DeGette
DeLay
DeMint
Deutsch
Diaz-Balart
Dicks
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
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Edwards
Ehlers
Ehrlich
Emerson
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Etheridge
Everett
Farr
Fattah
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frank
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gephardt
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastings (WA)
Hayes
Hayworth
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Honda
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Israel
Issa
Istook
Jackson (IL)
Jefferson
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kingston
Kleczka
Knollenberg
Kolbe
LaFalce
LaHood
Lampson
Langevin
Lantos
Latham
LaTourette
Leach
Lee
Levin
Lewis (CA)
Lewis (KY)
Linder
Lofgren
Lowey
Lucas (KY)
Lucas (OK)
Luther
Lynch
Maloney (CT)
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McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McHugh
McInnis
McIntyre
McKeon
McKinney
Meehan
Meeks (NY)
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, George
Miller, Jeff
Mink
Mollohan
Moore
Moran (VA)
Morella
Murtha
Myrick
Nadler
Napolitano
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Osborne
Ose
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pence
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reyes
Reynolds
Rodriguez
Roemer
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Rush
Ryun (KS)
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schiff
Schrock
Scott
Sensenbrenner
Serrano
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Spratt
Stark
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tanner
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
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Tiahrt
Tiberi
Tierney
Toomey
Turner
Upton
Velazquez
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weldon (FL)
Weldon (PA)
Wexler
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wynn
Young (AK)
Young (FL)

NOES—56

Aderholt
Baird
Berry
Brady (PA)
Capuano
Condit
Costello
Crane
DeFazio
Delahunt
Dingell
English
Evans
Filner
Green (TX)
Gutierrez
Gutknecht
Hastings (FL)
Hefley
Hilliard
Hinchey
Holt
Jackson-Lee (TX)
Kucinich
Larsen (WA)
Larson (CT)
Lewis (GA)
Lipinski
LoBiondo
Matheson
McDermott
McGovern
McNulty
Menendez
Moran (KS)
Neal
Oberstar
Obey
Olver
Peterson (MN)
Sabo
Schakowsky
Slaughter
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Udall (CO)
Udall (NM)
Visclosky
Waters
Weiner
Weller
Wu

ANSWERED "PRESENT"—1

Tancredo

NOT VOTING—17

Allen
Ballenger
Brown (FL)
DeLauro
Ford
Kirk
Meek (FL)
Pryce (OH)
Riley
Rivers
Roukema
Ryan (WI)
Schaffer
Sessions
Towns
Traficant
Whitfield

□ 1210

So the Journal was approved.

The result of the vote was announced as above recorded.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3479

Mr. KUCINICH. Mr. Speaker, I ask unanimous consent my name be removed as a cosponsor of H.R. 3479.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from Ohio?

There was no objection.

GENERAL LEAVE

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3762.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

PENSION SECURITY ACT OF 2002

Mr. BOEHNER. Mr. Speaker, pursuant to House Resolution 386, I call up the bill (H.R. 3762) to amend title 1 of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to provide additional protections to participants and beneficiaries in individual account plans from excessive investment in employer securities and to promote the provision of retirement investment advice to workers managing their retirement income assets, and to amend the Securities Exchange Act of 1934 to prohibit insider trades during any suspension of the ability of plan participants or beneficiaries to direct investment away from equity securities of the plan sponsor, and ask for its immediate consideration in the House.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 386, the bill is considered read for amendment.

The text of H.R. 3762 is as follows:

H.R. 3762

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Pension Security Act of 2002".

SEC. 2. IMPROVED DISCLOSURE OF PENSION BENEFIT INFORMATION BY INDIVIDUAL ACCOUNT PLANS.

(a) PENSION BENEFIT STATEMENTS REQUIRED ON PERIODIC BASIS.—

(1) IN GENERAL.—Subsection (a) of section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by inserting "and, in the case of an applicable individual account plan, shall furnish at least quarterly to each plan participant (and to each beneficiary with a right to direct investments)," after "who so requests in writing,".

(2) INFORMATION REQUIRED FROM INDIVIDUAL ACCOUNT PLANS.—Section 105 of such Act (29 U.S.C. 1025) is amended by adding at the end the following new subsection:

"(e)(1) The quarterly statements required under subsection (a) shall include (together with the information required in subsection (a)) the following:

"(A) the value of investments allocated to the individual account, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and an explanation of any limitations or restrictions on the right of the participant or beneficiary to direct an investment; and

"(B) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities.".

(3) DEFINITION OF APPLICABLE INDIVIDUAL ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new subsection:

"(42) The term 'applicable individual account plan' means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereunder) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986.".

(b) CIVIL PENALTIES FOR FAILURE TO PROVIDE QUARTERLY BENEFIT STATEMENTS.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(1) in subsection (a)(6), by striking "(5), or (6)" and inserting "(5), (6), or (7)";

(2) by redesignating paragraph (7) of subsection (c) as paragraph (8); and

(3) by inserting after paragraph (6) of subsection (c) the following new paragraph:

"(7) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day from the date of such plan administrator's failure or refusal to provide participants or beneficiaries with a benefit statement on at least a quarterly basis in accordance with section 105(a).".

SEC. 3. PROTECTION FROM SUSPENSIONS, LIMITATIONS, OR RESTRICTIONS ON ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT OR DIVERSIFY PLAN ASSETS.

(a) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

(1) by redesignating the second subsection (h) as subsection (j); and

(2) by inserting after the first subsection (h) the following new subsection:

''(i) NOTICE OF SUSPENSION, LIMITATION, OR RESTRICTION ON ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT INVESTMENTS IN INDIVIDUAL ACCOUNT PLAN.—

''(1) IN GENERAL.—In the case of an applicable individual account plan, the administrator shall notify participants and beneficiaries of any action that would have the affect of suspending, limiting, or restricting the ability of participants or beneficiaries to direct or diversify assets credited to their accounts.

''(2) NOTICE REQUIREMENTS.—

''(A) IN GENERAL.—The notices described in paragraph (1) shall—

''(i) be written in a manner calculated to be understood by the average plan participant and shall include the reasons for the suspension, limitation, or restriction, an identification of the investments affected, and the expected period of the suspension, limitation, or restriction, and

''(ii) be furnished at least 30 days in advance of the action suspending, limiting, or restricting the ability of the participants or beneficiaries to direct or diversify assets.

''(B) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

''(i) a fiduciary of the plan determines, in writing, that a deferral of the suspension, limitation, or restriction would violate the requirements of subparagraph (A) or (B) of section 404(a)(1), or

''(ii) the inability to provide the 30-day advance notice is due to circumstances beyond the reasonable control of the plan administrator,

subparagraph (A)(ii) shall not apply, and the notice shall be furnished as soon as reasonably possible under the circumstances.

''(3) CHANGES IN EXPECTED PERIOD OF SUSPENSION, LIMITATION, OR RESTRICTION.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the expected period of the suspension, limitation, or restriction on the right of a participant or beneficiary to direct or diversify assets, the administrator shall provide affected participants and beneficiaries advance notice of the change. Such notice shall meet the requirements of paragraph (2)(A)(i) in relation to the extended suspension, limitation, or restriction.''.

(b) CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 502 of such Act (as amended by section 2(b)) is amended further—

(1) in subsection (a)(6), by striking ''(6), or (7)'' and inserting ''(6), (7), or (8)'';

(2) by redesignating paragraph (8) of subsection (c) as paragraph (9); and

(3) by inserting after paragraph (7) of subsection (c) the following new paragraph:

''(8) The Secretary may assess a civil penalty against any person of up to $100 a day from the date of the person's failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary, shall be treated as a separate violation.''.

(c) INAPPLICABILITY OF RELIEF FROM FIDUCIARY LIABILITY DURING SUSPENSION OF ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT INVESTMENTS.—Section 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is amended—

(1) in subparagraph (B), by inserting before the period the following: '', except that this subparagraph shall not apply for any period during which the ability of a participant or beneficiary to direct the investment of assets in his or her individual account is suspended by a plan sponsor or fiduciary''; and

(2) by adding at the end the following:

''Any limitation or restriction that may govern the frequency of transfers between investment vehicles shall not be treated as a suspension referred to in subparagraph (B) to the extent such limitation or restriction is disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.''.

SEC. 4. LIMITATIONS ON RESTRICTIONS OF INVESTMENTS IN EMPLOYER SECURITIES.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1107) is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection:

''(j)(1) An applicable individual account plan may not acquire or hold any employer securities with respect to which there is any restriction on divestment by a participant or beneficiary on or after the date on which the participant has completed 3 years of participation (as defined in subsection (b)(4)) under the plan or (if the plan so provides) 3 years of service (as defined in section 203(b)(2)) with the employer.

''(2) For purposes of paragraph (1), the term 'restriction on divestment' includes—

''(A) any failure to offer at least 3 diversified investment options in which a participant or beneficiary may direct the proceeds from the divestment of employer securities, and

''(B) any restriction on the ability of a participant or beneficiary to choose from all otherwise available investment options in which such proceeds may be so directed.''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Subsection (a) of section 401 of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (34) the following new paragraph:

''(35) LIMITATIONS ON RESTRICTIONS UNDER APPLICABLE DEFINED CONTRIBUTION PLANS ON INVESTMENTS IN EMPLOYER SECURITIES.—

''(A) IN GENERAL.—A trust forming a part of an applicable defined contribution plan shall not constitute a qualified trust under this subsection if the plan acquires or holds any employer securities with respect to which there is any restriction on divestment by a participant or beneficiary on or after the date on which the participant has completed 3 years of participation (as defined in section 411(b)(4)) under the plan or (if the plan so provides) 3 years of service (as defined in section 411(a)(5)) with the employer.

''(B) DEFINITIONS.—For purposes of subparagraph (A)—

''(i) APPLICABLE DEFINED CONTRIBUTION PLAN.—The term 'applicable defined contribution plan' means any defined contribution plan, except that such term does not include an employee stock ownership plan (as defined in section 4975(e)(7)) unless there are any contributions to such plan (or earnings thereunder) held within such plan that are subject to subsections (k)(3) or (m)(2).

''(ii) RESTRICTION ON DIVESTMENT.—The term 'restriction on divestment' includes—

''(I) any failure to offer at least 3 diversified investment options in which a participant or beneficiary may direct the proceeds from the divestment of employer securities, and

''(II) any restriction on the ability of a participant or beneficiary to choose from all otherwise available investment options in which such proceeds may be so directed.''.

(2) CONFORMING AMENDMENT.—Section 401(a)(28)(B) of such Code (relating to diversification of investments) is amended by adding at the end the following new clause:

''(v) EXCEPTION.—This subparagraph shall not apply to an applicable defined contribution plan (as defined in paragraph (35)(B)(i)).''.

SEC. 5. PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE.

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

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(2) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary advisor in connection with the provision of investment advice by the fiduciary adviser, and

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(3) EXEMPTION CONDITIONED ON CONTINUED AVAILABILITY OF REQUIRED INFORMATION ON REQUEST FOR 1 YEAR.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4),

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(A) in paragraph (14), by striking ''or'' at the end;

(B) in paragraph (15), by striking the period at the end and inserting ''; or''; and

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

''(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.''.

(2) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property, ''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary advisor in connection with the provision of investment advice by the fiduciary adviser, and

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4),

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

SEC. 6. INSIDER TRADES DURING PENSION PLAN SUSPENSION PERIODS PROHIBITED.

Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following new subsection:

''(h) INSIDER TRADES DURING PENSION PLAN SUSPENSION PERIODS PROHIBITED.—

''(1) PROHIBITION.—It shall be unlawful for any such beneficial owner, director, or officer of an issuer, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of such issuer (other than an exempted security), during any pension plan suspension period with respect to such equity security.

''(2) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this subsection shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction.

''(3) RULEMAKING PERMITTED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

''(4) DEFINITIONS.—For purposes of this subsection—

''(A) PENSION PLAN SUSPENSION PERIOD.—The term 'pension plan suspension period' means, with respect to an equity security, any period during which the ability of a participant or beneficiary under an applicable individual account plan maintained by the issuer to direct the investment of assets in his or her individual account away from such equity security is suspended by the issuer or a fiduciary of the plan. Such term does not include any limitation or restriction that may govern the frequency of transfers between investment vehicles to the extent such limitation and restriction is disclosed to participants and beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.

''(B) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—The term 'applicable individual account plan' has the meaning provided such term in section 3(42) of the Employee Retirement Income Security Act of 1974.''.

SEC. 7. EFFECTIVE DATES AND RELATED RULES.

(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by sections 2, 3, 4, and 6 shall apply with respect to plan years beginning on or after January 1, 2003.

(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''January 1, 2003'' the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2004, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 2005.

(c) PLAN AMENDMENTS.—If the amendments made by sections 2, 3, and 4 of this Act require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 2005, if—

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

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

(d) AMENDMENTS RELATING TO INVESTMENT ADVICE.—The amendments made by section 5 shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 or section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2003.

The SPEAKER pro tempore. In lieu of the amendment recommended by the Committee on Education and the Workforce printed in the bill, the amendment in the nature of a substitute printed in part A of House Report 107–396 is adopted.

The text of H.R. 3762, as amended pursuant to House Resolution 386, is as follows:

H.R. 3762

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Pension Security Act of 2002''.

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN PENSION SECURITY

Sec. 101. Periodic pension benefits statements.
Sec. 102. Protection from suspensions, limitations, or restrictions on ability of participant or beneficiary to direct or diversify plan assets.
Sec. 103. Informational and educational support for pension plan fiduciaries.
Sec. 104. Diversification requirements for defined contribution plans that hold employer securities.
Sec. 105. Prohibited transaction exemption for the provision of investment advice.
Sec. 106. Study regarding impact on retirement savings of participants and beneficiaries by requiring consultants to advise plan fiduciaries of individual account plans.
Sec. 107. Treatment of qualified retirement planning services.
Sec. 108. Insider trades during pension fund blackout periods prohibited.
Sec. 109. Effective dates of title and related rules.

TITLE II—OTHER PROVISIONS RELATING TO PENSIONS

Sec. 201. Amendments to Retirement Protection Act of 1994.
Sec. 202. Reporting simplification.
Sec. 203. Improvement of Employee Plans Compliance Resolution System.
Sec. 204. Flexibility in nondiscrimination, coverage, and line of business rules.
Sec. 205. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
Sec. 206. Notice and consent period regarding distributions.
Sec. 207. Annual report dissemination.
Sec. 208. Technical corrections to Saver Act.
Sec. 209. Missing participants.
Sec. 210. Reduced PBGC premium for new plans of small employers.
Sec. 211. Reduction of additional PBGC premium for new and small plans.
Sec. 212. Authorization for PBGC to pay interest on premium overpayment refunds.
Sec. 213. Substantial owner benefits in terminated plans.
Sec. 214. Benefit suspension notice.
Sec. 215. Studies.
Sec. 216. Interest rate range for additional funding requirements.
Sec. 217. Provisions relating to plan amendments.

TITLE III—STOCK OPTIONS

Sec. 301. Exclusion of incentive stock options and employee stock purchase plan stock options from wages.

TITLE IV—SOCIAL SECURITY AND MEDICARE HELD HARMLESS

Sec. 401. Protection of Social Security and Medicare.

TITLE I—IMPROVEMENTS IN PENSION SECURITY

SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.

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

(1) REQUIREMENTS.—

(A) IN GENERAL.—Section 105(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025(a)) is amended to read as follows:

''(a)(1)(A) The administrator of an individual account plan shall furnish a pension benefit statement—

''(i) to each plan participant at least annually,

''(ii) to each plan beneficiary upon written request, and

''(iii) in the case of an applicable individual account plan, to each plan participant (and to each beneficiary with a right to direct investments) at least quarterly.

''(B) The administrator of a defined benefit plan shall furnish a pension benefit statement—

''(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit who is employed by the employer maintaining the plan at the time the statement is furnished to participants, and

''(ii) to a plan participant or plan beneficiary of the plan upon written request.

''(2) A pension benefit statement under paragraph (1)—

''(A) shall indicate, on the basis of the latest available information—

''(i) the total benefits accrued, and

''(ii) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,

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

''(C) may be provided in written form or in electronic or other appropriate form to the extent that such form is reasonably accessible to the recipient.

''(3) In the case of an applicable individual account plan, the requirements of paragraph (1)(A) shall be treated as met if the quarterly statement (together with the information required in subparagraphs (A) and (B) of subsection (d)(1)) is available electronically in reasonably accessible form, and the participant or beneficiary is provided at least once each year a notice that such statement (together with such information) is available in such form. Such notice shall be in written, electronic, or other appropriate form.

''(4)(A) In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if the administrator provides the participant at least once each year with notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice shall be provided in written, electronic, or other appropriate form, and may be included with other communications to the participant if done in a manner reasonably designed to attract the attention of the participant.

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

(B) CONFORMING AMENDMENTS.—

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

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

''(b) In no case shall a participant or beneficiary of a plan be entitled to more than one statement described in clause (i) or (ii) of subsection (a)(1)(A) or clause (i) or (ii) of subsection (a)(1)(B), whichever is applicable, in any 12-month period. If such report is required under subsection (a) to be furnished at least quarterly, the requirements of the preceding sentence shall be applied with respect to each quarter in lieu of the 12-month period.''.

(2) INFORMATION REQUIRED FROM APPLICABLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of such Act (as amended by paragraph (1)) is amended further by adding at the end the following new subsection:

''(d)(1) The statements required to be provided at least quarterly under subsection (a) shall include (together with the information required in subsection (a)) the following:

''(A) the value of investments allocated to the individual account, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and an explanation of any limitations or restrictions on the right of the participant or beneficiary to direct an investment; and

''(B) an explanation, written in a manner calculated to be understood by the average plan participant, of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a discussion of the risk of holding more than 25 percent of a portfolio in the security of any one entity, such as employer securities.

''(2) The value of any employer securities that are not readily tradable on an established securities market that is required to be reported under paragraph (1)(A) may be determined by using the most recent valuation of the employer securities.

''(3) The Secretary shall issue guidance and model notices which meet the requirements of this subsection.''.

(3) DEFINITION OF APPLICABLE INDIVIDUAL ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C. 1002) is amended by adding at the end the following new paragraph:

''(42)(A) The term 'applicable individual account plan' means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereunder) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986. Such term shall not include a one-participant retirement plan.

''(B) The term 'one-participant retirement plan' means a retirement plan that—

''(i) on the first day of the plan year—

''(I) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated), or

''(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation),

''(ii) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph) without being combined with any other plan of the business that covers the employees of the business,

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

''(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

''(v) does not cover a business that leases employees.''.

(4) CIVIL PENALTIES FOR FAILURE TO PROVIDE QUARTERLY BENEFIT STATEMENTS.—Section 502 of such Act (29 U.S.C. 1132) is amended—

(A) in subsection (a)(6), by striking ''(5), or (6)'' and inserting ''(5), (6), or (7)'';

(B) by redesignating paragraph (7) of subsection (c) as paragraph (8); and

(C) by inserting after paragraph (6) of subsection (c) the following new paragraph:

''(7) The Secretary may assess a civil penalty against any plan administrator of up to $1,000 a day from the date of such plan administrator's failure or refusal to provide participants or beneficiaries with a benefit statement on at least a quarterly basis in accordance with section 105(a)(1)(A)(iii).''.

(5) MODEL STATEMENTS.—The Secretary of Labor shall, not later than January 1, 2003, issue initial guidance and a model benefit statement, written in a manner calculated to be understood by the average plan participant, that may be used by plan administrators in complying with the requirements of section 105 of the Employee Retirement Income Security Act of 1974. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) PROVISION OF INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—Section 414 of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following:

''(w) PROVISION OF INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—

''(1) IN GENERAL.—The plan administrator of an applicable pension plan shall provide to each applicable individual an investment education notice described in paragraph (2) at the time of the enrollment of the applicable individual in the plan and not less often than annually thereafter.

''(2) INVESTMENT EDUCATION NOTICE.—An investment education notice is described in this paragraph if such notice contains—

''(A) an explanation, for the long-term retirement security of participants and beneficiaries, of generally accepted investment principles, including principles of risk management and diversification, and

''(B) a discussion of the risk of holding substantial portions of a portfolio in the security of any one entity, such as employer securities.

''(3) UNDERSTANDABILITY.—Each notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with guidance provided by the Secretary) to allow recipients to understand such notice.

''(4) FORM AND MANNER OF NOTICES.—The notices required by this subsection shall be in writing, except that such notices may be in electronic or other form (or electronically posted on the plan's website) to the extent that such form is reasonably accessible to the applicable individual.

''(5) DEFINITIONS.—For purposes of this subsection—

''(A) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(i) any participant in the applicable pension plan,

''(ii) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under a qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

''(iii) any beneficiary of a deceased participant or alternate payee.

''(B) APPLICABLE PENSION PLAN.—The term 'applicable pension plan' means—

''(i) a plan described in clause (i), (ii), or (iv) of section 219(g)(5)(A), and

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A),

which permits any participant to direct the investment of some or all of his account in the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant. Such term shall not include a one-participant retirement plan or a plan to which section 105 of the Employee Retirement Income Security Act of 1974 applies.

''(C) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—The term 'one-participant retirement plan' means a retirement plan that—

''(i) on the first day of the plan year—

''(I) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated), or

''(II) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation),

''(ii) meets the minimum coverage requirements of section 410(b) without being combined with any other plan of the business that covers the employees of the business,

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

''(iv) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control, and

''(v) does not cover a business that leases employees.

''(6) CROSS REFERENCE.—

''For provisions relating to penalty for failure to provide the notice required by this section, see section 6652(m).''.

(2) PENALTY FOR FAILURE TO PROVIDE NOTICE.—Section 6652 of such Code (relating to failure to file certain information returns, registration statements, etc.) is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following new subsection:

''(m) FAILURE TO PROVIDE INVESTMENT EDUCATION NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—In the case of each failure to provide a written explanation as required by section 414(w) with respect to an applicable individual (as defined in such section), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $100 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.''.

SEC. 102. PROTECTION FROM SUSPENSIONS, LIMITATIONS, OR RESTRICTIONS ON ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT OR DIVERSIFY PLAN ASSETS.

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

(1) NOTICE REQUIREMENTS.—

(A) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021) is amended—

(i) by redesignating the second subsection (h) as subsection (j); and

(ii) by inserting after the first subsection (h) the following new subsection:

''(i) NOTICE OF SUSPENSION, LIMITATION, OR RESTRICTION ON ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT INVESTMENTS IN INDIVIDUAL ACCOUNT PLAN.—

''(1) DUTIES OF PLAN ADMINISTRATOR.—

''(A) IN GENERAL.—In the case of any action having the effect of temporarily suspending, limiting, or restricting any ability of participants or beneficiaries under an applicable individual account plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, if such suspension, limitation, or restriction is for any period of more than 3 consecutive business days, the plan administrator shall—

''(i) in advance of taking such action, determine, in accordance with the requirements of part 4, that the expected period of suspension, limitation, or restriction is reasonable, and

''(ii) after making the determination under subparagraph (A) and in advance of taking such action, notify the plan participants and beneficiaries who are affected by such action in accordance with this subsection.

''(B) EXCEPTIONS.—Subparagraph (A) does not apply in connection with any suspension, limitation, or restriction—

''(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), or

''(ii) to the extent the suspension, limitation, or restriction is a change to the terms of the plan disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.

''(C) BUSINESS DAY.—For purposes of subparagraph (A), under regulations prescribed by the Secretary, the term 'business day' means—

''(i) in the case of a security which is traded on an established security market, any day on which such security may be traded on the principal securities market of such security, and

''(ii) in the case of a security which is not traded on an established security market, any calendar day.

''(2) NOTICE REQUIREMENTS.—

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

''(i) the reasons for the suspension, limitation, or restriction,

''(ii) an identification of the investments affected,

''(iii) the expected period of the suspension, limitation, or restriction,

''(iv) a statement that the plan administrator has evaluated the reasonableness of the expected period of suspension, limitation, or restriction,

''(v) a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets credited to their accounts during the expected period of suspension, limitation, or restriction, and

''(vi) such other matters as the Secretary may include in the model notices issued under subparagraph (E).

''(B) PROVISION OF NOTICE.—Except as otherwise provided in this subsection, notices described in paragraph (1) shall be furnished to all participants and beneficiaries under the plan at least 30 days in advance of the action suspending, limiting, or restricting the ability of the participants or beneficiaries to direct or diversify assets.

''(C) EXCEPTION TO 30-DAY NOTICE REQUIREMENT.—In any case in which—

''(i) a fiduciary of the plan determines, in writing, that a deferral of the suspension, limitation, or restriction would violate the requirements of subparagraph (A) or (B) of section 404(a)(1), or

''(ii) the inability to provide the 30-day advance notice is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator,

subparagraph (B) shall not apply, and the notice shall be furnished to all participants and beneficiaries under the plan as soon as reasonably possible under the circumstances unless such a notice in advance of the termination of the suspension, limitation, or restriction is impracticable.

''(D) WRITTEN NOTICE.—The notice required to be provided under this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the recipient.

''(E) MODEL NOTICES.—The Secretary shall issue model notices which meet the requirements of this paragraph.

''(3) EXCEPTION FOR SUSPENSIONS, LIMITATIONS, OR RESTRICTIONS WITH LIMITED APPLICABILITY.—In any case in which the suspension, limitation, or restriction described in paragraph (1)—

''(A) applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 206(d)(3)(K)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 206(d)(3)(B)(i)), or

''(B) applies only to 1 or more participants or beneficiaries in connection with a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such merger, acquisition, divestiture, or transaction,

the requirement of this subsection that the notice be provided to all participants and beneficiaries shall be treated as met if the notice required under paragraph (1) is provided to all the individuals referred to in subparagraph (A) or (B) to whom the suspension, limitation, or restriction applies as soon as reasonably practicable.

''(4) CHANGES IN PERIOD OF SUSPENSION, LIMITATION, OR RESTRICTION.—If, following the furnishing of the notice pursuant to this subsection, there is a change in the period of the suspension, limitation, or restriction (specified in such notice pursuant to paragraph (2)(A)(iii)) on the right of a participant or beneficiary to direct or diversify assets, the administrator shall provide affected participants and beneficiaries notice of the change as soon as reasonably practicable. In relation to the extended suspension, limitation, or restriction, such notice shall meet the requirements of paragraph (2)(D) and shall specify any material change in the matters referred to in clauses (i) through (vi) of paragraph (2)(A).

''(5) REGULATORY EXCEPTIONS.—The Secretary may provide by regulation for additional exceptions to the requirements of this subsection which the Secretary determines are in the interests of participants and beneficiaries.

''(6) GUIDANCE AND MODEL NOTICES.—The Secretary shall issue guidance and model notices which meet the requirements of this subsection.''.

(B) ISSUANCE OF INITIAL GUIDANCE AND MODEL NOTICE.—The Secretary of Labor shall issue initial guidance and a model notice pursuant to section 101(i)(6) of the Employee Retirement Income Security Act of 1974 (as added by this subsection) not later than January 1, 2003. Not later than 75 days after the date of the enactment of this Act, the Secretary shall promulgate interim final rules necessary to carry out the amendments made by this subsection.

(2) CIVIL PENALTIES FOR FAILURE TO PROVIDE NOTICE.—Section 502 of such Act (as amended by section 101(a)(4)) is amended further—

(A) in subsection (a)(6), by striking ''(6), or (7)'' and inserting ''(6), (7), or (8)'';

(B) by redesignating paragraph (8) of subsection (c) as paragraph (9); and

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

''(8) The Secretary may assess a civil penalty against a plan administrator of up to $100 a day from the date of the plan administrator's failure or refusal to provide notice to participants and beneficiaries in accordance with section 101(i). For purposes of this paragraph, each violation with respect to any single participant or beneficiary shall be treated as a separate violation.''.

(3) INAPPLICABILITY OF RELIEF FROM FIDUCIARY LIABILITY DURING SUSPENSION OF ABILITY OF PARTICIPANT OR BENEFICIARY TO DIRECT INVESTMENTS.—Section 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is amended—

(A) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by inserting ''(A)'' after ''(c)(1)'';

(B) in subparagraph (A)(ii) (as redesignated by subparagraph (A)), by inserting before the period the following: '', except that this clause shall not apply in connection with such participant or beneficiary for any period during which the ability of such participant or beneficiary to direct the investment of the assets in his or her account is suspended by a plan sponsor or fiduciary''; and

(C) by adding at the end the following new subparagraphs:

''(B) If the person referred to in subparagraph (A)(ii) meets the requirements of this title in connection with authorizing the suspension, such person shall not be liable under this title for any loss occurring during the suspension as a result of any exercise by the participant or beneficiary of control over assets in his or her account prior to the suspension. Matters to be considered in determining whether such person has satisfied the requirements of this title include whether such person—

''(i) has considered the reasonableness of the expected period of the suspension as required under section 101(i)(1)(A)(i),

''(ii) has provided the notice required under section 101(i)(1)(A)(ii), and

''(iii) has acted in accordance with the requirements of subsection (a) in determining whether to enter into the suspension.

''(C) Any limitation or restriction that may govern the frequency of transfers between investment vehicles shall not be treated as a suspension referred to in subparagraph (A)(ii) to the extent such limitation or restriction is disclosed to participants or beneficiaries through the summary plan description or materials describing specific investment alternatives under the plan.''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) EXCISE TAX ON FAILURE OF PENSION PLANS TO PROVIDE NOTICE OF TRANSACTION RESTRICTION PERIODS.—

(A) IN GENERAL.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

''SEC. 4980H. FAILURE OF APPLICABLE PLANS TO PROVIDE NOTICE OF TRANSACTION RESTRICTION PERIODS.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any applicable pension plan to meet the requirements of subsection (e) with respect to any applicable individual.

''(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any applicable individual shall be $100.

''(c) LIMITATIONS ON AMOUNT OF TAX.—

''(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

''(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

''(B) such person provides the notice described in subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed and at least 1 business day before the beginning of the transaction restriction period.

''(2) TAX NOT TO APPLY WHEN PROVIDING NOTICE NOT REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) if, in the case of the occurrence of an unforeseeable event, it is not reasonably practicable to provide such notice before the beginning of the transaction restriction period.

''(3) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

''(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

''(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

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

''(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

''(1) In the case of a plan other than a multiemployer plan, the employer.

''(2) In the case of a multiemployer plan, the plan.

''(e) NOTICE OF TRANSACTION RESTRICTION PERIOD.—

''(1) IN GENERAL.—The plan administrator of an applicable pension plan shall provide written notice of any transaction restriction period to each applicable individual to whom the transaction restriction period applies (and to each employee organization representing such applicable individuals).

''(2) UNDERSTANDABILITY.—The notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with guidance provided by the Secretary) to allow recipients to understand the timing and effect of such transaction restriction period.

''(3) TIMING OF NOTICE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the notice required by paragraph (1) shall be provided at least 30 days before the beginning of the transaction restriction period.

''(B) DISPOSITION OF STOCK OR ASSETS.—

''(i) IN GENERAL.—If, in connection with the major corporate disposition by a corporation maintaining an applicable pension plan, there is the possibility of a transaction restriction period—

''(I) the notice required by paragraph (1) shall be provided at least 30 days before the date of such disposition, and

''(II) no other notice shall be required by paragraph (1) with respect to such period if notice is provided pursuant to subclause (I) and such period begins not more than 30 days after the date of such disposition.

Subclause (I) shall not apply if the plan administrator has a substantial basis to believe that there will be no transaction restriction period in connection with the disposition.

''(ii) MAJOR CORPORATE DISPOSITION.—For purposes of clause (i), the term 'major corporate disposition' means, with respect to a corporation—

''(I) the disposition of substantially all of the stock of such corporation or a subsidiary thereof, or

''(II) the disposition of substantially all of the assets used in a trade or business of such corporation or subsidiary.

''(iii) NONCORPORATE ENTITIES.—Rules similar to the rules of this subparagraph shall apply to entities that are not corporations.

''(4) FORM AND MANNER OF NOTICE.—The notice required by this subsection shall be in writing, except that such notice may be in electronic or other form to the extent that such form is reasonably accessible to the applicable individual.

''(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(A) any participant in the applicable pension plan, and

''(B) any beneficiary who is an alternate payee (within the meaning of section 414(p)(8)) under a qualified domestic relations order (within the meaning of section 414(p)(1)(A)), and

''(C) any beneficiary of a deceased participant or alternate payee.

''(2) APPLICABLE PENSION PLAN.—

''(A) IN GENERAL.—The term 'applicable pension plan' means—

''(i) a plan described in clause (i), (ii), or (iv) of section 219(g)(5)(A), and

''(ii) an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A),

which maintains accounts for participants under the plan or under which the accrued benefit of any participant depends in whole or in part on hypothetical investments directed by the participant.

''(B) EXCEPTION.—Such term shall not include a one-participant retirement plan (as defined in section 4980G(f)(3)).

''(3) TRANSACTION RESTRICTION PERIOD.—

''(A) IN GENERAL.—The term 'transaction restriction period' means, with respect to an applicable pension plan, a period beginning on a day in which there is a substantial reduction in rights described in subparagraph (B) which are not restored as of the beginning of the 3rd day following the day of such reduction.

''(B) RIGHTS DESCRIBED.—For purposes of this paragraph, rights described in this section with respect to an applicable pension plan are rights under such plan of 1 or more applicable individuals to direct investments in such plan, to obtain loans from such plan, or to obtain distributions from such plan.

''(C) SPECIAL RULE FOR EMPLOYER SECURITIES.—For purposes of this paragraph—

''(i) IN GENERAL.—In the case of rights relating to directing investments out of employer securities, such rights shall be treated as substantially reduced if such rights are significantly restricted for at least 3 consecutive business days.

''(ii) BUSINESS DAY.—For purposes of clause (i), under regulations prescribed by the Secretary, the term 'business day' means—

''(I) in the case of a security which is traded on an established security market, any day on which such security may be traded on the principal securities market of such security, and

''(II) in the case of a security which is not traded on an established security market, any calendar day.

''(iii) EMPLOYER SECURITIES.—For purposes of this subparagraph, the term 'employer securities' shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974.

''(D) EXCEPTIONS.—Rights which are substantially reduced by reason of the application of securities laws or other circumstances specified by the Secretary in regulations shall not be taken into account for purposes of this paragraph.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

''Sec. 4980H. Failure of applicable plans to provide notice of transaction restriction periods.''.

(3) GUIDANCE.—The Secretary of the Treasury, in consultation with the Secretary of Labor, shall issue guidance in carrying out section 4980H of the Internal Revenue Code of 1986 (as added by this section). Such guidance—

(A) in the case of a reduction of rights relating to the direction of investments out of employer securities, shall be issued by November 1, 2002 (or, if later, the 60th day after the date of the enactment of this Act), and

(B) in any other case, shall be issued not later than 120 days after the date of the enactment of this Act.

SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT FOR PENSION PLAN FIDUCIARIES.

Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e) The Secretary shall establish a program under which information and educational resources shall be made available on an ongoing basis to persons serving as fiduciaries under employee pension benefit plans so as to assist such persons in diligently and effectively carrying out their fiduciary duties in accordance with this part.''.

SEC. 104. DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.

(a) AMENDMENT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 204 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054) is amended—

(1) by redesignating subsection (j) as subsection (k); and

(2) by inserting after subsection (i) the following new subsection:

''(j) DIVERSIFICATION REQUIREMENTS FOR INDIVIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURITIES.—

''(1) IN GENERAL.—An applicable individual account plan shall meet the requirements of paragraphs (2) and (3).

''(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if each applicable individual may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

''(3) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—

''(A) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals to which paragraph (2) applies) which is invested in employer securities, a plan meets the requirements of this paragraph if, under the plan—

''(i) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4), or

''(ii) with respect to any employer security allocated to an applicable individual's account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of paragraph (4).

''(B) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of subparagraph (A), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 203(b)) were taken into account under paragraph (6)(B)(i).

''(4) INVESTMENT OPTIONS.—The requirements of this paragraph are met if—

''(A) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics, and

''(B) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities occurring no less frequently than on a quarterly basis.

''(5) DEFINITIONS AND RULES.—For purposes of this subsection—

''(A) APPLICABLE INDIVIDUAL ACCOUNT PLAN.—The term 'applicable individual account plan' means any individual account plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7) of the Internal Revenue Code of 1986) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2) of section 401 of the Internal Revenue Code of 1986.

''(B) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(i) any participant in the plan, and

''(ii) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.

''(C) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).

''(D) EMPLOYER SECURITY.—The term 'employer security' shall have the meaning given such term by section 407(d)(1) of this Act (as in effect on the date of the enactment of this subsection).

''(E) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this subsection).

''(F) ELECTIONS.—Elections under this subsection may be made not less frequently than quarterly.

''(6) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This subsection shall not apply with respect to a plan if there is no class of stock issued by any employer maintaining the plan (or by a corporation which is an affiliate of any such employer, as defined in section 407(d)(7) as in effect on the date of the enactment of this subsection) that is readily tradable on an established securities market.

''(7) TRANSITION RULE.—

''(A) IN GENERAL.—In the case of any individual account plan which, on the first day of the first plan year to which this subsection applies, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this subsection, this subsection shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

''(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be as follows:

"Plan years for which provisions are effective:	Applicable percentage:
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter.	100 percent.

''(C) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—For purposes of subparagraph (A), the applicable percentage shall be 100 percent with respect to—

''(i) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) as of the date of the enactment of this paragraph, and

''(ii) such elective deferrals.

''(D) COORDINATION WITH PRIOR ELECTIONS.—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this subsection was undertaken pursuant to other applicable Federal law prior to such date, the applicable percentage (as determined without regard to this subparagraph) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

''(8) REGULATIONS.—The Secretary of the Treasury shall prescribe regulations under this subsection in consultation with the Secretary of Labor.''

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Section 401(a) of the Internal Revenue Code of 1986 (relating to requirements for qualification) is amended by inserting after paragraph (34) the following new paragraph:

''(35) DIVERSIFICATION REQUIREMENTS FOR DEFINED CONTRIBUTION PLANS THAT HOLD EMPLOYER SECURITIES.—

''(A) IN GENERAL.—An applicable defined contribution plan shall meet the requirements of subparagraphs (B) and (C).

''(B) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this subparagraph if each applicable individual in such plan may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

''(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES.—

''(i) IN GENERAL.—In the case of the portion of the account attributable to employer contributions (other than elective deferrals to which subparagraph (B) applies) which is invested in employer securities, a plan meets the requirements of this subparagraph if, under the plan—

''(I) each applicable individual with a benefit based on 3 years of service may elect to direct the plan to divest any such securities in the individual's account and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D), or

''(II) with respect to any employer security allocated to an applicable individual's account during any plan year, such applicable individual may elect to direct the plan to divest such employer security after a date which is not later than 3 years after the end of such plan year and to reinvest an equivalent amount in other investment options which meet the requirements of subparagraph (D).

''(ii) APPLICABLE INDIVIDUAL WITH BENEFIT BASED ON 3 YEARS OF SERVICE.—For purposes of clause (i), an applicable individual has a benefit based on 3 years of service if such individual would be an applicable individual if only participants in the plan who have completed at least 3 years of service (as determined under section 411(a)) were taken into account under subparagraph (F)(ii)(I).

''(D) INVESTMENT OPTIONS.—The requirements of this subparagraph are met if—

''(i) the plan offers not less than 3 investment options, other than employer securities, to which an applicable individual may direct the proceeds from the divestment of employer securities pursuant to this paragraph, each of which is diversified and has materially different risk and return characteristics, and

''(ii) the plan permits the applicable individual to choose from any of the investment options made available under the plan to which such proceeds may be so directed, subject to such restrictions as may be provided by the plan limiting such choice to periodic, reasonable opportunities occurring no less frequently than on a quarterly basis.

''(E) DEFINITIONS AND RULES.—For purposes of this paragraph—

''(i) APPLICABLE DEFINED CONTRIBUTION PLAN.—The term 'applicable defined contribution plan' means any defined contribution plan, except that such term does not include an employee stock ownership plan (within the meaning of section 4975(e)(7)) unless there are any contributions to such plan (or earnings thereon) held within such plan that are subject to subsection (k)(3) or (m)(2).

''(ii) APPLICABLE INDIVIDUAL.—The term 'applicable individual' means—

''(I) any participant in the plan, and

''(II) any beneficiary of a participant referred to in clause (i) who has an account under the plan with respect to which the beneficiary is entitled to exercise the rights of the participant.

''(iii) ELECTIVE DEFERRAL.—The term 'elective deferral' means an employer contribution described in section 402(g)(3)(A) (as in effect on the date of the enactment of this paragraph).

''(iv) EMPLOYER SECURITY.—The term 'employer security' shall have the meaning given such term by section 407(d)(1) of the Employee Retirement Income Security Act of 1974 (as in effect on the date of the enactment of this paragraph).

''(v) EMPLOYEE STOCK OWNERSHIP PLAN.—The term 'employee stock ownership plan' shall have the same meaning given to such term by section 4975(e)(7) of the Internal Revenue Code of 1986 (as in effect on the date of the enactment of this paragraph).

''(vi) ELECTIONS.—Elections under this paragraph may be made not less frequently than quarterly.

''(F) EXCEPTION WHERE THERE IS NO READILY TRADABLE STOCK.—This paragraph shall not apply with respect to a plan if there is no class of stock issued by any employer maintaining the plan that is readily tradable on an established securities market.

''(G) TRANSITION RULE.—

''(i) IN GENERAL.—In the case of any defined contribution plan which, on the effective date of this subsection, holds employer securities of any class that were acquired before such date and on which there is a restriction on diversification otherwise precluded by this paragraph, this paragraph shall apply to such securities of such class held in any plan year only with respect to the number of such securities equal to the applicable percentage of the total number of such securities of such class held on such date.

''(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage shall be as follows:

"Plan years for which provisions are effective:	Applicable percentage:
1st plan year	20 percent.
2nd plan year	40 percent.
3rd plan year	60 percent.
4th plan year	80 percent.
5th plan year or thereafter.	100 percent.

''(iii) ELECTIVE DEFERRALS TREATED AS SEPARATE PLAN NOT INDIVIDUAL ACCOUNT PLAN.—For purposes of clause (i), the applicable percentage shall be 100 percent with respect to—

''(I) employee contributions to a plan under which any portion attributable to elective deferrals is treated as a separate plan under section 407(b)(2) of the Employee Retirement Income Security Act of 1974 as of the date of the enactment of this paragraph, and

''(II) such elective deferrals.

''(iv) CONTRIBUTIONS HELD WITHIN AN ESOP.—In the case of contributions (other than elective deferrals and employee contributions) held within an employee stock ownership plan, in the case of the 1st and 2nd plan years referred to in the table in clause (ii), the applicable percentage shall be the greater of the amount determined under clause (ii) or the percentage determined under paragraph (28) (determined as if paragraph (28) applied to a plan described in this paragraph).

''(v) COORDINATION WITH PRIOR ELECTIONS UNDER PARAGRAPH (28).—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this paragraph was undertaken pursuant to an election under paragraph (28) prior to such date, the applicable percentage (as determined without regard to this clause) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

''(H) REGULATIONS.—The Secretary shall prescribe regulations under this paragraph in consultation with the Secretary of Labor.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 401(a)(28) of such Code is amended by adding at the end the following new subparagraph:

''(D) APPLICATION.—This paragraph shall not apply to a plan to which paragraph (35) applies.''.

(B) Section 409(h)(7) of such Code is amended by inserting before the period at the end ''or subparagraph (B) or (C) of section 401(a)(35)''.

(C) Section 4980(c)(3)(A) of such Code is amended by striking ''if—'' and all that follows and inserting ''if the requirements of subparagraphs (B), (C), and (D) are met.''.

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2) and section 109, the amendments made by this section shall apply to plan years beginning after December 31, 2002, and with respect to employer securities allocated to accounts before, on, or after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to employer securities held by an employee stock ownership plan which are acquired before January 1, 1987.

SEC. 105. PROHIBITED TRANSACTION EXEMPTION FOR THE PROVISION OF INVESTMENT ADVICE.

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

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Section 408(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

''(14)(A) Any transaction described in subparagraph (B) in connection with the provision of investment advice described in section 3(21)(A)(ii), in any case in which—

''(i) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(ii) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(iii) the requirements of subsection (g) are met in connection with the provision of the advice.

''(B) The transactions described in this subparagraph are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.''.

(2) REQUIREMENTS.—Section 408 of such Act is amended further by adding at the end the following new subsection:

''(g) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—

''(1) IN GENERAL.—The requirements of this subsection are met in connection with the provision of investment advice referred to in section 3(21)(A)(ii), provided to an employee benefit plan or a participant or beneficiary of an employee benefit plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(A) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(i) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(ii) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(iii) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(iv) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(v) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(vi) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(B) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(C) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(D) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(E) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(2) STANDARDS FOR PRESENTATION OF INFORMATION.—

''(A) IN GENERAL.—The notification required to be provided to participants and beneficiaries under paragraph (1)(A) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(B) MODEL FORM FOR DISCLOSURE OF FEES AND OTHER COMPENSATION.—The Secretary shall issue a model form for the disclosure of fees and other compensation required in paragraph (1)(A)(i) which meets the requirements of subparagraph (A).

''(3) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of paragraph (1)(A) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in paragraph (1) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in clauses (i) through (iv) of subparagraph (A) in currently accurate form and in the manner described in paragraph (2) or fails—

''(A) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(B) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(C) in the event of a material change to the information described in clauses (i) through (iv) of paragraph (1)(A), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in paragraph (1) who has provided advice referred to in such paragraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this subsection and of subsection (b)(14) have been met. A transaction prohibited under section 406 shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(5) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), a plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this part solely by reason of the provision of investment advice referred to in section 3(21)(A)(ii) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this subsection, and

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice.

''(B) CONTINUED DUTY OF PRUDENT SELECTION OF ADVISER AND PERIODIC REVIEW.—Nothing in subparagraph (A) shall be construed to exempt a plan sponsor or other person who is a fiduciary from any requirement of this part for the prudent selection and periodic review of a fiduciary adviser with whom the plan sponsor or other person enters into an arrangement for the provision of advice referred to in section 3(21)(A)(ii). The plan sponsor or other person who is a fiduciary has no duty under this part to monitor the specific investment advice given by the fiduciary adviser to any particular recipient of the advice.

''(C) AVAILABILITY OF PLAN ASSETS FOR PAYMENT FOR ADVICE.—Nothing in this part shall be construed to preclude the use of plan assets to pay for reasonable expenses in providing investment advice referred to in section 3(21)(A)(ii).

''(6) DEFINITIONS.—For purposes of this subsection and subsection (b)(14)—

''(A) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(i) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(ii) a bank or similar financial institution referred to in section 408(b)(4), but only if the advice is provided through a trust department of the bank or similar financial institution which is subject to periodic examination and review by Federal or State banking authorities,

''(iii) an insurance company qualified to do business under the laws of a State,

''(iv) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(v) an affiliate of a person described in any of clauses (i) through (iv), or

''(vi) an employee, agent, or registered representative of a person described in any of clauses (i) through (v) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(B) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(C) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) EXEMPTION FROM PROHIBITED TRANSACTIONS.—Subsection (d) of section 4975 of the Internal Revenue Code of 1986 (relating to exemptions from tax on prohibited transactions) is amended—

(A) in paragraph (14), by striking ''or'' at the end;

(B) in paragraph (15), by striking the period at the end and inserting ''; or''; and

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

''(16) any transaction described in subsection (f)(7)(A) in connection with the provision of investment advice described in subsection (e)(3)(B), in any case in which—

''(A) the investment of assets of the plan is subject to the direction of plan participants or beneficiaries,

''(B) the advice is provided to the plan or a participant or beneficiary of the plan by a fiduciary adviser in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of plan assets, and

''(C) the requirements of subsection (f)(7)(B) are met in connection with the provision of the advice.''.

(2) ALLOWED TRANSACTIONS AND REQUIREMENTS.—Subsection (f) of such section 4975 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(7) PROVISIONS RELATING TO INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—

''(A) TRANSACTIONS ALLOWABLE IN CONNECTION WITH INVESTMENT ADVICE PROVIDED BY FIDUCIARY ADVISERS.—The transactions referred to in subsection (d)(16), in connection with the provision of investment advice by a fiduciary adviser, are the following:

''(i) the provision of the advice to the plan, participant, or beneficiary;

''(ii) the sale, acquisition, or holding of a security or other property (including any lending of money or other extension of credit associated with the sale, acquisition, or holding of a security or other property) pursuant to the advice; and

''(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with a sale, acquisition, or holding of a security or other property pursuant to the advice.

''(B) REQUIREMENTS RELATING TO PROVISION OF INVESTMENT ADVICE BY FIDUCIARY ADVISERS.—The requirements of this subparagraph (referred to in subsection (d)(16)(C)) are met in connection with the provision of investment advice referred to in subsection (e)(3)(B), provided to a plan or a participant or beneficiary of a plan by a fiduciary adviser with respect to the plan in connection with any sale, acquisition, or holding of a security or other property for purposes of investment of amounts held by the plan, if—

''(i) in the case of the initial provision of the advice with regard to the security or other property by the fiduciary adviser to the plan, participant, or beneficiary, the fiduciary adviser provides to the recipient of the advice, at a time reasonably contemporaneous with the initial provision of the advice, a written notification (which may consist of notification by means of electronic communication)—

''(I) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

''(II) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

''(III) of any limitation placed on the scope of the investment advice to be provided by the fiduciary adviser with respect to any such sale, acquisition, or holding of a security or other property,

''(IV) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

''(V) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

''(VI) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property,

''(ii) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

''(iii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

''(iv) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

''(v) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

''(C) STANDARDS FOR PRESENTATION OF INFORMATION.—The notification required to be provided to participants and beneficiaries under subparagraph (B)(i) shall be written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

''(D) EXEMPTION CONDITIONED ON MAKING REQUIRED INFORMATION AVAILABLE ANNUALLY, ON REQUEST, AND IN THE EVENT OF MATERIAL CHANGE.—The requirements of subparagraph (B)(i) shall be deemed not to have been met in connection with the initial or any subsequent provision of advice described in subparagraph (B) to the plan, participant, or beneficiary if, at any time during the provision of advisory services to the plan, participant, or beneficiary, the fiduciary adviser fails to maintain the information described in subclauses (I) through (IV) of subparagraph (B)(i) in currently accurate form and in the manner required by subparagraph (C), or fails—

''(i) to provide, without charge, such currently accurate information to the recipient of the advice no less than annually,

''(ii) to make such currently accurate information available, upon request and without charge, to the recipient of the advice, or

''(iii) in the event of a material change to the information described in subclauses (I) through (IV) of subparagraph (B)(i), to provide, without charge, such currently accurate information to the recipient of the advice at a time reasonably contemporaneous to the material change in information.

''(E) MAINTENANCE FOR 6 YEARS OF EVIDENCE OF COMPLIANCE.—A fiduciary adviser referred to in subparagraph (B) who has provided advice referred to in such subparagraph shall, for a period of not less than 6 years after the provision of the advice, maintain any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d)(16) have been met. A transaction prohibited under subsection (c)(1) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

''(F) EXEMPTION FOR PLAN SPONSOR AND CERTAIN OTHER FIDUCIARIES.—A plan sponsor or other person who is a fiduciary (other than a fiduciary adviser) shall not be treated as failing to meet the requirements of this section solely by reason of the provision of investment advice referred to in subsection (e)(3)(B) (or solely by reason of contracting for or otherwise arranging for the provision of the advice), if—

''(i) the advice is provided by a fiduciary adviser pursuant to an arrangement between the plan sponsor or other fiduciary and the fiduciary adviser for the provision by the fiduciary adviser of investment advice referred to in such section,

''(ii) the terms of the arrangement require compliance by the fiduciary adviser with the requirements of this paragraph,

''(iii) the terms of the arrangement include a written acknowledgment by the fiduciary adviser that the fiduciary adviser is a fiduciary of the plan with respect to the provision of the advice, and

''(iv) the requirements of part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 are met in connection with the provision of such advice.

''(G) DEFINITIONS.—For purposes of this paragraph and subsection (d)(16)—

''(i) FIDUCIARY ADVISER.—The term 'fiduciary adviser' means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice by the person to the plan or to a participant or beneficiary and who is—

''(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

''(II) a bank or similar financial institution referred to in subsection (d)(4), but only if the advice is provided through a trust department of the bank or similar financial institution which is subject to periodic examination and review by Federal or State banking authorities,

''(III) an insurance company qualified to do business under the laws of a State,

''(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(V) an affiliate of a person described in any of subclauses (I) through (IV), or

''(VI) an employee, agent, or registered representative of a person described in any of subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

''(ii) AFFILIATE.—The term 'affiliate' of another entity means an affiliated person of the entity (as defined in section 2(a)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(3))).

''(iii) REGISTERED REPRESENTATIVE.—The term 'registered representative' of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)) (substituting the entity for the investment adviser referred to in such section).''.

SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT SAVINGS OF PARTICIPANTS AND BENEFICIARIES BY REQUIRING CONSULTANTS TO ADVISE PLAN FIDUCIARIES OF INDIVIDUAL ACCOUNT PLANS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor shall undertake a study of the costs and benefits to participants and beneficiaries of requiring independent consultants to advise plan fiduciaries in connection with individual account plans. In conducting such study, the Secretary shall consider—

(1) the benefits to plan participants and beneficiaries of engaging independent advisers to provide investment and other advice regarding the assets of the plan to persons who have fiduciary duties with respect to the management or disposition of such assets,

(2) the extent to which independent advisers are currently retained by plan fiduciaries,

(3) the availability of assistance to fiduciaries from appropriate Federal agencies,

(4) the availability of qualified independent consultants to serve the needs of individual account plan fiduciaries in the United States,

(5) the impact of the additional fiduciary duty of an independent advisor on the strict fiduciary obligations of plan fiduciaries,

(6) the impact of new requirements (consulting fees, reporting requirements, and new plan duties to prudently identify and contract with qualified independent consultants) on the availability of individual account plans, and

(7) the impact of a new requirement on the plan administration costs per participant for small and mid-size employers and the pension plans they sponsor.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor shall report the results of the study undertaken pursuant to this section, together with any recommendations for legislative changes, to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

SEC. 107. TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

''(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

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

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

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

SEC. 108. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.

(a) PROHIBITION.—It shall be unlawful for any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or who is a director or an officer of the issuer of such security, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of any issuer (other than an exempted security), during any blackout period with respect to such equity security.

(b) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this section shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purposes of this subsection.

(c) RULEMAKING PERMITTED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

(d) As used in this section:

(1) BENEFICIAL OWNER.—The term ''beneficial owner'' has the meaning provided such term in rules or regulations issued by the Commission under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p).

(2) BLACKOUT PERIOD.—The term ''blackout period'' with respect to the equity securities of any issuer—

(A) means any period during which the ability of at least fifty percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase (or otherwise acquire) or sell (or otherwise transfer) an interest in any equity of such issuer is suspended by the issuer or a fiduciary of the plan; but

(B) does not include—

(i) a period in which the employees of an issuer may not allocate their interests in the individual account plan due to an express investment restriction—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before joining the individual account plan or as a subsequent amendment to the plan;

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an applicable individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction.

(3) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(4) INDIVIDUAL ACCOUNT PLAN.—The term ''individual account plan'' has the meaning provided such term in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

(5) ISSUER.—The term ''issuer'' shall have the meaning set forth in section 2(a)(4) of the Securities Act of 1933 (15 U.S.C. 77b(a)(4)).

SEC. 109. EFFECTIVE DATES OF TITLE AND RELATED RULES.

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

(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''January 1, 2003'' the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2004, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 2005.

(c) PLAN AMENDMENTS.—If the amendments made by sections 101, 102, 103, and 104 of this Act require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 2005, if—

(1) during the period after such amendments made by such sections take effect and before such first plan year, the plan is operated in accordance with the requirements of such amendments made by such sections, and

(2) such plan amendment applies retroactively to the period after such amendments made by such sections take effect and before such first plan year.

(d) AMENDMENTS RELATING TO INVESTMENT ADVICE.—The amendments made by section 104 shall apply with respect to advice referred to in section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974 or section 4975(c)(3)(B) of the Internal Revenue Code of 1986 provided on or after January 1, 2003.

TITLE II—OTHER PROVISIONS RELATING TO PENSIONS

SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT OF 1994.

(a) TRANSITION RULE MADE PERMANENT.—Paragraph (1) of section 769(c) of the Retirement Protection Act of 1994 is amended—

(1) by striking ''transition'' each place it appears in the heading and the text, and

(2) by striking ''for any plan year beginning after 1996 and before 2010''.

(b) SPECIAL RULES.—Paragraph (2) of section 769(c) of the Retirement Protection Act of 1994 is amended to read as follows:

''(2) SPECIAL RULES.—The rules described in this paragraph are as follows:

''(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

''(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

''(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2001.

SEC. 202. REPORTING SIMPLIFICATION.

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

(1) IN GENERAL.—The Secretary of the Treasury and the Secretary of Labor shall modify the requirements for filing annual returns with respect to one-participant retirement plans to ensure that such plans with assets of $250,000 or less as of the close of the plan year need not file a return for that year.

(2) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term ''one-participant retirement plan'' means a retirement plan that—

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

(i) covered only the employer (and the employer's spouse) and the employer owned the entire business (whether or not incorporated); or

(ii) covered only one or more partners (and their spouses) in a business partnership (including partners in an S or C corporation);

(B) meets the minimum coverage requirements of section 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan of the business that covers the employees of the business;

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

(D) does not cover a business that is a member of an affiliated service group, a controlled group of corporations, or a group of businesses under common control; and

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

(3) OTHER DEFINITIONS.—Terms used in paragraph (2) which are also used in section 414 of the Internal Revenue Code of 1986 shall have the respective meanings given such terms by such section.

(4) EFFECTIVE DATE.—The provisions of this subsection shall apply to plan years beginning on or after January 1, 2002.

(b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case of plan years beginning after December 31, 2003, the Secretary of the Treasury and the Secretary of Labor shall provide for the filing of a simplified annual return for any retirement plan which covers less than 25 employees on the first day of a plan year and which meets the requirements described in subparagraphs (B), (D), and (E) of subsection (a)(2).

SEC. 203. IMPROVEMENT OF EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM.

The Secretary of the Treasury shall continue to update and improve the Employee Plans Compliance Resolution System (or any successor program) giving special attention to—

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

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

(3) extending the duration of the self-correction period under the Self-Correction Program for significant compliance failures;

(4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

(5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

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

SEC. 204. FLEXIBILITY IN NONDISCRIMINATION, COVERAGE, AND LINE OF BUSINESS RULES.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall, by regulation, provide that a plan shall be deemed to satisfy the requirements of section 401(a)(4) of the Internal Revenue Code of 1986 if such plan satisfies the facts and circumstances test under section 401(a)(4) of such Code, as in effect before January 1, 1994, but only if—

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

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

Subparagraph (B) shall only apply to the extent provided by the Secretary.

(2) EFFECTIVE DATES.—

(A) REGULATIONS.—The regulation required by paragraph (1) shall apply to years beginning after December 31, 2003.

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under paragraph (1)(A) shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(b) COVERAGE TEST.—

(1) IN GENERAL.—Section 410(b)(1) of the Internal Revenue Code of 1986 (relating to minimum coverage requirements) is amended by adding at the end the following:

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

''(i) satisfies subparagraph (B), as in effect immediately before the enactment of the Tax Reform Act of 1986,

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

''(iii) satisfies conditions prescribed by the Secretary by regulation that appropriately limit the availability of this subparagraph.

Clause (ii) shall apply only to the extent provided by the Secretary.''.

(2) EFFECTIVE DATES.—

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

(B) CONDITIONS OF AVAILABILITY.—Any condition of availability prescribed by the Secretary under regulations prescribed by the Secretary under section 410(b)(1)(D) of the Internal Revenue Code of 1986 shall not apply before the first year beginning not less than 120 days after the date on which such condition is prescribed.

(c) LINE OF BUSINESS RULES.—The Secretary of the Treasury shall, on or before December 31, 2003, modify the existing regulations issued under section 414(r) of the Internal Revenue Code of 1986 in order to expand (to the extent that the Secretary determines appropriate) the ability of a pension plan to demonstrate compliance with the line of business requirements based upon the facts and circumstances surrounding the design and operation of the plan, even though the plan is unable to satisfy the mechanical tests currently used to determine compliance.

SEC. 205. EXTENSION TO ALL GOVERNMENTAL PLANS OF MORATORIUM ON APPLICATION OF CERTAIN NONDISCRIMINATION RULES APPLICABLE TO STATE AND LOCAL PLANS.

(a) IN GENERAL.—

(1) Subparagraph (G) of section 401(a)(5) of the Internal Revenue Code of 1986 and subparagraph (H) of section 401(a)(26) of such Code are each amended by striking ''section 414(d))'' and all that follows and inserting ''section 414(d)).''.

(2) Subparagraph (G) of section 401(k)(3) of the Internal Revenue Code of 1986 and paragraph (2) of section 1505(d) of the Taxpayer Relief Act of 1997 are each amended by striking ''maintained by a State or local government or political subdivision thereof (or agency or instrumentality thereof)''.

(b) CONFORMING AMENDMENTS.—

(1) The heading for subparagraph (G) of section 401(a)(5) of such Code is amended to read as follows: ''GOVERNMENTAL PLANS.—''.

(2) The heading for subparagraph (H) of section 401(a)(26) of such Code is amended to read as follows: ''EXCEPTION FOR GOVERNMENTAL PLANS.—''.

(3) Subparagraph (G) of section 401(k)(3) of such Code is amended by inserting ''GOVERNMENTAL PLANS.—'' after ''(G)''.

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

SEC. 206. NOTICE AND CONSENT PERIOD REGARDING DISTRIBUTIONS.

(a) EXPANSION OF PERIOD.—

(1) AMENDMENT OF INTERNAL REVENUE CODE.—

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

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under sections 402(f), 411(a)(11), and 417 of the Internal Revenue Code of 1986 to substitute ''180 days'' for ''90 days'' each place it appears in Treasury Regulations sections 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–1(b).

(2) AMENDMENT OF ERISA.—

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

(B) MODIFICATION OF REGULATIONS.—The Secretary of the Treasury shall modify the regulations under part 2 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 to the extent that they relate to sections 203(e) and 205 of such Act to substitute ''180 days'' for ''90 days'' each place it appears.

(3) EFFECTIVE DATE.—The amendments made by paragraphs (1)(A) and (2)(A) and the modifications required by paragraphs (1)(B) and (2)(B) shall apply to years beginning after December 31, 2002.

(b) CONSENT REGULATION INAPPLICABLE TO CERTAIN DISTRIBUTIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall modify the regulations under section 411(a)(11) of the Internal Revenue Code of 1986 and under section 205 of the Employee Retirement Income Security Act of 1974 to provide that the description of a participant's right, if any, to defer receipt of a distribution shall also describe the consequences of failing to defer such receipt.

(2) EFFECTIVE DATE.—

(A) IN GENERAL.—The modifications required by paragraph (1) shall apply to years beginning after December 31, 2002.

(B) REASONABLE NOTICE.—In the case of any description of such consequences made before the date that is 90 days after the date on which the Secretary of the Treasury issues a safe harbor description under paragraph (1), a plan shall not be treated as failing to satisfy the requirements of section 411(a)(11) of such Code or section 205 of such Act by reason of the failure to provide the information required by the modifications made under paragraph (1) if the Administrator of such plan makes a reasonable attempt to comply with such requirements.

SEC. 207. ANNUAL REPORT DISSEMINATION.

(a) REPORT AVAILABLE THROUGH ELECTRONIC MEANS.—Section 104(b)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amended by adding at the end the following new sentence: ''The requirement to furnish information under the previous sentence with respect to an employee pension benefit plan shall be satisfied if the administrator makes such information reasonably available through electronic means or other new technology.''.

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

SEC. 208. TECHNICAL CORRECTIONS TO SAVER ACT.

Section 517 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1147) is amended—

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

(2) in subsection (b), by adding at the end the following new sentence: ''To effectuate the purposes of this paragraph, the Secretary may enter into a cooperative agreement, pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301 et seq.), with any appropriate, qualified entity.'';

(3) in subsection (e)(2)—

(A) by striking ''Committee on Labor and Human Resources'' in subparagraph (D) and inserting ''Committee on Health, Education, Labor, and Pensions'';

(B) by striking subparagraph (F) and inserting the following:

''(F) the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the House of Representatives and the Chairman and Ranking Member of the Subcommittee on Labor, Health and Human Services, and Education of the Committee on Appropriations of the Senate;'';

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

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

''(G) the Chairman and Ranking Member of the Committee on Finance of the Senate;

''(H) the Chairman and Ranking Member of the Committee on Ways and Means of the House of Representatives;

''(I) the Chairman and Ranking Member of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce of the House of Representatives; and'';

(4) in subsection (e)(3)—

(A) by striking ''There shall be not more than 200 additional participants.'' in subparagraph (A) and inserting ''The participants in the National Summit shall also include additional participants appointed under this subparagraph.'';

(B) by striking ''one-half shall be appointed by the President,'' in subparagraph (A)(i) and inserting ''not more than 100 participants shall be appointed under this clause by the President,'';

(C) by striking ''one-half shall be appointed by the elected leaders of Congress'' in subparagraph (A)(ii) and inserting ''not more than 100 participants shall be appointed under 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:

''(B) PRESIDENTIAL AUTHORITY FOR ADDITIONAL APPOINTMENTS.—The President, in consultation with the elected leaders of Congress referred to in subsection (a), may appoint under this subparagraph additional participants to the National Summit. The number of such additional participants appointed under this subparagraph may not exceed the lesser of 3 percent of the total number of all additional participants appointed under this paragraph, or 10. Such additional participants shall be appointed from persons nominated by an organization referred to in subsection (b) which is made up of private sector businesses and associations partnered with Government entities to promote long term financial security in retirement through savings and with which the Secretary is required thereunder to consult and cooperate and shall not be Federal, State, or local government employees.'';

(5) in subsection (e)(3)(C) (as redesignated), by striking ''January 31, 1998'' and inserting ''3 months before the convening of each summit;''

(6) in subsection (f)(1)(C), by inserting '', no later than 90 days prior to the date of the commencement of the National Summit,'' after ''comment'';

(7) in subsection (g), by inserting '', in consultation with the congressional leaders specified in subsection (e)(2),'' after ''report'' the first place it appears;

(8) in subsection (i)—

(A) by striking ''for fiscal years beginning on or after October 1, 1997,''; and

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

''(3) RECEPTION AND REPRESENTATION AUTHORITY.—The Secretary is hereby granted reception and representation authority limited specifically to the events at the National Summit. The Secretary shall use any private contributions accepted in connection with the National Summit prior to using funds appropriated for purposes of the National Summit pursuant to this paragraph.''; and

(9) in subsection (k)—

(A) by striking ''shall enter into a contract on a sole-source basis'' and inserting ''may enter into a contract on a sole-source basis''; and

(B) by striking ''in fiscal year 1998''.

SEC. 209. MISSING PARTICIPANTS.

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

''(c) MULTIEMPLOYER PLANS.—The corporation shall prescribe rules similar to the rules in subsection (a) for multiemployer plans covered by this title that terminate under section 4041A.

''(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

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

''(2) INFORMATION TO THE CORPORATION.—To the extent provided in regulations, the plan administrator of a plan described in paragraph (4) shall, upon termination of the plan, provide the corporation information with respect to benefits of a missing participant if the plan transfers such benefits—

''(A) to the corporation, or

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

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

''(A) in a single sum (plus interest), or

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

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

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

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

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

''(B) at the time the assets are to be distributed upon termination, the plan—

''(i) has missing participants, and

''(ii) has not provided for the transfer of assets to pay the benefits of all missing participants to another pension plan (within the meaning of section 3(2)).

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

(b) CONFORMING AMENDMENTS.—Section 206(f) of such Act (29 U.S.C. 1056(f)) is amended—

(1) by striking ''title IV'' and inserting ''section 4050''; and

(2) by striking ''the plan shall provide that,''.

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

SEC. 210. REDUCED PBGC PREMIUM FOR NEW PLANS OF SMALL EMPLOYERS.

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

(1) in clause (i), by inserting ''other than a new single-employer plan (as defined in subparagraph (F)) maintained by a small employer (as so defined),'' after ''single-employer plan,'',

(2) in clause (iii), by striking the period at the end and inserting '', and'', and

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

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

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

''(F)(i) For purposes of this paragraph, a single-employer plan maintained by a contributing sponsor shall be treated as a new single-employer plan for each of its first 5 plan years if, during the 36-month period ending on the date of the adoption of such plan, the sponsor or any member of such sponsor's controlled group (or any predecessor of either) did not establish or maintain a plan to which this title applies with respect to which benefits were accrued for substantially the same employees as are in the new single-employer plan.

''(ii)(I) For purposes of this paragraph, the term 'small employer' means an employer which on the first day of any plan year has, in aggregation with all members of the controlled group of such employer, 100 or fewer employees.

''(II) In the case of a plan maintained by two or more contributing sponsors that are not part of the same controlled group, the employees of all contributing sponsors and controlled groups of such sponsors shall be aggregated for purposes of determining whether any contributing sponsor is a small employer.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to plans first effective after December 31, 2002.

SEC. 211. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR NEW AND SMALL PLANS.

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

''(v) In the case of a new defined benefit plan, the amount determined under clause (ii) for any plan year shall be an amount equal to the product of the amount determined under clause (ii) and the applicable percentage. For purposes of this clause, the term 'applicable percentage' means—

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

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

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

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

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

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

(b) SMALL PLANS.—Paragraph (3) of section 4006(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)), as amended by section 210(b), is amended—

(1) by striking ''The'' in subparagraph (E)(i) and inserting ''Except as provided in subparagraph (G), the'', and

(2) by inserting after subparagraph (F) the following new subparagraph:

''(G)(i) In the case of an employer who has 25 or fewer employees on the first day of the plan year, the additional premium determined under subparagraph (E) for each participant shall not exceed $5 multiplied by the number of participants in the plan as of the close of the preceding plan year.

''(ii) For purposes of clause (i), whether an employer has 25 or fewer employees on the first day of the plan year is determined by taking into consideration all of the employees of all members of the contributing sponsor's controlled group. In the case of a plan maintained by two or more contributing sponsors, the employees of all contributing sponsors and their controlled groups shall be aggregated for purposes of determining whether the 25-or-fewer-employees limitation has been satisfied.''.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendments made by subsection (a) shall apply to plans first effective after December 31, 2002.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to plan years beginning after December 31, 2002.

SEC. 212. AUTHORIZATION FOR PBGC TO PAY INTEREST ON PREMIUM OVERPAYMENT REFUNDS.

(a) IN GENERAL.—Section 4007(b) of the Employment Retirement Income Security Act of 1974 (29 U.S.C. 1307(b)) is amended—

(1) by striking ''(b)'' and inserting ''(b)(1)'', and

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

''(2) The corporation is authorized to pay, subject to regulations prescribed by the corporation, interest on the amount of any overpayment of premium refunded to a designated payor. Interest under this paragraph shall be calculated at the same rate and in the same manner as interest is calculated for underpayments under paragraph (1).''.

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

SEC. 213. SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS.

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

''(5)(A) For purposes of this paragraph, the term 'majority owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(i) owns the entire interest in an unincorporated trade or business,

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

''(iii) in the case of a corporation, owns, directly or indirectly, 50 percent or more in value of either the voting stock of that corporation or all the stock of that corporation. For purposes of clause (iii), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).

''(B) In the case of a participant who is a majority owner, the amount of benefits guaranteed under this section shall equal the product of—

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

''(ii) the amount of benefits that would be guaranteed under this section if the participant were not a majority owner.''.

(b) MODIFICATION OF ALLOCATION OF ASSETS.—

(1) Section 4044(a)(4)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1344(a)(4)(B)) is amended by striking ''section 4022(b)(5)'' and inserting ''section 4022(b)(5)(B)''.

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

(A) by striking ''(5)'' in paragraph (2) and inserting ''(4), (5),'', and

(B) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively, and by inserting after paragraph (2) the following new paragraph:

''(3) If assets available for allocation under paragraph (4) of subsection (a) are insufficient to satisfy in full the benefits of all individuals who are described in that paragraph, the assets shall be allocated first to benefits described in subparagraph (A) of that paragraph. Any remaining assets shall then be allocated to benefits described in subparagraph (B) of that paragraph. If assets allocated to such subparagraph (B) are insufficient to satisfy in full the benefits described in that subparagraph, the assets shall be allocated pro rata among individuals on the basis of the present value (as of the termination date) of their respective benefits described in that subparagraph.''.

(c) CONFORMING AMENDMENTS.—

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

(A) in subsection (b)(9), by striking ''as defined in section 4022(b)(6)'', and

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

''(d) For purposes of subsection (b)(9), the term 'substantial owner' means an individual who, at any time during the 60-month period ending on the date the determination is being made—

''(1) owns the entire interest in an unincorporated trade or business,

''(2) in the case of a partnership, is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or the profits interest in such partnership, or

''(3) in the case of a corporation, owns, directly or indirectly, more than 10 percent in value of either the voting stock of that corporation or all the stock of that corporation. For purposes of paragraph (3), the constructive ownership rules of section 1563(e) of the Internal Revenue Code of 1986 shall apply (determined without regard to section 1563(e)(3)(C)).''.

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

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan terminations—

(A) under section 4041(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1341(c)) with respect to which notices of intent to terminate are provided under section 4041(a)(2) of such Act (29 U.S.C. 1341(a)(2)) after December 31, 2002, and

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

(2) CONFORMING AMENDMENTS.—The amendments made by subsection (c) shall take effect on January 1, 2003.

SEC. 214. BENEFIT SUSPENSION NOTICE.

(a) MODIFICATION OF REGULATION.—The Secretary of Labor shall modify the regulation under subparagraph (B) of section 203(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide that the notification required by such regulation in connection with any suspension of benefits described in such subparagraph—

(1) in the case of an employee who returns to service described in section 203(a)(3)(B)(i) or (ii) of such Act after commencement of payment of benefits under the plan, shall be made during the first calendar month or the first 4 or 5-week payroll period ending in a calendar month in which the plan withholds payments, and

(2) in the case of any employee who is not described in paragraph (1)—

(A) may be included in the summary plan description for the plan furnished in accordance with section 104(b) of such Act (29 U.S.C. 1024(b)), rather than in a separate notice, and

(B) need not include a copy of the relevant plan provisions.

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

SEC. 215. STUDIES.

(a) MODEL SMALL EMPLOYER GROUP PLANS STUDY.—As soon as practicable after the date of the enactment of this Act, the Secretary of Labor, in consultation with the Secretary of the Treasury, shall conduct a study to determine—

(1) the most appropriate form or forms of—

(A) employee pension benefit plans which would—

(i) be simple in form and easily maintained by multiple small employers, and

(ii) provide for ready portability of benefits for all participants and beneficiaries,

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

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

(2) appropriate methods and strategies for making pension plan coverage described in paragraph (1) more widely available to American workers.

(b) MATTERS TO BE CONSIDERED.—In conducting the study under subsection (a), the Secretary of Labor shall consider the adequacy and availability of existing employee pension benefit plans and the extent to which existing models may be modified to be more accessible to both employees and employers.

(c) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor shall report the results of the study under subsection (a), together with the Secretary's recommendations, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate. Such recommendations shall include one or more model plans described in subsection (a)(1)(A) and model alternative arrangements described in subsections (a)(1)(B) and (a)(1)(C) which may serve as the basis for appropriate administrative or legislative action.

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

(1) the extent of pension plan coverage for low and middle-income workers,

(2) the levels of pension plan benefits generally,

(3) the quality of pension plan coverage generally,

(4) workers' access to and participation in pension plans, and

(5) retirement security.

SEC. 216. INTEREST RATE RANGE FOR ADDITIONAL FUNDING REQUIREMENTS.

(a) IN GENERAL.—Subclause (III) of section 412(l)(7)(C)(i) of the Internal Revenue Code of 1986 is amended—

(1) by striking ''2002 or 2003'' in the text and inserting ''2001, 2002, or 2003'', and

(2) by striking ''2002 AND 2003'' in the heading and inserting ''2001, 2002, AND 2003''.

(b) SPECIAL RULE.—Subclause (III) of section 302(d)(7)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is amended—

(1) by striking ''2002 or 2003'' in the text and inserting ''2001, 2002, or 2003'', and

(2) by striking ''2002 AND 2003'' in the heading and inserting ''2001, 2002, AND 2003''.

(c) PBGC.—Subclause (IV) of section 4006(a)(3)(E)(iii) of such Act (29 U.S.C. 1306(a)(3)(E)(iii)) is amended to read as follows—

''(IV) In the case of plan years beginning after December 31, 2001, and before January 1, 2004, subclause (II) shall be applied by substituting '100 percent' for '85 percent' and by substituting '115 percent' for '100 percent'. Subclause (III) shall be applied for such years without regard to the preceding sentence. Any reference to this clause or this subparagraph by any other sections or subsections (other than sections 4005, 4010, 4011 and 4043) shall be treated as a reference to this clause or this subparagraph without regard to this subclause.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the amendments made by section 405 of the Job Creation and Worker Assistance Act of 2002.

SEC. 217. PROVISIONS RELATING TO PLAN AMENDMENTS.

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

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this title or title VI of the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under this title or such title VI, and

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

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), this paragraph shall be applied by substituting ''2007'' for ''2005''.

(2) CONDITIONS.—This section shall not apply to any amendment unless—

(A) during the period—

(i) beginning on the date the legislative or regulatory amendment described in paragraph (1)(A) takes effect (or in the case of a plan or contract amendment not required by such legislative or regulatory amendment, the effective date specified by the plan), and

(ii) ending on the date described in paragraph (1)(B) (or, if earlier, the date the plan or contract amendment is adopted),

the plan or contract is operated as if such plan or contract amendment were in effect; and

(B) such plan or contract amendment applies retroactively for such period.

TITLE III—STOCK OPTIONS

SEC. 301. EXCLUSION OF INCENTIVE STOCK OPTIONS AND EMPLOYEE STOCK PURCHASE PLAN STOCK OPTIONS FROM WAGES.

(a) EXCLUSION FROM EMPLOYMENT TAXES.—

(1) SOCIAL SECURITY TAXES.—

(A) Section 3121(a) of the Internal Revenue Code of 1986 (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (20), by striking the period at the end of paragraph (21) and inserting ''; or'', and by inserting after paragraph (21) the following new paragraph:

''(22) remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(B) Section 209(a) of the Social Security Act is amended by striking ''or'' at the end of paragraph (17), by striking the period at the end of paragraph (18) and inserting ''; or'', and by inserting after paragraph (18) the following new paragraph:

''(19) Remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b) of the Internal Revenue Code of 1986) or under an employee stock purchase plan (as defined in section 423(b) of such Code), or

''(B) any disposition by the individual of such stock.''.

(2) RAILROAD RETIREMENT TAXES.—Subsection (e) of section 3231 of such Code is amended by adding at the end the following new paragraph:

''(11) QUALIFIED STOCK OPTIONS.—The term 'compensation' shall not include any remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(3) UNEMPLOYMENT TAXES.—Section 3306(b) of such Code (relating to definition of wages) is amended by striking ''or'' at the end of paragraph (16), by striking the period at the end of paragraph (17) and inserting ''; or'', and by inserting after paragraph (17) the following new paragraph:

''(18) remuneration on account of—

''(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422(b)) or under an employee stock purchase plan (as defined in section 423(b)), or

''(B) any disposition by the individual of such stock.''.

(b) WAGE WITHHOLDING NOT REQUIRED ON DISQUALIFYING DISPOSITIONS.—Section 421(b) of such Code (relating to effect of disqualifying dispositions) is amended by adding at the end the following new sentence: ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any increase in income attributable to a disposition described in the preceding sentence.''.

(c) WAGE WITHHOLDING NOT REQUIRED ON COMPENSATION WHERE OPTION PRICE IS BETWEEN 85 PERCENT AND 100 PERCENT OF VALUE OF STOCK.—Section 423(c) of such Code (relating to special rule where option price is between 85 percent and 100 percent of value of stock) is amended by adding at the end the following new sentence: ''No amount shall be required to be deducted and withheld under chapter 24 with respect to any amount treated as compensation under this subsection.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to stock acquired pursuant to options exercised after the date of the enactment of this Act.

TITLE IV—SOCIAL SECURITY AND MEDICARE HELD HARMLESS

SEC. 401. PROTECTION OF SOCIAL SECURITY AND MEDICARE.

The amounts transferred to any trust fund under the Social Security Act shall be determined as if this Act had not been enacted.

The SPEAKER pro tempore. After 2 hours of debate on the bill, as amended, it shall be in order to consider a further amendment printed in part B of the report, if offered by the gentleman from California (Mr. GEORGE MILLER), or the gentleman from New York (Mr. RANGEL), or a designee, which shall be considered read, and shall be debatable for 1 hour, equally divided and controlled by the proponent and an opponent.

The gentleman from Ohio (Mr. BOEHNER), the gentleman from California (Mr. GEORGE MILLER), the gentleman from California (Mr. THOMAS), and the gentleman from New York (Mr. RANGEL) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from California (Mr. THOMAS) for 30 minutes.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

There has been a quiet revolution going on in the United States, and it was so quiet that a lot of people did not notice. One of the fundamental tenets of Marxism was that there was a separation between those who own the means of production and those who labored at that production; as Marx said in the Communist Manifesto, the capitalists and the proletariat. And there was a belief, still somewhat attempted to be carried on by some folks, that there is a significant and fundamental class difference, an economic difference, which produces a cultural difference between ''classes,'' the captains of industry, the big corporate folk and the workers that to a certain extent, this political argument is perpetuated today.

The quiet revolution that I am talking about is the change that has occurred over the last half century, speeding up significantly in the last third of the 20th century, and really culminating in part for why we are on the floor today; and that is, there is becoming less and less of a distinction between workers and owners. As a matter of fact, based upon legislation in the 1970s, more and more companies are being owned by the workers.

If my colleagues do not think that shows a fundamental flaw in Marxism and a significant and historic modification of capitalism, talk to any worker who has a 401(k), who owns shares in the stock market. And, frankly, that is becoming more and more your everyday American because, at the same time, the concept that one was supposed to go to work for a company and be employed for 20 years, 30 years, a lifetime, and that if they committed themselves to that company, they were rewarded by a pension or a decent retirement payment, exemplified, for example, a gold watch for loyalty.

Today, not only are individuals working a number of different jobs in their lifetime, they wind up oftentimes with several different careers in their lifetime. And what is most remarkable about being on the floor today is that all of this occurred without a significant or heavy hand of government trying to make it happen. It just kind of occurred. There was an enlightenment that management ought to allow workers to participate as owners, and workers thought it might be a good idea to get a piece of the action.

Frankly, since it developed to a very great extent below the radar screen and it was not going to be focused on until there were some problems that occurred, and obviously Enron as a focal point could be described as a problem, we are here today to make modest adjustments to a system that needs to continue to evolve largely in the private sector, not controlled or dictated to by government.

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However, in the chairman's opinion, government ought to watch very carefully what is occurring in this area because I believe there are a number of successful models that can be examined to help us in our dilemma of one of the key safety nets, the entitlement of Social Security, where over the next several years we are going to have to make several decisions about how we modify the Social Security system.

It is, I think, significant that we are here today to put into place modest, but appropriate, changes in that structure in which workers have become owners, part or whole.

Mr. Speaker, I yield to the gentleman from Arizona (Mr. SHADEGG) for the purpose of a colloquy pointing to the fact that there is a difference between certain types of employee-owned companies, commonly known because of the law, as ESOPs.

Mr. SHADEGG. Mr. Speaker, will the gentleman yield?

Mr. THOMAS. I yield to the gentleman from Arizona.

Mr. SHADEGG. Mr. Speaker, first I would like to clarify that the diversification requirements in the legislation do not apply to privately owned corporations, but only to those corporations whose securities are tradeable or traded on an established securities market.

Mr. THOMAS. Mr. Speaker, the gentleman is correct. The diversification rules exempt privately held companies. Only public companies are subject to the rules.

Mr. SHADEGG. Mr. Speaker, secondly, a company may continue to make contributions to such an employee stock ownership plan, an ESOP, for purposes of meeting the safe harbor provisions of the nondiscrimination test established by section 401(k), and that such contributions would not be subject to the diversification requirement established by this legislation.

Mr. THOMAS. Mr. Speaker, the gentleman is correct. Employer contributions used to satisfy the 401(k) safe harbor test will not be subject to the diversification rules, as long as the contributions are made to a so-called pure ESOP, which is defined as an ESOP which holds no employee contributions, no employer-matching contributions, and no employer contributions used to meet the nondiscrimination test.

Mr. Speaker, I reserve the balance of my time.

Mr. RANGEL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first, I thank the distinguished chairman for that eloquent essay against communism. It is refreshing to know that this bill is trying to minimize the class differences that we have in this Nation between the captains of industry and employees, that this gap is being closed.

Most of us thought this was a question about the Enron scandal. Most of us thought, like the President, that we ought to repair the damages that have been made to see that it does not happen to employees in the future. Most of us thought that this was a tax issue since the 401(k)s, that so many employees, rank and file employees, got hurt by with Enron, that we on the Committee on Ways and Means would be providing the leadership for the House in order to repair the code so that these things would not happen again.

Instead, the debate is led off by the Committee on Education and the Workforce by the gentleman from Ohio (Mr. BOEHNER). It is good to know that things are getting better and the gap is getting closed, but to say that we do not know what is in this bill is similar to a statement we heard yesterday, nobody knew what was in the taxpayer bill.

When the day is over, the vote is going to be which side were Members on. Were Members with the executives that managed to protect their pensions and not pay taxes on it; or were Members with employees that, as the President said, as the sailors of this ship, they should have the same rights as the captains do?

Here we find that the captains of the Enron ship jumped ship and took the lifeboats with them, took the lifesavers with them, and employees sunk and lost their life savings. We want to know what we do about it today. Of course the Member says modest adjustments. That is code words for we do nothing about it today.

Some of us on the committee voted for it because we were under the impression that we could work out our differences and really put some teeth in this, and to try in some way to bring to the floor a bipartisan bill so the American people would believe as it relates to pension, there was some equity, some parity between how we treat executives and how we treat the rank and file.

We see here that the issue is not communism versus capitalism, it is campaign contributions versus doing the right thing.

I hope as the question was put to us yesterday, whether or not we should maintain loopholes for people to make campaign contributions that we thought we had closed, or whether or not people want to do the right thing, that we do not have people walking in lockstep to party leaders, but we have Members doing the right thing because that is what is expected of us. The closer we get to election, the more honestly we will be seeing our votes.

Mr. Speaker, I ask Members to listen not to the virtues of capitalism that we all really treasure, support, adore and want to maintain, and not in attacking communism because I think we have won that argument, but which side are Members on: the highly paid executives or protecting the rank-and-file employees.

Mr. Speaker, I reserve the balance of my time.

Mr. THOMAS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I find it ironic that the gentleman closed his statement right along the same class lines that I said have been blurred significantly. I was not talking about communism; I was talking about Marxism.

The gentleman's reference that the captains of industry get to be treated differently than their employees is one of the reasons we are here today. If the gentleman would turn to page 75 of the bill, the gentleman would find section 108, which clearly prohibits the so-called captains from participating in activities that the employees are denied. Exactly the point that the gentleman makes is contained in the legislation.

In addition to that, the reason we are here today with a shared committee responsibility is because in 1974 Congress passed, and the President signed, the Employer Retirement Income Security Act, known as ERISA. The jurisdiction of the Committee on Ways and Means is to the Tax Code. The jurisdiction of the Committee on Education and the Workforce is to that portion of the law known as ERISA. As is oftentimes the case, there are two different sections of the law.

Mr. Speaker, if the gentleman would wish that the Committee on Ways and Means also controlled the ERISA portion of the code, the Chair would reach out to the gentleman, and we could try to figure out a way to put that under our jurisdiction as well. But at least temporarily, it is under the jurisdiction of the Committee on Education and the Workforce. They have to be accommodated since that is their jurisdiction.

It was a pleasure to work with the chairman of that committee, the gentleman from Ohio (Mr. BOEHNER), in putting together this package.

Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. HOUGHTON), who is someone who understands the relationship between owners and workers and the change that has occurred over time in that relationship, the chairman of the Subcommittee on Oversight of the Committee on Ways and Means.

Mr. HOUGHTON. Mr. Speaker, I would like to support the pension improvements in this legislation, and I want to talk briefly about three issues.

First of all, payroll taxes on stock options: for over 30 years, since 1971, the IRS has taken the position that employee purchases of company stock and stock options do not give rise to employment tax obligations. Now the IRS is totally reversing its position, and employees I am sure will consider this a tax increase.

What this bill does is to preserve that 30-year policy which we have been operating under for so many years. In addition to higher taxes, several adverse consequences, I feel, are likely to flow from the failure to address the problem.

First of all, employee stock purchases will be depressed, reversing the trend in recent years toward greater ownership. Also, because employment taxes are higher until an employee reaches the maximum Social Security wage base of approximately $85,000, the change will also tend to harm those earning below the maximum wage base more than those earning above it. For the same reason, it is going to become more expensive for companies to award stock options to the average worker because employers will bear half the burden of employment taxes. By enacting this legislation, we will preserve existing laws on the incentive stock options.

Secondly, some outside the process have criticized other aspects of the bill for creating loopholes. I do not believe that. Democrats have joined Republicans in calling these loopholes reform. I hope they are reforms. What this does is fix mechanical rules that produce irrational results.

The simplification provision that is now criticized merely directs the Department of Treasury and Department of Labor to develop simplified annual reporting requirements for businesses with fewer than 25 employees. I have a feeling that the Democratic substitute, although well intentioned, is likely to have the unintended consequence of sharply restricting the availability of the 401(k) plans. Right now the 401(k) plans are a critical part of the structure of incentives for individual savings that we have built into our tax codes. These incentives can only be offered to employees if employers participate.

The Enron fraud has taught us the need for diversification to protect a workers' plan. This substitute would impose tough conditions on plan administrators that the best-run companies will have to reevaluate their decision to offer these tax-favored saving plans. They are all voluntary. I do not believe this is what was intended by this particular legislation.

Mr. Speaker, I support the pension improvement plan. I support the security plan, H.R. 3762.

Mr. RANGEL. Mr. Speaker, I ask unanimous consent to yield the balance of my time to the gentleman from California (Mr. STARK) for purposes of control.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. STARK. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GREEN).

Mr. GREEN of Texas. Mr. Speaker, I appreciate the opportunity to speak, as I am not on either the Committee on Ways and Means or the Committee on Education and the Workforce, but when Enron started to collapse, many people in Houston saw their life savings evaporate before their eyes.

My constituents' hands were tied because Enron executives prevented them from touching the 401(k)s, even though these same executives were able to unload their stock by other means as it continued to spiral down. Innocent employees and investors lost all their investments while the CEO and executives cut their losses with their stock losses and deferred compensation. Congress should be able to stand up to these folks who take free enterprise and abuse it, these corporate insiders who took advantage of their employees' trust.

This legislation, as I look at it, and I know that we have two different committees working on it, does little to help the average rank-and-file worker who could do nothing to prevent what was happening at Enron. This reminds me of a saying from Texas that we can put earrings and lipstick on a pig and call her Monique, but it is still a pig. Even with earrings and lipstick, this bill does not do much to prevent future Enrons.

Mr. Speaker, I do not want to throw out the baby with the bath water, and I agree that we need to continue the efforts for stock options and ESOPs; but somehow we have to send the message by legislation that we will not have what has happened at Enron ever happen again.

The President said he wanted the CEOs treated the same as the workers.

The Democratic substitute does that. It makes sure that executives play on the same field as their workers and investors. If employees are prohibited from selling their stock, executives should be, too, without any special dealings or deferred-compensation ways that they can get to their stock, and that is what the Republican bill that we have today does not do. The majority bill, even with the earrings and lipstick, is still no beauty.

□ 1230

Mr. THOMAS. Mr. Speaker, I ask unanimous consent that the gentleman from Ohio (Mr. PORTMAN) control the remainder of the time on this side.

The SPEAKER pro tempore (Mr. LATHAM). Is there objection to the request of the gentleman from California?

There was no objection.

Mr. PORTMAN. Mr. Speaker, I yield 2 minutes to the gentlewoman from Washington (Ms. DUNN) who has been instrumental in ensuring that we have broad coverage under our 401(k) plans.

Ms. DUNN. Mr. Speaker, today I rise in support of the Pension Security Act of 2002. This bill does have strong bipartisan support in the Committee on Ways and Means and it adheres to the principles outlined by President Bush. Most importantly, it will provide protections for employee-investors without impinging on employers' own abilities to establish, support and have some degree of control over their own retirement plans. Media hype notwithstanding, we cannot allow the unfortunate actions of a few, who will be penalized, to ruin a successful program that has created trillions of dollars in wealth for millions of Americans.

I want to highlight two important changes that are in this bill to protect employees. First, we included sensible diversification requirements for employee investments. We know that one of the principles of retirement security is personal control over a diversified portfolio. Our bill prohibits employers from requiring employees to invest their own money in company stock. Companies would be required to offer at least three investment options to their employees. And employees would also be given advice in plain English about the benefits of diversification of their investments.

Secondly, I want also to mention how we address employee stock purchase plans, or ESPPs. For decades, ESPPs have been exempt from payroll taxes because they were not considered wages. However, a recent IRS ruling overturned this longstanding practice. Our bill reaffirms that ESPPs are exempt. This is an important clarification that protects rank-and-file employees from a huge tax increase. Without this provision, you would have the very ironic situation of a junior programmer at Microsoft being forced to sell stock just to pay the payroll tax. Without this provision, small companies, which have used ESPPs to attract and to reward young workers, would be discouraged from offering these plans.

Our private retirement system is a great success, Mr. Speaker. It should make us all proud. Let us continue that tradition by passing this very important bill.

Mr. STARK. Mr. Speaker, I yield 4 minutes to the gentleman from Maryland (Mr. CARDIN).

Mr. CARDIN. Mr. Speaker, let me thank my friend from California for yielding me this time.

Mr. Speaker, I am disappointed. I think today we have missed an opportunity to pass legislation on a bipartisan basis that would have gone a long way to helping America's workers. If the Committee on Rules would have allowed the work product of the Committee on Ways and Means to come forward, the gentlewoman from Washington was correct, we passed that by a strong bipartisan vote in our committee, and we would be here today, Democrats and Republicans, urging the passage of that legislation. That was not to be the case.

Instead, the Committee on Rules brought forward the product of the Committee on Education and the Workforce and included some provisions that I believe should not be enacted. Therefore, I find it regrettable that I cannot support this legislation.

Mr. Speaker, there are some very important provisions in the legislation before us that we need to make sure gets enacted into law. There are certain protections for employees to be able to diversify their investment portfolio, to be able to take company stock and to put it into a more diversified portfolio for their retirement. Particularly in these days as we are changing from defined benefit plans to defined contribution plans, those changes are important.

The legislation was basically worked out in a bipartisan way. I thank the gentleman from Ohio (Mr. PORTMAN). The two of us have combined together a lot of pension legislation, including many of the provisions that were included in the Ways and Means bill but unfortunately have gotten clouded in the legislation before us. It includes notice, for example, of blackout periods and that employees should diversify their investment portfolios. It includes tax incentives so that individuals can get tax advice. It includes help for small business that was not included in last year's tax bill because of the rules in the other body. That is the good stuff that is in the bill. That is what was worked out in a bipartisan way. That is what I had hoped would have been before us. That is what I had asked the Committee on Rules to make in order. But that is not the bill before us.

The bill before us includes other provisions, including a restriction on diversification that I do not think is workable, that requires employees to wait 3 years after every new contribution by an employer of company stock before they can diversify it. How many of us look at our portfolios every year and set up plans for diversification every year? I think that is asking employees to do too much. How many of us can plan how much we are going to have available for retirement if we do not have complete control over our decisions? The legislation before us does not give that to us.

More importantly, the legislation before us opens up certain conflict situations on giving advice by making an exception to the prohibited transaction rules under ERISA. I supported change in that rule. I went to the Committee on Education and the Workforce and tried to work with them on sensible restrictions in opening this up so that the manager of the investment plan would at least be required to offer options and choice to the participants. But that amendment was not adopted. Instead, there is just a blanket exemption to the ERISA statute.

I regret that I will not be able to support a bill that I worked very hard with with the gentleman from Ohio (Mr. PORTMAN) to bring forward today. I do hope that as this legislation works its way through the other body and through conference that we will be able to bring back a bipartisan process, one in which the Committee on Ways and Means participated in, and have a bipartisan bill that can enjoy broad support in this body and that we can send to the President and get enacted into law. That is not the legislation before us. I hope we will have that when it returns from the other body.

Mr. PORTMAN. Mr. Speaker, I yield myself 30 seconds.

I would like to thank the gentleman from Maryland (Mr. CARDIN) for the good work he did on this legislation. As he says, the majority of this legislation is the product of the Committee on Ways and Means and the Portman-Cardin legislation.

He indicated that there were two areas he had disagreements: The workability of the 3-year rolling provision, that of course can be done as an option for the company. Second, he talked about his concern about the conflict situation of giving investment advice. We are very close on that one as well. I just want to underline the fact that we are very close in this legislation. I think, in fact, that this legislation is bipartisan still. I assume it will be. I look forward to working with him into the future to addressing those relatively small concerns in a good bill.

Mr. Speaker, I yield 2½ minutes to the gentleman from Arizona (Mr. HAYWORTH).

Mr. HAYWORTH. Mr. Speaker, I thank my colleague from Ohio for yielding me the time, and I appreciate the comments from my good friend from Maryland. If you listened closely, while there were some disagreements as to what is transpiring in the bill that my friend from Ohio addressed, there seems to be more of a concern about process, and we have joint jurisdiction with the Committee on Education and the Workforce and some of these questions of process can be worked out in the course of the legislation.

But what we do in this bill is address a definite need. This is an example where the House of Representatives responds to a challenge that confronts the American people. It is precisely because of the diversification rights that I would recommend this legislation. Plans would be required to offer at least three investment options other than company stock and to allow employees to change investment options at least quarterly. Employees must have the option of investing their own contributions in any investment option offered by the plan. Employers would be allowed to match in the form of company stock. However, employees would be allowed to sell this stock and diversify into other assets according to a couple of different options, a 3-year service option or a 3-year rolling option.

Another concern addressed by this legislation is that it strikes a balance. Mr. Speaker, many folks in Arizona have come to me about ESOPs and what goes on there, and it is important to note that the new diversification rules would apply only to plans that hold publicly traded employer securities and to plans that are not pure ESOPs. A pure ESOP does not hold any employee contributions, employer matching contributions, or employer contributions used to meet nondiscrimination tests.

As you take a look at this legislation, it actually enlarges and improves access to retirement security. It would make it easier for small businesses to start and maintain pension plans. It will simplify reporting requirements for pension plans with fewer than 25 participants.

If the question is access to pension security, it only makes sense to enlarge the possibilities for small business, and we should really redefine that as essential business since more Americans are employed by small businesses than all the corporations of the United States, we are able to set up a mechanism so that they can actually come up with their own plans, with their own pension programs, and it will provide for discounted insurance premiums that small businesses pay to the Pension Benefit Guaranty Corporation.

On balance, this legislation strikes a balance. It is an appropriate first step. I urge passage of the legislation.

Mr. STARK. Mr. Speaker, I yield myself 4 minutes.

As many speakers who have gone before suggest, this bill points out so clearly the difference between the Republicans and the Democrats. Not only is this bill terribly unfair to the average working person and abundantly generous to rich and high-paid executives and to the insurance industry who are contributing to the authors of this plan for the munificent tax loopholes it creates, but in structuring the plan in the dead of night, there were provisions put back into the bill in the Committee on Ways and Means which further discriminate against the average worker in the small business.

This is not about creating plans which, of course, is what the Republicans would like to do, to create plans for the rich executives. This is about fairness in coverage. This is how many people are covered by the plan in a fair way.

We have had for many years antidiscrimination laws which this bill attempts to eliminate. These have been a subject of contention time and time again as the Republicans, if you choose to support that philosophy, would give tax loopholes to the very rich and ignore the average working person. This has been the interest of the people selling the plan, selling the investments, selling the insurance or selling the service, is to line the pockets of the rich who, of course, will continue their contributions to the Republican campaigns at the expense of the average working person who will get precious little from these plans.

Why we should continue to think that we can say this helps anybody to retire, it helps a very small percentage of very rich people or small business owners to retire. And who pays for that? The average taxpayer pays for that. We pay for that tax loophole. And the price that we were previously extracting was that that small business owner had to give an equivalent protection to every employee in his or her business. This bill eviscerates that idea.

There is some claptrappy language in here that will turn it over to the Secretary of the Treasury, but if the Secretary of the Treasury does nothing, there will be no requirement for antidiscrimination laws. And guess who will have won? The Republican Party and their rich friends and the people who sell these plans, the investment brokers and the insurance agents who do it. What is worse is that it was brought into the bill in the dead of night without the knowledge of the Democrats on the committee. To me, this is underhanded, it is sneaky, and it is indeed the operating procedure of the Republican Party.

I cannot help but suggest, because our chairman brought up the idea of Marxism, and I guess he used to teach history or something like that at some junior college, and he might remember that it was in a European country in the thirties that the fascist leader of that country enlisted the corporate executives to support a war effort in the fight against Marxism and, in the process, enslaved the workers. This seems to be the pattern that the Republicans in this House are following today, by sneaking through in the dead of night, not telling us the truth about what is in the bill, and harming the average working American to the benefit of the very rich business owners. That is wrong, that is obscene, that is immoral.

Vote ''no'' on the bill.

□ 1245

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, that was pretty good theater, and I guess I have to compliment the gentleman for his partisanship, but there was no basis in fact for almost anything he just said.

This was done without the Democrats knowing about it? It is the Portman-Cardin legislation that has been voted five times on the floor of this House. You have voted for it, sir. There was a 36-to-2 vote out of the Committee on Ways and Means. It was in H.R. 10. It was in all the previous legislation that has come before this floor. It was passed by this House by over 400 votes. It has been fully vetted.

The way in which the gentleman described it is, frankly, inaccurate. Let me quote the gentleman: ''There is no requirement for any nondiscrimination testing.''

Where does that come from? The gentleman from Maryland (Mr. CARDIN) is on the floor here, as is the gentleman from North Dakota (Mr. POMEROY) on the other side of the aisle. They have worked well on a bipartisan basis with us to put forward this legislation over the years. Frankly I am, again, very disappointed that we cannot have a debate on the merits.

Let us talk about the facts. I know the gentleman has a disagreement with some of the facts. I know the gentleman is not for the investment advice part of this bill. The gentleman from Maryland (Mr. CARDIN) made it clear he is not. I respect that.

But I would urge on both sides of the aisle that we try to stick to the facts as we are talking about pension reform, not that we should not on every issue, but this one has been historically bipartisan, and it is so important to the workers of this country, including the 55 million people who now take advantage of defined contribution plans.

It is the 70 million Americans who have no plan, primarily because small businesses do not offer them, that need our help. That is what this relatively modest provision that the gentleman referenced as being ''a Republican idea that was brought up in the dark of the night'' is all about. It is one that has been supported by Democrats and Republicans alike, it is one that was fully vetted over a 5-year period, it is one that has been the subject of hearings and markups; it is one that will help small businesses to be able to offer plans by giving them just a little relief from the rules, the regulations, the costs and burdens under the pension rules, and it does not, does not, I repeat, eliminate the need for nondiscrimination testing.

Mr. Speaker, I yield 3 minutes to the gentleman from Illinois (Mr. WELLER).

(Mr. WELLER asked and was given permission to revise and extend his remarks.)

Mr. WELLER. Mr. Speaker, I rise in support of this legislation, legislation which has so much bipartisan work invested in this legislation, the Pension Security Act of 2002. I commend the gentleman from Ohio (Mr. PORTMAN) and the gentleman from California (Mr. THOMAS) and the gentleman from Ohio (Mr. BOEHNER), who have led this effort to bring this legislation to the floor.

We have all learned over the last several months of some terrible things that occurred in Enron and Global Crossing and how they have impacted the retirement savings of the workers of those companies, and certainly we want to find a solution. We are going to hear the rhetoric of some who are going to choose to seize this as an opportunity for name calling and partisanship and class warfare.

We are also going to see Members of this House who are going to rise up and do the right thing, and that is offer a solution, a solution that does what we want to achieve, and that is to protect workers and to strengthen retirement savings.

That is what this is all about, pension security. That is why I stand in strong support of this legislation.

Let us look at what this bill does for America's workers. It empowers employees. Employee rights and protections are enhanced without further burdensome regulations. The bill also gives employees more control over the investment of their accounts once they own or become fully vested with that money. It also requires employers to notify workers in advance of a blackout so that employees have the same opportunity to make changes before the restrictions come into effect.

I would also note that employees are given the opportunity for investment education, something that many employees have told me they are looking for, because we give them in this legislation the opportunity for investor education and access to professional investment advice, and that is all improved with this bill.

We also help employers, because we want to encourage employers to provide pension benefits, because we want to encourage, particularly smaller employers, to provide retirement savings opportunities for their employees because they are the ones, frankly, that have a harder time doing it because of the regulatory and administrative costs. And this House has worked so hard with the leadership of the gentleman from Ohio (Mr. PORTMAN) and the gentleman from Maryland (Mr. CARDIN) to make it easier for small employers to offer pensions.

This bill also reduces costs and regulatory burdens for employers who voluntarily sponsor pension plans. I would note that thanks to the leadership of the gentleman from New York (Mr. HOUGHTON), this legislation prevents the IRS and the Federal Government from imposing further taxes on employee stock options. If we do not pass this legislation, workers who have employee stock options may suffer payroll taxes. We do not want that to happen.

This legislation deserves bipartisan support. It would make it easier for small employers to provide retirement savings opportunities for their workers. We empower employees. It is a bipartisan bill and deserves bipartisan support. Let us do the right thing. We have a solution. I urge support.

Mr. STARK. Mr. Speaker, I yield 4¼ minutes to the gentleman from Texas (Mr. DOGGETT).

Mr. DOGGETT. Mr. Speaker, I thank the gentleman for yielding me time.

In the aftermath of the Enron-Andersen fiasco, certainly we should be concerned about activity that was lawless. But I believe we here in Congress need to be equally concerned about activity that was lawful, but simply awful, in its impact on American families.

This is a scandal involving the deliberate decisions of policymakers in this House of Representatives to allow and overlook loopholes, shortcuts, back doors, exemptions, and exceptions that riddle our laws, that provide special protection and special opportunities to special interests that devote such energy to lobbying us here in Washington. It works to the detriment of blameless employees at Andersen and Enron and at companies across this country, the blameless participation of retirees and investors and of taxpayers who work hard to contribute to make this the great country that it is.

And for those Enron employees who lost all their life savings, for those taxpayers that are out there completing their tax return and wondering why it was that Enron did not pay a dime in taxes, for all those people across America who are saying ''there ought to be a law to do something about this, those folks do not need to look any further than the House Committee on Ways and Means that has responsibility for people paying their taxes and for protecting pensions, to ask why did they not do something about it. Why do they continue to enable and facilitate and encourage companies like Enron to not pay a dime on their taxes, while Americans are working hard to pay for the costs of the security of this country? Why have they been so indifferent to ordinary workers that are concerned about their pension security?

This bill is not about the protection of pensions for hard-working employees; it is about political cover for Members of Congress who have not done very much about these kinds of problems in the past. It is based on the premise of how very little can this Congress do and still go out with a straight face and say they have done something about this problem.

Let me tell you, if your family's future is dependent upon an employee pension plan, and you are asking what is this Congress doing to protect me, to protect my family, what is this Congress doing to prevent another Enron-type debacle from destroying our retirement security, the answer is practically nothing.

That is not just my assessment, that was the assessment of the American Association of Retired Persons when this bill came out of committee, and I am proud to have voted against it. That was also the assessment of the New York Times on the front page yesterday—serious concerns that have not been answered by supporters of this bill.

In fact, a former Treasury official said the bill opens the door to discrimination between executive and lower-paid workers.

While its proponent did not have time to take care of ordinary folks, they could certainly provide new favors for highly-paid workers.

If management tells you to buy more company stock while they are selling theirs, does management have to tell even the pension plan that it made these sales? No, not under this bill. If management continues to stuff your retirement plan with company stock, is that illegal? Not only is it lawful, they give a tax break to the company if they do that. And they tell us a company can give some advice to people: ''We will let Jeff Skilling go out and hire a consultant to advise people to sell their Enron stock.'' If you believe that, I am sure the Brooklyn Bridge is available for you.

A company under this bill can continue to encourage employee contributions of company stock and hire an advisor to give advice limited to other investment issues. It is more conflicted interests atop the very kind of conflicted interests we have had in the past.

I am so pleased that the gentleman from California (Chairman THOMAS) brought up Marx, because I am a real fan of their movies. I can tell you that what this bill does in the way of pension protection for American families is just about as much as if we turned the job over to Groucho, Harpo and Chico.

Mr. PORTMAN. Mr. Speaker, I yield myself 1½ minutes.

Mr. Speaker, the gentleman said that there is a New York Times article that has not been responded to. We have spent a good part of today responding to it and its inaccuracies.

Just to do it once more, because the gentleman said we had not responded, the provision we are talking about is to be able to use a facts-and-circumstances test at the Department of Treasury when a plan is fair on its face. It is entirely within the discretion of the Department of Treasury to determine the procedures for that. It is entirely within their discretion to say even though your plan is fair, even though it treats everybody the same, even though you have a uniform benefit all the way through, still you do not meet the test.

There are circumstances where a plan is perfectly fair. In fact, you could have a uniform benefit for every level of paid worker in the plan, but because one of the workers at the middle or higher level came on to the plan at an earlier age, it might not meet the specific mathematical tests that the Treasury Department uses.

There needs to be some kind of test, but tests are just that; they are mathematical, they are specific. Sometimes they do not work to determine whether something is fair or not. Should there not be some safety valve? The junior senator from New York thinks there should. It is in the Grassley bill that she has cosponsored. It has passed this House five times, by votes of over 400 votes it has passed this House. It is something that has been totally bipartisan from the start. This is nothing new.

I would just like to be clear, finally, that the legislation before us does address problems that have arisen because of what happened at Enron, but it affects all folks who are in defined contribution plans in this country. It does make significant steps forward.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LATHAM). Members are reminded that improper references to members of the other body are to be avoided.

Mr. PORTMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. BRADY).

Mr. BRADY of Texas. Mr. Speaker, I am a Houston area Congressman. Many of the Enron employees are my neighbors. They are good people, and they have lost their jobs and they have lost their retirement through no fault of their own. They do not have time to sit around thinking of clever movie titles to stick into their speeches. They are too busy finding jobs and trying to rebuild their homes and their lives.

I am ashamed of those in Congress who continue to try to score political points off the misery of these workers from Enron. The fact of the matter is the biggest threat to future retirement plans is not the prospect of future Enrons. The biggest threat is political grandstanding here in Washington that destroys companies' incentives to share their wealth with the workers who helped achieve it.

The fact is these are thoughtful safeguards today to give workers more control over their retirement plans, while encouraging companies to help them build up their nest egg for retirement.

This legislation does not satisfy the business community, it does not satisfy all the workers. It certainly does not satisfy the lawyers who would like to sue everybody. But when combined with needed accounting reforms, stiffer penalties for corporate fraud and a healthy dose of buyer beware for anyone looking to invest in stock, this should help to prevent the Enrons of the future, and this is a sound balance that we need.

Mr. STARK. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. PASCRELL).

(Mr. PASCRELL asked and was given permission to revise and extend his remarks.)

Mr. PASCRELL. Mr. Speaker, I have heard it all today. I really have. When my friend from Arizona says that what we need is a balanced approach, at this time of the game? You tell that to Wayne and Kathy Stevens, who in their 401(k) had $720,000 in savings wiped away.

□ 1300

You tell them what they need is a balanced approach. We are beyond a balanced approach. Besides someone going to jail, those people need relief; and they are not getting it in this legislation. My colleagues may think that is theatrics. You tell that to them, that couple out in Washington State.

This legislation includes no bona fide structural changes that will create protection. It does not require equal representation of employers and employees on the 401(k) plan management boards. It does not create equity between the claims of workers and the executives if the company files for bankruptcy. It does not mandate that independent, unbiased investment advice be provided to rank-and-file employees. In other words, this bill is at worst, a placebo; at best, a Band-Aid on a deep wound.

For these reasons and for what the bill does not do, I urge my colleagues to vote against the Republican bill and for the Democratic substitute. We know who brought you to the dance; but you do not have to keep on saying yes, yes, yes.

Our substitute levels the playing field. It gives rank-and-file employees the same pension protection as the executives. For us to ask anything less, we will not do a service to all Americans, just a few.

The way I see it is certain assets of the company that I have invested in, if I am part of the pension plan, are the property of the employees.

In conclusion, Mr. Speaker, I think our substitute does a better job in trying to address the problem.

Mr. STARK. Mr. Speaker, I am happy to yield 3 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. Mr. Speaker, I thank the gentleman for yielding me this time.

The security of retirement programs of America's workers is about as important a thing as I think we are going to tackle. It has been my pleasure to work with people on both sides of the aisle on this issue for many years. I want to commend, in particular, the gentleman from Ohio (Mr. PORTMAN) for the substantive and serious-minded work he has put into this topic. He is truly one of the experts in the Congress, House and Senate, on this issue; and his leadership has been important.

Let us look at where we are today. Only half the people in the workforce today have access to workplace retirement savings. We have absolutely a collapse in the number of defined benefit plans providing reliable pensions to workers. The plans are not collapsing; they are converting to defined contribution plans, a different arrangement, in my opinion, over the long run, one not likely to serve the worker quite as well. We have 401(k) choices, a bewildering array, facing workers, without having provided them sufficient information to best steer their interests in light of their new responsibilities. And, obviously, as the Enron case has so sadly shown, we have insufficient protections that protect workers from the kind of abuse that occurred by an employer acting in what, I believe, will be very actionable ways in the Enron circumstance.

So what we have before us are two approaches to try and fix some of these issues. Sometimes the choices before us are dumb and dumber. Today, I think they are good and better. I am going to vote for the underlying bill. I am going to vote for the substitute, in any event. I think we are making a step forward with the passage of either one of these choices today.

Let us take a look at, first, the underlying bill. It allows diversification protection that we do not have today. The 3-year rolling average is not as good as the Committee on Ways and Means' 3-year provision, which is a distinct advantage in the underlying substitute; but it is an advantage, and it will protect workers, allow them to be able to put a more healthy investment balance into their retirement funds; the 30-day notice on blackout periods and an absolute guarantee they will have a right to trade and diversify within that period of time. That was in the underlying bill that was obviously tragically not in the Enron circumstance, to the abuse of many of those employees. A big step forward with that one.

A big step forward in my opinion on providing investment advise, much greater availability of investment advice to workers facing these 401(k) choices. I am very pleased that the gentleman from Ohio (Mr. BOEHNER), the chairman of the Committee on Education and the Workforce, incorporated into this draft changes that I proposed that make sure that a fiduciary standard applies in the providing of that advice; and it discloses fees in a clear and uniform way, and that it has all of the advisors providing this advice, subject to administrative penalties in those circumstances where they have a vested interest in the sale.

I believe that this will go a long way in a very secure format to provide them the advice they need.

This is a choice; two good choices. Yes on the substitute is the preferred choice. The other one is good too.

Mr. STARK. Mr. Speaker, I yield 2 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, what is at stake here today is the faith of the

American people in their economic system and in this Congress. The American dream is work hard, get ahead, give your life to a company, get a secure, decent retirement pension. Well, that dream is being destroyed by corporate executives who are cheating people out of their hard-earned retirement benefits.

As the Nation watched enormous corporate bankruptcies unfold at Enron and Global Crossing, and as the people of my district watched Chapter 11 proceedings at LTV Steel, we see the plot thicken around one major theme. There are two sets of rules. Executives get one set of rules and the employees have to play under a different set of rules. Corporate executives get special treatment, including more investment choices, no lockdown restrictions, generous deferred compensation plans that are not required to be disclosed, guaranteed rates of return on pension investments, and a golden parachute of retention bonuses and other benefits when a company goes under.

Employees, on the other hand, have barriers to information, fewer options, more restrictions on investment, and no guaranteed returns. The most egregious disparity is that during a bankruptcy, executive pension plans are totally protected from creditors, and executives can count on cashing in their entire package. On the other hand, employee protections are not protected from creditors. Employees stand at the end of the line and must wait behind other creditors to claim what rightfully belongs to them for compensation that is already earned. Finally, if employees do get to make a claim, that claim is capped at a mere $4,650.

At the end of the Enron debacle, Ken Lay still receives $475,000 each year for the rest of his life and a prepaid $12 million insurance policy; but the employees' 401(k)s are drained, and they will be lucky if they get their $4,650 maximum severance pay.

This bill does nothing to protect employee pensions in a bankruptcy. It fails to give equal protection to the employee pension as the law currently provides to executive pensions. I urge a ''no'' vote on this bill.

Mr. PORTMAN. Mr. Speaker, I yield 1 minute to the gentleman from Florida (Mr. FOLEY), a valued member of the Committee on Ways and Means.

Mr. FOLEY. Mr. Speaker, I thank the gentleman for yielding me this time. Let me commend the gentleman from Ohio (Mr. PORTMAN) for his hard work on this legislation. He has been at this for many, many years; and I salute him.

What this bill says loudly and clearly: if it is good for the brass, it ought to be the same for the middle class. We are taking care of employees; we are defining benefits; we are giving investment advice; we are providing advanced notice of blackouts; we are giving diversification; we are taking off, if you will, the corporate handcuffs that have locked many employees in their employee stock option plans. It improves access to retirement planning services so the average line worker, or the CEO, can take advantage of up-to-date, latest investment advice.

I am encouraged by the action of this House, and I applaud the leadership on this issue. There is no question that Americans need security and safety in their pensions. This is a fantastic step in that direction. I salute all who have participated. I urge my colleagues, as they prepare to leave this Capitol, that when they vote for this bill, they are giving an underlying security to the pensions of all American workers.

Mr. PORTMAN. Could we have a division of time, Mr. Speaker.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The gentleman from Ohio (Mr. PORTMAN) has 5½ minutes remaining; the gentleman from California (Mr. STARK) has 4¾ minutes remaining.

Mr. PORTMAN. Mr. Speaker, I yield 1 minute to the gentleman from Michigan (Mr. CAMP).

Mr. CAMP. Mr. Speaker, I want to thank the gentleman for yielding me this time; and I also want to commend him on his efforts on not only this bill, but years' long efforts on making sure that retirement security is a reality for all Americans.

This legislation really does address in the right kind of way the problems that we have seen so much in the press lately. Employee rights and protections are enhanced. We do not have burdensome regulations to affect investment and keep people from investing. We will see pension benefit statements; we will see investment education notices. The bill will give employees more control over the investment of their accounts once they own them, or become vested in that money. They will have three investment options to choose from, and that will be required under this bill. There will be an advanced notification to workers if there is a blackout period so that employees have the same opportunity to make changes as anyone else does that is involved in that plan before the restrictions come into effect.

Investor education and access to retirement planning and professional investment advice are improved under this legislation. This bill will reduce the cost of regulatory burdens for employers who voluntarily sponsor these plans.

This clarifies current law treatment by making stock options not subject to payroll tax, and it is a good bill, and I urge its passage.

Mr. STARK. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman from California for yielding and for his leadership.

Mr. Speaker, I had hoped that we could have come to this floor in a bipartisan manner and supported either the Committee on Ways and Means proposal on this issue, the total Committee on Ways and Means proposal, or the complete Committee on Ways and Means proposal and/or the Miller substitute. Let me share with my colleagues why, Mr. Speaker.

I live with this every day. The 18th Congressional District has Enron in its district. I am hoping for rehabilitation and reconstruction and the opportunity for a new entity to grow and thrive, but I live every day with the heartfelt tragedies of employees who now still are in foreclosure, who cannot have health care, whose pension benefits, along with the retirees, are long gone.

When they ask me what are we doing, they are asking for a comprehensive and inclusive response. They wonder if the hearings of these past months, where there was great drama, whether this Congress had come together in a bipartisan way.

I would say to my colleagues, Mr. Speaker, that I am very sad that as a member of the Committee on the Judiciary, the Committee on Rules did not see fit to establish some parameters to give penalties to the destruction of documents. It answers the concerns of Andersen employees, and it answers the concerns of ex-Enron employees; but it does not answer the concerns that we would never want this to happen again.

Mr. Speaker, I wanted to vote for this legislation today; and I want my constituents to know why I am not going to vote for it, because this pension bill does not answer the concerns. It does not give independent advice that is needed for these employees. It does not give them the opportunity to fully diversify their company stock, and fails to give workers a voice in administering and protecting their retirement savings through employee representation on pension boards; and for the first time since this bill was enacted, the Republican pension bill provides employees with biased and conflicted investment advice.

Mainly, let me share with my colleagues a story that is ongoing. The Creditors Committee refuses to give a legal severance pay to these employees, Mr. Speaker, as I close. Why? Because these are the big guys, and the little guys do not get heard. We need to pass legislation where the little guys will be heard. I ask my colleagues to reject this legislation.

I thank the distinguished gentleman from California for yielding and for his leadership.

Mr. Speaker, I had hoped that we could have come to this floor in a bipartisan manner and supported either the Committee on Ways and Means proposal on this issue, the total Committee on Ways and Means proposal, or the complete Committee on Ways and Means proposal and/or the Miller substitute. Let me share with my colleagues why, Mr. Speaker.

I live with this every day. The 18th Congressional District has Enron in its district. I am hoping for rehabilitation and reconstruction and the opportunity for a new entity to grow

and thrive, but I live every day with the heartfelt tragedies of employees who now have homes in foreclosure, who cannot pay for health care, whose pension benefits, along with the retirees, are long gone.

When they ask me what are we doing, they are asking for a comprehensive and inclusive response. They wonder if the hearings of these past months, where there was great drama, whether this Congress had come together in a bipartisan way to do something effective. This legislation today is not effective.

I would say to my colleagues, Mr. Speaker, that I am very sad that as a member of the Committee on the Judiciary, the Committee on Rules did not see fit to allow an amendment that would establish some parameters and add criminal penalties to the destruction of documents. That would answer the concerns of the Andersen employees, and it answers the concerns of ex-Enron employees; but the legislation today is not the tough reform it should be.

Mr. Speaker, I wanted to vote for this legislation today; and I want my constituents to know why I am not going to vote for it, because this pension bill does nothing serious. It does not give independent advice that is needed for these employees in these in investment choices. It does not give them the opportunity to fully diversify their company stock, and fails to give workers a voice in administering and protecting their retirement savings through employee representation on pension boards; and the bill does not give notices to employees if executives are dumping their stock. This bill provides employees with biased and conflicted investment advice.

Mainly, let me share with my colleagues a story that is ongoing regarding ex Enron employers. They hope to fight a Creditors Committee that refuses to give a legal severance pay to these employees, Mr. Speaker, as I close. Why? Because these are the big guys, and the little guys do not get heard. We need to pass legislation where the little guys will be heard. I ask my colleagues to reject this legislation, and fight for and with the little guys!

Mr. PORTMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. SAM JOHNSON), who is chairman of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce, as well as serving on the Committee on Ways and Means.

(Mr. SAM JOHNSON of Texas asked and was given permission to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, I hate to tell everybody this, but there is independent advice authorized in this bill; and it is for everybody, not just the bottom, but the top and the bottom.

I thank the gentleman for yielding time to me.

The Pension Security Act contains some important provisions that will modernize pension legislation. The gentleman from California (Mr. THOMAS), the chairman of the Committee on Ways and Means, also included in this bill a very important pension-related provision that will overturn a new IRS position on employee stock purchase plans.

I have received a number of calls, letters, and e-mails from constituents regarding the new IRS position that is overturning 30 years of tax policy, that was, the employee stock purchase plans are not subject to payroll tax. The IRS overturned that 1971 policy just recently. Imposing payroll taxes for Social Security and unemployment on employee stock purchase plans is just wrong, just as imposing payroll taxes on contributions to 401(k) plans would be wrong. At least the IRS did not go that far.

I hope the IRS sees we are serious about this matter and they do the right thing and simply make this issue go away. This IRS ruling penalizes hardworking people and is just wrong. Again, I want to thank the gentleman from California (Mr. THOMAS) for his dedication to this issue and for making sure that America's pension plans are safe and secure.

Mr. STARK. Mr. Speaker, I yield myself the balance of our time. I will try and summarize. Admittedly, this bill will encourage more plans.

□ 1315

The best way to encourage plans is to have no restriction on them at all, and then the very rich will have plans, but they will not cover the employees.

Professor Halperin at the Harvard Law School has written and suggested that this really solves a minor problem by creating a loophole through which we could march an elephant, or a donkey, too, perhaps, to be bipartisan in the closing minutes of this debate.

But the fact is that this is a bill written to satisfy rich contributors to the Republican Party, and it gives assistance to major corporations and to owners of small businesses without any regard to protecting the employees who are under them.

And it is couched in some language that will say there is a little bit here and there, but the fact is that we give the Treasury the right to make the decision of whether the plans meet the antidiscrimination rules, and then give the Treasury no direction. So if the Secretary of the Treasury does not act, there are no antidiscrimination rules.

Mr. Speaker, this is a bad bill. It is a bill that is unfair. It is a bill that helps only the very rich and the owners of businesses, but leaves the workers with less protection than they start with now.

I guess that is what we have to expect from a Republican-controlled House. That is what they have been doing at every step of the way.

There is the tax bill, which only gives 90 percent of the benefits to 2 percent of the richest people in this country. That is a Republican operation.

There is a bill that talks about education, but does not fund it. That is a Republican plan.

So one more step in a Republican-controlled House to hammer down the working people and the average person in this country to the benefit of the few rich people, the few extreme right-wing radicals who will support the Republican Party and their blatant, blatant, obsequious bowing to the wealthy and the large corporations in this country.

It is something that should shame them. I do not know what they are going to tell their children some day: I came to Congress and helped the rich, and I destroyed the poor. I destroyed pension plans by supporting Enron. I took a lot of money from Enron, and I destroyed the pension plans of those workers. I denied seniors medical care coverage. I refused to give a pharmaceutical benefit.

What a wonderful way to take their pension money that they are going to get, far better than any workers are going to get, and then sit and tell their children and grandchildren what they did for this country. I hope they enjoy that retirement, because the average working person in this country is not going to enjoy it if he is subject to the rules that are written in this law by the Republican majority in this House.

Vote no on the bill.

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume.

I am so glad my colleague, the gentleman from California, did not get too partisan there at the end, as he said he would not. I do not know how he could be much more partisan than that.

Again, I think it is a sad day on the floor of the House when we have that kind of rhetoric over legislation that traditionally has been bipartisan, and that in fact is commonsense legislation that helps working people.

I do want to apologize to the gentleman because earlier I said I had thought he had voted for the provision he was talking about. It passed the House 407 to 24. It has passed the House five times, as he knows. But he was not one of the people who voted for that, and I apologize for saying that.

Earlier speakers have said there are no bona fide structural changes in this bill. The gentleman from California (Mr. STARK) has just talked about it in strictly political terms.

Let me tell Members what the bill does. It provides more education, it provides more information, and it provides more choice to workers. That is what it does. All of that leads to more security in retirement.

In terms of education, it says to workers that we are now going to allow them to get pre-tax advice. They can take pre-tax dollars, and go out and get their own advice. I think that is a good thing. There is a bipartisan consensus in the pension world that that is one of the things we need to focus on now is giving better information so they can make informed choices.

It also provides for investment advice the employer can provide to the employee. It also provides for the first time a requirement that employers, as people enter 401(k)s or other retirement plans, send a statement which provides generally-accepted investment principles that say, you ought to diversify. To put all your eggs in one basket, as in the case of Enron, is a bad idea. That notice is good. We want to do that for the workers.

It provides more information. For the first time ever, we are going to say that if there is a black-out period, that is when they cannot change their stock because that is when we are changing plan managers or plan administrators, they ought to know about that. We provide for a 30-day notice period. It is not in current law. That is an important change. It lets people get out of the stock if they want to.

In terms of choice, right now if you are in a 401(k) plan, your employer can tie you with the employer-matched stock until you retire. At Enron, it was age 50. In an ESOP it could be up to age 55 plus 10 years particpation. We say no, it ought to be 3 years. Once you are there 3 years, you ought to be able to make that choice with better education, with better information; to be able to sell that stock you have gotten through an employer match.

That is what this bill does. It has been mischaracterized today. There has been a lot of rhetoric on the floor, but those are the facts. Those are substantial changes from current law. Those are structural changes to the law that are going to give the workers in this country more security in their retirement by giving them better information to make choices, by giving them educational tools, and by giving them choice, and empowering them to make decisions for their own retirement.

The SPEAKER pro tempore (Mr. MILLER of Florida). All time for debate by the Committee on Ways and Means has expired.

Under the rule, the gentleman from Ohio (Mr. BOEHNER) and the gentleman from California (Mr. GEORGE MILLER) each will control 30 minutes of debate.

The Chair recognizes the gentleman from Ohio (Mr. BOEHNER).

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, late last year, thousands of Americans employed by Enron Corporation watched helplessly as their company collapsed, and their retirement savings were lost with it. Today we are here to restore worker confidence in our Nation's pension system.

Enron workers may be the victims of criminal wrongdoing. We do not know that yet. But we already know they are victims of an outdated Federal pension law. The bill before us today will modernize our Nation's pension law and help promote security, education, and freedom for employees who have worked and saved all of their lives for a safe and secure retirement.

President Bush followed up his State of the Union speech this year by outlining a series of bipartisan reforms that could have made a critical difference for Enron workers who lost their retirement savings. The bipartisan Pension Security Act of 2002 is based on those reform principles.

But let us be very clear: Congress should take action to protect Americans' retirement benefits, not endanger them. One of the great strengths of our country is that employees of companies can own stock in their place of business and become part of the corporate ownership. This has allowed workers who stock shelves at Wal-Mart and run the checkout counters at Target, not just the top-level management, allow these other workers to build wealth and significantly enhance their own requirement security.

On a bipartisan basis, we have consistently rejected efforts to place arbitrary caps on a company's stock because Congress should encourage employers to provide matching contributions to their workers, not enact extreme proposals that could jeopardize Americans' retirement security, or spell the death of 401(k) plans altogether.

The bipartisan Pension Security Act takes a balanced approach by expanding worker access to investment advice and including new safeguards to help workers preserve and enhance their own requirement security, such as giving employees new freedoms to diversify their own portfolios.

But it also insists on greater accountability from senior company insiders. We believe it is unfair for workers to be denied the opportunity to sell company stock in their 401(k) accounts during blackout periods, while corporate insiders can sell off their investments and preserve their own savings. Enron insiders got away with this, and we are going to change it.

The Pension Security Act before us gives rank and file workers parity with senior company executives. It also strengthens the notice requirements by requiring companies to give 30 days' notice before a blackout period can begin.

The bill also empowers workers to hold company insiders accountable for abuses by clarifying the company is responsible for worker savings during blackout periods when workers cannot make changes to their 401(k) plans.

Under the Pension Security Act, as under current law, workers can sue company pension officials if they violate their fiduciary duty to act solely in the interest of 401(k) participants.

Enron barred workers from selling company stock until age 50. The bill gives workers new freedoms to sell their company stock within 3 years of receiving it in their 401(k) plan if they get company stock as a match. The benefits of diversification will help workers better plan and save for their own future over the long term.

As we all know it, defined contribution 401(k) type plans have become a primary vehicle for retirement savings. Yet today, the vast majority of American workers receive no investment advice on how best to structure their 401(k) retirement plans, and most cannot afford to pay for it on their own like the company insiders can.

I think it is time to fix outdated Federal rules that discourage employers from giving workers access to professional investment advice. Like most U.S. companies, Enron did not provide its workers with access to this type of advice. This type of investment guidance would have alerted Enron workers to the need to diversify their accounts, and enable many of them to preserve their retirement nest eggs.

The pension act today that we have changes these outdated Federal rules and encourages employers to provide quality investment advice for their workers. We need to give investors more choices and more information to choose wisely, so that they are better able to navigate their way through the volatile markets and maximize the potential of their hard-earned retirement savings.

Workers must also be fully protected and fully prepared with the tools they need to protect and enhance their retirement security. The Pension Security Act accomplishes these goals.

I want to thank my colleague and the chairman of our subcommittee, the gentleman from Texas (Mr. JOHNSON), who is also a member of the Committee on Ways and Means, for all of the work that he has done at both of our committees to enhance the bills that we have before us, and for the important role he played in the process.

Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself 4½ minutes.

Mr. Speaker, the challenge today is whether or not the House of Representatives is prepared to take the lessons of the Enron scandal and use those lessons to apply to greater security of the millions of workers' 401(k) plans across the country.

I would suggest that, in the Republican bill, they have failed to do that. Later, we will offer a Democratic substitute that I believe provides for that greater security, greater control, and greater say by the employees of the assets that belong to them that make up much of their retirement nest egg, so we do not again see, as we saw on Enron, where, because of unethical behavior by corporate executives, where because of greedy behavior by corporate executives, where because of illegal behavior by corporate executives, where because of conflicts of interest by corporate executives, the employees lost everything.

They were never given advance notice. They were never told what was really happening with the corporation. They never had a representative on the pension board which was controlling the assets which 100 percent belonged to the employees.

So we will have an opportunity with that substitute to reject the Republican bill that fails to learn any lessons and provide those greater protections to the workers of this country, and to, in its place, provide for an employee representative, a rank and file employee representative, on the pension boards so we do not have the situation that we had at Enron and other corporations where members of the pension board who were executive vice presidents have a conflict of interest between their career track and taking care of the beneficiaries, the employees, of the corporation; where they sold their stock but never told the pension beneficiaries that they were selling, or that they thought it was the right thing to do.

We are going to make sure that a rank and file member is a member, so they will have access to the information and they will be able to make determinations for their fellow employees.

We are going to make sure that, after 3 years, they have a complete right to divest, so if they want to diversify their portfolio, if they want to make other decisions about their retirement, they will be free to do it.

□ 1330

In the Republican bill, which you see, it takes 5 years to be fully able to diversify; and every 3 years a new period starts with a new contribution. Three years ago we were in the throws of a bull market, the greatest bull market in modern history. And today, many of those same people have lost much of their retirement because they were locked into it. Three years is a very long time, and a rolling 3-year period is an unacceptable time to lock up people's assets that belong to them so they cannot make a determination about their retirement.

We will also make sure people are treated equally. What we see in Enron and many corporations today is that the retirement plans are ensured for the executives. The retirement plans are guaranteed. The benefits of the 401(k) plans are guaranteed for the executives but not for the employees. So while Enron or other corporations go into bankruptcy, the executives are taken care of. They are taken care of. They walk away with millions. The employee, they have to walk around the corner and stand in line at the bankruptcy courts and hope that there is something left over at the end to see if they can put back together their retirement.

This is really about a fundamental test, about the workers of this Nation who now have got a rude awakening call; and through the tragedy of the workers at Enron that their 401(k) plan that they are being required to lean on more and more for their retirement as vulnerable beyond their expectations, is far more vulnerable than they were led to believe.

Finally, we say yes, investment advice is important; but that advice should not be conflicted.

We have just witnessed this week once again the incredible conflicts in the financial institutions of the country where Merrill Lynch was offering retail advice to people to buy their stocks; and in their e-mail traffic they were making jokes about the stock. They were raising ethical concerns about offering these stocks for sale because they knew their company was conflicted because it was earning fees as an investment bank from the very clients whose stock it was touting. The investment advice can be offered and it can be helpful, but it cannot be conflicted. The Republican bill allows that investment advice to continue to be conflicted.

Mr. Speaker, I reserve the balance of my time.

Mr. BOEHNER. Mr. Speaker, I yield 4 minutes to the gentleman from Texas (Mr. SAM JOHNSON), the chairman of the Subcommittee on Employer-Employee Relations of the Committee on Education and the Workforce.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, conflicted advice, we keep hearing about; but there is not any conflicted advice when you have somebody who is recognized as a professional stock or option advisor being concerned.

I have been concerned about many of the pension proposals that have been introduced aimed at protecting Americans from themselves. If history is any guide, Congress should very well protect Americans by simply destroying another successful pension plan. Just look at what happened with the government's over-regulation of the defined benefit pension system. Congress killed those plans with kindness. Let us not repeat those mistakes here.

The bill we are debating here is moving pension reforms cautiously in the right direction, and it is balanced and fair. And I want to commend the gentleman from Ohio (Mr. BOEHNER) and the gentleman from California (Mr. THOMAS) for their hard work in putting together this bill.

As a subcommittee chairman for the Committee on Education and the Workforce, I will focus on those sections of the bill. First, I believe that the rolling 3-year diversification rights for employees who are given company stock as a match in their 401(k) is as important an improvements as any in this proposed legislation. Rolling diversification will preserve employees' ownership ethics as stockholders, but will also permit individuals to diversify into other investments as they see fit.

Next, I am glad that we have clarified the issue of employer liability for stock market fluctuations in a 401(k) plan during a black-out period. We heard a lot of testimony in my subcommittee on this subject. Under the bill reported by the full committee, employers are not responsible for market swings and 401(k) accounts during a black-out period, as long as they provide 30 days' notice in advance and make sure they have a legitimate reason for doing the black out.

The bill today also exempts privately held businesses from being subjected to the diversification mandates and permits them to use their most recent annual valuation for reporting stock value on 401(k) stock benefit statements.

I probably sat through more hours of hearings on pension benefit issues in this session of Congress than any other Member.

One thing that has been confirmed for me during these hearings is that employees want, need and deserve to receive professional investment advice for their 401(k) plans. This bill does this.

Last month, Mr. Dary Ebright was a witness before the Committee on Ways and Means; and he told his personal story about the horrors of putting all your eggs in one basket. His personal tragedy could have been prevented if he had received professional investment advice.

He had invested 60 percent of his 401(k) into Enron stock, and then he cashed out his traditional pension plan and bought Enron stock. His defined benefit pension would have paid him roughly $2,000 per month for the rest of his life. But instead, at the age of 54, the only retirement savings that he has left is the portion of his 401(k) that was diversified.

I asked if he received any professional advice on these decisions. He said he did not. Too many workers lack access to quality investment advice on how to invest their hard-earned savings. Without a doubt, investment advice must become law soon, and I urge Members to vote for this sensible bill which does that. It educates. It provides investments advice. It provides diversification, and it stops big executives from selling their stock during a black-out period.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, we should not replace no advice for workers with bad advice for workers. A few days ago, the attorney general for New York alleged a scheme involving the Merrill Lynch firm that worked like this: one part of the Merrill Lynch house, he alleged, was collecting huge fees for raising capital for Internet companies. The other side of the Merrill Lynch house was giving investment advice to individual clients, telling those individual clients that these Internet companies were the way to go with their money, encouraging them to buy the stock.

This is not what these advisors were telling each other, though, in private e-mails and conversations that the attorney general of New York later found. What they were telling each other was these stocks were a joke; these stocks were a disaster. They were using words that should not be used in mixed company or on the House floor.

This bill wants to take the quality of investment advice the New York attorney general alleged those people were receiving and offer it to the pensioners of this country. No advice should not be replaced with bad advice. The proposal would enshrine into the law, would legalize and legitimize the opportunity of unscrupulous advisors to offer advice which benefits them but not the pensioners to whom the advice is offered.

Employees do need advice. They should be given a full array of choices. They should be made aware, and as the Democratic substitute does, made available as to how to pay for the offering and receipt of independent advice. One of the many flaws in the majority's bill is that it enshrines into law the practice of authorizing and permitting the giving of advice by people who have more to look out for themselves than for the pensioners to whom the advice is offered.

For this and many other reasons the underlying bill should be defeated and the Democratic Miller substitute should be adopted.

Mr. BOEHNER. Mr. Speaker, I yield 3 minutes to my colleague and friend, the gentleman from California (Mr. MCKEON).

Mr. MCKEON. Mr. Speaker, I rise today in strong support of H.R. 3762, the Pension Security Act; and I thank the gentleman from Ohio (Mr. BOEHNER) and the gentleman from California (Mr. THOMAS) for their hard work on this legislation.

In his State of the Union address, President George W. Bush called on Congress to enact important new safeguards to protect the pensions of millions of American workers. The President called on Congress to move quickly to enact these important reforms so that people who work hard and save for their retirement can have full confidence in our retirement system.

In response to the President's call, Congress immediately took action by holding several hearings on the Enron collapse and its implications for worker retirement security.

Mr. Speaker, we have listened to both workers who have lost or are at risk of losing their retirement savings, and we have listened to employers who voluntarily offer their employees retirement savings plans. After listening to employees and employers, I am pleased to announce that the House is here today to provide new safeguards to help workers preserve and enhance their retirement savings. At the same time, it will still allow employers to have the incentive to provide retirement benefits by refraining from overprecipitous regulation.

The Pension Security Act provides workers with the tools they need to protect their retirement savings. For example, the bill gives workers freedom to diversify their investment options, creates parity between senior corporate executives and rank-and-file workers, clarifies the fiduciary duty of employers, gives workers better information about their pensions, and enhances worker access to quality investment advice.

Mr. Speaker, H.R. 3762 promotes security, education and freedom for America's workers who have saved all of their lives for a secure retirement. I, therefore, encourage all of my colleagues to join me in strongly supporting it.

I would like to use the balance of my time, Mr. Speaker, to engage with the chairman in a colloquy.

Mr. Speaker, I am very concerned that the diversification provision of the act not be applied in the case of a nonpublicly traded employer with affiliates that may have a limited amount of publicly traded stock outstanding. I do not believe it is the intent of the legislation to have the diversification provision apply in such a situation; and I would ask the distinguished chairman if he would confirm my understanding, and if he would be prepared to work with me to clarify the application of the provision in this respect as this legislation moves.

Mr. BOEHNER. Mr. Speaker, if the gentleman will yield, I would say to my colleague that the act is not intended to apply to diversification provision in the indication of a nonpublicly traded employer with affiliates that have only a limited amount of publicly traded stock outstanding. In this special case, as in others that may arise, I would be pleased to work with my colleague to clarify the application of the provision to reflect this intent and to provide for flexibility that may be necessary to clarify the intent of the legislation.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, clearly this morning when I spoke on the rule I think I made a point worth repeating here and that is that the majority did not want to have a rule that allowed for individual amendments to be made because that would allow us to set up each aspect of this bill side by side so that the public would have an education and an informed debate on the provisions of the respective bill versus the substitute bill.

Frankly speaking, we have executive accountability in the Democratic substitute. The other bill does not. We have honest, accurate and timely information for employees provided in the substitute. The bill does not have adequate provisions for that.

We provide for unbiased, independent investment advice. The main bill specifically allows for biased, conflicted advice. And there is no reason on the planet why that should ever be the case. There are more than ample resources out there to give unbiased, unconflicted advice. Employers only want to make sure that they are not held liable when they take the precautions to get proper advisors in there, and all bills can do that. But, simply, even after Enron's Ken Lay was advising people against their interests, when we see news articles as recently as yesterday about Merrill Lynch having a conflict of interest that works against employees' rights right on down the line, this bill still goes up and hails the fact that they are bringing in conflicted advice as if that is the only way they can get advice for employees, and that is simply not the case.

The Democratic substitute takes care of lock-out restrictions and provisions. It lets employees know that if they are locked out, the executives will not be taking advantage of that period of time to their benefit. We give parity of benefits for executives and rank-and-file workers to make sure that everybody is treated fairly. The substitute gives employees control over their retirement savings in much greater degree than does the bill itself. And we have additional protections for workers' pension benefits and a representative of employees on the pension board; and history shows us that when that happens the pension itself does better.

All of these things are lacking and found wanting in the Republican bill itself. That is why we do not have a rule that allows us to bring up individual motions. That is why we are not allowed to stand here and side by side, motion by motion sit here and tell the public why the provisions of the substitute are in fact much better than those provisions of the bill.

□ 1345

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Kentucky (Mr. FLETCHER).

Mr. FLETCHER. Mr. Speaker, certainly I think it is very important in light of a lot of the discussion we have heard about Enron about a number of people losing investments over a number of years because of the ill-advice, because of the way Enron reported its financing, and because of the lack of financial advice, I want to say I encourage everyone to support 3762, the Pension Security Act of 2002, because it includes new safeguards and options to help workers preserve and enhance their retirement security.

It insists on greater accountability from companies and senior corporate executives during blackout periods when rank-and-file workers are unable to change investments in their retirement accounts. Workers must be fully protected and fully prepared with the tools they need to protect and enhance their retirement savings.

This bill gives workers freedom to diversify. We have heard it gives employers options to allow sale of company stock after 3 years, the 3-year rolling diversification, or allows workers to sell company stock after 3 years of service, the 3-year diversification cliff.

It prohibits companies from forcing worker investment in company stock.

Opponents of the bill, in the bill that will be offered as an option here, allow actually the employees to self-direct stock and money that actually is not theirs but it may belong in the future to other employees for several years, and I think that is a major problem in consistency that exists with the other proposals here.

This bill creates parity between senior corporate executives and rank-and-file workers, the captain and sailor equity provisions the President has talked about. It prevents senior executives from selling stock during blackout periods because workers are unable to sell stocks in the plans during these periods, and it requires a 30-day notice to workers before the start of a blackout period.

It clarifies that employers are responsible for workers' savings during blackouts. It clarifies that companies have a fiduciary responsibility for workers' savings during a blackout period and does outline situations where they may not be liable for losses in individually directed accounts.

It enhances worker access to quality investment advice. It includes the Retirement Security Advice Act which was passed since the 106th Congress. This provision allows workers access to information and advice about their 401(k) plans, which is greatly needed to ensure the growth we have seen in the last two decades in the defined contribution retirement plans, and as my colleagues will recall, the House passed this legislation in November with a strongly bipartisan bill, but the Senate has failed to act on this bill as of yet.

There are three reasons, I think, or three important differences with the opponent's bill. It does not include investment advice access, which is one of the provisions that would actually have helped Enron employees. It does not rely on education. Rather, it relies on overregulation.

It increases the regulatory red tape that I believe will discourage these types of defined contribution plans.

Lastly, their answer always seems to be, let us sue for some redress. Let us not give the personal freedom, responsibility, and the choice along with the education.

I encourage the passage of 3762.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentlewoman from Connecticut (Ms. DELAURO).

Ms. DELAURO. Mr. Speaker, until the collapse of Enron, most Americans felt that their pensions would be there for them when they retired. They felt their savings earned from a lifetime of hard work were protected.

We know better now. We know that our pension rules do not do enough to protect helpless employees from being locked out of their pension plans while their life savings go down the drain. They are not protected from venal executives who took their money and ran.

Two years ago, employees from a Westbrook, Connecticut lighting company learned a similar lesson. The company lost $2 million from their pension plan. I met with these men and women as we worked together to win back their hard-earned retirement savings, and no one should ever have to go through what those families did.

This Republican bill does virtually nothing to prevent what happened there or at Enron. It fails to allow employees the right to fully diversify their stock. It fails to hold executives who are fiduciaries of the pension plan accountable if they violate the law; and Ken Lay has to be accountable. It continues to allow employers to give the same conflicted financial advice the Republicans tried to push on the American workers last fall before the Enron scandal broke.

We have an opportunity today to do something worthwhile for middle-class Americans, for working men and women in this country. We can tell them today that, yes, we want to protect your pensions because your life's work has to be there for you and your family when you retire. That is what this country is built on. That is what our values are. That is the direction we should go in.

I urge my colleagues to vote against this flawed Republican bill and vote for the Democratic substitute.

Mr. BOEHNER. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from Georgia (Mr. ISAKSON).

Mr. ISAKSON. Mr. Speaker, I thank the distinguished chairman of the Committee on Education and the Workforce for this opportunity.

Pension security has two components. First is protecting the workers' investment but also is preserving that investment to exist at all. As we deal with the ramifications of the immoral and possibly illegal actions of Enron executives, and the loss to their employees, we must be very careful not to react in such a way that we destroy the benefits that most Americans have and the wealth that most have created.

We have talked a lot about Enron, and some people have painted with a pretty broad brush. It has become almost a corporate America statement. The gentleman from California (Mr. GEORGE MILLER), the distinguished ranking member in our committee, brought us a chart during the debate to raise the question about the disproportionate investment in some 401(k) plans by employees, and a couple of those companies were in Atlanta, Georgia. They were in my district.

As we talk about Enron, we must also remember the Coca-Cola Company and Home Depot. Coca-Cola, with 83 percent of the value of its 401(k) in Coca-Cola stock, and Home Depot is 73 percent, and the risk that the gentleman from California (Mr. STARK) kept criticizing about a half an hour ago happened to be rank-and-file Coca-Cola and rank-and-file Home Depot employees who invested in their company and became millionaires because of a program that we in this Congress created to create pension security.

Were there bad actors at Enron? Yes. Were there loopholes that need to be closed? Yes. This bill closes those loopholes and brings about responsibility, but we have to be very careful not to throw the baby out with the bath water. We do not need to paint a broad brush that destroys pension security by destroying any incentive for businesses to have pensions and 401(k)s, and we have to be very careful about who we castigate as being rich because, in fact, most of America's wealth has been earned by people who have invested in the sweat and the blood of their businesses and their companies, and they have been treated right.

There are bad actors. The Merrill Lynch example sounds bad, but it does not mean that every advice any professional ever gave was conflicted, nor should we sell the American worker short that they are not capable of giving information and making an intelligent decision.

I commend the President, the chairman of our committee, the chairman of the Committee on Ways and Means, and this Congress for dealing deliberately in closing the loophole that Enron used, holding corporate executives example, allowing people to diversify and allowing people the ability to get unconflicted and accurate advice.

Let us not castigate all of corporate America nor the great benefits that most American workers have gained by this important program. Let us not throw the baby out with the bath water. Let us not adopt a Democratic substitute. Let us adopt the House pension security plan.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. SCOTT) for the purposes of his remarks and entering into a colloquy with the chairman of the committee.

Mr. SCOTT. Mr. Speaker, I rise today to talk about an amendment I offered in committee to conduct a study looking into whether and how insurance could be provided for defined contribution plans. A defined benefit plan is one that defines the benefits one will get at retirement. But a defined contribution plan only speaks to the amount of money one can put into the plan, says nothing about what will be there for someone's retirement.

ERISA provided many protections, including guarantees for defined benefit plans but not for defined contribution plans. The Enron accounts we have heard so much about were defined contribution plans and, therefore, were not guaranteed.

In 1974 when ERISA was enacted, the contribution plans represented an insignificant portion of the plans, but today they constitute almost half of all plans, and because those plans are not insured, those employees have no assurances that their money will actually be there when they retire.

That is why I have been pleased to work with the gentleman from Ohio (Mr. BOEHNER), the chairman of the committee, to include a study which will explore the feasibility of developing an insurance program for defined contribution plans, just as we have for defined benefit plans. The study could recommend, for example, a procedure for private insurance paid for with the premium on assets. To put that potential cost in context, a defined benefit insurance now costs about $19 a year per account.

The study could also show what kinds of assets could be insured; for example, broadly based index funds, or AAA bonds could be insured, whereas individual stocks or junk bonds may not. The recommendation of the study could protect future employees from losing their retirement funds because stock prices collapse or because the funds in their account have been lost to fraud or theft.

I would like to engage the gentleman from Ohio (Mr. BOEHNER), the chairman of the committee, the primary sponsor of the legislation, in a colloquy for the purposes of clarifying the importance of including the study I have offered on insurance for defined contribution plans, and I would like his comments on the importance in including that study in the bill.

Mr. BOEHNER. Mr. Speaker, will the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Ohio.

Mr. BOEHNER. Mr. Speaker, I want to thank the gentleman for his work on this issue, and I want to state that we, too, believe that his study could be important in informing future public policy positions on this issue. And we regret that there was not enough time to finish out the few remaining details of the study to include his provision in this bill at this time. It is our intention to continue working with him, the other committee of jurisdiction on this issue, and the other body, as this issue goes to conference.

Mr. SCOTT. Mr. Speaker, reclaiming my time, I thank the gentleman for his assurance and look forward to working with him.

Mr. BOEHNER. Mr. Speaker, I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, can the Chair tell us how much time each side has remaining?

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The gentleman from California (Mr. GEORGE MILLER) has 16½ minutes remaining, and the gentleman from Ohio (Mr. BOEHNER) has 12 minutes remaining.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from Michigan (Mr. KILDEE), a senior member of the committee.

Mr. KILDEE. Mr. Speaker, I thank the gentleman from California for yielding me the time.

Mr. Speaker, I rise in opposition to H.R. 3762 and in strong support of the Miller-Rangel substitute. The Enron disaster has illustrated a number of glaring loopholes in our pension system that led to some 15,000 Enron employees losing more than $1.3 billion from their 401(k) retirement accounts.

Testimony in our committee indicated that the actions of some Enron executives went beyond simple misfeasance to actual malfeasance. The Miller-Rangel substitute ensures that employees will receive honest, accurate information by providing, first, regular benefit statements to workers that would include information regarding the importance of diversification; second, employees will be provided representation on pension boards; third, the substitute also provides for independent, nonconflicted investment advice when company stock is offered as an investment option; and finally, it ensures that executives are not given special treatment over rank-and-file employees.

Mr. Speaker, the collapse of Enron has revealed a number of serious flaws in our pension system. This substitute is a major step forward in addressing those flaws. I urge my colleagues to support the Miller-Rangel substitute.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 3 minutes to the gentlewoman from California (Ms. SOLIS).

Ms. SOLIS. Mr. Speaker, I thank the gentleman from California for this time.

Mr. Speaker, I rise today in strong opposition to the Republican's misnamed pension protection bill. Rather than prevent future Enrons, the Republican version of their plan only weakens our current pension laws and ignores the very basic reforms that Enron's disaster created for us.

□ 1400

Mr. Speaker, unlike the Republican version of pension reform, our bill would give employees a voice about their pension plans. It requires a employee representative to serve on pension boards. What a great idea.

I am sure that the Enron employees who recently lost their life savings would have loved to have had an opportunity to be at the table to discuss how their pension plan funds would be spent.

Eliminating the disparity between employer and employee pension protection goes way beyond just making up the composition of a board. We must also close the loopholes that provide greater legal protections for executive retirement plans. Because of this loophole, Enron executives not only rescued their money from a sinking ship, but they were also able to shield their luxurious homes and other assets from attacks by general creditors during the bankruptcy. Once again, the hardworking rank-and-file men and women of Enron do not enjoy such protections. Instead, they are vulnerable and left to defend for themselves.

Mr. Speaker, the Democratic substitute eliminates this special treatment for executives and levels the playing field for employees. I urge my colleagues to support the Democratic substitute.

Mr. BOEHNER. Mr. Speaker, I yield 2 minutes to the gentleman from Nebraska (Mr. OSBORNE).

Mr. OSBORNE. Mr. Speaker, I join my colleagues in support of the Pension Security Act. The district that I represent is very rural, small towns and small businesses; and I think it is important to point out that most of the business done in this country is done by small businesses, not by Fortune 500 companies. My father was a small businessman, and my brother currently runs one.

The number one complaint that I hear is that government regulation is so burdensome that many small businesses are damaged or driven out of business entirely. Examples of this would be parts of the Tax Code, ergonomic regulation, health care paperwork, and retirement plan paperwork.

The President's plan addresses the major issues that resulted in the loss of retirement benefits of Enron employees without adding significant regulatory burdens. I think it strikes a good balance. The Pension Security Act allows employees to sell stock within 3 years. One of the major problems at Enron was an employee had to be 55 years of age or more and had to be employed for 10 years or more.

It prohibits senior executives from selling stock during blackout periods, and requires 30 days' notice before declaring blackouts. Neither of these were true in the Enron case.

In addition, the plan requires companies to give regular financial reports on the value of the stock. Also the President's plan includes the Retirement Security Advice Act, which has already passed the House, which provides for increased availability of investment advisers to assist plan participants in making good decisions about their investments. Currently, only 16 percent of businesses provide this advice; and in most cases small businesses do not provide it at all, whereas roughly 75 percent of employees would like such advice. I think this would be very helpful.

So the greatest concern I have is that this well-intentioned substitute, and I am sure it is motivated from good intentions, will provide safeguards that will really eliminate pension plans, and that is absolutely something that helps no one.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. SANCHEZ).

Ms. SANCHEZ. Mr. Speaker, as a former investment banker and a small business owner, I am well aware of the complexities that are involved with pensions and with private investments. I believe that most bankers and business owners try to do a good job for their clients and employees; but many Americans invest too much of their money in their company's stock, unaware of the type of problems that arise, like the ones that we have seen with Enron.

The Pension Security Act opens a dangerous loophole that allows self-interested people at investment firms to serve as principal financial advisers to employees and to offer conflicted advice. We saw this as an example in the Merrill Lynch case detailed in the Washington Post and other major newspapers.

The Miller-Rangel substitute would offer employees independent financial advice when company stock is offered as an investment option under their pension plan. This is just one example of how the Miller-Rangel substitute offers real reform to our pension system and how the base bill fails to give employees control over their money.

Mr. Speaker, employees have already lost too much. We must pass legislation that gives them more security for their retirement, and I urge my colleagues to reject the base bill and to vote for the Miller-Rangel substitute.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 4 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, I went to a grade school in suburban Cleveland about a month ago to talk about current affairs, and I asked for a show of hands of about 300 grade schoolers, How many have heard of Enron? Every hand went up. These are first through sixth graders. And then I asked, What do you know about Enron? Some of the sixth graders actually knew there were workers who were cheated out of their pensions. These were sixth graders.

I think it is fair to say just about everybody in America knows about Enron, and most adults certainly know about the fact that people were cheated out of their pensions. Everyone in America knows this except some Members in the House of Representatives. It is as if Enron never happened.

Mr. Speaker, the bill that we consider today continues special treatment for company executive pension plans at the expense of the employees. It is like Enron never happened.

It is just like Enron was some passing fancy, instead of it being symptomatic of something that is wrong at the core of this system, and that is that workers do not get fair treatment.

The Miller substitute is the only bill that addresses the inequity between executives and employees. A vote for the Miller substitute is a vote for fair treatment for workers. The Miller substitute would prohibit plans for executives from receiving greater protections under the law than the 401(k)-type plans that employees have.

As Enron began to implode in a wave of accounting scandals, company executives not only cashed out millions in company stock, but also protected themselves through a number of executive-type plans. Enron employees stand as general creditors to recover 401(k) losses from the misconduct of the corporation. Enron executives prefunded deferred compensation plans that were immune from claims of general creditors once the company went into bankruptcy.

Meanwhile, executive savings plans operate under different rules from the employees' 401(k) plans. Executive savings plans afford executives more choice, more protection of assets, and guarantee more money. Most companies offer these plans. As shown in the 2000 study of Fortune 1000 companies, 86 percent of companies surveyed already had those plans, with the remainder considering adding one. Enron set up an executive savings plan that lets participating executives contribute 25 percent of their salaries and 100 percent of cash bonuses each year. Executives were guaranteed a 9 percent rate of return on the first 2 years of the plan, and allowed to put money in a variety of investments. Executives were not limited to just Enron stock.

In addition, Ken Lay holds a pension that will pay $475,000 each year for the rest of his life and a prepaid, $12 million life insurance policy. Think about the workers at Enron. Think about how they have to worry about making ends meet, how they may not be able to make mortgage payments, and about how they may not be able to send their kids to college or have bread on the table. Meanwhile, the executives walk away wealthier than ever.

Enron executives had similar pension or insurance agreements, but employees' 401(k)s are drained. They will be lucky if they get their $4,650 maximum severance pay. The lack of a consistent set of rules between employees and executives is unjust and unfair, and it should be illegal. Only the Miller substitute makes it so because executive plans have legal protections that put a barrier between the money and the general creditors. Enron executives were protected from losing their retirement. Employees were totally exposed. It is time we stood up for the American workers here.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. HOLT).

Mr. HOLT. Mr. Speaker, it is really quite simple. We have learned some very simple lessons; perhaps we should have learned them a long time ago, but we certainly should learn them now in light of Enron. The employees have been left holding the bag, while the corporate executives, sometimes in a very duplicitous way, walk away with their options, walk away with their bundles.

We have such a good opportunity here to get things right. But the bill before us, the underlying bill, fails to give employees notice when executives are dumping company stock. It fails to hold the plan fiduciaries accountable and limits the ability of the employees to collect damages resulting from misconduct under the pension plan. It denies employees a spot on the pension board. How simple could that be? Yet the bill fails to do that.

Mr. Speaker, it also continues special treatment of executives. In other words, executives could continue to have their savings set aside and protected through their stock options and so forth when a company fails, while rank and file would be at the end of the line in bankruptcy holding this empty bag.

Perhaps most important, it fails to give employees early control of their assets. Anybody's standard financial advice would be to diversify, and yet the employees are denied the opportunity to diversify for at least 5 years under the underlying bill. Ordinary employees would be prevented from diversifying while corporate executives would be allowed to sell the stock they receive in stock options. We are missing a real opportunity here to help the employees.

Mr. GEORGE MILLER of California. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me close with our section on the general debate and thank my colleagues on both sides of the aisle for their contributions to this process.

Members on both sides of the aisle believe it is important to protect retirement security of American workers, and Members need to understand that there are outdated Federal laws that need to be dealt with.

A bipartisan group of Members believes that the bill, the Pension Security Act, the base bill today, is the reasonable approach to deal with this issue in a balanced way that protects the rights of employees further than it does under current law without driving employers out of the pension business or discouraging employers from setting up new pensions; nor does it restrict the ability of employees to make decisions with regard to their own accounts.

I believe my colleagues on the other side of the aisle want to go too far, too far that will have unintended consequences. As we get into the substitute in a few minutes, we will have an opportunity to talk about those differences and shortcomings.

Mr. MOORE. Mr. Speaker, I rise today to express my reasons for voting against H.R. 3762, the Pension Security Act, and the Miller-Rangel substitute to this legislation.

During my time in Congress, I have strongly supported legislation that would help employees prepare for their retirement. Pension reform legislation affects all working Americans, and as such both parties in Congress have a responsibility to work together in a thoughtful and conscientious manner on this issue. To that end, I am a cosponsor of the bipartisan Employee Savings Bill of Rights Act, which empowers employees to take control of their retirement plan investments and gives workers substantial new rights to avoid over-concentration in the stock of their own company. By modifying the rules that apply to the 401(k) plans and Employee Stock Ownership Plans (ESOPs) of publicly-traded companies, the Employee Savings Bill of Rights provides workers with needed control over their retirement plan investments while preserving the opportunity for employee ownership. Through new diversification rights, new disclosure requirements and new tax incentives for retirement education, this legislation would help employees achieve retirement security through their 401(k) plans and ESOPs.

I have serious concerns with both H.R. 3762 and the Miller-Rangel substitute to this legislation. I am disappointed that the House has not been able to come together on this issue to advance reasonable, much needed pension reform that will benefit working Americans. Unfortunately, the substitute overreacts to the unfortunate circumstances surrounding Enron's historic bankruptcy. Congress has a duty to the American people to enact responsible legislation that will benefit employees rather than impose new administrative burdens on millions of retirement plans.

The substitute would thwart bipartisan efforts to reduce administrative burdens on employers who voluntarily sponsor retirement plans by imposing new, expensive rules on such plans. The substitute's provision that would require retirement plans to insure against vaguely defined plan asset losses would increase the cost of these retirement plans, creating a disincentive for employers to offer their employees a pension plan.

Additionally, under the substitute, a plan participant is allowed to divest of company stock held in an account after just one year. The bipartisan Employee Savings Bill of Rights Act, of which I am cosponsor, requires only current holdings to be diversified out over five years. The substitute's one-year diversification provision runs the significant risk of causing disruptions in both plan administration and the markets.

Further, the substitute would require employers to create joint employer-employee retirement plan trusteeships. Employers in Kansas's Third District have assured me that this provision has the potential to complicate plan administration to the point that some employers may drop their plans altogether. The working people of this country deserve a more thoughtful, careful process from their federal representatives.

While the substitute goes too far in seeking to ensure reasonable safeguards on employer-sponsored retirement plans, the so-called Pension Security Act does not go far enough in protecting working Americans. Additionally, I am extremely disappointed that the House leadership decided to schedule this legislation for floor consideration instead of the bipartisan Employee Savings Bill of Rights. Last month, the Ways & Means Committee approved this legislation by a near-unanimous vote of 36–2. I am frustrated, though not surprised, at the House leadership's unwillingness to address the important issue of pension reform in a bipartisan fashion.

I will continue to support bipartisan efforts to reform our nation's retirement system in a manner that benefits both employers and employees. I urge my colleagues to do the same.

Mr. ETHERIDGE. Mr. Speaker, I rise in opposition to H.R. 3762, the Pension Security Act and in support of the Miller Substitute. Today, we have an important opportunity to protect our working families and their retirement security from greedy, unscrupulous corporate wrongdoers. But, Mr. Speaker the Republican Leadership has wasted that opportunity.

Earlier this year, the Ways and Means Committee passed a truly bipartisan pension reform bill. But, the Republican Majority chose to merge that bipartisan measure with a controversial bill passed by the Education and Workforce Committee. The product of that merger, H.R. 3762, does not protect employee pensions, fails to prevent future scandals like Enron, and opens a new loophole that jeopardizes employee savings. H.R. 3762 also establishes complicated diversification rules that do not allow workers substantial control over their retirement investments. Under the Miller Substitute employees would be able to diversify company-matched stock after three years of participation in a 401K plan.

Under current law, employees are allowed to receive independent, comprehensive investment information as a part of their employee benefits package. H.R. 3762 would overturn current law, and allow employers to offer conflicted investment advice to their employees. Financial institutions should not be able to give an employee investment advice if the financial institution stands to profit from that advice. About 15,000 Enron employees lost their retirement savings because Ken Lay and other Enron executives assured their employees that Enron stock was a sound investment. Ken Lay and his cronies lined their pockets while they misled their employees with bad advice. The conflicted investment advice provisions in this bill would set workers up for another Enron. Mr. Speaker, we know all too well the corrupting power of greed.

In contrast the Miller Substitute would offer employees honest, accurate, and timely investment information. It would prohibit pension plans from giving misleading information, require that workers receive regular benefit statements and are notified of plan lockdowns at least 30-days in advance.

As more Americans turn to 401K and other retirement plans to help them prepare for their golden years, we must act to prevent future Enrons. The Republican Leadership had an opportunity to act in bipartisan manner to protect the retirement security of working families, but they chose not do so. H.R. 3762 fails to solve our pension law problems. In fact, the bill would actually create new ones. The Miller Substitute protects workers and their investments from greedy corporate entities, provides unbaised, independent investment advice, and gives employees control over their retirement savings.

I urge my colleagues to oppose H.R. 3762 and to vote for the Miller Substitute.

Mr. BLUMENAUER. Mr. Speaker, I rise today in strong opposition to H.R. 3762, the Republican leadership's missed opportunity to address concerns for the security of working Americans' pension plans. I fully support the Democratic substitute amendment, which makes an honest attempt to correct the problems apparent in the wake of the Enron debacle.

I represent as many Enron survivors as anyone outside of Houston. Portland, Oregon is the home of Portland General Electric (PGE), a stable utility company founded in 1889 that has provided steady employment to 2,700 employees. Enron purchased PGE in 1997. PGE line employees did not volunteer for this takeover. They were working for a profitable and respected company, earning a fair salary and saving for retirement in a stable pension plan. After Enron's purchase of PGE, it was only a few years before the stability of Enron. PGE and their employee's retirement savings began to unravel. Enron executives continued to encourage employee investment in Enron stock and spoke of the integrity of the comapny's financial position, while they sold their personal holdings of Enron stock and drove the company into bankruptcy proceedings.

I have seen the pain and disbelief of PGE employees firsthand. Dozens of people I know personally have had dreams shattered, been forced to postpone life decisions and delay retirement. Those involved in the Enron debacle have failed and abused honest hardworking employees in my district and across the country.

Sadly, it may yet be determined that past Congressional and governmental actions contributed to the betrayal of these honest employees. Today, we have the opportunity to pass legislation that can help to prevent the destruction of working families' lives and retirement savings in the future. It would be tragic if Congress fails American workers again, which will surely happen under the Republican leadership's proposal. The Republican pension bill not only falls short of improving an obviously flawed pension system, but actually weakens current law by providing employees with biased and conflicted investment advice without access to an independent alternative.

To provide true security for retirement savings, pension reform must:

- hold corporate executives accountable for their actions,
- give employees control over their own retirement dollars.
- ensure workers a voice on management pension boards, and
- provide independent advice for workers.

I strongly support the Democratic substitute amendment, which will provide these needed reforms and help protect workers' retirement savings from the misdeeds of executives and corporations. The pain I have witnessed firsthand among the PGE employees in my district demands that Congress provide true pension security.

Mr. MEEHAN. Mr. Speaker, today, the House voted on H.R. 3762, the Pension Security Act. Had I been present, I would have voted in favor of the Democratic substitute authored by Representatives MILLER and RANGEL and against final passage of H.R. 3762, the so-called Pension Security Act.

I would have opposed H.R. 3762, the Republican proposal, because it would have done little to prevent future ''Enron'' scenarios, where executives and pension administrators withheld financial information from the employees of that company. Without the necessary information about the financial status of the company, Enron's non-executive employees then lost the bulk of their retirement sayings when the value of the company's stock fell through the floor.

H.R. 3762 fails to require anyone to alert employees when company officials begin dumping company stock, as Enron executives did just before the value of Enron stock dropped dramatically on the market. H.R. 3762 also fails to hold fiduciaries of pension plans accountable if they violate the law. Furthermore, under H.R. 3762, employees would not have the option to fully diversify their stock in a timely manner, nor would they have a voice in the administration and protection of their retirement savings. Combined, these failings would leave future workers vulnerable to the same type of financial disaster facing Enron's employees today.

I would have supported the Democratic substitute to H.R. 3762 because I believe it would go a long way towards preventing a future ''Enron'' situation from occurring. The Democratic substitute to H.R. 3762 would arm employees with the same access to information as corporate executives, giving employees the tolls they need to make informed investment decisions regarding their pension plans. Moreover, H.R. 3762 would give employees representation on the boards that manage pension plans and a say in the administration and protection of those plans. I would have also supported the Democratic substitute because it would require executives to notify the pension plan when they are selling large amounts of company stock, and it would give the employees the right to diversify their investments as soon as they are vested in the funds.

I was unable to vote for the Democratic plan and against H.R. 3762 because of a compelling obligation in my Congressional district occurring at the time of the votes. Former Mayor of New York City Rudolph Guiliani is giving remarks in Lowell, Massachusetts today—which is located in my Congressional District. Mayor Giuliani demonstrated superb and heralded leadership immediately following the September 11th terrorist attacks on the World Trade Center in New York City. Tragically, 30 of my constituents lost their lives in those attacks, as they were on the American Airlines jet which was one of two airplanes that crashed into the Twin Towers. Their families continue to mourn the loss of parents, children and siblings and every day feel the pain that terrorism has visited upon them. Mayor Giuliani has provided unique comfort to families who lost loved ones on September 11th because of his boundless compassion, tremendous leadership in the face of unspeakable tragedy, and unstinting efforts to help these families overcome the financial and emotional difficulties caused by this terrible event. I have accordingly arranged for the Mayor to meet privately with these families at my residence and will miss these votes to attend that gathering.

As I was unable to vote for the Democratic substitute today, I am looking forward to having the opportunity to vote for a balanced and effective pension reform bill that I hope will be the result of a House-Senate compromise on this critical issue.

Ms. HARMAN. Mr. Speaker, the collapse of Enron and its impact on employees' retirement plans underscores the need to enact additional federal protections.

The bill before us is a step in that direction. It is far from perfect—but perfection is not an option. Forward progress is.

Similarly, the substitute amendment offered by my colleagues, GEORGE MILLER and CHARLES RANGEL, is not perfect either. While making some improvements over the committee bill, it too has some features that may have the effect of discouraging employers from providing retirement benefits to employees.

Striking the right balance is often a difficult task. But it is especially difficult in an area like defined contribution pension plans where a poor investment or management decision may cause untold financial hardship on individuals in or near their retirement years.

We clearly need to move the process of reform forward—hopefully combining the best features of both the bill and substitute and more thoroughly vetting the more problematic features of each.

Mr. Speaker, we don't have the luxury of doing nothing. We have long recognized the outdated nature of many of our pension laws. Enron's collapse has provided the impetus for action.

Protecting workers' retirement benefits and encouraging the expansion of pension plans to more companies and workers are positive goals in the abstract. But writing the rules is always more difficult.

We should proceed carefully.

Mr. KIND. Mr. Speaker, this past winter, thousands of ENRON employees, stockholders, and their families saw their life savings disappear. While their nest eggs were being crushed, top executives were selling stock at top dollar and the auditors were shredding documents. The ENRON debacle shook the foundation of our country's private pension system and caused many people to wonder if the same thing could happen to them. Today, 46 million Americans participate in 401(k) and other pension programs with more than $4 trillion invested in the private pension system.

Congress has a responsibility to improve retirement security and restore confidence in the pension system for millions of Americans. In 1974, Congress enacted the Employee Retirement Income Security Act (ERISA) to provide protection of pension benefits for American's private sector employees. While ERISA made great strides, the growth of 401(k) plans and increased participation in the securities markets call for improved safeguards to protect these individually controlled pension accounts.

Our Democratic substitute includes important provisions that should be included in the underlying bill. For example, the Miller bill would provide employees a voice on their pension board where critical decisions about workers' retirement security are made. In addition, the substitute seeks parity of benefits for executives and rank-and-file workers by closing a current loophole that gives special treatment for executive pension plans.

While I would prefer that the legislation on the floor today contain some of the provisions included in the Miller substitute, the Pension Security Act, is a step in the right direction to provide employees more control and decision making over their 401(k) plans. Pension reform must be carefully done so as not to impose such onerous new restrictions that employers would be unwilling to offer pension plans, or might be encouraged to discontinue the plans they already offer.

Specifically HR 3762 would:

Allow employees to sell their company-contributed stock after three years.

Ensures that corporate executives are held to the same restrictions as average American workers during ''lockdown'' periods.

Provide workers quarterly statements about their investments and their rights to diversify them.

Ensure that employers assume full fiduciary responsibility during ''lockdown'' periods.

Expand workers' access to investment advice.

These are common sense reforms that will help employees make better, more informed investment choices to prepare for their golden years. The ENRON scandal exposed weaknesses in our pension laws that could jeopardize these retirement savings. Hardworking Americans should not lose all of their retirement savings due to the wrong doing of corporate executives and loopholes in our pension laws. The legislation, while not perfect, will bring much needed improvements to our private pension system and help millions of American workers save for a happy and healthy retirement.

Mr. BOEHNER. Mr. Speaker, I yield back the balance of my time.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

Mr. GEORGE MILLER of California. Mr. Speaker, I offer an amendment in the nature of a substitute.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. GEORGE MILLER of California:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Employee Pension Freedom Act of 2002''.

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVEMENTS IN DISCLOSURE

Sec. 101. Pension benefit information.
Sec. 102. Immediate warning of excessive stock holdings.
Sec. 103. Additional fiduciary protections relating to lockdowns.
Sec. 104. Report to participants and beneficiaries of trades in employer securities.
Sec. 105. Provision to participants and beneficiaries of material investment information in accurate form.
Sec. 106. Enforcement of information and disclosure requirements.

TITLE II—DIVERSIFICATION REQUIREMENTS

Sec. 201. Freedom to make investment decisions with plan assets.
Sec. 202. Effective date of title.

TITLE III—EMPLOYEE REPRESENTATION

Sec. 301. Participation of participants in trusteeship of individual account plans.

TITLE IV—EXECUTIVE PARITY

Sec. 401. Inclusion in gross income of funded deferred compensation of corporate insiders if corporation funds defined contribution plan with employer stock.
Sec. 402. Insider trades during pension fund blackout periods prohibited.

TITLE V—INCREASED ACCOUNTABILITY

Sec. 501. Bonding or insurance adequate to protect interest of participants and beneficiaries.
Sec. 502. Liability for breach of fiduciary duty.
Sec. 503. Preservation of rights or claims.
Sec. 504. Office of Pension Participant Advocacy.

Sec. 505. Additional criminal penalties.
Sec. 506. Study regarding insurance system for individual account plans.

TITLE VI—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES

Sec. 601. Independent investment advice.
Sec. 602. Tax treatment of qualified retirement planning services.

TITLE VII—GENERAL PROVISIONS

Sec. 701. General effective date.
Sec. 702. Plan amendments.

TITLE I—IMPROVEMENTS IN DISCLOSURE

SEC. 101. PENSION BENEFIT INFORMATION.

(a) PENSION BENEFIT STATEMENTS REQUIRED ON PERIODIC BASIS.—

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

(A) by striking ''shall furnish to any plan participant or beneficiary who so requests in writing,'' and inserting ''shall furnish at least once every 3 years, in the case of a participant in a defined benefit plan who has attained age 35, and annually, in the case of an individual account plan, to each plan participant, and shall furnish to any plan participant or beneficiary who so requests,'', and

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

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

(2) MODEL STATEMENT.—Section 105 of such Act (29 U.S.C. 1025) is amended by adding at the end the following new subsection:

''(e)(1) The Secretary of Labor shall develop a model benefit statement which shall be used by plan administrators in complying with the requirements of subsection (a). Such statement shall include—

''(A) the amount of nonforfeitable accrued benefits as of the statement date which is payable at normal retirement age under the plan,

''(B) the amount of accrued benefits which are forfeitable but which may become nonforfeitable under the terms of the plan,

''(C) the amount or percentage of any reduction due to integration of the benefit with the participant's Social Security benefits or similar governmental benefits,

''(D) information on early retirement benefit and joint and survivor annuity reductions, and

''(E) the percentage of the net return on investment of plan assets for the preceding plan year (or, with respect to investments directed by the participant, the net return on investment of plan assets for such year so directed), itemized with respect to each type of investment, and, stated separately, the administrative and transaction fees incurred in connection with each such type of investment, and

''(F) in the case of an individual account plan, the amount and percentage of assets in the individual account that consists of employer securities and employer real property (as defined in paragraphs (1) and (2), respectively, of section 407(d)), as determined as of the most recent valuation date of the plan.

''(2) The Secretary shall also develop a separate notice, which shall be included by the plan administrator with the information furnished pursuant to subsection (a), which advises participants and beneficiaries of generally accepted investment principles, including principles of risk management and diversification for long-term retirement security and the risks of holding substantial asssets in a single asset such as employer securities.''.

(3) RULE FOR MULTIEMPLOYER PLANS.—Subsection (d) of section 105 of such Act (29 U.S.C. 1025) is amended to read as follows:

''(d) Each administrator of a plan to which more than 1 unaffiliated employer is required to contribute shall furnish to any plan participant or beneficiary who so requests in writing, a statement described in subsection (a).''.

(b) DISCLOSURE OF BENEFIT CALCULATIONS.—

(1) IN GENERAL.—Section 105 of such Act (as amended by subsection (a)) is amended further—

(A) by redesignating subsections (b), (c), (d), and (e) as subsections (c), (d), (e), and (f), respectively; and

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

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

''(2) The information described in this paragraph includes—

''(A) a worksheet explaining how the amount of the distribution was calculated and stating the assumptions used for such calculation,

''(B) upon written request of the participant or beneficiary, any documents relating to the calculation (if available), and

''(C) such other information as the Secretary may prescribe.

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

(2) CONFORMING AMENDMENTS.—

(A) Section 101(a)(2) of such Act (29 U.S.C. 1021(a)(2)) is amended by striking ''105(a) and (c)'' and inserting ''105(a), (b), and (d)''.

(B) Section 105(c) of such Act (as redesignated by paragraph (1)(A) of this subsection) is amended by inserting ''or (b)'' after ''subsection (a)''.

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

(c) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) EXCISE TAX ON FAILURE OF DEFINED CONTRIBUTION PLANS TO PROVIDE NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

''SEC. 4980I. FAILURE OF DEFINED CONTRIBUTION PLANS TO PROVIDE NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any defined contribution plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

''(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be $1,000 for each day on which such failure is not corrected.

''(c) LIMITATIONS ON AMOUNT OF TAX.—

''(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

''(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

''(B) such person provides the notice described in subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

''(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

''(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

''(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

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

''(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

''(1) In the case of a plan other than a multiemployer plan, the employer.

''(2) In the case of a multiemployer plan, the plan.

''(e) REQUIREMENTS RELATING TO NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.—The plan administrator of any defined contribution plan shall provide annually a separate notice which advises participants and beneficiaries of generally accepted investment principles, including principles of risk management and diversification for long-term retirement security and the risks of holding substantial assets in a single asset such as employer securities.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:2

''SEC. 4980I. FAILURE OF DEFINED CONTRIBUTION PLANS TO PROVIDE NOTICE OF GENERALLY ACCEPTED INVESTMENT PRINCIPLES.''.

SEC. 102. IMMEDIATE WARNING OF EXCESSIVE STOCK HOLDINGS.

Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) (as amended by section 101 of this Act) is amended further by adding at the end the following new subsection:

''(g)(1) Upon receipt of information by the plan administrator of an individual account plan indicating that the individual account of any participant which had not been excessively invested in employer securities is excessively invested in such securities (or that such account, as initially invested, is excessively invested in employer securities), the plan administrator shall immediately provide to the participant a separate, written statement—

''(A) indicating that the participant's account has become excessively invested in employer securities,

''(B) setting forth the notice described in subsection (e)(7), and

''(C) referring the participant to investment education materials and investment advice which shall be made available by or under the plan.

In any case in which such a separate, written statement is required to be provided to a participant under this paragraph, each statement issued to such participant pursuant to subsection (a) thereafter shall also contain such separate, written statement until the plan administrator is made aware that such participant's account has ceased to be excessively invested in employer securities or the employee, in writing, waives the receipt of the notice and acknowledges understanding the importance of diversification.

''(2) Each notice required under this subsection shall be provided in a form and manner which shall be prescribed in regulations of the Secretary. Such regulations shall provide for inclusion in the notice a prominent reference to the risks of large losses in assets available for retirement from excessive investment in employer securities.

''(3) For purposes of paragraph (1), a participant's account is 'excessively invested' in employer securities if more than 10 percent of the balance in such account is invested in employer securities (as defined in section 407(d)(1)).''.

SEC. 103. ADDITIONAL FIDUCIARY PROTECTIONS RELATING TO LOCKDOWNS.

(a) AMENDMENT TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) is amended by adding at the end the following new subsection:

''(e)(1) In the case of any eligible individual account plan (as defined in section 407(d)(3)) no lockdown may take effect until at least 30 days after written notice of such lockdown is provided by the plan administrator to such participant or beneficiary (and to each employee organization representing any such participant).

''(2) Subject to such regulations as the Secretary may prescribe, the requirements of paragraph (1) shall not apply in cases of emergency.

''(3) A plan described in paragraph (1) shall provide that each participant and beneficiary required to receive a notice under paragraph (1)(A) is entitled to direct the plan to divest within 3 business days (but in no event later than the beginning of the lockdown) any security or other property in which any assets allocated to the account of such individual are invested and to reinvest such assets in any other investment option offered under the plan.

''(4) For purposes of this subsection, the term 'lockdown' means any temporary lockdown, blackout, or freeze with respect to, suspension of, or similar limitation on the ability of a participant or beneficiary to exercise control over the assets in his or her account as otherwise generally provided under the plan (as determined under regulations of the Secretary), including the ability to direct investments, obtain loans, or obtain distributions.''.

(b) AMENDMENTS TO INTERNAL REVENUE CODE OF 1986.—

(1) EXCISE TAX ON FAILURES WITH RESPECT TO LOCKDOWNS.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

''SEC. 4980G. FAILURE OF DEFINED CONTRIBUTION PLANS WITH RESPECT TO LOCKDOWNS.

''(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any defined contribution plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

''(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be $100.

''(c) LIMITATIONS ON AMOUNT OF TAX.—

''(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

''(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

''(B) such person meets the requirements of subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

''(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

''(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

''(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

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

''(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

''(1) In the case of a plan other than a multiemployer plan, the employer.

''(2) In the case of a multiemployer plan, the plan.

''(e) REQUIREMENTS RELATING TO LOCKDOWNS.—

''(1) IN GENERAL.—In the case of any defined contribution plan no lockdown may take effect until at least 30 days after written notice of such lockdown is provided by the plan administrator to each participant or beneficiary (and to each employee organization representing any such participant).

''(2) EXCEPTION FOR EMERGENCY.—Subject to such regulations as the Secretary may prescribe, the requirements of paragraph (1) shall not apply in cases of emergency.

''(3) REQUIREMENT RELATING TO DIVESTMENT.—A plan described in paragraph (1) shall provide that each participant and beneficiary required to receive a notice under paragraph (1)(A) is entitled to direct the plan to divest within 3 business days (but in no event later than the beginning of the lockdown) any security or other property in which any assets allocated to the account of such individual are invested and to reinvest such assets in any other investment option offered under the plan.

''(4) LOCKDOWN DEFINED.—For purposes of this subsection, the term 'lockdown' means any temporary lockdown, blackout, or freeze with respect to, suspension of, or similar limitation on the ability of a participant or beneficiary to exercise control over the assets in his or her account as otherwise generally provided under the plan (as determined under regulations of the Secretary), including the ability to direct investments, obtain loans, or obtain distributions.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

''SEC. 4980G. FAILURE OF DEFINED CONTRIBUTION PLANS WITH RESPECT TO LOCKDOWNS.''.

SEC. 104. REPORT TO PARTICIPANTS AND BENEFICIARIES OF TRADES IN EMPLOYER SECURITIES.

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection:

''(d)(1) In any case in which assets in the individual account of a participant or beneficiary under an individual account plan include employer securities, if any person engages in a transaction constituting a direct or indirect purchase or sale of employer securities and—

''(A) such transaction is required under section 16 of the Securities Exchange Act of 1934 to be reported by such person to the Securities and Exchange Commission, or

''(B) such person is a named fiduciary of the plan,

such person shall comply with the requirements of paragraph (2).

''(2) A person described in paragraph (1) complies with the requirements of this paragraph in connection with a transaction described in paragraph (1) if such person provides to the plan administrator of the plan a written notification of the transaction not later than 1 business day after the date of the transaction.

''(3)(A) If the plan administrator is made aware, on the basis of notifications received pursuant to paragraph (2) or otherwise, that the proceeds from any transaction described in paragraph (1), constituting direct or indirect sales of employer securities by any person described in paragraph (1), exceed $100,000, the plan administrator of the plan shall provide to each participant and beneficiary a notification of such transaction. Such notification shall be in writing, except that such notification may be in electronic or other form to the extent that such form is reasonably accessible to the participant or beneficiary.

''(B) In any case in which the proceeds from any transaction described in paragraph (1) (with respect to which a notification has not been provided pursuant to this paragraph), together with the proceeds from any other such transaction or transactions described in paragraph (1) occurring during the preceding one-year period, constituting direct or indirect sales of employer securities by any person described in paragraph (1), exceed (in the aggregate) $100,000, such series of transactions by such person shall be treated as a transaction described in subparagraph (A) by such person.

''(C) Each notification required under this paragraph shall be provided as soon as practicable, but not later than 3 business days after receipt of the written notification or notifications indicating that the transaction (or series of transactions) requiring such notice has occurred.

''(4) Each notification required under paragraph (2) or (3) shall be made in such form and manner as may be prescribed in regulations of the Secretary and shall include the number of shares involved in each transaction and the price per share, and the notification required under paragraph (3) shall be written in language designed to be understood by the average plan participant. The Secretary may provide by regulation, in consultation with the Securities and Exchange Commission, for exemptions from the requirements of this subsection with respect to specified types of transactions to the extent that such exemptions are consistent with the best interests of plan participants and beneficiaries. Such exemptions may relate to transactions involving reinvestment plans, stock splits, stock dividends, qualified domestic relations orders, and similar matters.

"(5) For purposes of this subsection, the term 'employer security' has the meaning provided in section 407(d)(1).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to transactions occurring on or after July 1, 2002.

SEC. 105. PROVISION TO PARTICIPANTS AND BENEFICIARIES OF MATERIAL INVESTMENT INFORMATION IN ACCURATE FORM.

Section 404(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104(c)) is amended by adding at the end the following new paragraph:

"(4) The plan sponsor and plan administrator of a pension plan described in paragraph (1) shall have a fiduciary duty to ensure that each participant and beneficiary under the plan, in connection with the investment by the participant or beneficiary of plan assets in the exercise of his or her control over assets in his account, is provided with all material investment information regarding investment of such assets to the extent that the provision of such information is generally required to be disclosed by the plan sponsor to investors in connection with such an investment under applicable securities laws. The provision by the plan sponsor or plan administrator of any misleading investment information shall be treated as a violation of this paragraph.".

SEC. 106. ENFORCEMENT OF INFORMATION AND DISCLOSURE REQUIREMENTS.

(a) IN GENERAL.—Section 502(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)) is amended—

(1) by redesignating paragraph (7) as paragraph (8); and

(2) by inserting after paragraph (6) the following new paragraph:

"(7) The Secretary may assess a civil penalty against any person required to provide any notification under the provisions of section 104(d), any statement under the provisions of subsection (a), (d), or (f) of section 105, any information under the provisions of section 404(c)(4), or any notice under the provisions of section 404(f)(1) of up to $1,000 a day from the date of any failure by such person to provide such notification, statement, information, or notice in accordance with such provisions.".

(b) CONFORMING AMENDMENT.—Section 502(a)(6) of such Act (29 U.S.C. 1132(a)(6)) (as amended by section 102(b)) is amended further by striking "(5), or (6)" and inserting "(5), (6), or (7)".

TITLE II—DIVERSIFICATION REQUIREMENTS

SEC. 201. FREEDOM TO MAKE INVESTMENT DECISIONS WITH PLAN ASSETS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 404 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1104) (as amended by section 103) is amended further by adding at the end the following new subsection:

"(f)(1)(A)(i) Subject to clause (ii), an individual account plan under which a participant or beneficiary is permitted to exercise control over assets in his or her account shall provide that—

"(I) any such participant or beneficiary has the right to allocate all assets in his or her account (and any portion thereof) attributable to employee contributions to any investment option provided under the plan, and

"(II) any such participant who has completed 3 years of service (as defined in section 203(b)(2)) with the employer, or any such beneficiary of such a participant, has the right to allocate all assets in his or her account (and any portion thereof) attributable to employer contributions to any investment option provided under the plan.

The application of any penalty or any restriction based on age or years of service in connection with any exercise of such right as provided under this clause shall be construed as a violation of this clause.

"(ii) Clause (i) shall apply only to so much of a nonforfeitable accrued benefit as consists of employer securities which are readily tradable on an established securities market.

"(B)(i) Except as provided in clause (ii), within 5 days after the date of any election by a participant or beneficiary allocating his or her nonforfeitable accrued benefit to any investment option provided under the plan, the plan administrator shall take such actions as are necessary to effectuate such allocation.

"(ii) In any case in which the plan provides for elections periodically during prescribed periods, the 5-day period described in clause (i) shall commence at the end of each such prescribed period.

"(C) Nothing in this paragraph shall be construed to limit the authority of a plan to impose limitations on the portion of plan assets in any account which may be invested in employer securities to the extent that any such limitation is consistent with this title and not more restrictive than is permitted under this title.

"(2) Not later than 30 days prior to the date on which the right of a participant under an individual account plan to his or her accrued benefit becomes nonforfeitable, the plan administrator shall provide to such participant and his or her beneficiaries a written notice—

"(A) setting forth their rights under this section with respect to the accrued benefit, and

"(B) describing the importance of diversifying the investment of account assets.".

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) EXCISE TAX ON FAILURE TO PERMIT DIVERSIFICATION OF EMPLOYER SECURITIES.—Chapter 43 of the Internal Revenue Code of 1986 (relating to qualified pension, etc., plans) is amended by adding at the end the following new section:

"SEC. 4980H. FAILURE OF DEFINED CONTRIBUTION PLANS TO PERMIT DIVERSIFICATION OF EMPLOYER SECURITIES.

"(a) IMPOSITION OF TAX.—There is hereby imposed a tax on the failure of any defined contribution plan to meet the requirements of subsection (e) with respect to any participant or beneficiary.

"(b) AMOUNT OF TAX.—The amount of the tax imposed by subsection (a) on any failure with respect to any participant or beneficiary shall be $1,000 for each day for which the failure is not corrected.

"(c) LIMITATIONS ON AMOUNT OF TAX.—

"(1) TAX NOT TO APPLY TO FAILURES CORRECTED AS SOON AS REASONABLY PRACTICABLE.—No tax shall be imposed by subsection (a) on any failure if—

"(A) any person subject to liability for the tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), and

"(B) such person meets the requirements of subsection (e) as soon as reasonably practicable after the first date such person knew, or exercising reasonable diligence should have known, that such failure existed.

"(2) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—

"(A) IN GENERAL.—If the person subject to liability for tax under subsection (d) exercised reasonable diligence to meet the requirements of subsection (e), the tax imposed by subsection (a) for failures during the taxable year of the employer (or, in the case of a multiemployer plan, the taxable year of the trust forming part of the plan) shall not exceed $500,000. For purposes of the preceding sentence, all multiemployer plans of which the same trust forms a part shall be treated as 1 plan.

"(B) TAXABLE YEARS IN THE CASE OF CERTAIN CONTROLLED GROUPS.—For purposes of this paragraph, if all persons who are treated as a single employer for purposes of this section do not have the same taxable year, the taxable years taken into account shall be determined under principles similar to the principles of section 1561.

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

"(d) LIABILITY FOR TAX.—The following shall be liable for the tax imposed by subsection (a):

"(1) In the case of a plan other than a multiemployer plan, the employer.

"(2) In the case of a multiemployer plan, the plan.

"(e) REQUIREMENTS RELATING TO DIVERSIFICATION OF EMPLOYER SECURITY.—

"(1) IN GENERAL.—The requirements of this subsection are the requirements of paragraphs (2), (3), and (4).

"(2) RIGHT TO DIRECT INVESTMENTS.—

"(A) IN GENERAL.—Subject to subparagraph (B), a plan meets the requirements of this paragraph if, under the plan—

"(i) any participant or beneficiary who is permitted to exercise control over assets in his or her account has the right to allocate all assets in his or her account (and any portion thereof) attributable to employee contributions to any investment option provided under the plan, and

"(ii) any such participant who has completed 3 years of service (as defined in section 411(a)(5)) with the employer, or any such beneficiary of such a participant, has the right to allocate all assets in his or her account (and any portion thereof) attributable to employer contributions to any investment option provided under the plan.

The application of any penalty or any restriction based on age or years of service in connection with any exercise of such right as provided under this clause shall be construed as a violation of this clause.

"(B) LIMITATION TO READILY TRADABLE EMPLOYER SECURITIES.—Subparagraph (A) shall apply only to so much of a nonforfeitable accrued benefit as consists of employer securities which are readily tradable on an established securities market.

"(3) PROMPT COMPLIANCE WITH DIRECTIONS TO ALLOCATE INVESTMENTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a plan meets the requirements of this paragraph if the plan provides that, within 5 days after the date of any election by a participant or beneficiary allocating his or her nonforfeitable accrued benefit to any investment option provided under the plan, the plan administrator shall take such actions as are necessary to effectuate such allocation.

"(B) SPECIAL RULE FOR PERIODIC ELECTIONS.—In any case in which the plan provides for elections periodically during prescribed periods, the 5-day period described in subparagraph (A) shall commence at the end of each such prescribed period.

"(4) NOTICE OF RIGHTS AND OF IMPORTANCE OF DIVERSIFICATION.—A plan meets the requirements of this paragraph if the plan provides that, not later than 30 days prior to the date on which the right of a participant under the plan to his or her accrued benefit becomes nonforfeitable, the plan administrator shall provide to such participant and his or her beneficiaries a written notice—

''(A) setting forth their rights under this section with respect to the accrued benefit, and

''(B) describing the importance of diversifying the investment of account assets.

''(5) PRESERVATION OF AUTHORITY OF PLAN TO LIMIT INVESTMENT.—Nothing in this subsection shall be construed to limit the authority of a plan to impose limitations on the portion of plan assets in any account which may be invested in employer securities.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 43 of such Code is amended by adding at the end the following new item:

''SEC. 4980H. FAILURE OF DEFINED CONTRIBUTION PLANS TO PERMIT DIVERSIFICATION OF EMPLOYER SECURITIES.''.

(c) RECOMMENDATIONS RELATING TO NON-PUBLICLY TRADED STOCK.—Within 1 year after the date of the enactment of this Act, the Secretary of Labor and the Secretary of the Treasury shall jointly transmit to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate their recommendations regarding legislative changes relating to treatment, under section 404(e) of the Employee Retirement Income Security Act of 1974 and section 401(a)(35) of the Internal Revenue Code of 1986 (as added by this section), of individual account plans under which a participant or beneficiary is permitted to exercise control over assets in his or her account, in cases in which such assets do not include employer securities which are readily tradable under an established securities market.

SEC. 202. EFFECTIVE DATE OF TITLE.

(a) IN GENERAL.—Subject to subsection (b), the amendments made by this title shall apply with respect to plan years beginning on or after January 1, 2003.

(b) DELAYED EFFECTIVE DATE FOR EXISTING HOLDINGS.—In any case in which a portion of the nonforfeitable accrued benefit of a participant or beneficiary is held in the form of employer securities (as defined in section 407(d)(1) of the Employee Retirement Income Security Act of 1974) immediately before the first date of the first plan year to which the amendments made by this title apply, such portion shall be taken into account only with respect to plan years beginning on or after January 1, 2004.

TITLE III—EMPLOYEE REPRESENTATION

SEC. 301. PARTICIPATION OF PARTICIPANTS IN TRUSTEESHIP OF INDIVIDUAL ACCOUNT PLANS.

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

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

(2) by inserting ''(1)'' after ''(a)''; and

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

''(2)(A) The assets of a single-employer plan which is an individual account plan and under which some or all of the assets are derived from employee contributions shall be held in trust by a joint board of trustees, which shall consist of two or more trustees representing on an equal basis the interests of the employer or employers maintaining the plan and the interests of the participants and their beneficiaries and having equal voting rights.

''(B)(i) Except as provided in clause (ii), in any case in which the plan is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and one or more employers, the trustees representing the interests of the participants and their beneficiaries shall be designated by such employee organizations.

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

''(iii) In any case in which clause (i) does not apply with respect to a single-employer plan because the plan is not described in clause (i) or because of a waiver filed pursuant to clause (ii), the trustee or trustees representing the interests of the participants and their beneficiaries shall be selected by the plan participants in accordance with regulations of the Secretary.

''(C) An individual shall not be treated as ineligible for selection as trustee solely because such individual is an employee of the plan sponsor, except that the employee so selected may not be a highly compensated employee (as defined in section 414(q) of the Internal Revenue Code of 1986).

''(D) The Secretary shall provide by regulation for the appointment of a neutral individual, in accordance with the procedures under section 203(f) of the Labor Management Relations Act, 1947 (29 U.S.C. 173(f)), to cast votes as necessary to resolve tie votes by the trustees.''.

(b) REGULATIONS.—The Secretary of Labor shall prescribe the initial regulations necessary to carry out the provisions of the amendments made by this section not later than 90 days after the date of the enactment of this Act.

TITLE IV—EXECUTIVE PARITY

SEC. 401. INCLUSION IN GROSS INCOME OF FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.

(a) IN GENERAL.—Subpart A of part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new section:

''SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.

''(a) IN GENERAL.—If an employer maintains a defined contribution plan to which employer contributions are made in the form of employer stock and such employer maintains a funded deferred compensation plan—

''(1) compensation of any corporate insider which is deferred under such funded deferred compensation plan shall be included in the gross income of the insider or beneficiary for the 1st taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

''(2) the tax treatment of any amount made available under the plan to a corporate insider or beneficiary shall be determined under section 72 (relating to annuities, etc.).

''(b) FUNDED DEFERRED COMPENSATION PLAN.—For purposes of this section—

''(1) IN GENERAL.—The term 'funded deferred compensation plan' means any plan providing for the deferral of compensation unless—

''(A) the employee's rights to the compensation deferred under the plan are no greater than the rights of a general creditor of the employer, and

''(B) all amounts set aside (directly or indirectly) for purposes of paying the deferred compensation, and all income attributable to such amounts, remain (until made available to the participant or other beneficiary) solely the property of the employer (without being restricted to the provision of benefits under the plan), and

''(C) the amounts referred to in subparagraph (B) are available to satisfy the claims of the employer's general creditors at all times (not merely after bankruptcy or insolvency).

Such term shall not include a qualified employer plan.

''(2) SPECIAL RULES.—

''(A) EMPLOYEE'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(A) unless, under the written terms of the plan—

''(i) the compensation deferred under the plan is paid only upon separation from service, death, or at a specified time (or pursuant to a fixed schedule), and

''(ii) the plan does not permit the acceleration of the time such deferred compensation is paid by reason of any event.

If the employer and employee agree to a modification of the plan that accelerates the time for payment of any deferred compensation, then all compensation previously deferred under the plan shall be includible in gross income for the taxable year during which such modification takes effect and the taxpayer shall pay interest at the underpayment rate on the underpayments that would have occurred had the deferred compensation been includible in gross income in the taxable years deferred.

''(B) CREDITOR'S RIGHTS.—A plan shall be treated as failing to meet the requirements of paragraph (1)(B) with respect to amounts set aside in a trust unless—

''(i) the employee has no beneficial interest in the trust,

''(ii) assets in the trust are available to satisfy claims of general creditors at all times (not merely after bankruptcy or insolvency), and

''(iii) there is no factor (such as the location of the trust outside the United States) that would make it more difficult for general creditors to reach the assets in the trust than it would be if the trust assets were held directly by the employer in the United States.

''(c) CORPORATE INSIDER.—For purposes of this section, the term 'corporate insider' means, with respect to a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.

''(d) OTHER DEFINITIONS.—For purposes of this section—

''(1) PLAN INCLUDES ARRANGEMENTS, ETC.—The term 'plan' includes any agreement or arrangement.

''(2) SUBSTANTIAL RISK OF FORFEITURE.—The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.''

(b) CLERICAL AMENDMENT.—The table of sections for such subpart A is amended by adding at the end the following new item:

''SEC. 409A. DENIAL OF DEFERRAL FOR FUNDED DEFERRED COMPENSATION OF CORPORATE INSIDERS IF CORPORATION FUNDS DEFINED CONTRIBUTION PLAN WITH EMPLOYER STOCK.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to amounts deferred after the date of the enactment of this Act.

SEC. 402. INSIDER TRADES DURING PENSION FUND BLACKOUT PERIODS PROHIBITED.

(a) PROHIBITION.—It shall be unlawful for any person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which is registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78*l*) or who is a director or an officer of the issuer of such security, directly or indirectly, to purchase (or otherwise acquire) or sell (or otherwise transfer) any equity security of any issuer (other than an exempted security), during any blackout period with respect to such equity security.

(b) REMEDY.—Any profit realized by such beneficial owner, director, or officer from any purchase (or other acquisition) or sale (or other transfer) in violation of this section shall inure to and be recoverable by the issuer irrespective of any intention on the part of such beneficial owner, director, or officer in entering into the transaction. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within 60 days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than 2 years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purposes of this subsection.

(c) RULEMAKING PERMITTED.—The Commission may issue rules to clarify the application of this subsection, to ensure adequate notice to all persons affected by this subsection, and to prevent evasion thereof.

(d) As used in this section:

(1) BENEFICIAL OWNER.—The term ''beneficial owner'' has the meaning provided such term in rules or regulations issued by the Commission under section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p).

(2) BLACKOUT PERIOD.—The term ''blackout period'' with respect to the equity securities of any issuer—

(A) means any period during which the ability of at least fifty percent of the participants or beneficiaries under all applicable individual account plans maintained by the issuer to purchase (or otherwise acquire) or sell (or otherwise transfer) an interest in any equity of such issuer is suspended by the issuer or a fiduciary of the plan; but

(B) does not include—

(i) a period in which the employees of an issuer may not allocate their interests in the individual account plan due to an express investment restriction—

(I) incorporated into the individual account plan; and

(II) timely disclosed to employees before joining the individual account plan or as a subsequent amendment to the plan;

(ii) any suspension described in subparagraph (A) that is imposed solely in connection with persons becoming participants or beneficiaries, or ceasing to be participants or beneficiaries, in an applicable individual account plan by reason of a corporate merger, acquisition, divestiture, or similar transaction.

(3) COMMISSION.—The term ''Commission'' means the Securities and Exchange Commission.

(4) INDIVIDUAL ACCOUNT PLAN.—The term ''individual account plan'' has the meaning provided such term in section 3(34) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(34)).

(5) ISSUER.—The term ''issuer'' shall have the meaning set forth in section 2(a)(4) of the Securities Act of 1933 (15 U.S.C. 77b(a)(4)).

TITLE V—INCREASED ACCOUNTABILITY

SEC. 501. BONDING OR INSURANCE ADEQUATE TO PROTECT INTEREST OF PARTICIPANTS AND BENEFICIARIES.

Section 412 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1112) is amended by adding at the end the following new subsection:

''(f) Notwithstanding the preceding provisions of this section, each fiduciary of an individual account plan shall be bonded or insured, in accordance with regulations which shall be prescribed by the Secretary, in an amount sufficient to ensure coverage by the bond or insurance of financial losses due to any failure to meet the requirements of this part.''.

SEC. 502. LIABILITY FOR BREACH OF FIDUCIARY DUTY.

(a) LIABILITY FOR PARTICIPATING IN OR CONCEALING FIDUCIARY BREACH.—

(1) APPLICATION TO PARTICIPANTS AND BENEFICIARIES OF 401(k) PLANS.—

(A) IN GENERAL.—Part 4 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1101 et seq.) is amended by adding after section 409 the following new section:

''SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN 401(k) PLANS.

''(a) Any person who is a fiduciary with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of the Internal Revenue Code of 1986 who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to each participant and beneficiary of the plan any losses to such participant or beneficiary resulting from each such breach, and to restore to such participant or beneficiary any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary. A fiduciary may also be removed for a violation of section 411 of this Act.

''(b) The right of participants and beneficiaries under subsection (a) to sue for breach of fiduciary duty with respect to an individual account plan that includes a qualified cash or deferred arrangement under section 401(k) of such Code shall be in addition to all existing rights that participants and beneficiaries have under section 409, section 502, and any other provision of this title, and shall not be construed to give rise to any inference that such rights do not already exist under section 409, section 502, or any other provision of this title.

''(c) No fiduciary shall be liable with respect to a breach of fiduciary duty under this title if such breach was committed before he or she became a fiduciary or after he or she ceased to be a fiduciary.''

(B) CONFORMING AMENDMENT.—The table of contents for part 4 of subtitle B of title I of such Act is amended by inserting the following new item after the item relating to section 409:

''SEC. 409A. LIABILITY FOR BREACH OF FIDUCIARY DUTY IN 401(k) PLANS.''

(2) INSIDER LIABILITY.—

(A) IN GENERAL.—Section 409 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1109) is amended by redesignating subsection (b) as subsection (c) and by inserting after subsection (a) the following new subsection:

''(b)(1)(A) If an insider with respect to the plan sponsor of an employer individual account plan that holds employer securities that are readily tradable on an established securities market—

''(i) knowingly participates in a breach of fiduciary responsibility to which subsection (a) applies, or

''(ii) knowingly undertakes to conceal such a breach,

such insider shall be personally liable under this subsection for such breach in the same manner as the fiduciary who commits such breach.

''(B) For purposes of subparagraph (A), the term 'insider' means, with respect to any plan sponsor of a plan to which subparagraph (A) applies—

''(i) any officer or director with respect to the plan sponsor, or

''(ii) any independent qualified public accountant of the plan or of the plan sponsor.

''(3) Any relief provided under this subsection or section 409A—

''(A) to an individual account plan shall inure to the individual accounts of the affected participants or beneficiaries, and

''(B) to a participant or beneficiary shall be payable to the individual account plan on behalf of such participant or beneficiary unless such plan has been terminated.''

(B) CONFORMING AMENDMENT.—Section 409(c) of such Act (29 U.S.C. 1109(c)), as redesignated by subparagraph (A), is amended by inserting before the period the following: '', unless such liability arises under subsection (b)''.

(b) MAINTENANCE OF FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)) is amended by inserting before the period the following: '', except that this subparagraph shall not be construed to exempt any fiduciary from liability for any violation of subsection (e) or (f)''.

SEC. 503. PRESERVATION OF RIGHTS OR CLAIMS.

Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n)(1) The rights under this title (including the right to maintain a civil action) may not be waived, deferred, or lost pursuant to any agreement not authorized under this title with specific reference to this subsection.

''(2) Paragraph (1) shall not apply to an agreement providing for arbitration or participation in any other nonjudicial procedure to resolve a dispute if the agreement is entered into knowingly and voluntarily by the parties involved after the dispute has arisen or is pursuant to the terms of a collective bargaining agreement.''.

SEC. 504. OFFICE OF PENSION PARTICIPANT ADVOCACY.

(a) IN GENERAL.—Title III of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 3001 et seq.) is amended by adding at the end the following:

''(1) IN GENERAL.—There is established in the Department of Labor an office to be known as the 'Office of Pension Participant Advocacy'.

''(2) PENSION PARTICIPANT ADVOCATE.—The Office of Pension Participant Advocacy shall be under the supervision and direction of an official to be known as the 'Pension Participant Advocate' who shall—

''(A) have demonstrated experience in the area of pension participant assistance, and

''(B) be selected by the Secretary after consultation with pension participant advocacy organizations.

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

''(b) FUNCTIONS OF OFFICE.—It shall be the function of the Office of Pension Participant Advocacy to—

''(1) evaluate the efforts of the Federal Government, business, and financial, professional, retiree, labor, women's, and other appropriate organizations in assisting and protecting pension plan participants, including—

''(A) serving as a focal point for, and actively seeking out, the receipt of information with respect to the policies and activities of the Federal Government, business, and such organizations which affect such participants,

''(B) identifying significant problems for pension plan participants and the capabilities of the Federal Government, business, and such organizations to address such problems, and

''(C) developing proposals for changes in such policies and activities to correct such problems, and communicating such changes to the appropriate officials,

''(2) promote the expansion of pension plan coverage and the receipt of promised benefits by increasing the awareness of the general public of the value of pension plans and by protecting the rights of pension plan participants, including—

''(A) enlisting the cooperation of the public and private sectors in disseminating information, and

''(B) forming private-public partnerships and other efforts to assist pension plan participants in receiving their benefits,

''(3) advocating for the full attainment of the rights of pension plan participants, including by making pension plan sponsors and fiduciaries aware of their responsibilities,

''(4) giving priority to the special needs of low and moderate income participants,

''(5) developing needed information with respect to pension plans, including information on the types of existing pension plans, levels of employer and employee contributions, vesting status, accumulated benefits, benefits received, and forms of benefits, and

''(6) pursuing claims on behalf of participants and beneficiaries and providing appropriate assistance in the resolution of disputes between participants and beneficiaries and pension plans, including assistance in obtaining settlement agreements.

''(c) REPORTS.—

''(1) ANNUAL REPORT.—Not later than December 31 of each calendar year, the Pension Participant Advocate shall report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on its activities during the fiscal year ending in the calendar year. Such report shall—

''(A) identify significant problems the Advocate has identified,

''(B) include specific legislative and regulatory changes to address the problems, and

''(C) identify any actions taken to correct problems identified in any previous report.

The Advocate shall submit a copy of such report to the Secretary and any other appropriate official at the same time it is submitted to the committees of Congress.

''(2) SPECIFIC REPORTS.—The Pension Participant Advocate shall report to the Secretary or any other appropriate official any time the Advocate identifies a problem which may be corrected by the Secretary or such official.

''(3) REPORTS TO BE SUBMITTED DIRECTLY.—The report required under paragraph (1) shall be provided directly to the committees of Congress without any prior review or comment than the Secretary or any other Federal officer or employee.

''(d) SPECIFIC POWERS.—

''(1) RECEIPT OF INFORMATION.—Subject to such confidentiality requirements as may be appropriate, the Secretary and other Federal officials shall, upon request, provide such information (including plan documents) as may be necessary to enable the Pension Participant Advocate to carry out the Advocate's responsibilities under this section.

''(2) APPEARANCES.—The Pension Participant Advocate may represent the views and interests of pension plan participants before any Federal agency, including, upon request of a participant, in any proceeding involving the participant.

''(3) CONTRACTING AUTHORITY.—In carrying out responsibilities under subsection (b)(5), the Pension Participant Advocate may, in addition to any other authority provided by law—

''(A) contract with any person to acquire statistical information with respect to pension plan participants, and

''(B) conduct direct surveys of pension plan participants.''

(b) CONFORMING AMENDMENT.—The table of contents for title III of such Act is amended by adding at the end the following:

''Subtitle C—Office of Pension Participant Advocacy

''3051. Office of Pension Participant Advocacy.''.

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

SEC. 505. ADDITIONAL CRIMINAL PENALTIES.

Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by inserting ''(a)'' after ''SEC. 501.'';

(2) by striking ''$5,000'' and inserting ''$50,000'' and by striking ''$100,000'' and inserting ''$500,000'';

(2) by adding at the end the following new subsection:

''(b) Any person described in subsection (a) of 402 of the Employee Pension Freedom Act of 2002 who willfully violates such section or section 104(d) or causes an individual account plan to fail to meet the requirements of section 409A of the Internal Revenue Code of 1986 shall upon conviction be fined not more than $500,000 or imprisoned not more than one year, or both.''.

SEC. 506. STUDY REGARDING INSURANCE SYSTEM FOR INDIVIDUAL ACCOUNT PLANS.

(a) STUDY.—As soon as practicable after the date of the enactment of this Act, the Pension Benefit Guaranty Corporation shall contract to carry out a study relating to the establishment of an insurance system for individual account plans. In conducting such study, the Corporation shall consider—

(1) the feasibility and impact of such a system, and

(2) options for developing such a system.

(b) REPORT.—Not later than 3 years after the date of the enactment of this Act, the Corporation shall report the results of its study, together with any recommendations for legislative changes, to the Committee on Education and the Workforce and the Committee on Ways and Means of the House of Representatives and the Committee on Health, Education, Labor, and Pensions and the Committee on Finance of the Senate.

TITLE VI—INVESTMENT ADVICE FOR PARTICIPANTS AND BENEFICIARIES

SEC. 601. INDEPENDENT INVESTMENT ADVICE.

(a) IN GENERAL.—SECTION 404(C)(1) OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (29 U.S.C. 1104(C)(1)) (AS AMENDED BY SECTION 102(C)) IS AMENDED FURTHER—

(1) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively, and by inserting ''(A)'' after ''(c)(1)''; and

(2) by adding at the end the following new subparagraphs:

''(B)(i) In the case of a pension plan described in subparagraph (A) which provides investment in employer securities as at least one option for investment of plan assets at the direction of the participant or beneficiary, such plan shall make available to the participant or beneficiary the services of a qualified fiduciary adviser for purposes of providing investment advice described in section 3(21)(A)(ii) regarding investment in such securities.

''(ii) No person who is otherwise a fiduciary shall be liable by reason of any investment advice provided by a qualified fiduciary adviser pursuant to a request under clause (i) if—

''(I) the plan provides for selection and monitoring of such adviser in a prudent and effective manner, and

''(II) such adviser is a named fiduciary under the plan in connection with the provision of such advice.

''(C) For purposes of subparagraph (B)—

''(i) The term 'qualified fiduciary adviser' means, with respect to a plan, a person who—

''(I) is a fiduciary of the plan by reason of the provision of qualified investment advice by such person to a participant or beneficiary,

''(II) has no material interest in, and no material affiliation or contractual relationship with any third party having a material interest in, the security or other property with respect to which the person is providing the advice,

''(III) meets the qualifications of clause (ii), and

''(IV) meets the additional requirements of clause (iii).

''(ii) A person meets the qualifications of this subparagraph if such person—

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

''(II) if not registered as an investment adviser under such Act by reason of section 203A(a)(1) of such Act (15 U.S.C. 80b–3a(a)(1)), is registered under the laws of the State in which the fiduciary maintains its principal office and place of business, and, at the time the fiduciary last filed the registration form most recently filed by the fiduciary with such State in order to maintain the fiduciary's registration under the laws of such State, also filed a copy of such form with the Secretary,

''(III) is registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

''(IV) is a bank or similar financial institution referred to in section 408(b)(4),

''(V) is an insurance company qualified to do business under the laws of a State, or

''(VI) is any other comparable entity which satisfies such criteria as the Secretary determines appropriate.

''(iii) A person meets the additional requirements of this clause if every individual who is employed (or otherwise compensated) by such person and whose scope of duties includes the provision of qualified investment advice on behalf of such person to any participant or beneficiary is—

''(I) a registered representative of such person,

''(II) an individual described in subclause (I), (II), or (III) of clause (i), or

''(III) such other comparable qualified individual as may be designated in regulations of the Secretary.''.

(b) MAINTENANCE OF FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of such Act (29 U.S.C. 1104(c)(1)(B)) is amended by inserting before the period the following: '', except that this subparagraph shall not be construed to exempt any fiduciary from liability for any violation of this section''.

SEC. 602. TAX TREATMENT OF QUALIFIED RETIREMENT PLANNING SERVICES.

(a) IN GENERAL.—Subsection (m) of section 132 of the Internal Revenue Code of 1986 (defining qualified retirement services) is amended by adding at the end the following new paragraph:

''(4) NO CONSTRUCTIVE RECEIPT.—No amount shall be included in the gross income of any employee solely because the employee may choose between any qualified retirement planning services provided by a qualified investment advisor and compensation which would otherwise be includible in the gross income of such employee. The preceding sentence shall apply to highly compensated employees only if the choice described in such sentence is available on substantially the same terms to each member of the group of employees normally provided education and information regarding the employer's qualified employer plan.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting ''132(m)(4),'' after ''132(f)(4),''.

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

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

(c) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2002.

TITLE VII—GENERAL PROVISIONS

SEC. 701. GENERAL EFFECTIVE DATE.

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

(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED PLANS.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified on or before the date of the enactment of this Act, subsection (a) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ''January 1, 2003'' the date of the commencement of the first plan year beginning on or after the earlier of—

(1) the later of—

(A) January 1, 2004, or

(B) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof after the date of the enactment of this Act), or

(2) January 1, 2005.

SEC. 702. PLAN AMENDMENTS.

If any amendment made by this Act requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after the effective date specified in section 601, if—

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

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

The SPEAKER pro tempore. Pursuant to House Resolution 386, the gentleman from California (Mr. GEORGE MILLER) and the gentleman from Ohio (Mr. BOEHNER) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. GEORGE MILLER).

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we have heard a great deal today and over these past many months about the Enron scandal. I think there is general agreement throughout the halls of Congress and throughout this Nation that it was, in fact, a scandal; that we saw the very worst in human behavior with respect to corporate responsibility, and the responsibility of employers to employees, of the corporation to its shareholders, of the corporation to the general public.

□ 1415

But this legislation is more than about Enron, because Enron is in bankruptcy. Enron may very well cease to exist as an ongoing financial entity. Its parts are being sold off. Its parts are being salvaged and people are trying to get hold of their lives again after the financial collapse. But Enron was also a beacon of warning to millions of American workers about what their particular situation might or might not be with respect to the security of their 401(k) plan; a 401(k) plan of which the workers are being told over and over again they are going to have to rely on more and more for their retirement because companies refuse to provide a defined benefit plan which would provide them much more security and much more future security with their retirement, something that they could count on.

So what have we learned from Enron? We learned from Enron that many employees did not have control over that part of the stock that was contributed by the corporation. We also found out that many employees were prevented from having any control over that stock until age 50 or 55. But we also found out that that was not unique to Enron. That was true of many corporations, of the Fortune 500 and unnamed corporations that we do not know a lot about, but that was true of them and a holding period for the employees not to divest themselves of the stock. That was done for the convenience of the corporation. That was done because the corporation believed it made their employees more loyal. But when the plans went wrong with their financial future, the company went wrong, we found out that the employees were locked into a situation from which they could not extract themselves.

So this legislation takes the Enron lesson and says we ought not let that happen to other employees in other corporations. So we say that after 3 years of employment, you ought to be able to diversify your 401(k), your 401(k), in a manner which you think is best for your retirement. The 3 years is a maximum period of time which you ought to be able to force the employee to hold onto the stock, because markets move fast, financial markets move fast, and the future of corporations changes all the time. The Republicans do not do that. They have a rolling 3 years. They have a 5-year phaseout. We do not think that that is fair to the worker. We think the worker ought to have that control.

It is interesting now that as corporations review their plans, they are moving toward the Democratic bill. Chevron, in its merger with Texaco, decided that people could diversify immediately. Time Warner decided that people in AOL could diversify immediately. Walt Disney, Gillette, Quest Communications, Procter & Gamble, McDonald's, Coca-Cola, Pfizer, Abbot Laboratories. So this is not a radical approach. People realize this is what workers are entitled to now because the 401(k) is made up, 100 percent, of the assets that belong to the worker.

We also said that if this is the employees' assets, if this is their money, this is their stock portfolio, this is their retirement, maybe they ought to have a say on the board. At Enron we saw that they had no say on the board, that the board was made up of executive vice presidents who did not want to deliver any bad news to the corporation, who when they found out bad news did not tell the employees, did not tell the pension board, went off and privately sold their own stock.

But we have also seen that that has been true in other corporations beyond Enron. We have seen that family members have been selling stock when the corporations are in trouble. Obviously somebody whispered to their son or daughter, ''The company is not doing so well, sell the stock.''

Why should the employees not have that information? We believe there should be a rank-and-file member on the pension board since the pension represents 100 percent of the employees' money. Research has shown us that where we have rank-and-file members on the pension board, people tend to invest more in their retirement plans and they do a little better on the rate of return. We think that that is important. That is a lesson of Enron that is important for other corporations and for the employees.

We also saw the situation where employers were dumping stock, where Ken Lay was telling people in e-mails that he was buying stock. But he was not really buying stock, he was trading stock and, in fact, he was selling the stock to liquidate the large loans, personal loans, that he had taken from the Enron Corporation.

Again, as we have seen the fortunes of companies change over the last several months in a down economy, in a changed dot-com society, we have seen that many employers have been dumping stock. We think that maybe the employee ought to know that when the corporate heads of the company decide to dump the stock, that they ought to be told about that. Today you can hide that sale of stock for 6 months or a year. Six months or a year can be an economic disaster for the employees if you are caught behind that wave. So we say when you sell $100,000 of shares, inform the pension board, inform the employees. What is it that we cannot trust these employees to understand? They will make the decision if they want to also sell their stock, like the CEOs and the FAO of the corporations.

We also decided and we learned from Enron that there was much corporate misconduct, where the employees who were devastated by that conduct had no right to proceed against those people who defrauded them, who had looted the companies. Again, tragically, not unique to Enron, but we have seen the same instances in a number of other corporations, so we said those people ought to be able to proceed to recover their retirement nest egg, to recover their financial future, to recover the plans that they have made for themselves and their families because somebody acted in an illegal fashion.

Today those people can do that. And under ERISA there is no right of recovery, so this is beyond the Enron employees. This is about the millions of other employees who are out there in this same situation.

What else did we learn from Enron? We learned that the employees had one plan, a 401(k) plan, and that the executives had another 401(k) plan. The executives' plan was insured. It was guaranteed. So as Enron goes on the rocks, as it becomes bankrupt, the executives leave with life preservers in the lifeboat. The employees leave with nothing.

We think that if you are going to insure the executives' plan, insure the employees' plan. Both of them are contributing to making the wealth of the company. Both of them are creating the earnings of the company. It is not like the Enron employees were not working hard in this company. They just did not get a chance to be protected like the executives.

So this is really about whether or not we are going to continue to accept a system where we have an elite group of executives that get insured pension plans, get incredible compensation, are able to buy multimillion-dollar homes in Florida or in Texas that are exempt from bankruptcy, that can have insurance plans that guarantee a payout, and then there are the employees who go to work every day, who build the financial future of the company, who do the job for which they were hired and can be left with nothing.

This really is about equity. This is about fairness. This is about what we owe the workers in these companies. Mind you, these very same companies made a decision that this was really good for the executives, for the top corporate elite, that these were all good things to do. But now when you suggest that maybe you should do them for the employees, for the rank-and-file people who are on the line working every day, that somehow it is radical or it is un-American or it is against the free enterprise system.

I think President Bush got it about right. In his first public statement after the Enron case down in North Carolina, I believe it was at a naval base, he said, ''What is good for the captain should be good for the sailor.'' That is what the Democratic substitute says. It says that we ought to recognize the dignity and the hard work of the employees and they should not be put in a position of disadvantage. They should not be put in a position where they could lose everything when the executives are in a position of losing nothing. That is a very important principle. It is a very important principle for this Nation. The President recognized it, but the Republican bill does not.

The Republican bill concentrates on getting the employees better investment advice, and that is a good idea. Clearly, even the Enron employees did not understand the real value of diversification. So good investment advice makes sense as people are trying to plan for their retirement. We believe that that advice should not be conflicted. The Republican bill does not provide for that kind of protection.

We recognize, as we have seen, where Arthur Andersen was deeply conflicted between the commissions it was making on consulting from Enron and auditing the books they were presenting to the public, to the shareholders, and to the employees about the health of the company.

We have now seen all of the labyrinth of commissions and fees and financial arrangements that had distorted the financial marketplace, the most recent of which is Merrill Lynch, where Merrill Lynch was seeking to make millions, tens of millions of dollars as an investment bank, but it was doing business with the same people whose stock it was touting, so it did not want to say ''don't buy ABC stock'' when it was trying to negotiate a commission worth tens of millions of dollars, so it had its people keep saying ''buy ABC stock'' and even those people said, ''That is lousy stock. It's no good.'' They were conflicted.

Yes, investment advice is good, but it ought to be independent. It ought to be independent of those commissions, of those holdings, of those conflicts. And they run throughout the financial markets.

If America got any lesson from Enron, through Arthur Andersen, through Global Crossing, through so many others, they learned that there really are two systems; a system for the privileged, for the elite, for the executives, and another system for the employees who are investing in these companies.

That is why we have introduced the substitute, because half of the Republican bill is missing. Yes, it deals with investment advice, but it does not deal with the lessons of Enron. It does not deal with the peril of millions of Americans who are leaning very hard on their 401(k) to help provide for their retirement. It does not deal with the unethical behavior of corporate executives who are not in Enron. It does not deal with the ability of corporate executives to hide their transactions from their employees and from the investors. And it does not deal with the fairness of the treatment of those two parts of the corporation.

The Democratic substitute does it. It does it in a way that does not place a burden on the system. It is really about disclosure. It is really about fairness. And it is making sure that as we walk away from the Enron disaster, that we really in fact have changed the manner in which we are doing business to make sure that there is fairness in treatment and there is protection for the American worker. The bill as presented to us today is incomplete in that fashion. The Democratic substitute will complete that part of the story, to provide that kind of protection for the American worker.

I will hope that our colleagues in this House on both sides of the aisle will embrace this substitute and discharge their obligation that we have to provide for the retirement future and protection of the American worker.

Mr. Speaker, I reserve the balance of my time.

Mr. BOEHNER. Mr. Speaker, I yield myself such time as I may consume.

As I said earlier, with all due respect to my colleagues, some on the other side who believe that the base bill before us does not go far enough, I would argue that the proposal offered by my good friend, the gentleman from California (Mr. GEORGE MILLER), does in fact go way too far.

Let me point out several of those differences. As the gentleman said, when it comes to company-matched stock in a 401(k) plan, companies today can require you to hold that until such time as you retire, not allowing you to take the company match and to convert it into some other type of stock or bond, or cash for that matter, within the account. And so the gentleman from California has a 3-year limit that would go into effect at the signing of the bill, but after that there is no holding period at all.

□ 1430

The underlying bill, beyond the 5-year phase-in, has a 3-year rolling average. Any new matched company stock, the maximum it could be required to be held by the company is 3 years. Many employers are already doing it on their own, doing 1 year, doing quicker time frames.

But why do we have a 3-year rolling average? Because we do not want to discourage companies from offering the company match that many do in stock today. They find that this is a perfect way of trying to retain employees, to encourage employees to stay with the company. And I am concerned that in a proposal similar to the one the gentleman from California (Mr. GEORGE MILLER) is proposing, that many employers would in fact eliminate the match of company stock that they do today. We do not want to do anything in this bill that would hurt the ability of employees to maximize their employment security.

Another problem we see with the substitute being offered is that we expand remedies. We expand more remedies, more lawsuits for those who may have just made a mistake. I am not talking about criminal behavior here, we will get into that in a moment. But to expand remedies is a nice big red flag for employers that says, if you open a pension plan, you are going to be opening yourselves to expanded liability.

What that is going to do, plain and simple, is discourage, especially small companies, from setting up a pension plan for their employees, at a time when we have worked for years here to try to encourage more employers to offer these plans to their employees. I think there are sufficient remedies today within ERISA and within the code, and expanding those remedies at this time I think is a very big mistake.

Let me also say that the substitute creates criminal penalties that do lead to personal liability again for mere mistakes that someone might make. Again, there is another red flag. If I am an employer looking at setting up a plan or maintaining my plan, why would I want to open myself up for the possibility of criminal wrongdoing if I made a mistake in the administration of my plan? Again, I think we have sufficient remedies today within ERISA to deal with this.

One of the other issues that the gentleman from California (Mr. GEORGE MILLER) talked about is the fact that corporate executives have insured plans and 401(k) plans are not insured. Now, we are dealing a little bit here with apples and oranges, because when it comes to the corporate governance issues, it is controlled by another committee, and we are strictly dealing here with ERISA and with the Tax Code and with pension issues.

But one of the issues that is in the gentleman's bill is he would require liability insurance for the full value of all of the 401(k) accounts within the company. Now, if you want to talk about a staggering bill that would discourage employers from setting up 401(k) accounts, here is probably the single one big issue that would stop them cold in their tracks. They would say, listen, if I have got to buy an insurance policy for several hundred million dollars, do I really want to have 401(k) accounts?

The last issue I would like to talk about, though, that is of great concern to all of us is the issue of investment advice. We have some 50 million Americans today who have self-directed 401(k)-type of accounts. We all know that they need good, solid investment advice that meets their particular needs. So both sides have the issue in their bill.

But the difference here is very simply this: There are two issues that have to be dealt with to get more investment advice into the marketplace. One, we have to do something about employer liability, and both the Miller substitute and the underlying bill, the Pension Security Act, deal with protecting employers from liability, other than they have to exercise their fiduciary duty in hiring a good investment advisor.

But the second issue is this: It says if you sell products, you are prohibited from giving investment advice. Now, the idea here is to get more investment advice in the marketplace, and under the Miller proposal they would have to go get independent third-party advice. It is well-meaning, well-intentioned, but very expensive, and, I would add, most employers are not going to ever go down that path. My point is, we will end up with very little investment advice in the marketplace.

Under the underlying bill, we say you could go out and get independent advice if you like, or you could have those who sell product set up investment advice under these conditions: You have to disclose any potential conflicts; you have to disclose any differences in fees between the products that you are selling; you have to do this at the same time commensurate with the giving of the advice; and, above all, you are required to be held to the highest fiduciary duty in the giving of that advice, which means that when you give the advice, it has to be solely in the interest of that employee, and there are penalties if you violate any or all of those.

We believe what this will do is to bring more investment advice into the marketplace in a much quicker way and cover far more employees. As a matter of fact, the House thought this was such a good idea last November, before we knew what we know today about Enron, that the House voted 280 to 141 to support the exact investment advice bill, virtually the same investment advice bill, that is contained here.

So I would say to my colleagues on both sides of the aisle, my Democrat friends are as concerned about this as we are. I do in fact believe that if we were to adopt the Miller substitute, that we would in fact limit the ability of employers to set up plans, we would discourage employers from setting up plans, and we would see companies fold up their plans. I do not think that is what we want to do at this day and hour.

We should be looking at how can we secure the retirement security for more American workers, how we can expand the number of workers covered by high-quality retirement plans, and not go in the other direction.

Mr. Speaker, I reserve the balance of my time.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). Without objection, the gentleman from New Jersey (Mr. ANDREWS) will be recognized to control the time in favor of the amendment.

There was no objection.

Mr. ANDREWS. Mr. Speaker, I yield myself 3 minutes in support of the Miller substitute.

Mr. Speaker, there is some confusion on the issue here of the competing proposals and how long someone is required to hold shares of stock contributed by an employer when that is the employer stock. I want to be very clear: The proposal that we support, the Democratic substitute, does call for a 3-year period, not a 1-year period as some groups outside of this body are alleging. It is a 3-year period.

The Republican proposal, the underlying bill though, I want to be clear about what it means to a person who is in a 401(k) plan that has her or his employer's stock matched in that 401(k) plan. Under the underlying bill, it would be 5 years before an employee could completely divest himself or herself of that stock. So here is what this means: If you were working for a company and the company put matching shares of its stock into your 401(k), and the company started to slide downhill the way Enron slid downhill, and you decided the best thing for you to do was to get your retirement fund out of that stock, get it out of there so that you would not be losing your pension, under the Republican bill that we are amending it would be a 5-year process, 5 years, before you could get all of that stock out. It is phased out 20 percent, then 40 percent, then 60 percent, then 80 percent.

I do not see why people should be required to wait 5 years. Next week will commemorate the anniversary of the sinking of the Titanic, April 15. The Republican proposal reminds me of the Titanic in this respect: When the Titanic was sinking, the wealthy people got off the ship in their lifeboats and the working class people were locked down below in steerage, unable to get off the boat as it was sinking. That very unfortunate proposal is carried out in the underlying bill.

Frankly, there are those of us that believe 3 years is far too long, but in an attempt to compromise, to make sure we could draw as many people to support the proposal as we could, the Democratic plan talks about 3.

I do not want any confusion about the fact that the bill that we are amending, the underlying plan, calls for at the beginning of the plan a 5-year period before someone can get completely off that sinking ship. That is wrong, and that is another good reason to support the Democratic substitute and oppose the underlying bill.

Mr. BOEHNER. Mr. Speaker, I ask unanimous consent that 15 minutes of the time in opposition be given to the Committee on Ways and Means and controlled by the gentleman from Ohio (Mr. PORTMAN).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. BOEHNER. Mr. Speaker, I yield 4 minutes to the gentleman from North

Carolina (Mr. BALLENGER), a long-term member of the Committee on Education and the Workforce.

Mr. BALLENGER. Mr. Speaker, let me just say I rise in support of the base bill and in opposition to the Miller-Rangel substitute on the grounds that it would oppose a host of new government regulations that will drive businesses out of offering, and I emphasize the word, voluntary retirement savings plans.

I happened to be in a situation in 1950 in my company back home where we had an employee that had worked for the company for 30 years and decided to retire, and I found out at that time, I did not realize much about the way things went, I realized that this gentleman after 30 years with me had only his Social Security to count on. So what I did is I put into our company at that time a defined benefit plan that was going to take care of all the employees, some retirement and so forth. This whole situation, to my way of thinking, was a fabulous thing. We should take care of employees.

All of a sudden, somewhere down the road we ran into the fact that the government's regulations were coming along and it appeared to me I was not trustworthy of Uncle Sam, so what I did is I liquidated the whole pension plan and gave the employees all the money and started over again. And we ended up with a 401(k) and an ESOP right now, which I realize the ESOP is not involved in this. But I want you to know, I got out of this pension plan even before I knew about trial lawyers or fiduciary responsibility.

The Democrat substitute creates a new resource for trial lawyers to line their pockets by increasing the liability exposure of employers, administrators, service providers to an ill-defined and uncapped damage. From the CEOs to the middle managers and those who have no control over the plan's investment decisions, they could be personally liable for losses in their retirement plan, and these men and women who are sued for something out of their control could be forced to pay damages beyond the lost value of their retirement plan. Current law allows Labor, Treasury and the Justice Department, as well as affected individuals, to take actions to recover damages from a plan.

Additionally, the Democrat substitute would extend this unlimited right to sue to all ERISA plans, including retirement, health, disability, all of these plans, as well as reducing the availability of retirement plans. This amendment would destroy the current system of employer provided health insurance, leaving millions of Americans uninsured.

The Miller-Rangel substitute would force every fiduciary to a defined contribution plan to have insurance themselves in case there was a breach of fiduciary duty. I do not know how many of you have looked at the cost of that insurance, but today it is unbelievably expensive. However, mandating each individual fiduciary to have his or her own insurance would be redundant and costly, and, once again, these costly, unneeded measures would discourage employers from offering retirement plans.

Finally, the substitute would mandate that retirement plans include an employee representative on the joint board of trustees. What employee can you find that would be willing to serve on a board when he knew he was going to get sued? That is an interesting situation.

This is already allowed under ERISA, and some employers do it. This mandate would increase administrative burdens on employers, and since ERISA currently requires that plan administrators act solely in the interest of participants and beneficiaries, what is the benefit of mandating an employee to join the Board of Trustees? There is not one, but it does add a substantial burden.

While I believe the government has a role in protecting employees' retirement plans, I cannot support a massive imposition of Federal regulations that will destroy the incentive for employers to offer retirement plans. I urge a ''no'' vote on the substitute amendment and a ''yes'' vote on final passage of H.R. 3762.

Mr. ANDREWS. Mr. Speaker, I yield 3½ minutes to the gentleman from New Jersey (Mr. PAYNE), who is a strong voice for workers both in New Jersey and around the country.

(Mr. PAYNE asked and was given permission to revise and extend his remarks.)

Mr. PAYNE. Mr. Speaker, let me thank the gentleman from New Jersey for yielding me time and commend him for the outstanding work that he did on the subcommittee handling this very important Pension Security Act.

There are, in my opinion, defining financial points in every decade. In the seventies we suffered a gasoline shortage, where long lines disrupted the daily lives of American people and lost productivity ensued.

□ 1445

In the 1980s, there was the savings and loan debacle where greedy investors and unscrupulous brokers went away with billions of dollars of Americans' money. In the 1990s we suffered a recession where the market dropped. However, we bounced back because President Clinton and his great program in the early 1990s cut $250 billion of spending and another $250 billion to the 1 percent of the top earners in the country, and that $500 billion put us on to a projected $5 trillion surplus over the years. However, we have seen that wilted away by the new administration.

In this decade, it is safe to say that the Enron debacle will go down in the books as an example of deception and mismanagement and which has ruined the lives of thousands of people. That is the human side that we do not see.

What have we learned from this tragedy? How can we protect ourselves from a recurrence of the financial disasters of this magnitude? By not supporting the Republican bill. Why? Because their bill fails the American people. Because they create new loopholes and a relaxed requirement. Their bill lacks real teeth to hold companies accountable. It fails to hold plans accountable, and it fails to provide real diversification in plans; and it fails to give employees' notice when companies are dumping company stock, and it continues to give preferential treatment to executives.

The Democratic alternative provides real pension reform. How? By, one, including strong criminal penalties for executives who engage in mismanagement and abuse, by requiring notification of employees when executives are dumping company stock, and ensuring that employees receive honest and timely information about their pensions from unbiased, independent financial advisors, and it gives employees a voice on pension boards.

During the markup in the Committee on Education and the Workforce, the Democrats offered amendments, amendment after amendment, which would strengthen the current law that would protect the American workers, holding their hard-earned savings to their own portfolio, which were denied. Because the bottom line is, this is their money, and the employees should have more say over it.

It appears to me that the Republican bill serves the interests of corporate executives rather than the rank-and-file employees who lost billions of dollars of their retirement savings. There must be an end to this giving special treatment to executives while employees suffer. Enough is enough.

Support the Democratic substitute, which seeks to correct loopholes, shifting less risk on our workers, putting more control of their money in their hands. Support the substitute which provides unbiased, independent advice, a parity of benefits for all employees, representation on pension boards, and tougher criminal enforcement.

We can all agree we cannot let this happen again. The Miller-Rangel bill seeks to correct the loopholes, shift less risk to our workers by putting the control of their money in their hands. Stop favoring executives, and let us protect our workers. Support the Democratic substitute.

Mr. BOEHNER. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. NORWOOD), the chairman of the Subcommittee on Workforce Protections.

Mr. NORWOOD. Mr. Speaker, I thank the gentleman for yielding me this time. I strongly support the underlying bill, and I ask my colleagues to vote down the Miller substitute. There are many reasons to do that. We have heard many of them this afternoon. I would like to focus in on just one area.

Mr. Speaker, this substitute is a classic case of putting the fox in charge of the hen house. Believe it or not, their substitute would make union officials trustees of any savings plan that is given to workers they represent. This will jeopardize hundreds of billions of dollars in workers' savings.

Just blocks away from this House, just a couple of blocks, a Federal grand jury is determining whether a dozen or so union presidents violated their fiduciary duties by inside trading of stocks tied to Global Crossings Corporation, in which they have invested workers' pensions through union life insurance companies. Meanwhile, workers were losing billions from the bankruptcy of their company. This substitute will turn private savings of union workers over to these same leaders.

As chairman of the Subcommittee on Workforce Protections, I can tell my colleagues that this country is suffering from what The New York Times reports is a wave of union corruption. Just yesterday, I heard testimony about the embezzlement of millions by New York City's largest public employee union. I heard about workers who only make $20,000 a year forced to pay dues of $700 a year, which was then used for penthouses, maid services that were really male prostitutes, clothing, overseas trips, Super Bowl tickets, topless bars, and it goes on and. Do we really want that same crowd to get their claws into the individual savings of these workers? I do not believe any of us would want to do that.

As some of my colleagues know, I raised a few chickens on my place back in Georgia. I have had dogs on that property, and I love them very much. However, I would never let my dogs start eating my chickens. It would naturally be rough on the chickens, and the dogs would never hunt again.

Now, I know my Democratic friends love the support they get from labor leaders. I know they want to feed them any chance that they can get. But please do not feed them the savings of hard-working American families. It is bad for the dogs, and it is murder for the chickens. Friends, that dog has already got feathers on his snout that look a whole lot like pension money.

I urge my colleagues to vote down the Miller substitute.

Mr. ANDREWS. Mr. Speaker, may I inquire as to how much time our side has left.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The gentleman from New Jersey (Mr. ANDREWS) has 9½ minutes; the gentleman from Ohio (Mr. BOEHNER) has 30 seconds remaining; and the gentleman from Ohio (Mr. PORTMAN) has 15 minutes remaining.

Mr. ANDREWS. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. BLUMENAUER).

Mr. BLUMENAUER. Mr. Speaker, I appreciate the gentleman's courtesy of yielding me this time.

I have been listening in disbelief to the testimony here before us today. I represent as many Enron survivors as probably almost anybody in the House, and I have heard people ask, Could we find some workers that would be willing to serve on the board? I will tell my colleagues, they are lining up in Portland, Oregon. They would love to serve. I have heard people who are concerned about the trial lawyers being involved. Well, the trial lawyers did not create the problem in Portland; but I will tell my colleagues, there are lots of Republicans lining up to hire them to try and salvage a little bit of their dream.

Today's Republican pension bill I think falls far short in an obviously flawed pension system. I support the substitute.

The chairman of the committee referenced the act that we passed last fall before we knew about some of these abuses dealing with conflicted investment advice. Well, I will tell my colleagues, it was wrong last fall; and if the Members on this floor knew of the abuses and the problems, I do not think it would have passed then.

It is critical that we provide true security for retirement savings, that we hold corporate executives accountable for their actions, that we give employees some mode of control over their own retirement dollars, that we give them a voice. God forbid that there be as many employee representatives as employer representatives. I am not afraid of that; and I will tell my colleagues, the people in Portland who have been brutalized by this system, I think they would find it to be a great, great proposal to put into effect.

I will tell my colleagues the pain that I have witnessed firsthand with people who have had to delay their retirement, who have had their family's dreams shattered; and being disillusioned as a result of this is impossible to be able to give voice to. But thankfully, some of these witnesses have come to Washington, D.C.

Mr. Speaker, I would just say that it happened in Portland, Oregon; and it can happen anywhere. That is why we need to support this substitute.

Mr. PORTMAN. Mr. Speaker, I yield myself such time as I may consume.

I think the gentleman addressed the concerns, and all I can say is the underlying bill does address them. If you are an Enron employee, you had to hold that stock until you were 50 years old. What this underlying bill says is, you cannot do that anymore. A company cannot require that the employee hold the company-matched, it goes into a 401(k), until the employee is age 50. In fact, you cannot do it for more than 3 years. There is an initial 5-year period where you can unload 20 percent per year so you do not disrupt the markets; and after that point, you cannot hold an employee with the corporate stock for more than 3 years. The handcuffs are off. That is a big change.

Under current practice, you can hold somebody until they retire. You can hold them for 40 or 50 or 60 years. It also provides more education, and this is extremely important. I think there is a consensus on that among people in this area, on the outside and people here in Congress, that we have to provide people with better tools so that they can make better decisions once they have been given more flexibility and more choice. We have disagreed here on the floor as to what kinds of tools those should be; but I think we agree, for the most part, that we ought to be getting people more advice.

There are three ways this bill does that. First, it says that every time someone gets into a plan, they have to be given a notice saying you must look at your portfolio and you should diversify; in retirement, you should not have all of your eggs in one basket. It also says that on a quarterly basis, you get a report as to what is going on in your plan. That is not currently required. None of these are. It also says, under commonly accepted investment practices, you should diversify, in plain English.

Second, it lets employees, on a pretax basis, pay for investment advice. That is not currently available. It could be like a cafeteria plan or like an eye glass plan or a health plan or a pension plan. It lets employees have a tax preference to go out and get investment advise on their own. They can choose whoever they want. That is expensive. That is one reason why people do not seek it. That is what the surveys show. So we are trying to help people.

Finally is the investment advice piece that passed this House last November with 64 Democrats supporting it, and that piece says the company should be able to bring in people who are certified, qualified, who disclose any potential conflict of interest, who have a fiduciary responsibility to only do what is good for the workers; otherwise, they face penalties, and those people offer advice. That is a pretty practical way to do it, because some companies will be willing to pay for that and offer it. We want to encourage that.

If we really believe education is a problem, and I think most of us do, we have to do something that is going to address it directly and that is really going to work in the real world. I think this substitute and the proposal there would not work nearly as well in the real world because I do not think employers would take advantage of it.

Finally, we provide a lot more information in this bill. We tell people when there is a blackout period. Right now there is no requirement for that. Thirty days before a blackout period, and now you have to have a notice. That is going to help people who are stuck in a situation like the Enron scandal.

So this is much more than Enron. It affects 55 million Americans who are in defined contribution plans, particularly those who are in a plan where you can get some corporate stock as a match, which is not the majority of plans, unfortunately, because we want these plans to be generous; but it will help millions of Americans, and it would have helped people who were stuck in the Enron situation. It would have helped them.

Someone said that there is not adequate protections in here or there is nothing in here relating to what is good for the goose is good for the gander or, as someone said earlier, the captains ought to abide by the same rules as the sailors. Well, there is. First of all, if you are a captain or if you are a goose, and you have something of a 401(k) plan, you have some assets in a 401(k) plan, you are treated like everybody else. You are subject to the same blackout notice, the same blackout period where you cannot trade.

The question is, what if you have stock outside of the 401(k)? Should you have an additional requirement for those employees of a company, senior executives or not, who have stock outside; and we say, yes, you should. If half or more of the people in a company are affected, as was the case of Enron, then you cannot trade during a blackout period, even though your stock has nothing to do with a 401(k) plan. That is a big change from current law. I think that needs to be clear.

We are doing things that change structurally the way we deal with pensions in this country. Not every business is happy about this, but we have tried to achieve a balance. Because at the same time that we are providing more protections for the workers, information, education, disclosure, accountability, all equaling more retirement security, we are also very sensitive to this balance. Remember, there are 42 million Americans in 401(k)s, 55 million Americans in other kinds of plans. When we add them all up, there is $2.5 trillion of assets in these plans. We do not want to do harm to these plans. More important, there are 70 million Americans, half the workforce, who have no plan at all. They do not have anything.

□ 1500

They do not have a 401(k). They do not have a SIMPLE plan, a SEP, or any retirement savings through their employer.

The whole goal of this Congress over the last 5 years has been to expand pensions to those people. Where do they work? In small business, that is where the great bulk of them are; in small businesses, businesses that do not have a lawyer, they do not have an accountant, they do not have somebody to go through this maze, with the burdens, the costs and burdens and liabilities of pension plans. That is the real world.

That is why, on a bipartisan basis, this House has acted, with over 400 votes on this floor, to pass legislation to expand pensions to these smaller employers by cutting down on the costs and burdens and liabilities.

The alternative we are looking at here, the substitute we are debating right now, increases costs, burdens, and liabilities. In fact, it makes people personally liable for decisions that they have no control over with regard to pensions.

Now, if one is a small business person and is trying to decide how to get into this business of offering pensions, and is worried about the costs, burdens, and liabilities, and now you discover you could have a criminal liability, a personal liability, more costs, more burdens, what are you going to do?

Mr. Speaker, it is a voluntary system. We need to provide incentives. All the surveys show that. They all show the same things: Small businesses are going to get into providing pensions and the pension coverage we want them to provide only if it is easier, less expensive, less burdensome, and has less liability. That is the direction we ought to be going.

So we do have a balance here. We do provide the employees more rights and protections, and we think that is appropriate, but we do not go so as far as to discourage those people who are already offering plans, and again, more importantly, to discourage those that might be interested in getting into the pension business now that we are offering higher contribution levels, more protections, lower costs and burdens and liabilities.

We cannot go the wrong way here. We cannot go too far. My concern is that the substitute does go too far.

Remember, in 1983 there were 175,000 defined benefit plans in this country. Those are the good, guaranteed plans. There were 175,000 of them; today there are 50,000. This Congress has, over time, added costs and burdens and liabilities to those plans to the point that most employers throw up their hands and say, I am not going to offer them anymore.

We did things last year in this Congress to encourage defined benefit plans. We increased the limits, made it easier to offer them. But we do not want defined contribution plans, the 401(k)s, to go the way of the defined benefit plans, do we? Do we not want more pension coverage? In a voluntary system, we ought to do everything we can to encourage them.

There are a couple of provisions that I see in the substitute that I am concerned with. Why should internal dispute resolutions be prohibited? Employers and employees alike like that, public and private sector alike. Why increase litigation costs? Why increase litigation? I do not get that. Why would we want to vote for a substitute that has increased litigation, increased costs?

Second, there is an amendment in here, well-meaning, trying to close a loophole, by a colleague of mine in the Committee on Ways and Means, not vetted. It is a brand new amendment. It did not even come up in committee. The one that came up in committee was a different amendment. It has to do with those deferred comp plans that are not qualified plans. The Treasury Department has not even looked at it. We have not had a hearing on it.

I would urge my colleagues not to move forward with this amendment until we have a chance to look at it and see what effect it would have. We do not want to, by trying to protect workers, create additional problems that will lead to less retirement coverage.

So the underlying bill has important structural changes: more information, more education, more choice, more security, more accountability. The substitute, while well-meaning, goes too far and strikes the wrong balance. This Congress ought to be working to expand retirement security, not to decrease it.

Mr. Speaker, I reserve the balance of my time.

Mr. ANDREWS. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY), a valued member of the Committee who has valuable experience as a human rights executive.

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, I am a member of the Committee on Education and the Workforce, and I can tell the Members that this Republican Pension Security Act of 2002 will not make retirement secure for the majority of employees. Instead, it allows a two-tiered retirement system that gives top executives, the captains, special benefits and protections while leaving their employees, the crew, to fend for themselves if the company has troubled times. That is plain wrong.

Our President has agreed: What is good for the captain is good for the sailor; or what is good for the captain is good for the crew.

I introduced an amendment during the committee that would ensure that all of the crew have the pension parity, exactly the same as their captains. Every Democrat on the committee voted for my amendment for parity. Every Republican opposed it.

This Republican bill leaves employees that are seeing troubled times with their firms at the end of the line when it comes to collecting retirement benefits, while the captains, those like Kenneth Lay from Enron, do not even have to get in line. Their benefits are paid for up front in full.

The Miller substitute makes pension benefits for the rank and file, for the crew, as secure as for the executives, the captains. It is real pension reform, and we must support it.

Mr. PORTMAN. Mr. Speaker, I yield 2½ minutes to the gentleman from Illinois (Mr. WELLER), my colleague on the Committee on Ways and Means.

(Mr. WELLER asked and was given permission to revise and extend his remarks.)

Mr. WELLER. Mr. Speaker, I rise in opposition to the substitute, and, of course, I support the bill that is being managed and offered by the gentleman from Ohio (Mr. BOEHNER) and the gentleman from California (Mr. THOMAS) and the gentleman from Ohio (Mr. PORTMAN) today.

We have had a situation in our country that we are all concerned about. The situation has been illustrated by Global Crossing and by Enron, and we have heard those names in the debate today. Because of that, it reinforces a goal we have been working on in this House, and that is to work to provide safe and secure retirement opportunities for the men and women who work in America.

We have made a lot of progress in the legislation we have passed out of here. This legislation before us today, the base bill, the Pension Security Act of 2002, is a real solution towards concerns that have been raised by the so-called Enron and Global Crossing problem. In fact, the base bill provides worker security and pension security.

Let me express some concerns about the substitute that has been offered by the gentleman from California (Mr. GEORGE MILLER) and the gentleman from New York (Mr. RANGEL). While I have great respect, I know they are well-intentioned, I do not believe they are trying to be partisan and political, but I believe what they are offering is pretty radical. It is an attempt to offer a so-called solution which is way overboard, and in the end would actually reduce retirement savings opportunities for workers, particularly because, while maybe not intended, this legislation would actually discourage small business from providing retirement savings. The increased liability and damages that would result would push employers out of providing retirement benefits. Again, that is anti-small business.

Also, I just do not understand why, in the substitute that has been offered, something that both Democrats and Republicans have both agreed upon, that workers and employers have agreed upon in the past, that the substitute actually bans and prohibits alternative dispute resolution when there is an argument over pension benefits or how they are being operated.

Why would anyone want to do that? The only ones who benefit by banning alternative dispute resolutions are lawyers. Why do we want to create more litigation, when I think everyone in our society agrees there is too much litigation today?

The bottom line is, the Pension Security Act of 2002 is good legislation. It is bipartisan. It is put together very thoughtfully over a period of time, recognizing there are challenges and we need to offer solutions.

Let us do the right thing, Mr. Speaker, and let us reject the substitute and support the Pension Security Act of 2002 with a bipartisan vote.

Mr. ANDREWS. Mr. Speaker, it is a pleasure to yield 2 minutes to the gentleman from Michigan (Mr. BONIOR), our former majority whip and one of the leading voices in America for minority rights.

Mr. BONIOR. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, I rise in strong support of this Democratic substitute that is being offered by the gentleman from California (Mr. GEORGE MILLER) and the gentleman from New York (Mr. RANGEL) and others.

What we are talking about here today are the real lives of working people. This is about valuing and respecting a person's labor. It is about honoring a commitment. It is about keeping trust.

It is not just about Enron employees. In my home State of Michigan earlier this year, the auto supplier DCT laid off its last 400 employees with 30-minute notices, and then locked them out of their 401(k)s. The collapse of DCT hurt not only the DCT employees, but also the city workers in the city of Detroit, whose pension fund lost $32 million in DCT investment.

Our pension laws are too outdated to protect people. They are too weak to protect the K-Mart workers all across this country who now face uncertain futures. They are too weak to protect our R&R workers up in northern Michigan, in the Upper Peninsula, in the Mesabi Range, who are losing their benefits due to the flood of cheap steel into our country.

Pensions ought to be sacred. They ought to be a symbol of a trust between a company and a worker. By the way, I would say to my friend, the gentleman from Georgia (Mr. NORWOOD), we would not have pensions if it was not for unions, let us make no mistake about that, for workers.

Pensions are not handouts, they are something people earn. One of the worst things that could be done to a worker and their family is to take their pension away. People dream about their pension at their work site, in the factory, in the office, on construction. They think about getting to that point in their lives when they can enjoy their pension. And then to yank it from them, to take it, to pull it out from underneath them, to deceive them, to break that trust, to break that commitment, is the worst thing anyone can do.

This Democratic substitute is the right substitute. I urge my colleagues to support it.

Mr. PORTMAN. Mr. Speaker, I yield 2 minutes to the gentleman from Arizona (Mr. HAYWORTH), a member of the Committee on Ways and Means.

Mr. HAYWORTH. Mr. Speaker, I thank my colleague, the gentleman from Ohio, for yielding time to me.

I appreciate the words of my friend, the gentleman from Michigan, who preceded me in the well. Would that this substitute from the other side, would that it in fact concentrated on workers.

I do not dispute a thing that my friend, the gentleman from Michigan, said about the desirability of pension plans. Indeed, the bill we offer has an opportunity to expand pension plans on into small businesses, opportunities for businesses with as few as 25 employees.

The problem with the substitute is that instead of being pension protection, it is a trial lawyer's bonanza. The language in this substitute would authorize suits to recover unlimited damages alleging economic and non-economic losses, and welcome to the litigation bonanza.

Should pensions be protected? Absolutely. But if we want to help working people, we want to expand the pension pool. We want to set up new opportunities for small business to go into these pension plans to do the very things my friend, the gentleman from Michigan, talked about.

We do not want an economic bonanza, or, sadly, and I am sure it is not the intention of my friends, but one can almost see a situation where we would have an economic bonanza and the equivalent of whiplash, whiplash.

Look, we are talking about people's lives. It is precisely because of the dignity of work and the opportunity that retirement brings, and their hopes and dreams, that we do not want to see funds jeopardized by unlimited liability and damages that enrich only the trial lawyers' lobby and does nothing to help working people. That is the choice we have to make today.

Mr. Speaker, we have a bipartisan piece of legislation with many commonsense remedies that people on both sides of the aisle have championed. Do not sacrifice that for a substitute that enriches the trial lawyers' lobby. Reject the substitute and go with our bipartisan plan.

Mr. ANDREWS. Mr. Speaker, I am pleased to yield 2 minutes to our ranking member, the gentleman from California (Mr. GEORGE MILLER), the author of the substitute and a tenacious fighter for workers across America.

Mr. GEORGE MILLER of California. Mr. Speaker, I thank the gentleman for yielding time to me.

Mr. Speaker, the gentleman who just preceded me in the well might be interested to know that this year, the man of the year of the American trial lawyers is going to be Ken Lay. He has developed more business than any single American in the history of the country.

A lot has been talked about about investment advice. We all agree that investors need to know more about planning for their security. But it is interesting that when Jane Bryant Quinn, the financial writer for Newsweek Magazine, looked at the investment advice bill in light of the Enron scandal, she yelled, ''Help, I am scared for my 401(k).'' Post-Enron, how could anyone even think of creating such a conflict of interest that is in the underlying bill? You might as well turn the system over to the ice skating judges, because that is the situation you have.

We have the very same people who are making millions, hundreds of millions of dollars in Commissions and fees as investment bankers providing retail advice to people who are trying to plan for their retirement, the average worker.

□ 1515

And they are being told on the level, this is a good investment. But, in fact, what we know is they are making that decision based upon the millions of dollars in fees, not the best interests of the investor. This is really about whether or not we are going to treat the corporate elite and the workers the same.

It is a radical notion in the Republican Party that workers would have some say in their own retirement; that workers would be warned when the corporate elite are bailing out of the corporate towers; when the corporate elite are selling their stock. A radical notion that the workers at Enron and other corporations would be told of that. But we should expected that; we saw that in committee.

The Wall Street Journal said it best: ''The Republican-led panel rejected a dozen Democratic amendments which would have offered workers greater protections and improved stricter rules on employer-sponsored 401(k)s and other defined contribution plans.'' Yes, they had a chance to help out workers, to give them notice when the big shots are selling their stock; to give them a say in the control of retirement funds that belong to them, it is 100 percent of their assets; to make sure that they had the same rights as the corporate elite. But the Republicans have not seen fit to do that. You can support the Democratic substitute, and you can make sure that the workers after Enron have more protections than they had before.

Mr. PORTMAN. Mr. Speaker, I yield the balance of our time for purposes of control to the gentleman from Ohio (Mr. BOEHNER), the chairman of the Committee on Education and the Workforce.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). Without objection, the gentleman from Ohio (Mr. BOEHNER) will control the remainder of the time and has 2¼ minutes remaining and will have the right to close. The gentleman from New Jersey (Mr. ANDREWS) has 2 minutes remaining.

Mr. ANDREWS. Mr. Speaker, I assume we have the right to close.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. BOEHNER) has the right to close.

Mr. ANDREWS. Mr. Speaker, I yield the balance of my time to the gentlewoman from California (Ms. PELOSI), our dynamic leader, the highest woman elected in the history of the House of Representatives.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for yielding me time and for his leadership and kind words.

Mr. Speaker, an extremely important matter is before the House today. Nothing short of pension security of America's working families is at risk. We all agree that this is a very, very complicated issue; and we also agree that we want to maintain confidence in our financial systems in the decisions we make today.

That is why it is so very regrettable that the Republicans have brought an irresponsible proposal to the floor. Every day it seems Republicans are dragging another Trojan horse on to the House floor, a horse that has some nice features but covers up the dangers within.

I tell my colleagues, beware of Republicans bearing gifts. A vote for their bill is a vote to weaken existing law by giving employees biased and conflicted advice without access to an independent alternative.

A vote for the Democratic substitute empowers workers; and it means giving them control of their investment, accurate investment advice, representation on pension boards to protect their interests, and notification when executives are dumping company stock. It also means holding plans accountable through tougher criminal penalties for misconduct and the ability of employees to collect damages when they are misled. The Republican bill fails on all of these counts.

A comparison of these two bills makes it very clear that President Bush was right when he said, What is good for the captain is good for the crew.

Let us follow that advice of President Bush and give employees control of investments of their nest egg and a voice on their pension boards; give employees the opportunity to be notified when executives dump company stock; give employees the right to be protected from conflicts of interest when receiving investment advice. And on that score, the Republican proposal not only fails, it is regressive. It is regressive. It makes matters worse for American workers and their pension funds. It gives employee and executive plans exactly the same treatment, employees and executives exactly the same treatment. And it gives tougher penalties for company misconduct.

The Republican bill, on the other hand, gives no control, no voice for employees over their own nest egg. It allows for conflicts of interest in investment advice of employees, a very important point because this is where it makes matters worse. No notification to employees when executives dump company stock. We know how many were victimized by that. It gives preferential treatment for executive pension funds. We want success to be awarded both at the executive and the employee level. Why cannot Republicans recognize that? There are no new penalties for pension plan abuse.

The contrast is stark. The decision is important. We have a responsibility on this day to restore confidence in pension plans and investments of workers and executives. We have a responsibility today to maintain confidence in our financial systems.

Vote ''yes'' on the Democratic substitute to do just that. Vote ''no'' on the Republican proposal, a bill that makes matters worse for workers investing in their retirement pensions.

I urge my colleagues to do just that.

Mr. BOEHNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, we have talked a lot today about diversification, blackout periods, fiduciary duty; but at the end of the day what this bill really is about is real people and their own financial security.

Current pension law is simply outdated, and we have the responsibility to change that. We have the responsibility to ensure that America's retirement futures are not jeopardized by laws that are out of step with our current times. If this bill had been law, it would have made a real difference for Enron's employees.

Under this bill they would have had access to professional investment advice, people who could have warned them that they had too many eggs in one basket. They would have been better informed about upcoming blackout periods, and they would have had more freedom to diversify their portfolios.

The retirement future of our Nation's workers is too important for political gamesmanship. In the wake of the Enron collapse, the American people are counting on us to make practical and necessary changes to our pension system that basically is healthy, and that, on the balance, works very well.

But my colleagues on the other side of the aisle are being encouraged by the political leaders of their party to support an alternative to this bill that would do far more harm than good. Instead of supporting bipartisan protections that would shield millions of American workers, the partisan opponents of this bill are putting their own political interests ahead of those of ordinary Americans. The House Democrat leadership alternative is really no alternative at all. It would enrich trial lawyers. It would hurt small businesses, impose costly new mandates, and even endanger 401(k)-type plans. Most importantly of all, it would continue to deny workers from getting access to the professional investment advice that is crucial for them to maximize their own retirement security. In short, the opponents of this bill would take us in exactly the wrong direction.

The underlying bill, the Pension Security Act, which has been embraced by Republicans and Democrats alike, would change what is wrong with current pension law without, and I say without, breaking what does not need to be fixed. I urge my colleagues to vote against the substitute and for the underlying bill.

Mr. UDALL of Colorado. Mr. Speaker, this bill is not all that it should be. It is not even the bill that we should be passing today.

We should be passing the substitute offered by the gentleman from California, Mr. GEORGE MILLER, and the gentleman from New York, Mr. RANGEL. That was why I voted for that substitute and why I am very disappointed that it was not adopted.

But now we are left with the choice of voting for this bill or voting for no legislation at all. And I think there definitely is an urgent need for legislation to address the serious problems made so evidently by recent events, including the collapse of the Enron Corporation.

For that reason—and solely for that reason—I will vote for the bill. I do not think that it would be responsible to say that it would be better to do nothing.

In voting for the bill, I am under no illusions about its flaws. In particular, I very much disapprove of the changes the bill would make in current law related to investment advice provided to employees. Those provisions are similar to those in H.R. 2269, which the House passed last year. I voted against that bill, and if this bill did not include anything more, I would vote against it as well.

However, while the rest of the bill falls short of what I would prefer, it does make some improvements in current law. Further, passage of the bill will set the stage for the Senate to make further improvements—including correction or deletion of the investment-advice provision. I am voting for the bill today so that can take place, as I expect it will.

Mr. POMEROY. Mr. Speaker, I rise in opposition to the Miller substitute and in support of the underlying bill. Earlier in this debate, I indicated my support for the Miller amendment. In many respects, it does improve on the underlying bill. After further reviewing the substitute, however, I have found legal liability provisions that I believe will seriously discourage employers from offering retirement plans, to detriment of workers.

Setting aside the Enron fiasco, employer-sponsored retirement plans are a great success story of the American workplace. Such plans help employees accrue the assets they will need to live comfortably in retirement. Unfortunately, only half of American workers have access to employer-sponsored plans.

Therefore, as we seek to address the problems revealed by the collapse of Enron, we must both increase worker protection and encourage employers to expand pension coverage. We should protect workers by allowing them to diversify their retirement portfolio rather than keeping them locked into company stock. We should provide workers with adequate notification of impending black-out periods so that they may make changes in their portfolios before the temporary freeze occurs. Both the substitute and the underlying bill include these worker protections.

We should encourage the expansion of pension coverage by providing the type of rational, regulatory relief that is found in the underlying bill. What we should not do is increase employers' exposure to litigation arising from their retirement plan. Regrettably, the substitute does so in significant fashion. Rather than limiting liability to the fiduciary, who exercises control over the assets in the plan, the substitute expands liability to other parties who have no such control or responsibility. In addition, it greatly expands damage awards beyond simple losses to the plan. This increase in legal exposure would at least retard the growth of employer-sponsored plans and could even result in the contraction of retirement plans.

For these reasons, I must oppose the Miller substitute.

Mr. PASTOR. Mr. Speaker, I rise today in opposition to the Pension Protection Act as it is being presented to the House of Representatives and in favor of the alternative plan being offered by Congressman RANGEL and Congressman MILLER.

As we all know, the collapse and bankruptcy of the Enron Corporation left thousands of people without their retirement funds and wondering how they might make ends meet when they are no longer working. While the high ranking officials of the company were able to dump their stock in the last few days of the company's existence, the middle level and lower level workers, the people who had no idea of the financial disaster that lurked on the horizon, were locked out of selling their company stock and ended up losing most of if not all of their hard earned retirement funds.

Accordingly, it is incumbent on us in Congress to address this issue and to take the necessary steps, no matter how difficult they may be, to ensure that this never happens again. I strongly support efforts to do so.

However, Mr. Speaker, the bill we are voting on today does nothing to keep another ''Enron'' debacle from occurring today, or next month, or in years to come. The basic reforms that are needed are simply not there. True, this bill takes marginal actions, but these merely address the symptoms and not the core of the problems.

This bill would allow a dangerous situation to develop by allowing the investment firm that manages a company's pension plan to advise the employees on investment decisions that they should make. This is a fundamental conflict of interest and the classic example of the fox guarding the hen house.

The so-called Pension Protection Act also denies employees a voice on their own Pension Board. It is clear in the Enron scandal that the Enron Pension Trustees failed to take any actions at all to protect the savings of Enron employees. I believe it is critical that the Pension Board include some rank and file employees who have the interests of other employees at heart.

Also, Mr. Speaker, the bill we are considering today leaves employees locked into company stock for long periods of time, whether it is in their best interest to be there or not. And, just like the case in the Enron situation, this bill does nothing to let employees know when executives are ''dumping'' company stock.

But, I say to the employees of America, there is an alternative to this misguided legislation. Mr. RANGEL and Mr. MILLER are offering a substitute that addresses all these concerns and will take significant steps to ensure that your pension plans are safe and viable for your days of retirement.

The substitute require that retirement plan participants be notified within three days when any significant sales of company stock by company executives occurs. Hopefully, the employees will then be able to make their own judgments as to the necessity to sell their own stock.

The substitute also will no longer allow company executives to dump their stock while the employees are in a blackout period. In my mind, this was one of the most horrific examples of executive greed in the entire Enron scandal, and we must do whatever is necessary to ensure that this never occurs again.

The substitute also provides for independent financial advice for employees when company stock is offered as an investment option. And, it gives employees a voice on their Pension Board.

Mr. Speaker, I hear over and over again in this House the desire to allow individuals to have more control of their money, whether it be through massive tax cuts, or the creation of individual Social Security accounts, or other innumerable examples. Yet, this bill does not give employees any control over their money. It keeps control of their pensions in the hands of their employers.

This is the perfect vehicle to finally give the people more control of their hard earned money. Let's take the responsible step and pass the Rangel-Miller Substitute and make sure that employees' retirement accounts are protected.

Ms. KILPATRICK. Mr. Speaker, so the pattern continues. In October 2001, we provided $15 million to the airline industry following the September 11th attack but the Republican leadership did nothing to assist the rank-and-file workers who were laid off. In November 2001, the Republican leadership bailed out the insurance industry at $30 plus million, but did nothing for the rank-and-file workers. In February 2002, the Republican leadership secured big business with several tax breaks, but again, no real assistance for the rank-and-file worker.

Mr. Speaker, this pattern begs the question, ''who are we here to represent?'' According to the actions of the leadership, it would seem that we are to represent big business only. What about the rank-and-file workers who make up more than half of our country? Do they not deserve protection and security by the United States of America?

Today, we are attempting to pass a bill that purports to protect workers from future Enron debacles. Thousands of workers at Enron were left distraught and with little to no retirement savings. Executives, who knew of the situation, secured their assets. These employees lost well over $1 billion of their retirement savings because corporate management kept their employees in the dark about the actual net worth of Enron and the safety of the 401(k) plans.

The leadership claims to fix that situation with H.R. 3762. This bill proposes a 30-day notice prior to ''blackout'' periods for rank-and-file employees. This, supposedly, will allow employees to alter their 401(k) plans before the blackout. Executives, however, will have the option to adjust their 401(k) plans at anytime, even during the blackout. The bill also permits executives to move thousands of dollars from their stock plans without rank-and-file employees being notified of the drastic change. Additionally, executives would be the only individuals on the Pension Board deliberating the pension plans for the entire company. Amendments to include workers on the Board have been struck down.

This bill supports what occurred at Enron. We need a bill that works for the rank-and-file, not just for the corporate executive. We need extensive disclosure of pension information for the rank-and-file. We need independent, unbiased and accurate financial advice. We need rank-and-file representation on the Pension Boards so their voices will be heard. We need a level playing field during blackouts. If rank-and-file employees cannot touch their 401(k) plans, executives should be prohibited too. All of these suggestions are addressed in the Democratic substitute but not in the bill.

Mr. Speaker, it is due time that the leadership acknowledge the pension rights of workers and seek to secure them. For that reason, I will vote ''no'' on H.R. 3762. This is another attempt to protect the wealthy, with little concern for the worker. We can do much better, Mr. Speaker, and I await that day.

The SPEAKER pro tempore. Pursuant to House Resolution 386, the previous question is ordered on the bill, as amended, and on the amendment by the gentleman from California (Mr. GEORGE MILLER).

The question is on the amendment in the nature of a substitute offered by the gentleman from California (Mr. GEORGE MILLER).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. ANDREWS. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 187, nays 232, not voting 15, as follows:

[Roll No. 90]

YEAS—187

Abercrombie
Ackerman
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Becerra
Bentsen
Berkley
Berman
Berry
Bishop
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Boucher
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Carson (IN)
Clay
Clayton
Clement
Clyburn
Condit
Conyers
Costello
Coyne
Crowley
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frank
Frost
Gephardt
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Harman
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind (WI)
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Menendez
Miller, George
Mink
Mollohan
Moran (VA)
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Phelps
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NAYS—232

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Calvert
Camp
Cannon
Cantor
Capito
Cardin
Carson (OK)
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cox
Cramer
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCrery
McHugh
McInnis
McKeon
Mica
Millender-McDonald
Miller, Dan
Miller, Gary
Miller, Jeff
Moore
Moran (KS)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Pombo
Pomeroy
Portman
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Riley
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—15

Allen
Burton
Buyer
Callahan
Cooksey
Diaz-Balart
Ford
Jones (NC)
Meehan
Pitts
Pryce (OH)
Roukema
Ryan (WI)
Sessions
Traficant

□ 1548

Messrs. SKEEN, SMITH of Texas, EHLERS, HYDE, and TIBERI changed their vote from ''yea'' to ''nay.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated for:

Ms. MILLENDER-McDONALD. Mr. Speaker, I mistakenly voted ''no'' on rollcall 90, the Miller substitute. My intention was to vote ''yes.''

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The question is on engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. GEORGE MILLER OF CALIFORNIA

Mr. GEORGE MILLER of California. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. GEORGE MILLER of California. Mr. Speaker, yes, I am.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. GEORGE MILLER of California moves to recommit the bill H.R. 3762 to the Committee on Education and the Workforce with instructions to report the same back to the House promptly with the following amendment:

Add at the end thereof the following new section:

SEC. 501. TREATMENT OF CERTAIN FUNDED DEFERRED COMPENSATION PLANS FOR CORPORATE INSIDERS AS PENSION PLANS COVERED UNDER ERISA.

(a) INCLUSION IN DEFINITION OF PENSION PLAN.—Section 3(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(2)) is amended by adding at the end the following new subparagraph:

''(C)(i) The terms 'employee pension benefit plan' and 'pension plan' shall also include any arrangement providing for the deferral of compensation of a corporate insider of a corporation that is not otherwise a pension plan within the meaning of subparagraph (A), unless—

''(I) all amounts of compensation deferred under the arrangement,

''(II) all property and rights purchased with such amounts, and

''(III) all income attributable to such amounts, property, or rights,

remain (until made available to the corporate insider or other beneficiary under the arrangement) solely the property and rights of the employer (without being restricted to the provision of benefits under the arrangement), subject only to the claims of the employer's general creditors.

''(ii) For purposes of clause (i), the term 'corporate insider' means, in connection with a corporation, any individual who is subject to the requirements of section 16(a) of the Securities Exchange Act of 1934 with respect to such corporation.

''(iii) In the case of any arrangement that is a pension plan under clause (i)—

''(I) the corporation shall be treated as an employer (within the meaning of paragraph (5)) of the corporate insider,

''(II) the corporate insider shall be treated as an employee (within the meaning of paragraph (6)) of the corporation, and

''(III) the arrangement shall not be treated as an unfunded arrangement.''.

(b) COMPLIANCE WITH CERTAIN PARTICIPATION STANDARDS.—Section 202 of such Act (29 U.S.C. 1052) is amended by adding at the end the following new subsection:

''(c) An arrangement that is a pension plan under section 3(2)(C)(i) shall comply with the requirements of section 410 of the Internal Revenue Code of 1986 necessary for a trust forming a part of such plan to constitute a qualified trust under section 401(a) of such Code.''.

Mr. GEORGE MILLER of California (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. GEORGE MILLER) is recognized for 5 minutes in support of his motion to recommit.

Mr. GEORGE MILLER of California. Mr. Speaker, one of the things we learn from the Enron tragedy and one of the things that we have learned from Global Crossing and so many other companies that have started to fail or turned on bad times is that the corporate elite, the CEO and others, have 401(k) plans that are absolutely protected. Their ability to collect on their pension plans has nothing to do with the financial health of the company, how well the company does or how poorly the company does. Yet we see the employees with their 401(k) plans; they are absolutely tied to how the company does. And in many instances, they are locked into the stock of the company.

What we are seeing here is what the President said when he went to North Carolina, if it is good for the captain, it is good for the crew. We cannot have the executives ensuring their pension plans so that they walk off with millions and tens of millions of dollars, lifetime pensions, and the employees have got to go to bankruptcy court and hope that there is something left over for them. If we insure one, we insure others. If preference is given to one, preference is given to the other.

Mr. Speaker, it is a very important principle. The theory of executive compensation is that we are rewarding an executive, one, for how well their company does. Yet we see time and again executive compensation has nothing to do with the performance of the company. Their pension plans are guaranteed; and yet the employee must be more productive, must do all that they can to make that company perform so that their stock is worth what it should be in their retirement plans.

We think that they ought to be treated alike, and this is an opportunity to vote to make sure that there is parity among the elite executives of a corporation with respect to pension plans, and among the employees, that they not get left out.

It is terribly important that as the executives walk off stage with tens of millions of dollars, that the employees not be left holding the bag; and that is the purpose of this amendment.

Mr. Speaker, I yield to the gentleman from California (Mr. MATSUI), who offered this in the Committee on Ways and Means.

Mr. MATSUI. Mr. Speaker, I have to say what happened with the Enron situation was not unique because this is going to happen more and more. Essentially what has happened is CEOs and top management people in many corporations have set up a plan that basically violates the principles of our pension laws.

Ken Lay, for example, was able to get deferred compensation, that is, he did not have to pay any taxes on his retirement program. Yet when Enron filed bankruptcy, he was able to collect about $2 million from that plan, whereas every other Enron employee lost valuable assets in their 401(k) plan. This would merely tighten that up and make it consistent where Members of both the House and the Senate, and certainly Democrats and Republicans would not want anyone to be able to defer taxes, and at the same time be able to get a fully funded program that is protected from bankruptcy.

Mr. Speaker, this has to be tightened up. This is closing a loophole. This is something that we cannot allow to happen as we see more and more of these Enron scandals occur.

Mr. GEORGE MILLER of California. Mr. Speaker, all of us in the Committee on Financial Services, the Committee on Energy and Commerce, and the Committee on Education and the Workforce have listened to these workers who have had their retirement plans destroyed, workers who are 55, 59, 62 years old; their plans are destroyed, and they are now dependent on their children. The life they thought they were going to lead, they are not going to be able to.

Yet Ken Lay, who looted this company and destroyed these people's retirement nest egg walks off stage with $475,000 a year in guaranteed income and a multimillion dollar house in Texas that is protected under bankruptcy law.

Somehow there has to be parity and fairness. This is our chance to repair what is lacking in the Republican bill and provide fairness and protection for the employee, the same as the CEO and the chief operating officers of this corporation get, to make sure that employees are not left holding the bag.

Mr. Speaker, I would urge an ''aye'' vote on the motion to recommit.

Mr. BOEHNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore. The gentleman from Ohio (Mr. BOEHNER) is recognized for 5 minutes in opposition to the motion to recommit.

Mr. BOEHNER. Mr. Speaker, this is a rather unusual motion to recommit. It does not change the bill and allow it to move on; it actually would send the bill back to the committee. After all of the work that we have done in two committees, and all of the work we have done here, the last think we want to do is send this bill off to a black hole.

But more importantly, what the gentleman from California (Mr. GEORGE MILLER) is suggesting is that we try to change IRS code and bankruptcy code through ERISA, trying to get at the top end of employees who have deferred compensation plans.

All of us know that deferred compensation plans are not tax-qualified pension plans. They are payment plans for high-level executives. I could not agree more with the gentleman from California (Mr. MATSUI) that what Ken Lay and other executives at Enron did was absolutely wrong. But to try to change bankruptcy protections through ERISA is not going to change the employees who we are attempting to help in the underlying bill.

Mr. Speaker, I would ask my colleagues, considering the time, that we do not want to send this bill off to oblivion. We want to move this process on. This is not a very good idea and will not help the employees that we are attempting to help. I urge my colleagues to vote ''no.''

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. GEORGE MILLER of California. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the period of time within which a vote by electronic device will be taken on the question of the passage of the bill.

The vote was taken by electronic device, and there were—ayes 204, noes 212, not voting 19, as follows:

[Roll No. 91]

AYES—204

Abercrombie	Clyburn	Gordon
Ackerman	Condit	Green (TX)
Andrews	Conyers	Gutierrez
Baca	Costello	Hall (OH)
Baird	Coyne	Harman
Baldacci	Cramer	Hastings (FL)
Baldwin	Crowley	Hill
Barcia	Cummings	Hilliard
Barrett	Davis (CA)	Hinchey
Becerra	Davis (FL)	Hinojosa
Bentsen	Davis (IL)	Hoeffel
Berkley	DeFazio	Holden
Berman	DeGette	Holt
Berry	Delahunt	Honda
Bishop	DeLauro	Hooley
Blagojevich	Deutsch	Inslee
Blumenauer	Dicks	Israel
Bonior	Dingell	Jackson (IL)
Borski	Doggett	Jackson-Lee (TX)
Boswell	Dooley	Jefferson
Boucher	Doyle	John
Boyd	Edwards	Johnson, E. B.
Brady (PA)	Engel	Jones (OH)
Brown (FL)	Eshoo	Kanjorski
Brown (OH)	Etheridge	Kaptur
Capps	Evans	Kennedy (RI)
Capuano	Farr	Kildee
Cardin	Fattah	Kilpatrick
Carson (IN)	Filner	Kind (WI)
Carson (OK)	Frank	Kleczka
Clay	Frost	Kucinich
Clayton	Gephardt	LaFalce
Clement	Gonzalez	

Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Lynch
Maloney (CT)
Maloney (NY)
Markey
Mascara
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McKinney
McNulty
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Ross
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Shows
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Thurman
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Waters
Watson (CA)
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—212

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barr
Bartlett
Barton
Bass
Bereuter
Biggert
Bilirakis
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Brady (TX)
Brown (SC)
Bryant
Burr
Calvert
Camp
Cannon
Cantor
Capito
Castle
Chabot
Chambliss
Coble
Collins
Combest
Cox
Crane
Crenshaw
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Gutknecht
Hall (TX)
Hansen
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hilleary
Hobson
Hoekstra
Horn
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
Kerns
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
McCrery
McHugh
McInnis
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pombo
Portman
Putnam
Quinn
Ramstad
Regula
Rehberg
Reynolds
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skeen
Smith (MI)
Smith (NJ)
Smith (TX)
Souder
Stearns
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiberi
Toomey
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)

NOT VOTING—19

Allen
Burton
Buyer
Callahan
Cooksey
Diaz-Balart
Ford
Hoyer
Meehan
Meek (FL)
Pryce (OH)
Radanovich
Riley
Roukema
Ryan (WI)
Sessions
Tiahrt
Traficant
Young (FL)

□ 1616

Mr. LUCAS of Kentucky changed his vote from ‘‘aye’’ to ‘‘no.’’

Ms. JACKSON-LEE of Texas changed her vote from ‘‘no’’ to ‘‘aye.’’

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. TIAHRT. Mr. Speaker on rollcall No. 91, I was unavoidably detained. Had I been present, I would have voted ‘‘no.’’

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GEORGE MILLER of California. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 255, noes 163, not voting 17, as follows:

[Roll No. 92]

AYES—255

Aderholt
Akin
Armey
Bachus
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Bentsen
Bereuter
Berry
Biggert
Bilirakis
Bishop
Blunt
Boehlert
Boehner
Bonilla
Bono
Boozman
Boucher
Boyd
Brady (TX)
Brown (SC)
Bryant
Burr
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Castle
Chabot
Chambliss
Clement
Coble
Collins
Combest
Condit
Cox
Cramer
Crane
Crenshaw
Crowley
Cubin
Culberson
Cunningham
Davis, Jo Ann
Davis, Tom
Deal
DeLay
DeMint
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ferguson
Flake
Fletcher
Foley
Forbes
Fossella
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Graves
Green (WI)
Greenwood
Grucci
Hall (OH)
Hall (TX)
Hansen
Harman
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Hostettler
Houghton
Hulshof
Hunter
Hyde
Isakson
Issa
Istook
Jenkins
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kerns
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
LaHood
Larsen (WA)
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Luther
Maloney (CT)
Manzullo
Matheson
McCarthy (NY)
McCrery
McHugh
McInnis
McIntyre
McKeon
Mica
Miller, Dan
Miller, Gary
Miller, Jeff
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Osborne
Ose
Otter
Oxley
Pence
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pitts
Platts
Pombo
Pomeroy
Portman
Price (NC)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryun (KS)
Saxton
Schaffer
Schrock
Sensenbrenner
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shows
Shuster
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Stearns
Stenholm
Stump
Sullivan
Sununu
Sweeney
Tancredo
Tanner
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Thune
Tiahrt
Tiberi
Toomey
Turner
Udall (CO)
Upton
Vitter
Walden
Walsh
Wamp
Watkins (OK)
Watts (OK)
Weldon (FL)
Weldon (PA)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NOES—163

Abercrombie
Ackerman
Andrews
Baca
Baird
Baldacci
Baldwin
Barrett
Becerra
Berkley
Berman
Blagojevich
Blumenauer
Bonior
Borski
Boswell
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Dicks
Dingell
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Frank
Frost
Gephardt
Gonzalez
Green (TX)
Gutierrez
Gutknecht
Hastings (FL)
Hilliard
Hinchey
Hoeffel
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kleczka
Kucinich
LaFalce
Lampson
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Maloney (NY)
Markey
Mascara
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
McKinney
McNulty
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Mink
Mollohan
Moore
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Rahall
Rangel
Reyes
Rivers
Rodriguez
Roemer
Rothman
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Schakowsky
Schiff
Scott
Serrano
Sherman
Slaughter
Solis
Spratt
Stark
Strickland
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Thurman
Tierney

Towns	Waters	Weiner
Udall (NM)	Watson (CA)	Wexler
Velazquez	Watt (NC)	Woolsey
Visclosky	Waxman	Wynn

NOT VOTING—17

Allen	Ford	Riley
Burton	Horn	Roukema
Buyer	Meehan	Ryan (WI)
Callahan	Meek (FL)	Sessions
Cooksey	Paul	Traficant
Diaz-Balart	Pryce (OH)	

□ 1625

Mr. STRICKLAND changed his vote from ''aye'' to ''no.''

Mr. LUTHER changed his vote from ''no'' to ''aye.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. BURTON of Indiana. Mr. Speaker, during rollcall votes Nos. 90, 91, and 92, I was unavailable due to an illness in my family. Had I been here I would have voted ''no'' on rollcall votes Nos. 90 and 91 and ''yea'' on rollcall vote No. 92.

LEGISLATIVE PROGRAM

(Ms. PELOSI asked and was given permission to address the House for 1 minute.)

Ms. PELOSI. Mr. Speaker, I take this time for the purpose of inquiring about the schedule for next week.

I am pleased to yield to the distinguished gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Speaker, I thank the gentlewoman for yielding.

I am pleased to announce that the House has now completed its legislative business for the week. The House will next meet for legislative business on Tuesday, April 16, at 12:30 p.m. for morning hour, and 2 o'clock p.m. for legislative business. The House will consider a number of measures under suspension of the rules, a list of which will be distributed to Members' offices tomorrow. On Tuesday, recorded votes will be postponed until 6:30 p.m.

For Wednesday and Thursday, the majority leader has scheduled H.R. 476, the Child Custody Protection Act. The majority leader is also working with the chairman of the Committee on Ways and Means to bring legislation to the floor next week to repeal the sunsets on the Bush tax relief plan that was passed by Congress last year.

Ms. PELOSI. Mr. Speaker, reclaiming my time, I thank the gentleman for the information. I would just like to inquire if the gentleman knows which day the tax bill will be scheduled?

Mr. PORTMAN. If the gentlewoman will yield further, it looks as though the tax bill will be scheduled for Thursday, and the child custody bill will likely be scheduled for Wednesday.

Ms. PELOSI. Will the legislation on pensions from the Committee on Financial Services come to the floor next week?

Mr. PORTMAN. It is my understanding that the Committee on Financial Services marked that legislation up today. It is being looked at now. It is unlikely to come up next week. More likely it would come up in later weeks. But we are still looking at the legislation.

Ms. PELOSI. Is there any other legislation that is expected to come to the floor, apart from the two bills that the gentleman mentioned?

Mr. PORTMAN. There is no other legislation, other than the suspensions on Tuesday, that is anticipated at this time.

Ms. PELOSI. Mr. Speaker, I thank the gentleman for the information.

ADJOURNMENT TO MONDAY, APRIL 15, 2002

Mr. PORTMAN. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at 2 p.m. on Monday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

HOUR OF MEETING ON TUESDAY, APRIL 16, 2002

Mr. PORTMAN. Mr. Speaker, I ask unanimous consent that when the House adjourns on Monday, April 15, 2002, it adjourn to meet at 12:30 p.m. on Tuesday, April 16, 2002, for morning hour debates.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. PORTMAN. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 3598

Mr. WELDON of Pennsylvania. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 3598.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

PERMITTING OFFICIAL PHOTOGRAPHS OF HOUSE WHILE IN SESSION

Mr. DOOLITTLE. Mr. Speaker, I ask unanimous consent that the Committee on House Administration be discharged from further consideration of the resolution (H. Res. 378) permitting official photographs of the House of Representatives to be taken while the House is in actual session, and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the resolution, as follows:

H. RES. 378

Resolved, That at a time designated by the Speaker of the House of Representatives, official photographs of the House may be taken while the House is in actual session. Payment for the costs associated with taking, preparing, and distributing such photographs may be made from the applicable accounts of the House of Representatives.

The resolution was agreed to.

A motion to reconsider was laid on the table.

CONGRATULATING UNIVERSITY OF MARYLAND FOR WINNING 2002 NCAA MEN'S BASKETBALL CHAMPIONSHIP

Mr. MCKEON. Mr. Speaker, I ask unanimous consent that the Committee on Education and the Workforce be discharged from further consideration of the resolution (H. Res. 383) congratulating the University of Maryland for winning the 2002 National Collegiate Athletic Association men's basketball championship, and ask for its immediate consideration in the House.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. HOYER. Mr. Speaker, reserving the right to object, of course I not only will not object, but will enthusiastically support this resolution.

But I rise, as everyone I am sure in the Chamber can understand, with great pride in 12 young men and Coach Gary Williams, who had an extraordinary season; who won the national championship for the first time in the school's history; who won the Atlantic Coast Conference championship for the first time in 22 years; who beat teams who had won 15 national championships in Kentucky, in Indiana and in Kansas; who overcame personal adversity as well as they played throughout the season; who went 15 and 0 at home, one of the first times that any team has done that in Maryland's history, and in doing so, crowned an extraordinary history for Cole Field House, which is now going to be closed, at least for the basketball team, who will play in a new arena next year.

All in all, it was an extraordinary season for extraordinary young men and for an extraordinary coach. Gary Williams has coached for 30 years now,