12                   “(ii) EXCEPTION FOR CERTAIN PAR-  
 13                  TICIPANTS AGED 55 OR OVER.—Clause (i)  
 14                  shall not apply to an applicable individual  
 15                  who is a participant who has attained age  
 16                  55 and completed at least 3 years of serv-  
 17                  ice before the first plan year beginning  
 18                  after December 31, 2005.

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

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

22                   (c) EFFECTIVE DATES.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graphs (2) and (3), the amendments made by this  
3           section shall apply to plan years beginning after De-  
4           cember 31, 2005.

5           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
6           GAINED AGREEMENTS.—In the case of a plan main-  
7           tained pursuant to 1 or more collective bargaining  
8           agreements between employee representatives and 1  
9           or more employers ratified on or before the date of  
10          the enactment of this Act, paragraph (1) shall be  
11          applied to benefits pursuant to, and individuals cov-  
12          ered by, any such agreement by substituting for  
13          “December 31, 2005” the earlier of—

14                   (A) the later of—

15                           (i) December 31, 2006, or

16                           (ii) the date on which the last of such  
17                   collective bargaining agreements termi-  
18                   nates (determined without regard to any  
19                   extension thereof after such date of enact-  
20                   ment), or

21                   (B) December 31, 2007.

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

24                   (A) IN GENERAL.—In the case of employer  
25                  securities to which this paragraph applies, the



1 amendments made by this section shall apply to  
2 plan years beginning after the earlier of—

3 (i) December 31, 2006, or

4 (ii) the first date on which the fair  
5 market value of such securities exceeds the  
6 guaranteed minimum value described in  
7 subparagraph (B)(ii).

8 (B) APPLICABLE SECURITIES.—This para-  
9 graph shall apply to employer securities which  
10 are attributable to employer contributions other  
11 than elective deferrals, and which, on Sep-  
12 tember 17, 2003—

13 (i) consist of preferred stock, and

14 (ii) are within an employee stock own-  
15 ership plan (as defined in section  
16 4975(e)(7) of the Internal Revenue Code  
17 of 1986), the terms of which provide that  
18 the value of the securities cannot be less  
19 than the guaranteed minimum value speci-  
20 fied by the plan on such date.

21 (C) COORDINATION WITH TRANSITION  
22 RULE.—In applying section 401(a)(35)(H) of  
23 the Internal Revenue Code of 1986 and section  
24 204(j)(7) of the Employee Retirement Income  
25 Security Act of 1974 (as added by this section)

1 to employer securities to which this paragraph  
 2 applies, the applicable percentage shall be de-  
 3 termined without regard to this paragraph.

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

6 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

11 **“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-**  
 12 **TION PLANS TO PROVIDE NOTICE OF FREE-**  
 13 **DOM TO DIVEST EMPLOYER SECURITIES.**

14 “(a) IMPOSITION OF TAX.—There is hereby imposed  
 15 a tax on the failure of a defined contribution plan to meet  
 16 the requirements of subsection (e) with respect to any par-  
 17 ticipant or beneficiary.

18 “(b) AMOUNT OF TAX.—

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

24 “(2) NONCOMPLIANCE PERIOD.—For purposes  
 25 of this section, the term ‘noncompliance period’

1 means, with respect to any failure, the period begin-  
2 ning on the date the failure first occurs and ending  
3 on the date the notice to which the failure relates is  
4 provided or the failure is otherwise corrected.

5 “(c) LIMITATIONS ON AMOUNT OF TAX.—

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

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

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

22 “(B) such person provides the notice de-  
23 scribed in subsection (e) during the 30-day pe-  
24 riod beginning on the first date such person

1           knew, or exercising reasonable diligence should  
2           have known, that such failure existed.

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

5                   “(A) IN GENERAL.—If the person subject  
6           to liability for tax under subsection (d) exer-  
7           cised reasonable diligence to meet the require-  
8           ments of subsection (e), the tax imposed by  
9           subsection (a) for failures during the taxable  
10          year of the employer (or, in the case of a multi-  
11          employer plan, the taxable year of the trust  
12          forming part of the plan) shall not exceed  
13          \$500,000. For purposes of the preceding sen-  
14          tence, all multiemployer plans of which the  
15          same trust forms a part shall be treated as 1  
16          plan.

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

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

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

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

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

13           “(e) NOTICE OF RIGHT TO DIVEST.—Not later than  
14 30 days before the first date on which an applicable indi-  
15 vidual of an applicable defined contribution plan is eligible  
16 to exercise the right under section 401(a)(35) to direct  
17 the proceeds from the divestment of employer securities  
18 or employer real property with respect to any type of con-  
19 tribution, the plan administrator shall provide to such in-  
20 dividual a notice—

21           “(1) setting forth such right under such sec-  
22 tion, and

23           “(2) describing the importance of diversifying  
24 the investment of retirement account assets.

1 The notice required by this subsection shall be written in  
2 a manner calculated to be understood by the average plan  
3 participant and may be delivered in written, electronic, or  
4 other appropriate form to the extent that such form is rea-  
5 sonably accessible to the applicable individual.

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

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

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

“Sec. 4980H. Failure of certain defined contribution plans to provide notice of  
freedom to divest employer securities.”.

15 (b) AMENDMENTS OF ERISA.—

16 (1) IN GENERAL.—Section 104 of the Employee  
17 Retirement Income Security Act of 1974 (29 U.S.C.  
18 1024) is amended by redesignating subsection (d) as  
19 subsection (e) and by inserting after subsection (c)  
20 the following new subsection:

21 “(d) NOTICE OF RIGHT TO DIVEST.—Not later than  
22 30 days before the first date on which an applicable indi-  
23 vidual of an applicable individual account plan is eligible  
24 to exercise the right under section 204(j) to direct the pro-

1 ceeds from the divestment of employer securities or em-  
2 ployer real property with respect to any type of contribu-  
3 tion, the administrator shall provide to such individual a  
4 notice—

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

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

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

14           (2) PENALTIES.—Section 502(c)(7) of the Em-  
15           ployee Retirement Income Security Act of 1974 (29  
16           U.S.C. 1132(c)(7)) is amended by inserting “or sec-  
17           tion 104(d)” after “section 101(i)”.

18           (c) MODEL NOTICE.—The Secretary of Labor shall,  
19 within 180 days after the date of the enactment of this  
20 subsection, prescribe a model notice for purposes of satis-  
21 fying the requirements of the amendments made by this  
22 section.

23           (d) EFFECTIVE DATES.—

1           (1) IN GENERAL.—The amendments made by  
2 this section shall apply to plan years beginning after  
3 December 31, 2005.

4           (2) TRANSITION RULE.—If notice under section  
5 4980H(e) of the Internal Revenue Code of 1986 or  
6 section 104(d) of the Employee Retirement Income  
7 Security Act of 1974 (as added by this section)  
8 would otherwise be required to be provided before  
9 the 90th day after the date of the enactment of this  
10 Act, such notice shall not be required to be provided  
11 until such 90th day.

12           **Subtitle B—Information to Assist**  
13           **Pension Plan Participants**

14           **SEC. 111. PERIODIC PENSION BENEFIT STATEMENTS.**

15           (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

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

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



1 “(b) AMOUNT OF TAX.—

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

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

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

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

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

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

5           “(B) such person provides the statement  
6 described in subsection (e) during the 30-day  
7 period beginning on the first date such person  
8 knew, or exercising reasonable diligence should  
9 have known, that such failure existed.

10           “(3) OVERALL LIMITATION FOR UNINTEN-  
11 TIONAL FAILURES.—

12           “(A) IN GENERAL.—If the person subject  
13 to liability for tax under subsection (d) exer-  
14 cised reasonable diligence to meet the require-  
15 ments of subsection (e), the tax imposed by  
16 subsection (a) for failures during the taxable  
17 year of the employer (or, in the case of a multi-  
18 employer plan, the taxable year of the trust  
19 forming part of the plan) shall not exceed  
20 \$500,000. For purposes of the preceding sen-  
21 tence, all multiemployer plans of which the  
22 same trust forms a part shall be treated as 1  
23 plan.

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

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

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

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

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

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

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

22 “(e) REQUIREMENTS TO PROVIDE PENSION BENEFIT  
23 STATEMENTS.—

24 “(1) REQUIREMENTS.—

1           “(A) DEFINED CONTRIBUTION PLAN.—  
2           The administrator of an applicable pension plan  
3           which is a defined contribution plan shall fur-  
4           nish a pension benefit statement described in  
5           paragraph (2)—

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

10                   “(ii) at least once each calendar year  
11                   to a participant or beneficiary who has his  
12                   or her own account under the plan but who  
13                   does not have the right to direct the invest-  
14                   ment of assets in that account, and

15                   “(iii) upon written request to a plan  
16                   beneficiary who is not a participant or ben-  
17                   eficiary described in clause (i) or (ii), ex-  
18                   cept that this subparagraph shall apply to  
19                   only 1 request during any 12-month pe-  
20                   riod.

21           “(B) DEFINED BENEFIT PLAN.—The ad-  
22           ministrator of an applicable pension plan which  
23           is a defined benefit plan shall furnish a pension  
24           benefit statement described in paragraph (2)—

1           “(i) at least once every 3 years to  
2           each participant who has a nonforfeitable  
3           accrued benefit and who is employed by  
4           the employer maintaining the plan at the  
5           time the statement is to be furnished, and

6           “(ii) to a participant or beneficiary of  
7           the plan upon written request, except that  
8           this clause shall apply to only 1 request  
9           during any 12-month period.

10           Information furnished under clause (i) to a par-  
11           ticipant may be based on reasonable estimates  
12           determined under regulations prescribed by the  
13           Secretary of Labor, in consultation with the  
14           Pension Benefit Guaranty Corporation.

15           “(2) STATEMENTS.—

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

18           “(i) shall indicate, on the basis of the  
19           latest available information—

20           “(I) the total benefits accrued,  
21           and

22           “(II) the nonforfeitable pension  
23           benefits, if any, which have accrued,  
24           or the earliest date on which benefits  
25           will become nonforfeitable,

1           “(ii) shall include an explanation of  
2           any permitted disparity under section  
3           401(l) or any floor-offset arrangement that  
4           may be applied in determining any accrued  
5           benefits described in clause (i),

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

9           “(iv) may be delivered in written, elec-  
10          tronic, or other appropriate form to the ex-  
11          tent such form is reasonably accessible to  
12          the participant or beneficiary.

13          “(B) ADDITIONAL INFORMATION.—In the  
14          case of a defined contribution plan, any pension  
15          benefit statement under clause (i) or (ii) of  
16          paragraph (1)(A) shall include—

17          “(i) the value of each investment to  
18          which assets in the individual account have  
19          been allocated, determined as of the most  
20          recent valuation date under the plan, in-  
21          cluding the value of any assets held in the  
22          form of employer securities or employer  
23          real property, without regard to whether  
24          such securities or real property were con-  
25          tributed by the plan sponsor or acquired at

1 the direction of the plan or of the partici-  
2 pant or beneficiary, and

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

5 “(I) an explanation of any limita-  
6 tions or restrictions on any right of  
7 the participant or beneficiary under  
8 the plan to direct an investment, and

9 “(II) a notice that investments in  
10 any individual account may not be  
11 adequately diversified if the value of  
12 any investment in the account exceeds  
13 20 percent of the fair market value of  
14 all investments in the account.

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

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

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

1 “(3) DEFINED BENEFIT PLANS.—

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

13 “(B) YEARS IN WHICH NO BENEFITS AC-  
14 CRUE.—The Secretary may provide that years  
15 in which no employee or former employee bene-  
16 fits (within the meaning of section 410(b))  
17 under the plan need not be taken into account  
18 in determining the 3-year period under para-  
19 graph (1)(B)(i).

20 “(4) SPECIAL RULE FOR CERTAIN ANNU-  
21 ITIES.—In the case of an annuity contract or custo-  
22 dial account described in section 403(b) which is not  
23 a plan established or maintained by the employer,  
24 the pension benefit statement under this subsection  
25 shall be furnished by the issuer of the contract, the



1       custodian of the account, or such other person as is  
2       specified by the Secretary.

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

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

10              “(2) EXCEPTION FOR GOVERNMENT AND  
11       CHURCH PLANS.—This section shall not apply to any  
12       governmental or church plan. For purposes of this  
13       paragraph, the terms ‘governmental plan’ and  
14       ‘church plan’ have the meanings given such terms by  
15       section 414.”

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

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

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

23       (b) AMENDMENTS OF ERISA.—

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

4           “(a) REQUIREMENTS TO PROVIDE PENSION BEN-  
5           EFIT STATEMENTS.—

6           “(1) REQUIREMENTS.—

7           “(A) INDIVIDUAL ACCOUNT PLAN.—The  
8           administrator of an individual account plan  
9           (other than a one-participant retirement plan  
10          described in section 101(i)(8)(B)) shall furnish  
11          a pension benefit statement—

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

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

21                  “(iii) upon written request to a plan  
22                  beneficiary not described in clause (i) or  
23                  (ii).

24           “(B) DEFINED BENEFIT PLAN.—The ad-  
25          ministrator of a defined benefit plan (other

1 than a one-participant retirement plan de-  
2 scribed in section 101(i)(8)(B)) shall furnish a  
3 pension benefit statement—

4 “(i) at least once every 3 years to  
5 each participant with a nonforfeitable ac-  
6 crued benefit and who is employed by the  
7 employer maintaining the plan at the time  
8 the statement is to be furnished, and

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

11 Information furnished under clause (i) to a par-  
12 ticipant may be based on reasonable estimates  
13 determined under regulations prescribed by the  
14 Secretary, in consultation with the Pension  
15 Benefit Guaranty Corporation.

16 “(2) STATEMENTS.—

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

19 “(i) shall indicate, on the basis of the  
20 latest available information—

21 “(I) the total benefits accrued,  
22 and

23 “(II) the nonforfeitable pension  
24 benefits, if any, which have accrued,

1 or the earliest date on which benefits  
2 will become nonforfeitable,

3 “(ii) shall include an explanation of  
4 any permitted disparity under section  
5 401(l) of the Internal Revenue Code of  
6 1986 or any floor-offset arrangement that  
7 may be applied in determining any accrued  
8 benefits described in clause (i),

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

12 “(iv) may be delivered in written, elec-  
13 tronic, or other appropriate form to the ex-  
14 tent such form is reasonably accessible to  
15 the participant or beneficiary.

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

20 “(i) the value of each investment to  
21 which assets in the individual account have  
22 been allocated, determined as of the most  
23 recent valuation date under the plan, in-  
24 cluding the value of any assets held in the  
25 form of employer securities or employer

1 real property, without regard to whether  
2 such securities or real property were con-  
3 tributed by the plan sponsor or acquired at  
4 the direction of the plan or of the partici-  
5 pant or beneficiary, and

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

8 “(I) an explanation of any limita-  
9 tions or restrictions on any right of  
10 the participant or beneficiary under  
11 the plan to direct an investment, and

12 “(II) a notice that investments in  
13 any individual account may not be  
14 adequately diversified if the value of  
15 any investment in the account exceeds  
16 20 percent of the fair market value of  
17 all investments in the account.

18 “(C) ALTERNATIVE NOTICE.—The require-  
19 ments of subparagraph (A)(i)(II) are met if, at  
20 least annually and in accordance with require-  
21 ments of the Secretary, the plan—

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

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

5                   “(3) DEFINED BENEFIT PLANS.—

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

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

25                  “(2) CONFORMING AMENDMENTS.—

1 (A) Section 105 of the Employee Retirement  
2 ment Income Security Act of 1974 (29 U.S.C.  
3 1025) is amended by striking subsection (d).

4 (B) Section 105(b) of such Act (29 U.S.C.  
5 1025(b)) is amended to read as follows:

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

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

15 (c) MODEL STATEMENTS.—The Secretary of Labor  
16 shall, within 180 days after the date of the enactment of  
17 this section, develop 1 or more model benefit statements  
18 that are written in a manner calculated to be understood  
19 by the average plan participant and that may be used by  
20 plan administrators in complying with the requirements  
21 of section 4980I of the Internal Revenue Code of 1986  
22 and section 105 of the Employee Retirement Income Secu-  
23 rity Act of 1974.

24 (d) EFFECTIVE DATE.—

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

4           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
5 GAINED AGREEMENTS.—In the case of a plan main-  
6 tained pursuant to 1 or more collective bargaining  
7 agreements between employee representatives and 1  
8 or more employers ratified on or before the date of  
9 the enactment of this Act, paragraph (1) shall be  
10 applied to benefits pursuant to, and individuals cov-  
11 ered by, any such agreement by substituting for  
12 “December 31, 2006” the earlier of—

13                   (A) the later of—

14                           (i) December 31, 2007, or

15                           (ii) the date on which the last of such  
16 collective bargaining agreements termi-  
17 nates (determined without regard to any  
18 extension thereof after such date of enact-  
19 ment), or

20                   (B) December 31, 2008.



1 **SEC. 112. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
2 **PROVIDE ADEQUATE INVESTMENT EDU-**  
3 **CATION TO PARTICIPANTS.**

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

7 (1) **IN GENERAL.—**Section 4980I(e)(1)(A) of  
8 the Internal Revenue Code of 1986, as added by sec-  
9 tion 111, is amended by adding at the end the fol-  
10 lowing new flush sentence:

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

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

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

22 “(A) **IN GENERAL.—**The Secretary shall,  
23 in consultation with the Secretary of Labor, de-  
24 velop and make available to defined contribu-  
25 tion plans for distribution under paragraph  
26 (1)(A) a model form containing basic guidelines

1 for investing for retirement. Except as other-  
2 wise provided by the Secretary, such guidelines  
3 shall include—

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

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

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

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

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

23 “(B) CALCULATION INFORMATION.—The  
24 model form under subparagraph (A) shall in-  
25 clude addresses for Internet sites, and a work-

1 sheet, which a participant or beneficiary may  
2 use to calculate—

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

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

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

21 “(C) PUBLIC COMMENT.—The Secretary  
22 shall provide at least 90 days for public com-  
23 ment before publishing final notice of the model  
24 form.

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

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

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

11           (3) CONFORMING AMENDMENTS.—Section  
12 4980I of such Code is amended—

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

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

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

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

4 (b) ADEQUATE INVESTMENT EDUCATION.—

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

11 “(e) BASIC INVESTMENT GUIDELINES.—

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

20 “(2) MODEL FORM.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9           (c) EFFECTIVE DATE.—

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

13           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
14           GAINED AGREEMENTS.—In the case of a plan main-  
15           tained pursuant to 1 or more collective bargaining  
16           agreements between employee representatives and 1  
17           or more employers ratified on or before the date of  
18           the enactment of this Act, paragraph (1) shall be  
19           applied to benefits pursuant to, and individuals cov-  
20           ered by, any such agreement by substituting for  
21           “December 31, 2006” the earlier of—

22           (A) the later of—

23           (i) December 31, 2007, or

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



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

4           (B) December 31, 2008.

5 **SEC. 113. MATERIAL INFORMATION RELATING TO INVEST-**  
6 **MENT IN EMPLOYER SECURITIES.**

7       (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

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

13      “(e) NOTICE REQUIREMENTS.—

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

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

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

20      “(2) MATERIAL INFORMATION.—

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

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

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

18 (2) CONFORMING AMENDMENTS.—

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

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

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

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

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

15 (b) AMENDMENTS OF ERISA.—

16 (1) IN GENERAL.—Section 104 of the Employee  
17 Retirement Income Security Act of 1974 (29 U.S.C.  
18 1024) as amended by sections 102 and 112, is  
19 amended by redesignating subsection (f) as sub-  
20 section (g) and by inserting after subsection (e) the  
21 following new subsection:

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

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

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

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

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

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

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

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

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

7 (c) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by  
9 this section shall apply to plan years beginning after  
10 December 31, 2005.

11 (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
12 GAINED AGREEMENTS.—In the case of a plan main-  
13 tained pursuant to 1 or more collective bargaining  
14 agreements between employee representatives and 1  
15 or more employers ratified on or before the date of  
16 the enactment of this Act, paragraph (1) shall be  
17 applied to benefits pursuant to, and individuals cov-  
18 ered by, any such agreement by substituting for  
19 “December 31, 2005” the earlier of—

20 (A) the later of—

21 (i) December 31, 2006, or

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

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

3 (B) December 31, 2007.

4 **SEC. 114. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**  
5 **NATING INDEPENDENT INVESTMENT ADVIS-**  
6 **ERS.**

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

11 “(e) INDEPENDENT INVESTMENT ADVISER.—

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

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

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

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

11           “(2) QUALIFIED INVESTMENT ADVISER.—

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

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

19                   “(ii) who—

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **SEC. 115. TREATMENT OF QUALIFIED RETIREMENT PLAN-**  
10 **NING SERVICES.**

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

15 “(4) NO CONSTRUCTIVE RECEIPT.—

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

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

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

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

13 “(i) who—

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

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

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

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

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

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

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

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

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

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

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

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

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

17          “ (E) TERMINATION.—This paragraph  
18          shall not apply to taxable years beginning after  
19          December 31, 2010.”

20          (b) CONFORMING AMENDMENTS.—

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

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



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

4           (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall apply to taxable years beginning after  
 6 December 31, 2005.

7           **Subtitle C—Protection of Pension**  
 8           **Plan Participants**

9           **SEC. 121. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**  
 10           **BLACKOUT PERIODS.**

11           (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

12           (1) EXCISE TAX.—

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

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

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

25           “(b) AMOUNT OF TAX.—

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

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

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

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

22                 “(2) TAX NOT TO APPLY TO FAILURES COR-  
23                 RECTED AS SOON AS REASONABLY PRACTICABLE.—  
24                 No tax shall be imposed by subsection (a) on any  
25                 failure if—

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

5           “(B) such person provides the notice de-  
6 scribed in subsection (e) as soon as reasonably  
7 practicable after the first date such person  
8 knew, or exercising reasonable diligence should  
9 have known, that such failure existed.

10           “(3) OVERALL LIMITATION FOR UNINTEN-  
11 TIONAL FAILURES.—

12           “(A) IN GENERAL.—If the person subject  
13 to liability for tax under subsection (d) exer-  
14 cised reasonable diligence to meet the require-  
15 ments of subsection (e), the tax imposed by  
16 subsection (a) for failures during the taxable  
17 year of the employer (or, in the case of a multi-  
18 employer plan, the taxable year of the trust  
19 forming part of the plan) shall not exceed  
20 \$500,000. For purposes of the preceding sen-  
21 tence, all multiemployer plans of which the  
22 same trust forms a part shall be treated as 1  
23 plan.

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

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

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

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

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

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

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

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

25 “(1) IN GENERAL.—

1           “(A) DUTIES OF PLAN ADMINISTRATOR.—

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

8           “(B) SPECIAL RULE FOR CERTAIN ANNU-

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

16          “(2) NOTICE REQUIREMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) AMENDMENTS OF ERISA.—

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

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 122. ALLOWANCE OF CATCHUP PAYMENTS.**

14 (a) IN GENERAL.—Section 219(b)(5) of the Internal  
15 Revenue Code of 1986 (relating to deductible amount) is  
16 amended by redesignating subparagraph (C) as subpara-  
17 graph (D) and by inserting after subparagraph (B) the  
18 following new subparagraph:

19 “(C) CATCHUP CONTRIBUTIONS FOR CER-  
20 TAIN INDIVIDUALS.—

21 “(i) IN GENERAL.—In the case of an  
22 eligible individual who elects to make a  
23 qualified retirement contribution in addi-  
24 tion to the deductible amount determined  
25 under subparagraph (A)—

1           “(I) the deductible amount for  
2           any taxable year shall be increased by  
3           an amount equal to 3 times the appli-  
4           cable amount determined under sub-  
5           paragraph (B) for such taxable year,  
6           and

7           “(II) subparagraph (B) shall not  
8           apply.

9           “(ii) ELIGIBLE INDIVIDUAL.—For  
10          purposes of this subparagraph, the term  
11          ‘eligible individual’ means, with respect to  
12          any taxable year, any individual who was a  
13          qualified participant in a qualified cash or  
14          deferred arrangement (as defined in sec-  
15          tion 401(k)) of an employer described in  
16          clause (ii) under which the employer  
17          matched at least 50 percent of the employ-  
18          ee’s contributions to such arrangement  
19          with stock of such employer.

20          “(iii) EMPLOYER DESCRIBED.—An  
21          employer is described in this clause if, in  
22          any taxable year preceding the taxable year  
23          described in clause (ii)—

24                 “(I) such employer (or any con-  
25                 trolling corporation of such employer)

1 was a debtor in a case under title 11  
2 of the United States Code, or similar  
3 Federal or State law, and

4 “(II) such employer (or any other  
5 person) was subject to an indictment  
6 or conviction resulting from business  
7 transactions related to such case.

8 “(iv) QUALIFIED PARTICIPANT.—For  
9 purposes of clause (ii), the term ‘qualified  
10 participant’ means any eligible individual  
11 who was a participant in the cash or de-  
12 ferred arrangement described in clause (i)  
13 on the date that is 6 months before the fil-  
14 ing of the case described in clause (iii).

15 “(v) TERMINATION.—This subpara-  
16 graph shall not apply to taxable years be-  
17 ginning after December 31, 2009.”

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

1 **TITLE II—PROVISIONS RELAT-**  
2 **ING TO FUNDING, DEDUC-**  
3 **TIONS, AND THE PENSION**  
4 **BENEFIT GUARANTY COR-**  
5 **PORATION**

6 **Subtitle A—Replacement of Inter-**  
7 **est Rate on 30-Year Treasury Se-**  
8 **curities**

9 **SEC. 201. REPLACEMENT OF 30-YEAR TREASURY RATE FOR**  
10 **PURPOSES OF FUNDING AND PBGC PREMIUM**  
11 **RATES.**

12 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

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

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

22 “(i) in the case of plan years begin-  
23 ning in 2006, by using an interest rate de-  
24 termined in accordance with the rules pre-  
25 scribed under subsection (o)(1),



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

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

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

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

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

16                         “(A) DETERMINATION OF RATE.—

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

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

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

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

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

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

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

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

4 “(3) PHASE-IN YIELD CURVE METHOD.—

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

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

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

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

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

21 “(4) SIMPLIFIED METHODS.—

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

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

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

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

23          (b) AMENDMENTS OF ERISA.—

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

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

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

9 “(i) in the case of plan years begin-  
10 ning in 2006, by using an interest rate de-  
11 termined in accordance with the rules pre-  
12 scribed under subsection (h)(1),

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

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

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

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

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

5                       “(A) DETERMINATION OF RATE.—

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

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

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

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

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

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

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

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

18 “(3) PHASE-IN YIELD CURVE METHOD.—

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

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

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

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

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

10                   “(4) SIMPLIFIED METHODS.—

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

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



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

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

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

11 (4) PBGC PREMIUM RATES.—

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

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

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

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

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

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

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

24 (d) EFFECTIVE DATES.—

1           (1) IN GENERAL.—Except as provided in para-  
2           graphs (2) and (3), the amendments made by this  
3           section shall apply to plan years beginning after De-  
4           cember 31, 2004

5           (2) LOOKBACK RULES.—For purposes of apply-  
6           ing subsections (d)(9)(B) and (e)(1) of section 302  
7           of the Employee Retirement Income Security Act of  
8           1974 and subsections (l)(9)(B) and (m)(1) of section  
9           412 of the Internal Revenue Code of 1986 to plan  
10          years beginning after December 31, 2004, the  
11          amendments made by this section may be applied as  
12          if such amendments had been in effect for all prior  
13          plan years. The Secretary of the Treasury may pre-  
14          scribe simplified assumptions which may be used in  
15          applying the amendments made by this section to  
16          such prior plan years.

17 **SEC. 202. REPLACEMENT OF 30-YEAR TREASURY RATE FOR**  
18 **CALCULATING LUMP-SUM DISTRIBUTIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9                   (c) EFFECTIVE DATES.—

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

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

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

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

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

9   **SEC. 203. SECTION 415 LIMITATION ON DEFINED BENEFIT**  
10                           **PLANS.**

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

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

19           (b) **EFFECTIVE DATE.**—The amendment made by  
20 this section shall apply to years beginning after December  
21 31, 2005.

1 **Subtitle B—Provisions Relating to**  
2 **Pension Plan Funding and De-**  
3 **ductions**

4 **SEC. 211. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

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

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

15 (c) **EFFECTIVE DATE.**—The amendments made by  
16 this section shall apply to years beginning after December  
17 31, 2005.

18 **SEC. 212. BENEFIT LIMITATIONS FOR CERTAIN FINAN-**  
19 **CIALLY DISTRESSED PLANS.**

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



1           “(36) BENEFIT LIMITATIONS FOR CERTAIN FI-  
2           NANCIALLY DISTRESSED PLANS.—

3           “(A) IN GENERAL.—Notwithstanding any  
4           other provision of this part, if a defined benefit  
5           plan to which the requirements of section 412(l)  
6           apply is a financially distressed plan for any  
7           plan year, a trust forming part of the plan shall  
8           not be treated as a qualified trust under this  
9           section unless—

10           “(i) no amendment to the plan takes  
11           effect during the plan year if such amend-  
12           ment increases liabilities of the plan by  
13           reason of increases in benefits, any change  
14           in the accrual of benefits, or any change in  
15           the rate at which benefits become non-  
16           forfeitable,

17           “(ii) notwithstanding any other provi-  
18           sion of the plan—

19           “(I) the accrued benefit, any  
20           death or disability benefit, and any so-  
21           cial security supplement described in  
22           the last sentence of section 411(a)(9)  
23           of each participant are frozen at the  
24           amount of such benefit or supplement  
25           as of the end of the preceding plan

1 year, determined without regard to  
2 any plan amendment adopted during  
3 the preceding plan year which in-  
4 creased any such benefit or supple-  
5 ment and determined after the appli-  
6 cation of this subclause, and

7 “(II) all other benefits provided  
8 under the plan are eliminated,

9 but only to the extent the freezing or elimi-  
10 nation of such benefits would have been  
11 permitted under section 411(d)(6) if they  
12 had been implemented by a plan amend-  
13 ment adopted at the end of the preceding  
14 plan year, and

15 “(iii) no payments described in para-  
16 graph (32)(B) are made to any participant  
17 or beneficiary whose annuity starting date  
18 occurs during the plan year.

19 Clause (iii) shall apply to any plan year begin-  
20 ning after such plan year and before the 1st  
21 plan year following such plan year for which the  
22 plan is not a financially distressed plan.

23 “(B) SPECIAL RULES IF FUNDING IN-  
24 CREASES TO AT LEAST 50 PERCENT.—If a plan  
25 is a financially distressed plan for any plan year

1 but the funded current liability percentage as of  
2 the beginning of the preceding plan year is at  
3 least 50 percent—

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

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

14 “(C) SPECIAL RULES.—For purposes of  
15 this paragraph—

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

21 “(ii) COLLECTIVELY BARGAINED  
22 PLANS.—In the case of a plan maintained  
23 pursuant to a collective bargaining agree-  
24 ment between employee representatives  
25 and the employer and in effect before the

1 beginning of the first plan year of any con-  
2 tinuous period of 1 or more plan years for  
3 which a plan is a financially distressed  
4 plan, this paragraph shall not be applied to  
5 benefits pursuant to, and individuals cov-  
6 ered by, such agreement for plan years be-  
7 ginning before the date on which such col-  
8 lective bargaining agreement terminates  
9 (determined without regard to any exten-  
10 sion thereof).

11 “(D) FINANCIALLY DISTRESSED PLAN.—

12 For purposes of this paragraph—

13 “(i) IN GENERAL.—A plan shall be  
14 treated as a financially distressed plan for  
15 any plan year if—

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

24 “(II) the funded current liability  
25 percentage of the plan as of the begin-

1           ning of the plan year preceding such  
2           plan year is less than 50 percent.

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

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

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

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

1                   plan years the plan was not described  
2                   in clause (i)(II).

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

14                  (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT  
15                  OF 1974.—

16                  (1) IN GENERAL.—Section 206 of the Employee  
17                  Retirement Income Security Act of 1974 (29 U.S.C.  
18                  1056) is amended by adding at the end the following  
19                  new subsection:

20                  “(g) BENEFIT LIMITATIONS FOR CERTAIN FINAN-  
21                  CIALLY DISTRESSED PLANS.—

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

1           “(A) no amendment to the plan shall take  
2 effect during the plan year if such amendment  
3 increases liabilities of the plan by reason of in-  
4 creases in benefits, any change in the accrual of  
5 benefits, or any change in the rate at which  
6 benefits become nonforfeitable,

7           “(B) notwithstanding any other provision  
8 of the plan—

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

20           “(ii) all other benefits provided under  
21 the plan shall be eliminated,

22 but only to the extent the freezing or elimi-  
23 nation of such benefits would have been per-  
24 mitted under section 204(g) if they had been

1 implemented by a plan amendment adopted at  
2 the end of the preceding plan year, and

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

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

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

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

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



1           “(3) SPECIAL RULES.—For purposes of this  
2 subsection—

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

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

21           “(4) NOTICE REQUIREMENTS.—

22           “(A) IN GENERAL.—The plan adminis-  
23 trator of a plan which is a financially distressed  
24 plan for any year shall, at least 45 days before  
25 the beginning of the plan year, notify each plan

1 participant or beneficiary, each labor organiza-  
2 tion representing such participants or bene-  
3 ficiaries, and the Pension Benefit Guaranty  
4 Corporation that—

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

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

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

15 “(B) FORM AND MANNER.—Any notice  
16 under subparagraph (A)—

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

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

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

1 persons to whom the notice is required to  
2 be provided.

3 “(5) FINANCIALLY DISTRESSED PLAN.—For  
4 purposes of this subsection—

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

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

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

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

23 “(B) FINANCIAL STATUS MUST IMPROVE  
24 FOR AT LEAST 5 YEARS.—

1           “(i) IN GENERAL.—Notwithstanding  
2           subparagraph (A), if a plan is treated  
3           under subparagraph (A) as a financially  
4           distressed plan for 1 or more plan years,  
5           the plan shall continue to be treated as a  
6           financially distressed plan for subsequent  
7           plan years beginning before the first plan  
8           year after the close of the first period de-  
9           scribed in clause (ii).

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

18           “(6) FUNDED CURRENT LIABILITY PERCENT-  
19           AGE.—For purposes of this subsection the term  
20           ‘funded current liability percentage’ has the meaning  
21           given such term by section 302(d)(8)(B), except that  
22           the current liability used in computing such percent-  
23           age shall be determined by only taking into account  
24           vested benefits and by using the interest rate de-

1 scribed in section 4006(a)(3)(E)(iii)(II) and the fair  
2 market value of the plan assets.”

3 (2) ENFORCEMENT.—Section 502(c)(3) of such  
4 Act (29 U.S.C. 1132(c)(3)) is amended by inserting  
5 “206(g)(4) or” before “302(d)(12)(E)”.

6 (c) EFFECTIVE DATES.—

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

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

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

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

1 (B) January 1, 2007.

2 **SEC. 213. UPDATING DEDUCTION RULES FOR COMBINA-**  
3 **TION OF PLANS.**

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

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

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

4 “(A) so much of the contributions to 1 or  
 5 more defined contribution plans which are not  
 6 deductible when contributed solely because of  
 7 section 404(a)(7) as does not exceed the  
 8 amount of contributions described in section  
 9 401(m)(4)(A), or”.

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

13 **Subtitle C—Provisions Relating to**  
 14 **the Pension Benefit Guaranty**  
 15 **Corporation**

16 **SEC. 221. PBGC PREMIUMS FOR NEW PLANS OF SMALL EM-**  
 17 **PLOYERS.**

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

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

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

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

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

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

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



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

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

12       (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to plans first effective after Decem-  
14 ber 31, 2005.

15 **SEC. 222. ADDITIONAL PBGC PREMIUM FOR NEW AND**  
16 **SMALL PLANS.**

17       (a) NEW PLANS.—Subparagraph (E) of section  
18 4006(a)(3) of the Employee Retirement Income Security  
19 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by  
20 adding at the end the following new clause:

21       “(v) In the case of a new defined benefit plan, the  
22 amount determined under clause (ii) for any plan year  
23 shall be an amount equal to the product of the amount  
24 determined under clause (ii) and the applicable percent-

1 age. For purposes of this clause, the term ‘applicable per-  
2 centage’ means—

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

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

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

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

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

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

18 (b) SMALL PLANS.—Paragraph (3) of section  
19 4006(a) of the Employee Retirement Income Security Act  
20 of 1974 (29 U.S.C. 1306(a)), as amended by section  
21 221(b), is amended—

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

1           (2) by inserting after subparagraph (F) the fol-  
2           lowing new subparagraph:

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

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

18          (c) EFFECTIVE DATES.—

19               (1) SUBSECTION (a).—The amendments made  
20               by subsection (a) shall apply to plans first effective  
21               after December 31, 2005.

22               (2) SUBSECTION (b).—The amendments made  
23               by subsection (b) shall apply to plan years beginning  
24               after December 31, 2005.

1 **SEC. 223. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**  
2 **PREMIUM OVERPAYMENT REFUNDS.**

3 (a) IN GENERAL.—Section 4007(b) of the Employ-  
4 ment Retirement Income Security Act of 1974 (29 U.S.C.  
5 1307(b)) is amended—

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

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

10 “(2) The corporation is authorized to pay, subject to  
11 regulations prescribed by the corporation, interest on the  
12 amount of any overpayment of premium refunded to a des-  
13 ignated payor. Interest under this paragraph shall be cal-  
14 culated at the same rate and in the same manner as inter-  
15 est is calculated for underpayments under paragraph (1).”

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

20 **SEC. 224. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**  
21 **PLANS.**

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

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

5           “(i) owns the entire interest in an unincor-  
6 porated trade or business,

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

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

15 For purposes of clause (iii), the constructive ownership  
16 rules of section 1563(e) of the Internal Revenue Code of  
17 1986 shall apply (determined without regard to section  
18 1563(e)(3)(C)).

19       “(B) In the case of a participant who is a majority  
20 owner, the amount of benefits guaranteed under this sec-  
21 tion shall equal the product of—

22           “(i) a fraction (not to exceed 1) the numerator  
23 of which is the number of years from the later of the  
24 effective date or the adoption date of the plan to the

1 termination date, and the denominator of which is  
2 10, and

3 “(ii) the amount of benefits that would be guar-  
4 anteed under this section if the participant were not  
5 a majority owner.”

6 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

7 (1) Section 4044(a)(4)(B) of the Employee Re-  
8 tirement Income Security Act of 1974 (29 U.S.C.  
9 1344(a)(4)(B)) is amended by striking “section  
10 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

11 (2) Section 4044(b) of such Act (29 U.S.C.  
12 1344(b)) is amended—

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

15 (B) by redesignating paragraphs (3)  
16 through (6) as paragraphs (4) through (7), re-  
17 spectively, and by inserting after paragraph (2)  
18 the following new paragraph:

19 “(3) If assets available for allocation under  
20 paragraph (4) of subsection (a) are insufficient to  
21 satisfy in full the benefits of all individuals who are  
22 described in that paragraph, the assets shall be allo-  
23 cated first to benefits described in subparagraph (A)  
24 of that paragraph. Any remaining assets shall then  
25 be allocated to benefits described in subparagraph

1 (B) of that paragraph. If assets allocated to such  
2 subparagraph (B) are insufficient to satisfy in full  
3 the benefits described in that subparagraph, the as-  
4 sets shall be allocated pro rata among individuals on  
5 the basis of the present value (as of the termination  
6 date) of their respective benefits described in that  
7 subparagraph.”

8 (c) CONFORMING AMENDMENTS.—

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

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

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

16 “(d) For purposes of subsection (b)(9), the term ‘sub-  
17 stantial owner’ means an individual who, at any time dur-  
18 ing the 60-month period ending on the date the determina-  
19 tion is being made—

20 “(1) owns the entire interest in an unincor-  
21 porated trade or business,

22 “(2) in the case of a partnership, is a partner  
23 who owns, directly or indirectly, more than 10 per-  
24 cent of either the capital interest or the profits inter-  
25 est in such partnership, or

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

5 For purposes of paragraph (3), the constructive ownership  
6 rules of section 1563(e) of the Internal Revenue Code of  
7 1986 shall apply (determined without regard to section  
8 1563(e)(3)(C)).”

9           (2) Section 4043(c)(7) of such Act (29 U.S.C.  
10          1343(c)(7)) is amended by striking “section  
11          4022(b)(6)” and inserting “section 4021(d)”.

12          (d) EFFECTIVE DATES.—

13           (1) IN GENERAL.—Except as provided in para-  
14          graph (2), the amendments made by this section  
15          shall apply to plan terminations—

16           (A) under section 4041(c) of the Employee  
17          Retirement Income Security Act of 1974 (29  
18          U.S.C. 1341(c)) with respect to which notices  
19          of intent to terminate are provided under sec-  
20          tion 4041(a)(2) of such Act (29 U.S.C.  
21          1341(a)(2)) after December 31, 2005, and

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



1           (2) CONFORMING AMENDMENTS.—The amend-  
2           ments made by subsection (c) shall take effect on  
3           January 1, 2006.

4 **SEC. 225. ACCELERATION OF COMPUTATION OF BENEFITS**  
5                           **ATTRIBUTABLE TO RECOVERIES OF EM-**  
6                           **PLOYER LIABILITY.**

7           (a) MODIFICATION OF AVERAGE RECOVERY PER-  
8           CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-  
9           ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS  
10          AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the  
11          Employee Retirement Income Security Act of 1974 (29  
12          U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

13                           “(ii) notices of intent to terminate  
14                           were provided (or in the case of a termi-  
15                           nation by the corporation, a notice of de-  
16                           termination under section 4042 was  
17                           issued) during the 5-Federal fiscal year pe-  
18                           riod ending with the third fiscal year pre-  
19                           ceding the fiscal year in which occurs the  
20                           date of the notice of intent to terminate  
21                           (or the notice of determination under sec-  
22                           tion 4042) with respect to the plan termi-  
23                           nation for which the recovery ratio is being  
24                           determined.”

1 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR  
 2 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
 3 PARTICIPANTS AND BENEFICIARIES.—Section 4044 of the  
 4 Employee Retirement Income Security Act of 1974 (29  
 5 U.S.C. 1362) is amended by adding at the end the fol-  
 6 lowing new subsection:

7 “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR  
 8 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
 9 PARTICIPANTS AND BENEFICIARIES.—

10 “(1) IN GENERAL.—In the case of a terminated  
 11 plan, the value of the recovery of liability under sec-  
 12 tion 4062(c) allocable as a plan asset under this sec-  
 13 tion for purposes of determining the amount of ben-  
 14 efits payable by the corporation shall be determined  
 15 by multiplying—

16 “(A) the amount of liability under section  
 17 4062(c) as of the termination date of the plan,  
 18 by

19 “(B) the applicable section 4062(c) recov-  
 20 ery ratio.

21 “(2) SECTION 4062(c) RECOVERY RATIO.—For  
 22 purposes of this subsection—

23 “(A) IN GENERAL.—Except as provided in  
 24 subparagraph (C), the term ‘section 4062(c) re-  
 25 covery ratio’ means the average, determined

1 with respect to prior plan terminations de-  
2 scribed in subparagraph (B), of the ratio  
3 which—

4 “(i) the value of the recovery under  
5 section 4062(c) determined by the corpora-  
6 tion in connection with any such prior ter-  
7 mination, bears to

8 “(ii) the amount of liability under sec-  
9 tion 4062(c) with respect to such plans as  
10 of the termination date in connection with  
11 any such prior termination.

12 “(B) PRIOR TERMINATIONS.—A plan ter-  
13 mination described in this subparagraph is a  
14 termination with respect to which—

15 “(i) the value of recoveries under sec-  
16 tion 4062(c) have been determined by the  
17 corporation, and

18 “(ii) notices of intent to terminate  
19 were provided (or in the case of a termi-  
20 nation by the corporation, a notice of de-  
21 termination under section 4042 was  
22 issued) during the 5-Federal fiscal year pe-  
23 riod ending with the third fiscal year pre-  
24 ceding the fiscal year in which occurs the  
25 date of the notice of intent to terminate

1 (or the notice of determination under sec-  
2 tion 4042) with respect to the plan termi-  
3 nation for which the recovery ratio is being  
4 determined.

5 “(C) EXCEPTION.—In the case of a termi-  
6 nated plan with respect to which the out-  
7 standing amount of benefit liabilities exceeds  
8 \$20,000,000, the term ‘section 4062(c) recovery  
9 ratio’ means, with respect to the termination of  
10 such plan, the ratio of—

11 “(i) the value of the recoveries on be-  
12 half of the plan under section 4062(c), to

13 “(ii) the amount of the liability owed  
14 under section 4062(c) as of the date of  
15 plan termination to the trustee appointed  
16 under section 4042 (b) or (c).

17 “(3) SUBSECTION NOT TO APPLY.—This sub-  
18 section shall not apply with respect to the deter-  
19 mination of—

20 “(A) whether the amount of outstanding  
21 benefit liabilities exceeds \$20,000,000, or

22 “(B) the amount of any liability under sec-  
23 tion 4062 to the corporation or the trustee ap-  
24 pointed under section 4042 (b) or (c).



1           (2) ways to encourage the continued mainte-  
2           nance of defined benefit plans by larger employers,  
3           and

4           (3) legislative proposals to accomplish the objec-  
5           tives described in paragraphs (1) and (2).

6           (b) REPORT.—Not later than 2 years after the date  
7           of the enactment of this Act, the Secretaries and the Exec-  
8           utive Director shall report the results of the study, to-  
9           gether with any recommendations for legislative changes,  
10          to the Committees on Ways and Means and Education and  
11          the Workforce of the House of Representatives and the  
12          Committees on Finance and Health, Education, Labor,  
13          and Pensions of the Senate.

14   **SEC. 232. STUDY ON FLOOR-OFFSET ESOPS.**

15          (a) STUDY.—As soon as practicable after the date of  
16          the enactment of this Act, the Secretary of the Treasury  
17          and the Pension Benefit Guaranty Corporation shall un-  
18          dertake a study to determine the number of floor-offset  
19          employee stock ownership plans still in existence and the  
20          extent to which such plans pose a risk to plan participants  
21          or beneficiaries and to the Corporation. Such study shall  
22          consider legislative proposals to address such risks.

23          (b) REPORT.—Not later than 1 year after the date  
24          of the enactment of this Act, the Secretary and the Cor-  
25          poration shall report the results of the study, together

1 with any recommendations for legislative changes, to the  
 2 Committees on Ways and Means and Education and the  
 3 Workforce of the House of Representatives and the Com-  
 4 mittees on Finance and Health, Education, Labor, and  
 5 Pensions of the Senate.

6 **TITLE III—IMPROVEMENTS IN**  
 7 **PORTABILITY AND DISTRIBUTION RULES**  
 8

9 **SEC. 301. CLARIFICATIONS REGARDING PURCHASE OF PER-**  
 10 **MISSIVE SERVICE CREDIT.**

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

14 (1) by striking “an employee” in paragraph (1)  
 15 and inserting “a participant”, and

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

18 “Such term may include service credit for peri-  
 19 ods for which there is no performance of serv-  
 20 ice, and notwithstanding clause (ii), may in-  
 21 clude service credited in order to provide an in-  
 22 creased benefit for service credit which a partic-  
 23 ipant is receiving under the plan.”

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

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

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

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

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

23 (1) by striking “permissive service credit attrib-  
24 utable to nonqualified service” each place it appears



1 in subparagraph (B) and inserting “nonqualified  
2 service credit”,

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

5 “(C) NONQUALIFIED SERVICE CREDIT.—  
6 For purposes of subparagraph (B), the term  
7 ‘nonqualified service credit’ means permissive  
8 service credit other than that allowed with re-  
9 spect to—”, and

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

17 (d) EFFECTIVE DATES.—

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

22 (2) SUBSECTION (b).—The amendments made  
23 by subsection (b) shall take effect as if included in  
24 the amendments made by section 647 of the Eco-



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

3 **SEC. 304. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**  
 4 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**  
 5 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**  
 6 **PLOYEES.**

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

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

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

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

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

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

6 **SEC. 305. ALLOW ROLLOVERS BY NONSPOUSE BENE-**  
7                           **FICIARIES OF CERTAIN RETIREMENT PLAN**  
8                           **DISTRIBUTIONS.**

9           (a) **IN GENERAL.**—

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

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

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

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

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

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

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

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

22                   (2) SECTION 403(a) PLANS.—Subparagraph (B)  
23                   of section 403(a)(4) of such Code (relating to roll-  
24                   over amounts) is amended by striking “and (9)” and  
25                   inserting “, (9), and (11)”.

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

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

9           (b) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to distributions after December 31,  
11 2005.

12 **SEC. 306. FASTER VESTING OF EMPLOYER NONELECTIVE**  
13 **CONTRIBUTIONS.**

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

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

20           “(2) EMPLOYER CONTRIBUTIONS.—

21           “(A) DEFINED BENEFIT PLANS.—

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

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

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

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

14          “(B) DEFINED CONTRIBUTION PLANS.—

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

9           (c) EFFECTIVE DATES.—

10           (1) IN GENERAL.—Except as provided in para-  
 11 graph (2), the amendments made by this section  
 12 shall apply to contributions for plan years beginning  
 13 after December 31, 2005.

14           (2) COLLECTIVE BARGAINING AGREEMENTS.—

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

1 (A) the later of—

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

7 (ii) January 1, 2006; or

8 (B) January 1, 2008.

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

15 **SEC. 307. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
16 **PLANS TO ROTH IRAS.**

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

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

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

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

25 if—

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

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

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

13       (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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

16 (c) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to distributions after December 31,  
18 2005.

19 **SEC. 308. ELIMINATION OF HIGHER PENALTY ON CERTAIN**  
20 **SIMPLE PLAN DISTRIBUTIONS.**

21 (a) IN GENERAL.—Subsection (t) of section 72 of the  
22 Internal Revenue Code of 1986 (relating to 10-percent ad-  
23 ditional tax on early distributions from qualified retire-  
24 ment plans), as amended by section 304, is amended by  
25 striking paragraph (6) and redesignating paragraphs (7),

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

3 (b) CONFORMING AMENDMENTS.—

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

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

10 (3) Section 408(d)(3)(G) of such Code is  
11 amended by striking “applies” and inserting “ap-  
12 plied on the day before the date of the enactment of  
13 the National Employee Savings and Trust Equity  
14 Guarantee Act of 2005”.

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

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to years beginning after December  
20 31, 2005.

21 **SEC. 309. SIMPLE PLAN PORTABILITY.**

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

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

3 (b) EFFECTIVE DATE.—The amendment made by  
4 this section shall apply to years beginning after December  
5 31, 2005.

6 **SEC. 310. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**  
7 **MENT PLANS.**

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

14 **SEC. 311. TRANSFERS TO THE PBGC.**

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

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

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

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

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

17           (c) MISSING PARTICIPANTS AND BENEFICIARIES.—  
18           Section 4050 of the Employee Retirement Income Security  
19           Act of 1974 (29 U.S.C. 1350), as amended by section 312,  
20           is amended by redesignating subsection (e) as subsection  
21           (f) and by inserting after subsection (d) the following new  
22           subsection:

23                     “(e) INVOLUNTARY CASHOUTS.—

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



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

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

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

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

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

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

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

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

6           (d) EFFECTIVE DATES.—

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

12          (2) EMPLOYEE RETIREMENT INCOME SECURITY  
13          ACT OF 1974 PROVISIONS.—The amendments made  
14          by subsection (c) shall apply to distributions made  
15          after final regulations implementing subsection (e)  
16          of section 4050 of the Employee Retirement Income  
17          Security Act of 1974 (as added by subsection (c))  
18          are prescribed.

19          (3) REGULATIONS.—The Pension Benefit Guar-  
20          anty Corporation shall issue regulations necessary to  
21          carry out the amendments made by subsection (c)  
22          not later than December 31, 2006.

23 **SEC. 312. MISSING PARTICIPANTS.**

24          (a) IN GENERAL.—Section 4050 of the Employee Re-  
25          tirement Income Security Act of 1974 (29 U.S.C. 1350)

1 is amended by redesignating subsection (c) as subsection  
2 (e) and by inserting after subsection (b) the following new  
3 subsections:

4 “(c) **MULTIEMPLOYER PLANS.**—The corporation  
5 shall prescribe rules similar to the rules in subsection (a)  
6 for multiemployer plans covered by this title that termi-  
7 nate under section 4041A.

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

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

13 “(2) **INFORMATION TO THE CORPORATION.**—To  
14 the extent provided in regulations, the plan adminis-  
15 trator of a plan described in paragraph (4) shall,  
16 upon termination of the plan, provide the corpora-  
17 tion information with respect to benefits of a miss-  
18 ing participant if the plan transfers such benefits—

19 “(A) to the corporation, or

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

22 “(3) **PAYMENT BY THE CORPORATION.**—If ben-  
23 efits of a missing participant were transferred to the  
24 corporation under paragraph (1), the corporation  
25 shall, upon location of the participant or beneficiary,

1 pay to the participant or beneficiary the amount  
2 transferred (or the appropriate survivor benefit) ei-  
3 ther—

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

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

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

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

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

14 “(ii) which is not a plan described in  
15 paragraphs (2) through (11) of section  
16 4021(b), and

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

19 “(i) has missing participants, and

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

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

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

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

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

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

## 15           **TITLE IV—ADMINISTRATIVE** 16           **PROVISIONS**

### 17          **SEC. 401. EMPLOYEE PLANS COMPLIANCE RESOLUTION** 18          **SYSTEM.**

19          (a) IN GENERAL.—The Secretary of the Treasury  
20          shall have full authority to establish and implement the  
21          Employee Plans Compliance Resolution System (or any  
22          successor program) and any other employee plans correc-  
23          tion policies, including the authority to waive income, ex-  
24          cise, or other taxes to ensure that any tax, penalty, or

1 sanction is not excessive and bears a reasonable relation-  
2 ship to the nature, extent, and severity of the failure.

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

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

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

13 (3) extending the duration of the self-correction  
14 period under the Self-Correction Program for signifi-  
15 cant compliance failures;

16 (4) expanding the availability to correct insig-  
17 nificant compliance failures under the Self-Correc-  
18 tion Program during audit; and

19 (5) assuring that any tax, penalty, or sanction  
20 that is imposed by reason of a compliance failure is  
21 not excessive and bears a reasonable relationship to  
22 the nature, extent, and severity of the failure.

1 **SEC. 402. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
2 **MORATORIUM ON APPLICATION OF CERTAIN**  
3 **NONDISCRIMINATION RULES APPLICABLE TO**  
4 **STATE AND LOCAL PLANS.**

5 (a) **IN GENERAL.**—The following provisions are each  
6 amended by striking “maintained by a State or local gov-  
7 ernment or political subdivision thereof (or agency or in-  
8 strumentality thereof)”:

9 (1) Section 401(a)(5)(G) of the Internal Rev-  
10 enue Code of 1986.

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

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

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

15 (b) **CONFORMING AMENDMENTS.**—

16 (1) The heading for section 401(a)(5)(G) of  
17 such Code is amended to read as follows: “GOVERN-  
18 MENTAL PLANS.—”.

19 (2) The heading for section 401(a)(26)(H) of  
20 such Code is amended to read as follows: “EXCEP-  
21 TION FOR GOVERNMENTAL PLANS.—”.

22 (3) Section 401(k)(3)(G) of such Code is  
23 amended by inserting “GOVERNMENTAL PLANS.—”  
24 after “(G)”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to plan years beginning after De-  
3 cember 31, 2005.

4 **SEC. 403. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
5 **TRIBUTIONS.**

6 (a) EXPANSION OF PERIOD.—

7 (1) AMENDMENT OF INTERNAL REVENUE  
8 CODE.—

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

12 (B) MODIFICATION OF REGULATIONS.—  
13 The Secretary of the Treasury shall modify the  
14 regulations under sections 402(f), 411(a)(11),  
15 and 417 of the Internal Revenue Code of 1986  
16 by substituting “180 days” for “90 days” each  
17 place it appears in Treasury Regulations sec-  
18 tions 1.402(f)-1, 1.411(a)-11(c), and 1.417(e)-  
19 1(b).

20 (2) AMENDMENT OF ERISA.—

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



1 (B) MODIFICATION OF REGULATIONS.—

2 The Secretary of the Treasury shall modify the  
3 regulations under part 2 of subtitle B of title  
4 I of the Employee Retirement Income Security  
5 Act of 1974 relating to sections 203(e) and 205  
6 of such Act by substituting “180 days” for “90  
7 days” each place it appears.

8 (3) EFFECTIVE DATE.—The amendments and  
9 modifications made or required by this subsection  
10 shall apply to years beginning after December 31,  
11 2005.

12 (b) NOTIFICATION OF RIGHT TO DEFER.—

13 (1) IN GENERAL.—The Secretary of the Treas-  
14 ury shall modify the regulations under section  
15 411(a)(11) of the Internal Revenue Code of 1986  
16 and under section 205 of the Employee Retirement  
17 Income Security Act of 1974 to provide that the de-  
18 scription of a participant’s right, if any, to defer re-  
19 ceipt of a distribution shall also describe the con-  
20 sequences of failing to defer such receipt.

21 (2) EFFECTIVE DATE.—

22 (A) IN GENERAL.—The modifications re-  
23 quired by paragraph (1) shall apply to years be-  
24 ginning after December 31, 2005.

1           (B) REASONABLE NOTICE.—A plan shall  
2           not be treated as failing to meet the require-  
3           ments of section 411(a)(11) of such Code or  
4           section 205 of such Act with respect to any de-  
5           scription of consequences described in para-  
6           graph (1) made within 90 days after the Sec-  
7           retary of the Treasury issues the modifications  
8           required by paragraph (1) if the plan adminis-  
9           trator makes a reasonable attempt to comply  
10          with such requirements.

11 **SEC. 404. REPORTING SIMPLIFICATION.**

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

14           (1) IN GENERAL.—The Secretary of the Treas-  
15          ury and the Secretary of Labor shall modify the re-  
16          quirements for filing annual returns with respect to  
17          one-participant retirement plans to ensure that such  
18          plans with assets of \$250,000 or less as of the close  
19          of the plan year need not file a return for that year.

20           (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
21          FINED.—For purposes of this subsection, the term  
22          “one-participant retirement plan” means a retire-  
23          ment plan with respect to which the following re-  
24          quirements are met:

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

1 (i) the plan covered only one indi-  
2 vidual (or the individual and the individ-  
3 ual's spouse) and the individual owned 100  
4 percent of the plan sponsor (whether or  
5 not incorporated), or

6 (ii) the plan covered only one or more  
7 partners (or partners and their spouses) in  
8 the plan sponsor;

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

14 (C) the plan does not provide benefits to  
15 anyone except the individual (and the individ-  
16 ual's spouse) or the partners (and their  
17 spouses);

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

22 (E) the plan does not cover a business that  
23 uses the services of leased employees (within  
24 the meaning of section 414(n) of such Code).

1 For purposes of this paragraph, the term “partner”  
 2 includes a 2-percent shareholder (as defined in sec-  
 3 tion 1372(b) of such Code) of an S corporation.

4 (3) OTHER DEFINITIONS.—Terms used in para-  
 5 graph (2) which are also used in section 414 of the  
 6 Internal Revenue Code of 1986 shall have the re-  
 7 spective meanings given such terms by such section.

8 (4) EFFECTIVE DATE.—The provisions of this  
 9 subsection shall apply to plan years beginning on or  
 10 after January 1, 2006.

11 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
 12 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case  
 13 of plan years beginning after December 31, 2006, the Sec-  
 14 retary of the Treasury and the Secretary of Labor shall  
 15 provide for the filing of a simplified annual return for any  
 16 retirement plan which covers less than 25 employees on  
 17 the first day of a plan year and which meets the require-  
 18 ments described in subparagraphs (B), (D), and (E) of  
 19 subsection (a)(2).

20 **SEC. 405. VOLUNTARY EARLY RETIREMENT INCENTIVE AND**  
 21 **EMPLOYMENT RETENTION PLANS MAIN-**  
 22 **TAINED BY LOCAL EDUCATIONAL AGENCIES**  
 23 **AND OTHER ENTITIES.**

24 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE  
 25 PLANS.—

1           (1) TREATMENT AS PLAN PROVIDING SEVER-  
2 ANCE PAY.—Section 457(e)(11) of the Internal Rev-  
3 enue Code of 1986 (relating to certain plans ex-  
4 cluded) is amended by adding at the end the fol-  
5 lowing new subparagraph:

6                   “(D) CERTAIN VOLUNTARY EARLY RETIRE-  
7                   MENT INCENTIVE PLANS.—

8                           “(i) IN GENERAL.—If an applicable  
9                           voluntary early retirement incentive plan—

10                                   “(I) makes payments or supple-  
11                                   ments as an early retirement benefit,  
12                                   a retirement-type subsidy, or a benefit  
13                                   described in the last sentence of sec-  
14                                   tion 411(a)(9), and

15                                   “(II) such payments or supple-  
16                                   ments are made in coordination with  
17                                   a defined benefit plan which is de-  
18                                   scribed in section 401(a) and includes  
19                                   a trust exempt from tax under section  
20                                   501(a) and which is maintained by an  
21                                   eligible employer described in para-  
22                                   graph (1)(A) or by an education asso-  
23                                   ciation described in clause (ii)(II),

24                                   such applicable plan shall be treated for  
25                                   purposes of subparagraph (A)(i) as a bona

1           fide severance pay plan with respect to  
 2           such payments or supplements to the ex-  
 3           tent such payments or supplements could  
 4           otherwise have been provided under such  
 5           defined benefit plan (determined as if sec-  
 6           tion 411 applied to such defined benefit  
 7           plan).

8           “(ii) APPLICABLE VOLUNTARY EARLY  
 9           RETIREMENT INCENTIVE PLAN.—For pur-  
 10          poses of this subparagraph, the term ‘ap-  
 11          plicable voluntary early retirement incen-  
 12          tive plan’ means a voluntary early retire-  
 13          ment incentive plan maintained by—

14                 “(I) a local educational agency  
 15                 (as defined in section 9101 of the Ele-  
 16                 mentary and Secondary Education  
 17                 Act of 1965 (20 U.S.C. 7801)), or

18                 “(II) an education association  
 19                 which principally represents employees  
 20                 of 1 or more agencies described in  
 21                 subclause (I) and which is described  
 22                 in section 501(c) (5) or (6) and ex-  
 23                 empt from tax under section 501(a).”

24           (2) AGE DISCRIMINATION IN EMPLOYMENT  
 25          ACT.—Section 4(l)(1) of the Age Discrimination in

1 Employment Act of 1967 (29 U.S.C. 623(l)(1)) is  
2 amended—

3 (A) by inserting “(A)” after “(1)”,

4 (B) by redesignating subparagraphs (A)  
5 and (B) as clauses (i) and (ii), respectively,

6 (C) by redesignating clauses (i) and (ii) of  
7 subparagraph (B) (as in effect before the  
8 amendments made by subparagraph (B)) as  
9 subclauses (I) and (II), respectively, and

10 (D) by adding at the end the following:

11 “(B) A voluntary early retirement incentive  
12 plan that—

13 “(i) is maintained by—

14 “(I) a local educational agency (as de-  
15 fined in section 9101 of the Elementary  
16 and Secondary Education Act of 1965 (20  
17 U.S.C. 7801), or

18 “(II) an education association which  
19 principally represents employees of 1 or  
20 more agencies described in subclause (I)  
21 and which is described in section 501(c)  
22 (5) or (6) of the Internal Revenue Code of  
23 1986 and exempt from taxation under sec-  
24 tion 501(a) of such Code, and

1           “(ii) makes payments or supplements de-  
2           scribed in subclauses (I) and (II) of subpara-  
3           graph (A)(ii) in coordination with a defined  
4           benefit plan (as so defined) maintained by an  
5           eligible employer described in section  
6           457(e)(1)(A) of such Code or by an education  
7           association described in clause (i)(II),  
8           shall be treated solely for purposes of subparagraph  
9           (A)(ii) as if it were a part of the defined benefit plan  
10          with respect to such payments or supplements. Pay-  
11          ments or supplements under such a voluntary early  
12          retirement incentive plan shall not constitute sever-  
13          ance pay for purposes of section 4(l)(2) of the Age  
14          Discrimination in Employment Act (29 U.S.C.  
15          623(l)(2)).”

16          (b) EMPLOYMENT RETENTION PLANS.—

17                 (1) IN GENERAL.—Section 457(f)(2) of the In-  
18                 ternal Revenue Code of 1986 (relating to exceptions)  
19                 is amended by striking “and” at the end of subpara-  
20                 graph (D), by striking the period at the end of sub-  
21                 paragraph (E) and inserting “, and”, and by adding  
22                 at the end the following:

23                         “(F) that portion of any applicable employ-  
24                         ment retention plan described in paragraph (4)  
25                         with respect to any participant.”



1           (2) DEFINITIONS AND RULES RELATING TO EM-  
2           PLOYMENT RETENTION PLANS.—Section 457(f) of  
3           such Code is amended by adding at the end the fol-  
4           lowing new paragraph:

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

7           “(A) IN GENERAL.—The portion of an ap-  
8           plicable employment retention plan described in  
9           this paragraph with respect to any participant  
10          is that portion of the plan which provides bene-  
11          fits payable to the participant not in excess of  
12          twice the applicable dollar limit determined  
13          under subsection (e)(15).

14          “(B) OTHER RULES.—

15          “(i) LIMITATION.—Paragraph (2)(F)  
16          shall only apply to the portion of the plan  
17          described in subparagraph (A) for years  
18          preceding the year in which such portion is  
19          paid or otherwise made available to the  
20          participant.

21          “(ii) TREATMENT.—A plan shall not  
22          be treated for purposes of this title as pro-  
23          viding for the deferral of compensation for  
24          any year with respect to the portion of the  
25          plan described in subparagraph (A).

1           “(C) APPLICABLE EMPLOYMENT RETEN-  
2           TION PLAN.—The term ‘applicable employment  
3           retention plan’ means an employment retention  
4           plan maintained by—

5                   “(i) a local educational agency (as de-  
6                   fined in section 9101 of the Elementary  
7                   and Secondary Education Act of 1965 (20  
8                   U.S.C. 7801), or

9                   “(ii) an education association which  
10                  principally represents employees of 1 or  
11                  more agencies described in clause (i) and  
12                  which is described in section 501(c) (5) or  
13                  (6) and exempt from taxation under sec-  
14                  tion 501(a).

15           “(D) EMPLOYMENT RETENTION PLAN.—  
16           The term ‘employment retention plan’ means a  
17           plan to pay, upon termination of employment,  
18           compensation to an employee of a local edu-  
19           cational agency or education association de-  
20           scribed in subparagraph (C) for purposes of—

21                   “(i) retaining the services of the em-  
22                   ployee, or

23                   “(ii) rewarding such employee for the  
24                   employee’s service with 1 or more such  
25                   agencies or associations.”

1           (c) COORDINATION WITH ERISA.—Section 3(2)(B)  
2 of the Employee Retirement Income Security Act of 1974  
3 (29 U.S.C. 1002(2)(B)) is amended by adding at the end  
4 the following: “An applicable voluntary early retirement  
5 incentive plan (as defined in section 457(e)(11)(D)(ii) of  
6 the Internal Revenue Code of 1986) making payments or  
7 supplements described in section 457(e)(11)(D)(i) of such  
8 Code, and an applicable employment retention plan (as de-  
9 fined in section 457(f)(4)(C) of such Code) making pay-  
10 ments of benefits described in section 457(f)(4)(A) of such  
11 Code, shall, for purposes of this title, be treated as a wel-  
12 fare plan (and not a pension plan) with respect to such  
13 payments and supplements.”

14           (d) EFFECTIVE DATES.—

15                 (1) IN GENERAL.—The amendments made by  
16 this Act shall take effect on the date of the enact-  
17 ment of this Act.

18                 (2) TAX AMENDMENTS.—The amendments  
19 made by subsections (a)(1) and (b) shall apply to  
20 taxable years ending after the date of the enactment  
21 of this Act.

22                 (3) ERISA AMENDMENTS.—The amendment  
23 made by subsection (c) shall apply to plan years  
24 ending after the date of the enactment of this Act.

1           (4) CONSTRUCTION.—Nothing in the amend-  
 2           ments made by this section shall alter or affect the  
 3           construction of the Internal Revenue Code of 1986,  
 4           the Employee Retirement Income Security Act of  
 5           1974, or the Age Discrimination in Employment Act  
 6           of 1967 as applied to any plan, arrangement, or con-  
 7           duct to which such amendments do not apply.

8   **SEC. 406. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**  
 9                                   **TION AS A RESULT OF PENSION ROLLOVERS.**

10          (a) IN GENERAL.—Section 3304(a) of the Internal  
 11          Revenue Code of 1986 (relating to requirements for State  
 12          unemployment laws) is amended by adding at the end the  
 13          following new flush sentence:

14          “Compensation shall not be reduced under paragraph (15)  
 15          for any pension, retirement or retired pay, annuity, or  
 16          similar payment which is not includible in gross income  
 17          of the individual for the taxable year in which paid because  
 18          it was part of a rollover distribution.”

19          (b) EFFECTIVE DATE.—The amendment made by  
 20          this section shall apply to weeks beginning on or after the  
 21          date of the enactment of this Act.

22   **SEC. 407. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**  
 23                                   **ERNMENTAL SECTION 457 PLANS.**

24          (a) IN GENERAL.—Section 641(f) of the Economic  
 25          Growth and Tax Relief Reconciliation Act of 2001 is

1 amended by adding at the end the following new para-  
2 graph:

3           “(4) **TRANSITION RULE FOR CERTAIN GOVERN-**  
4           **MENTAL PLANS.**—In the case of distributions from  
5           an eligible deferred compensation plan of an em-  
6           ployer described in section 457(e)(1)(A) of the Inter-  
7           nal Revenue Code of 1986 which are made after De-  
8           cember 31, 2001, and which are part of a series of  
9           distributions which—

10                   “(A) began before January 1, 2002, and

11                   “(B) are payable for 10 years or less, the  
12           Internal Revenue Code of 1986 may be applied  
13           to such distributions without regard to the  
14           amendments made by subsection (a)(1)(D).”

15           (b) **EFFECTIVE DATE.**—The amendment made by  
16           subsection (a) shall take effect as if included in the provi-  
17           sions of section 641 of the Economic Growth and Tax Re-  
18           lief Reconciliation Act of 2001.

19 **SEC. 408. PROVISIONS RELATING TO PLAN AMENDMENTS.**

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

22                   (1) such plan or contract shall be treated as  
23           being operated in accordance with the terms of the  
24           plan during the period described in subsection

25           (b)(2)(A), and

1           (2) except as provided by the Secretary of the  
2 Treasury, such plan shall not fail to meet the re-  
3 quirements of section 411(d)(6) of the Internal Rev-  
4 enue Code of 1986 and section 204(g) of the Em-  
5 ployee Retirement Income Security Act of 1974 by  
6 reason of such amendment.

7 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

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

11                   (A) pursuant to any amendment made by  
12 this Act or the Economic Growth and Tax Re-  
13 lief Reconciliation Act of 2001, or pursuant to  
14 any regulation issued by the Secretary of the  
15 Treasury or the Secretary of Labor under such  
16 Acts, and

17                   (B) on or before the last day of the first  
18 plan year beginning on or after January 1,  
19 2007, or such later date as the Secretary of the  
20 Treasury may prescribe.

21 In the case of a governmental plan (as defined in  
22 section 414(d) of the Internal Revenue Code of  
23 1986), subparagraph (B) shall be applied by sub-  
24 stituting the date which is 2 years after the date  
25 otherwise applied under subparagraph (B).

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

3           (A) during the period—

4                   (i) beginning on the date the legisla-  
5 tive or regulatory amendment described in  
6 paragraph (1)(A) takes effect (or in the  
7 case of a plan or contract amendment not  
8 required by such legislative or regulatory  
9 amendment, the effective date specified by  
10 the plan), and

11                   (ii) ending on the date described in  
12 paragraph (1)(B) (or, if earlier, the date  
13 the plan or contract amendment is adopt-  
14 ed),

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

17           (B) such plan or contract amendment ap-  
18 plies retroactively for such period.

1 **TITLE V—PROVISIONS RELAT-**  
2 **ING TO SPOUSAL PENSION**  
3 **PROTECTION**

4 **Subtitle A—Study of Spousal Con-**  
5 **sent for Distributions From De-**  
6 **defined Contribution Plans**

7 **SEC. 501. JOINT STUDY OF APPLICATION OF SPOUSAL CON-**  
8 **SENT RULES TO DEFINED CONTRIBUTION**  
9 **PLANS.**

10 (a) STUDY.—The Secretary of Labor and the Sec-  
11 retary of the Treasury shall jointly conduct a study of the  
12 feasibility and desirability of extending the application of  
13 the requirements of section 205 of the Employee Retire-  
14 ment Income Security Act of 1974 and sections  
15 401(a)(11) and 417 of the Internal Revenue Code of 1986  
16 (relating to spousal consent requirements) to defined con-  
17 tribution plans to which such requirements do not apply.  
18 Such study shall include consideration of—

19 (1) any modifications of such requirements that  
20 are necessary to apply such requirements to such  
21 plans, and

22 (2) the feasibility of providing notice and spous-  
23 al consent in 1 or more electronic forms that are ca-  
24 pable of authentication.



1 (b) REPORT.—Not later than 2 years after the date  
2 of the enactment of this Act, the Secretaries shall report  
3 the results of the study, together with any recommenda-  
4 tions for legislative changes, to the Committees on Ways  
5 and Means and Education and the Workforce of the  
6 House of Representatives and the Committees on Finance  
7 and Health, Education, Labor, and Pensions of the Sen-  
8 ate.

9 **Subtitle B—Division Of Pension**  
10 **Benefits Upon Divorce**

11 **SEC. 511. REGULATIONS ON TIME AND ORDER OF**  
12 **ISSUANCE OF DOMESTIC RELATIONS OR-**  
13 **DERS.**

14 Not later than 1 year after the date of the enactment  
15 of this Act, the Secretary of Labor shall issue regulations  
16 under section 206(d)(3) of the Employee Retirement Secu-  
17 rity Act of 1974 and section 414(p) of the Internal Rev-  
18 enue Code of 1986 which clarify that—

19 (1) a domestic relations order otherwise meet-  
20 ing the requirements to be a qualified domestic rela-  
21 tions order, including the requirements of section  
22 206(d)(3)(D) of such Act and section 414(p)(3) of  
23 such Code, shall not fail to be treated as a qualified  
24 domestic relations order solely because—

1 (A) the order is issued after, or revises, an-  
 2 other domestic relations order or qualified do-  
 3 mestic relations order; or

4 (B) of the time at which it is issued; and

5 (2) any order described in paragraph (1) shall  
 6 be subject to the same requirements and protections  
 7 which apply to qualified domestic relations orders,  
 8 including the provisions of section 206(d)(3)(H) of  
 9 such Act and section 414(p)(7) of such Code.

## 10 **Subtitle C—Railroad Retirement**

### 11 **SEC. 521. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-** 12 **ROAD RETIREMENT ANNUITIES INDE-** 13 **PENDENT OF ACTUAL ENTITLEMENT OF EM-** 14 **PLOYEE.**

15 (a) IN GENERAL.—Section 2 of the Railroad Retire-  
 16 ment Act of 1974 (45 U.S.C. 231a) is amended—

17 (1) in subsection (c)(4)(i), by striking “(A) is  
 18 entitled to an annuity under subsection (a)(1) and  
 19 (B)”;

20 (2) in subsection (e)(5), by striking “or di-  
 21 vorced wife” the second place it appears.

22 (b) EFFECTIVE DATE.—The amendments made by  
 23 this section shall take effect 1 year after the date of the  
 24 enactment of this Act.

1 **SEC. 522. EXTENSION OF TIER II RAILROAD RETIREMENT**  
2 **BENEFITS TO SURVIVING FORMER SPOUSES**  
3 **PURSUANT TO DIVORCE AGREEMENTS.**

4 (a) **IN GENERAL.**—Section 5 of the Railroad Retire-  
5 ment Act of 1974 (45 U.S.C. 231d) is amended by adding  
6 at the end the following:

7 “(d) Notwithstanding any other provision of law, the  
8 payment of any portion of an annuity computed under sec-  
9 tion 3(b) to a surviving former spouse in accordance with  
10 a court decree of divorce, annulment, or legal separation  
11 or the terms of any court-approved property settlement  
12 incident to any such court decree shall not be terminated  
13 upon the death of the individual who performed the service  
14 with respect to which such annuity is so computed unless  
15 such termination is otherwise required by the terms of  
16 such court decree.”

17 (b) **EFFECTIVE DATE.**—The amendment made by  
18 this section shall take effect 1 year after the date of the  
19 enactment of this Act.

20 **Subtitle D—Modifications of Joint**  
21 **and Survivor Annuity Require-**  
22 **ments**

23 **SEC. 531. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**  
24 **NUITY OPTION.**

25 (a) **AMENDMENTS TO INTERNAL REVENUE CODE.**—

1           (1) ELECTION OF SURVIVOR ANNUITY.—Section  
2           417(a)(1)(A) of the Internal Revenue Code of 1986  
3           is amended—

4                   (A) in clause (i), by striking “, and” and  
5           inserting a comma;

6                   (B) by redesignating clause (ii) as clause  
7           (iii); and

8                   (C) by inserting after clause (i) the fol-  
9           lowing:

10                   “(ii) if the participant elects a waiver  
11           under clause (i), may elect the qualified op-  
12           tional survivor annuity at any time during the  
13           applicable election period, and”.

14           (2) DEFINITION.—Section 417 of such Code is  
15           amended by adding at the end the following:

16           “(g) DEFINITION OF QUALIFIED OPTIONAL SUR-  
17           VIVOR ANNUITY.—

18                   “(1) IN GENERAL.—For purposes of this sec-  
19           tion, the term ‘qualified optional survivor annuity’  
20           means an annuity—

21                   “(A) for the life of the participant with a  
22           survivor annuity for the life of the spouse which  
23           is equal to the applicable percentage of the  
24           amount of the annuity which is payable during

1 the joint lives of the participant and the spouse,  
2 and

3 “(B) which is the actuarial equivalent of a  
4 single annuity for the life of the participant.

5 Such term also includes any annuity in a form hav-  
6 ing the effect of an annuity described in the pre-  
7 ceding sentence.

8 “(2) APPLICABLE PERCENTAGE.—

9 “(A) IN GENERAL.—For purposes of para-  
10 graph (1), if the survivor annuity percentage—

11 “(i) is less than 75 percent, the appli-  
12 cable percentage is 75 percent, and

13 “(ii) is greater than or equal to 75  
14 percent, the applicable percentage is 50  
15 percent.

16 “(B) SURVIVOR ANNUITY PERCENTAGE.—

17 For purposes of subparagraph (A), the term  
18 ‘survivor annuity percentage’ means the per-  
19 centage which the survivor annuity under the  
20 plan’s qualified joint and survivor annuity bears  
21 to the annuity payable during the joint lives of  
22 the participant and the spouse.”

23 (3) NOTICE.—Section 417(a)(3)(A)(i) of such  
24 Code is amended by inserting “and of the qualified  
25 optional survivor annuity” after “annuity”.

1 (b) AMENDMENTS TO ERISA.—

2 (1) ELECTION OF SURVIVOR ANNUITY.—Section  
3 205(c)(1)(A) of the Employee Retirement Income  
4 Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is  
5 amended—

6 (A) in clause (i), by striking “, and” and  
7 inserting a comma;

8 (B) by redesignating clause (ii) as clause  
9 (iii); and

10 (C) by inserting after clause (i) the fol-  
11 lowing:

12 “(ii) if the participant elects a waiver  
13 under clause (i), may elect the qualified op-  
14 tional survivor annuity at any time during the  
15 applicable election period, and”.

16 (2) DEFINITION.—Section 205(d) of such Act  
17 (29 U.S.C. 1055(d)) is amended—

18 (A) by inserting “(1)” after “(d)”;

19 (B) by redesignating paragraphs (1) and  
20 (2) as subparagraphs (A) and (B), respectively;  
21 and

22 (C) by adding at the end the following:

23 “(2)(A) For purposes of this section, the term ‘quali-  
24 fied optional survivor annuity’ means an annuity—

1           “(i) for the life of the participant with a sur-  
2           vivor annuity for the life of the spouse which is  
3           equal to the applicable percentage of the amount of  
4           the annuity which is payable during the joint lives  
5           of the participant and the spouse, and

6           “(ii) which is the actuarial equivalent of a sin-  
7           gle annuity for the life of the participant.

8           Such term also includes any annuity in a form having the  
9           effect of an annuity described in the preceding sentence.

10          “(B)(i) For purposes of subparagraph (A), if the sur-  
11          vivor annuity percentage—

12           “(I) is less than 75 percent, the applicable per-  
13          centage is 75 percent, and

14           “(II) is greater than or equal to 75 percent, the  
15          applicable percentage is 50 percent.

16          “(ii) For purposes of clause (i), the term ‘survivor  
17          annuity percentage’ means the percentage which the sur-  
18          vivor annuity under the plan’s qualified joint and survivor  
19          annuity bears to the annuity payable during the joint lives  
20          of the participant and the spouse.”

21           (3) NOTICE.—Section 205(c)(3)(A)(i) of such  
22          Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-  
23          serting “and of the qualified optional survivor annu-  
24          ity” after “annuity”.

25          (c) EFFECTIVE DATES.—

1           (1) IN GENERAL.—The amendments made by  
2 this section shall apply to plan years beginning after  
3 December 31, 2005.

4           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
5 GAINED PLANS.—In the case of a plan maintained  
6 pursuant to 1 or more collective bargaining agree-  
7 ments between employee representatives and 1 or  
8 more employers ratified on or before the date of the  
9 enactment of this Act, the amendments made by this  
10 section shall apply to the first plan year beginning  
11 on or after the earlier of—

12                   (A) the later of—

13                           (i) January 1, 2006, or

14                           (ii) the date on which the last of such  
15 collective bargaining agreements termi-  
16 nates (determined without regard to any  
17 extension thereof after the date of enact-  
18 ment of this Act), or

19                   (B) January 1, 2007.

20       **TITLE VI—TAX COURT PENSION**  
21                   **AND COMPENSATION**

22       **SEC. 600. AMENDMENT OF 1986 CODE.**

23       Except as otherwise expressly provided, whenever in  
24 this title an amendment or repeal is expressed in terms  
25 of an amendment to, or repeal of, a section or other provi-



1 sion, the reference shall be considered to be made to a  
 2 section or other provision of the Internal Revenue Code  
 3 of 1986.

4 **SEC. 601. ANNUITIES FOR SURVIVORS OF TAX COURT**  
 5 **JUDGES WHO ARE ASSASSINATED.**

6 (a) **ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-**  
 7 **TION.**—Subsection (h) of section 7448 (relating to annu-  
 8 ities to surviving spouses and dependent children of  
 9 judges) is amended to read as follows:

10 “(h) **ENTITLEMENT TO ANNUITY.**—

11 “(1) **IN GENERAL.**—

12 “(A) **ANNUITY TO SURVIVING SPOUSE.**—If  
 13 a judge described in paragraph (2) is survived  
 14 by a surviving spouse but not by a dependent  
 15 child, there shall be paid to such surviving  
 16 spouse an annuity beginning with the day of the  
 17 death of the judge or following the surviving  
 18 spouse’s attainment of the age of 50 years,  
 19 whichever is the later, in an amount computed  
 20 as provided in subsection (m).

21 “(B) **ANNUITY TO CHILD.**—If such a judge  
 22 is survived by a surviving spouse and a depend-  
 23 ent child or children, there shall be paid to such  
 24 surviving spouse an immediate annuity in an  
 25 amount computed as provided in subsection

1 (m), and there shall also be paid to or on behalf  
 2 of each such child an immediate annuity equal  
 3 to the lesser of—

4 “(i) 10 percent of the average annual  
 5 salary of such judge (determined in accord-  
 6 ance with subsection (m)), or

7 “(ii) 20 percent of such average an-  
 8 nual salary, divided by the number of such  
 9 children.

10 “(C) ANNUITY TO SURVIVING DEPENDENT  
 11 CHILDREN.—If such a judge leaves no surviving  
 12 spouse but leaves a surviving dependent child or  
 13 children, there shall be paid to or on behalf of  
 14 each such child an immediate annuity equal to  
 15 the lesser of—

16 “(i) 20 percent of the average annual  
 17 salary of such judge (determined in accord-  
 18 ance with subsection (m)), or

19 “(ii) 40 percent of such average an-  
 20 nual salary, divided by the number of such  
 21 children.

22 “(2) COVERED JUDGES.—Paragraph (1) applies  
 23 to any judge electing under subsection (b)—

24 “(A) who dies while a judge after having  
 25 rendered at least 5 years of civilian service com-

1           puted as prescribed in subsection (n), for the  
2           last 5 years of which the salary deductions pro-  
3           vided for by subsection (c)(1) or the deposits  
4           required by subsection (d) have actually been  
5           made or the salary deductions required by the  
6           civil service retirement laws have actually been  
7           made, or

8           “(B) who dies by assassination after hav-  
9           ing rendered less than 5 years of civilian service  
10          computed as prescribed in subsection (n) if, for  
11          the period of such service, the salary deductions  
12          provided for by subsection (c)(1) or the deposits  
13          required by subsection (d) have actually been  
14          made.

15          “(3) TERMINATION OF ANNUITY.—

16          “(A) IN THE CASE OF A SURVIVING  
17          SPOUSE.—The annuity payable to a surviving  
18          spouse under this subsection shall be terminable  
19          upon such surviving spouse’s death or such sur-  
20          viving spouse’s remarriage before attaining age  
21          55.

22          “(B) IN THE CASE OF A CHILD.—The an-  
23          nuity payable to a child under this subsection  
24          shall be terminable upon (i) the child attaining  
25          the age of 18 years, (ii) the child’s marriage, or

1 (iii) the child's death, whichever first occurs, ex-  
2 cept that if such child is incapable of self-sup-  
3 port by reason of mental or physical disability  
4 the child's annuity shall be terminable only  
5 upon death, marriage, or recovery from such  
6 disability.

7 “(C) IN THE CASE OF A DEPENDENT  
8 CHILD AFTER DEATH OF SURVIVING SPOUSE.—  
9 In case of the death of a surviving spouse of a  
10 judge leaving a dependent child or children of  
11 the judge surviving such spouse, the annuity of  
12 such child or children shall be recomputed and  
13 paid as provided in paragraph (1)(C).

14 “(D) RECOMPUTATION.—In any case in  
15 which the annuity of a dependent child is termi-  
16 nated under this subsection, the annuities of  
17 any remaining dependent child or children,  
18 based upon the service of the same judge, shall  
19 be recomputed and paid as though the child  
20 whose annuity was so terminated had not sur-  
21 vived such judge.

22 “(4) SPECIAL RULE FOR ASSASSINATED  
23 JUDGES.—In the case of a survivor or survivors of  
24 a judge described in paragraph (2)(B), there shall be

1       deducted from the annuities otherwise payable under  
2       this section an amount equal to—

3               “(A) the amount of salary deductions pro-  
4               vided for by subsection (c)(1) that would have  
5               been made if such deductions had been made  
6               for 5 years of civilian service computed as pre-  
7               scribed in subsection (n) before the judge’s  
8               death, reduced by

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

12       (b)   DEFINITION OF ASSASSINATION.—Section  
13   7448(a) (relating to definitions) is amended by adding at  
14   the end the following new paragraph:

15              “(8) The terms ‘assassinated’ and ‘assassina-  
16              tion’ mean the killing of a judge that is motivated  
17              by the performance by that judge of his or her offi-  
18              cial duties.”

19       (c)   DETERMINATION OF ASSASSINATION.—Sub-  
20   section (i) of section 7448 is amended—

21              (1) by striking the subsection heading and in-  
22              serting the following:

23              “(i) DETERMINATIONS BY CHIEF JUDGE.—

24              “(1) DEPENDENCY AND DISABILITY.—”,

25              (2) by moving the text 2 ems to the right, and

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

3           “(2) ASSASSINATION.—The chief judge shall  
4 determine whether the killing of a judge was an as-  
5 sassinatio, subject to review only by the Tax Court.  
6 The head of any Federal agency that investigates  
7 the killing of a judge shall provide information to  
8 the chief judge that would assist the chief judge in  
9 making such a determination.”

10          (d) COMPUTATION OF ANNUITIES.—Subsection (m)  
11 of section 7448 is amended—

12           (1) by striking the subsection heading and in-  
13 serting the following:

14          “(m) COMPUTATION OF ANNUITIES.—

15           “(1) IN GENERAL.—”,

16           (2) by moving the text 2 ems to the right, and

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

19           “(2) ASSASSINATED JUDGES.—In the case of a  
20 judge who is assassinated and who has served less  
21 than 3 years, the annuity of the surviving spouse of  
22 such judge shall be based upon the average annual  
23 salary received by such judge for judicial service.”

24          (e) OTHER BENEFITS.—Section 7448 is amended by  
25 adding at the end the following:

1       “(u) OTHER BENEFITS.—In the case of a judge who  
2 is assassinated, an annuity shall be paid under this section  
3 notwithstanding a survivor’s eligibility for or receipt of  
4 benefits under chapter 81 of title 5, United States Code,  
5 except that the annuity for which a surviving spouse is  
6 eligible under this section shall be reduced to the extent  
7 that the total benefits paid under this section and chapter  
8 81 of that title for any year would exceed the current sal-  
9 ary for that year of the office of the judge.”

10 **SEC. 602. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
11 **JUDICIAL SURVIVOR ANNUITIES.**

12       (a) IN GENERAL.—Subsection (s) of section 7448  
13 (relating to annuities to surviving spouses and dependent  
14 children of judges) is amended to read as follows:

15       “(s) INCREASES IN SURVIVOR ANNUITIES.—Each  
16 time that an increase is made under section 8340(b) of  
17 title 5, United States Code, in annuities payable under  
18 subchapter III of chapter 83 of that title, each annuity  
19 payable from the survivors annuity fund under this section  
20 shall be increased at the same time by the same percent-  
21 age by which annuities are increased under such section  
22 8340(b).”

23       (b) EFFECTIVE DATE.—The amendment made by  
24 this section shall apply with respect to increases made  
25 under section 8340(b) of title 5, United States Code, in

1 annuities payable under subchapter III of chapter 83 of  
2 that title, taking effect after the date of the enactment  
3 of this Act.

4 **SEC. 603. LIFE INSURANCE COVERAGE FOR TAX COURT**  
5 **JUDGES.**

6 (a) IN GENERAL.—Section 7447 (relating to retire-  
7 ment of judges) is amended by adding at the end the fol-  
8 lowing new subsection:

9 “(j) LIFE INSURANCE COVERAGE.—For purposes of  
10 chapter 87 of title 5, United States Code (relating to life  
11 insurance), any individual who is serving as a judge of  
12 the Tax Court or who is retired under this section is  
13 deemed to be an employee who is continuing in active em-  
14 ployment.”

15 (b) EFFECTIVE DATE.—The amendment made by  
16 this section shall apply to any individual serving as a judge  
17 of the United States Tax Court or to any retired judge  
18 of the United States Tax Court on the date of the enact-  
19 ment of this Act.

20 **SEC. 604. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
21 **COURT JUDGES AGE 65 OR OVER.**

22 Section 7472 (relating to expenditures) is amended  
23 by inserting after the first sentence the following new sen-  
24 tence: “Notwithstanding any other provision of law, the  
25 Tax Court is authorized to pay on behalf of its judges,



1 age 65 or over, any increase in the cost of Federal Em-  
 2 ployees' Group Life Insurance imposed after April 24,  
 3 1999, including any expenses generated by such payments,  
 4 as authorized by the chief judge in a manner consistent  
 5 with such payments authorized by the Judicial Conference  
 6 of the United States pursuant to section 604(a)(5) of title  
 7 28, United States Code.”

8 **SEC. 605. MODIFICATION OF TIMING OF LUMP-SUM PAY-**  
 9 **MENT OF JUDGES' ACCRUED ANNUAL LEAVE.**

10 (a) IN GENERAL.—Section 7443 (relating to mem-  
 11 bership of the Tax Court) is amended by adding at the  
 12 end the following new subsection:

13 “(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED  
 14 ANNUAL LEAVE.—Notwithstanding the provisions of sec-  
 15 tions 5551 and 6301 of title 5, United States Code, when  
 16 an individual subject to the leave system provided in chap-  
 17 ter 63 of that title is appointed by the President to be  
 18 a judge of the Tax Court, the individual shall be entitled  
 19 to receive, upon appointment to the Tax Court, a lump-  
 20 sum payment from the Tax Court of the accumulated and  
 21 accrued current annual leave standing to the individual's  
 22 credit as certified by the agency from which the individual  
 23 resigned.”

24 (b) EFFECTIVE DATE.—The amendment made by  
 25 this section shall apply to any judge of the United States

1 Tax Court who has an outstanding leave balance on the  
 2 date of the enactment of this Act and to any individual  
 3 appointed by the President to serve as a judge of the  
 4 United States Tax Court after such date.

5 **SEC. 606. PARTICIPATION OF TAX COURT JUDGES IN THE**  
 6 **THRIFT SAVINGS PLAN.**

7 (a) IN GENERAL.—Section 7447 (relating to retire-  
 8 ment of judges), as amended by this Act, is amended by  
 9 adding at the end the following new subsection:

10 “(k) THRIFT SAVINGS PLAN.—

11 “(1) ELECTION TO CONTRIBUTE.—

12 “(A) IN GENERAL.—A judge of the Tax  
 13 Court may elect to contribute to the Thrift Sav-  
 14 ings Fund established by section 8437 of title  
 15 5, United States Code.

16 “(B) PERIOD OF ELECTION.—An election  
 17 may be made under this paragraph only during  
 18 a period provided under section 8432(b) of title  
 19 5, United States Code, for individuals subject to  
 20 chapter 84 of such title.

21 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

22 Except as otherwise provided in this subsection, the  
 23 provisions of subchapters III and VII of chapter 84  
 24 of title 5, United States Code, shall apply with re-

1 spect to a judge who makes an election under para-  
2 graph (1).

3 “(3) SPECIAL RULES.—

4 “(A) AMOUNT CONTRIBUTED.—The  
5 amount contributed by a judge to the Thrift  
6 Savings Fund in any pay period shall not ex-  
7 ceed the maximum percentage of such judge’s  
8 basic pay for such period as allowable under  
9 section 8440f of title 5, United States Code.  
10 Basic pay does not include any retired pay paid  
11 pursuant to this section.

12 “(B) CONTRIBUTIONS FOR BENEFIT OF  
13 JUDGE.—No contributions may be made for the  
14 benefit of a judge under section 8432(c) of title  
15 5, United States Code.

16 “(C) APPLICABILITY OF SECTION 8433(b)  
17 OF TITLE 5 WHETHER OR NOT JUDGE RE-  
18 TIRES.—Section 8433(b) of title 5, United  
19 States Code, applies with respect to a judge  
20 who makes an election under paragraph (1) and  
21 who either—

22 “(i) retires under subsection (b), or

23 “(ii) ceases to serve as a judge of the  
24 Tax Court but does not retire under sub-  
25 section (b).

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

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

9 “(E) EXCEPTION.—Notwithstanding sub-  
10 paragraph (C), if any judge retires under this  
11 section, or resigns without having met the age  
12 and service requirements set forth under sub-  
13 section (b)(2), and such judge’s nonforfeitable  
14 account balance is less than an amount that the  
15 Executive Director of the Office of Personnel  
16 Management prescribes by regulation, the Exec-  
17 utive Director shall pay the nonforfeitable ac-  
18 count balance to the participant in a single pay-  
19 ment.”

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall take effect on the date of the enactment  
22 of this Act, except that United States Tax Court judges  
23 may only begin to participate in the Thrift Savings Plan  
24 at the next open season beginning after such date.

1 **SEC. 607. EXEMPTION OF TEACHING COMPENSATION OF**  
 2 **RETIRED JUDGES FROM LIMITATION ON**  
 3 **OUTSIDE EARNED INCOME.**

4 (a) IN GENERAL.—Section 7447 (relating to retire-  
 5 ment of judges), as amended by this Act, is amended by  
 6 adding at the end the following new subsection:

7 “(1) TEACHING COMPENSATION OF RETIRED  
 8 JUDGES.—For purposes of the limitation under section  
 9 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.  
 10 App.), any compensation for teaching approved under sec-  
 11 tion 502(a)(5) of such Act shall not be treated as outside  
 12 earned income when received by a judge of the Tax Court  
 13 who has retired under subsection (b) for teaching per-  
 14 formed during any calendar year for which such a judge  
 15 has met the requirements of subsection (c), as certified  
 16 by the chief judge of the Tax Court.”

17 (b) EFFECTIVE DATE.—The amendment made by  
 18 this section shall apply to any individual serving as a re-  
 19 tired judge of the United States Tax Court on or after  
 20 the date of the enactment of this Act.

21 **SEC. 608. GENERAL PROVISIONS RELATING TO MAG-**  
 22 **ISTRATE JUDGES OF THE TAX COURT.**

23 (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO  
 24 MAGISTRATE JUDGE OF THE TAX COURT.—The heading  
 25 of section 7443A is amended to read as follows:

1 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

2 (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-  
3 section (a) of section 7443A is amended to read as follows:

4 “(a) APPOINTMENT, TENURE, AND REMOVAL.—

5 “(1) APPOINTMENT.—The chief judge may,  
6 from time to time, appoint and reappoint magistrate  
7 judges of the Tax Court for a term of 8 years. The  
8 magistrate judges of the Tax Court shall proceed  
9 under such rules as may be promulgated by the Tax  
10 Court.

11 “(2) REMOVAL.—Removal of a magistrate  
12 judge of the Tax Court during the term for which  
13 he or she is appointed shall be only for incom-  
14 petency, misconduct, neglect of duty, or physical or  
15 mental disability, but the office of a magistrate  
16 judge of the Tax Court shall be terminated if the  
17 judges of the Tax Court determine that the services  
18 performed by the magistrate judge of the Tax Court  
19 are no longer needed. Removal shall not occur unless  
20 a majority of all the judges of the Tax Court concur  
21 in the order of removal. Before any order of removal  
22 shall be entered, a full specification of the charges  
23 shall be furnished to the magistrate judge of the Tax  
24 Court, and he or she shall be accorded by the judges  
25 of the Tax Court an opportunity to be heard on the  
26 charges.”

1 (c) SALARY.—Section 7443A(d) (relating to salary)  
2 is amended by striking “90” and inserting “92”.

3 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-  
4 SIONS.—Section 7443A is amended by adding at the end  
5 the following new subsection:

6 “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-  
7 SIONS.—

8 “(1) IN GENERAL.—A magistrate judge of the  
9 Tax Court appointed under this section shall be ex-  
10 empt from the provisions of subchapter I of chapter  
11 63 of title 5, United States Code.

12 “(2) TREATMENT OF UNUSED LEAVE.—

13 “(A) AFTER SERVICE AS MAGISTRATE  
14 JUDGE.—If an individual who is exempted  
15 under paragraph (1) from the subchapter re-  
16 ferred to in such paragraph was previously sub-  
17 ject to such subchapter and, without a break in  
18 service, again becomes subject to such sub-  
19 chapter on completion of the individual’s service  
20 as a magistrate judge, the unused annual leave  
21 and sick leave standing to the individual’s cred-  
22 it when such individual was exempted from this  
23 subchapter is deemed to have remained to the  
24 individual’s credit.

1           “(B) COMPUTATION OF ANNUITY.—In  
2           computing an annuity under section 8339 of  
3           title 5, United States Code, the total service of  
4           an individual specified in subparagraph (A) who  
5           retires on an immediate annuity or dies leaving  
6           a survivor or survivors entitled to an annuity  
7           includes, without regard to the limitations im-  
8           posed by subsection (f) of such section 8339,  
9           the days of unused sick leave standing to the  
10          individual’s credit when such individual was ex-  
11          empted from subchapter I of chapter 63 of title  
12          5, United States Code, except that these days  
13          will not be counted in determining average pay  
14          or annuity eligibility.

15          “(C) LUMP SUM PAYMENT.—Any accumu-  
16          lated and current accrued annual leave or vaca-  
17          tion balances credited to a magistrate judge as  
18          of the date of the enactment of this subsection  
19          shall be paid in a lump sum at the time of sepa-  
20          ration from service pursuant to the provisions  
21          and restrictions set forth in section 5551 of  
22          title 5, United States Code, and related provi-  
23          sions referred to in such section.”

24          (e) CONFORMING AMENDMENTS.—



1           (1) The heading of subsection (b) of section  
2           7443A is amended by striking “SPECIAL TRIAL  
3           JUDGES” and inserting “Magistrate Judges of the  
4           Tax Court”.

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

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

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

15          (5) Section 7456(a) is amended by striking  
16          “special trial judge” each place it appears and in-  
17          serting “magistrate judge”.

18          (6) Subsection (c) of section 7471 is amend-  
19          ed—

20                  (A) by striking the subsection heading and  
21                  inserting “MAGISTRATE JUDGES OF THE TAX  
22                  COURT.—”, and

23                  (B) by striking “special trial judges” and  
24                  inserting “magistrate judges”.

1 **SEC. 609. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
2 **PENDENT CHILDREN OF MAGISTRATE**  
3 **JUDGES OF THE TAX COURT.**

4 (a) DEFINITIONS.—Section 7448(a) (relating to defi-  
5 nitions), as amended by this Act, is amended by redesi-  
6 gnating paragraphs (5), (6), (7), and (8) as paragraphs (7),  
7 (8), (9), and (10), respectively, and by inserting after  
8 paragraph (4) the following new paragraphs:

9 “(5) The term ‘magistrate judge’ means a judi-  
10 cial officer appointed pursuant to section 7443A, in-  
11 cluding any individual receiving an annuity under  
12 section 7443B, or chapters 83 or 84, as the case  
13 may be, of title 5, United States Code, whether or  
14 not performing judicial duties under section 7443C.

15 “(6) The term ‘magistrate judge’s salary’  
16 means the salary of a magistrate judge received  
17 under section 7443A(d), any amount received as an  
18 annuity under section 7443B, or chapters 83 or 84,  
19 as the case may be, of title 5, United States Code,  
20 and compensation received under section 7443C.”

21 (b) ELECTION.—Subsection (b) of section 7448 (re-  
22 lating to annuities to surviving spouses and dependent  
23 children of judges) is amended—

24 (1) by striking the subsection heading and in-  
25 serting the following:

26 “(b) ELECTION.—

1           “(1) JUDGES.—”,  
2           (2) by moving the text 2 ems to the right, and  
3           (3) by adding at the end the following new  
4 paragraph:

5           “(2) MAGISTRATE JUDGES.—Any magistrate  
6 judge may by written election filed with the chief  
7 judge bring himself or herself within the purview of  
8 this section. Such election shall be filed not later  
9 than the later of 6 months after—

10           “(A) 6 months after the date of the enact-  
11 ment of this paragraph,

12           “(B) the date the judge takes office, or

13           “(C) the date the judge marries.”

14           (c) CONFORMING AMENDMENTS.—

15           (1) The heading of section 7448 is amended by  
16 inserting “**AND MAGISTRATE JUDGES**” after  
17 “**JUDGES**”.

18           (2) The item relating to section 7448 in the  
19 table of sections for part I of subchapter C of chap-  
20 ter 76 is amended by inserting “and magistrate  
21 judges” after “judges”.

22           (3) Subsections (c)(1), (d), (f), (g), (h), (j),  
23 (m), (n), and (u) of section 7448, as amended by  
24 this Act, are each amended—

1 (A) by inserting “or magistrate judge”  
2 after “judge” each place it appears other than  
3 in the phrase “chief judge”, and

4 (B) by inserting “or magistrate judge’s”  
5 after “judge’s” each place it appears.

6 (4) Section 7448(c) is amended—

7 (A) in paragraph (1), by striking “Tax  
8 Court judges” and inserting “Tax Court judi-  
9 cial officers”,

10 (B) in paragraph (2)—

11 (i) in subparagraph (A), by inserting  
12 “and section 7443A(d)” after “(a)(4)”,  
13 and

14 (ii) in subparagraph (B), by striking  
15 “subsection (a)(4)” and inserting “sub-  
16 sections (a)(4) and (a)(6)”.

17 (5) Section 7448(g) is amended by inserting  
18 “or section 7443B” after “section 7447” each place  
19 it appears, and by inserting “or an annuity” after  
20 “retired pay”.

21 (6) Section 7448(j)(1) is amended—

22 (A) in subparagraph (A), by striking  
23 “service or retired” and inserting “service, re-  
24 tired”, and by inserting “, or receiving any an-  
25 nuity under section 7443B or chapters 83 or 84

1 of title 5, United States Code,” after “section  
2 7447”, and

3 (B) in the last sentence, by striking “sub-  
4 sections (a) (6) and (7)” and inserting “para-  
5 graphs (8) and (9) of subsection (a)”.

6 (7) Section 7448(m)(1), as amended by this  
7 Act, is amended—

8 (A) by inserting “or any annuity under  
9 section 7443B or chapters 83 or 84 of title 5,  
10 United States Code” after “7447(d)”, and

11 (B) by inserting “or 7443B(m)(1)(B) after  
12 “7447(f)(4)”.

13 (8) Section 7448(n) is amended by inserting  
14 “his years of service pursuant to any appointment  
15 under section 7443A,” after “of the Tax Court,”.

16 (9) Section 3121(b)(5)(E) is amended by in-  
17 serting “or magistrate judge” before “of the United  
18 States Tax Court”.

19 (10) Section 210(a)(5)(E) of the Social Secu-  
20 rity Act is amended by inserting “or magistrate  
21 judge” before “of the United States Tax Court”.

22 **SEC. 610. RETIREMENT AND ANNUITY PROGRAM.**

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

1 **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
2 **THE TAX COURT.**

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

12 “(b) RETIREMENT UPON FAILURE OF REAPPOINT-  
13 MENT.—A magistrate judge of the Tax Court to whom  
14 this section applies who is not reappointed following the  
15 expiration of the term of office of such magistrate judge  
16 and who retires upon the completion of the term shall,  
17 subject to subsection (f), be entitled to receive, upon at-  
18 taining the age of 65 years and during the remainder of  
19 such magistrate judge’s lifetime, an annuity equal to that  
20 portion of the salary being received at the time the mag-  
21 istrate judge leaves office which the aggregate number of  
22 years of service, not to exceed 14, bears to 14, if—

23 “(1) such magistrate judge has served at least  
24 1 full term as a magistrate judge, and

25 “(2) not earlier than 9 months before the date  
26 on which the term of office of such magistrate judge

1 expires, and not later than 6 months before such  
2 date, such magistrate judge notified the chief judge  
3 of the Tax Court in writing that such magistrate  
4 judge was willing to accept reappointment to the po-  
5 sition in which such magistrate judge was serving.

6 “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate  
7 judge of the Tax Court to whom this section applies and  
8 who retires after serving at least 8 years, whether continu-  
9 ously or otherwise, as such a magistrate judge shall, sub-  
10 ject to subsection (f), be entitled to receive, upon attaining  
11 the age of 65 years and during the remainder of the mag-  
12 istrate judge’s lifetime, an annuity equal to that portion  
13 of the salary being received at the time the magistrate  
14 judge leaves office which the aggregate number of years  
15 of service, not to exceed 14, bears to 14. Such annuity  
16 shall be reduced by  $\frac{1}{6}$  of 1 percent for each full month  
17 such magistrate judge was under the age of 65 at the time  
18 the magistrate judge left office, except that such reduction  
19 shall not exceed 20 percent.

20 “(d) RETIREMENT FOR DISABILITY.—A magistrate  
21 judge of the Tax Court to whom this section applies, who  
22 has served at least 5 years, whether continuously or other-  
23 wise, as such a magistrate judge and who retires or is re-  
24 moved from office upon the sole ground of mental or phys-  
25 ical disability shall, subject to subsection (f), be entitled

1 to receive, during the remainder of the magistrate judge's  
2 lifetime, an annuity equal to 40 percent of the salary being  
3 received at the time of retirement or removal or, in the  
4 case of a magistrate judge who has served for at least 10  
5 years, an amount equal to that proportion of the salary  
6 being received at the time of retirement or removal which  
7 the aggregate number of years of service, not to exceed  
8 14, bears to 14.

9       “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate  
10 judge of the Tax Court who is entitled to an annuity under  
11 this section is also entitled to a cost-of-living adjustment  
12 in such annuity, calculated and payable in the same man-  
13 ner as adjustments under section 8340(b) of title 5,  
14 United States Code, except that any such annuity, as in-  
15 creased under this subsection, may not exceed the salary  
16 then payable for the position from which the magistrate  
17 judge retired or was removed.

18       “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-  
19 ITIES.—

20       “(1) IN GENERAL.—A magistrate judge of the  
21 Tax Court shall be entitled to an annuity under this  
22 section if the magistrate judge elects an annuity  
23 under this section by notifying the chief judge of the  
24 Tax Court not later than the later of—



1           “(A) 5 years after the magistrate judge of  
2           the Tax Court begins judicial service, or

3           “(B) 5 years after the date of the enact-  
4           ment of this subsection.

5           Such notice shall be given in accordance with proce-  
6           dures prescribed by the Tax Court.

7           “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—  
8           A magistrate judge who elects to receive an annuity  
9           under this section shall not be entitled to receive—

10           “(A) any annuity to which such magistrate  
11           judge would otherwise have been entitled under  
12           subchapter III of chapter 83, or under chapter  
13           84 (except for subchapters III and VII), of title  
14           5, United States Code, for service performed as  
15           a magistrate or otherwise,

16           “(B) an annuity or salary in senior status  
17           or retirement under section 371 or 372 of title  
18           28, United States Code,

19           “(C) retired pay under section 7447, or

20           “(D) retired pay under section 7296 of  
21           title 38, United States Code.

22           “(3) COORDINATION WITH TITLE 5.—A mag-  
23           istrate judge of the Tax Court who elects to receive  
24           an annuity under this section—

1           “(A) shall not be subject to deductions and  
2           contributions otherwise required by section  
3           8334(a) of title 5, United States Code,

4           “(B) shall be excluded from the operation  
5           of chapter 84 (other than subchapters III and  
6           VII) of such title 5, and

7           “(C) is entitled to a lump-sum credit under  
8           section 8342(a) or 8424 of such title 5, as the  
9           case may be.

10          “(g) CALCULATION OF SERVICE.—For purposes of  
11          calculating an annuity under this section—

12                 “(1) service as a magistrate judge of the Tax  
13          Court to whom this section applies may be credited,  
14          and

15                 “(2) each month of service shall be credited as  
16           $\frac{1}{12}$  of a year, and the fractional part of any month  
17          shall not be credited.

18          “(h) COVERED POSITIONS AND SERVICE.—This sec-  
19          tion applies to any magistrate judge of the Tax Court or  
20          special trial judge of the Tax Court appointed under this  
21          subchapter, but only with respect to service as such a mag-  
22          istrate judge or special trial judge after a date not earlier  
23          than  $9\frac{1}{2}$  years before the date of the enactment of this  
24          subsection.

25          “(i) PAYMENTS PURSUANT TO COURT ORDER.—

1           “(1) IN GENERAL.—Payments under this sec-  
2           tion which would otherwise be made to a magistrate  
3           judge of the Tax Court based upon his or her service  
4           shall be paid (in whole or in part) by the chief judge  
5           of the Tax Court to another person if and to the ex-  
6           tent expressly provided for in the terms of any court  
7           decree of divorce, annulment, or legal separation, or  
8           the terms of any court order or court-approved prop-  
9           erty settlement agreement incident to any court de-  
10          cree of divorce, annulment, or legal separation. Any  
11          payment under this paragraph to a person bars re-  
12          covery by any other person.

13           “(2) REQUIREMENTS FOR PAYMENT.—Para-  
14          graph (1) shall apply only to payments made by the  
15          chief judge of the Tax Court after the date of re-  
16          ceipt by the chief judge of written notice of such de-  
17          cree, order, or agreement, and such additional infor-  
18          mation as the chief judge may prescribe.

19           “(3) COURT DEFINED.—For purposes of this  
20          subsection, the term ‘court’ means any court of any  
21          State, the District of Columbia, the Commonwealth  
22          of Puerto Rico, Guam, the Northern Mariana Is-  
23          lands, or the Virgin Islands, and any Indian tribal  
24          court or courts of Indian offense.

1       “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-  
2 ITS.—

3               “(1) DEDUCTIONS.—Beginning with the next  
4 pay period after the chief judge of the Tax Court re-  
5 ceives a notice under subsection (f) that a mag-  
6 istrate judge of the Tax Court has elected an annu-  
7 ity under this section, the chief judge shall deduct  
8 and withhold 1 percent of the salary of such mag-  
9 istrate judge. Amounts shall be so deducted and  
10 withheld in a manner determined by the chief judge.  
11 Amounts deducted and withheld under this sub-  
12 section shall be deposited in the Treasury of the  
13 United States to the credit of the Tax Court Judi-  
14 cial Officers’ Retirement Fund. Deductions under  
15 this subsection from the salary of a magistrate judge  
16 shall terminate upon the retirement of the mag-  
17 istrate judge or upon completion of 14 years of serv-  
18 ice for which contributions under this section have  
19 been made, whether continuously or otherwise, as  
20 calculated under subsection (g), whichever occurs  
21 first.

22               “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF  
23 CLAIMS.—Each magistrate judge of the Tax Court  
24 who makes an election under subsection (f) shall be  
25 deemed to consent and agree to the deductions from

1 salary which are made under paragraph (1). Pay-  
2 ment of such salary less such deductions (and any  
3 deductions made under section 7448) is a full and  
4 complete discharge and acquittance of all claims and  
5 demands for all services rendered by such magistrate  
6 judge during the period covered by such payment,  
7 except the right to those benefits to which the mag-  
8 istrate judge is entitled under this section (and sec-  
9 tion 7448).

10 “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-  
11 istrate judge of the Tax Court who makes an election  
12 under subsection (f) may deposit, for service performed  
13 before such election for which contributions may be made  
14 under this section, an amount equal to 1 percent of the  
15 salary received for that service. Credit for any period cov-  
16 ered by that service may not be allowed for purposes of  
17 an annuity under this section until a deposit under this  
18 subsection has been made for that period.

19 “(l) INDIVIDUAL RETIREMENT RECORDS.—The  
20 amounts deducted and withheld under subsection (j), and  
21 the amounts deposited under subsection (k), shall be cred-  
22 ited to individual accounts in the name of each magistrate  
23 judge of the Tax Court from whom such amounts are re-  
24 ceived, for credit to the Tax Court Judicial Officers’ Re-  
25 tirement Fund.

1 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

2 “(1) 1-YEAR FORFEITURE FOR FAILURE TO  
3 PERFORM JUDICIAL DUTIES.—Subject to paragraph  
4 (3), any magistrate judge of the Tax Court who re-  
5 tires under this section and who fails to perform ju-  
6 dicial duties required of such individual by section  
7 7443C shall forfeit all rights to an annuity under  
8 this section for a 1-year period which begins on the  
9 1st day on which such individual fails to perform  
10 such duties.

11 “(2) PERMANENT FORFEITURE OF RETIRED  
12 PAY WHERE CERTAIN NON-GOVERNMENT SERVICES  
13 PERFORMED.—Subject to paragraph (3), any mag-  
14 istrate judge of the Tax Court who retires under this  
15 section and who thereafter performs (or supervises  
16 or directs the performance of) legal or accounting  
17 services in the field of Federal taxation for the indi-  
18 vidual’s client, the individual’s employer, or any of  
19 such employer’s clients, shall forfeit all rights to an  
20 annuity under this section for all periods beginning  
21 on or after the first day on which the individual per-  
22 forms (or supervises or directs the performance of)  
23 such services. The preceding sentence shall not apply  
24 to any civil office or employment under the Govern-  
25 ment of the United States.

1           “(3) FORFEITURES NOT TO APPLY WHERE IN-  
2           DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-  
3           ITY.—

4           “(A) IN GENERAL.—If a magistrate judge  
5           of the Tax Court makes an election under this  
6           paragraph—

7                   “(i) paragraphs (1) and (2) (and sec-  
8                   tion 7443C) shall not apply to such mag-  
9                   istrate judge beginning on the date such  
10                  election takes effect, and

11                   “(ii) the annuity payable under this  
12                  section to such magistrate judge, for peri-  
13                  ods beginning on or after the date such  
14                  election takes effect, shall be equal to the  
15                  annuity to which such magistrate judge is  
16                  entitled on the day before such effective  
17                  date.

18           “(B) ELECTION REQUIREMENTS.—An elec-  
19           tion under subparagraph (A)—

20                   “(i) may be made by a magistrate  
21                  judge of the Tax Court eligible for retire-  
22                  ment under this section, and

23                   “(ii) shall be filed with the chief judge  
24                  of the Tax Court.

1           Such an election, once it takes effect, shall be  
2           irrevocable.

3           “(C) EFFECTIVE DATE OF ELECTION.—  
4           Any election under subparagraph (A) shall take  
5           effect on the first day of the first month fol-  
6           lowing the month in which the election is made.

7           “(4) ACCEPTING OTHER EMPLOYMENT.—Any  
8           magistrate judge of the Tax Court who retires under  
9           this section and thereafter accepts compensation for  
10          civil office or employment under the United States  
11          Government (other than for the performance of  
12          functions as a magistrate judge of the Tax Court  
13          under section 7443C) shall forfeit all rights to an  
14          annuity under this section for the period for which  
15          such compensation is received. For purposes of this  
16          paragraph, the term ‘compensation’ includes retired  
17          pay or salary received in retired status.

18          “(n) LUMP-SUM PAYMENTS.—

19                 “(1) ELIGIBILITY.—

20                         “(A) IN GENERAL.—Subject to paragraph  
21                         (2), an individual who serves as a magistrate  
22                         judge of the Tax Court and—

23                                 “(i) who leaves office and is not re-  
24                                 appointed as a magistrate judge of the Tax  
25                                 Court for at least 31 consecutive days,



1           “(ii) who files an application with the  
2           chief judge of the Tax Court for payment  
3           of a lump-sum credit,

4           “(iii) is not serving as a magistrate  
5           judge of the Tax Court at the time of fil-  
6           ing of the application, and

7           “(iv) will not become eligible to re-  
8           ceive an annuity under this section within  
9           31 days after filing the application,

10           is entitled to be paid the lump-sum credit. Pay-  
11           ment of the lump-sum credit voids all rights to  
12           an annuity under this section based on the serv-  
13           ice on which the lump-sum credit is based, until  
14           that individual resumes office as a magistrate  
15           judge of the Tax Court.

16           “(B) PAYMENT TO SURVIVORS.—Lump-  
17           sum benefits authorized by subparagraphs (C),  
18           (D), and (E) of this paragraph shall be paid to  
19           the person or persons surviving the magistrate  
20           judge of the Tax Court and alive on the date  
21           title to the payment arises, in the order of pre-  
22           cedence set forth in subsection (o) of section 376  
23           of title 28, United States Code, and in accord-  
24           ance with the last 2 sentences of paragraph (1)  
25           of that subsection. For purposes of the pre-

1 ceding sentence, the term ‘judicial official’ as  
2 used in subsection (o) of such section 376 shall  
3 be deemed to mean ‘magistrate judge of the  
4 Tax Court’ and the terms ‘Administrative Of-  
5 fice of the United States Courts’ and ‘Director  
6 of the Administrative Office of the United  
7 States Courts’ shall be deemed to mean ‘chief  
8 judge of the Tax Court’.

9 “(C) PAYMENT UPON DEATH OF JUDGE  
10 BEFORE RECEIPT OF ANNUITY.—If a mag-  
11 istrate judge of the Tax Court dies before re-  
12 ceiving an annuity under this section, the lump-  
13 sum credit shall be paid.

14 “(D) PAYMENT OF ANNUITY REMAIN-  
15 DER.—If all annuity rights under this section  
16 based on the service of a deceased magistrate  
17 judge of the Tax Court terminate before the  
18 total annuity paid equals the lump-sum credit,  
19 the difference shall be paid.

20 “(E) PAYMENT UPON DEATH OF JUDGE  
21 DURING RECEIPT OF ANNUITY.—If a magistrate  
22 judge of the Tax Court who is receiving an an-  
23 nuity under this section dies, any accrued annu-  
24 ity benefits remaining unpaid shall be paid.

1           “(F) PAYMENT UPON TERMINATION.—Any  
2 accrued annuity benefits remaining unpaid on  
3 the termination, except by death, of the annuity  
4 of a magistrate judge of the Tax Court shall be  
5 paid to that individual.

6           “(G) PAYMENT UPON ACCEPTING OTHER  
7 EMPLOYMENT.—Subject to paragraph (2), a  
8 magistrate judge of the Tax Court who forfeits  
9 rights to an annuity under subsection (m)(4)  
10 before the total annuity paid equals the lump-  
11 sum credit shall be entitled to be paid the dif-  
12 ference if the magistrate judge of the Tax  
13 Court files an application with the chief judge  
14 of the Tax Court for payment of that dif-  
15 ference. A payment under this subparagraph  
16 voids all rights to an annuity on which the pay-  
17 ment is based.

18           “(2) SPOUSES AND FORMER SPOUSES.—

19           “(A) IN GENERAL.—Payment of the lump-  
20 sum credit under paragraph (1)(A) or a pay-  
21 ment under paragraph (1)(G)—

22                   “(i) may be made only if any current  
23 spouse and any former spouse of the mag-  
24 istrate judge of the Tax Court are notified  
25 of the magistrate judge’s application, and

1           “(ii) shall be subject to the terms of  
2           a court decree of divorce, annulment, or  
3           legal separation, or any court or court ap-  
4           proved property settlement agreement inci-  
5           dent to such decree, if—

6                   “(I) the decree, order, or agree-  
7                   ment expressly relates to any portion  
8                   of the lump-sum credit or other pay-  
9                   ment involved, and

10                   “(II) payment of the lump-sum  
11                   credit or other payment would extin-  
12                   guish entitlement of the magistrate  
13                   judge’s spouse or former spouse to  
14                   any portion of an annuity under sub-  
15                   section (i).

16           “(B) NOTIFICATION.—Notification of a  
17           spouse or former spouse under this paragraph  
18           shall be made in accordance with such proce-  
19           dures as the chief judge of the Tax Court shall  
20           prescribe. The chief judge may provide under  
21           such procedures that subparagraph (A)(i) may  
22           be waived with respect to a spouse or former  
23           spouse if the magistrate judge establishes to the  
24           satisfaction of the chief judge that the where-

1           abouts of such spouse or former spouse cannot  
2           be determined.

3           “(C) RESOLUTION OF 2 OR MORE OR-  
4           DERS.—The chief judge shall prescribe proce-  
5           dures under which this paragraph shall be ap-  
6           plied in any case in which the chief judge re-  
7           ceives 2 or more orders or decrees described in  
8           subparagraph (A).

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

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

15           “(B) amounts deposited under subsection  
16           (k) by a magistrate judge of the Tax Court cov-  
17           ering earlier service, and

18           “(C) interest on the deductions and depos-  
19           its which, for any calendar year, shall be equal  
20           to the overall average yield to the Tax Court  
21           Judicial Officers’ Retirement Fund during the  
22           preceding fiscal year from all obligations pur-  
23           chased by the Secretary during such fiscal year  
24           under subsection (o); but does not include inter-  
25           est—

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

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

5           “(o) TAX COURT JUDICIAL OFFICERS’ RETIREMENT  
6 FUND.—

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

13                  “(2) INVESTMENT OF FUND.—The Secretary  
14                  shall invest, in interest bearing securities of the  
15                  United States, such currently available portions of  
16                  the Tax Court Judicial Officers’ Retirement Fund as  
17                  are not immediately required for payments from the  
18                  Fund. The income derived from these investments  
19                  constitutes a part of the Fund.

20                  “(3) UNFUNDED LIABILITY.—

21                         “(A) IN GENERAL.—There are authorized  
22                         to be appropriated to the Tax Court Judicial  
23                         Officers’ Retirement Fund amounts required to  
24                         reduce to zero the unfunded liability of the  
25                         Fund.

1           “(B) UNFUNDED LIABILITY.—For pur-  
2           poses of subparagraph (A), the term ‘unfunded  
3           liability’ means the estimated excess, deter-  
4           mined on an annual basis in accordance with  
5           the provisions of section 9503 of title 31,  
6           United States Code, of the present value of all  
7           benefits payable from the Tax Court Judicial  
8           Officers’ Retirement Fund over the sum of—

9                   “(i) the present value of deductions to  
10                   be withheld under this section from the fu-  
11                   ture basic pay of magistrate judges of the  
12                   Tax Court, plus

13                   “(ii) the balance in the Fund as of the  
14                   date the unfunded liability is determined.

15           “(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

16                   “(1) ELECTION TO CONTRIBUTE.—

17                   “(A) IN GENERAL.—A magistrate judge of  
18                   the Tax Court who elects to receive an annuity  
19                   under this section or under section 611 of the  
20                   National Employee Savings and Trust Equity  
21                   Guarantee Act of 2005 may elect to contribute  
22                   an amount of such individual’s basic pay to the  
23                   Thrift Savings Fund established by section  
24                   8437 of title 5, United States Code.

1           “(B) PERIOD OF ELECTION.—An election  
2           may be made under this paragraph only during  
3           a period provided under section 8432(b) of title  
4           5, United States Code, for individuals subject to  
5           chapter 84 of such title.

6           “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—  
7           Except as otherwise provided in this subsection, the  
8           provisions of subchapters III and VII of chapter 84  
9           of title 5, United States Code, shall apply with re-  
10          spect to a magistrate judge who makes an election  
11          under paragraph (1).

12          “(3) SPECIAL RULES.—

13                 “(A) AMOUNT CONTRIBUTED.—The  
14                 amount contributed by a magistrate judge to  
15                 the Thrift Savings Fund in any pay period shall  
16                 not exceed the maximum percentage of such  
17                 judge’s basic pay for such pay period as allow-  
18                 able under section 8440f of title 5, United  
19                 States Code.

20                 “(B) CONTRIBUTIONS FOR BENEFIT OF  
21                 JUDGE.—No contributions may be made for the  
22                 benefit of a magistrate judge under section  
23                 8432(c) of title 5, United States Code.

24                 “(C) APPLICABILITY OF SECTION 8433(b)  
25                 OF TITLE 5.—Section 8433(b) of title 5, United



1 States Code, applies with respect to a mag-  
2 istrate judge who makes an election under para-  
3 graph (1) and—

4 “(i) who retires entitled to an imme-  
5 diate annuity under this section (including  
6 a disability annuity under subsection (d) of  
7 this section) or section 611 of the National  
8 Employee Savings and Trust Equity Guar-  
9 antee Act of 2005,

10 “(ii) who retires before attaining age  
11 65 but is entitled, upon attaining age 65,  
12 to an annuity under this section or section  
13 611 of the National Employee Savings and  
14 Trust Equity Guarantee Act of 2005, or

15 “(iii) who retires before becoming en-  
16 titled to an immediate annuity, or an an-  
17 nuity upon attaining age 65, under this  
18 section or section 611 of the National Em-  
19 ployee Savings and Trust Equity Guar-  
20 antee Act of 2005.

21 “(D) SEPARATION FROM SERVICE.—With  
22 respect to a magistrate judge to whom this sub-  
23 section applies, retirement under this section or  
24 section 611 of the National Employee Savings  
25 and Trust Equity Guarantee Act of 2005 is a

1 separation from service for purposes of sub-  
2 chapters III and VII of chapter 84 of title 5,  
3 United States Code.

4 “(4) DEFINITIONS.—For purposes of this sub-  
5 section, the terms ‘retirement’ and ‘retire’ include  
6 removal from office under section 7443A(a)(2) on  
7 the sole ground of mental or physical disability.

8 “(5) OFFSET.—In the case of a magistrate  
9 judge who receives a distribution from the Thrift  
10 Savings Fund and who later receives an annuity  
11 under this section, that annuity shall be offset by an  
12 amount equal to the amount which represents the  
13 Government’s contribution to that person’s Thrift  
14 Savings Account, without regard to earnings attrib-  
15 utable to that amount. Where such an offset would  
16 exceed 50 percent of the annuity to be received in  
17 the first year, the offset may be divided equally over  
18 the first 2 years in which that person receives the  
19 annuity.

20 “(6) EXCEPTION.—Notwithstanding clauses (i)  
21 and (ii) of paragraph (3)(C), if any magistrate judge  
22 retires under circumstances making such magistrate  
23 judge eligible to make an election under subsection  
24 (b) of section 8433 of title 5, United States Code,  
25 and such magistrate judge’s nonforfeitable account

1 balance is less than an amount that the Executive  
 2 Director of the Office of Personnel Management pre-  
 3 scribes by regulation, the Executive Director shall  
 4 pay the nonforfeitable account balance to the partici-  
 5 pant in a single payment.”

6 (b) CONFORMING AMENDMENT.—The table of sec-  
 7 tions for part I of subchapter C of chapter 76 is amended  
 8 by inserting after the item relating to section 7443A the  
 9 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax Court.”.

10 **SEC. 611. INCUMBENT MAGISTRATE JUDGES OF THE TAX**  
 11 **COURT.**

12 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND  
 13 SECTION 7443B OF THE INTERNAL REVENUE CODE OF  
 14 1986.—A magistrate judge of the United States Tax  
 15 Court in active service on the date of the enactment of  
 16 this Act shall, subject to subsection (b), be entitled, in lieu  
 17 of the annuity otherwise provided under the amendments  
 18 made by this title, to—

19 (1) an annuity under subchapter III of chapter  
 20 83, or under chapter 84 (except for subchapters III  
 21 and VII), of title 5, United States Code, as the case  
 22 may be, for creditable service before the date on  
 23 which service would begin to be credited for pur-  
 24 poses of paragraph (2), and

1           (2) an annuity calculated under subsection (b)  
2           or (c) and subsection (g) of section 7443B of the In-  
3           ternal Revenue Code of 1986, as added by this Act,  
4           for any service as a magistrate judge of the United  
5           States Tax Court or special trial judge of the United  
6           States Tax Court but only with respect to service as  
7           such a magistrate judge or special trial judge after  
8           a date not earlier than 9½ years prior to the date  
9           of the enactment of this Act (as specified in the elec-  
10          tion pursuant to subsection (b)) for which deduc-  
11          tions and deposits are made under subsections (j)  
12          and (k) of such section 7443B, as applicable, with-  
13          out regard to the minimum number of years of serv-  
14          ice as such a magistrate judge of the United States  
15          Tax Court, except that—

16                 (A) in the case of a magistrate judge who  
17                 retired with less than 8 years of service, the an-  
18                 nuity under subsection (c) of such section  
19                 7443B shall be equal to that proportion of the  
20                 salary being received at the time the magistrate  
21                 judge leaves office which the years of service  
22                 bears to 14, subject to a reduction in accord-  
23                 ance with subsection (c) of such section 7443B  
24                 if the magistrate judge is under age 65 at the  
25                 time he or she leaves office, and

1           (B) the aggregate amount of the annuity  
2           initially payable on retirement under this sub-  
3           section may not exceed the rate of pay for the  
4           magistrate judge which is in effect on the day  
5           before the retirement becomes effective.

6           (b) FILING OF NOTICE OF ELECTION.—A magistrate  
7           judge of the United States Tax Court shall be entitled to  
8           an annuity under this section only if the magistrate judge  
9           files a notice of that election with the chief judge of the  
10          United States Tax Court specifying the date on which  
11          service would begin to be credited under section 7443B  
12          of the Internal Revenue Code of 1986, as added by this  
13          Act, in lieu of chapter 83 or chapter 84 of title 5, United  
14          States Code. Such notice shall be filed in accordance with  
15          such procedures as the chief judge of the United States  
16          Tax Court shall prescribe.

17          (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-  
18          istrate judge of the United States Tax Court who makes  
19          an election under subsection (b) shall be entitled to a  
20          lump-sum credit under section 8342 or 8424 of title 5,  
21          United States Code, as the case may be, for any service  
22          which is covered under section 7443B of the Internal Rev-  
23          enue Code of 1986, as added by this Act, pursuant to that  
24          election, and with respect to which any contributions were

1 made by the magistrate judge under the applicable provi-  
2 sions of title 5, United States Code.

3 (d) RECALL.—With respect to any magistrate judge  
4 of the United States Tax Court receiving an annuity under  
5 this section who is recalled to serve under section 7443C  
6 of the Internal Revenue Code of 1986, as added by this  
7 Act—

8 (1) the amount of compensation which such re-  
9 called magistrate judge receives under such section  
10 7443C shall be calculated on the basis of the annu-  
11 ity received under this section, and

12 (2) such recalled magistrate judge of the United  
13 States Tax Court may serve as a reemployed annu-  
14 itant to the extent otherwise permitted under title 5,  
15 United States Code.

16 Section 7443B(m)(4) of the Internal Revenue Code of  
17 1986, as added by this Act, shall not apply with respect  
18 to service as a reemployed annuitant described in para-  
19 graph (2).

20 **SEC. 612. PROVISIONS FOR RECALL.**

21 (a) IN GENERAL.—Part I of subchapter C of chapter  
22 76, as amended by this Act, is amended by inserting after  
23 section 7443B the following new section:

1 **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**  
2 **COURT.**

3 “(a) RECALLING OF RETIRED MAGISTRATE  
4 JUDGES.—Any individual who has retired pursuant to sec-  
5 tion 7443B or the applicable provisions of title 5, United  
6 States Code, upon reaching the age and service require-  
7 ments established therein, may at or after retirement be  
8 called upon by the chief judge of the Tax Court to perform  
9 such judicial duties with the Tax Court as may be re-  
10 quested of such individual for any period or periods speci-  
11 fied by the chief judge; except that in the case of any such  
12 individual—

13 “(1) the aggregate of such periods in any 1 cal-  
14 endar year shall not (without such individual’s con-  
15 sent) exceed 90 calendar days, and

16 “(2) such individual shall be relieved of per-  
17 forming such duties during any period in which ill-  
18 ness or disability precludes the performance of such  
19 duties.

20 Any act, or failure to act, by an individual performing ju-  
21 dicial duties pursuant to this subsection shall have the  
22 same force and effect as if it were the act (or failure to  
23 act) of a magistrate judge of the Tax Court.

24 “(b) COMPENSATION.—For the year in which a pe-  
25 riod of recall occurs, the magistrate judge shall receive,  
26 in addition to the annuity provided under the provisions

1 of section 7443B or under the applicable provisions of title  
 2 5, United States Code, an amount equal to the difference  
 3 between that annuity and the current salary of the office  
 4 to which the magistrate judge is recalled. The annuity of  
 5 the magistrate judge who completes that period of service,  
 6 who is not recalled in a subsequent year, and who retired  
 7 under section 7443B, shall be equal to the salary in effect  
 8 at the end of the year in which the period of recall oc-  
 9 curred for the office from which such individual retired.

10 “(c) RULEMAKING AUTHORITY.—The provisions of  
 11 this section may be implemented under such rules as may  
 12 be promulgated by the Tax Court.”

13 (b) CONFORMING AMENDMENT.—The table of sec-  
 14 tions for part I of subchapter C of chapter 76, as amended  
 15 by this Act, is amended by inserting after the item relating  
 16 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

17 **SEC. 613. EFFECTIVE DATE.**

18 Except as otherwise provided, the amendments made  
 19 by this title shall take effect on the date of the enactment  
 20 of this Act.

21 **TITLE VII—OTHER PROVISIONS**

22 **SEC. 701. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**  
 23 **TIEMPLOYER HEALTH PLAN.**

24 (a) IN GENERAL.—Section 420(e) of the Internal  
 25 Revenue Code of 1986 (relating to definitions and special



1 rules) is amended by adding at the end the following new  
2 paragraph:

3           “(5) APPLICATION TO MULTIEMPLOYER  
4 PLAN.—In the case of any plan to which section  
5 404(c) applies (or any successor plan primarily cov-  
6 ering employees in the building and construction in-  
7 dustry)—

8           “(A) the prohibition under subsection (a)  
9 on the application of this section to a multiem-  
10 ployer plan shall not apply, and

11           “(B) this section shall be applied to any  
12 such plan—

13           “(i) by treating any reference in this  
14 section to an employer as a reference to all  
15 employers maintaining the plan (or, if ap-  
16 propriate, the plan sponsor), and

17           “(ii) in accordance with such modi-  
18 fications of this section (and the provisions  
19 of this title and the Employee Retirement  
20 Income Security Act of 1974 relating to  
21 this section) as the Secretary determines  
22 appropriate to reflect the fact the plan is  
23 not maintained by a single employer.”

24 (b) AMENDMENTS OF ERISA.—



1 lung disability trusts) as precedes the last sentence is  
2 amended to read as follows:

3           “(C) Payments described in subparagraph  
4           (A)(i)(IV) may be made from such trust during  
5           a taxable year only to the extent that the aggregate  
6           amount of such payments during such taxable  
7           year does not exceed the excess (if any), as  
8           of the close of the preceding taxable year, of—

9                   “(i) the fair market value of the as-  
10                   sets of the trust, over

11                   “(ii) 110 percent of the present value  
12                   of the liability described in subparagraph  
13                   (A)(i)(I) of such person.”

14           (b) TRANSFER.—Section 9705 of such Code (relating  
15 to transfer) is amended by adding at the end the following  
16 new subsection:

17           “(c) TRANSFER FROM BLACK LUNG DISABILITY  
18 TRUSTS.—

19                   “(1) IN GENERAL.—The Secretary shall trans-  
20                   fer each fiscal year to the Fund from the general  
21                   fund of the Treasury an amount which the Secretary  
22                   estimates to be the additional amounts received in  
23                   the Treasury for that fiscal year by reason of the  
24                   amendment made by section 804(a) of the National  
25                   Employee Savings and Trust Equity Guarantee Act

1 of 2005. The Secretary shall adjust the amount  
2 transferred for any year to the extent necessary to  
3 correct errors in any estimate for any prior year.

4 “(2) USE OF FUNDS.—Any amount transferred  
5 to the Combined Fund under paragraph (1) shall be  
6 used to proportionately reduce the unassigned bene-  
7 ficiary premium under section 9704(a)(3) of each  
8 assigned operator for the plan year in which trans-  
9 ferred.”

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

13 **SEC. 703. TREATMENT OF DEATH BENEFITS FROM COR-**  
14 **PORATE-OWNED LIFE INSURANCE.**

15 (a) IN GENERAL.—Section 101 of the Internal Rev-  
16 enue Code of 1986 (relating to certain death benefits) is  
17 amended by adding at the end the following new sub-  
18 section:

19 “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED  
20 LIFE INSURANCE CONTRACTS.—

21 “(1) GENERAL RULE.—In the case of an em-  
22 ployer-owned life insurance contract, the amount ex-  
23 cluded from gross income of an applicable policy-  
24 holder by reason of paragraph (1) of subsection (a)  
25 shall not exceed an amount equal to the sum of the

1 premiums and other amounts paid by the policy-  
2 holder for the contract.

3 “(2) EXCEPTIONS.—In the case of an employer-  
4 owned life insurance contract with respect to which  
5 the notice and consent requirements of paragraph  
6 (4) are met, paragraph (1) shall not apply to any of  
7 the following:

8 “(A) EXCEPTIONS BASED ON INSURED’S  
9 STATUS.—Any amount received by reason of  
10 the death of an insured who, with respect to an  
11 applicable policyholder—

12 “(i) was an employee at any time dur-  
13 ing the 12-month period before the in-  
14 sured’s death, or

15 “(ii) is, at the time the contract is  
16 issued—

17 “(I) a director,

18 “(II) a highly compensated em-  
19 ployee within the meaning of section  
20 414(q) (without regard to paragraph  
21 (1)(B)(ii) thereof), or

22 “(III) a highly compensated indi-  
23 vidual within the meaning of section  
24 105(h)(5), except that ‘35 percent’

1 shall be substituted for ‘25 percent’ in  
2 subparagraph (C) thereof.

3 “(B) EXCEPTION FOR AMOUNTS PAID TO  
4 INSURED’S HEIRS.—Any amount received by  
5 reason of the death of an insured to the ex-  
6 tent—

7 “(i) the amount is paid to a member  
8 of the family (within the meaning of sec-  
9 tion 267(c)(4)) of the insured, any indi-  
10 vidual who is the designated beneficiary of  
11 the insured under the contract (other than  
12 the applicable policyholder), a trust estab-  
13 lished for the benefit of any such member  
14 of the family or designated beneficiary, or  
15 the estate of the insured, or

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

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

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

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

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

10          For purposes of the preceding sentence, if cov-  
11          erage for each insured under a master contract  
12          is treated as a separate contract for purposes of  
13          sections 817(h), 7702, and 7702A, coverage for  
14          each such insured shall be treated as a separate  
15          contract.

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

18                 “(i) IN GENERAL.—The term ‘applica-  
19                 ble policyholder’ means, with respect to  
20                 any employer-owned life insurance con-  
21                 tract, the person described in subpara-  
22                 graph (A)(i) which owns the contract.

23                 “(ii) RELATED PERSONS.—The term  
24                 ‘applicable policyholder’ includes any per-  
25                 son which—

1                   “(I) bears a relationship to the  
2                   person described in clause (i) which is  
3                   specified in section 267(b) or  
4                   707(b)(1), or

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

10                   “(4) NOTICE AND CONSENT REQUIREMENTS.—

11                   The notice and consent requirements of this para-  
12                   graph are met if, before the issuance of the contract,  
13                   the employee—

14                   “(A) is notified in writing that the applica-  
15                   ble policyholder intends to insure the employee’s  
16                   life and the maximum face amount for which  
17                   the employee could be insured at the time the  
18                   contract was issued,

19                   “(B) provides written consent to being in-  
20                   sured under the contract and that such cov-  
21                   erage may continue after the insured terminates  
22                   employment, and

23                   “(C) is informed in writing that an appli-  
24                   cable policyholder will be a beneficiary of any



1 proceeds payable upon the death of the em-  
2 ployee.

3 “(5) DEFINITIONS.—For purposes of this sub-  
4 section—

5 “(A) EMPLOYEE.—The term ‘employee’ in-  
6 cludes an officer, director, and highly com-  
7 pensated employee (within the meaning of sec-  
8 tion 414(q)).

9 “(B) INSURED.—The term ‘insured’  
10 means, with respect to an employer-owned life  
11 insurance contract, an individual covered by the  
12 contract who is a United States citizen or resi-  
13 dent. In the case of a contract covering the  
14 joint lives of 2 individuals, references to an in-  
15 sured include both of the individuals.”.

16 (b) REPORTING REQUIREMENTS.—Subpart A of part  
17 III of subchapter A of chapter 61 of the Internal Revenue  
18 Code of 1986 (relating to information concerning persons  
19 subject to special provisions) is amended by inserting after  
20 section 6039H the following new section:

21 **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**  
22 **EMPLOYER-OWNED LIFE INSURANCE CON-**  
23 **TRACTS.**

24 “(a) IN GENERAL.—Every applicable policyholder  
25 owning 1 or more employer-owned life insurance contracts

1 issued after the date of the enactment of this section shall  
2 file a return (at such time and in such manner as the  
3 Secretary shall by regulations prescribe) showing for each  
4 year such contracts are owned—

5           “(1) the number of employees of the applicable  
6 policyholder at the end of the year,

7           “(2) the number of such employees insured  
8 under such contracts at the end of the year,

9           “(3) the total amount of insurance in force at  
10 the end of the year under such contracts,

11           “(4) the name, address, and taxpayer identifica-  
12 tion number of the applicable policyholder and the  
13 type of business in which the policyholder is en-  
14 gaged, and

15           “(5) that the applicable policyholder has a valid  
16 consent for each insured employee (or, if all such  
17 consents are not obtained, the number of insured  
18 employees for whom such consent was not obtained).

19           “(b) RECORDKEEPING REQUIREMENT.—Each appli-  
20 cable policyholder owning 1 or more employer-owned life  
21 insurance contracts during any year shall keep such  
22 records as may be necessary for purposes of determining  
23 whether the requirements of this section and section  
24 101(j) are met.

1       “(c) DEFINITIONS.—Any term used in this section  
2 which is used in section 101(j) shall have the same mean-  
3 ing given such term by section 101(j).”.

4       (c) CONFORMING AMENDMENTS.—

5           (1) Paragraph (1) of section 101(a) of the In-  
6 ternal Revenue Code of 1986 is amended by striking  
7 “and subsection (f)” and inserting “subsection (f),  
8 and subsection (j)”.

9           (2) The table of sections for subpart A of part  
10 III of subchapter A of chapter 61 of such Code is  
11 amended by inserting after the item relating to sec-  
12 tion 6039H the following new item:

“Sec. 6039I. Returns and records with respect to employer-owned life insurance  
contracts.”.

13       (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to life insurance contracts issued  
15 after the date of the enactment of this Act, except for a  
16 contract issued after such date pursuant to an exchange  
17 described in section 1035 of the Internal Revenue Code  
18 of 1986 for a contract issued on or prior to that date.  
19 For purposes of the preceding sentence, any material in-  
20 crease in the death benefit or other material change shall  
21 cause the contract to be treated as a new contract except  
22 that, in the case of a master contract (within the meaning  
23 of section 264(f)(4)(E) of such Code), the addition of cov-

- 1 ered lives shall be treated as a new contract only with re-
- 2 spect to such additional covered lives.

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