

107TH CONGRESS  
2D SESSION

# H. R. 3918

To amend the Employee Retirement Income Security Act of 1974 to simplify reporting and disclosure requirements, to provide Pension Benefit Guarantee Corporation premium relief, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 2002

Mr. PORTMAN (for himself, Mr. CARDIN, Mr. BOEHNER, and Mr. POMEROY) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Employee Retirement Income Security Act of 1974 to simplify reporting and disclosure requirements, to provide Pension Benefit Guarantee Corporation premium relief, and for other purposes.

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

3       **SECTION 1. SHORT TITLE.**

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

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

- Sec. 1. Short title.
- Sec. 2. Periodic pension benefits statements.
- Sec. 3. Reporting simplification.
- Sec. 4. Improvement of Employee Plans Compliance Resolution System.
- Sec. 5. Flexibility in nondiscrimination, coverage, and line of business rules.
- Sec. 6. Extension to all Governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 7. Notice and consent period regarding distributions.
- Sec. 8. Annual report dissemination.
- Sec. 9. Technical corrections to Saver Act.
- Sec. 10. Missing participants.
- Sec. 11. Reduced PBGC premium for new plans of small employers.
- Sec. 12. Reduction of additional PBGC premium for new and small plans.
- Sec. 13. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 14. Substantial owner benefits in terminated plans.
- Sec. 15. Civil penalties for breach of fiduciary responsibility.
- Sec. 16. Benefit suspension notice.
- Sec. 17. Studies.
- Sec. 18. Provisions relating to plan amendments.

### 3 SEC. 2. PERIODIC PENSION BENEFITS STATEMENTS.

4 (a) IN GENERAL.—Section 105(a) of the Employee

## 5 Retirement Income Security Act of 1974 (29 U.S.C. 1025)

6 (a)) is amended to read as follows:

7       “SEC. 105. (a)(1)(A) The administrator of an indi-  
8 vidual account plan shall furnish a pension benefit  
9 statement—

10                   “(i) to a plan participant at least once annually,

11 and

12                   “(ii) to a plan beneficiary upon written request.

13        "(B) The administrator of a defined benefit plan

14 shall furnish a pension benefit statement—

1                   “(i) at least once every 3 years to each  
2                   participant with a nonforfeitable accrued ben-  
3                   efit who is employed by the employer maintain-  
4                   ing the plan at the time the statement is fur-  
5                   nished to participants, and

6                   “(ii) to a plan participant or plan bene-  
7                   ficiary of the plan upon written request.

8           “(2) A pension benefit statement under paragraph  
9           (1)—

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

12               “(i) the total benefits accrued, and  
13               “(ii) the nonforfeitable pension benefits, if  
14               any, which have accrued, or the earliest date on  
15               which benefits will become nonforfeitable,

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

18               “(C) may be provided in written, electronic, or  
19               other appropriate form.

20           “(3)(A) In the case of a defined benefit plan, the re-  
21           quirements of paragraph (1)(B)(i) shall be treated as met  
22           with respect to a participant if the administrator provides  
23           the participant at least once each year with notice of the  
24           availability of the pension benefit statement and the ways  
25           in which the participant may obtain such statement. Such

1 notice shall be provided in written, electronic, or other ap-  
2 propriate form, and may be included with other commu-  
3 nications to the participant if done in a manner reasonably  
4 designed to attract the attention of the participant.

5       “(B) The Secretary may provide that years in which  
6 no employee or former employee benefits (within the  
7 meaning of section 410(b) of the Internal Revenue Code  
8 of 1986) under the plan need not be taken into account  
9 in determining the 3-year period under paragraph  
10 (1)(B)(i).”.

11       (b) CONFORMING AMENDMENTS.—

12           (1) Section 105 of the Employee Retirement In-  
13 come Security Act of 1974 (29 U.S.C. 1025) is  
14 amended by striking subsection (d).

15           (2) Section 105(b) of such Act (29 U.S.C.  
16 1025(b)) is amended to read as follows:

17           “(b) In no case shall a participant or beneficiary of  
18 a plan be entitled to more than one statement described  
19 in subsection (a)(1)(A) or (a)(1)(B)(ii), whichever is appli-  
20 cable, in any 12-month period.”.

21       (c) MODEL STATEMENTS.—The Secretary of Labor  
22 shall develop a model benefit statement, written in a man-  
23 ner calculated to be understood by the average plan partic-  
24 ipant, that may be used by plan administrators in com-

1 plying with the requirements of section 105 of the Em-  
2 ployee Retirement Income Security Act of 1974.

3 (d) EFFECTIVE DATE.—The provisions of subsection  
4 (a) shall take effect for plan years beginning on or after  
5 January 1, 2003.

6 **SEC. 3. REPORTING SIMPLIFICATION.**

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

9 (1) IN GENERAL.—The Secretary of the Treas-  
10 ury and the Secretary of Labor shall modify the re-  
11 quirements for filing annual returns with respect to  
12 one-participant retirement plans to ensure that such  
13 plans with assets of \$250,000 or less as of the close  
14 of the plan year need not file a return for that year.

15 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
16 FINED.—For purposes of this subsection, the term  
17 “one-participant retirement plan” means a retire-  
18 ment plan that—

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

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

24 (ii) covered only one or more partners  
25 (and their spouses) in a business partner-

1 ship (including partners in an S or C cor-  
2 poration);

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

11 (D) does not cover a business that is a  
12 member of an affiliated service group, a con-  
13 trolled group of corporations, or a group of  
14 businesses under common control; and

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

24 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
25 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case

1 of plan years beginning after December 31, 2003, the Sec-  
2 retary of the Treasury and the Secretary of Labor shall  
3 provide for the filing of a simplified annual return for any  
4 retirement plan which covers less than 25 employees on  
5 the first day of a plan year and which meets the require-  
6 ments described in subparagraphs (B), (D), and (E) of  
7 subsection (a)(2).

8 **SEC. 4. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE**

9 **RESOLUTION SYSTEM.**

10 The Secretary of the Treasury shall continue to up-  
11 date and improve the Employee Plans Compliance Resolu-  
12 tion System (or any successor program) giving special at-  
13 tention to—

14 (1) increasing the awareness and knowledge of  
15 small employers concerning the availability and use  
16 of the program;

17 (2) taking into account special concerns and  
18 circumstances that small employers face with respect  
19 to compliance and correction of compliance failures;

20 (3) extending the duration of the self-correction  
21 period under the Self-Correction Program for signifi-  
22 cant compliance failures;

23 (4) expanding the availability to correct insig-  
24 nificant compliance failures under the Self-Correc-  
25 tion Program during audit; and

5 The Secretary of the Treasury shall have full authority  
6 to effectuate the foregoing with respect to the Employee  
7 Plans Compliance Resolution System (or any successor  
8 program) and any other employee plans correction poli-  
9 cies, including the authority to waive income, excise, or  
10 other taxes to ensure that any tax, penalty, or sanction  
11 is not excessive and bears a reasonable relationship to the  
12 nature, extent, and severity of the failure.

## 13 SEC. 5. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, 14 AND LINE OF BUSINESS RULES.

15 (a) NONDISCRIMINATION.—

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

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

4 Subparagraph (B) shall only apply to the extent pro-  
5 vided by the Secretary.

6 (2) EFFECTIVE DATES.—

10 (B) CONDITIONS OF AVAILABILITY.—Any  
11 condition of availability prescribed by the Sec-  
12 retary under paragraph (1)(A) shall not apply  
13 before the first year beginning not less than  
14 120 days after the date on which such condition  
15 is prescribed.

## 16 (b) COVERAGE TEST.—

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

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

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

7                         “(iii) satisfies conditions prescribed by  
8                         the Secretary by regulation that appro-  
9                         priately limit the availability of this sub-  
10                         paragraph.

11                         Clause (ii) shall apply only to the extent pro-  
12                         vided by the Secretary.”.

13                         (2) EFFECTIVE DATES.—

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

17                         (B) CONDITIONS OF AVAILABILITY.—Any  
18                         condition of availability prescribed by the Sec-  
19                         retary under regulations prescribed by the Sec-  
20                         retary under section 410(b)(1)(D) of the Inter-  
21                         nal Revenue Code of 1986 shall not apply be-  
22                         fore the first year beginning not less than 120  
23                         days after the date on which such condition is  
24                         prescribed.

1        (c) LINE OF BUSINESS RULES.—The Secretary of  
2 the Treasury shall, on or before December 31, 2003, mod-  
3 ify the existing regulations issued under section 414(r) of  
4 the Internal Revenue Code of 1986 in order to expand  
5 (to the extent that the Secretary determines appropriate)  
6 the ability of a pension plan to demonstrate compliance  
7 with the line of business requirements based upon the  
8 facts and circumstances surrounding the design and oper-  
9 ation of the plan, even though the plan is unable to satisfy  
10 the mechanical tests currently used to determine compli-  
11 ance.

12 SEC. 6. EXTENSION TO ALL GOVERNMENTAL PLANS OF  
13 MORATORIUM ON APPLICATION OF CERTAIN  
14 NONDISCRIMINATION RULES APPLICABLE TO  
15 STATE AND LOCAL PLANS.

16 (a) IN GENERAL.—

22 (2) Subparagraph (G) of section 401(k)(3) and  
23 paragraph (2) of section 1505(d) of the Taxpayer  
24 Relief Act of 1997 are each amended by striking  
25 “maintained by a State or local government or polit-

1       ical subdivision thereof (or agency or instrumentality  
2       thereof)”.

3 (b) CONFORMING AMENDMENTS.—

14 (c) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply to years beginning after December  
16 31, 2002.

17 SEC. 7. NOTICE AND CONSENT PERIOD REGARDING DIS-  
18 TRIBUTIONS.

19 (a) EXPANSION OF PERIOD.—

20 (1) AMENDMENT OF INTERNAL REVENUE  
21 CODE.—

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

## 1 (B) MODIFICATION OF REGULATIONS.—

2 The Secretary of the Treasury shall modify the  
3 regulations under sections 402(f), 411(a)(11),  
4 and 417 of the Internal Revenue Code of 1986  
5 to substitute “180 days” for “90 days” each  
6 place it appears in Treasury Regulations sec-  
7 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–  
8 1(b).

## 9 (2) AMENDMENT OF ERISA.—

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

14 (B) MODIFICATION OF REGULATIONS.—  
15 The Secretary of the Treasury shall modify the  
16 regulations under part 2 of subtitle B of title  
17 I of the Employee Retirement Income Security  
18 Act of 1974 to the extent that they relate to  
19 sections 203(e) and 205 of such Act to sub-  
20 stitute “180 days” for “90 days” each place it  
21 appears.

22 (3) EFFECTIVE DATE.—The amendments made  
23 by paragraphs (1)(A) and (2)(A) and the modifica-  
24 tions required by paragraphs (1)(B) and (2)(B)

1 shall apply to years beginning after December 31,  
2 2002.

3 (b) CONSENT REGULATION INAPPLICABLE TO CER-  
4 TAIN DISTRIBUTIONS.—

5 (1) IN GENERAL.—The Secretary of the Treas-  
6 ury shall modify the regulations under section  
7 411(a)(11) of the Internal Revenue Code of 1986  
8 and under section 205 of the Employee Retirement  
9 Income Security Act of 1974 to provide that the de-  
10 scription of a participant's right, if any, to defer re-  
11 ceipt of a distribution shall also describe the con-  
12 sequences of failing to defer such receipt.

13 (2) EFFECTIVE DATE.—

14 (A) IN GENERAL.—The modifications re-  
15 quired by paragraph (1) shall apply to years be-  
16 ginning after December 31, 2002.

17 (B) REASONABLE NOTICE.—In the case of  
18 any description of such consequences made be-  
19 fore the date that is 90 days after the date on  
20 which the Secretary of the Treasury issues a  
21 safe harbor description under paragraph (1), a  
22 plan shall not be treated as failing to satisfy the  
23 requirements of section 411(a)(11) of such  
24 Code or section 205 of such Act by reason of  
25 the failure to provide the information required

1           by the modifications made under paragraph (1)  
2           if the Administrator of such plan makes a rea-  
3           sonable attempt to comply with such require-  
4           ments.

5 **SEC. 8. ANNUAL REPORT DISSEMINATION.**

6       (a) REPORT AVAILABLE THROUGH ELECTRONIC  
7 MEANS.—Section 104(b)(3) of the Employee Retirement  
8 Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is  
9 amended by adding at the end the following new sentence:  
10 “The requirement to furnish information under the pre-  
11 vious sentence shall be satisfied if the administrator makes  
12 such information reasonably available through electronic  
13 means or other new technology.”.

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

17 **SEC. 9. TECHNICAL CORRECTIONS TO SAVER ACT.**

18       Section 517 of the Employee Retirement Income Se-  
19 curity Act of 1974 (29 U.S.C. 1147) is amended—

20           (1) in subsection (a), by striking “2001 and  
21           2005 on or after September 1 of each year involved”  
22           and inserting “2002, 2006, and 2010”;

23           (2) in subsection (b), by adding at the end the  
24           following new sentence: “To effectuate the purposes  
25           of this paragraph, the Secretary may enter into a co-

1 operative agreement, pursuant to the Federal Grant  
2 and Cooperative Agreement Act of 1977 (31 U.S.C.  
3 6301 et seq.), with any appropriate, qualified enti-  
4 ty.”;

5 (3) in subsection (e)(2)—

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

10 (B) by striking subparagraph (F) and in-  
11 serting the following:

12 “(F) the Chairman and Ranking Member  
13 of the Subcommittee on Labor, Health and  
14 Human Services, and Education of the Com-  
15 mittee on Appropriations of the House of Rep-  
16 resentatives and the Chairman and Ranking  
17 Member of the Subcommittee on Labor, Health  
18 and Human Services, and Education of the  
19 Committee on Appropriations of the Senate;”;

20 (C) by redesignating subparagraph (G) as  
21 subparagraph (J); and

22 (D) by inserting after subparagraph (F)  
23 the following new subparagraphs:

24 “(G) the Chairman and Ranking Member  
25 of the Committee on Finance of the Senate;

1                   “(H) the Chairman and Ranking Member  
2                   of the Committee on Ways and Means of the  
3                   House of Representatives;

4                   “(I) the Chairman and Ranking Member  
5                   of the Subcommittee on Employer-Employee  
6                   Relations of the Committee on Education and  
7                   the Workforce of the House of Representatives;  
8                   and”;

9                   (4) in subsection (e)(3)—

10                  (A) by striking “There shall be not more  
11                  than 200 additional participants.” in subparagraph  
12                  (A) and inserting “The participants in  
13                  the National Summit shall also include addi-  
14                  tional participants appointed under this sub-  
15                  paragraph.”;

16                  (B) by striking “one-half shall be ap-  
17                  pointed by the President,” in subparagraph  
18                  (A)(i) and inserting “not more than 100 par-  
19                  ticipants shall be appointed under this clause by  
20                  the President.”;

21                  (C) by striking “one-half shall be ap-  
22                  pointed by the elected leaders of Congress” in  
23                  subparagraph (A)(ii) and inserting “not more  
24                  than 100 participants shall be appointed under  
25                  this clause by the elected leaders of Congress”;

(D) by redesignating subparagraph (B) as subparagraph (C); and

(E) by inserting after subparagraph (A) the following new subparagraph:

5                             “(B) PRESIDENTIAL AUTHORITY FOR AD-  
6                             DITIONAL APPOINTMENTS.—The President, in  
7                             consultation with the elected leaders of Con-  
8                             gress referred to in subsection (a), may appoint  
9                             under this subparagraph additional participants  
10                            to the National Summit. The number of such  
11                            additional participants appointed under this  
12                            subparagraph may not exceed the lesser of 3  
13                            percent of the total number of all additional  
14                            participants appointed under this paragraph, or  
15                            10. Such additional participants shall be ap-  
16                            pointed from persons nominated by the organi-  
17                            zation referred to in subsection (b)(2) which is  
18                            made up of private sector businesses and asso-  
19                            ciations partnered with Government entities to  
20                            promote long term financial security in retire-  
21                            ment through savings and with which the Sec-  
22                            retary is required thereunder to consult and co-  
23                            operate and shall not be Federal, State, or local  
24                            government employees.”;

12 (8) in subsection (i)—

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

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

25 (9) in subsection (k)—

## 6 SEC. 10. MISSING PARTICIPANTS.

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

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

16       “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—  
17           “(1) TRANSFER TO CORPORATION.—The plan  
18       administrator of a plan described in paragraph (4)  
19       may elect to transfer a missing participant’s benefits  
20       to the corporation upon termination of the plan.

21       “(2) INFORMATION TO THE CORPORATION.—To  
22       the extent provided in regulations, the plan adminis-  
23       trator of a plan described in paragraph (4) shall,  
24       upon termination of the plan, provide the corpora-

1       tion information with respect to benefits of a missing  
2       participant if the plan transfers such benefits—

3               “(A) to the corporation, or

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

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

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

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

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

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

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

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

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

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

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

11                 (b) CONFORMING AMENDMENTS.—Section 206(f) of  
12                 such Act (29 U.S.C. 1056(f)) is amended—  
13                         (1) by striking “title IV” and inserting “section  
14                 4050”; and  
15                         (2) by striking “the plan shall provide that,”.

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

1 **SEC. 11. REDUCED PBGC PREMIUM FOR NEW PLANS OF**2 **SMALL EMPLOYERS.**

3 (a) IN GENERAL.—Subparagraph (A) of section  
4 4006(a)(3) of the Employee Retirement Income Security  
5 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

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

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

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

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

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

24 “(F)(i) For purposes of this paragraph, a single-em-  
25 ployer plan maintained by a contributing sponsor shall be  
26 treated as a new single-employer plan for each of its first

1 5 plan years if, during the 36-month period ending on the  
2 date of the adoption of such plan, the sponsor or any  
3 member of such sponsor's controlled group (or any prede-  
4 cessor of either) did not establish or maintain a plan to  
5 which this title applies with respect to which benefits were  
6 accrued for substantially the same employees as are in the  
7 new single-employer plan.

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

13       “(II) In the case of a plan maintained by two or more  
14 contributing sponsors that are not part of the same con-  
15 trolled group, the employees of all contributing sponsors  
16 and controlled groups of such sponsors shall be aggregated  
17 for purposes of determining whether any contributing  
18 sponsor is a small employer.”.

19       (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to plans established after Decem-  
21 ber 31, 2001.

22 **SEC. 12. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**  
23 **NEW AND SMALL PLANS.**

24       (a) NEW PLANS.—Subparagraph (E) of section  
25 4006(a)(3) of the Employee Retirement Income Security

1 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by  
2 adding at the end the following new clause:

3       “(v) In the case of a new defined benefit plan, the  
4 amount determined under clause (ii) for any plan year  
5 shall be an amount equal to the product of the amount  
6 determined under clause (ii) and the applicable per-  
7 age. For purposes of this clause, the term ‘applicable per-  
8 centage’ means—

9           “(I) 0 percent, for the first plan year.  
10          “(II) 20 percent, for the second plan year.  
11          “(III) 40 percent, for the third plan year.  
12          “(IV) 60 percent, for the fourth plan year.  
13          “(V) 80 percent, for the fifth plan year.

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

24       (b) SMALL PLANS.—Paragraph (3) of section  
25 4006(a) of the Employee Retirement Income Security Act

1 of 1974 (29 U.S.C. 1306(a)), as amended by section  
2 702(b), is amended—

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

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

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

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

23 (c) EFFECTIVE DATES.—

7 SEC. 13. AUTHORIZATION FOR PBGC TO PAY INTEREST ON  
8 PREMIUM OVERPAYMENT REFUNDS.

9 (a) IN GENERAL.—Section 4007(b) of the Employ-  
10 ment Retirement Income Security Act of 1974 (29 U.S.C.  
11 1307(b)) is amended—

12 (1) by striking "(b)" and inserting "(b)(1)",  
13 and

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

16       “(2) The corporation is authorized to pay, subject to  
17 regulations prescribed by the corporation, interest on the  
18 amount of any overpayment of premium refunded to a des-  
19 ignated payor. Interest under this paragraph shall be cal-  
20 culated at the same rate and in the same manner as inter-  
21 est is calculated for underpayments under paragraph  
22 (1).”.

23 (b) EFFECTIVE DATE.—The amendment made by  
24 subsection (a) shall apply to interest accruing for periods

1 beginning not earlier than the date of the enactment of  
2 this Act.

3 **SEC. 14. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**  
4 **PLANS.**

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

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

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

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

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

23 For purposes of clause (iii), the constructive ownership  
24 rules of section 1563(e) of the Internal Revenue Code of

1 1986 shall apply (determined without regard to section  
2 1563(e)(3)(C)).

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

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

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

14 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

15           (1) Section 4044(a)(4)(B) of the Employee Re-  
16 tirement Income Security Act of 1974 (29 U.S.C.  
17 1344(a)(4)(B)) is amended by striking “section  
18 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

19           (2) Section 4044(b) of such Act (29 U.S.C.  
20 1344(b)) is amended—

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

23               (B) by redesignating paragraphs (3)  
24 through (6) as paragraphs (4) through (7), re-

1                   spectively, and by inserting after paragraph (2)  
2                   the following new paragraph:

3                   “(3) If assets available for allocation under  
4                   paragraph (4) of subsection (a) are insufficient to  
5                   satisfy in full the benefits of all individuals who are  
6                   described in that paragraph, the assets shall be allo-  
7                   cated first to benefits described in subparagraph (A)  
8                   of that paragraph. Any remaining assets shall then  
9                   be allocated to benefits described in subparagraph  
10                   (B) of that paragraph. If assets allocated to such  
11                   subparagraph (B) are insufficient to satisfy in full  
12                   the benefits described in that subparagraph, the as-  
13                   sets shall be allocated pro rata among individuals on  
14                   the basis of the present value (as of the termination  
15                   date) of their respective benefits described in that  
16                   subparagraph.”.

17                   (c) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

19           (2) Section 4043(c)(7) of such Act (29 U.S.C.  
20 1343(c)(7)) is amended by striking “section  
21 4022(b)(6)” and inserting “section 4021(d)”.

22           (d) EFFECTIVE DATES.—

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

14 SEC. 15. CIVIL PENALTIES FOR BREACH OF FIDUCIARY RE-  
15 SPONSIBILITY.

16 (a) IMPOSITION AND AMOUNT OF PENALTY MADE  
17 DISCRETIONARY.—Section 502(l)(1) of the Employee Re-  
18 tirement Income Security Act of 1974 (29 U.S.C.  
19 1132(l)(1)) is amended—

20 (1) by striking "shall" and inserting "may",  
21 and

22 (2) by striking “equal to” and inserting “not  
23 greater than”.

24 (b) APPLICABLE RECOVERY AMOUNT.—Section  
25 502(l)(2) of such Act (29 U.S.C. 1132(l)(2)) is amended

1 by inserting after “fiduciary or other person” the fol-  
2 lowing: “(or from any other person on behalf of any such  
3 fiduciary or other person)”.

4 (c) OTHER RULES.—Section 502(l) of the Employee  
5 Retirement Income Security Act of 1974 (29 U.S.C.  
6 1132(l)) is amended by adding at the end the following  
7 new paragraphs:

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

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

16 (d) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to any breach of fiduciary responsi-  
18 bility or other violation of part 4 of subtitle B of title I  
19 of the Employee Retirement Income Security Act of 1974  
20 occurring on or after the date of the enactment of this  
21 Act.

22 **SEC. 16. BENEFIT SUSPENSION NOTICE.**

23 (a) MODIFICATION OF REGULATION.—The Secretary  
24 of Labor shall modify the regulation under subparagraph  
25 (B) of section 203(a)(3) of the Employee Retirement In-

- 1 come Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to
- 2 provide that the notification required by such regulation
- 3 in connection with any suspension of benefits described in
- 4 such subparagraph—

14 (A) may be included in the summary plan  
15 description for the plan furnished in accordance  
16 with section 104(b) of such Act (29 U.S.C.  
17 1024(b)), rather than in a separate notice, and  
18 (B) need not include a copy of the relevant  
19 plan provisions

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

## 23 SEC. 17. STUDIES.

24 (a) MODEL SMALL EMPLOYER GROUP PLANS  
25 STUDY.—As soon as practicable after the date of the en-

1 actment of this Act, the Secretary of Labor, in consulta-  
2 tion with the Secretary of the Treasury, shall conduct a  
3 study to determine—

4 (1) the most appropriate form or forms of—

5 (A) employee pension benefit plans which  
6 would—

7 (i) be simple in form and easily main-  
8 tained by multiple small employers, and  
9 (ii) provide for ready portability of  
10 benefits for all participants and bene-  
11 ficiaries,

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

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

19 (2) appropriate methods and strategies for  
20 making pension plan coverage described in para-  
21 graph (1) more widely available to American work-  
22 ers.

23 (b) MATTERS TO BE CONSIDERED.—In conducting  
24 the study under subsection (a), the Secretary of Labor  
25 shall consider the adequacy and availability of existing em-

1 employee pension benefit plans and the extent to which existing  
2 models may be modified to be more accessible to both  
3 employees and employers.

4 (c) REPORT.—Not later than 18 months after the  
5 date of the enactment of this Act, the Secretary of Labor  
6 shall report the results of the study under subsection (a),  
7 together with the Secretary's recommendations, to the  
8 Committee on Education and the Workforce and the Com-  
9 mittee on Ways and Means of the House of Representa-  
10 tives and the Committee on Health, Education, Labor,  
11 and Pensions and the Committee on Finance of the Sen-  
12 ate. Such recommendations shall include one or more  
13 model plans described in subsection (a)(1)(A) and model  
14 alternative arrangements described in subsections  
15 (a)(1)(B) and (a)(1)(C) which may serve as the basis for  
16 appropriate administrative or legislative action.

17 (d) STUDY ON EFFECT OF LEGISLATION.—Not later  
18 than 5 years after the date of the enactment of this Act,  
19 the Secretary of Labor shall submit to the Committee on  
20 Education and the Workforce of the House of Representa-  
21 tives and the Committee on Health, Education, Labor,  
22 and Pensions of the Senate a report on the effect of the  
23 provisions of this Act and title VI of the Economic Growth  
24 and Tax Relief Reconciliation Act of 2001 on pension plan  
25 coverage, including any change in—

## 9 SEC. 18. PROVISIONS RELATING TO PLAN AMENDMENTS.

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

22 (b) AMENDMENTS TO WHICH SECTION APPLIES.—

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

9        In the case of a governmental plan (as defined in  
10      section 414(d) of the Internal Revenue Code of  
11      1986), this paragraph shall be applied by sub-  
12      stituting “2007” for “2005”.

15 (A) during the period—

16 (i) beginning on the date the legis-  
17 tive or regulatory amendment described in  
18 paragraph (1)(A) takes effect (or in the  
19 case of a plan or contract amendment not  
20 required by such legislative or regulatory  
21 amendment, the effective date specified by  
22 the plan); and

23 (ii) ending on the date described in  
24 paragraph (1)(B) (or, if earlier, the date

1                   the plan or contract amendment is adopt-  
2                   ed),  
3                   the plan or contract is operated as if such plan  
4                   or contract amendment were in effect; and  
5                   (B) such plan or contract amendment ap-  
6                   plies retroactively for such period.

○