

105TH CONGRESS
2D SESSION

S. 2249

To provide retirement security for all Americans.

IN THE SENATE OF THE UNITED STATES

JUNE 26, 1998

Mr. DASCHLE (for himself, Mrs. BOXER, Mr. KENNEDY, Mr. BINGAMAN, Ms. MOSELEY-BRAUN, Mr. ROCKEFELLER, Ms. MIKULSKI, Mr. REID, Mr. DURBIN, Mr. INOUE, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide retirement security for all Americans.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Retirement Accessibil-
5 ity, Security, and Portability Act of 1998”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—PENSION ACCESS AND COVERAGE

Sec. 100. Amendment of 1986 Code.

Subtitle A—Improved Access to Individual Retirement Savings

- Sec. 101. Credit for pension plan startup costs of small employers.
- Sec. 102. Exclusion for payroll deduction contributions to IRAs.
- Sec. 103. Nonrefundable tax credit for contributions to individual retirement plans.
- Sec. 104. Distributions from certain plans may be used without penalty during periods of unemployment.

Subtitle B—Secure Money Annuity or Retirement (SMART) Trusts

- Sec. 111. Secure money annuity or retirement (SMART) trusts.

Subtitle C—Improved Fairness in Retirement Plan Benefits

- Sec. 121. Amendments to SIMPLE retirement accounts.
- Sec. 122. Nondiscrimination rules for qualified cash or deferred arrangements and matching contributions.
- Sec. 123. Definition of highly compensated employees.
- Sec. 124. Treatment of multiemployer plans under section 415.
- Sec. 125. Exemption of mirror plans from section 457 limits.
- Sec. 126. Immediate participation in the thrift savings plan for Federal employees.
- Sec. 127. Full funding limitation for multiemployer plans.
- Sec. 128. Elimination of partial termination rules for multiemployer plans.
- Sec. 129. Repeal of 150 percent of current liability funding limit.

TITLE II—SECURITY

- Sec. 200. Amendment of ERISA.

Subtitle A—General Provisions

- Sec. 201. Periodic pension benefits statements.
- Sec. 202. Requirement of annual, detailed investment reports applied to certain 401(k) plans.
- Sec. 203. Information required to be provided to investment managers of 401(k) plans.
- Sec. 204. Study on investments in collectibles.
- Sec. 205. Qualified employer plans prohibited from making loans through credit cards and other intermediaries.
- Sec. 206. Multiemployer plan benefits guaranteed.
- Sec. 207. Prohibited transactions.
- Sec. 208. Substantial owner benefits.
- Sec. 209. Reversion report.

Subtitle B—ERISA Enforcement

- Sec. 211. Civil penalties for breach of fiduciary responsibilities made discretionary, etc.
- Sec. 212. Reporting and enforcement requirements for employee benefit plans.
- Sec. 213. Additional requirements for qualified public accountants.
- Sec. 214. Inspector General study.

Subtitle C—Increase in Excise Tax on Employer Reversions

- Sec. 221. Increase in excise tax.

TITLE III—PORTABILITY

- Sec. 301. Faster vesting of employer matching contributions.
- Sec. 302. Rationalization of the restrictions on distributions from 401(k) plans.
- Sec. 303. Treatment of transfers between defined contribution plans.
- Sec. 304. Missing participants.
- Sec. 305. Allowance of rollovers from and to 403(b) plans.
- Sec. 306. Rollover contributions from deferred compensation plans of State and local governments.
- Sec. 307. Extension of 60-day rollover period in the case of Presidentially declared disasters and service in combat zone.
- Sec. 308. Purchase of service credit in governmental defined benefit plans.

TITLE IV—COMPREHENSIVE WOMEN’S PENSION PROTECTION

Subtitle A—Pension Reform

- Sec. 401. Pension right to know proposals.
- Sec. 402. Women’s pension toll-free phone number.
- Sec. 403. Modification of government pension offset.
- Sec. 404. Family leave provisions.
- Sec. 405. Pension integration rules.
- Sec. 406. Division of pension benefits upon divorce.
- Sec. 407. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
- Sec. 408. Effective dates.

Subtitle B—Protection of Rights of Former Spouses to Pension Benefits Under Certain Government and Government-Sponsored Retirement Programs

- Sec. 411. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.
- Sec. 412. Survivor annuities for widows, widowers, and former spouses of Federal employees who die before attaining age for deferred annuity under civil service retirement system.
- Sec. 413. Payment of lump-sum benefits to former spouses of Federal employees.

Subtitle C—Modifications of Joint and Survivor Annuity Requirements

- Sec. 421. Modifications of joint and survivor annuity requirements.
- Sec. 422. Spousal consent required for distributions from defined contribution plans.

TITLE V—DATE FOR ADOPTION OF PLAN AMENDMENTS

- Sec. 501. Date for adoption of plan amendments.

1 **TITLE I—PENSION ACCESS AND** 2 **COVERAGE**

3 **SEC. 100. AMENDMENT OF 1986 CODE.**

4 Except as otherwise expressly provided, whenever in
5 this title an amendment or repeal is expressed in terms

1 of an amendment to, or repeal of, a section or other provi-
 2 sion, the reference shall be considered to be made to a
 3 section or other provision of the Internal Revenue Code
 4 of 1986.

5 **Subtitle A—Improved Access to** 6 **Individual Retirement Savings**

7 **SEC. 101. CREDIT FOR PENSION PLAN STARTUP COSTS OF** 8 **SMALL EMPLOYERS.**

9 (a) IN GENERAL.—Subpart D of part IV of sub-
 10 chapter A of chapter 1 (relating to business related cred-
 11 its) is amended by adding at the end the following new
 12 section:

13 **“SEC. 45D. SMALL EMPLOYER PENSION PLAN STARTUP** 14 **COSTS.**

15 “(a) GENERAL RULE.—For purposes of section 38,
 16 in the case of an eligible employer, the small employer pen-
 17 sion plan startup cost credit determined under this section
 18 for any taxable year is an amount equal to 50 percent
 19 of the qualified startup costs paid or incurred by the tax-
 20 payer during the taxable year.

21 “(b) DOLLAR LIMITATION.—The amount of the cred-
 22 it determined under this section for any taxable year shall
 23 not exceed—

24 “(1) \$1,000 for the first credit year,

1 “(2) \$500 for each of the 2 taxable years imme-
2 diately following the first credit year, and

3 “(3) zero for any other taxable year.

4 “(c) ELIGIBLE EMPLOYER.—For purposes of this
5 section—

6 “(1) IN GENERAL.—The term ‘eligible em-
7 ployer’ has the meaning given such term by section
8 408(p)(2)(C)(i).

9 “(2) EMPLOYERS MAINTAINING QUALIFIED
10 PLANS DURING 1997 NOT ELIGIBLE.—Such term
11 shall not include an employer if such employer (or
12 any predecessor employer) maintained a qualified
13 plan (as defined in section 408(p)(2)(D)(ii)) with re-
14 spect to which contributions were made, or benefits
15 were accrued, for service in 1997. If only individuals
16 other than employees described in subparagraph (A)
17 or (B) of section 410(b)(3) are eligible to participate
18 in the qualified employer plan referred to in sub-
19 section (d)(1), then the preceding sentence shall be
20 applied without regard to any qualified plan in
21 which only employees so described are eligible to
22 participate.

23 “(d) OTHER DEFINITIONS.—For purposes of this
24 section—

25 “(1) QUALIFIED STARTUP COSTS.—

1 “(A) IN GENERAL.—The term ‘qualified
2 startup costs’ means any ordinary and nec-
3 essary expenses of an eligible employer which
4 are paid or incurred in connection with—

5 “(i) the establishment or administra-
6 tion of an eligible employer plan, or

7 “(ii) the retirement-related education
8 of employees with respect to such plan.

9 “(B) PLAN MUST HAVE AT LEAST 2 PAR-
10 TICIPANTS.—Such term shall not include any
11 expense in connection with a plan that does not
12 have at least 2 individuals who are eligible to
13 participate.

14 “(C) PLAN MUST BE ESTABLISHED BE-
15 FORE JANUARY 1, 2001.—Such term shall not
16 include any expense in connection with a plan
17 established after December 31, 2000.

18 “(2) ELIGIBLE EMPLOYER PLAN.—The term
19 ‘eligible employer plan’ means a qualified employer
20 plan within the meaning of section 4972(d), or a
21 qualified payroll deduction arrangement within the
22 meaning of section 408(q)(1) (whether or not an
23 election is made under section 408(q)(2)). A quali-
24 fied payroll deduction arrangement shall be treated

1 as an eligible employer plan only if all employees of
 2 the employer who—

3 “(A) have been employed for 90 days, and

4 “(B) are not described in subparagraph
 5 (A) or (C) of section 410(b)(3),

6 are eligible to make the election under section
 7 408(q)(1)(A).

8 “(3) FIRST CREDIT YEAR.—The term ‘first
 9 credit year’ means—

10 “(A) the taxable year which includes the
 11 date that the eligible employer plan to which
 12 such costs relate becomes effective, or

13 “(B) at the election of the eligible employer, the
 14 taxable year preceding the taxable year referred to
 15 in subparagraph (A).

16 “(e) SPECIAL RULES.—For purposes of this sec-
 17 tion—

18 “(1) AGGREGATION RULES.—All persons treat-
 19 ed as a single employer under subsection (a) or (b)
 20 of section 52, or subsection (n) or (o) of section 414,
 21 shall be treated as one person. All eligible employer
 22 plans shall be treated as 1 eligible employer plan.

23 “(2) DISALLOWANCE OF DEDUCTION.—No de-
 24 duction shall be allowed for that portion of the quali-
 25 fied startup costs paid or incurred for the taxable

1 year which is equal to the credit determined under
 2 subsection (a).

3 “(3) ELECTION NOT TO CLAIM CREDIT.—This
 4 section shall not apply to a taxpayer for any taxable
 5 year if such taxpayer elects to have this section not
 6 apply for such taxable year.”

7 (b) CREDIT ALLOWED AS PART OF GENERAL BUSI-
 8 NESS CREDIT.—Section 38(b) (defining current year busi-
 9 ness credit) is amended by striking “plus” at the end of
 10 paragraph (11), by striking the period at the end of para-
 11 graph (12) and inserting “, plus”, and by adding at the
 12 end the following new paragraph:

13 “(13) in the case of an eligible employer (as de-
 14 fined in section 45D(c)), the small employer pension
 15 plan startup cost credit determined under section
 16 45D(a).”

17 (c) CONFORMING AMENDMENTS.—

18 (1) Section 39(d) is amended by adding at the
 19 end the following new paragraph:

20 “(8) NO CARRYBACK OF SMALL EMPLOYER
 21 PENSION PLAN STARTUP COST CREDIT BEFORE EF-
 22 FECTIVE DATE.—No portion of the unused business
 23 credit for any taxable year which is attributable to
 24 the small employer pension plan startup cost credit
 25 determined under section 45D may be carried back

1 to a taxable year ending on or before the date of
 2 the enactment of section 45D.”

3 (2) Subsection (c) of section 196 is amended by
 4 striking “and” at the end of paragraph (7), by strik-
 5 ing the period at the end of paragraph (8) and in-
 6 serting “, and”, and by adding at the end the follow-
 7 ing new paragraph:

8 “(9) the small employer pension plan startup
 9 cost credit determined under section 45D(a).”

10 (3) The table of sections for subpart D of part
 11 IV of subchapter A of chapter 1 is amended by add-
 12 ing at the end the following new item:

“Sec. 45D. Small employer pension plan startup costs.”

13 (d) EFFECTIVE DATE.—The amendments made by
 14 this section shall apply to costs paid or incurred in taxable
 15 years ending after the date of the enactment of this Act.

16 **SEC. 102. EXCLUSION FOR PAYROLL DEDUCTION CON-**
 17 **TRIBUTIONS TO IRAS.**

18 (a) IN GENERAL.—Section 408 (relating to individual
 19 retirement accounts) is amended by redesignating sub-
 20 section (q) as subsection (r) and by inserting after sub-
 21 section (p) the following new subsection:

22 “(q) QUALIFIED PAYROLL DEDUCTION ARRANGE-
 23 MENT FOR IRA CONTRIBUTIONS.—

24 “(1) IN GENERAL.—For purposes of this title,
 25 the term ‘qualified payroll deduction arrangement’

1 means a written arrangement of an employer under
2 which—

3 “(A) an employee eligible to participate in
4 the arrangement may elect to have the employer
5 make payments—

6 “(i) to the employee directly in cash,
7 or

8 “(ii) as elective employer contributions
9 to an individual retirement plan (as de-
10 fined in section 7701(a)(37)), other than
11 an individual retirement plan described in
12 section 408(k), 408(p), or 408A(b), on be-
13 half of the employee for the taxable year in
14 which the payments otherwise would have
15 been made to the employee directly in
16 cash,

17 “(B) the amount which the employee may
18 elect under subparagraph (A) for any year may
19 not exceed a total of \$2,000,

20 “(C) no other contributions may be made
21 other than contributions described in subpara-
22 graph (A),

23 “(D) the employee’s rights to any contribu-
24 tions made to an individual retirement plan are

1 nonforfeitable (for this purpose, rules similar to
2 the rules of subsection (k)(4) shall apply), and

3 “(E) the employer makes the elective em-
4 ployer contributions under subparagraph (A)
5 not later than the close of the 30-day period
6 following the last day of the month with respect
7 to which the contributions are to be made.

8 “(2) ELECTION NOT TO HAVE SUBSECTION
9 APPLY.—An employer that maintains an arrange-
10 ment otherwise described in paragraph (1) may elect
11 to have contributions treated as though they were
12 not made under such an arrangement. If an em-
13 ployer does not make an election described in the
14 preceding sentence, an employee may elect, before
15 any contributions are made for the calendar year, to
16 have contributions on behalf of the employee treated
17 as though they were not made under an arrange-
18 ment described in paragraph (1). An employer shall
19 be deemed to have made an election under this para-
20 graph for a year if the employer maintained a quali-
21 fied plan with respect to which contributions were
22 made or benefits were accrued for such year. For
23 purposes of the preceding sentence, the term ‘quali-
24 fied plan’ means a plan, contract, pension, or trust

1 described in subparagraph (A) or (B) of section
2 219(g)(5).”.

3 (b) TAX TREATMENT OF EMPLOYER CONTRIBUTIONS
4 MADE UNDER A QUALIFIED PAYROLL DEDUCTION AR-
5 RANGEMENT.—

6 (1) COORDINATION WITH DEDUCTION UNDER
7 SECTION 219.—

8 (A) Section 219(b) (relating to maximum
9 amount of deduction) is amended by adding at
10 the end the following new paragraph:

11 “(5) SPECIAL RULE FOR CONTRIBUTIONS
12 UNDER A QUALIFIED PAYROLL DEDUCTION AR-
13 RANGEMENT.—This section shall not apply with re-
14 spect to any amount contributed under a qualified
15 payroll deduction arrangement described in section
16 408(q)(1) (for which an election has not been made
17 under section 408(q)(2)).”.

18 (B) Section 219(g)(1) (relating to the limi-
19 tation on deduction for active participants) is
20 amended to read as follows:

21 “(1) IN GENERAL.—If (for any part of any plan
22 year ending with or within a taxable year) an indi-
23 vidual is an active participant, each of the dollar
24 limitations contained in subsections (b)(1)(A) and

1 (c)(1)(A) for such taxable year shall be reduced (but
2 not below zero) by the sum of—

3 “(A) the amount determined under para-
4 graph (2), and

5 “(B) the amount contributed for the tax-
6 able year under a qualified payroll deduction ar-
7 rangement described in section 408(q)(1) (for
8 which an election has not been made under sec-
9 tion 408(q)(2)).”.

10 (2) DEDUCTIBILITY OF EMPLOYER CONTRIBU-
11 TIONS.—Section 404 (relating to deductions for con-
12 tributions of an employer to pension, etc., plans) is
13 amended by adding at the end the following new
14 subsection:

15 “(n) SPECIAL RULES FOR CONTRIBUTIONS UNDER
16 A QUALIFIED PAYROLL DEDUCTION ARRANGEMENT.—
17 Rules similar to the rules of subsection (m) shall apply
18 to employer contributions made under a qualified payroll
19 deduction arrangement described in section 408(q)(1) (for
20 which an election has not been made under section
21 408(q)(2)).”.

22 (3) CONTRIBUTIONS AND DISTRIBUTIONS.—
23 Section 402 (relating to taxability of beneficiary of
24 employees’ trust) is amended by adding at the end
25 the following new subsection:

1 “(l) TREATMENT OF CONTRIBUTIONS AND DIS-
2 TRIBUTIONS UNDER A QUALIFIED PAYROLL DEDUCTION
3 ARRANGEMENT.—Rules similar to the rules of paragraphs
4 (1) and (3) of subsection (h) shall apply to contributions
5 and distributions made with respect to an individual re-
6 tirement plan under a qualified payroll deduction arrange-
7 ment described in section 408(q)(1) (for which an election
8 has not been made under section 408(q)(2)), except that
9 contributions made by an employer on behalf of an em-
10 ployee for a taxable year shall be excluded from income
11 only to the extent such contributions would have been de-
12 ductible for such taxable year under section 219, if such
13 section applied, without regard to section 219(g)(1)(B).
14 Contributions that are not excluded from income under
15 the preceding sentence shall be treated as designated non-
16 deductible contributions under section 408(o).”.

17 (c) EXEMPTION FROM WITHHOLDING.—Subsection
18 (a) of section 3401 (defining wages) is amended by strik-
19 ing “or” at the end of paragraph (20), by striking the
20 period at the end of paragraph (21) and inserting “; or”,
21 and by inserting after paragraph (21) the following new
22 paragraph:

23 “(22) for any payment made for the benefit of
24 the employee to an individual retirement plan if the

1 amount of such payment was deducted and withheld
2 under section 408(q).”.

3 (d) EXCLUSION SHOWN ON W-2.—Subsection (a) of
4 section 6051 (relating to receipts for employees) is amend-
5 ed by striking “and” at the end of paragraph (10), by
6 striking the period at the end of paragraph (11) and in-
7 serting “, and”, and by inserting after paragraph (11) the
8 following new paragraph:

9 “(12) the total amount deducted and withheld
10 pursuant to section 408(q).”.

11 (e) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to remuneration paid after Decem-
13 ber 31, 1998.

14 **SEC. 103. NONREFUNDABLE TAX CREDIT FOR CONTRIBU-**
15 **TIONS TO INDIVIDUAL RETIREMENT PLANS.**

16 (a) IN GENERAL.—Subpart A of part IV of sub-
17 chapter A of chapter 1 (relating to nonrefundable personal
18 credits) is amended by inserting after section 25A the fol-
19 lowing new section:

20 **“SEC. 25B. RETIREMENT SAVINGS.**

21 “(a) ALLOWANCE OF CREDIT.—There shall be al-
22 lowed as a credit against the tax imposed by this chapter
23 so much of the qualified retirement contributions of the
24 taxpayer for the taxable year as does not exceed the appli-

1 cable amount of the adjusted gross income of the taxpayer
2 for such year.

3 “(b) APPLICABLE AMOUNT.—For purposes of sub-
4 section (a), the applicable amount is determined in accord-
5 ance with the following table:

“If adjusted gross income is:	The applicable amount is:
Not over \$15,000	\$450.
Over \$15,000 but not over \$20,000.	\$400.
Over \$20,000 but not over \$25,000.	\$350.
Over \$25,000 but not over \$30,000.	\$300.
Over \$30,000	\$0.

6 “(c) SECTION NOT TO APPLY TO CERTAIN CON-
7 TRIBUTIONS.—This section shall not apply with respect
8 to—

9 “(1) an employer contribution to a simplified
10 employee pension,

11 “(2) any amount contributed to a simple retire-
12 ment account established under section 408(p),

13 “(3) any amount contributed to a Roth IRA,
14 and

15 “(4) any designated nondeductible contribution
16 (as defined in section 408(o)(2)(C)).

17 “(d) OTHER LIMITATIONS AND RESTRICTIONS.—

18 “(1) BENEFICIARY MUST BE UNDER AGE
19 70½.—No credit shall be allowed under this section
20 with respect to any qualified retirement contribution
21 for the benefit of an individual if such individual has

1 attained age 70½ before the close of such individ-
2 ual's taxable year for which the contribution was
3 made.

4 “(2) RECONTRIBUTED AMOUNTS.—No credit
5 shall be allowed under this section with respect to a
6 rollover contribution described in section 402(c),
7 403(a)(4), 403(b)(8), or 408(d)(3).

8 “(3) AMOUNTS CONTRIBUTED UNDER ENDOW-
9 MENT CONTRACT.—In the case of an endowment
10 contract described in section 408(b), no credit shall
11 be allowed under this section for that portion of the
12 amounts paid under the contract for the taxable
13 year which is properly allocable, under regulations
14 prescribed by the Secretary, to the cost of life insur-
15 ance.

16 “(4) DENIAL OF CREDIT FOR AMOUNT CON-
17 TRIBUTED TO INHERITED ANNUITIES OR AC-
18 COUNTS.—No credit shall be allowed under this sec-
19 tion with respect to any amount paid to an inherited
20 individual retirement account or individual retire-
21 ment annuity (within the meaning of section
22 408(d)(3)(C)(ii)).

23 “(5) NO DOUBLE BENEFIT.—No credit shall be
24 allowed under this section for any taxable year with
25 respect to the amount of any qualified retirement

1 contribution for the benefit of an individual if such
 2 individual takes a deduction with respect to such
 3 amount under section 219 for such taxable year.

4 “(e) QUALIFIED RETIREMENT CONTRIBUTION.—For
 5 purposes of this section, the term ‘qualified retirement
 6 contribution’ means—

7 “(1) any amount paid in cash for the taxable
 8 year by or on behalf of an individual to an individual
 9 retirement plan for such individual’s benefit, and

10 “(2) any amount contributed on behalf of any
 11 individual to a plan described in section 501(c)(18).

12 “(f) OTHER DEFINITIONS AND SPECIAL RULES.—

13 “(1) COMPENSATION.—For purposes of this
 14 section, the term ‘compensation’ has the meaning
 15 given in section 219(f)(1).

16 “(2) MARRIED COUPLES MUST FILE JOINT RE-
 17 TURN.—If the taxpayer is married at the close of
 18 the taxable year, the credit shall be allowed under
 19 subsection (a) only if the taxpayer and the tax-
 20 payer’s spouse file a joint return for the taxable
 21 year.

22 “(3) TIME WHEN CONTRIBUTIONS DEEMED
 23 MADE.—For purposes of this section, a taxpayer
 24 shall be deemed to have made a contribution to an
 25 individual retirement plan on the last day of the pre-

ceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

“(4) EMPLOYER PAYMENTS.—For purposes of this title, any amount paid by an employer to an individual retirement plan shall be treated as payment of compensation to the employee (other than a self-employed individual who is an employee within the meaning of section 401(c)(1)) includible in his gross income in the taxable year for which the amount was contributed, whether or not a credit for such payment is allowable under this section to the employee.”

(b) CONFORMING AMENDMENTS.—

(1) Section 86(f) is amended by redesignating paragraphs (2), (3), and (4) as paragraphs (3), (4), and (5), respectively, and by inserting after paragraph (1) the following new paragraph:

“(2) section 25B(f)(1) (defining compensation),”.

(2) Clause (i) of section 501(c)(18)(D) is amended by inserting “which may be taken into ac-

1 count in computing the credit allowable under sec-
 2 tion 25B or” before “with respect”.

3 (3) Section 6047(c) is amended by inserting
 4 “section 25B or” before “section 219”.

5 (4) Section 6652(g) is amended by inserting
 6 “CREDITABLE” before “DEDUCTIBLE” in the head-
 7 ing thereof.

8 (5) The table of sections for subpart A of part
 9 IV of subchapter A of chapter 1 is amended by in-
 10 serting after the item relating to section 25A the fol-
 11 lowing new item:

“Sec. 25B. Retirement savings.”

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section apply to taxable years beginning after Decem-
 14 ber 31, 1998.

15 **SEC. 104. DISTRIBUTIONS FROM CERTAIN PLANS MAY BE**
 16 **USED WITHOUT PENALTY DURING PERIODS**
 17 **OF UNEMPLOYMENT.**

18 (a) IN GENERAL.—Paragraph (2) of section 72(t)
 19 (relating to exceptions to 10-percent additional tax on
 20 early distributions from qualified retirement plans) is
 21 amended by adding at the end the following new subpara-
 22 graph:

23 “(G) ADDITIONAL DISTRIBUTIONS TO UN-
 24 EMPLOYED INDIVIDUALS.—

1 “(i) IN GENERAL.—Distributions from
2 an individual retirement plan, or from
3 amounts attributable to employer contribu-
4 tions made pursuant to elective deferrals
5 described in subparagraph (A) or (C) of
6 section 402(g)(3) or section
7 501(c)(18)(D)(iii), to an individual after
8 separation from employment if—

9 “(I) such individual has received
10 unemployment compensation for 12
11 consecutive weeks under any Federal
12 or State unemployment compensation
13 law by reason of such separation, and

14 “(II) such distributions are made
15 during the 1-year period beginning on
16 the date of such separation.

17 “(ii) DISTRIBUTIONS AFTER REEM-
18 PLOYMENT.—Clause (i) shall not apply to
19 any distribution made after the individual
20 has been employed for at least 60 days
21 after the separation from employment to
22 which clause (i) applies.

23 “(iii) COORDINATION WITH SUBPARA-
24 GRAPH (D).—Distributions during the 1-
25 year period described in clause (i)(II) shall

1 not be taken into account in applying the
 2 limitation under subparagraph
 3 (D)(i)(III).”

4 (b) CONFORMING AMENDMENTS.—

5 (1) Section 401(k)(2)(B)(i) is amended by
 6 striking “or” at the end of subclause (III), by strik-
 7 ing “and” at the end of subclause (IV) and inserting
 8 “or”, and by inserting after subclause (IV) the fol-
 9 lowing new subclause:

10 “(V) the date on which a period
 11 referred to in section 72(t)(2)(G) be-
 12 gins, and”.

13 (2) Section 403(b)(11) is amended by striking
 14 “or” at the end of subparagraph (A), by striking the
 15 period at the end of subparagraph (B) and inserting
 16 “, or”, and by inserting after subparagraph (B) the
 17 following new subparagraph:

18 “(C) for distributions to which section
 19 72(t)(2)(G) applies.”

20 (c) EFFECTIVE DATE.—The amendments made by
 21 this section shall apply to distributions after the date of
 22 the enactment of this Act.

1 **Subtitle B—Secure Money Annuity**
 2 **or Retirement (SMART) Trusts**

3 **SEC. 111. SECURE MONEY ANNUITY OR RETIREMENT**
 4 **(SMART) TRUSTS.**

5 (a) IN GENERAL.—Subpart A of part I of subchapter
 6 D of chapter 1 is amended by inserting after section 408A
 7 the following new section:

8 **“SEC. 408B. SMART PLANS.**

9 “(a) EMPLOYER ELIGIBILITY.—

10 “(1) IN GENERAL.—An employer may establish
 11 and maintain a SMART annuity or a SMART trust
 12 for any year only if—

13 “(A) the employer is an eligible employer
 14 (as defined in section 408(p)(2)(C)), and

15 “(B) the employer does not maintain (and
 16 no predecessor of the employer maintains) a
 17 qualified plan (other than a permissible plan)
 18 with respect to which contributions were made,
 19 or benefits were accrued, for service in any year
 20 in the period beginning with the year such an-
 21 nuity or trust became effective and ending with
 22 the year for which the determination is being
 23 made.

24 The period described in subparagraph (B) shall in-
 25 clude the period of 5 years before the year such

1 trust or annuity became effective with respect to
 2 qualified plans which are defined benefit plans or
 3 money purchase pension plans.

4 “(2) DEFINITIONS.—For purposes of paragraph
 5 (1)—

6 “(A) QUALIFIED PLAN.—The term ‘quali-
 7 fied plan’ has the meaning given such term by
 8 section 408(p)(2)(D)(ii).

9 “(B) PERMISSIBLE PLAN.—The term ‘per-
 10 missible plan’ means—

11 “(i) a SIMPLE plan described in sec-
 12 tion 408(p),

13 “(ii) a SIMPLE 401(k) plan de-
 14 scribed in section 401(k)(11),

15 “(iii) an eligible deferred compensa-
 16 tion plan described in section 457(b),

17 “(iv) a collectively bargained plan but
 18 only if the employees eligible to participate
 19 in such plan are not also entitled to a ben-
 20 efit described in subsection (b)(5) or
 21 (c)(5), or

22 “(v) a plan under which there may be
 23 made only—

24 “(I) elective deferrals described
 25 in section 402(g)(3), and

1 “(II) employer matching con-
 2 tributions not in excess of the
 3 amounts described in subclauses (I)
 4 and (II) of section 401(k)(12)(B)(i).

5 “(b) SMART ANNUITY.—

6 “(1) IN GENERAL.—For purposes of this title,
 7 the term ‘SMART annuity’ means an individual re-
 8 tirement annuity (as defined in section 408(b) with-
 9 out regard to paragraph (2) thereof and without re-
 10 gard to the limitation on aggregate annual pre-
 11 miums contained in the flush language of section
 12 408(b)) if—

13 “(A) such annuity meets the requirements
 14 of paragraphs (2) through (8), and

15 “(B) the only contributions to such annu-
 16 ity are employer contributions.

17 Nothing in this section shall be construed as pre-
 18 venting an employer from using a group annuity
 19 contract which is divisible into individual retirement
 20 annuities for purposes of providing SMART annu-
 21 ities.

22 “(2) PARTICIPATION REQUIREMENTS.—

23 “(A) IN GENERAL.—The requirements of
 24 this paragraph are met for any year only if all
 25 employees of the employer who—

1 “(i) received at least \$5,000 in com-
 2 pensation from the employer during any 2
 3 consecutive preceding years, and

4 “(ii) received at least \$5,000 in com-
 5 pensation during the year,

6 are entitled to the benefit described in para-
 7 graph (5) for such year.

8 “(B) EXCLUDABLE EMPLOYEES.—An em-
 9 ployer may elect to exclude from the require-
 10 ments under subparagraph (A) employees de-
 11 scribed in subparagraph (A) or (C) of section
 12 410(b)(3).

13 “(3) VESTING.—The requirements of this para-
 14 graph are met if the employee’s rights to any bene-
 15 fits under the annuity are nonforfeitable.

16 “(4) BENEFIT FORM.—The requirements of
 17 this paragraph are met if the only form of benefit
 18 is—

19 “(A) a benefit payable annually in the
 20 form of a single life annuity with monthly pay-
 21 ments (with no ancillary benefits) beginning at
 22 age 65, or

23 “(B) any other form of benefit which is the
 24 actuarial equivalent (based on the assumptions

1 specified in the SMART annuity) of the benefit
 2 described in subparagraph (A).

3 “(5) AMOUNT OF ANNUAL ACCRUED BENE-
 4 FIT.—

5 “(A) IN GENERAL.—The requirements of
 6 this paragraph are met for any plan year if the
 7 accrued benefit of each participant derived from
 8 employer contributions for such year, when ex-
 9 pressed as a benefit described in paragraph
 10 (4)(A), equals the applicable percentage of the
 11 participant’s compensation for such year.

12 “(B) APPLICABLE PERCENTAGE.—For
 13 purposes of this paragraph—

14 “(i) IN GENERAL.—The term ‘applica-
 15 ble percentage’ means 2 percent.

16 “(ii) ELECTION OF DIFFERENT PER-
 17 CENTAGE.—An employer may elect to
 18 apply an applicable percentage of 1 percent
 19 for any year for all employees eligible to
 20 participate in the plan for such year, if the
 21 employer notifies the employees of such
 22 percentage within a reasonable period be-
 23 fore the beginning of such year. An em-
 24 ployer may also elect to apply an applicable
 25 percentage of 3 percent for any of the first

1 5 years that the plan is effective for all
2 employees eligible to participate in the plan
3 for such year, if the employer so notifies
4 the employees.

5 “(C) COMPENSATION LIMIT.—

6 “(i) IN GENERAL.—The compensation
7 taken into account under this paragraph
8 for any year shall not exceed \$100,000.

9 “(ii) COST-OF-LIVING ADJUSTMENT.—
10 The Secretary shall adjust annually the
11 \$100,000 amount in clause (i) for in-
12 creases in the cost-of-living at the same
13 time and in the same manner as adjust-
14 ments under section 415(d); except that
15 the base period shall be the calendar quar-
16 ter beginning October 1, 1998, and any in-
17 crease which is not a multiple of \$5,000
18 shall be rounded to the next lowest mul-
19 tiple of \$5,000.

20 “(6) FUNDING.—

21 “(A) IN GENERAL.—The requirements of
22 this paragraph are met only if the employer is
23 required to contribute to the annuity for each
24 plan year the amount necessary to purchase a
25 SMART annuity in the amount of the benefit

1 accrued for such year for each participant enti-
 2 tled to such benefit. Such contribution must be
 3 made no later than 8½ months after the end
 4 of the plan year.

5 “(B) PENALTY FOR FAILURE TO MAKE RE-
 6 QUIRED CONTRIBUTION.—The taxes imposed by
 7 section 4971 shall apply to a failure to make
 8 the contribution required by this paragraph in
 9 the same manner as if the amount of the failure
 10 were an accumulated funding deficiency to
 11 which such section applies.

12 “(7) LIMITATION ON DISTRIBUTIONS.—

13 “(A) IN GENERAL.—The requirements of
 14 this paragraph are met only if distributions
 15 may be paid only when the employee attains
 16 age 65, separates from service, dies, or becomes
 17 disabled (within the meaning of section
 18 72(m)(7)).

19 “(B) LIMITATION ON DISTRIBUTIONS ON
 20 SEPARATION FROM SERVICE OF EMPLOYEES
 21 WHO HAVE NOT ATTAINED AGE 65.—Subpara-
 22 graph (A) shall apply to a distribution on sepa-
 23 ration of service of an employee who has not at-
 24 tained age 65 only if—

1 “(i) the aggregate cash value of an
 2 employee’s SMART annuities does not ex-
 3 ceed the dollar limit in effect under section
 4 411(a)(11)(A), or

5 “(ii) the distribution is a direct trust-
 6 ee-to-trustee transfer of the entire balance
 7 to the credit of the employee to a SMART
 8 trust described in subsection (c), a
 9 SMART rollover plan, or a SMART annu-
 10 ity for the benefit of such employee.

11 “(8) JOINT AND SURVIVOR ANNUITY RULES AP-
 12 PPLICABLE.—The requirements of this paragraph are
 13 met only if the annuity satisfies section 401(a)(11).

14 “(9) DEFINITIONS AND SPECIAL RULE.—

15 “(A) DEFINITIONS.—The definitions in
 16 section 408(p)(6) shall apply for purposes of
 17 this subsection.

18 “(B) USE OF DESIGNATED FINANCIAL IN-
 19 STITUTIONS.—A rule similar to the rule of sec-
 20 tion 408(p)(7) (without regard to the last sen-
 21 tence thereof) shall apply for purposes of this
 22 subsection.

23 “(C) SMART ROLLOVER PLAN.—For pur-
 24 poses of this section, the term ‘SMART rollover
 25 plan’ means an individual retirement plan for

1 the benefit of the employee to which a rollover
 2 was made from a SMART Annuity, SMART
 3 trust, or another SMART Rollover plan.

4 “(c) SMART TRUST.—

5 “(1) IN GENERAL.—For purposes of this title,
 6 the term ‘SMART trust’ means a trust forming part
 7 of a defined benefit plan if—

8 “(A) such trust meets the requirements of
 9 section 401(a) as modified by subsection (d),

10 “(B) such plan meets the requirements of
 11 paragraphs (2) through (8), and

12 “(C) the only contributions to such trust
 13 are employer contributions.

14 “(2) PARTICIPATION REQUIREMENTS.—A plan
 15 meets the requirements of this paragraph for any
 16 year only if the requirements of subsection (b)(2)
 17 are met for such year.

18 “(3) VESTING.—A plan meets the requirements
 19 of this paragraph for any year only if the require-
 20 ments of subsection (b)(3) are met for such year.

21 “(4) BENEFIT FORM.—

22 “(A) IN GENERAL.—Except as provided in
 23 subparagraph (B), a plan meets the require-
 24 ments of this paragraph only if the trustee dis-
 25 tributes a SMART annuity that satisfies sub-

1 section (b)(4) where the annual benefit de-
2 scribed in subsection (b)(4)(A) is no less than
3 the accrued benefit determined under para-
4 graph (5).

5 “(B) DIRECT TRANSFERS TO INDIVIDUAL
6 RETIREMENT PLAN OR SMART ANNUITY.—A
7 plan shall not fail to meet the requirements of
8 this paragraph by reason of permitting, as an
9 optional form of benefit, the distribution of the
10 entire balance to the credit of the employee. If
11 the employee is under age 65, such distribution
12 must be in the form of a direct trustee-to-trust-
13 ee transfer to a SMART annuity, another
14 SMART trust, or a SMART rollover plan (or,
15 in the case of a distribution that does not ex-
16 ceed the dollar limit in effect under section
17 411(a)(11)(A), any other individual retirement
18 plan).

19 “(5) AMOUNT OF ANNUAL ACCRUED BENE-
20 FIT.—A plan meets the requirements of this para-
21 graph for any year only if the requirements of sub-
22 section (b)(5) are met for such year.

23 “(6) FUNDING.—

1 “(A) IN GENERAL.—A plan meets the re-
 2 quirements of this paragraph for any year only
 3 if—

4 “(i) the requirements of subparagraph
 5 (A) of subsection (b)(6) are met for such
 6 year,

7 “(ii) in the case of a plan which has
 8 an unfunded annuity amount with respect
 9 to the account of any participant, the plan
 10 requires that the employer make an addi-
 11 tional contribution to such plan (at the
 12 time the annuity contract to which such
 13 amount relates is purchased) equal to the
 14 unfunded annuity amount, and

15 “(iii) in the case of a plan which has
 16 an unfunded prior year liability as of the
 17 close of such plan year, the plan requires
 18 that the employer make an additional con-
 19 tribution to such plan for such year equal
 20 to the amount of such unfunded prior year
 21 liability no later than 8½ months following
 22 the end of the plan year.

23 “(B) UNFUNDED ANNUITY AMOUNT.—For
 24 purposes of this paragraph, the term ‘unfunded
 25 annuity amount’ means, with respect to the ac-

1 count of any participant for whom an annuity
2 is being purchased, the excess (if any) of—

3 “(i) the amount necessary to purchase
4 an annuity contract which meets the re-
5 quirements of subsection (b)(4) in the
6 amount of the participant’s accrued benefit
7 determined under paragraph (5), over

8 “(ii) the balance in such account at
9 the time such contract is purchased.

10 “(C) UNFUNDED PRIOR YEAR LIABIL-
11 ITY.—For purposes of this paragraph, the term
12 ‘unfunded prior year liability’ means, with re-
13 spect to any plan year, the excess (if any) of—

14 “(i) the aggregate of the present value
15 under the plan as of the close of the prior
16 plan year, over

17 “(ii) the value of the plan’s assets de-
18 termined under section 412(c)(2) as of the
19 close of the plan year (determined without
20 regard to any contributions for such plan
21 year).

22 Such present value shall be determined using
23 the assumptions specified in subparagraph (D).

1 “(D) ACTUARIAL ASSUMPTIONS.—In deter-
 2 mining the amount required to be contributed
 3 under subparagraph (A)—

4 “(i) the assumed interest rate shall be
 5 5 percent per year,

6 “(ii) the assumed mortality shall be
 7 determined under the applicable mortality
 8 table (as defined in section 417(e)(3), as
 9 modified by the Secretary so that it does
 10 not include any assumption for preretire-
 11 ment mortality), and

12 “(iii) the assumed retirement age
 13 shall be 65.

14 “(E) CHANGES IN MORTALITY TABLE.—If
 15 the applicable mortality table under section
 16 417(e)(3) for any plan year is not the same as
 17 such table for the prior plan year, the Secretary
 18 shall prescribe regulations which phase in the
 19 effect of the changes over a reasonable period
 20 of plan years determined by the Secretary.

21 “(F) PENALTY FOR FAILURE TO MAKE RE-
 22 QUIRED CONTRIBUTION.—The taxes imposed by
 23 section 4971 shall apply to a failure to make
 24 the contribution required by this paragraph in
 25 the same manner as if the amount of the failure

1 were an accumulated funding deficiency to
2 which such section applies.

3 “(7) SEPARATE ACCOUNTS FOR PARTICI-
4 PANTS.—A plan meets the requirements of this
5 paragraph for any year only if the plan provides—

6 “(A) for an individual account for each
7 participant, and

8 “(B) for benefits based solely on—

9 “(i) the amount contributed to the
10 participant’s account,

11 “(ii) any income, expenses, gains and
12 losses, and any forfeitures of accounts of
13 other participants which may be allocated
14 to such participant’s account, and

15 “(iii) the amount of any unfunded an-
16 nuity amount with respect to the partici-
17 pant.

18 “(8) TRUST MAY NOT HOLD SECURITIES WHICH
19 ARE NOT READILY TRADABLE.—A plan meets the
20 requirements of this paragraph only if the plan pro-
21 hibits the trust from holding directly or indirectly se-
22 curities which are not readily tradable on an estab-
23 lished securities market. Nothing in this paragraph
24 shall prohibit the trust from holding insurance com-
25 pany products regulated by State law.

1 “(9) DEFINITIONS.—The definitions applicable
2 under subsection (b)(8) shall apply for purposes of
3 this subsection.

4 “(d) SPECIAL RULES FOR SMART ANNUITIES AND
5 TRUSTS.—For purposes of section 401(a), a SMART an-
6 nuity and a SMART trust shall be treated as meeting the
7 requirements of the following provisions:

8 “(1) Section 401(a)(4) (relating to non-
9 discrimination rules).

10 “(2) Section 401(a)(26) (relating to minimum
11 participation).

12 “(3) Section 410 (relating to minimum partici-
13 pation and coverage requirements).

14 “(4) Section 411(b) (relating to accrued benefit
15 requirements).

16 “(5) Section 416 (relating to special rules for
17 top-heavy plans).”

18 (b) DEDUCTION RULES.—

19 (1) IN GENERAL.—Section 404 is amended by
20 adding at the end the following new subsection:

21 “(n) SPECIAL RULES FOR SMART ANNUITIES AND
22 TRUSTS.—

23 “(1) IN GENERAL.—Employer contributions to
24 a SMART annuity shall be treated as if they are

1 made to a plan described in paragraph (1) of sub-
2 section (a).

3 “(2) DEDUCTIBLE LIMIT.—For purposes of sec-
4 tion 404(a)(1)(A)(i), the amount necessary to satisfy
5 the minimum funding requirement of section 408B
6 (b)(6) or (c)(6) shall be treated as the amount nec-
7 essary to satisfy the minimum funding requirement
8 of section 412.”

9 (2) COORDINATION WITH DEDUCTION UNDER
10 SECTION 219.—

11 (A) Section 219(b) is amended by adding
12 at the end the following new paragraph:

13 “(5) SPECIAL RULE FOR SMART ANNUITIES.—
14 This section shall not apply with respect to any
15 amount contributed to a SMART annuity estab-
16 lished under section 408B(b).”

17 (B) Section 219(g)(5)(A) (defining active
18 participant) is amended by striking “or” at the
19 end of clause (v) and by adding at the end the
20 following new clause:

21 “(vii) any SMART annuity (within
22 the meaning of section 408B), or”.

23 (c) CONTRIBUTIONS AND DISTRIBUTIONS.—

24 (1) Section 402 is amended by adding at the
25 end the following new subsection:

1 “(l) TREATMENT OF SMART ANNUITIES.—Rules
 2 similar to the rules of paragraphs (1) and (3) of sub-
 3 section (h) shall apply to contributions and distributions
 4 with respect to SMART annuities under section 408B.”

5 (2) Section 408(d)(3) is amended by adding at
 6 the end the following new subparagraph:

7 “(H) SMART ANNUITIES.—This para-
 8 graph shall not apply to any amount paid or
 9 distributed out of a SMART annuity (as de-
 10 fined in section 408B) unless it is paid in a
 11 trustee-to-trustee transfer into a SMART roll-
 12 over plan.”

13 (3)(A) Section 412(h) is amended by striking
 14 “or” at the end of paragraph (5), by striking the pe-
 15 riod at the end of paragraph (6) and inserting “,
 16 or”, and by inserting after paragraph (6) the follow-
 17 ing new paragraph:

18 “(7) any plan providing for the purchase of any
 19 SMART annuity or any SMART plan.”

20 (B) Section 301(a) of Employee Retirement In-
 21 come Security Act of 1974 (29 U.S.C. 1081) is
 22 amended by striking “or” at the end of paragraph
 23 (9), by striking the period at the end of paragraph
 24 (10) and inserting “; or”, and by adding at the end
 25 the following new paragraph:

1 “(11) any plan providing for the purchase of
2 any SMART annuity or any SMART plan (as such
3 terms are defined in section 408B of such Code).”

4 (4) Section 415(b) is amended by adding at the
5 end the following new paragraph:

6 “(12) TREATMENT OF SMART ANNUITIES AND
7 TRUSTS.—A SMART annuity and a SMART trust
8 shall be treated as meeting the requirements of this
9 section, but distributions from such an annuity or
10 trust shall be taken into account in determining
11 whether any other plan satisfies the requirements of
12 this section.”

13 (d) INCREASED PENALTY ON EARLY WITHDRAW-
14 ALS.—Section 72(t) (relating to additional tax on early
15 distributions) is amended by adding at the end the follow-
16 ing new paragraph:

17 “(9) SPECIAL RULES FOR SMART ANNUITIES
18 AND TRUSTS.—In the case of any amount received
19 from a SMART annuity, a SMART trust, or a
20 SMART rollover plan (within the meaning of section
21 408B), paragraph (1) shall be applied by substitut-
22 ing ‘20 percent’ for ‘10 percent’ and paragraph (2)
23 shall be applied by substituting ‘age 65’ for ‘age
24 59½’.”

25 (e) SIMPLIFIED EMPLOYER REPORTS.—

1 (1) SMART ANNUITIES.—Section 408(l) (relat-
2 ing to simplified employer reports) is amended by
3 adding at the end the following new paragraph:

4 “(3) SMART ANNUITIES.—

5 “(A) SIMPLIFIED REPORT.—The employer
6 maintaining any SMART annuity (within the
7 meaning of section 408B) shall file a simplified
8 annual return with the Secretary containing
9 only the information described in subparagraph
10 (B).

11 “(B) CONTENTS.—The return required by
12 subparagraph (A) shall set forth—

13 “(i) the name and address of the em-
14 ployer,

15 “(ii) the date the plan was adopted,

16 “(iii) the number of employees of the
17 employer,

18 “(iv) the number of such employees
19 who are eligible to participate in the plan,

20 “(v) the total amount contributed by
21 the employer to each such annuity for such
22 year and the minimum amount required
23 under section 408B to be so contributed,

24 “(vi) the percentage elected under sec-
25 tion 408B(b)(5)(B),

1 “(vii) the name of the issuer,

2 “(viii) the employer identification
3 number,

4 “(ix) the name of the plan, and

5 “(x) the date of the contribution.

6 “(C) REPORTING BY ISSUER OF SMART AN-
7 NUITY.—

8 “(i) IN GENERAL.—The issuer of each
9 SMART annuity shall provide to the owner
10 of the annuity for each year a statement
11 setting forth as of the close of such year—

12 “(I) the benefits guaranteed at
13 age 65 under the annuity, and

14 “(II) the cash surrender value of
15 the annuity.

16 “(ii) SUMMARY DESCRIPTION.—The
17 issuer of any SMART annuity shall pro-
18 vide to the employer maintaining the annu-
19 ity for each year a description containing
20 the following information:

21 “(I) The name and address of
22 the employer and the issuer.

23 “(II) The requirements for eligi-
24 bility for participation.

1 “(III) The benefits provided with
2 respect to the annuity.

3 “(IV) The procedures for, and ef-
4 fects of, withdrawals (including roll-
5 overs) from the annuity.

6 “(D) TIME AND MANNER OF REPORT-
7 ING.—Any return, report, or statement required
8 under this paragraph shall be made in such
9 form and at such time as the Secretary shall
10 prescribe.”

11 (2) SMART TRUSTS.—Section 6059 (relating
12 to actuarial reports) is amended by redesignating
13 subsections (c) and (d) as subsections (d) and (e),
14 respectively, and by inserting after subsection (b)
15 the following new subsection:

16 “(c) SMART TRUSTS.—In the case of a SMART
17 trust (within the meaning of section 408B), the Secretary
18 shall require a simplified actuarial report which con-
19 tains—

20 “(1) information similar to the information re-
21 quired in section 408(l)(3)(B),

22 “(2) the fair market value of the assets of the
23 trust,

24 “(3) the amounts distributed directly to partici-
25 pants,

1 “(4) the amounts transferred to SMART roll-
2 over plans, and

3 “(5) the present value of the annual accrued
4 benefits under the plan to which the trust relates.”

5 (f) CONFORMING AMENDMENTS.—

6 (1) Subparagraph (A) of section 219(g)(5) is
7 amended by striking “or” at the end of clause (v)
8 and by inserting after clause (vi) the following new
9 clause:

10 “(vii) any SMART trust or SMART
11 annuity (within the meaning of section
12 408B), or”.

13 (2) Section 280G(b)(6) is amended by striking
14 “or” at the end of subparagraph (C), by striking the
15 period at the end of subparagraph (D) and inserting
16 “, or” and by adding after subparagraph (D) the
17 following new subparagraph:

18 “(E) a SMART annuity described in sec-
19 tion 408B.”

20 (3) Subsections (b), (c), (m)(4)(B), and
21 (n)(3)(B) of section 414 are each amended by in-
22 serting “408B,” after “408(p),”.

23 (4) Section 4972(d)(1)(A) is amended by strik-
24 ing “and” at the end of clause (iii), by striking the
25 period at the end of clause (iv) and inserting “,

1 and”, and by adding after clause (iv) the following
2 new clause:

3 “(v) any SMART annuity (within the
4 meaning of section 408B).”

5 (g) REPORTING REQUIREMENTS UNDER ERISA.—
6 Section 101 of the Employee Retirement Income Security
7 Act of 1974 (29 U.S.C. 1021) is amended by redesignat-
8 ing subsection (h) as subsection (i) and by inserting after
9 subsection (g) the following new subsection:

10 “(h) SMART ANNUITIES.—

11 “(1) NO EMPLOYER REPORTS.—Except as pro-
12 vided in this subsection, no report shall be required
13 under this section by an employer maintaining a
14 SMART annuity under section 408B(b) of the Inter-
15 nal Revenue Code of 1986.

16 “(2) SUMMARY DESCRIPTION.—The issuer of
17 any SMART annuity shall provide to the employer
18 maintaining the annuity for each year a description
19 containing the following information:

20 “(A) The name and address of the em-
21 ployer and the issuer.

22 “(B) The requirements for eligibility for
23 participation.

24 “(C) The benefits provided with respect to
25 the annuity.

1 “(D) The procedures for, and effects of,
2 withdrawals (including rollovers) from the an-
3 nuity.”

4 “(3) EMPLOYEE NOTIFICATION.—The employer
5 shall provide each employee eligible to participate in
6 the SMART annuity with the description described
7 in paragraph (2) at the same time as the notifica-
8 tion required under section 408B(b)(5)(B) of the In-
9 ternal Revenue Code of 1986.”

10 (h) \$5 PER PARTICIPANT PBGC PREMIUM.—Sub-
11 paragraph (A) of section 4006(a)(3) of the Employee Re-
12 tirement Income Security Act of 1974 (29 U.S.C. 1306)
13 is amended—

14 (1) by inserting “not described in clause (iv)”
15 after “in the case of a single-employer plan” in
16 clause (i),

17 (2) by striking the period at the end of clause
18 (iii) and inserting “; and”, and

19 (3) by inserting after clause (iii) the following
20 new clause:

21 “(iv) in the case of a single-employer plan de-
22 scribed in section 408B(c) of the Internal Revenue
23 Code of 1986, an amount equal to \$5 for each par-
24 ticipant.”.

1 (i) CLERICAL AMENDMENT.—The table of sections
 2 for subpart A of part I of subchapter D of chapter 1 is
 3 amended by inserting after the item relating to section
 4 408A the following new item:

“Sec. 408B. SMART plans.”

5 (j) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply to years beginning after December
 7 31, 1998.

8 **Subtitle C—Improved Fairness in** 9 **Retirement Plan Benefits**

10 **SEC. 121. AMENDMENTS TO SIMPLE RETIREMENT AC-** 11 **COUNTS.**

12 (a) MINIMUM CONTRIBUTION REQUIREMENT.—

13 (1) IN GENERAL.—Paragraph (2) of section
 14 408(p) (defining qualified salary reduction arrange-
 15 ment) is amended—

16 (A) by striking clauses (iii) and (iv) of sub-
 17 paragraph (A) and inserting the following new
 18 clauses:

19 “(iii) the employer is required to make
 20 a matching contribution to the simple re-
 21 tirement account for any year in an
 22 amount equal to—

23 “(I) so much of the amount the
 24 employee elects under clause (i)(I) as

1 does not exceed 3 percent of com-
 2 pensation for the year, and

3 “(II) a uniform percentage
 4 (which is at least 50 percent but not
 5 more than 100 percent) of the amount
 6 the employee elects under clause (i)(I)
 7 to the extent that such amount ex-
 8 ceeds 3 percent but does not exceed 5
 9 percent of the employee’s compensa-
 10 tion,

11 “(iv) the employer is required to make
 12 nonelective contributions of 1 percent of
 13 compensation for each employee eligible to
 14 participate in the arrangement who has at
 15 least \$5,000 of compensation from the em-
 16 ployer for the year, and

17 “(v) no contributions may be made
 18 other than contributions described in
 19 clause (i), (iii), or (iv).”, and

20 (B) by striking subparagraph (B) and in-
 21 serting the following new subparagraph:

22 “(B) CONTRIBUTION RULES.—

23 “(i) EMPLOYER MAY ELECT 3-PER-
 24 CENT NONELECTIVE CONTRIBUTION.—An
 25 employer shall be treated as meeting the

1 requirements of clauses (iii) and (iv) of
2 subparagraph (A) for any year if, in lieu of
3 the contributions described in such clauses,
4 the employer elects to make nonelective
5 contributions of 3 percent of compensation
6 for each employee who is eligible to partici-
7 pate in the arrangement and who has at
8 least \$5,000 of compensation from the em-
9 ployer for the year. If an employer makes
10 an election under this clause for any year,
11 the employer shall notify employees of such
12 election within a reasonable period of time
13 before the 60-day period for such year
14 under paragraph (5)(C).

15 “(ii) DISCRETIONARY CONTRIBU-
16 TIONS.—A plan shall not be treated as fail-
17 ing to meet the requirements of subpara-
18 graph (A)(v) merely because, pursuant to
19 the terms of the plan, an employer makes
20 nonelective contributions under subpara-
21 graph (A)(iv) or clause (i) of this subpara-
22 graph in excess of 1 percent or 3 percent
23 of compensation, respectively, but only if
24 all such contributions bear a uniform rela-
25 tionship to the compensation of each eligi-

1 ble employee and do not exceed 5 percent
2 of compensation for any eligible employee.

3 “(iii) COMPENSATION LIMITATION.—

4 The compensation taken into account
5 under this paragraph for any year shall
6 not exceed the limitation in effect for such
7 year under section 401(a)(17).”

8 (2) MATCHING CONTRIBUTIONS.—Subpara-
9 graph (B) of section 401(k)(11) (relating to adop-
10 tion of simple plan to meet nondiscrimination tests)
11 is amended—

12 (A) by striking subclauses (II) and (III) of
13 clause (i) and inserting the following new sub-
14 clauses:

15 “(II) the employer is required to
16 make a matching contribution to the
17 trust for any year in an amount equal
18 to—

19 “(aa) so much of the
20 amount the employee elects
21 under subclause (I) as does not
22 exceed 3 percent of compensation
23 for the year, and

24 “(bb) a uniform percentage
25 (which is at least 50 percent but

1 not more than 100 percent) of
 2 the amount the employee elects
 3 under subclause (I) to the extent
 4 that such amount exceeds 3 per-
 5 cent but does not exceed 5 per-
 6 cent of the employee's compensa-
 7 tion,

8 “(III) the employer is required to
 9 make nonelective contributions of 1
 10 percent of compensation for each em-
 11 ployee eligible to participate in the ar-
 12 rangement who has at least \$5,000 of
 13 compensation from the employer for
 14 the year, and

15 “(IV) no other contributions may
 16 be made other than contributions de-
 17 scribed in subclause (I), (II), or
 18 (III).”, and

19 (B) by striking clause (ii) and inserting the
 20 following new clause:

21 “(ii) CONTRIBUTION RULES.—

22 “(I) EMPLOYER MAY ELECT 3-
 23 PERCENT NONELECTIVE CONTRIBU-
 24 TION.—An employer shall be treated
 25 as meeting the requirements of sub-

1 clauses (II) and (III) of clause (i) for
2 any year if, in lieu of the contribu-
3 tions described in such subclauses, the
4 employer elects to make nonelective
5 contributions of 3 percent of com-
6 pensation for each employee who is el-
7 igible to participate in the arrange-
8 ment and who has at least \$5,000 of
9 compensation from the employer for
10 the year. If an employer makes an
11 election under this subclause for any
12 year, the employer shall notify em-
13 ployees of such election within a rea-
14 sonable period of time before the 60th
15 day before the beginning of such year.

16 “(II) DISCRETIONARY CONTRIBU-
17 TIONS.—A plan shall not be treated
18 as failing to meet the requirements of
19 clause (i)(IV) merely because, pursu-
20 ant to the terms of the plan, an em-
21 ployer makes nonelective contributions
22 under clause (i)(III) or subclause (I)
23 of this clause in excess of 1 percent or
24 3 percent of compensation, respec-
25 tively, but only if all such contribu-

1 tions bear a uniform relationship to
 2 the compensation of each eligible em-
 3 ployee and do not exceed 5 percent of
 4 compensation for any eligible em-
 5 ployee.”

6 (b) OPTION TO SUSPEND CONTRIBUTIONS.—Section
 7 408(p) (relating to simple retirement accounts) is amend-
 8 ed by adding at the end the following new paragraph:

9 “(10) SUSPENSION OF PLAN.—Except as pro-
 10 vided by the Secretary, a plan shall not be treated
 11 as failing to meet the requirements of this sub-
 12 section if, under the plan, the employer may suspend
 13 all elective, matching, and nonelective contributions
 14 under the plan after notifying employees eligible to
 15 participate in the arrangement of such suspension in
 16 writing at least 30 days in advance. Such suspension
 17 shall apply to contributions with respect to com-
 18 pensation earned after the effective date of the sus-
 19 pension. Only 1 suspension under this paragraph
 20 may take effect during any year.”

21 (c) CONFORMING AMENDMENTS.—Section
 22 408(p)(2)(C) is amended—

23 (1) by striking clause (ii),
 24 (2) by striking “DEFINITIONS” in the heading
 25 and inserting “ELIGIBLE EMPLOYER”,

1 (3) by striking “(i) ELIGIBLE EMPLOYER.—”,
2 and

3 (4) by redesignating subclauses (I) and (II) as
4 clauses (i) and (ii), respectively.

5 (d) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as provided in para-
7 graph (2), the amendments made by this section
8 shall apply to taxable years beginning after Decem-
9 ber 31, 1998.

10 (2) DELAYED EFFECTIVE DATE FOR PLANS ES-
11 TABLISHED IN 1997 OR 1998.—In the case of plans
12 established in 1997 or 1998 under section 408(p) of
13 the Internal Revenue Code of 1986, the amendments
14 made by this section shall apply to taxable years be-
15 ginning after December 31, 2002.

16 **SEC. 122. NONDISCRIMINATION RULES FOR QUALIFIED**
17 **CASH OR DEFERRED ARRANGEMENTS AND**
18 **MATCHING CONTRIBUTIONS.**

19 (a) ALTERNATIVE METHODS OF SATISFYING SEC-
20 TION 401(k) NONDISCRIMINATION TESTS.—Subpara-
21 graph (B) of section 401(k)(12) (relating to alternative
22 methods of meeting nondiscrimination requirements) is
23 amended to read as follows:

24 “(B) NONELECTIVE AND MATCHING CON-
25 TRIBUTIONS.—

1 “(i) IN GENERAL.—The requirements
 2 of this subparagraph are met if the re-
 3 quirements of clauses (ii) and (iii) are met.

4 “(ii) NONELECTIVE CONTRIBU-
 5 TIONS.—The requirements of this clause
 6 are met if, under the arrangement, the em-
 7 ployer is required, without regard to
 8 whether the employee makes an elective
 9 contribution or employee contribution, to
 10 make a contribution to a defined contribu-
 11 tion plan on behalf of each employee who
 12 is not a highly compensated employee and
 13 who is eligible to participate in the ar-
 14 rangement in an amount equal to at least
 15 1 percent of the employee’s compensation.

16 “(iii) MATCHING CONTRIBUTIONS.—
 17 The requirements of this clause are met if,
 18 under the arrangement, the employer
 19 makes matching contributions on behalf of
 20 each employee who is not a highly com-
 21 pensated employee in an amount equal
 22 to—

23 “(I) 100 percent of the elective
 24 contributions of the employee to the
 25 extent such elective contributions do

1 not exceed 3 percent of the employee's
2 compensation, and

3 “(II) 50 percent of the elective
4 contributions of the employee to the
5 extent that such elective contributions
6 exceed 3 percent but do not exceed 5
7 percent of the employee's compensa-
8 tion.

9 “(iv) RATE FOR HIGHLY COM-
10 PENSATED EMPLOYEES.—The require-
11 ments of clause (iii) are not met if, under
12 the arrangement, the rate of matching con-
13 tribution with respect to any rate of elec-
14 tive contribution of a highly compensated
15 employee is greater than that with respect
16 to an employee who is not a highly com-
17 pensated employee. For purposes of this
18 clause, to the extent provided in regula-
19 tions, the last sentences of paragraph
20 (3)(A) and subsection (m)(2)(B) shall not
21 apply.

22 “(v) ALTERNATIVE PLAN DESIGNS.—
23 If the rate of matching contribution with
24 respect to any rate of elective contribution
25 is not equal to the percentage required

under clause (iii), an arrangement shall not be treated as failing to meet the requirements of clause (iii) if—

“(I) the rate of an employer’s matching contribution does not increase as an employee’s rate of elective contribution increase, and

“(II) the aggregate amount of matching contributions at such rate of elective contribution is at least equal to the aggregate amount of matching contributions which would be made if matching contributions were made on the basis of the percentages described in clause (iii).”

(b) CONTRIBUTIONS PART OF QUALIFIED CASH OR DEFERRED ARRANGEMENT.—Subparagraph (E)(ii) of section 401(k)(12) is amended to read as follows:

“(ii) SOCIAL SECURITY AND SIMILAR CONTRIBUTIONS NOT TAKEN INTO ACCOUNT.—Except as provided in regulations, an arrangement shall not be treated as meeting the requirements of subparagraph (B) or (C) unless such requirements are met without regard to subsection (l),

1 and, for purposes of subsection (l), and de-
 2 termining whether contributions provided
 3 under a plan satisfy subsection (a)(4) on
 4 the basis of equivalent benefits, employer
 5 contributions under subparagraph (B) or
 6 (C) shall not be taken into account.”

7 (c) ALTERNATIVE METHODS OF SATISFYING SEC-
 8 TION 401(m) NONDISCRIMINATION TESTS.—Section
 9 401(m)(11) (relating to alternative method of satisfying
 10 tests) is amended—

11 (1) by striking “subparagraph (B)” in subpara-
 12 graph (A)(iii) and inserting “subparagraphs (B) and
 13 (C)”,

14 (2) by adding at the end of subparagraph (B)
 15 the following new flush sentence:

16 “To the extent provided in regulations, the last
 17 sentences of paragraph (2)(B) and subsection
 18 (k)(3)(A) shall not apply for purposes of clause
 19 (iii).”, and

20 (3) by adding at the end the following new sub-
 21 paragraph:

22 “(C) TEST MUST BE MET SEPARATELY.—
 23 If this paragraph applies to any matching con-
 24 tributions, such contributions shall not be taken
 25 into account in determining whether employee

1 contributions satisfy the requirements of this
2 subsection.”

3 (d) SPECIAL RULE FOR DETERMINING AVERAGE DE-
4 FERRAL PERCENTAGE FOR FIRST PLAN YEAR, ETC.—
5 Subparagraph (E) of section 401(k)(3) is amended to read
6 as follows:

7 “(E) For purposes of this paragraph, in
8 the case of the first plan year of any plan, the
9 amount taken into account as the actual defer-
10 ral percentage of nonhighly compensated em-
11 ployees for the preceding plan year shall be—

12 “(i) 3 percent, or

13 “(ii) the actual deferral percentage of
14 nonhighly compensated employees deter-
15 mined for such first plan year in the case
16 of—

17 “(I) an employer who elects to
18 have this clause apply, or

19 “(II) except to the extent pro-
20 vided by the Secretary, a successor
21 plan.”

22 (e) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to years beginning after December
24 31, 1998.

1 **SEC. 123. DEFINITION OF HIGHLY COMPENSATED EMPLOY-**
 2 **EES.**

3 (a) IN GENERAL.—Subparagraph (B) of section
 4 414(q)(1) (defining highly compensated employee) is
 5 amended to read as follows:

6 “(B) for the preceding year had compensa-
 7 tion from the employer in excess of \$80,000.”

8 (b) CONFORMING AMENDMENTS.—

9 (1)(A) Subsection (q) of section 414 is amended
 10 by striking paragraphs (3), (5), and (7) and by re-
 11 designating paragraphs (4), (6), (8), and (9) as
 12 paragraphs (3) through (6), respectively.

13 (B) Sections 129(d)(8)(B), 401(a)(5)(D)(ii),
 14 408(k)(2)(C), and 416(i)(1)(D) are each amended
 15 by striking “section 414(q)(4)” and inserting “sec-
 16 tion 414(q)(3)”.

17 (C) Section 416(i)(1)(A) is amended by striking
 18 “section 414(q)(5)” and inserting “section
 19 414(r)(9)”.

20 (2)(A) Section 414(r) is amended by adding at
 21 the end the following new paragraph:

22 “(9) EXCLUDED EMPLOYEES.—For purposes of
 23 paragraph (2)(A), the following employees shall be
 24 excluded:

25 “(A) Employees who have not completed 6
 26 months of service.

1 “(B) Employees who normally work less
2 than 17½ hours per week.

3 “(C) Employees who normally work during
4 not more than 6 months during any year.

5 “(D) Employees who have not attained the
6 age of 21.

7 “(E) Except to the extent provided in reg-
8 ulations, employees who are included in a unit
9 of employees covered by an agreement which
10 the Secretary of Labor finds to be a collective
11 bargaining agreement between employee rep-
12 resentatives and the employer.”

13 (B) Subparagraph (A) of section 414(r)(2) is
14 amended by striking “subsection (q)(5)” and insert-
15 ing “paragraph (9)”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to years beginning after December
18 31, 1998.

19 **SEC. 124. TREATMENT OF MULTIEMPLOYER PLANS UNDER**
20 **SECTION 415.**

21 (a) COMPENSATION LIMIT.—Paragraph (11) of sec-
22 tion 415(b) (relating to limitation for defined benefit
23 plans) is amended to read as follows:

24 “(11) SPECIAL LIMITATION RULE FOR GOVERN-
25 MENTAL AND MULTIEMPLOYER PLANS.—In the case

1 of a governmental plan (as defined in section
 2 414(d)) or a multiemployer plan (as defined in sec-
 3 tion 414(f)), subparagraph (B) of paragraph (1)
 4 shall not apply.”

5 (b) EXEMPTION FOR SURVIVOR AND DISABILITY
 6 BENEFITS.—Subparagraph (I) of section 415(b)(2) (relat-
 7 ing to limitation for defined benefit plans) is amended—

8 (1) by inserting “or a multiemployer plan (as
 9 defined in section 414(f))” after “section 414(d))”
 10 in clause (i),

11 (2) by inserting “or multiemployer plan” after
 12 “governmental plan” in clause (ii), and

13 (3) by inserting “AND MULTIEMPLOYER” after
 14 “GOVERNMENTAL” in the heading.

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to years beginning after December
 17 31, 1998.

18 **SEC. 125. EXEMPTION OF MIRROR PLANS FROM SECTION**
 19 **457 LIMITS.**

20 (a) IN GENERAL.—Subsection (e) of section 457 (re-
 21 lating to deferred compensation plans of State and local
 22 governments and tax-exempt organizations) is amended by
 23 adding at the end the following new paragraph:

24 “(16) EXEMPTION FOR MIRROR PLANS.—

1 “(A) IN GENERAL.—Amounts of com-
 2 pensation deferred under a mirror plan shall
 3 not be taken into account in applying this sec-
 4 tion to amounts of compensation deferred under
 5 any other deferred compensation plan.

6 “(B) MIRROR PLAN.—The term ‘mirror
 7 plan’ means a plan, program, or arrangement
 8 maintained solely for the purpose of providing
 9 retirement benefits for employees in excess of
 10 the limitations imposed by section 401(a)(17)
 11 or section 415, or both.”

12 (b) EFFECTIVE DATE.—The amendment made by
 13 this section shall apply to taxable years beginning after
 14 December 31, 1998.

15 **SEC. 126. IMMEDIATE PARTICIPATION IN THE THRIFT SAV-**
 16 **INGS PLAN FOR FEDERAL EMPLOYEES.**

17 (a) ELIMINATION OF CERTAIN WAITING PERIODS
 18 FOR PURPOSES OF EMPLOYEE CONTRIBUTIONS.—Para-
 19 graph (4) of section 8432(b) of title 5, United States
 20 Code, is amended to read as follows:

21 “(4) The Executive Director shall prescribe such reg-
 22 ulations as may be necessary to carry out the following:

23 “(A) Notwithstanding subparagraph (A) of
 24 paragraph (2), an employee or Member described in
 25 such subparagraph shall be afforded a reasonable

1 opportunity to first make an election under this sub-
2 section beginning on the date of commencing service
3 or, if that is not administratively feasible, beginning
4 on the earliest date thereafter that such an election
5 becomes administratively feasible, as determined by
6 the Executive Director.

7 “(B) An employee or Member described in sub-
8 paragraph (B) of paragraph (2) shall be afforded a
9 reasonable opportunity to first make an election
10 under this subsection (based on the appointment or
11 election described in such subparagraph) beginning
12 on the date of commencing service pursuant to such
13 appointment or election or, if that is not administra-
14 tively feasible, beginning on the earliest date there-
15 after that such an election becomes administratively
16 feasible, as determined by the Executive Director.

17 “(C) Notwithstanding the preceding provisions
18 of this paragraph, contributions under paragraphs
19 (1) and (2) of subsection (c) shall not be payable
20 with respect to any pay period before the earliest
21 pay period for which such contributions would other-
22 wise be allowable under this subsection if this para-
23 graph had not been enacted.

24 “(D) Sections 8351(a)(2), 8440a(a)(2),
25 8440b(a)(2), 8440c(a)(2), and 8440d(a)(2) shall be

1 applied in a manner consistent with the purposes of
 2 subparagraphs (A) and (B), to the extent those sub-
 3 paragraphs can be applied with respect thereto.

4 “(E) Nothing in this paragraph shall affect
 5 paragraph (3).”

6 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

7 (1) Section 8432(a) of title 5, United States
 8 Code, is amended—

9 (A) in the first sentence by striking
 10 “(b)(1)” and inserting “(b)”; and

11 (B) by amending the second sentence to
 12 read as follows: “Contributions under this sub-
 13 section pursuant to such an election shall, with
 14 respect to each pay period for which such elec-
 15 tion remains in effect, be made in accordance
 16 with a program of regular contributions pro-
 17 vided in regulations prescribed by the Executive
 18 Director.”

19 (2) Section 8432(b)(1)(B) of such title is
 20 amended by inserting “(or any election allowable by
 21 virtue of paragraph (4))” after “subparagraph (A)”.

22 (3) Section 8432(b)(3) of such title is amended
 23 by striking “Notwithstanding paragraph (2)(A), an”
 24 and inserting “An”.

1 (4) Section 8432(i)(1)(B)(ii) of such title is
 2 amended by striking “either elected to terminate in-
 3 dividual contributions to the Thrift Savings Fund
 4 within 2 months before commencing military service
 5 or”.

6 (5) Section 8439(a)(1) of such title is amended
 7 by inserting “who makes contributions or” after “for
 8 each individual” and by striking “section
 9 8432(c)(1)” and inserting “section 8432”.

10 (6) Section 8439(c)(2) of such title is amended
 11 by adding at the end the following: “Nothing in this
 12 paragraph shall be considered to limit the dissemina-
 13 tion of information only to the times required under
 14 the preceding sentence.”

15 (7) Sections 8440a(a)(2) and 8440d(a)(2) of
 16 such title are amended by striking all after “subject
 17 to” and inserting “subject to this chapter.”

18 (c) EFFECTIVE DATE.—This section shall take effect
 19 6 months after the date of the enactment of this Act or
 20 such earlier date as the Executive Director may by regula-
 21 tion prescribe.

22 **SEC. 127. FULL FUNDING LIMITATION FOR MULTIEM-**
 23 **PLOYER PLANS.**

24 (a) AMENDMENTS TO CODE.—

1 (1) FULL FUNDING LIMITATION.—Section
2 412(c)(7)(C) (relating to full funding limitation) is
3 amended—

4 (A) by inserting “or in the case of a multi-
5 employer plan,” after “paragraph (6)(B),”, and

6 (B) by inserting “AND MULTIEMPLOYER
7 PLANS” after “PARAGRAPH (6)(B)” in the head-
8 ing thereof.

9 (2) VALUATION.—Section 412(c)(9) (relating to
10 annual valuation) is amended—

11 (A) by inserting “(3 years in the case of a
12 multiemployer plan)” after “year”, and

13 (B) by striking “ANNUAL VALUATION” in
14 the heading and inserting “VALUATION”.

15 (b) AMENDMENTS TO ERISA.—

16 (1) FULL FUNDING LIMITATION.—Section
17 302(c)(7)(C) of the Employee Retirement Income
18 Security Act of 1974 (29 U.S.C. 1082(c)(7)(C)) is
19 amended—

20 (A) by inserting “or in the case of a multi-
21 employer plan,” after “paragraph (6)(B),”, and

22 (B) by inserting “AND MULTIEMPLOYER
23 PLANS” after “PARAGRAPH (6)(B)” in the head-
24 ing thereof.

1 (2) VALUATION.—Section 302(c)(9) of such Act
2 (29 U.S.C. 1082(c)(9)) is amended—

3 (A) by inserting “(3 years in the case of a
4 multiemployer plan)” after “year”, and

5 (B) by striking “ANNUAL VALUATION” in
6 the heading and inserting “VALUATION”.

7 (c) EFFECTIVE DATE.—The amendments made by
8 this section shall apply to plan years beginning after De-
9 cember 31, 1998.

10 **SEC. 128. ELIMINATION OF PARTIAL TERMINATION RULES**
11 **FOR MULTIEMPLOYER PLANS.**

12 (a) PARTIAL TERMINATION RULES FOR MULTIEM-
13 PLOYER PLANS.—Section 411(d)(3) (relating to termi-
14 nation or partial termination; discontinuance of contribu-
15 tions) is amended by adding at the end the following new
16 sentence: “This paragraph shall not apply in the case of
17 a partial termination of a multiemployer plan.”

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply to partial terminations beginning
20 after December 31, 1998.

21 **SEC. 129. REPEAL OF 150 PERCENT OF CURRENT LIABILITY**
22 **FUNDING LIMIT.**

23 (a) IN GENERAL.—Section 412(c)(7) (relating to
24 full-funding limitation) is amended—

1 (1) by striking “150 percent” in subparagraph
 2 (A)(i)(I) and inserting “the applicable percentage”,
 3 and

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

6 “(F) APPLICABLE PERCENTAGE.—For
 7 purposes of subparagraph (A)(i)(I), the applica-
 8 ble percentage is determined according to the
 9 following table:

“In the case of any plan year The applicable percentage is— beginning in—	
1998	155
1999	160
2000	165
2001	170
2002 and succeeding years	0.”

10 (b) SPECIAL AMORTIZATION RULE.—

11 (1) IN GENERAL.—Section 412(c)(7), as
 12 amended by subsection (a), is amended by adding at
 13 the end the following new subparagraph:

14 “(G) SPECIAL AMORTIZATION RULE.—Con-
 15 tributions that would be required to be made
 16 under the plan but for the provisions of sub-
 17 paragraph (A)(i)(I) shall be amortized over a
 18 20-year period.”

19 (2) CONFORMING AMENDMENT.—Section
 20 412(c)(7)(D) is amended by adding “and” at the
 21 end of clause (i), by striking “, and” at the end of

1 clause (ii) and inserting a period, and by striking
 2 clause (iii).

3 (3) EFFECTIVE DATE.—The amendments made
 4 by this subsection shall apply to any unamortized
 5 bases with respect to plan years beginning before,
 6 on, or after December 31, 1998.

7 **TITLE II—SECURITY**

8 **SEC. 200. AMENDMENT OF ERISA.**

9 Except as otherwise expressly provided, whenever in
 10 this title an amendment or repeal is expressed in terms
 11 of an amendment to, or repeal of, a section or other provi-
 12 sion, the reference shall be considered to be made to a
 13 section or other provision of the Employee Retirement In-
 14 come Security Act of 1974.

15 **Subtitle A—General Provisions**

16 **SEC. 201. PERIODIC PENSION BENEFITS STATEMENTS.**

17 (a) IN GENERAL.—Subsection (a) of section 105 (29
 18 U.S.C. 1025) is amended—

19 (1) by striking “shall furnish to any plan par-
 20 ticipant or beneficiary who so requests in writing,”
 21 and inserting “shall furnish at least once every 3
 22 years, in the case of a participant in a defined bene-
 23 fit plan who has attained age 35, and annually, in
 24 the case of a defined contribution plan, to each plan

1 participant, and shall furnish to any plan participant
2 or beneficiary who so requests,” and

3 (2) by adding at the end the following flush
4 sentence:

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

10 (b) RULE FOR MULTIEMPLOYER PLANS.—Subsection
11 (d) of section 105 (29 U.S.C. 1025) is amended to read
12 as follows:

13 “(d) Each administrator of a plan to which more than
14 1 unaffiliated employer is required to contribute shall fur-
15 nish to any plan participant or beneficiary who so requests
16 in writing, a statement described in subsection (a).”

17 (c) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to plan years beginning after the
19 later of—

20 (1) the date of issuance by the Secretary of
21 Labor of regulations providing guidance for simplify-
22 ing defined benefit plan calculations with respect to
23 the information required under section 105 of the
24 Employee Retirement Income Security Act of 1974
25 (29 U.S.C. 1025), or

1 (2) December 31, 1998.

2 **SEC. 202. REQUIREMENT OF ANNUAL, DETAILED INVEST-**
 3 **MENT REPORTS APPLIED TO CERTAIN 401(k)**
 4 **PLANS.**

5 (a) IN GENERAL.—Section 104(b)(3) (29 U.S.C.
 6 1024(b)(3)) is amended—

7 (1) by inserting “(A)” after “(3)”; and

8 (2) by adding at the end the following new sub-
 9 paragraph:

10 “(B)(i) If, for any plan year, a plan includes a
 11 qualified cash or deferred arrangement (as defined
 12 in section 401(k)(2) of the Internal Revenue Code of
 13 1986) and such plan covers less than 100 partici-
 14 pants, the administrator shall furnish (within 60
 15 days after the end of such plan year) to each partici-
 16 pant and to each beneficiary receiving benefits under
 17 the plan an annual investment report detailing such
 18 information as the Secretary by regulation shall re-
 19 quire.

20 “(ii) Clause (i) shall not apply with respect to
 21 any participant described in section 404(c).”

22 (b) REGULATIONS.—

23 (1) IN GENERAL.—The Secretary of Labor, in
 24 prescribing regulations required under section
 25 104(b)(3)(B)(i) of the Employee Retirement Income

1 Security Act of 1974 (29 U.S.C. 1023(b)(3)(B)(i)),
2 as added by subsection (a), shall consider including
3 in the information required in an annual investment
4 report the following:

5 (A) Total plan assets and liabilities as of
6 the beginning and ending of the plan year.

7 (B) Plan income and expenses and con-
8 tributions made and benefits paid for the plan
9 year.

10 (C) Any transaction between the plan and
11 the employer, any fiduciary, or any 10-percent
12 owner during the plan year, including the acqui-
13 sition of any employer security or employer real
14 property.

15 (D) Any noncash contributions made to or
16 purchases of nonpublicly traded securities made
17 by the plan during the plan year without an ap-
18 praisal by an independent third party.

19 (2) ELECTRONIC TRANSFER.—The Secretary of
20 Labor in prescribing such regulations shall also
21 make provision for the electronic transfer of the re-
22 quired annual investment report by a plan adminis-
23 trator to plan participants and beneficiaries.

1 (c) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply to plan years beginning after
3 the date of the enactment of this Act.

4 **SEC. 203. INFORMATION REQUIRED TO BE PROVIDED TO**
5 **INVESTMENT MANAGERS OF 401(k) PLANS.**

6 (a) IN GENERAL.—Section 105 (29 U.S.C. 1025) is
7 amended by adding at the end the following new sub-
8 section:

9 “(e) If—

10 “(1) the administrator of an individual account
11 plan described in section 401(k) of the Internal Rev-
12 enue Code of 1986 provides for investment of the
13 plan assets by means of a contractual arrangement
14 with another party, and

15 “(2) such other party is not required under
16 such arrangement to separately account for benefits
17 accrued with respect to each participant and bene-
18 ficiary under this plan,

19 such administrator shall be treated as failing to meet the
20 requirements of subsection (a) unless, under such contrac-
21 tual arrangement, such administrator provides to such
22 other party such information as is necessary to enable
23 such party to separately account at any time for benefits
24 accrued with respect to each participant and beneficiary.”

1 (b) CIVIL PENALTY FOR VIOLATIONS.—Paragraph
 2 (1) of section 502(c) (29 U.S.C. 1132(c)(1)) is amended
 3 by striking “or section 101(e)(1)” and inserting “, section
 4 101(e)(1), or section 105(e)”.

5 **SEC. 204. STUDY ON INVESTMENTS IN COLLECTIBLES.**

6 (a) STUDY.—The Secretary of Labor, in consultation
 7 with the Secretary of the Treasury, shall study the extent
 8 to which pension plans invest in collectibles and whether
 9 such investments present a risk to the pension security
 10 of the participants and beneficiaries of such plans.

11 (b) REPORT.—Not later than 12 months after the
 12 date of the enactment of this Act, the Secretary of Labor
 13 shall submit a report to the Congress containing the find-
 14 ings of the study described in subsection (a) and any rec-
 15 ommendations for legislative action.

16 **SEC. 205. QUALIFIED EMPLOYER PLANS PROHIBITED FROM**
 17 **MAKING LOANS THROUGH CREDIT CARDS**
 18 **AND OTHER INTERMEDIARIES.**

19 (a) IN GENERAL.—Subsection (a) of section 401 of
 20 the Internal Revenue Code of 1986 is amended by adding
 21 after paragraph (34) the following new paragraph:

22 “(35) PROHIBITION OF LOANS THROUGH CRED-
 23 IT CARDS AND OTHER INTERMEDIARIES.—A trust
 24 shall not constitute a qualified trust under this sec-
 25 tion if the plan makes any loan to any beneficiary

1 under the plan through the use of any credit card
 2 or any other intermediary.”

3 (b) EFFECTIVE DATE.—The amendment made by
 4 subsection (a) shall apply to plan years beginning after
 5 the date of the enactment of this Act.

6 **SEC. 206. MULTIEMPLOYER PLAN BENEFITS GUARANTEED.**

7 (a) IN GENERAL.—Section 4022A(c) (29 U.S.C.
 8 1322a(c)) is amended—

9 (1) by striking “\$5” each place it appears in
 10 paragraph (1) and inserting “\$11”,

11 (2) by striking “\$15” in paragraph (1) and in-
 12 serting “\$33”, and

13 (3) by striking paragraphs (2), (5), and (6) and
 14 by redesignating paragraphs (3) and (4) as para-
 15 graphs (2) and (3), respectively.

16 (b) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to any multiemployer plan that has
 18 not received financial assistance (within the meaning of
 19 section 4261 of the Employee Retirement Income Security
 20 Act of 1974) within the 1-year period ending on the date
 21 of the enactment of this Act.

22 **SEC. 207. PROHIBITED TRANSACTIONS.**

23 (a) IN GENERAL.—Section 502(i) (29 U.S.C.
 24 1132(i)) is amended by striking “5 percent” and inserting
 25 “15 percent”.

1 (b) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to prohibited transactions occur-
 3 ring after the date of the enactment of this Act.

4 **SEC. 208. SUBSTANTIAL OWNER BENEFITS.**

5 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
 6 Subparagraphs (B) and (C) of section 4022(b)(5) (29
 7 U.S.C. 1322(b)(5)) are amended to read as follows:

8 “(B) For purposes of this title, the term ‘majority
 9 owner’ has the same meaning as substantial owner under
 10 subparagraph (A), except that subparagraph (A) shall be
 11 applied by substituting ‘50 percent or more’ for ‘more
 12 than 10 percent’ each place it appears.

13 “(C) In the case of a participant who is a majority
 14 owner, the amount of benefits guaranteed under this sec-
 15 tion shall not exceed the product of—

16 “(i) a fraction (not to exceed 1) the numerator
 17 of which is the number of years from the later of the
 18 effective date or the adoption date of the plan to the
 19 termination date, and the denominator of which is
 20 30, and

21 “(ii) the amount of the majority owner’s month-
 22 ly benefits guaranteed under subsection (a) (as lim-
 23 ited by paragraph (3) of this subsection).”

24 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

1 (1) Section 4044(a)(4)(B) (29 U.S.C.
2 1344(a)(4)(B)) is amended by striking “section
3 4022(b)(5)” and inserting “section 4022(b)(5)(C)”.

4 (2) Section 4044(b) (29 U.S.C. 1344(b)) is
5 amended—

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

8 (B) by redesignating paragraphs (3)
9 through (6) as paragraphs (4) through (7), re-
10 spectively, and by inserting after paragraph (2)
11 the following new paragraph:

12 “(3) If assets available for allocation under
13 paragraph (4) of subsection (a) are insufficient to
14 satisfy in full the benefits of all individuals who are
15 described in that paragraph, the assets shall be allo-
16 cated first to benefits described in subparagraph (A)
17 of that paragraph. Any remaining assets shall then
18 be allocated to subparagraph (B). If assets allocated
19 to subparagraph (B) are insufficient to satisfy in full
20 the benefits in that subparagraph, the assets shall
21 be allocated pro rata among individuals on the basis
22 of the present value (as of the termination date) of
23 their respective benefits described in that subpara-
24 graph.”

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to plan terminations—

3 (1) under section 4041(c) of the Employee Re-
 4 tirement Income Security Act of 1974 (29 U.S.C.
 5 1341(c)) with respect to which notices of intent to
 6 terminate are provided under section 4041(a)(2) of
 7 such Act (29 U.S.C. 1341(a)(2)) on or after the
 8 date of the enactment of this Act, or

9 (2) under section 4042 of such Act (29 U.S.C.
 10 1342) with respect to which proceedings are insti-
 11 tuted by the corporation on or after such date.

12 **SEC. 209. REVERSION REPORT.**

13 (a) IN GENERAL.—Section 4008 (29 U.S.C. 1308)
 14 is amended by adding at the end the following new sub-
 15 section:

16 “(b) REVERSION REPORT.—As soon as practicable
 17 after the close of each fiscal year, the Secretary of Labor
 18 (acting in the Secretary’s capacity as chairman of the cor-
 19 poration’s board) shall transmit to the President and the
 20 Congress a report providing information on plans from
 21 which residual assets were distributed to employers pursu-
 22 ant to section 4044(d).”

23 (b) CONFORMING AMENDMENT.—Section 4008 (29
 24 U.S.C. 1308) is amended by striking “SEC. 4008.” and
 25 inserting “SEC. 4008. (a) ANNUAL REPORT.—”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to fiscal years beginning after Sep-
 3 tember 30, 1998.

4 **Subtitle B—ERISA Enforcement**

5 **SEC. 211. CIVIL PENALTIES FOR BREACH OF FIDUCIARY** 6 **RESPONSIBILITIES MADE DISCRETIONARY,** 7 **ETC.**

8 (a) IMPOSITION AND AMOUNT OF PENALTY MADE
 9 DISCRETIONARY.—Section 502(l)(1) (29 U.S.C. 1132(l))
 10 is amended—

11 (1) by striking “shall” and inserting “may”,
 12 and

13 (2) by striking “equal to” and inserting “not
 14 greater than”.

15 (b) APPLICABLE RECOVERY AMOUNT.—Section
 16 502(l)(2) (29 U.S.C. 1132(l)(2)) is amended to read as
 17 follows:

18 “(2) For purposes of paragraph (1), the term ‘appli-
 19 cable recovery amount’ means any amount which is recov-
 20 ered from (or on behalf of) any fiduciary or other person
 21 with respect to a breach or violation described in para-
 22 graph (1) on or after the 30th day following receipt by
 23 such fiduciary or other person of written notice from the
 24 Secretary of the violation, whether paid voluntarily or by
 25 order of a court in a judicial proceeding instituted by the

1 Secretary under paragraph (2) or (5) of subsection (a).
 2 The Secretary may, in the Secretary's sole discretion, ex-
 3 tend the 30-day period described in the preceding sen-
 4 tence.”.

5 (c) OTHER RULES.—Section 502(l) is amended by
 6 adding at the end the following new paragraphs:

7 “(5) A person shall be jointly and severally liable for
 8 the penalty described in paragraph (1) to the same extent
 9 that such person is jointly and severally liable for the ap-
 10 plicable recovery amount on which the penalty is based.

11 “(6) No penalty shall be assessed under this sub-
 12 section unless the person against whom the penalty is as-
 13 sessed is given notice and opportunity for a hearing with
 14 respect to the violation and applicable recovery amount.”

15 (d) EFFECTIVE DATES.—

16 (1) IN GENERAL.—The amendments made by
 17 this section shall apply to any breach of fiduciary re-
 18 sponsibility or other violation of part 4 of title I of
 19 the Employee Retirement Income Security Act of
 20 1974 occurring on or after the date of the enact-
 21 ment of this Act.

22 (2) TRANSITION RULE.—In applying the
 23 amendment made by subsection (b), a breach or
 24 other violation occurring before the date of the en-
 25 actment of this Act which continues after the 180th

1 day after such date (and which may be discontinued
 2 at any time during its existence) shall be treated as
 3 having occurred on the day after such date of enact-
 4 ment.

5 **SEC. 212. REPORTING AND ENFORCEMENT REQUIREMENTS**
 6 **FOR EMPLOYEE BENEFIT PLANS.**

7 (a) IN GENERAL.—Part 1 of subtitle B of title I (29
 8 U.S.C. 1021 et seq.) is amended—

9 (1) by redesignating section 111 as section 112,
 10 and

11 (2) inserting after section 110 the following
 12 new section:

13 “DIRECT REPORTING OF CERTAIN EVENTS

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

15 “(1) NOTIFICATIONS BY PLAN ADMINIS-
 16 TRATOR.—Within 5 business days after an adminis-
 17 trator of an employee benefit plan determines that
 18 there is evidence (or after the administrator is noti-
 19 fied under paragraph (2)) that an irregularity may
 20 have occurred with respect to the plan, the adminis-
 21 trator shall—

22 “(A) notify the Secretary of the irregular-
 23 ity in writing; and

24 “(B) furnish a copy of such notification to
 25 the accountant who is currently engaged under
 26 section 103(a)(3)(A).

1 “(2) NOTIFICATIONS BY ACCOUNTANT.—

2 “(A) IN GENERAL.—Within 5 business
3 days after an accountant engaged by the ad-
4 ministrator of an employee benefit plan under
5 section 103(a)(3)(A) determines in connection
6 with such engagement that there is evidence
7 that an irregularity may have occurred with re-
8 spect to the plan, the accountant shall—

9 “(i) notify the plan administrator of
10 the irregularity in writing, or

11 “(ii) if the accountant determines that
12 there is evidence that the irregularity may
13 have involved an individual who is the plan
14 administrator or who is a senior official of
15 the plan administrator, notify the Sec-
16 retary of the irregularity in writing.

17 “(B) NOTIFICATION UPON FAILURE OF
18 PLAN ADMINISTRATOR TO NOTIFY.—If an ac-
19 countant who has provided notification to the
20 plan administrator pursuant to subparagraph
21 (A)(i) does not receive a copy of the administra-
22 tor’s notification to the Secretary required in
23 paragraph (1) within the 5-business day period
24 specified therein, the accountant shall furnish
25 to the Secretary a copy of the accountant’s no-

1 tification made to the plan administrator on the
2 next business day following such period.

3 “(3) IRREGULARITY DEFINED.—

4 “(A) For purposes of this subsection, the
5 term ‘irregularity’ means—

6 “(i) a theft, embezzlement, or a viola-
7 tion of section 664 of title 18, United
8 States Code (relating to theft or embezzle-
9 ment from an employee benefit plan);

10 “(ii) an extortion or a violation of sec-
11 tion 1951 of title 18, United States Code
12 (relating to interference with commerce by
13 threats or violence);

14 “(iii) a bribery, a kickback, or a viola-
15 tion of section 1954 of title 18, United
16 States Code (relating to offer, acceptance,
17 or solicitation to influence operations of an
18 employee benefit plan);

19 “(iv) a violation of section 1027 of
20 title 18, United States Code (relating to
21 false statements and concealment of facts
22 in relation to employee benefit plan
23 records); or

1 “(v) a violation of section 411, 501, or
 2 511 of this title (relating to criminal viola-
 3 tions).

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

10 “(b) NOTIFICATION UPON TERMINATION OF EN-
 11 GAGEMENT OF ACCOUNTANT.—

12 “(1) NOTIFICATION BY PLAN ADMINIS-
 13 TRATOR.—Within 5 business days after the termi-
 14 nation of an engagement of an accountant under
 15 section 103(a)(3)(A) with respect to an employee
 16 benefit plan, the administrator of such plan shall—

17 “(A) notify the Secretary in writing of
 18 such termination, giving the reasons for such
 19 termination, and

20 “(B) furnish the accountant whose engage-
 21 ment was terminated with a copy of the notifi-
 22 cation sent to the Secretary.

23 “(2) NOTIFICATION BY ACCOUNTANT.—If the
 24 accountant referred to in paragraph (1)(B) has not
 25 received a copy of the administrator’s notification to

1 the Secretary as required under paragraph (1)(B),
 2 or if the accountant disagrees with the reasons given
 3 in the notification of termination of the engagement
 4 for auditing services, the accountant shall notify the
 5 Secretary in writing of the termination, giving the
 6 reasons for the termination, within 10 business days
 7 after the termination of the engagement.

8 “(c) DETERMINATION OF PERIODS REQUIRED FOR
 9 NOTIFICATION.—In determining whether a notification re-
 10 quired under this section with respect to any act or omis-
 11 sion has been made within the required number of busi-
 12 ness days—

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

15 “(2) Saturdays, Sundays, and legal holidays
 16 shall not be included.

17 For purposes of this subsection, the term ‘legal holiday’
 18 means any Federal legal holiday and any other day ap-
 19 pointed as a holiday by the State in which the person re-
 20 sponsible for making the notification principally conducts
 21 business.

22 “(d) IMMUNITY FOR GOOD FAITH NOTIFICATION.—
 23 No accountant or plan administrator shall be liable to any
 24 person for any finding, conclusion, or statement made in
 25 any notification made pursuant to subsection (a)(2) or

1 (b)(2), or pursuant to any regulations issued under those
 2 subsections, if the finding, conclusion, or statement is
 3 made in good faith.”

4 (b) CIVIL PENALTY.—

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

8 “(8)(A) The Secretary may assess a civil penalty of
 9 up to \$50,000 against any administrator who fails to pro-
 10 vide the Secretary with any notification as required under
 11 section 111.

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

16 (2) CONFORMING AMENDMENT.—Section
 17 502(a)(6) (29 U.S.C. 1132(a)(6)) is amended by
 18 striking “or (6)” and inserting “(6), or (8)”.

19 (c) CLERICAL AMENDMENTS.—

20 (1) Section 514(d) (29 U.S.C. 114(d)) is
 21 amended by striking “111” and inserting “112”.

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

“Sec. 111. Direct reporting of certain events.

“Sec. 112. Repeal and effective date.”

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply with respect to any irregularity or
 3 termination of engagement described in the amendments
 4 only if the 5-day period described in the amendments in
 5 connection with the irregularity or termination commences
 6 at least 90 days after the date of the enactment of this
 7 Act.

8 **SEC. 213. ADDITIONAL REQUIREMENTS FOR QUALIFIED**
 9 **PUBLIC ACCOUNTANTS.**

10 (a) IN GENERAL.—Section 103(a)(3)(D) (29 U.S.C.
 11 1023(a)(3)(D)) is amended—

12 (1) by inserting “(i)” after “(D)”;

13 (2) by inserting “, with respect to any engage-
 14 ment of an accountant under subparagraph (A)”
 15 after “means”;

16 (3) by redesignating clauses (i), (ii), and (iii) as
 17 subclauses (I), (II), and (III), respectively;

18 (4) by striking the period at the end of sub-
 19 clause (III) (as so redesignated) and inserting a
 20 comma;

21 (5) by adding after and below subclause (III)
 22 (as so redesignated), the following: “but only if such
 23 person meets the requirements of clauses (ii) and
 24 (iii), with respect to such engagement.”; and

1 (6) by adding at the end the following new
2 clauses:

3 “(ii) A person meets the requirements of
4 this clause with respect to an engagement of
5 the person as an accountant under subpara-
6 graph (A) if the person—

7 “(I) has in operation an appropriate
8 internal quality control system;

9 “(II) has undergone a qualified exter-
10 nal quality control review of the person’s
11 accounting and auditing practices, includ-
12 ing such practices relevant to employee
13 benefit plans (if any), during the 3-year
14 period immediately preceding such engage-
15 ment; and

16 “(III) has completed, within the 2 cal-
17 endar years immediately preceding such
18 engagement, such continuing education or
19 training as the Secretary in regulations de-
20 termines is necessary to maintain profes-
21 sional proficiency in connection with em-
22 ployee benefit plans.

23 “(iii) A person meets the requirements of
24 this clause with respect to an engagement of
25 the person as an accountant under subpara-

graph (A) if the person meets such additional requirements and qualifications of regulations which the Secretary deems necessary to ensure the quality of plan audits.

“(iv) For purposes of clause (ii)(II), an external quality control review shall be treated as qualified with respect to a person referred to in clause (ii) if—

“(I) such review is performed in accordance with the requirements of external quality control review programs of recognized auditing standard setting bodies, as determined in regulations of the Secretary, and

“(II) in the case of any such person who has, during the peer review period, conducted 1 or more previous audits of employee benefit plans, such review includes the review of an appropriate number (determined as provided in such regulations, but in no case less than 1) of plan audits in relation to the scale of the person’s auditing practice.

(b) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graph (2), the amendments made by this section
 3 apply with respect to plan years beginning on or
 4 after the date which is 3 years after the date of the
 5 enactment of this Act.

6 (2) RESTRICTIONS ON CONDUCTING EXAMINA-
 7 TIONS.—Clause (iii) of section 103(a)(1)(D) of the
 8 Employee Retirement Income Security Act of 1974
 9 (as added by subsection (a)(6)) takes effect on the
 10 date of enactment of this Act.

11 (3) REGULATIONS.—The Secretary shall issue
 12 regulations under this section no later than Decem-
 13 ber 31, 1999.

14 **SEC. 214. INSPECTOR GENERAL STUDY.**

15 (a) STUDY.—The Inspector General of the Depart-
 16 ment of Labor shall conduct a study on the need for regu-
 17 latory standards and procedures to authorize the Sec-
 18 retary, in appropriate cases, to prohibit persons from serv-
 19 ing as qualified accountants for purposes of section 103
 20 of the Employee Retirement Income Security Act of 1974
 21 (29 U.S.C. 1023).

22 (b) MATTERS TO BE STUDIED.—In conducting the
 23 study under this section, the Inspector General shall ad-
 24 dress whether standards and procedures to prohibit per-
 25 sons from serving as qualified public accountants are like-

1 ly to improve the quality of employee benefit plan audits,
 2 and the potential for increased costs to plans. If the In-
 3 spector General concludes that regulations incorporating
 4 standards and procedures would be appropriate, the study
 5 shall include recommended standards and procedures.

6 (c) REPORT.—Not later than 1 year after the date
 7 of the enactment of this Act, the Inspector General shall
 8 submit a report on the results of the study conducted pur-
 9 suant to this section to each house of Congress and the
 10 Secretary of Labor.

11 **Subtitle C—Increase in Excise Tax** 12 **on Employer Reversions**

13 **SEC. 221. INCREASE IN EXCISE TAX.**

14 (a) IN GENERAL.—Section 4980 of the Internal Rev-
 15 enue Code of 1986 (relating to tax on reversion of quali-
 16 fied plan assets to employer) is amended—

17 (1) in subsection (a), by striking “20 percent”
 18 and inserting “35 percent”; and

19 (2) in subsection (d)(1), by striking “substitut-
 20 ing ‘50 percent’ for ‘20 percent’ with respect to any
 21 employer reversion” and inserting “substituting ‘65
 22 percent’ for ‘35 percent’ with respect to any em-
 23 ployer reversion”.

24 (b) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendment made by this section shall
3 apply to reversions occurring after December 31,
4 1998.

5 (2) EXCEPTION.—The amendment made by this
6 section shall not apply to any reversion after Decem-
7 ber 31, 1998, if—

8 (A) in the case of plans subject to title IV
9 of the Employee Retirement Income Security
10 Act of 1974, a notice of intent to terminate
11 under such title was provided to participants
12 (or if no participants, to the Pension Benefit
13 Guaranty Corporation) before June 25, 1998,

14 (B) in the case of plans subject to title I
15 (and not to title IV) of such Act, a notice of in-
16 tent to reduce future accruals under section
17 204(h) of such Act was provided to participants
18 in connection with the termination before June
19 25, 1998,

20 (C) in the case of plans not subject to title
21 I or IV of such Act, a request for a determina-
22 tion letter with respect to the termination was
23 filed with the Secretary of the Treasury or the
24 Secretary's delegate before June 25, 1998, or

1 (D) in the case of plans not subject to title
 2 I or IV of such Act and having only 1 partici-
 3 pant, a resolution terminating the plan was
 4 adopted by the employer before June 25, 1998.

5 **TITLE III—PORTABILITY**

6 **SEC. 301. FASTER VESTING OF EMPLOYER MATCHING CON-** 7 **TRIBUTIONS.**

8 (a) AMENDMENT OF INTERNAL REVENUE CODE.—
 9 Paragraph (2) of section 411(a) of the Internal Revenue
 10 Code of 1986 (relating to employer contributions) is
 11 amended—

12 (1) by inserting “, and, if applicable, (C)” after
 13 “or (B)”, and

14 (2) by adding at the end the following new sub-
 15 paragraph:

16 “(C) MATCHING CONTRIBUTIONS.—In the
 17 case of a plan that includes an accrued benefit
 18 derived from matching contributions (as defined
 19 in section 401(m)(4)(A)), the plan satisfies the
 20 requirements of this subparagraph if—

21 “(i) an employee who has completed
 22 at least 3 years of service has a nonforfeit-
 23 able right to 100 percent of the employee’s
 24 accrued benefit derived from such match-
 25 ing contributions, or

1 “(ii) an employee has a nonforfeitable
 2 right to a percentage of the employee’s ac-
 3 crued benefit derived from employer
 4 matching contributions (as so defined) de-
 5 termined under the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6	100.”

6 (b) AMENDMENT OF ERISA.—Paragraph (2) of sec-
 7 tion 203(a) of the Employee Retirement Income Security
 8 Act of 1974 (29 U.S.C. 1053(a)) is amended—

9 (1) by inserting “, and, if applicable, (C)” after
 10 “or (B)”, and

11 (2) by adding at the end the following new sub-
 12 paragraph:

13 “(C) MATCHING CONTRIBUTIONS.—In the
 14 case of a plan that includes an accrued benefit
 15 derived from matching contributions (as defined
 16 in section 401(m)(4)(A) of the Internal Reve-
 17 nue Code of 1986), the plan satisfies the re-
 18 quirements of this subparagraph if—

19 “(i) an employee who has completed
 20 at least 3 years of service has a nonforfeit-
 21 able right to 100 percent of the employee’s

1 accrued benefit derived from such match-
 2 ing contributions, or
 3 “(ii) an employee has a nonforfeitable
 4 right to a percentage of the employee’s ac-
 5 crued benefit derived from employer
 6 matching contributions (as so defined) de-
 7 termined under the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6	100.”

8 (c) EFFECTIVE DATE.—

9 (1) IN GENERAL.—Except as provided in para-
 10 graphs (2) and (3), the amendments made by this
 11 section shall apply to plan years beginning after De-
 12 cember 31, 1998.

13 (2) APPLICATION TO CURRENT EMPLOYEES.—
 14 The amendments made by this section shall not
 15 apply to any employee who does not have at least 1
 16 hour of service in any plan year beginning after De-
 17 cember 31, 1998.

18 (3) COLLECTIVE BARGAINING AGREEMENTS.—
 19 In the case of a plan maintained pursuant to 1 or
 20 more collective bargaining agreements between em-
 21 ployee representatives and 1 or more employers rati-
 22 fied by the date of the enactment of this Act, the

1 amendments made by this section shall not apply to
 2 employees covered by any such agreement in plan
 3 years beginning before the earlier of—

4 (A) the later of—

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

10 (ii) January 1, 1999, or

11 (B) January 1, 2003.

12 **SEC. 302. RATIONALIZATION OF THE RESTRICTIONS ON**
 13 **DISTRIBUTIONS FROM 401(k) PLANS.**

14 (a) IN GENERAL.—Section 401(k)(2)(B)(i)(I) of the
 15 Internal Revenue Code of 1986 (relating to qualified cash
 16 or deferred arrangements) is amended by striking “sepa-
 17 ration from service” and inserting “severance from em-
 18 ployment”.

19 (b) BUSINESS SALE REQUIREMENTS DELETED.—

20 (1) IN GENERAL.—Section 401(k)(2)(B)(i)(II)
 21 of the Internal Revenue Code of 1986 (relating to
 22 qualified cash or deferred arrangements) is amended
 23 by striking “an event” and inserting “a plan termi-
 24 nation”.

1 (2) CONFORMING AMENDMENTS.—Section
2 401(k)(10) of such Code is amended—

3 (A) by striking subparagraph (A) and in-
4 serting the following:

5 “(A) IN GENERAL.—A plan termination is
6 described in this paragraph if the termination
7 of the plan is without establishment or mainte-
8 nance of another defined contribution plan
9 (other than an employee stock ownership plan
10 as defined in section 4975(e)(7)).”,

11 (B) by striking subparagraph (C), and

12 (C) by striking “OR DISPOSITION OF AS-
13 SETS OR SUBSIDIARY” in the heading.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to distributions after December 31,
16 1998.

17 **SEC. 303. TREATMENT OF TRANSFERS BETWEEN DEFINED**
18 **CONTRIBUTION PLANS.**

19 (a) IN GENERAL.—Section 411(d)(6) of the Internal
20 Revenue Code of 1986 (relating to accrued benefit not to
21 be decreased by amendment) is amended by adding at the
22 end the following new subparagraph:

23 “(D) PLAN TRANSFERS.—A defined con-
24 tribution plan (in this subparagraph referred to
25 as the ‘transferee plan’) shall not be treated as

1 failing to meet the requirements of this para-
2 graph merely because the transferee plan does
3 not provide some or all of the forms of distribu-
4 tion previously available under another defined
5 contribution plan (in this subparagraph referred
6 to as the ‘transferor plan’) to the extent that—

7 “(i) the forms of distribution pre-
8 viously available under the transferor plan
9 applied to the account of a participant or
10 beneficiary under the transferor plan that
11 was transferred from the transferor plan to
12 the transferee plan pursuant to a direct
13 transfer rather than pursuant to a dis-
14 tribution from the transferor plan,

15 “(ii) the terms of both the transferor
16 plan and the transferee plan authorize the
17 transfer described in clause (i),

18 “(iii) the transfer described in clause
19 (i) was made pursuant to a voluntary elec-
20 tion by the participant or beneficiary
21 whose account was transferred to the
22 transferee plan,

23 “(iv) the election described in clause
24 (iii) was made after the participant or ben-

1 eficiary received a notice describing the
2 consequences of making the election,

3 “(v) if the transferor plan provides for
4 an annuity as the normal form of distribu-
5 tion under the plan in accordance with sec-
6 tion 417, the transfer is made with the
7 consent of the participant’s spouse (if
8 any), and such consent meets requirements
9 similar to the requirements imposed by
10 section 417(a)(2), and

11 “(vi) the transferee plan allows the
12 participant or beneficiary described in
13 clause (iii) to receive any distribution to
14 which the participant or beneficiary is enti-
15 tled under transferee plan in the form of
16 a single sum distribution.”

17 (b) CONFORMING AMENDMENT.—Section 204(g) of
18 the Employee Retirement Income Security Act of 1974
19 (29 U.S.C. 1054(g)) is amended by adding at the end the
20 following new paragraph:

21 “(4) A defined contribution plan (in this paragraph
22 referred to as the ‘transferee plan’) shall not be treated
23 as failing to meet the requirements of this subsection
24 merely because the transferee plan does not provide some
25 or all of the forms of distribution previously available

1 under another defined contribution plan (in this para-
2 graph referred to as the ‘transferor plan’) to the extent
3 that—

4 “(A) the forms of distribution previously avail-
5 able under the transferor plan applied to the account
6 of a participant or beneficiary under the transferor
7 plan that was transferred from the transferor plan
8 to the transferee plan pursuant to a direct transfer
9 rather than pursuant to a distribution from the
10 transferor plan,

11 “(B) the terms of both the transferor plan and
12 the transferee plan authorize the transfer described
13 in subparagraph (A),

14 “(C) the transfer described in subparagraph
15 (A) was made pursuant to a voluntary election by
16 the participant or beneficiary whose account was
17 transferred to the transferee plan,

18 “(D) the election described in subparagraph (C)
19 was made after the participant or beneficiary re-
20 ceived a notice describing the consequences of mak-
21 ing the election,

22 “(E) if the transferor plan provides for an an-
23 nuity as the normal form of distribution under the
24 plan in accordance with section 205, the transfer is
25 made with the consent of the participant’s spouse (if

1 any), and such consent meets requirements similar
 2 to the requirements imposed by section 205(c)(2),
 3 and

4 “(F) the transferee plan allows the participant
 5 or beneficiary described in subparagraph (C) to re-
 6 ceive any distribution to which the participant or
 7 beneficiary is entitled under transferee plan in the
 8 form of a single sum distribution.”

9 (b) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to transfers after December 31,
 11 1998.

12 **SEC. 304. MISSING PARTICIPANTS.**

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

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

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

23 “(1) TRANSFER TO CORPORATION.—The plan
 24 administrator of a plan described in paragraph (4)

1 may elect to transfer a missing participant’s benefits
2 to the corporation upon termination of the plan.

3 “(2) INFORMATION TO THE CORPORATION.—To
4 the extent provided in regulations, the plan adminis-
5 trator of a plan described in paragraph (4) shall,
6 upon termination of the plan, provide the corpora-
7 tion information with respect to benefits of a miss-
8 ing participant if the plan transfers such benefits—

9 “(A) to the corporation, or

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

12 “(3) PAYMENT BY THE CORPORATION.—If ben-
13 efits of a missing participant were transferred to the
14 corporation under paragraph (1), the corporation
15 shall, upon location of the participant or beneficiary,
16 pay to the participant or beneficiary the amount
17 transferred (or the appropriate survivor benefit) ei-
18 ther—

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

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

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

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

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

4 “(ii) which is not a plan described in
 5 paragraphs (2) through (11) of section
 6 4021(b), and

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

9 “(i) has missing participants, and

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

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

17 (b) CONFORMING AMENDMENTS.—

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

21 (A) by striking “title IV” and inserting
 22 “section 4050”, and

23 (B) by striking “the plan shall provide
 24 that,”.

1 (2) Section 401(a)(34) of the Internal Revenue
 2 Code of 1986 (relating to benefits of missing partici-
 3 pants on plan termination) is amended by striking
 4 “title IV” and inserting “section 4050”.

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

11 **SEC. 305. ALLOWANCE OF ROLLOVERS FROM AND TO 403(b)**
 12 **PLANS.**

13 (a) ROLLOVERS FROM SECTION 403(b) PLANS.—
 14 Section 403(b)(8)(A)(ii) of the Internal Revenue Code of
 15 1986 (relating to rollover amounts) is amended by striking
 16 “such distribution” and all that follows and inserting
 17 “such distribution to an eligible retirement plan described
 18 in section 402(c)(8)(B), and”.

19 (b) ROLLOVERS TO SECTION 403(b) PLANS.—Sec-
 20 tion 402(c)(8)(B) of such Code (defining eligible retire-
 21 ment plan) is amended by striking “and” at the end of
 22 clause (ii), by striking the period at the end of clause (iv)
 23 and inserting “, and”, and by adding at the end the follow-
 24 ing:

1 “(v) an annuity contract described in
2 section 403(b).”

3 (c) CONFORMING AMENDMENTS.—

4 (1) Section 72(o)(4) of such Code is amended
5 by striking “and 408(d)(3)” and inserting
6 “403(b)(8), and 408(d)(3)”.

7 (2) Section 401(a)(31)(B) of such Code is
8 amended by striking “and 403(a)(4)” and inserting
9 “, 403(a)(4), and 403(b)(8)”.

10 (3) Subparagraph (B) of section 403(b)(8) of
11 such Code is amended by inserting “and (9)” after
12 “through (7)”.

13 (4) Subparagraphs (A) and (B) of section
14 415(b)(2) of such Code are each amended by strik-
15 ing “and 408(d)(3)” and inserting “403(b)(8), and
16 408(d)(3)”.

17 (d) EFFECTIVE DATE; SPECIAL RULE.—

18 (1) EFFECTIVE DATE.—The amendments made
19 by this section shall apply to distributions after De-
20 cember 31, 1998.

21 (2) SPECIAL RULE.—Notwithstanding any other
22 provision of law, subsections (h)(3) and (h)(5) of
23 section 1122 of the Tax Reform Act of 1986 shall
24 not apply to any distribution from an eligible retire-
25 ment plan on behalf of an individual if there was a

1 rollover to such plan on behalf of such individual
 2 which is permitted solely by reason of any amend-
 3 ment made by this section.

4 **SEC. 306. ROLLOVER CONTRIBUTIONS FROM DEFERRED**
 5 **COMPENSATION PLANS OF STATE AND**
 6 **LOCAL GOVERNMENTS.**

7 (a) ROLLOVERS FROM SECTION 457 PLANS.—

8 (1) IN GENERAL.—Section 457(e) of the Inter-
 9 nal Revenue Code of 1986 (relating to other defini-
 10 tions and special rules) is amended by adding at the
 11 end the following:

12 “(16) ROLLOVER AMOUNTS.—

13 “(A) GENERAL RULE.—In the case of an
 14 eligible deferred compensation plan of an eligi-
 15 ble employer described in paragraph (1)(A),
 16 if—

17 “(i) any portion of the balance to the
 18 credit of an employee in such plan is paid
 19 to such employee in a rollover distribution
 20 (other than a distribution described in sub-
 21 section (d)(1)(A)(iii) or in subparagraph
 22 (A) or (B) of section 402(c)(4)),

23 “(ii) the employee transfers any por-
 24 tion of the property such employee receives
 25 in such distribution to an individual retire-

ment plan (as defined in section 7701(a)(37), and

“(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

“(B) CERTAIN RULES MADE APPLICABLE.—Rules similar to the rules of section 401(a)(31), paragraphs (2), (3), (5), (6), (7), and (9) of section 402(c), and section 402(f) shall apply for purposes of subparagraph (A).”

(2) DISTRIBUTION REQUIREMENTS.—Section 457(d)(1)(A) of such Code (relating to distribution requirements) is amended by inserting “except as provided in subsection (e)(16),” after “(A)”.

(3) CONFORMING AMENDMENTS.—

(A) Section 72(o)(4) of such Code is amended—

(i) by striking “and 408(d)(3)” and inserting “408(d)(3), and 457(e)(16)”,

(ii) by inserting “or excludable” after “deductible” each place it appears, and

1 (iii) in the heading by inserting “OR
2 EXCLUDABLE” after “DEDUCTIBLE”.

3 (B) Section 219(d)(2) of such Code is
4 amended by striking “or 408(d)(3)” and insert-
5 ing “408(d)(3), or 457(e)(16)”.

6 (C) Section 401(a)(31)(B) of such Code is
7 amended by striking “and 403(b)(8)” and in-
8 serting “, 403(b)(8), and 457(e)(16)”.

9 (D) Paragraph (4) of section 402(c) of
10 such Code is amended by inserting “or in an el-
11 igible deferred compensation plan (as defined in
12 section 457(b)) of an eligible employer de-
13 scribed in section 457(e)(1)(A)” after “qualified
14 trust”.

15 (E) Section 408(a)(1) of such Code is
16 amended by striking “or 403(b)(8)” and insert-
17 ing “, 403(b)(8), or 457(e)(16)”.

18 (F) Section 408(d)(3)(A)(ii) of such Code
19 is amended by striking “or” after “501(a)” and
20 inserting a comma, and by inserting “, or from
21 an eligible deferred compensation plan described
22 in section 457(b)” after “contribution”.

23 (G) Subparagraphs (A) and (B) of section
24 415(b)(2) of such Code are each amended by

1 striking “and 408(d)(3)” and inserting
 2 “408(d)(3), and 457(e)(16)”.

3 (H) Section 4973(b)(1)(A) of such Code is
 4 amended by striking “or 408(d)(3)” and insert-
 5 ing “408(d)(3), or 457(e)(16)”.

6 (d) EFFECTIVE DATE; SPECIAL RULE.—

7 (1) EFFECTIVE DATE.—The amendments made
 8 by this section shall apply to distributions after De-
 9 cember 31, 1998.

10 (2) SPECIAL RULE.—Notwithstanding any other
 11 provision of law, subsections (h)(3) and (h)(5) of
 12 section 1122 of the Tax Reform Act of 1986 shall
 13 not apply to any distribution from an individual re-
 14 tirement plan on behalf of an individual if there was
 15 a rollover to such plan on behalf of such individual
 16 which is permitted solely by reason of any amend-
 17 ment made by this section.

18 **SEC. 307. EXTENSION OF 60-DAY ROLLOVER PERIOD IN THE**
 19 **CASE OF PRESIDENTIALLY DECLARED DISAS-**
 20 **TERS AND SERVICE IN COMBAT ZONE.**

21 (a) IN GENERAL.—Paragraph (1) of section 7508(a)
 22 of the Internal Revenue Code of 1986 (relating to time
 23 postponed for performing certain acts) is amended by
 24 striking “and” at the end of subparagraph (J), by redesign-
 25 ating subparagraph (K) as subparagraph (L), and by in-

1 setting after subparagraph (J) the following new subpara-
 2 graph:

3 “(K) Rollover of any distribution within
 4 the 60-day period specified in section 402(c)(3)
 5 or 408(d)(3)(A); and”.

6 (b) EFFECTIVE DATE.—The amendment made by
 7 this section shall apply to distributions made after Decem-
 8 ber 31, 1998.

9 **SEC. 308. PURCHASE OF SERVICE CREDIT IN GOVERN-**
 10 **MENTAL DEFINED BENEFIT PLANS.**

11 (a) 403(b) PLANS.—Subsection (b) of section 403 of
 12 the Internal Revenue Code of 1986 is amended by adding
 13 at the end the following new paragraph:

14 “(13) TRUSTEE-TO-TRUSTEE TRANSFERS TO
 15 PURCHASE PERMISSIVE SERVICE CREDIT.—No
 16 amount shall be includible in gross income by reason
 17 of a direct trustee-to-trustee transfer to a defined
 18 benefit governmental plan (as defined in section
 19 414(d)) if such transfer is—

20 “(A) for the purchase of permissive service
 21 credit (as defined in section 415(n)(3)(A))
 22 under such plan, or

23 “(B) a repayment to which section 415
 24 does not apply by reason of subsection (k)(3)
 25 thereof.”

1 (b) 457 PLANS.—Subsection (e) of section 457 of
 2 such Code, as amended by section 306, is amended by add-
 3 ing at the end the following new paragraph:

4 “(17) TRUSTEE-TO-TRUSTEE TRANSFERS TO
 5 PURCHASE PERMISSIVE SERVICE CREDIT.—No
 6 amount shall be includible in gross income by reason
 7 of a direct trustee-to-trustee transfer to a defined
 8 benefit governmental plan (as defined in section
 9 414(d)) if such transfer is—

10 “(A) for the purchase of permissive service
 11 credit (as defined in section 415(n)(3)(A))
 12 under such plan, or

13 “(B) a repayment to which section 415
 14 does not apply by reason of subsection (k)(3)
 15 thereof.”

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to trustee-to-trustee transfers after
 18 December 31, 1998.

19 **TITLE IV—COMPREHENSIVE**
 20 **WOMEN’S PENSION PROTECTION**
 21 **Subtitle A—Pension Reform**

22 **SEC. 401. PENSION RIGHT TO KNOW PROPOSALS.**

23 (a) SPOUSE’S RIGHT TO KNOW DISTRIBUTION IN-
 24 FORMATION.—

1 (1) AMENDMENT OF INTERNAL REVENUE
 2 CODE.—Paragraph (3) of section 417(a) of the In-
 3 ternal Revenue Code of 1986 (relating to definitions
 4 and special rules for purposes of minimum survivor
 5 annuity requirements) is amended by adding at the
 6 end the following new subparagraph:

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

19 (2) AMENDMENT OF ERISA.—Paragraph (3) of
 20 section 205(c) of Employee Retirement Income Se-
 21 curity Act of 1974 is amended by adding at the end
 22 the following new subparagraph:

23 “(C) EXPLANATION TO SPOUSE.—At the
 24 time a plan provides a participant with a writ-
 25 ten explanation under subparagraph (A) or (B),

1 such plan shall provide a copy of such expla-
 2 nation to such participant's spouse. If the last
 3 known address of the spouse is the same as the
 4 last known address of the participant, the re-
 5 quirement of the preceding sentence shall be
 6 treated as met if the copy referred to in the
 7 preceding sentence is included in a single mail-
 8 ing made to such address and addressed to both
 9 such participant and spouse."

10 (b) EMPLOYEE'S RIGHT TO KNOW OF OPPORTUNITY
 11 FOR ELECTIVE CONTRIBUTIONS UNDER 401(k) PLANS.—
 12 Subparagraph (D) of section 401(k)(12) of the Internal
 13 Revenue Code of 1986 (relating to notice requirements)
 14 is amended—

15 (1) by striking “, within a reasonable period be-
 16 fore any year,” and inserting “before the 60th day
 17 before the beginning of any year”, and

18 (2) by adding at the end the following new
 19 flush sentence:

20 “The requirements of paragraph (11)(B)(iii)
 21 shall apply for purposes of this subparagraph.”

22 **SEC. 402. WOMEN'S PENSION TOLL-FREE PHONE NUMBER.**

23 (a) IN GENERAL.—The Secretary of Labor shall con-
 24 tract with an independent organization to create a wom-

1 en's pension toll-free telephone number and contact to
2 serve as—

3 (1) a resource for women on pension questions
4 and issues;

5 (2) a source for referrals to appropriate agen-
6 cies; and

7 (3) a source for printed information.

8 (b) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated \$1,000,000 for each of
10 the fiscal years 1999, 2000, 2001, and 2002 to carry out
11 subsection (a).

12 **SEC. 403. MODIFICATION OF GOVERNMENT PENSION OFF-**
13 **SET.**

14 (a) WIFE'S INSURANCE BENEFITS.—Section
15 202(b)(4)(A) of the Social Security Act (42 U.S.C.
16 402(b)(4)(A)) is amended—

17 (1) by inserting “the amount (if any) by which
18 the sum of such benefit (before reduction under this
19 paragraph) and” after “two-thirds of”; and

20 (2) by inserting “exceeds the amount described
21 in subsection (z) for such month,” before “if”.

22 (b) HUSBAND'S INSURANCE BENEFITS.—Section
23 202(c)(2)(A) of such Act (42 U.S.C. 402(c)(2)(A)) is
24 amended—

1 (1) by inserting “the amount (if any) by which
2 the sum of such benefit (before reduction under this
3 paragraph) and” after “two-thirds of”; and

4 (2) by inserting “exceeds the amount described
5 in subsection (z) for such month,” before “if”.

6 (c) WIDOW’S INSURANCE BENEFITS.—Section
7 202(e)(7)(A) of such Act (42 U.S.C. 402(e)(7)(A)) is
8 amended—

9 (1) by inserting “the amount (if any) by which
10 the sum of such benefit (before reduction under this
11 paragraph) and” after “two-thirds of”; and

12 (2) by inserting “exceeds the amount described
13 in subsection (z) for such month,” before “if”.

14 (d) WIDOWER’S INSURANCE BENEFITS.—Section
15 202(f)(2)(A) of such Act (42 U.S.C. 402(f)(2)(A)) is
16 amended—

17 (1) by inserting “the amount (if any) by which
18 the sum of such benefit (before reduction under this
19 paragraph) and” after “two-thirds of”; and

20 (2) by inserting “exceeds the amount described
21 in subsection (z) for such month,” before “if”.

22 (e) MOTHER’S AND FATHER’S INSURANCE BENE-
23 FITS.—Section 202(g)(4)(A) of such Act (42 U.S.C.
24 402(g)(4)(A)) is amended—

1 (1) by inserting “the amount (if any) by which
2 the sum of such benefit (before reduction under this
3 paragraph) and” after “two-thirds of”; and

4 (2) by inserting “exceeds the amount described
5 in subsection (z) for such month,” before “if”.

6 (f) AMOUNT DESCRIBED.—Section 202 of such Act
7 (42 U.S.C. 402) is amended by adding at the end the fol-
8 lowing:

9 “(z) The amount described in this subsection is, for
10 months in each 12-month period beginning in December
11 of 1998, and each succeeding calendar year, the greater
12 of—

13 “(1) \$1200; or

14 “(2) the amount applicable for months in the
15 preceding 12-month period, increased by the cost-of-
16 living adjustment for such period determined for an
17 annuity under section 8340 of title 5, United States
18 Code (without regard to any other provision of
19 law).”

20 (g) LIMITATIONS ON REDUCTIONS IN BENEFITS.—
21 Section 202 of such Act (42 U.S.C. 402), as amended by
22 subsection (f), is amended by adding at the end the follow-
23 ing:

24 “(aa) For any month after December 1998, in no
25 event shall an individual receive a reduction in a benefit

1 under subsection (b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A),
 2 or (g)(4)(A) for the month that is more than the reduction
 3 in such benefit that would have applied for such month
 4 under such subsections as in effect on December 1, 1998.”

5 (h) EFFECTIVE DATE.—The amendments made by
 6 this section shall apply with respect to monthly insurance
 7 benefits payable under title II of the Social Security Act
 8 for months after December 1998.

9 **SEC. 404. PERIODS OF FAMILY AND MEDICAL LEAVE**
 10 **TREATED AS HOURS OF SERVICE FOR PEN-**
 11 **SION PARTICIPATION AND VESTING.**

12 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

13 (1) PARTICIPATION.—

14 (A) IN GENERAL.—Paragraph (3) of sec-
 15 tion 410(a) of the Internal Revenue Code of
 16 1986 (relating to minimum participation stand-
 17 ards) is amended by adding at the end the fol-
 18 lowing new subparagraph:

19 “(E) FAMILY AND MEDICAL LEAVE TREAT-
 20 ED AS SERVICE.—

21 “(i) IN GENERAL.—For purposes of
 22 this subsection, in the case of an individual
 23 who is absent from work on leave required
 24 to be given to such individual under the

1 Family and Medical Leave Act of 1993,
2 the plan shall treat as hours of service—

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

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

11 “(ii) YEAR TO WHICH HOURS ARE
12 CREDITED.—The hours described in clause
13 (i) shall be treated as hours of service as
14 provided in this subparagraph—

15 “(I) only in the year in which the
16 absence from work begins, if a partici-
17 pant would have a year of service sole-
18 ly because the period of absence is
19 treated as hours of service as provided
20 in clause (i); or

21 “(II) in any other case, in the
22 immediately following year.”

23 (B) COORDINATION WITH TREATMENT OF
24 MATERNITY AND PATERNITY ABSENCES UNDER

BREAK IN SERVICE RULES.—Subparagraph (E) of section 411(a)(6) of such Code is amended—

(i) by inserting “NOT UNDER FAMILY AND MEDICAL LEAVE ACT OF 1993” after “ABSENCES” in the heading, and

(ii) by adding at the end of clause (i) the following new sentence: “The preceding sentence shall apply to an absence from work only if no part of such absence is required to be given under the Family and Medical Leave Act of 1993.”

(2) VESTING.—

(A) IN GENERAL.—Paragraph (5) of section 411(a) of such Code (relating to minimum vesting standards) is amended by adding at the end the following new subparagraph:

“(E) FAMILY AND MEDICAL LEAVE TREATED AS SERVICE.—

“(i) IN GENERAL.—For purposes of this subsection, in the case of an individual who is absent from work on leave required to be given to such individual under the Family and Medical Leave Act of 1993, the plan shall treat as hours of service—

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

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

9 “(ii) YEAR TO WHICH HOURS ARE
10 CREDITED.—The hours described in clause
11 (i) shall be treated as hours of service as
12 provided in this subparagraph—

13 “(I) only in the year in which the
14 absence from work begins, if a partici-
15 pant would have a year of service sole-
16 ly because the period of absence is
17 treated as hours of service as provided
18 in clause (i); or

19 “(II) in any other case, in the
20 immediately following year.”

21 (B) COORDINATION WITH TREATMENT OF
22 MATERNITY AND PATERNITY ABSENCES UNDER
23 BREAK IN SERVICE RULES.—Subparagraph (E)
24 of section 411(a)(6) of such Code is amended—

1 (i) by inserting “NOT UNDER FAMILY
2 AND MEDICAL LEAVE ACT OF 1993” after
3 “ABSENCES” in the heading, and

4 (ii) by adding at the end of clause (i)
5 the following new sentence: “The preceding
6 sentence shall apply to an absence from
7 work only if no part of such absence is re-
8 quired to be given under the Family and
9 Medical Leave Act of 1993.”

10 (b) AMENDMENTS OF ERISA.—

11 (1) PARTICIPATION.—

12 (A) IN GENERAL.—Paragraph (3) of sec-
13 tion 202(a) of the Employee Retirement Income
14 Security Act of 1974 (relating to minimum par-
15 ticipation standards) is amended by adding at
16 the end the following new subparagraph:

17 “(E)(i) For purposes of this subsection, in the case
18 of an individual who is absent from work on leave required
19 to be given to such individual under the Family and Medi-
20 cal Leave Act of 1993, the plan shall treat as hours of
21 service—

22 “(I) the hours of service which otherwise would
23 normally have been credited to such individual but
24 for such absence, or

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

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

6 “(I) only in the year in which the absence from
 7 work begins, if a participant would have a year of
 8 service solely because the period of absence is treat-
 9 ed as hours of service as provided in clause (i); or

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

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

21 (2) VESTING.—

22 (A) IN GENERAL.—Paragraph (2) of sec-
 23 tion 203(b) of such Act (relating to minimum
 24 vesting standards) is amended by adding at the
 25 end the following new subparagraph:

1 “(E)(i) For purposes of this subsection, in the case
 2 of an individual who is absent from work on leave required
 3 to be given to such individual under the Family and Medi-
 4 cal Leave Act of 1993, the plan shall treat as hours of
 5 service—

6 “(I) the hours of service which otherwise would
 7 normally have been credited to such individual but
 8 for such absence, or

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

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

14 “(I) only in the year in which the absence from
 15 work begins, if a participant would have a year of
 16 service solely because the period of absence is treat-
 17 ed as hours of service as provided in clause (i); or

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

20 (B) COORDINATION WITH TREATMENT OF
 21 MATERNITY AND PATERNITY ABSENCES UNDER
 22 BREAK IN SERVICE RULES.—Clause (i) of sec-
 23 tion 203(b)(3)(E) of such Act is amended by
 24 adding at the end of clause (i) the following
 25 new sentence: “The preceding sentence shall

1 apply to an absence from work only if no part
 2 of such absence is required to be given under
 3 the Family and Medical Leave Act of 1993.”

4 **SEC. 405. PENSION INTEGRATION RULES.**

5 (a) APPLICABILITY OF NEW INTEGRATION RULES
 6 EXTENDED TO ALL EXISTING ACCRUED BENEFITS.—
 7 Notwithstanding subsection (c)(1) of section 1111 of the
 8 Tax Reform Act of 1986 (relating to effective date of ap-
 9 plication of nondiscrimination rules to integrated plans)
 10 (100 Stat. 2440), effective for plan years beginning after
 11 the date of the enactment of this Act, the amendments
 12 made by subsection (a) of such section 1111 shall also
 13 apply to benefits attributable to plan years beginning on
 14 or before December 31, 1988.

15 (b) INTEGRATION DISALLOWED FOR SIMPLIFIED
 16 EMPLOYEE PENSIONS.—

17 (1) IN GENERAL.—Subparagraph (D) of section
 18 408(k)(3) of the Internal Revenue Code of 1986 (re-
 19 lating to permitted disparity under rules limiting
 20 discrimination under simplified employee pensions)
 21 is repealed.

22 (2) CONFORMING AMENDMENT.—Subparagraph
 23 (C) of such section 408(k)(3) is amended by striking
 24 “and except as provided in subparagraph (D),”.

1 (3) EFFECTIVE DATE.—The amendments made
2 by this subsection shall apply with respect to taxable
3 years beginning on or after January 1, 1998.

4 (c) EVENTUAL REPEAL OF INTEGRATION RULES.—
5 Effective for plan years beginning on or after January 1,
6 2004—

7 (1) subparagraphs (C) and (D) of section
8 401(a)(5) of the Internal Revenue Code of 1986 (re-
9 lating to pension integration exceptions under non-
10 discrimination requirements for qualification) are re-
11 pealed, and subparagraph (E) of such section
12 401(a)(5) is redesignated as subparagraph (C); and

13 (2) subsection (l) of section 401 of such Code
14 (relating to nondiscriminatory coordination of de-
15 fined contribution plans with OASDI) is repealed.

16 **SEC. 406. DIVISION OF PENSION BENEFITS UPON DIVORCE.**

17 (a) AMENDMENTS TO THE INTERNAL REVENUE
18 CODE OF 1986.—Section 414(p) of the Internal Revenue
19 Code of 1986 (relating to qualified domestic relations
20 order defined) is amended by redesignating paragraph
21 (12) as paragraph (13) and by adding at the end the fol-
22 lowing new paragraph:

23 “(12) SPECIAL RULES AND PROCEDURES FOR
24 DOMESTIC RELATIONS ORDERS NOT SPECIFYING DI-
25 VISION OF PENSION BENEFITS.—

1 “(A) IN GENERAL.—If—

2 “(i) a domestic relations order (in-
3 cluding an annulment or other order of
4 marital dissolution) relates to provision of
5 marital property with respect to a mar-
6 riage of at least 5 years duration between
7 the participant and the former spouse,

8 “(ii)(I) such order (and any prior
9 order) does not specifically provide that
10 pension benefits were considered by the
11 parties and no division is intended, and

12 “(II) such order is not a qualified do-
13 mestic relations order without regard to
14 this paragraph and there is no other prior
15 qualified domestic relations order issued in
16 connection with the dissolution of the mar-
17 riage to which such order relates, and

18 “(iii) the former spouse notifies a plan
19 within the period prescribed under sub-
20 paragraph (C) that the former spouse is
21 entitled to benefits under the plan in ac-
22 cordance with the provisions of this para-
23 graph,

24 then such domestic relations order shall be
25 treated as a qualified domestic relations order

1 for purposes of this subsection and section
2 401(a)(13).

3 “(B) AMOUNT OF BENEFIT.—

4 “(i) IN GENERAL.—Any domestic rela-
5 tions order treated as a qualified domestic
6 relations order under subparagraph (A)
7 shall be treated as specifying that the
8 former spouse is entitled to the applicable
9 percentage of the marital share of the par-
10 ticipant’s accrued benefit.

11 “(ii) MARITAL SHARE.—For purposes
12 of clause (i), the marital share of a partici-
13 pant’s accrued benefit is an amount equal
14 to the product of—

15 “(I) such benefit as of the date
16 of the first payment under the plan
17 (to the extent such accrued benefit is
18 vested at the date of the divorce or
19 any later date), and

20 “(II) a fraction the numerator of
21 which is the period of participation by
22 the participant under the plan start-
23 ing with the date of marriage and
24 ending with the date of divorce, and
25 the denominator of which is the total

1 period of participation by the partici-
 2 pant under the plan.

3 “(iii) APPLICABLE PERCENTAGE.—

4 For purposes of this subparagraph, the ap-
 5 plicable percentage is—

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

8 “(II) in the case of a participant
 9 who fails to provide the plan with no-
 10 tice of a domestic relations order
 11 within the time prescribed under sub-
 12 paragraph (C), 67 percent.

13 “(C) NOTICE REQUIREMENTS.—

14 “(i) NOTICE BY EMPLOYEE.—Each
 15 employee who is a participant in a pension
 16 plan shall, within 60 days after the dis-
 17 solution of the marriage of the employee—

18 “(I) notify the plan administrator
 19 of the plan of such dissolution, and

20 “(II) provide to the plan adminis-
 21 trator a copy of the domestic relations
 22 order (including an annulment or
 23 other order of marital dissolution)
 24 providing for such dissolution and the

1 last known address of the employee's
2 former spouse.

3 “(ii) NOTICE BY PLAN ADMINIS-
4 TRATOR.—Each plan administrator receiv-
5 ing notice under clause (i) shall promptly
6 notify the former spouse of a participant of
7 such spouse's rights under this paragraph,
8 including the time period within which
9 such spouse is required to notify the plan
10 of the spouse's intention to claim rights
11 under this paragraph.

12 “(iii) NOTICE BY FORMER SPOUSE.—
13 A former spouse may notify the plan ad-
14 ministrator of such spouse's intent to claim
15 rights under this paragraph at any time
16 before the last day of the 1-year period fol-
17 lowing receipt of notice under clause (ii).

18 “(iv) COORDINATION WITH PLAN PRO-
19 CEDURES.—The determination under para-
20 graph (6)(A)(ii) with respect to a domestic
21 relations order to which this paragraph ap-
22 plies shall be made within a reasonable pe-
23 riod of time after the plan administrator
24 receives the notice described in clause (iii).

1 “(D) INTERPRETATION AS QUALIFIED DO-
2 MESTIC RELATIONS ORDER.—Each plan shall
3 establish reasonable rules for determining how
4 any such deemed domestic relations order is to
5 be interpreted under the plan so as to con-
6 stitute a qualified domestic relations order that
7 satisfies paragraphs (2) through (4) (and a
8 copy of such rules shall be provided to such
9 former spouse promptly after delivery of the di-
10 vorce decree). Such rules—

11 “(i) may delay the effect of such an
12 order until the earlier of the date the par-
13 ticipant is fully vested or has terminated
14 employment,

15 “(ii) may allow the former spouse to
16 be paid out immediately,

17 “(iii) shall permit the former spouse
18 to be paid not later than the earliest retire-
19 ment age under the plan or the partici-
20 pant’s death,

21 “(iv) may require the submitter of the
22 divorce decree to present a marriage cer-
23 tificate or other evidence of the marriage
24 date to assist in benefit calculations, and

1 “(v) may conform to the rules applica-
 2 ble to qualified domestic relations orders
 3 regarding form or type of benefit.”

4 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 5 INCOME SECURITY ACT OF 1974.—Section 206(d)(3) of
 6 the Employee Retirement Income Security Act of 1974
 7 (29 U.S.C. 1056(d)(3)) is amended by redesignating sub-
 8 paragraph (N) as subparagraph (O) and by inserting after
 9 subparagraph (M) the following new subparagraph:

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

13 “(i) IN GENERAL.—If—

14 “(I) a domestic relations order
 15 (including an annulment or other
 16 order of marital dissolution) relates to
 17 provision of marital property with re-
 18 spect to a marriage of at least 5 years
 19 duration between the participant and
 20 the former spouse,

21 “(II)(aa) such order (and any
 22 prior order) does not specifically pro-
 23 vide that pension benefits were consid-
 24 ered by the parties and no division is
 25 intended, or

1 “(bb) such order is a qualified
2 domestic relations order without re-
3 gard to this subparagraph or there is
4 no other prior qualified domestic rela-
5 tions order issued in connection with
6 the dissolution of the marriage to
7 which such order relates, and

8 “(III) the former spouse notifies
9 a plan within the period prescribed
10 under clause (iii) that the former
11 spouse is entitled to benefits under
12 the plan in accordance with the provi-
13 sions of this subparagraph,

14 then such domestic relations order shall be
15 treated as a qualified domestic relations
16 order for purposes of this paragraph.

17 “(ii) AMOUNT OF BENEFIT.—

18 “(I) IN GENERAL.—Any domestic
19 relations order treated as a qualified
20 domestic relations order under clause
21 (i) shall be treated as specifying that
22 the former spouse is entitled to the
23 applicable percentage of the marital
24 share of the participant’s accrued ben-
25 efit.

1 “(II) MARITAL SHARE.—For
2 purposes of subclause (I), the marital
3 share of a participant’s accrued bene-
4 fit is an amount equal to the product
5 of—

6 “(aa) such benefit as of the
7 date of the first payment under
8 the plan (to the extent such ac-
9 crued benefit is vested at the
10 date of the divorce or any later
11 date), and

12 “(bb) the numerator of
13 which is the period of participa-
14 tion by the participant under the
15 plan starting with the date of
16 marriage and ending with the
17 date of divorce, and the denomi-
18 nator of which is the total period
19 of participation by the partici-
20 pant under the plan.

21 “(III) APPLICABLE PERCENT-
22 AGE.—For purposes of this clause, the
23 applicable percentage is—

24 “(aa) except as provided in
25 item (bb), 50 percent, and

1 “(bb) in the case of a partic-
2 ipant who fails to provide the
3 plan with notice of a domestic re-
4 lations order within the time pre-
5 scribed under clause (iii), 67 per-
6 cent.

7 “(iii) NOTICE REQUIREMENTS.—

8 “(I) NOTICE BY EMPLOYEE.—
9 Each employee who is a participant in
10 a pension plan shall, within 60 days
11 after the dissolution of the marriage
12 of the employee—

13 “(aa) notify the plan admin-
14 istrator of the plan of such dis-
15 solution, and

16 “(bb) provide to the plan ad-
17 ministrator a copy of the domes-
18 tic relations order (including an
19 annulment or other order of mar-
20 ital dissolution) providing for
21 such dissolution and the last
22 known address of the employee’s
23 former spouse.

24 “(II) NOTICE BY PLAN ADMINIS-
25 TRATOR.—Each plan administrator

1 receiving notice under subclause (I)
2 shall promptly notify the former
3 spouse of a participant of such
4 spouse's rights under this subpara-
5 graph, including the time period with-
6 in which such spouse is required to
7 notify the plan of the spouse's inten-
8 tion to claim rights under this sub-
9 paragraph.

10 “(III) NOTICE BY FORMER
11 SPOUSE.—A former spouse may notify
12 the plan administrator of such
13 spouse's intent to claim rights under
14 this subparagraph at any time before
15 the last day of the 1-year period fol-
16 lowing receipt of notice under sub-
17 clause (II).

18 “(IV) COORDINATION WITH PLAN
19 PROCEDURES.—The determination
20 under subparagraph (G)(i)(II) with
21 respect to a domestic relations order
22 to which this subparagraph applies
23 shall be made within a reasonable pe-
24 riod of time after the plan adminis-

1 trator receives the notice described in
2 subclause (III).

3 “(iv) INTERPRETATION AS QUALIFIED
4 DOMESTIC RELATIONS ORDER.—Each plan
5 shall establish reasonable rules for deter-
6 mining how any such deemed domestic re-
7 lations order is to be interpreted under the
8 plan so as to constitute a qualified domes-
9 tic relations order that satisfies subpara-
10 graphs (C) through (E) (and a copy of
11 such rules shall be provided to such former
12 spouse promptly after delivery of the di-
13 vorce decree). Such rules—

14 “(I) may delay the effect of such
15 an order until the earlier of the date
16 the participant is fully vested or has
17 terminated employment,

18 “(II) may allow the former
19 spouse to be paid out immediately,

20 “(III) shall permit the former
21 spouse to be paid not later than the
22 earliest retirement age under the plan
23 or the participant’s death,

24 “(IV) may require the submitter
25 of the divorce decree to present a

1 marriage certificate or other evidence
 2 of the marriage date to assist in bene-
 3 fit calculations, and
 4 “(V) may conform to the rules
 5 applicable to qualified domestic rela-
 6 tions orders regarding form or type of
 7 benefit.”

8 **SEC. 407. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**
 9 **ROAD RETIREMENT ANNUITIES INDEPEND-**
 10 **ENT OF ACTUAL ENTITLEMENT OF EM-**
 11 **PLOYEE.**

12 Section 2 of the Railroad Retirement Act of 1974 (45
 13 U.S.C. 231a) is amended—

14 (1) in subsection (c)(4)(i), by striking “(A) is
 15 entitled to an annuity under subsection (a)(1) and
 16 (B)”;

17 (2) in subsection (e)(5), by striking “or di-
 18 vorced wife” the second place it appears.

19 **SEC. 408. EFFECTIVE DATES.**

20 (a) IN GENERAL.—Except as provided in subsection
 21 (b), the amendments made by this subtitle, other than sec-
 22 tions 403 and 405, shall apply with respect to plan years
 23 beginning on or after January 1, 1999, and the amend-
 24 ments made by section 406 shall apply only with respect
 25 to divorces becoming final in such plan years.

1 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
2 PLANS.—In the case of a plan maintained pursuant to 1
3 or more collective bargaining agreements between em-
4 ployee representatives and 1 or more employers ratified
5 on or before the date of the enactment of this Act, sub-
6 section (a) shall be applied to benefits pursuant to, and
7 individuals covered by, any such agreement by substituting
8 for “January 1, 1999” the date of the commencement of
9 the first plan year beginning on or after the earlier of—

10 (1) the later of—

11 (A) January 1, 2000, or

12 (B) the date on which the last of such col-
13 lective bargaining agreements terminates (de-
14 termined without regard to any extension there-
15 of after the date of the enactment of this Act),
16 or

17 (2) January 1, 2001.

1 **Subtitle B—Protection of Rights of**
2 **Former Spouses to Pension Ben-**
3 **efits Under Certain Government**
4 **and Government-Sponsored Re-**
5 **tirement Programs**

6 **SEC. 411. EXTENSION OF TIER II RAILROAD RETIREMENT**
7 **BENEFITS TO SURVIVING FORMER SPOUSES**
8 **PURSUANT TO DIVORCE AGREEMENTS.**

9 (a) IN GENERAL.—Section 5 of the Railroad Retire-
10 ment Act of 1974 (45 U.S.C. 231d) is amended by adding
11 at the end the following new subsection:

12 “(d) Notwithstanding any other provision of law, the
13 payment of any portion of an annuity computed under sec-
14 tion 3(b) to a surviving former spouse in accordance with
15 a court decree of divorce, annulment, or legal separation
16 or the terms of any court-approved property settlement
17 incident to any such court decree shall not be terminated
18 upon the death of the individual who performed the service
19 with respect to which such annuity is so computed unless
20 such termination is otherwise required by the terms of
21 such court decree.”

22 (b) EFFECTIVE DATE.—The amendment made by
23 this section shall take effect on the date of the enactment
24 of this Act.

1 **SEC. 412. SURVIVOR ANNUITIES FOR WIDOWS, WIDOWERS,**
 2 **AND FORMER SPOUSES OF FEDERAL EM-**
 3 **PLOYEES WHO DIE BEFORE ATTAINING AGE**
 4 **FOR DEFERRED ANNUITY UNDER CIVIL**
 5 **SERVICE RETIREMENT SYSTEM.**

6 (a) BENEFITS FOR WIDOW OR WIDOWER.—Section
 7 8341(f) of title 5, United States Code, is amended—

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

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

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

16 (2) in paragraph (1)—

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

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

21 (3) in the undesignated sentence following para-
 22 graph (2)—

23 (A) in the matter preceding subparagraph

24 (A) by inserting “former employee or” before
 25 “Member”; and

1 (B) in subparagraph (B) by inserting
2 “former employee or” before “Member”.

3 (b) BENEFITS FOR FORMER SPOUSE.—Section
4 8341(h) of title 5, United States Code, is amended—

5 (1) in paragraph (1) by adding after the first
6 sentence “Subject to paragraphs (2) through (5) of
7 this subsection, a former spouse of a former em-
8 ployee who dies after having separated from the
9 service with title to a deferred annuity under section
10 8338(a) but before having established a valid claim
11 for annuity is entitled to a survivor annuity under
12 this subsection, if and to the extent expressly pro-
13 vided for in an election under section 8339(j)(3) of
14 this title, or in the terms of any decree of divorce
15 or annulment or any court order or court-approved
16 property settlement agreement incident to such de-
17 cree.”; and

18 (2) in paragraph (2)—

19 (A) in subparagraph (A)(ii) by striking “or
20 annuitant,” and inserting “annuitant, or former
21 employee”; and

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

24 (c) PROTECTION OF SURVIVOR BENEFIT RIGHTS.—
25 Section 8339(j)(3) of title 5, United States Code, is

1 amended by inserting at the end the following: “The Office
 2 shall provide by regulation for the application of this sub-
 3 section to the widow, widower, or surviving former spouse
 4 of a former employee who dies after having separated from
 5 the service with title to a deferred annuity under section
 6 8338(a) but before having established a valid claim for
 7 annuity.”

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

12 **SEC. 413. PAYMENT OF LUMP-SUM BENEFITS TO FORMER**
 13 **SPOUSES OF FEDERAL EMPLOYEES.**

14 (a) CIVIL SERVICE RETIREMENT SYSTEM.—Chapter
 15 83 of title 5, United States Code, is amended—

16 (1) in section 8342(c), by striking “Lump-sum”
 17 and inserting “Except as provided in section
 18 8345(j), lump-sum”;

19 (2) in section 8345(j) by adding at the end of
 20 paragraph (1) the following: “Except for purposes of
 21 subparagraph (B), the first sentence of this para-
 22 graph shall be deemed to be amended by inserting
 23 after ‘that individual’ the following: ‘, and any lump-
 24 sum benefits authorized by section 8342(d) through

1 (f) which would otherwise be paid to any person or
 2 persons under section 8342(c),’ ”; and

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

4 “(4) Any payment under this subsection to a person
 5 bars recovery by any other person.”

6 (b) FEDERAL EMPLOYEES’ RETIREMENT SYSTEM.—

7 Chapter 84 of title 5, United States Code, is amended—

8 (1) in section 8424(d), by striking “Lump-sum”
 9 and inserting “Except as provided in section
 10 8467(a), lump-sum”; and

11 (2) in section 8467—

12 (A) in subsection (a), by adding at the end
 13 the following: “Except for purposes of para-
 14 graph (2), the first sentence of this subsection
 15 shall be deemed to be amended by inserting
 16 after ‘that individual’ the following: ‘, and any
 17 lump-sum benefits authorized by section
 18 8424(e) through (g) which would otherwise be
 19 paid to any individual or individuals under sec-
 20 tion 8424(d),’ ”; and

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

22 “(d) Any payment under this section to a person bars
 23 recovery by any other person.”

24 (c) EFFECTIVE DATE.—The amendments made by
 25 this section shall apply with respect to any amount payable

1 by reason of any death occurring on or after the date of
 2 the enactment of this Act.

3 **Subtitle C—Modifications of Joint**
 4 **and Survivor Annuity Require-**
 5 **ments**

6 **SEC. 421. MODIFICATIONS OF JOINT AND SURVIVOR ANNU-**
 7 **ITY REQUIREMENTS.**

8 (a) AMENDMENTS TO ERISA.—

9 (1) AMOUNT OF ANNUITY.—

10 (A) IN GENERAL.—Paragraph (1) of sec-
 11 tion 205(a) of the Employee Retirement Income
 12 Security Act of 1974 (29 U.S.C. 1055(a)) is
 13 amended by inserting “or, at the election of the
 14 participant, shall be provided in the form of a
 15 qualified joint and $\frac{2}{3}$ survivor annuity” after
 16 “survivor annuity,”.

17 (B) DEFINITION.—Subsection (d) of sec-
 18 tion 205 of such Act (29 U.S.C. 1055) is
 19 amended—

20 (i) by redesignating paragraphs (1)
 21 and (2) as subparagraphs (A) and (B), re-
 22 spectively,

23 (ii) by inserting “(1)” after “(d)”,
 24 and

1 (iii) by adding at the end the follow-
 2 ing new paragraph:

3 “(2) For purposes of this section, the term “qualified
 4 joint and $\frac{2}{3}$ survivor annuity” means a joint and survivor
 5 annuity under which the survivor annuity for the life of
 6 the surviving spouse is equal to at least $\frac{2}{3}$ of the amount
 7 of the annuity which is payable during the joint lives of
 8 the participant and spouse.”

9 (2) ILLUSTRATION REQUIREMENT.—Clause (i)
 10 of section 205(c)(3)(A) of such Act (29 U.S.C.
 11 1055(c)(3)(A)) is amended to read as follows:

12 “(i) the terms and conditions of each qualified
 13 joint and survivor annuity and qualified joint and $\frac{2}{3}$
 14 survivor annuity offered, accompanied by an illustra-
 15 tion of the benefits under each such annuity for the
 16 particular participant and spouse and an acknowl-
 17 edgement form to be signed by the participant and
 18 the spouse that they have read and considered the
 19 illustration before any form of retirement benefit is
 20 chosen,”.

21 (b) AMENDMENTS TO INTERNAL REVENUE CODE.—

22 (1) AMOUNT OF ANNUITY.—

23 (A) IN GENERAL.—Clause (i) of section
 24 401(a)(11)(A) of the Internal Revenue Code of
 25 1986 (relating to requirement of joint and sur-

vivor annuity and preretirement survivor annuity) is amended by inserting “or, at the election of the participant, shall be provided in the form of a qualified joint and $\frac{2}{3}$ survivor annuity” after “survivor annuity,”.

(B) DEFINITION.—Section 417 of such Code (relating to definitions and special rules for purposes of minimum survivor annuity requirements), as amended by section 422, is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) DEFINITION OF QUALIFIED JOINT AND $\frac{2}{3}$ SURVIVOR ANNUITY.—For purposes of this section and section 401(a)(11), the term “qualified joint and $\frac{2}{3}$ survivor annuity” means a joint and survivor annuity under which the survivor annuity for the life of the surviving spouse is equal to at least $\frac{2}{3}$ of the amount of the annuity which is payable during the joint lives of the participant and spouse.”

(2) ILLUSTRATION REQUIREMENT.—Clause (i) of section 417(a)(3)(A) of such Code (relating to explanation of joint and survivor annuity) is amended to read as follows:

1 “(i) the terms and conditions of each
 2 qualified joint and survivor annuity and
 3 qualified joint and $\frac{2}{3}$ survivor annuity of-
 4 fered, accompanied by an illustration of
 5 the benefits under each such annuity for
 6 the particular participant and spouse and
 7 an acknowledgement form to be signed by
 8 the participant and the spouse that they
 9 have read and considered the illustration
 10 before any form of retirement benefit is
 11 chosen,”.

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to plan years beginning on or after
 14 January 1, 1999.

15 **SEC. 422. SPOUSAL CONSENT REQUIRED FOR DISTRIBU-**
 16 **TIONS FROM DEFINED CONTRIBUTION**
 17 **PLANS.**

18 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF
 19 1986.—

20 (1) IN GENERAL.—Section 401(a)(11) of the
 21 Internal Revenue Code of 1986 (relating to require-
 22 ment of joint and survivor annuity and preretire-
 23 ment survivor annuity) is amended by striking sub-
 24 paragraphs (B), (C), and (D), by redesignating sub-
 25 paragraphs (E) and (F) as subparagraphs (C) and

(D), respectively, and by inserting after subparagraph (A) the following new subparagraph:

“(B) PLANS TO WHICH PARAGRAPH APPLIES.—This paragraph shall apply to any defined benefit plan and to any defined contribution plan.”

(2) EXCEPTION FOR HARDSHIP DISTRIBUTIONS.—Section 417(f) of such Code is amended by adding at the end the following new paragraph:

“(8) HARDSHIP DISTRIBUTIONS.—The requirements of section 401(a)(11) and this section shall not apply to a hardship distribution under section 401(k)(2)(B)(i)(IV).”

(3) SPECIAL RULE FOR CASH-OUTS.—Section 417(e) of such Code is amended by adding at the end the following new paragraph:

“(4) SPECIAL RULE FOR DEFINED CONTRIBUTION PLANS.—

“(A) IN GENERAL.—In the case of a defined contribution plan, notwithstanding paragraph (2), if the present value of the qualified joint and survivor annuity does not exceed \$10,000, the plan may immediately distribute 50 percent of the present value of such annuity to each spouse.

1 “(B) EXCEPTION.—The plan may distrib-
 2 ute a different percentage of the present value
 3 of an annuity to each spouse if a court order
 4 or contractual agreement provides for such dif-
 5 ferent percentage.”

6 (b) AMENDMENTS TO ERISA.—

7 (1) IN GENERAL.—Section 205(b) of the Em-
 8 ployee Retirement Income Security Act of 1974 (29
 9 U.S.C. 1055(b)) is amended to read as follows:

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

12 “(2) This section shall not apply to a plan which the
 13 Secretary of the Treasury or his delegate has determined
 14 is a plan described in section 404(c) of the Internal Reve-
 15 nue Code of 1986 (or a continuation thereof) in which par-
 16 ticipation is substantially limited to individuals who, be-
 17 fore January 1, 1976, ceased employment covered by the
 18 plan.”

19 (2) HARDSHIP DISTRIBUTION.—Section 205 of
 20 such Act (29 U.S.C. 1055) is amended by adding at
 21 the end the following new subsection:

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

1 (3) SPECIAL RULE FOR CASH-OUTS.—Section
2 205(g) of such Act (29 U.S.C. 1055(g)) is amended
3 by adding at the end the following new paragraph:

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

6 “(A) IN GENERAL.—In the case of an indi-
7 vidual account plan, notwithstanding paragraph
8 (2), if the present value of the qualified joint
9 and survivor annuity or the qualified preretire-
10 ment survivor annuity exceeds \$10,000, the
11 plan may immediately distribute 50 percent of
12 the present value of such annuity to each
13 spouse.

14 “(B) EXCEPTION.—The plan may distrib-
15 ute a different percentage of the present value
16 of an annuity to each spouse if a court order
17 or contractual agreement provides for such dif-
18 ferent percentage.”

19 (c) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to plan years beginning after De-
21 cember 31, 1999.

1 **TITLE V—DATE FOR ADOPTION**
 2 **OF PLAN AMENDMENTS**

3 **SEC. 501. DATE FOR ADOPTION OF PLAN AMENDMENTS.**

4 (a) IN GENERAL.—Except as otherwise provided in
 5 this Act, if any amendment made by this Act requires an
 6 amendment to any plan, such plan amendment shall not
 7 be required to be made before the last day of the first
 8 plan year beginning on or after January 1, 1999, if—

9 (1) during the period after such amendment
 10 takes effect and before the last day of such first
 11 plan year, the plan is operated in accordance with
 12 the requirements of such amendment, and

13 (2) such plan amendment applies retroactively
 14 to such period.

15 A plan shall not be treated as failing to provide definitely
 16 determinable benefits or contributions, or to be operated
 17 in accordance with the provisions of the plan, merely be-
 18 cause it operates in accordance with this subsection.

19 (b) GOVERNMENTAL PLANS.—In the case of a gov-
 20 ernmental plan (as defined in section 414(d) of the Inter-
 21 nal Revenue Code of 1986), subsection (a) shall be applied
 22 by substituting for “January 1, 1999” the later of—

23 (1) January 1, 2000, or

24 (2) the date which is 90 days after the opening
 25 of the first legislative session beginning after Janu-

1 ary 1, 1999, of the governing body with authority to
 2 amend the plan, but only if such governing body
 3 does not meet continuously.

4 (c) SPECIAL RULE FOR COLLECTIVELY BARGAINED
 5 PLANS.—Notwithstanding any other provision of this Act,
 6 in the case of a plan maintained pursuant to 1 or more
 7 collective bargaining agreements between employee rep-
 8 resentatives and 1 or more employers ratified on or before
 9 the date of the enactment of this Act, any amendment
 10 made by this Act which requires an amendment to such
 11 plan shall not be required to be made before the last day
 12 of the first plan year beginning on or after the earlier of—

13 (1) the later of—

14 (A) January 1, 1999, or

15 (B) the date on which the last of such col-
 16 lective bargaining agreements terminates (de-
 17 termined without regard to any extension there-
 18 of after the date of the enactment of this Act),

19 or

20 (2) January 1, 2000.

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