

107TH CONGRESS  
2D SESSION

# S. 2190

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide employees with greater control over assets in their pension accounts by providing them with better information about investment of the assets, new diversification rights, and new limitations on pension plan blackouts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 17, 2002

Mr. KERRY (for himself, Ms. SNOWE, Mrs. FEINSTEIN, and Mr. CHAFEE) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to provide employees with greater control over assets in their pension accounts by providing them with better information about investment of the assets, new diversification rights, and new limitations on pension plan blackouts, and for other purposes.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the  
 3 “Worker Investment and Retirement Education Act of  
 4 2002” or the “WIRE Act”.

5 (b) **TABLE OF CONTENTS.**—

Sec. 1. Short title; table of contents.

**TITLE I—ADEQUATE INVESTMENT EDUCATION**

Sec. 101. Defined contribution plans required to provide adequate investment  
 education to participants.

Sec. 102. Fiduciary rules for plan sponsors designating independent investment  
 advisers.

**TITLE II—DIVERSIFICATION REQUIREMENTS**

Sec. 201. Diversification requirements for certain plans holding employer secu-  
 rities.

Sec. 202. Allowance of deduction for dividends payable on employer securities  
 divested by participants.

**TITLE III—PARTICIPANT PROTECTIONS**

**Subtitle A—Participant Access**

Sec. 301. Protection of participants or beneficiaries from unannounced or un-  
 duly long pension plan blackout periods.

Sec. 302. Trades by owners, officers, or directors prohibited during pension  
 plan blackout periods.

**Subtitle B—Participant Advocacy**

Sec. 311. Office of Pension Participant Advocacy.

**TITLE IV—GENERAL PROVISIONS**

Sec. 401. Effective dates and related rules.

1                   **TITLE I—ADEQUATE**  
 2                   **INVESTMENT EDUCATION**

3 **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
 4                   **PROVIDE ADEQUATE INVESTMENT EDU-**  
 5                   **CATION TO PARTICIPANTS.**

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

9                   (1) **IN GENERAL.**—Chapter 43 of the Internal  
 10           Revenue Code of 1986 (relating to qualified pension,  
 11           etc., plans) is amended by adding at the end the fol-  
 12           lowing new section:

13 **“SEC. 4980G. FAILURE OF CERTAIN DEFINED CONTRIBU-**  
 14                   **TION PLANS TO PROVIDE ADEQUATE INVEST-**  
 15                   **MENT INFORMATION.**

16           “(a) **IMPOSITION OF TAX.**—There is hereby imposed  
 17 a tax on the failure of any applicable defined contribution  
 18 plan to meet the requirements of subsection (e) with re-  
 19 spect to any participant or beneficiary.

20           “(b) **AMOUNT OF TAX.**—

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

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

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

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

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

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

24                   “(B) such person provides the model form  
25 and personalized benefit statement described in

1 subsection (e) during the 30-day period begin-  
2 ning on the first date such person knew, or ex-  
3 ercising reasonable diligence should have  
4 known, that such failure existed.

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

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

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

1 under principles similar to the principles of sec-  
2 tion 1561.

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

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

11 “(1) In the case of a plan other than a multi-  
12 employer plan, the employer.

13 “(2) In the case of a multiemployer plan, the  
14 plan.

15 “(e) REQUIREMENTS TO PROVIDE ADEQUATE IN-  
16 VESTMENT INFORMATION.—

17 “(1) IN GENERAL.—The plan administrator of  
18 an applicable defined contribution plan shall provide  
19 to each participant and beneficiary at least once  
20 annually—

21 “(A) the model form relating to basic in-  
22 vestment guidelines which is described in para-  
23 graph (2), and

24 “(B) in the case of an applicable defined  
25 contribution plan with at least 100 participants,

1 the personalized benefit statement described in  
2 paragraph (3).

3 “(2) BASIC INVESTMENT GUIDELINES.—

4 “(A) IN GENERAL.—The Secretary shall,  
5 in consultation with the Secretary of Labor, de-  
6 velop and make available to applicable defined  
7 contribution plans for distribution under para-  
8 graph (1) a model form containing basic guide-  
9 lines for investing for retirement. Such guide-  
10 lines shall include—

11 “(i) information on the benefits of di-  
12 versification,

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

18 “(iii) information on how a partici-  
19 pant’s pension plan investment allocations  
20 may differ depending on the participant’s  
21 age and years to retirement and on other  
22 factors determined by the Secretary,

23 “(iv) sources of information where  
24 participants may learn more about pension

1 rights, individual investing, and investment  
2 advice, and

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

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

11 “(i) the retirement age annuity value  
12 of the participant’s or beneficiary’s non-  
13 forfeitable pension benefits under the plan  
14 (determined by reference to varied histor-  
15 ical annual rates of return and annuity in-  
16 terest rates), and

17 “(ii) other important amounts relating  
18 to retirement savings, including the  
19 amount which a participant would be re-  
20 quired to save to ensure a retirement in-  
21 come equal to various percentages of their  
22 current salary (adjusted for historical  
23 growth prior to retirement).

24 The Secretary of Labor shall develop an Inter-  
25 net site which a participant or beneficiary may



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

3 “(C) PUBLIC HEARING; UPDATING.—The  
4 Secretary shall—

5 “(i) provide at least 90 days for public  
6 comment before publishing final notice of  
7 the model form, and

8 “(ii) update the model form at least  
9 annually.

10 “(3) PENSION BENEFIT STATEMENTS.—The  
11 personalized benefit statement for purposes of para-  
12 graph (1)(B) shall include—

13 “(A) the total accrued benefits of the par-  
14 ticipant or beneficiary,

15 “(B) the nonforfeitable pension benefits, if  
16 any, of the participant or beneficiary which  
17 have accrued, or the earliest date on which such  
18 pension benefits will become nonforfeitable,

19 “(C) the fair market value as of the close  
20 of the year of the assets in the participant’s or  
21 beneficiary’s account in each investment option  
22 under the plan, and

23 “(D) the percentage of assets as of the  
24 close of the year which each such investment  
25 option is of the total assets.

1           “(4) RULES RELATING TO FORM AND STATE-  
2           MENT.—The model form under paragraph (2) and  
3           the personalized benefit statement under paragraph  
4           (3)—

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

8                   “(B) shall be provided in writing or in any  
9                   other form (including electronic means) to the  
10                  extent such other form is reasonably accessible  
11                  to participants and beneficiaries, and

12                  “(C) may be provided at the same time to  
13                  a participant or beneficiary.

14           “(f) APPLICABLE DEFINED CONTRIBUTION PLAN.—  
15           For purposes of this section, the term ‘applicable defined  
16           contribution plan’ means a defined contribution plan  
17           which permits a participant or beneficiary to exercise con-  
18           trol over assets in his or her account.”

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

          “Sec. 4980G. Failure of certain defined contribution plans to provide adequate  
          investment information.”

22           (b) AMENDMENTS TO ERISA.—

23                   (1) IN GENERAL.—Section 104 of the Employee  
24           Retirement Income Security Act of 1974 (29 U.S.C.

1 1024) is amended by redesignating subsections (c)  
2 and (d) as subsections (d) and (e), respectively, and  
3 by inserting after subsection (b) the following new  
4 subsection:

5 “(c)(1) The plan administrator of an applicable indi-  
6 vidual account plan shall provide to each participant and  
7 beneficiary at least once annually—

8 “(A) the model form relating to basic invest-  
9 ment guidelines which is described in paragraph (2),  
10 and

11 “(B) in the case of an applicable individual ac-  
12 count plan with at least 100 participants, the per-  
13 sonalized benefit statement described in paragraph  
14 (3).

15 “(2)(A) The Secretary of the Treasury shall, in con-  
16 sultation with the Secretary, develop and make available  
17 to applicable individual account plans for distribution  
18 under paragraph (1) a model form containing basic guide-  
19 lines for investing for retirement. Such guidelines shall  
20 include—

21 “(i) information on the benefits of diversifica-  
22 tion,

23 “(ii) information on the essential differences, in  
24 terms of risk and return, of pension plan invest-

1       ments, including stocks, bonds, mutual funds, and  
2       money market investments,

3               “(iii) information on how a participant’s pen-  
4       sion plan investment allocations may differ depend-  
5       ing on the participant’s age and years to retirement  
6       and on other factors determined by the Secretary of  
7       the Treasury,

8               “(iv) sources of information where participants  
9       may learn more about pension rights, individual in-  
10      vesting, and investment advice, and

11              “(v) such other information related to indi-  
12      vidual investing as the Secretary of the Treasury de-  
13      termines appropriate.

14              “(B) The model form under subparagraph (A) shall  
15      include addresses for Internet sites, and a worksheet,  
16      which a participant or beneficiary may use to calculate—

17              “(i) the retirement age annuity value of the  
18      participant’s or beneficiary’s nonforfeitable pension  
19      benefits under the plan (determined by reference to  
20      varied historical annual rates of return and annuity  
21      interest rates), and

22              “(ii) other important amounts relating to retire-  
23      ment savings, including the amount which a partici-  
24      pant would be required to save to ensure a retire-  
25      ment income equal to various percentages of their

1 current salary (adjusted for historical growth prior  
2 to retirement).

3 The Secretary shall develop an Internet site which a par-  
4 ticipant or beneficiary may use in making such calcula-  
5 tions and the address for such site shall be included with  
6 the form.

7 “(C) The Secretary of the Treasury shall—

8 “(i) provide at least 90 days for public com-  
9 ment before publishing final notice of the model  
10 form, and

11 “(ii) update the model form at least annually.

12 “(3) The personalized benefit statement for purposes  
13 of paragraph (1)(B) shall include—

14 “(A) the total accrued benefits of the partici-  
15 pant or beneficiary,

16 “(B) the nonforfeitable pension benefits, if any,  
17 of the participant or beneficiary which have accrued,  
18 or the earliest date on which such pension benefits  
19 will become nonforfeitable,

20 “(C) the fair market value as of the close of the  
21 year of the assets in the participant’s or bene-  
22 ficiary’s account in each investment option under the  
23 plan, and

1           “(D) the percentage of assets as of the close of  
2           the year which each such investment option is of the  
3           total assets.

4           “(4) The model form under paragraph (2) and the  
5           personalized benefit statement under paragraph (3)—

6           “(A) shall be written in a manner calculated to  
7           be understood by the average plan participant,

8           “(B) shall be provided in writing or in any  
9           other form (including electronic means) to the extent  
10          such other form is reasonably accessible to partici-  
11          pants and beneficiaries, and

12          “(C) may be provided at the same time to a  
13          participant or beneficiary.

14          “(5) For purposes of this subsection, the term ‘appli-  
15          cable individual account plan’ means an individual account  
16          plan which permits a participant or beneficiary to exercise  
17          control over assets in his or her account.”

18                 (2) ENFORCEMENT.—Section 502(c)(1) of such  
19                 Act (29 U.S.C. 1132(c)(1)) is amended by striking  
20                 “or section 101(e)(1)” and inserting “, section  
21                 101(e)(1), as section 104(c)”.

1 **SEC. 102. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**  
2 **NATING INDEPENDENT INVESTMENT ADVIS-**  
3 **ERS.**

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

8 “(e)(1) In the case of an individual account plan  
9 which permits a plan participant or beneficiary to exercise  
10 control over the assets in his or her account, if a plan  
11 sponsor or other person who is a fiduciary designates and  
12 monitors a qualified investment adviser pursuant to the  
13 requirements of paragraph (3), such fiduciary—

14 “(A) shall be deemed to have satisfied the re-  
15 quirements under this section for the prudent des-  
16 ignation and periodic review of an investment ad-  
17 viser with whom the plan sponsor or other person  
18 who is a fiduciary enters into an arrangement for  
19 the provision of advice referred to in section  
20 3(21)(A)(ii),

21 “(B) shall not be liable under this section for  
22 any loss, or by reason of any breach, with respect to  
23 the provision of investment advice given by such ad-  
24 viser to any plan participant or beneficiary, and

25 “(C) shall not be liable for any co-fiduciary li-  
26 ability under subsections (a)(2) and (b) of section

1 405 with respect to the provision of investment ad-  
2 vice given by such adviser to any plan participant or  
3 beneficiary.

4 “(2)(A) For purposes of this section, the term ‘quali-  
5 fied investment adviser’ means, with respect to a plan, a  
6 person—

7 “(i) who is a fiduciary of the plan by reason of  
8 the provision of investment advice by such person to  
9 a plan participant or beneficiary;

10 “(ii) who—

11 “(I) is registered as an investment adviser  
12 under the Investment Advisers Act of 1940 (15  
13 U.S.C. 80b–1 et seq.),

14 “(II) is registered as an investment adviser  
15 under the laws of the State in which such ad-  
16 viser maintains the principal office and place of  
17 business of such adviser, but only if such State  
18 has an examination requirement to qualify for  
19 such registration,

20 “(III) is a bank or similar financial institu-  
21 tion referred to in section 408(b)(4),

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

24 “(V) is any other comparably qualified en-  
25 tity which satisfies such criteria as the Sec-



1           retary determines appropriate, consistent with  
2           the purposes of this subsection, and

3           “(iii) who meets the requirements of subpara-  
4           graph (B).

5           “(B) The requirements of this subparagraph are met  
6 if every individual employed (or otherwise compensated)  
7 by a person described in subparagraph (A)(ii) who pro-  
8 vides investment advice on behalf of such person to any  
9 plan participant or beneficiary is—

10           “(i) an individual described in subclause (I) or  
11           (II) of subparagraph (A)(ii),

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

15           “(iii) a registered representative as described in  
16 section 3(a)(18) of the Securities Exchange Act of  
17 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17)  
18 of the Investment Advisers Act of 1940 (15 U.S.C.  
19 80b-2(a)(17)), or

20           “(iv) any other comparably qualified individual  
21 who satisfies such criteria as the Secretary deter-  
22 mines appropriate, consistent with the purposes of  
23 this subsection.

24           “(3) The requirements of this paragraph are met if—

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

7                   “(i) is and remains a qualified investment  
8                   adviser,

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

12                  “(iii) has reviewed the plan documents (in-  
13                  cluding investment options) and has determined  
14                  that its relationship with the plan and the in-  
15                  vestment advice provided to any plan partici-  
16                  pant or beneficiary, including any fees or other  
17                  compensation it will receive, will not constitute  
18                  a violation of section 406, and

19                  “(iv) has the necessary insurance coverage  
20                  (as determined by the Secretary) for any claim  
21                  by any plan participant or beneficiary,

22           “(B) the plan sponsor or other person who is  
23           a fiduciary in designating a qualified investment ad-  
24           viser reviews the documents described in paragraph  
25           (4) provided by such adviser and determines that

1 there is no material reason not to enter into an ar-  
2 rangement for the provision of advice by such quali-  
3 fied investment adviser, and

4 “(C) the plan sponsor or other person who is a  
5 fiduciary in designating a qualified investment ad-  
6 viser determines whether or not to continue the des-  
7 ignation of the investment adviser as a qualified in-  
8 vestment adviser within 30 days of having informa-  
9 tion brought to its attention that the investment ad-  
10 viser is no longer qualified or that a substantial  
11 number of plan participants or beneficiaries have  
12 raised concerns about the services being provided by  
13 the investment adviser.

14 “(4) A qualified investment adviser shall provide the  
15 following documents to the plan sponsor or other person  
16 who is a fiduciary in designating the adviser:

17 “(A) The contract with the plan sponsor or  
18 other person who is a fiduciary for the services to  
19 be provided by the investment adviser to the plan  
20 participants and beneficiaries.

21 “(B) A disclosure as to any fees or other com-  
22 pensation that will be received by the investment ad-  
23 viser for the provision of such investment advice.

24 “(C) The Uniform Application for Investment  
25 Adviser Registration as filed with the Securities and

1 Exchange Commission or a substantially similar dis-  
2 closure application as determined by and filed with  
3 the Secretary.

4 “(5) Any qualified investment adviser that acknowl-  
5 edges it is a fiduciary pursuant to paragraph (3)(A)(ii)  
6 shall be deemed a fiduciary under this part with respect  
7 to the provision of investment advice to a plan participant  
8 or beneficiary.

9 “(6) Any recovery to the plan under section 409 as  
10 a result of a fiduciary breach by a qualified investment  
11 adviser under this part shall inure to the benefit of the  
12 individual accounts of affected plan participants and bene-  
13 ficiaries.”

14 (b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) is  
15 amended by inserting “(other than a qualified investment  
16 adviser)” after “fiduciary”.

17 (c) EFFECTIVE DATE.—The amendment made by  
18 this section shall apply with respect to advisers designated  
19 after the date of the enactment of this Act.

## 20 **TITLE II—DIVERSIFICATION** 21 **REQUIREMENTS**

### 22 **SEC. 201. DIVERSIFICATION REQUIREMENTS FOR CERTAIN** 23 **PLANS HOLDING EMPLOYER SECURITIES.**

24 (a) AMENDMENTS OF 1986 CODE.—

1           (1) QUALIFICATION REQUIREMENT.—Section  
 2           401(a) of the Internal Revenue Code of 1986 (relat-  
 3           ing to qualified pension, profit-sharing, and stock  
 4           bonus plans) is amended by inserting after para-  
 5           graph (34) the following new paragraph:

6           “(35) DIVERSIFICATION REQUIREMENTS FOR  
 7           CERTAIN DEFINED CONTRIBUTION PLANS.—A trust  
 8           which is part of a defined contribution plan shall not  
 9           be treated as a qualified trust unless the plan meets  
 10          the requirements of section 417A.”

11          (2) DIVERSIFICATION REQUIREMENTS.—

12           (A) IN GENERAL.—Subpart B of part I of  
 13           subchapter D of chapter 1 of the Internal Rev-  
 14           enue Code of 1986 (relating to special rules) is  
 15           amended by adding at the end the following  
 16           new section:

17          **“SEC. 417A. DIVERSIFICATION REQUIREMENTS FOR CER-**  
 18           **TAIN DEFINED CONTRIBUTION PLANS.**

19          “(a) GENERAL RULE.—For purposes of section  
 20          401(a)(35), a defined contribution plan meets the require-  
 21          ments of this section if the plan meets—

22           “(1) the voluntary investment requirement of  
 23           subsection (b),

24           “(2) the investment option requirement of sub-  
 25           section (c), and

1           “(3) the asset investment requirements of sub-  
2 sections (d) and (e).

3           “(b) VOLUNTARY INVESTMENT REQUIREMENT.—

4           “(1) IN GENERAL.—A defined contribution plan  
5 meets the requirements of this subsection if the plan  
6 provides that no employee contribution (or any earn-  
7 ings thereon) may be required to be invested in em-  
8 ployer securities—

9           “(A) pursuant to the terms of the plan, or

10           “(B) at the direction of a person other  
11 than the participant making the employee con-  
12 tribution (or a beneficiary of a participant).

13           “(2) EXCEPTION FOR EMPLOYEE STOCK OWN-  
14 ERSHIP PLANS.—Paragraph (1) shall not apply to  
15 an employee stock ownership plan.

16           “(c) INVESTMENT OPTIONS.—A defined contribution  
17 plan meets the requirements of this subsection if the plan  
18 offers not less than 3 investment options (not inconsistent  
19 with regulations prescribed by the Secretary) other than  
20 employer securities.

21           “(d) ASSET INVESTMENT REQUIREMENTS FOR EM-  
22 PLOYEE CONTRIBUTIONS.—

23           “(1) IN GENERAL.—In the case of the portion  
24 of a participant’s account attributable to employee  
25 contributions (or earnings thereon) invested in em-

1        ployer securities readily tradable on an established  
2        securities market, a defined contribution plan meets  
3        the requirements of this subsection if the participant  
4        may at any time elect to divest the account of any  
5        such employer securities and reinvest an equivalent  
6        amount in other investment options offered under  
7        subsection (c).

8               “(2) SPECIAL RULE FOR EMPLOYEE STOCK  
9        OWNERSHIP PLANS.—

10               “(A) IN GENERAL.—In the case of an em-  
11        ployee stock ownership plan—

12               “(i) paragraph (1) shall apply only to  
13        a KSOP which holds employer securities  
14        readily tradable on an established securi-  
15        ties market, and

16               “(ii) the rules of subparagraph (B)  
17        shall apply to any other employee stock  
18        ownership plan.

19               “(B) PLAN OTHER THAN KSOPS.—

20               “(i) IN GENERAL.—In the case of an  
21        employee stock ownership plan to which  
22        subparagraph (A)(i) does not apply, a de-  
23        fined contribution plan meets the require-  
24        ments of this subsection if a participant  
25        may elect to divest the portion of the par-

1 participant's account attributable to employee  
2 contributions (or earnings thereon) in-  
3 vested in employer securities readily  
4 tradable on an established securities mar-  
5 ket at any time during any plan year be-  
6 ginning after the plan year in which the  
7 participant completes 5 years of service  
8 under the plan.

9 “(ii) ADDITIONAL LIMITATION ON RE-  
10 INVESTMENT.—The maximum number of  
11 employer securities described in clause (i)  
12 a participant may elect to divest in any  
13 plan year beginning before the plan year in  
14 which the participant completes 7 years of  
15 service under the plan shall not exceed the  
16 excess (if any) of—

17 “(I) 50 percent of the greatest  
18 number of such securities held at any  
19 time in the participant's account, over

20 “(II) the number of such securi-  
21 ties the participant elected to divest  
22 for all preceding plan years.

23 “(iii) INDIVIDUALS AGE 55 OR  
24 OVER.—Notwithstanding clause (i) or (ii),  
25 a participant may elect to divest the por-



1                   tion of the account described in clause (i)  
2                   at any time during the plan year in which  
3                   the participant attains age 55 or any sub-  
4                   sequent plan year.

5           “(e) ASSET INVESTMENT REQUIREMENTS FOR EM-  
6 PLOYER CONTRIBUTIONS.—

7                   “(1) IN GENERAL.—In the case of a portion of  
8                   a participant’s account attributable to employer con-  
9                   tributions (or earnings thereon) invested in employer  
10                  securities which are readily tradable on an estab-  
11                  lished securities market, a defined contribution plan  
12                  meets the requirements of this subsection if the par-  
13                  ticipant may elect to divest the account of such em-  
14                  ployer securities and reinvest an equivalent amount  
15                  in other investment options offered under subsection  
16                  (c) only in plan years beginning after the later of—

17                           “(A) the plan year in which the participant  
18                           completes 5 years of service under the plan, or

19                           “(B) December 31, 2002.

20                  “(2) LIMITATION ON REINVESTMENT.—The  
21                  maximum number of employer securities described  
22                  in paragraph (1) which a participant may elect to di-  
23                  vest in any plan year beginning before the plan year  
24                  in which the participant completes 7 years of service

1 under the plan shall not exceed the excess (if any)  
2 of—

3 “(A) 50 percent of the greatest number of  
4 such securities which were held at any time in  
5 the participant’s account and with respect to  
6 which the participant had a nonforfeitable  
7 right, over

8 “(B) the number of such securities the  
9 participant elected to divest for all preceding  
10 plan years.

11 “(3) SPECIAL RULE FOR MATCHING CONTRIBU-  
12 TIONS.—In the case of employer securities described  
13 in paragraph (1) attributable to employer matching  
14 contributions—

15 “(A) paragraph (1)(A) shall be applied by  
16 substituting ‘3 years’ for ‘5 years’, and

17 “(B) paragraph (2) shall be applied by  
18 substituting ‘5 years’ for ‘7 years’.

19 “(4) INDIVIDUALS AGE 55 AND OVER.—Not-  
20 withstanding paragraph (1), (2), or (3), a partici-  
21 pant may elect to divest the portion of the account  
22 described in paragraph (1) at any time during the  
23 plan year in which the participant attains age 55 or  
24 any subsequent plan year.

1       “(f) SPECIAL RULES APPLICABLE TO ASSET INVEST-  
2   MENT REQUIREMENTS.—

3               “(1) INFORMATION REQUIRED TO BE PROVIDED  
4   TO INDIVIDUALS AGE 55 AND OVER.—

5               “(A) IN GENERAL.—A defined contribution  
6   plan shall not be treated as meeting the re-  
7   quirements of subsection (c) or (d) unless the  
8   plan administrator provides at least once each  
9   plan year to all participants who are age 55 or  
10   over notice of their right to divest all employer  
11   securities held in their accounts.

12              “(B) ADDITIONAL NOTICE FOR NON-  
13   DIVERSIFIED PARTICIPANTS.—In the case of a  
14   participant with respect to whom the fair mar-  
15   ket value of employer securities held in his or  
16   her account as of the close of any plan year ex-  
17   ceeds 20 percent of the fair market value of all  
18   assets in the account as of such time, the plan  
19   administrator shall include with the notice  
20   under subparagraph (A) for the succeeding plan  
21   year a statement advising the participant of  
22   such percentage and of the need to seek profes-  
23   sional investment advice regarding diversifica-  
24   tion of assets in the account. This subpara-

1 graph shall not apply to an employee stock own-  
2 ership plan other than a KSOP.

3 “(C) SIMPLIFICATION.—The Secretary  
4 may provide that any notice required under this  
5 subparagraph may be—

6 “(i) included with any other notice a  
7 plan administrator is required to provide,  
8 or

9 “(ii) provided in written, electronic, or  
10 other appropriate form which is reasonably  
11 accessible to a participant.

12 “(2) TIMES DURING WHICH DIVESTMENT AL-  
13 LOWED.—A defined contribution plan shall not be  
14 treated as failing to meet the requirements of sub-  
15 section (d) or (e)—

16 “(A) because the plan provides that the di-  
17 vestment and reinvestment of employer securi-  
18 ties may occur only during prescribed time peri-  
19 ods under the plan if such limitation also ap-  
20 plies to the divestment and reinvestment of all  
21 other assets under the plan, or

22 “(B) if the plan allows a participant to di-  
23 vest his or her account of any employer securi-  
24 ties earlier than the time such divestment is re-  
25 quired to be allowed under such subsection.

1           “(3) APPLICATION TO BENEFICIARIES.—If a  
2 beneficiary of a participant (including an alternate  
3 payee within the meaning of section 414(p)(8)) holds  
4 employer securities in his or her own account, sub-  
5 sections (d) and (e) shall apply to the beneficiary in  
6 the same manner as if the beneficiary were a partici-  
7 pant, except that in determining whether any years  
8 of service requirement is met, the years of service of  
9 the participant shall be taken into account.

10          “(g) OTHER DEFINITIONS AND SPECIAL RULES.—

11 For purposes of this section—

12           “(1) ELECTIVE DEFERRALS.—An elective deferr-  
13 al (within the meaning of section 402(g)(3)) shall  
14 be treated as an employee contribution.

15           “(2) EMPLOYEE STOCK OWNERSHIP PLAN.—  
16 The term ‘employee stock ownership plan’ has the  
17 meaning given such term by section 4975(e)(7).

18           “(3) EMPLOYER SECURITIES.—The term ‘em-  
19 ployer securities’ has the meaning given such term  
20 by section 407(d)(1) of the Employee Retirement In-  
21 come Security Act of 1974.

22           “(4) KSOP.—The term ‘KSOP’ means an em-  
23 ployee stock ownership plan which holds any con-  
24 tribution (or earnings thereon) which is subject to

1 the requirements of subsection (k)(3) or (m) of sec-  
2 tion 401.

3 “(5) MATCHING CONTRIBUTION.—The term  
4 ‘matching contribution’ has the meaning given such  
5 term by section 401(m)(4).

6 “(6) YEARS OF SERVICE.—The term ‘years of  
7 service’ has the meaning given such term by section  
8 411(a).

9 “(7) APPLICATION TO EMPLOYER REAL PROP-  
10 erty.—This section shall be applied to employer  
11 real property (as defined in section 407(d)(2) of the  
12 Employee Retirement Income Security Act of 1974)  
13 in the same manner as this section applies to em-  
14 ployer securities.

15 “(8) ESOP QUALIFICATION REQUIREMENTS.—  
16 An employee stock ownership plan shall not be treat-  
17 ed as failing to meet any qualification requirement  
18 to be such a plan by reason of the plan’s compliance  
19 with the provisions of this section.”

20 (B) CONFORMING AMENDMENT.—The  
21 table of sections for subpart B of part I of sub-  
22 chapter D of chapter 1 of such Code is amend-  
23 ed by adding at the end the following new item:

“Sec. 417A. Diversification requirements for certain defined con-  
tribution plans.”

1           (3) COORDINATION WITH EXISTING DIVER-  
2           SIFICATION REQUIREMENTS.—Section 401(a)(28)(B)  
3           of such Code (relating to diversification require-  
4           ments for employee stock ownership plans) is  
5           amended by adding at the end the following new  
6           clause:

7                         “(v) COORDINATION WITH OTHER RE-  
8                         QUIREMENTS.—If the requirements of sec-  
9                         tion 417A apply by reason of paragraph  
10                        (35) to a plan to which this paragraph ap-  
11                        plies, the plan shall be required to allow a  
12                        participant to direct the investment of the  
13                        greater of the percentage determined under  
14                        this subparagraph or section 417A with re-  
15                        spect to any assets for any plan year.”

16         (b) AMENDMENTS OF ERISA.—

17           (1) IN GENERAL.—Section 404(c)(1) of the  
18           Employee Retirement Income Security Act of 1974  
19           (29 U.S.C. 1104(c)(1)) is amended by striking “In”  
20           and inserting “Subject to the provisions of section  
21           404A, in”.

22           (2) DIVERSIFICATION REQUIREMENTS.—

23                         (A) IN GENERAL.—Part 4 of subtitle B of  
24                         title I of such Act (29 U.S.C. 401 et seq.) is

1           amended by inserting after section 404 the fol-  
2           lowing new section:

3 **“SEC. 404A. DIVERSIFICATION REQUIREMENTS FOR CER-**  
4 **TAIN INDIVIDUAL ACCOUNT PLANS.**

5           “(a) GENERAL RULE.—Section 404(e) shall apply to  
6 an individual account plan only if the plan meets—

7           “(1) the voluntary investment requirement of  
8 subsection (b),

9           “(2) the investment option requirement of sub-  
10 subsection (c), and

11           “(3) the asset investment requirements of sub-  
12 sections (d) and (e).

13           “(b) VOLUNTARY INVESTMENT REQUIREMENT.—

14           “(1) IN GENERAL.—An individual account plan  
15 meets the requirements of this subsection if the plan  
16 provides that no employee contribution (or any earn-  
17 ings thereon) may be required to be invested in em-  
18 ployer securities—

19           “(A) pursuant to the terms of the plan, or

20           “(B) at the direction of a person other  
21 than the participant making the employee con-  
22 tribution (or a beneficiary of a participant).

23           “(2) EXCEPTION FOR EMPLOYEE STOCK OWN-  
24 ERSHIP PLANS.—Paragraph (1) shall not apply to  
25 an employee stock ownership plan.



1       “(c) INVESTMENT OPTIONS.—An individual account  
2 plan meets the requirements of this subsection if the plan  
3 offers not less than 3 investment options (not inconsistent  
4 with regulations prescribed by the Secretary of the Treas-  
5 ury) other than employer securities.

6       “(d) ASSET INVESTMENT REQUIREMENTS FOR EM-  
7 PLOYEE CONTRIBUTIONS.—

8           “(1) IN GENERAL.—In the case of the portion  
9 of a participant’s account attributable to employee  
10 contributions (or earnings thereon) invested in em-  
11 ployer securities readily tradable on an established  
12 securities market, an individual account plan meets  
13 the requirements of this subsection if the participant  
14 may at any time elect to divest the account of any  
15 such employer securities and reinvest an equivalent  
16 amount in other investment options offered under  
17 subsection (c).

18           “(2) SPECIAL RULE FOR EMPLOYEE STOCK  
19 OWNERSHIP PLANS.—

20           “(A) IN GENERAL.—In the case of an em-  
21 ployee stock ownership plan—

22                   “(i) paragraph (1) shall apply only to  
23 a KSOP which holds employer securities  
24 readily tradable on an established securi-  
25 ties market, and

1           “(ii) the rules of subparagraph (B)  
2 shall apply to any other employee stock  
3 ownership plan.

4           “(B) PLAN OTHER THAN KSOPS.—

5           “(i) IN GENERAL.—In the case of an  
6 employee stock ownership plan to which  
7 subparagraph (A)(i) does not apply, an in-  
8 dividual account plan meets the require-  
9 ments of this subsection if a participant  
10 may elect to divest the portion of the par-  
11 ticipant’s account attributable to employee  
12 contributions (or earnings thereon) in-  
13 vested in employer securities readily  
14 tradable on an established securities mar-  
15 ket at any time during any plan year be-  
16 ginning after the plan year in which the  
17 participant completes 5 years of service  
18 under the plan.

19           “(ii) ADDITIONAL LIMITATION ON RE-  
20 INVESTMENT.—The maximum number of  
21 employer securities described in clause (i)  
22 a participant may elect to divest in any  
23 plan year beginning before the plan year in  
24 which the participant completes 7 years of

1 service under the plan shall not exceed the  
 2 excess (if any) of—

3 “(I) 50 percent of the greatest  
 4 number of such securities held at any  
 5 time in the participant’s account, over

6 “(II) the number of such securi-  
 7 ties the participant elected to divest  
 8 for all preceding plan years.

9 “(iii) INDIVIDUALS AGE 55 OR  
 10 OVER.—Notwithstanding clause (i) or (ii),  
 11 a participant may elect to divest the por-  
 12 tion of the account described in clause (i)  
 13 at any time during the plan year in which  
 14 the participant attains age 55 or any sub-  
 15 sequent plan year.

16 “(e) ASSET INVESTMENT REQUIREMENTS FOR EM-  
 17 PLOYER CONTRIBUTIONS.—

18 “(1) IN GENERAL.—In the case of a portion of  
 19 a participant’s account attributable to employer con-  
 20 tributions (or earnings thereon) invested in employer  
 21 securities which are readily tradable on an estab-  
 22 lished securities market, an individual account plan  
 23 meets the requirements of this subsection if the par-  
 24 ticipant may elect to divest the account of such em-  
 25 ployer securities and reinvest an equivalent amount

1 in other investment options offered under subsection  
2 (c) only in plan years beginning after the later of—

3 “(A) the plan year in which the participant  
4 completes 5 years of service under the plan, or

5 “(B) December 31, 2002.

6 “(2) LIMITATION ON REINVESTMENT.—The  
7 maximum number of employer securities described  
8 in paragraph (1) which a participant may elect to di-  
9 vest in any plan year beginning before the plan year  
10 in which the participant completes 7 years of service  
11 under the plan shall not exceed the excess (if any)  
12 of—

13 “(A) 50 percent of the greatest number of  
14 such securities which were held at any time in  
15 the participant’s account and with respect to  
16 which the participant had a nonforfeitable  
17 right, over

18 “(B) the number of such securities the  
19 participant elected to divest for all preceding  
20 plan years.

21 “(3) SPECIAL RULE FOR MATCHING CONTRIBU-  
22 TIONS.—In the case of employer securities described  
23 in paragraph (1) attributable to employer matching  
24 contributions—

1           “(A) paragraph (1)(A) shall be applied by  
2 substituting ‘3 years’ for ‘5 years’, and

3           “(B) paragraph (2) shall be applied by  
4 substituting ‘5 years’ for ‘7 years’.

5           “(4) INDIVIDUALS AGE 55 AND OVER.—Not-  
6 withstanding paragraph (1), (2), or (3), a partici-  
7 pant may elect to divest the portion of the account  
8 described in paragraph (1) at any time during the  
9 plan year in which the participant attains age 55 or  
10 any subsequent plan year.

11          “(f) SPECIAL RULES APPLICABLE TO ASSET INVEST-  
12 MENT REQUIREMENTS.—

13           “(1) INFORMATION REQUIRED TO BE PROVIDED  
14 TO INDIVIDUALS AGE 55 AND OVER.—

15           “(A) IN GENERAL.—An individual account  
16 plan shall not be treated as meeting the re-  
17 quirements of subsection (c) or (d) unless the  
18 plan administrator provides at least once each  
19 plan year to all participants who are age 55 or  
20 over notice of their right to divest all employer  
21 securities held in their accounts.

22           “(B) ADDITIONAL NOTICE FOR NON-  
23 DIVERSIFIED PARTICIPANTS.—In the case of a  
24 participant with respect to whom the fair mar-  
25 ket value of employer securities held in his or

1 her account as of the close of any plan year ex-  
2 ceeds 20 percent of the fair market value of all  
3 assets in the account as of such time, the plan  
4 administrator shall include with the notice  
5 under subparagraph (A) for the succeeding plan  
6 year a statement advising the participant of  
7 such percentage and of the need to seek profes-  
8 sional investment advice regarding diversifica-  
9 tion of assets in the account. This subpara-  
10 graph shall not apply to an employee stock own-  
11 ership plan other than a KSOP.

12 “(C) SIMPLIFICATION.—The Secretary of  
13 the Treasury may provide that any notice re-  
14 quired under this subparagraph may be—

15 “(i) included with any other notice a  
16 plan administrator is required to provide,  
17 or

18 “(ii) provided in written, electronic, or  
19 other appropriate form which is reasonably  
20 accessible to a participant.

21 “(2) TIMES DURING WHICH DIVESTMENT AL-  
22 LOWED.—An individual account plan shall not be  
23 treated as failing to meet the requirements of sub-  
24 section (d) or (e)—

1           “(A) because the plan provides that the di-  
2           vestment and reinvestment of employer securi-  
3           ties may occur only during prescribed time peri-  
4           ods under the plan if such limitation also ap-  
5           plies to the divestment and reinvestment of all  
6           other assets under the plan, or

7           “(B) if the plan allows a participant to di-  
8           vest his or her account of any employer securi-  
9           ties earlier than the time such divestment is re-  
10          quired to be allowed under such subsection.

11          “(3) APPLICATION TO BENEFICIARIES.—If a  
12          beneficiary of a participant (including an alternate  
13          payee within the meaning of section 414(p)(8)) holds  
14          employer securities in his or her own account, sub-  
15          sections (d) and (e) shall apply to the beneficiary in  
16          the same manner as if the beneficiary were a partici-  
17          pant, except that in determining whether any years  
18          of service requirement is met, the years of service of  
19          the participant shall be taken into account.

20          “(g) OTHER DEFINITIONS AND SPECIAL RULES.—  
21          For purposes of this section—

22          “(1) ELECTIVE DEFERRALS.—An elective defer-  
23          ral (within the meaning of section 402(g)(3) of the  
24          Internal Revenue Code of 1986) shall be treated as  
25          an employee contribution.

1           “(2) EMPLOYEE STOCK OWNERSHIP PLAN.—

2           The term ‘employee stock ownership plan’ has the  
3           meaning given such term by section 4975(e)(7) of  
4           such Code.

5           “(3) EMPLOYER SECURITIES.—The term ‘em-  
6           ployer securities’ has the meaning given such term  
7           by section 407(d)(1).

8           “(4) KSOP.—The term ‘KSOP’ means an em-  
9           ployee stock ownership plan which holds any con-  
10          tribution (or earnings thereon) which is subject to  
11          the requirements of subsection (k)(3) or (m) of sec-  
12          tion 401 of such Code.

13          “(5) MATCHING CONTRIBUTION.—The term  
14          ‘matching contribution’ has the meaning given such  
15          term by section 401(m)(4) of such Code.

16          “(6) YEARS OF SERVICE.—The term ‘years of  
17          service’ has the meaning given such term by section  
18          411(a) of such Code.

19          “(7) APPLICATION TO EMPLOYER REAL PROP-  
20          ERTY.—This section shall be applied to employer  
21          real property (as defined in section 407(d)(2)) in the  
22          same manner as this section applies to employer se-  
23          curities.

24          “(8) ESOP QUALIFICATION REQUIREMENTS.—  
25          An employee stock ownership plan shall not be treat-



1 ed as failing to meet any qualification requirement  
 2 to be such a plan by reason of the plan’s compliance  
 3 with the provisions of this section.”

4 (B) CONFORMING AMENDMENT.—The  
 5 table of sections for part 4 of subtitle B of title  
 6 I of such Code is amended by adding after the  
 7 item relating to section 404 the following new  
 8 item:

“Sec. 404A. Diversification requirements for certain individual ac-  
 count plans.”

9 **SEC. 202. ALLOWANCE OF DEDUCTION FOR DIVIDENDS**  
 10 **PAYABLE ON EMPLOYER SECURITIES DI-**  
 11 **VESTED BY PARTICIPANTS.**

12 (a) IN GENERAL.—Section 404(k) of the Internal  
 13 Revenue Code of 1986 (relating to deduction for dividends  
 14 paid on certain employer securities) is amended by adding  
 15 at the end the following new paragraph:

16 “(7) SPECIAL RULE FOR PAYMENTS WITH RE-  
 17 SPECT TO DIVESTED SECURITIES.—

18 “(A) IN GENERAL.—If a participant or  
 19 beneficiary of a defined contribution plan who  
 20 has not attained the age of 55 elects under sec-  
 21 tion 417A to divest his or her account of appli-  
 22 cable employer securities, then the corporation  
 23 which pays dividends with respect to such secu-  
 24 rities may elect to make the payments described

1 in subparagraph (B) and such payments shall  
2 be treated as applicable dividends for purposes  
3 of paragraph (1).

4 “(B) APPLICABLE PAYMENTS.—Payments  
5 described in this subparagraph are amounts  
6 paid in cash to the defined contribution plan  
7 which—

8 “(i) are paid during the period begin-  
9 ning on the date the employer securities  
10 were divested and ending on the last day  
11 of the 2nd taxable year following the tax-  
12 able year of divestment,

13 “(ii) are equivalent to the dividends  
14 which would have been paid on such secu-  
15 rities during such period if the securities  
16 had not been divested, and

17 “(iii) are, in accordance with the plan  
18 provisions, treated in the same manner as  
19 applicable dividends.”

20 (b) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to taxable years ending after the  
22 date of the enactment of this Act.

1                   **TITLE III—PARTICIPANT**  
 2                   **PROTECTIONS**  
 3                   **Subtitle A—Participant Access**

4 **SEC. 301. PROTECTION OF PARTICIPANTS OR BENE-**  
 5                   **FICIARIES FROM UNANNOUNCED OR UNDULY**  
 6                   **LONG PENSION PLAN BLACKOUT PERIODS.**

7                   (a) AMENDMENTS OF 1986 CODE.—

8                   (1) IN GENERAL.—Chapter 43 of the Internal  
 9                   Revenue Code of 1986 (relating to qualified pension,  
 10                  etc., plans), as amended by this Act, is amended by  
 11                  adding at the end the following new section:

12 **“SEC. 4980H. FAILURE OF APPLICABLE PLANS TO PROVIDE**  
 13                   **NOTICE OF TRANSACTION SUSPENSION PE-**  
 14                   **RIOD.**

15                  “(a) IMPOSITION OF TAX.—There is hereby imposed  
 16 a tax on the failure of—

17                  “(1) any applicable defined contribution plan to  
 18                  meet the notice requirements of subsection (e)(1)  
 19                  with respect to any participant or beneficiary, and

20                  “(2) any plan administrator of any applicable  
 21                  defined contribution plan to meet the data produc-  
 22                  tion requirements of subsection (e)(2).

23                  “(b) AMOUNT OF TAX.—

24                  “(1) IN GENERAL.—The amount of the tax im-  
 25                  posed by subsection (a)—

1           “(A) on any failure described in subsection  
2           (a)(1) with respect to any participant or bene-  
3           ficiary shall be \$100 for each day in the non-  
4           compliance period with respect to the failure,  
5           and

6           “(B) on any failure described in subsection  
7           (a)(2) shall be \$1,000 for each day in the non-  
8           compliance period with respect to the failure.

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

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

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

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

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

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

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

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

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

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

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

17 “(d) LIABILITY FOR TAX.—

18 “(1) NOTICE.—The following shall be liable for  
19 the tax imposed by subsection (a)(1):

20 “(A) In the case of a plan other than a  
21 multiemployer plan, the employer.

22 “(B) In the case of a multiemployer plan,  
23 the plan.

24 “(2) DOCUMENT PRODUCTION.—The plan ad-  
25 ministrator with respect to the failure to meet the

1 requirements of subsection (e)(2) shall be liable for  
2 the tax imposed by subsection (a)(2).

3 “(e) NOTICE OF BLACKOUT PERIOD; TRANSFER OF  
4 DATA DURING CHANGE OF ADMINISTRATORS.—

5 “(1) NOTICE OF BLACKOUT PERIOD.—

6 “(A) IN GENERAL.—The plan adminis-  
7 trator of an applicable defined contribution plan  
8 shall provide notice of any blackout period to  
9 each participant or beneficiary to whom the  
10 blackout period applies (and to any employee  
11 organization representing such participants).

12 “(B) NOTICE.—The notice required by  
13 subparagraph (A) shall be written in a manner  
14 calculated to be understood by the average plan  
15 participant and shall provide sufficient informa-  
16 tion (as determined in accordance with rules or  
17 other guidance adopted by the Secretary) to  
18 allow participants and beneficiaries to under-  
19 stand the timing and effect of the blackout pe-  
20 riod.

21 “(C) TIMING OF NOTICE.—Except as pro-  
22 vided in paragraph (3), the notice required by  
23 subparagraph (A) shall be provided not later  
24 than 30 days before the beginning of the black-  
25 out period.

1           “(D) FORM AND MANNER OF NOTICE.—

2           The notice required by subparagraph (A) shall  
3           be in writing, except that such notice may be in  
4           electronic or other form to the extent that such  
5           form is reasonably accessible to the applicable  
6           individual.

7           “(2) DATA TRANSFERS DURING CHANGE OF  
8           PLAN ADMINISTRATORS.—

9           “(A) IN GENERAL.—If there is a change of  
10          plan administrators resulting in a blackout pe-  
11          riod for an applicable defined contribution plan  
12          with respect to which the fair market value of  
13          employer securities held by the plan exceed 20  
14          percent of the fair market value of all assets  
15          held by the plan, the plan administrator that is  
16          being replaced shall transfer to the new plan  
17          administrator all necessary data in usable form  
18          no later than 30 days after the beginning of the  
19          blackout period.

20          “(B) FIDUCIARY RESPONSIBILITY.—A plan  
21          sponsor or plan administrator shall not be  
22          treated as having satisfied any fiduciary respon-  
23          sibility or duty solely by reason of having met  
24          the requirements of this paragraph.

25          “(3) EXCEPTIONS AND MODIFICATIONS.—



1           “(A) IN GENERAL.—The Secretary of  
2 Labor, in consultation with the Secretary, may  
3 prescribe rules or regulations which waive or  
4 modify any requirement under paragraph (1) or  
5 (2)—

6                   “(i) for any applicable defined con-  
7 tribution plan with fewer than 100 partici-  
8 pants,

9                   “(ii) in the case of any blackout pe-  
10 riod due to unforeseen events outside of  
11 the control of a plan sponsor or adminis-  
12 trator, or

13                   “(iii) in the case of any blackout pe-  
14 riod due to an acquisition or disposition to  
15 which section 410(b)(6)(C) applies or due  
16 to such other circumstances as the Sec-  
17 retary of Labor may prescribe.

18           “(B) WAIVER REQUESTS.—The Secretary  
19 of Labor may provide procedures for requesting  
20 a waiver or modification under subparagraph  
21 (A) and for expedited procedures for consid-  
22 ering any such request.

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

1           “(1) APPLICABLE DEFINED CONTRIBUTION  
2 PLAN.—The term ‘applicable defined contribution  
3 plan’ means a defined contribution plan which per-  
4 mits a participant or beneficiary to exercise control  
5 over assets in his or her account.

6           “(2) BLACKOUT PERIOD.—

7               “(A) IN GENERAL.—The term ‘blackout  
8 period’ means a temporary or indefinite period  
9 of 3 or more consecutive business days during  
10 which there is a substantial reduction (other  
11 than by reason of application of securities laws)  
12 in the rights of 1 or more participants or bene-  
13 ficiaries to direct investments in a defined con-  
14 tribution plan.

15               “(B) BUSINESS DAY.—For purposes of  
16 this paragraph, a day shall not be treated as a  
17 business day to the extent that 1 or more estab-  
18 lished securities markets for trading securities  
19 are not open.”

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

“Sec. 4980H. Failure of applicable plans to provide notice of transaction sus-  
pension period.”

23           “(b) AMENDMENTS OF ERISA.—

24               “(1) NOTICE.—

1           (A) IN GENERAL.—Section 104 of the Em-  
2           ployee Retirement Income Security Act of 1974  
3           (29 U.S.C. 1024), as amended by section  
4           101(b), is amended by redesignating sub-  
5           sections (d) and (e) as subsections (e) and (f),  
6           respectively, and by adding after subsection (c)  
7           the following new subsection:

8           “(d)(1)(A) The plan administrator of an applicable  
9           individual account plan shall provide notice of any black-  
10          out period to each participant or beneficiary to whom the  
11          blackout period applies (and to any employee organization  
12          representing such participants).

13          “(B) The notice required by subparagraph (A) shall  
14          be written in a manner calculated to be understood by the  
15          average plan participant and shall provide sufficient infor-  
16          mation (as determined in accordance with rules or other  
17          guidance adopted by the Secretary of the Treasury) to  
18          allow participants and beneficiaries to understand the tim-  
19          ing and effect of the blackout period.

20          “(C) Except as provided in paragraph (2), the notice  
21          required by subparagraph (A) shall be provided not later  
22          than 30 days before the beginning of the blackout period.

23          “(D) The notice required by subparagraph (A) shall  
24          be in writing, except that such notice may be in electronic

1 or other form to the extent that such form is reasonably  
2 accessible to the applicable individual.

3 “(2)(A) The Secretary, in consultation with the Sec-  
4 retary of the Treasury, may prescribe rules or regulations  
5 which waive or modify any requirement under paragraph  
6 (1)—

7 “(i) for any applicable individual account plan  
8 with fewer than 100 participants,

9 “(ii) in the case of any blackout period due to  
10 unforeseen events outside of the control of a plan  
11 sponsor or administrator, or

12 “(iii) in the case of any blackout period due to  
13 an acquisition or disposition to which section  
14 410(b)(6)(C) of the Internal Revenue Code of 1986  
15 applies or due to such other circumstances as the  
16 Secretary may prescribe.

17 “(B) WAIVER REQUESTS.—The Secretary may pro-  
18 vide procedures for requesting a waiver or modification  
19 under subparagraph (A) and for expedited procedures for  
20 considering any such request.

21 “(3) For purposes of this subsection—

22 “(A) the term ‘applicable individual account  
23 plan’ means an individual account plan which per-  
24 mits a participant or beneficiary to exercise control  
25 over assets in his or her account,

1           “(B) the term ‘blackout period’ means a tem-  
2           porary or indefinite period of 3 or more consecutive  
3           business days during which there is a substantial re-  
4           duction (other than by reason of application of secu-  
5           rities laws) in the rights of 1 or more participants  
6           or beneficiaries to direct investments in an applica-  
7           ble individual account plan, and

8           “(C) a day shall not be treated as a business  
9           day to the extent that 1 or more established securi-  
10          ties markets for trading securities are not open.”

11           (B) ENFORCEMENT.—Section 502(c)(1) of  
12          such Act (29 U.S.C. 1132(c)(1)), as amended  
13          by section 101(b), is amended by striking “sec-  
14          tion 104(c)” and inserting “section 104 (c) or  
15          (d)”.

16          (2) DATA TRANSFER.—Section 404 of such Act  
17          (29 U.S.C. 1104), as amended by section 102, is  
18          amended by adding at the end the following new  
19          subsection:

20          “(f)(1)(A) If there is a change of plan administrators  
21          resulting in a blackout period for an applicable individual  
22          account plan with respect to which the fair market value  
23          of employer securities held by the plan exceed 20 percent  
24          of the fair market value of all assets held by the plan,  
25          the plan administrator that is being replaced shall transfer

1 to the new plan administrator all necessary data in usable  
2 form no later than 30 days after the beginning of the  
3 blackout period.

4 “(B) A plan sponsor or plan administrator shall not  
5 be treated as having satisfied any fiduciary responsibility  
6 or duty solely by reason of having met the requirements  
7 of this paragraph.

8 “(2)(A) The Secretary, in consultation with the Sec-  
9 retary of the Treasury, may prescribe rules or regulations  
10 which waive or modify any requirement under paragraph  
11 (1)—

12 “(i) for any applicable individual account plan  
13 with fewer than 100 participants,

14 “(ii) in the case of any blackout period due to  
15 unforeseen events outside of the control of a plan  
16 sponsor or administrator, or

17 “(iii) in the case of any blackout period due to  
18 an acquisition or disposition to which section  
19 410(b)(6)(C) of the Internal Revenue Code of 1986  
20 applies or due to such other circumstances as the  
21 Secretary may prescribe.

22 “(B) The Secretary may provide procedures for re-  
23 questing a waiver or modification under subparagraph (A)  
24 and for expedited procedures for considering any such re-  
25 quest.

1 “(3) For purposes of this subsection—

2 “(A) the term ‘applicable individual account  
3 plan’ means an individual account plan which per-  
4 mits a participant or beneficiary to exercise control  
5 over assets in his or her account,

6 “(B) the term ‘blackout period’ means a tem-  
7 porary or indefinite period of 3 or more consecutive  
8 business days during which there is a substantial re-  
9 duction (other than by reason of application of secu-  
10 rities laws) in the rights of 1 or more participants  
11 or beneficiaries to direct investments in an applica-  
12 ble individual account plan, and

13 “(C) a day shall not be treated as a business  
14 day to the extent that 1 or more established securi-  
15 ties markets for trading securities are not open.”

16 **SEC. 302. TRADES BY OWNERS, OFFICERS, AND DIRECTORS**

17 **PROHIBITED DURING PENSION PLAN BLACK-**  
18 **OUT PERIODS.**

19 Section 16 of the Securities Exchange Act of 1934  
20 (15 U.S.C. 78p) is amended by adding at the end the fol-  
21 lowing new subsection:

22 “(h) **TRADES BY OWNERS, OFFICERS, AND DIREC-**  
23 **TORS PROHIBITED DURING PENSION PLAN SUSPENSION**  
24 **PERIODS.—**

1           “(1) PROHIBITION.—It shall be unlawful for  
2           any such beneficial owner, director, or officer of an  
3           issuer, directly or indirectly, to purchase (or other-  
4           wise acquire) or sell (or otherwise transfer) any eq-  
5           uity security of such issuer (other than an exempted  
6           security), during any blackout period of an applica-  
7           ble defined contribution plan with respect to such  
8           equity security. This paragraph shall only apply to  
9           equity securities acquired by an individual by reason  
10          of the individual’s employment with, or status as a  
11          beneficial owner, director, or officer of, the issuer.

12          “(2) REMEDY.—Any profit realized by such  
13          beneficial owner, director, or officer from any pur-  
14          chase (or other acquisition) or sale (or other trans-  
15          fer) in violation of this subsection shall inure to and  
16          be recoverable by the issuer irrespective of any in-  
17          tention on the part of such beneficial owner, direc-  
18          tor, or officer in entering into the transaction.

19          “(3) RULEMAKING PERMITTED.—The Commis-  
20          sion may issue rules to clarify the application of this  
21          subsection, to ensure adequate notice to all persons  
22          affected by this subsection, and to prevent evasion  
23          thereof.

24          “(4) DEFINITIONS.—For purposes of this sub-  
25          section, the terms ‘applicable defined contribution



1 plan' and 'blackout period' have the meanings given  
 2 such terms by section 4980H of the Internal Rev-  
 3 enue Code of 1986.”

## 4 **Subtitle B—Participant Advocacy**

### 5 **SEC. 311. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

6 (a) IN GENERAL.—Section 7803 of the Internal Rev-  
 7 enue Code of 1986 (relating to Commissioner of Internal  
 8 Revenue and other officials) is amended by adding at the  
 9 end the following new subsection:

10 “(e) OFFICE OF PENSION PARTICIPANT ADVO-  
 11 CACY.—

12 “(1) ESTABLISHMENT.—

13 “(A) IN GENERAL.—There is established in  
 14 the Internal Revenue Service an office to be  
 15 known as the ‘Office of Pension Participant Ad-  
 16 vocacy’.

17 “(B) PENSION PARTICIPANT ADVOCATE.—  
 18 The Office of Pension Participant Advocacy  
 19 shall be under the supervision and direction of  
 20 an official to be known as the ‘Pension Partici-  
 21 pant Advocate’ who shall—

22 “(i) have demonstrated experience in  
 23 the area of pension participant assistance,  
 24 and

1                   “(ii) be selected by the Secretary after  
2                   consultation with pension participant advoca-  
3                   cacy organizations.

4                   The Pension Participant Advocate shall report  
5                   directly to the Secretary and shall be entitled to  
6                   compensation at the same rate as the highest  
7                   rate of basic pay established for the Senior Ex-  
8                   ecutive Service under section 5382 of title 5,  
9                   United States Code.

10                  “(2) FUNCTIONS OF OFFICE.—It shall be the  
11                  function of the Office of Pension Participant Advoca-  
12                  cacy to—

13                         “(A) evaluate the efforts of the Federal  
14                         Government, business, and financial, profes-  
15                         sional, retiree, labor, women’s, and other appro-  
16                         priate organizations in assisting and protecting  
17                         pension plan participants, including—

18                                 “(i) serving as a focal point for, and  
19                                 actively seeking out, the receipt of informa-  
20                                 tion with respect to the policies and activi-  
21                                 ties of the Federal Government, business,  
22                                 and such organizations which affect such  
23                                 participants,

24                                 “(ii) identifying significant problems  
25                                 for pension plan participants and the capa-

1           bilities of the Federal Government, busi-  
2           ness, and such organizations to address  
3           such problems, and

4           ““(iii) developing proposals for changes  
5           in such policies and activities to correct  
6           such problems, and communicating such  
7           changes to the appropriate officials,

8           “(B) promote the expansion of pension  
9           plan coverage and the receipt of promised bene-  
10          fits by increasing the awareness of the general  
11          public of the value of pension plans and by pro-  
12          tecting the rights of pension plan participants,  
13          including—

14           “(i) enlisting the cooperation of the  
15           public and private sectors in disseminating  
16           information, and

17           “(ii) forming private-public partner-  
18           ships and other efforts to assist pension  
19           plan participants in receiving their bene-  
20           fits,

21           “(C) advocating for the full attainment of  
22           the rights of pension plan participants, includ-  
23           ing by making pension plan sponsors and fidu-  
24           ciaries aware of their responsibilities,

1           “(D) giving priority to the special needs of  
2 low and moderate income participants,

3           “(E) developing needed information with  
4 respect to pension plans, including information  
5 on the types of existing pension plans, levels of  
6 employer and employee contributions, vesting  
7 status, accumulated benefits, benefits received,  
8 and forms of benefits, and

9           “(F) pursuing claims on behalf of partici-  
10 pants and beneficiaries and providing appro-  
11 priate assistance in the resolution of disputes  
12 between participants and beneficiaries and pen-  
13 sion plans, including assistance in obtaining set-  
14 tlement agreements.

15           “(3) REPORTS.—

16           “(A) ANNUAL REPORT.—Not later than  
17 December 31 of each calendar year, the Pen-  
18 sion Participant Advocate shall report to the  
19 Committees on Education and the Workforce  
20 and Ways and Means of the House of Rep-  
21 resentatives and the Committees on Health,  
22 Education, Labor, and Pensions and Finance of  
23 the Senate on its activities during the fiscal  
24 year ending in the calendar year. Such report  
25 shall—

1                   “(i) identify significant problems the  
2                   Advocate has identified,

3                   “(ii) include specific legislative and  
4                   regulatory changes to address the prob-  
5                   lems, and

6                   “(iii) identify any actions taken to  
7                   correct problems identified in any previous  
8                   report.

9                   The Advocate shall submit a copy of such re-  
10                  port to the Secretary and any other appropriate  
11                  official at the same time it is submitted to the  
12                  committees of Congress.

13                  “(B) SPECIFIC REPORTS.—The Pension  
14                  Participant Advocate shall report to the Sec-  
15                  retary or any other appropriate official any  
16                  time the Advocate identifies a problem which  
17                  may be corrected by the Secretary or such offi-  
18                  cial.

19                  “(C) REPORTS TO BE SUBMITTED DI-  
20                  RECTLY.—The report required under subpara-  
21                  graph (A) shall be provided directly to the com-  
22                  mittees of Congress without any prior review or  
23                  comment than the Secretary or any other Fed-  
24                  eral officer or employee.

25                  “(4) SPECIFIC POWERS.—

1           “(A) RECEIPT OF INFORMATION.—Subject  
2 to such confidentiality requirements as may be  
3 appropriate, the Secretary and other Federal  
4 officials shall, upon request, provide such infor-  
5 mation (including plan documents) as may be  
6 necessary to enable the Pension Participant Ad-  
7 vocate to carry out the Advocate’s responsibil-  
8 ities under this subsection.

9           “(B) APPEARANCES.—The Pension Partic-  
10 ipant Advocate may represent the views and in-  
11 terests of pension plan participants before any  
12 Federal agency, including, upon request of a  
13 participant, in any proceeding involving the par-  
14 ticipant.

15           “(C) CONTRACTING AUTHORITY.—In car-  
16 rying out responsibilities under paragraph  
17 (2)(E), the Pension Participant Advocate may,  
18 in addition to any other authority provided by  
19 law—

20                   “(i) contract with any person to ac-  
21 quire statistical information with respect to  
22 pension plan participants, and

23                   “(ii) conduct direct surveys of pension  
24 plan participants.”

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall take effect on January 1, 2003.

3 **TITLE IV—GENERAL**  
4 **PROVISIONS**

5 **SEC. 401. EFFECTIVE DATES AND RELATED RULES.**

6 (a) IN GENERAL.—Except as otherwise provided in  
7 this Act, the amendments made by this Act shall apply  
8 with respect to plan years beginning on or after January  
9 1, 2003.

10 (b) PLAN AMENDMENTS.—If the amendments made  
11 by this Act require an amendment to any plan, such plan  
12 amendment shall not be required to be made before the  
13 first plan year beginning on or after January 1, 2005, if—

14 (1) during the period after such amendments  
15 made by this Act take effect and before such first  
16 plan year, the plan is operated in accordance with  
17 the requirements of such amendments made by this  
18 Act, and

19 (2) such plan amendment applies retroactively  
20 to the period after such amendments made by this  
21 Act take effect and before such first plan year.

○