

Union Calendar No. 233

107TH CONGRESS
2^D SESSION

H. R. 3762

[Report No. 107-383, Part I]

To amend title I 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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 2002

Mr. BOEHNER (for himself, Mr. SAM JOHNSON of Texas, Mr. OXLEY, Mr. FLETCHER, Mr. PETRI, Mrs. ROUKEMA, Mr. McKEON, Mr. CASTLE, Mr. UPTON, Mr. TANCREDO, Mrs. BIGGERT, Mr. KELLER, Mr. CULBERSON, Mr. CALVERT, Mr. KING, Mr. LATOURETTE, Mr. HILL, Mr. REHBERG, Mr. BOOZMAN, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Education and the Workforce, and in addition to the Committees on Ways and Means, and Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

APRIL 4, 2002

Reported from the Committee on Education and the Workforce with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

APRIL 4, 2002

Referral to the Committees on Ways and Means and Financial Services extended until April 9, 2002

APRIL 9, 2002

Additional sponsors: Mrs. CAPITO, Mr. BARTLETT of Maryland, Mr. LATHAM, Mr. TIBERI, Mr. GIBBONS, Mr. GREENWOOD, Mr. REYNOLDS, Mr. ISAKSON, Ms. HART, Mr. SENSENBRENNER, Mr. GREEN of Wisconsin, Mr. WALSH, Mr. KOLBE, and Mr. SHAYS

APRIL 9, 2002

The Committees on Ways and Means and Financial Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on February 14, 2002]

A BILL

To amend title I 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.

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

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

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

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

Sec. 1. Short title.

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. Limitations on restrictions of investments in 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 fiduciary consultants for individual account plans.
Sec. 107. Insider trades during pension plan suspension periods prohibited.
Sec. 108. Effective dates of title and related rules.

TITLE II—ADDITIONAL PROVISIONS

- Sec. 201. Amendments to Retirement Protection Act of 1994.*
Sec. 202. Notice and consent period regarding distributions.
Sec. 203. Annual report dissemination.
Sec. 204. Technical corrections to Saver Act.
Sec. 205. Missing participants.
Sec. 206. Reduced pbgc premium for new plans of small employers.
Sec. 207. Reduction of additional pbgc premium for new and small plans.
Sec. 208. Authorization for PBGC to pay interest on premium overpayment refunds.
Sec. 209. Substantial owner benefits in terminated plans.
Sec. 210. Benefit suspension notice.
Sec. 211. Studies.
Sec. 212. Interest rate range for additional funding requirements.
Sec. 213. Provisions relating to plan amendments.

1 ***TITLE I—IMPROVEMENTS IN***
2 ***PENSION SECURITY***

3 ***SEC. 101. PERIODIC PENSION BENEFITS STATEMENTS.***

4 *(a) REQUIREMENTS.—*

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

8 *“(a)(1)(A) The administrator of an individual account*
9 *plan shall furnish a pension benefit statement—*

10 *“(i) to each plan participant at least annually,*

11 *“(ii) to each plan beneficiary upon written re-*
12 *quest, and*

1 “(iii) in the case of an applicable individual ac-
2 count plan, to each plan participant (and to each
3 beneficiary with a right to direct investments) at least
4 quarterly.

5 “(B) The administrator of a defined benefit plan shall
6 furnish a pension benefit statement—

7 “(i) at least once every 3 years to each partici-
8 pant with a nonforfeitable accrued benefit who is em-
9 ployed by the employer maintaining the plan at the
10 time the statement is furnished to participants, and

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

13 “(2) A pension benefit statement under paragraph
14 (1)—

15 “(A) shall indicate, on the basis of the latest
16 available information—

17 “(i) the total benefits accrued, and

18 “(ii) the nonforfeitable pension benefits, if
19 any, which have accrued, or the earliest date on
20 which benefits will become nonforfeitable,

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

23 “(C) may be provided in written form or in elec-
24 tronic or other appropriate form to the extent that
25 such form is reasonably accessible to the recipient.

1 “(3)(A) *In the case of a defined benefit plan, the re-*
2 *quirements of paragraph (1)(B)(i) shall be treated as met*
3 *with respect to a participant if the administrator provides*
4 *the participant at least once each year with notice of the*
5 *availability of the pension benefit statement and the ways*
6 *in which the participant may obtain such statement. Such*
7 *notice shall be provided in written, electronic, or other ap-*
8 *propriate form, and may be included with other commu-*
9 *nications to the participant if done in a manner reasonably*
10 *designed to attract the attention of the participant.*

11 “(B) *The Secretary may provide that years in which*
12 *no employee or former employee benefits (within the mean-*
13 *ing of section 410(b) of the Internal Revenue Code of 1986)*
14 *under the plan need not be taken into account in deter-*
15 *mining the 3-year period under paragraph (1)(B)(i).”.*

16 (2) *CONFORMING AMENDMENTS.—*

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

20 (B) *Section 105(b) of such Act (29 U.S.C.*
21 *1025(b)) is amended to read as follows:*

22 “(b) *In no case shall a participant or beneficiary of*
23 *a plan be entitled to more than one statement described in*
24 *clause (i) or (ii) of subsection (a)(1)(A) or clause (i) or (ii)*
25 *of subsection (a)(1)(B), whichever is applicable, in any 12-*

1 month period. If such report is required under subsection
2 (a) to be furnished at least quarterly, the requirements of
3 the preceding sentence shall be applied with respect to each
4 quarter in lieu of the 12-month period.”.

5 (3) *EFFECTIVE DATE OF SUBSECTION.*—The
6 amendments made by this subsection shall take effect
7 for plan years beginning on or after January 1, 2003.

8 (b) *INFORMATION REQUIRED FROM APPLICABLE INDIVIDUAL ACCOUNT PLANS.*—Section 105 of such Act (as
9 amended by subsection (a)) is amended further by adding
10 at the end the following new subsection:

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

15 “(A) the value of investments allocated to the in-
16 dividual account, including the value of any assets
17 held in the form of employer securities, without re-
18 gard to whether such securities were contributed by
19 the plan sponsor or acquired at the direction of the
20 plan or of the participant or beneficiary, and an ex-
21 planation of any limitations or restrictions on the
22 right of the participant or beneficiary to direct an in-
23 vestment; and

24 “(B) an explanation, written in a manner cal-
25 culated to be understood by the average plan partici-

1 *part, of the importance, for the long-term retirement*
2 *security of participants and beneficiaries, of a well-*
3 *balanced and diversified investment portfolio, includ-*
4 *ing a discussion of the risk of holding substantial por-*
5 *tions of a portfolio in the security of any one entity,*
6 *such as employer securities.*

7 *“(2) The value of any employer securities that are not*
8 *readily tradable on an established securities market that is*
9 *required to be reported under paragraph (1)(A) may be de-*
10 *termined by using the most recent valuation of the employer*
11 *securities.*

12 *“(3) The Secretary shall issue guidance and model no-*
13 *tices which meet the requirements of this subsection.”.*

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

17 *“(42) The term ‘applicable individual account plan’*
18 *means any individual account plan, except that such term*
19 *does not include an employee stock ownership plan (within*
20 *the meaning of section 4975(e)(7) of the Internal Revenue*
21 *Code of 1986) unless there are any contributions to such*
22 *plan (or earnings thereunder) held within such plan that*
23 *are subject to subsection (k)(3) or (m)(2) of section 401 of*
24 *the Internal Revenue Code of 1986.”.*

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

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

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

8 (3) by inserting after paragraph (6) of sub-
9 section (c) the following new paragraph:

10 “(7) The Secretary may assess a civil penalty against
11 any plan administrator of up to \$1,000 a day from the
12 date of such plan administrator’s failure or refusal to pro-
13 vide participants or beneficiaries with a benefit statement
14 on at least a quarterly basis in accordance with section
15 105(a)(1)(A)(iii).”.

16 (e) *MODEL STATEMENTS.*—The Secretary of Labor
17 shall, not later than January 1, 2003, issue initial guidance
18 and a model benefit statement, written in a manner cal-
19 culated to be understood by the average plan participant,
20 that may be used by plan administrators in complying with
21 the requirements of section 105 of the Employee Retirement
22 Income Security Act of 1974. The Secretary may promul-
23 gate such interim final rules as the Secretary determines
24 are appropriate to carry out the amendments made by this
25 section.

1 **SEC. 102. PROTECTION FROM SUSPENSIONS, LIMITATIONS,**
2 **OR RESTRICTIONS ON ABILITY OF PARTICI-**
3 **PANT OR BENEFICIARY TO DIRECT OR DIVER-**
4 **SIFY PLAN ASSETS.**

5 (a) NOTICE REQUIREMENTS.—

6 (1) IN GENERAL.—Section 101 of the Employee
7 Retirement Income Security Act of 1974 (29 U.S.C.
8 1021) is amended—

9 (A) by redesignating the second subsection
10 (h) as subsection (j); and

11 (B) by inserting after the first subsection
12 (h) the following new subsection:

13 “(i) NOTICE OF SUSPENSION, LIMITATION, OR RE-
14 STRICTION ON ABILITY OF PARTICIPANT OR BENEFICIARY
15 TO DIRECT INVESTMENTS IN INDIVIDUAL ACCOUNT
16 PLAN.—

17 “(1) IN GENERAL.—In the case of any action
18 having the effect of temporarily suspending, limiting,
19 or restricting any ability of participants or bene-
20 ficiaries under an applicable individual account
21 plan, which is otherwise available under the terms of
22 such plan, to direct or diversify assets credited to
23 their accounts, if such suspension, limitation, or re-
24 striction is for any period of more than 3 consecutive
25 calendar days, the plan administrator shall—

1 “(A) in advance of taking such action, de-
2 termine, in accordance with the requirements of
3 part 4, that the expected period of suspension,
4 limitation, or restriction is reasonable, and

5 “(B) after making the determination under
6 subparagraph (A) and in advance of taking such
7 action, notify the plan participants and bene-
8 ficiaries of such action in accordance with this
9 subsection.

10 “(2) NOTICE REQUIREMENTS.—

11 “(A) IN GENERAL.—The notices described in
12 paragraph (1) shall be written in a manner cal-
13 culated to be understood by the average plan
14 participant and shall include—

15 “(i) the reasons for the suspension,
16 limitation, or restriction,

17 “(ii) an identification of the invest-
18 ments affected,

19 “(iii) the expected period of the suspen-
20 sion, limitation, or restriction,

21 “(iv) a statement that the plan admin-
22 istrator has evaluated the reasonableness of
23 the expected period of suspension, limita-
24 tion, or restriction,

1 “(v) a statement that the participant
2 or beneficiary should evaluate the appro-
3 priateness of their current investment deci-
4 sions in light of their inability to direct or
5 diversify assets credited to their accounts
6 during the expected period of suspension,
7 limitation, or restriction, and

8 “(vi) such other matters as the Sec-
9 retary may include in the model notices
10 issued under subparagraph (E).

11 “(B) *PROVISION OF NOTICE.*—*Except as*
12 *otherwise provided in this subsection, notices de-*
13 *scribed in paragraph (1) shall be furnished to all*
14 *participants and beneficiaries under the plan at*
15 *least 30 days in advance of the action sus-*
16 *pending, limiting, or restricting the ability of*
17 *the participants or beneficiaries to direct or di-*
18 *versify assets.*

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

21 “(i) a fiduciary of the plan determines,
22 in writing, that a deferral of the suspension,
23 limitation, or restriction would violate the
24 requirements of subparagraph (A) or (B) of
25 section 404(a)(1), or

1 “(ii) the inability to provide the 30-
2 day advance notice is due to events that
3 were unforeseeable or circumstances beyond
4 the reasonable control of the plan adminis-
5 trator,

6 subparagraph (B) shall not apply, and the notice
7 shall be furnished to all participants and bene-
8 ficiaries under the plan as soon as reasonably
9 possible under the circumstances.

10 “(D) WRITTEN NOTICE.—The notice re-
11 quired to be provided under this subsection shall
12 be in writing, except that such notice may be in
13 electronic or other form to the extent that such
14 form is reasonably accessible to the recipient.

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

18 “(3) EXCEPTION FOR SUSPENSIONS, LIMITA-
19 TIONS, OR RESTRICTIONS WITH LIMITED APPLICA-
20 BILITY.—In any case in which the suspension, limita-
21 tion, or restriction described in paragraph (1)—

22 “(A) applies only to 1 or more individuals,
23 each of whom is the participant, an alternate
24 payee (as defined in section 206(d)(3)(K)), or
25 any other beneficiary pursuant to a qualified do-

1 *mestic relations order (as defined in section*
2 *206(d)(3)(B)(i)), or*

3 *“(B) applies only to 1 or more participants*
4 *or beneficiaries in connection with a merger, ac-*
5 *quisition, divestiture, or similar transaction in-*
6 *volving the plan or plan sponsor and occurs sole-*
7 *ly in connection with becoming or ceasing to be*
8 *a participant or beneficiary under the plan by*
9 *reason of such merger, acquisition, divestiture, or*
10 *transaction,*

11 *the requirement of this subsection that the notice be*
12 *provided to all participants and beneficiaries shall be*
13 *treated as met if the notice required under paragraph*
14 *(1) is provided to all the individuals referred to in*
15 *subparagraph (A) or (B) to whom the suspension,*
16 *limitation, or restriction applies as soon as reason-*
17 *ably practicable in advance of the suspension, limita-*
18 *tion, or restriction.*

19 *“(4) CHANGES IN EXPECTED PERIOD OF SUSPEN-*
20 *SION, LIMITATION, OR RESTRICTION.—If, following the*
21 *furnishing of the notice pursuant to this subsection,*
22 *there is a change in the expected period of the suspen-*
23 *sion, limitation, or restriction on the right of a par-*
24 *ticipant or beneficiary to direct or diversify assets,*
25 *the administrator shall provide affected participants*

1 *and beneficiaries notice of the change as soon as rea-*
2 *sonably practicable in advance of the change. Such*
3 *notice shall meet the requirements of subparagraphs*
4 *(A) and (D) of paragraph (2) in relation to the ex-*
5 *tended suspension, limitation, or restriction.*

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

11 “(6) *GUIDANCE AND MODEL NOTICES.—The Sec-*
12 *retary shall issue guidance and model notices which*
13 *meet the requirements of this subsection.”*

14 (2) *ISSUANCE OF INITIAL GUIDANCE AND MODEL*
15 *NOTICE.—The Secretary of Labor shall issue initial*
16 *guidance and a model notice pursuant to section*
17 *101(i)(6) of the Employee Retirement Income Secu-*
18 *rity Act of 1974 (as added by this subsection) not*
19 *later than January 1, 2003. The Secretary may pro-*
20 *mulgate such interim final rules as the Secretary de-*
21 *termines are appropriate to carry out the amend-*
22 *ments made by this section.*

23 (b) *CIVIL PENALTIES FOR FAILURE TO PROVIDE NO-*
24 *TICE.—Section 502 of such Act (as amended by section*
25 *2(b)) is amended further—*

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

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

5 (3) by inserting after paragraph (7) of sub-
6 section (c) the following new paragraph:

7 “(8) The Secretary may assess a civil penalty against
8 a plan administrator of up to \$100 a day from the date
9 of the plan administrator’s failure or refusal to provide no-
10 tice to participants and beneficiaries in accordance with
11 section 101(i). For purposes of this paragraph, each viola-
12 tion with respect to any single participant or beneficiary,
13 shall be treated as a separate violation.”.

14 (c) *INAPPLICABILITY OF RELIEF FROM FIDUCIARY LI-*
15 *ABILITY DURING SUSPENSION OF ABILITY OF PARTICIPANT*
16 *OR BENEFICIARY TO DIRECT INVESTMENTS.*—Section
17 404(c)(1) of such Act (29 U.S.C. 1104(c)(1)) is amended—

18 (1) by redesignating subparagraphs (A) and (B)
19 as clauses (i) and (ii), respectively, and by inserting
20 “(A)” after “(c)(1)”;

21 (2) in subparagraph (A)(ii) (as redesignated by
22 paragraph (1)), by inserting before the period the fol-
23 lowing: “, except that this clause shall not apply in
24 connection with such participant or beneficiary for
25 any period during which the ability of such partici-

1 *part or beneficiary to direct the investment of the as-*
2 *sets in his or her account is suspended by a plan*
3 *sponsor or fiduciary”; and*

4 *(3) by adding at the end the following new sub-*
5 *paragraphs:*

6 *“(B) If the person referred to in subparagraph (A)(ii)*
7 *authorizing a suspension meets the requirements of this title*
8 *in connection with authorizing the suspension, such person*
9 *shall not be liable under this title for any loss occurring*
10 *during the suspension as a result of any exercise by the*
11 *participant or beneficiary of control over assets in his or*
12 *her account prior to the suspension. Matters to be consid-*
13 *ered in determining whether such person has satisfied the*
14 *requirements of this title include whether such person—*

15 *“(i) has considered the reasonableness of the ex-*
16 *pected period of the suspension as required under sec-*
17 *tion 101(i)(1)(A),*

18 *“(ii) has provided the notice required under sec-*
19 *tion 101(i)(1)(B), and*

20 *“(iii) has acted solely in the interests of plan*
21 *participants and beneficiaries in determining to enter*
22 *into the suspension.*

23 *“(C) Any limitation or restriction that may govern the*
24 *frequency of transfers between investment vehicles shall not*
25 *be treated as a suspension referred to in subparagraph*

1 (A)(ii) to the extent such limitation or restriction is dis-
2 closed to participants or beneficiaries through the summary
3 plan description or materials describing specific investment
4 alternatives under the plan.”.

5 **SEC. 103. INFORMATIONAL AND EDUCATIONAL SUPPORT**
6 **FOR PENSION PLAN FIDUCIARIES.**

7 Section 404 of the Employee Retirement Income Secu-
8 rity Act of 1974 (29 U.S.C. 1104) is amended by adding
9 at the end the following new subsection:

10 “(e) The Secretary shall establish a program under
11 which information and educational resources shall be made
12 available on an ongoing basis to persons serving as fidu-
13 ciaries under employee pension benefit plans so as to assist
14 such persons in diligently and effectively carrying out their
15 fiduciary duties in accordance with this part.”.

16 **SEC. 104. LIMITATIONS ON RESTRICTIONS OF INVEST-**
17 **MENTS IN EMPLOYER SECURITIES.**

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

20 (1) IN GENERAL.—Section 407 of the Employee
21 Retirement Income Security Act of 1974 (29 U.S.C.
22 1107) is amended by adding at the end the following
23 new subsection:

24 “(g)(1) An applicable individual account plan which
25 holds employer securities that are readily tradable on an

1 *established securities market may not acquire or hold any*
2 *employer securities with respect to which there is any re-*
3 *striction on divestment by a participant or beneficiary, un-*
4 *less the plan provides that the restriction—*

5 “(A) *is not applicable on or after a date which*
6 *is not later than the date on which the participant*
7 *has completed 3 years of service (as defined in section*
8 *203(b)(2)) with the employer or (if the plan so pro-*
9 *vides) 3 years of participation (as defined in section*
10 *204(b)(4)) in the plan, or*

11 “(B) *is not applicable, with respect to any em-*
12 *ployer security allocated to the individual account*
13 *during any calendar quarter, after a date which is*
14 *not later than 3 years after the end of such quarter.*

15 “(2)(A) *For purposes of paragraph (1), the term ‘re-*
16 *striction on divestment’ includes—*

17 “(i) *any failure to offer a broad range of invest-*
18 *ment alternatives (as may be determined by the Sec-*
19 *retary) to which a participant or beneficiary may di-*
20 *rect the proceeds from the divestment of employer se-*
21 *curities, and*

22 “(ii) *any restriction on the ability of a partici-*
23 *part or beneficiary to choose from a broad range of*
24 *otherwise available investment options (as may be de-*
25 *termined by the Secretary) to which such proceeds*

1 *may be so directed, other than a restriction limiting*
2 *such ability to so choose to a periodic, reasonable op-*
3 *portunity to so choose occurring no less frequently*
4 *than on a quarterly basis.”.*

5 (2) *CLERICAL AMENDMENTS.—The heading for*
6 *section 407 of such Act is amended by striking “10*
7 *PERCENT” and the item relating to such section in the*
8 *table of contents in section 1 of such Act is amended*
9 *by striking “10 percent”.*

10 (3) *TRANSITION RULE.—*

11 (A) *IN GENERAL.—The amendments made*
12 *by this subsection shall apply only with respect*
13 *to assets acquired on or after the effective date of*
14 *such amendments. In the case of any applicable*
15 *individual account plan which, on such effective*
16 *date, holds assets acquired before such date on*
17 *which there is any restriction on divestment by*
18 *a participant or beneficiary, such plan shall, be-*
19 *fore the applicable effective date, provide for the*
20 *removal of all such restrictions on the applicable*
21 *percentage of such assets held on such date.*

22 (B) *APPLICABLE PERCENTAGE.—For pur-*
23 *poses of subparagraph (A), the applicable per-*
24 *centage shall be as follows:*

Plan years beginning in:	Applicable percentage:
2003	20 percent
2004	40 percent
2005	60 percent
2006	80 percent
2007 or thereafter	100 percent.

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

3 **(1) IN GENERAL.**—*Subsection (a) of section 401*
4 *of the Internal Revenue Code of 1986 (relating to re-*
5 *quirements for qualification) is amended by inserting*
6 *after paragraph (34) the following new paragraph:*

7 **“(35) LIMITATIONS ON RESTRICTIONS UNDER AP-**
8 **PLICABLE DEFINED CONTRIBUTION PLANS ON INVEST-**
9 **MENTS IN EMPLOYER SECURITIES.**—

10 **“(A) IN GENERAL.**—*A trust forming a part*
11 *of an applicable defined contribution plan shall*
12 *not constitute a qualified trust under this sub-*
13 *section if the plan acquires or holds any em-*
14 *ployer securities with respect to which there is*
15 *any restriction on divestment by a participant*
16 *or beneficiary on or after the date on which the*
17 *participant has completed 3 years of participa-*
18 *tion (as defined in section 411(b)(4)) under the*
19 *plan or (if the plan so provides) 3 years of serv-*
20 *ice (as defined in section 411(a)(5)) with the em-*
21 *ployer.*

1 “(B) *DEFINITIONS.*—*For purposes of sub-*
2 *paragraph (A)—*

3 “(i) *APPLICABLE DEFINED CONTRIBU-*
4 *TION PLAN.*—*The term ‘applicable defined*
5 *contribution plan’ means any defined con-*
6 *tribution plan, except that such term does*
7 *not include an employee stock ownership*
8 *plan (as defined in section 4975(e)(7)) un-*
9 *less there are any contributions to such plan*
10 *(or earnings thereunder) held within such*
11 *plan that are subject to subsections (k)(3) or*
12 *(m)(2).*

13 “(ii) *RESTRICTION ON DIVESTMENT.*—
14 *The term ‘restriction on divestment’*
15 *includes—*

16 “(I) *any failure to offer at least 3*
17 *diversified investment options in which*
18 *a participant or beneficiary may di-*
19 *rect the proceeds from the divestment of*
20 *employer securities, and*

21 “(II) *any restriction on the abil-*
22 *ity of a participant or beneficiary to*
23 *choose from all otherwise available in-*
24 *vestment options in which such pro-*
25 *ceeds may be so directed.”.*

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

5 “(v) *EXCEPTION.—This subparagraph*
6 *shall not apply to an applicable defined*
7 *contribution plan (as defined in paragraph*
8 *(35)(B)(i)).”.*

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

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

13 (1) *EXEMPTION FROM PROHIBITED TRANS-*
14 *ACTIONS.—Section 408(b) of the Employee Retirement*
15 *Income Security Act of 1974 (29 U.S.C. 1108(b)) is*
16 *amended by adding at the end the following new*
17 *paragraph:*

18 “(14)(A) *Any transaction described in subpara-*
19 *graph (B) in connection with the provision of invest-*
20 *ment advice described in section 3(21)(A)(ii), in any*
21 *case in which—*

22 “(i) *the investment of assets of the plan is*
23 *subject to the direction of plan participants or*
24 *beneficiaries,*

1 “(ii) the advice is provided to the plan or
2 a participant or beneficiary of the plan by a fi-
3 duciary adviser in connection with any sale, ac-
4 quisition, or holding of a security or other prop-
5 erty for purposes of investment of plan assets,
6 and

7 “(iii) the requirements of subsection (g) are
8 met in connection with the provision of the ad-
9 vice.

10 “(B) The transactions described in this subpara-
11 graph are the following:

12 “(i) the provision of the advice to the plan,
13 participant, or beneficiary;

14 “(ii) the sale, acquisition, or holding of a
15 security or other property (including any lend-
16 ing of money or other extension of credit associ-
17 ated with the sale, acquisition, or holding of a
18 security or other property) pursuant to the ad-
19 vice; and

20 “(iii) the direct or indirect receipt of fees or
21 other compensation by the fiduciary adviser or
22 an affiliate thereof (or any employee, agent, or
23 registered representative of the fiduciary adviser
24 or affiliate) in connection with the provision of
25 the advice or in connection with a sale, acquisi-

1 *tion, or holding of a security or other property*
2 *pursuant to the advice.”.*

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

6 “(g) *REQUIREMENTS RELATING TO PROVISION OF IN-*
7 *VESTMENT ADVICE BY FIDUCIARY ADVISERS.*—

8 “(1) *IN GENERAL.*—*The requirements of this sub-*
9 *section are met in connection with the provision of*
10 *investment advice referred to in section 3(21)(A)(ii),*
11 *provided to an employee benefit plan or a participant*
12 *or beneficiary of an employee benefit plan by a fidu-*
13 *ciary adviser with respect to the plan in connection*
14 *with any sale, acquisition, or holding of a security or*
15 *other property for purposes of investment of amounts*
16 *held by the plan, if—*

17 “(A) *in the case of the initial provision of*
18 *the advice with regard to the security or other*
19 *property by the fiduciary adviser to the plan,*
20 *participant, or beneficiary, the fiduciary adviser*
21 *provides to the recipient of the advice, at a time*
22 *reasonably contemporaneous with the initial pro-*
23 *vision of the advice, a written notification*
24 *(which may consist of notification by means of*
25 *electronic communication)—*

1 “(i) of all fees or other compensation
2 relating to the advice that the fiduciary ad-
3 viser or any affiliate thereof is to receive
4 (including compensation provided by any
5 third party) in connection with the provi-
6 sion of the advice or in connection with the
7 sale, acquisition, or holding of the security
8 or other property,

9 “(ii) of any material affiliation or
10 contractual relationship of the fiduciary ad-
11 viser or affiliates thereof in the security or
12 other property,

13 “(iii) of any limitation placed on the
14 scope of the investment advice to be pro-
15 vided by the fiduciary adviser with respect
16 to any such sale, acquisition, or holding of
17 a security or other property,

18 “(iv) of the types of services provided
19 by the fiduciary adviser in connection with
20 the provision of investment advice by the fi-
21 duciary adviser,

22 “(v) that the adviser is acting as a fi-
23 duciary of the plan in connection with the
24 provision of the advice, and

1 “(vi) that a recipient of the advice
2 may separately arrange for the provision of
3 advice by another adviser, that could have
4 no material affiliation with and receive no
5 fees or other compensation in connection
6 with the security or other property.

7 “(B) the fiduciary adviser provides appro-
8 priate disclosure, in connection with the sale, ac-
9 quisition, or holding of the security or other
10 property, in accordance with all applicable secu-
11 rities laws,

12 “(C) the sale, acquisition, or holding occurs
13 solely at the direction of the recipient of the ad-
14 vice,

15 “(D) the compensation received by the fidu-
16 ciary adviser and affiliates thereof in connection
17 with the sale, acquisition, or holding of the secu-
18 rity or other property is reasonable, and

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

23 “(2) STANDARDS FOR PRESENTATION OF INFOR-
24 MATION.—

1 “(A) *IN GENERAL.*—*The notification re-*
2 *quired to be provided to participants and bene-*
3 *ficiaries under paragraph (1)(A) shall be written*
4 *in a clear and conspicuous manner and in a*
5 *manner calculated to be understood by the aver-*
6 *age plan participant and shall be sufficiently ac-*
7 *curate and comprehensive to reasonably apprise*
8 *such participants and beneficiaries of the infor-*
9 *mation required to be provided in the notifica-*
10 *tion.*

11 “(B) *MODEL FORM FOR DISCLOSURE OF*
12 *FEES AND OTHER COMPENSATION.*—*The Sec-*
13 *retary shall issue a model form for the disclosure*
14 *of fees and other compensation required in para-*
15 *graph (1)(A)(i) which meets the requirements of*
16 *subparagraph (A).*

17 “(3) *EXEMPTION CONDITIONED ON CONTINUED*
18 *AVAILABILITY OF REQUIRED INFORMATION ON RE-*
19 *QUEST FOR 1 YEAR.*—*The requirements of paragraph*
20 *(1)(A) shall be deemed not to have been met in con-*
21 *nection with the initial or any subsequent provision*
22 *of advice described in paragraph (1) to the plan, par-*
23 *ticipant, or beneficiary if, at any time during the*
24 *provision of advisory services to the plan, partici-*
25 *phant, or beneficiary, the fiduciary adviser fails to*

1 *maintain the information described in clauses (i)*
2 *through (iv) of subparagraph (A) in currently accu-*
3 *rate form and in the manner described in paragraph*
4 *(2) or fails—*

5 *“(A) to provide, without charge, such cur-*
6 *rently accurate information to the recipient of*
7 *the advice no less than annually,*

8 *“(B) to make such currently accurate infor-*
9 *mation available, upon request and without*
10 *charge, to the recipient of the advice, or*

11 *“(C) in the event of a material change to*
12 *the information described in clauses (i) through*
13 *(iv) of paragraph (1)(A), to provide, without*
14 *charge, such currently accurate information to*
15 *the recipient of the advice at a time reasonably*
16 *contemporaneous to the material change in in-*
17 *formation.*

18 *“(4) MAINTENANCE FOR 6 YEARS OF EVIDENCE*
19 *OF COMPLIANCE.—A fiduciary adviser referred to in*
20 *paragraph (1) who has provided advice referred to in*
21 *such paragraph shall, for a period of not less than 6*
22 *years after the provision of the advice, maintain any*
23 *records necessary for determining whether the require-*
24 *ments of the preceding provisions of this subsection*
25 *and of subsection (b)(14) have been met. A trans-*

1 *action prohibited under section 406 shall not be con-*
2 *sidered to have occurred solely because the records are*
3 *lost or destroyed prior to the end of the 6-year period*
4 *due to circumstances beyond the control of the fidu-*
5 *ciary adviser.*

6 “(5) *EXEMPTION FOR PLAN SPONSOR AND CER-*
7 *TAIN OTHER FIDUCIARIES.—*

8 “(A) *IN GENERAL.—Subject to subpara-*
9 *graph (B), a plan sponsor or other person who*
10 *is a fiduciary (other than a fiduciary adviser)*
11 *shall not be treated as failing to meet the re-*
12 *quirements of this part solely by reason of the*
13 *provision of investment advice referred to in sec-*
14 *tion 3(21)(A)(ii) (or solely by reason of con-*
15 *tracting for or otherwise arranging for the provi-*
16 *sion of the advice), if—*

17 “(i) *the advice is provided by a fidu-*
18 *ciary adviser pursuant to an arrangement*
19 *between the plan sponsor or other fiduciary*
20 *and the fiduciary adviser for the provision*
21 *by the fiduciary adviser of investment ad-*
22 *vice referred to in such section,*

23 “(ii) *the terms of the arrangement re-*
24 *quire compliance by the fiduciary adviser*

1 *with the requirements of this subsection,*
2 *and*

3 *“(iii) the terms of the arrangement in-*
4 *clude a written acknowledgment by the fidu-*
5 *ciary adviser that the fiduciary adviser is a*
6 *fiduciary of the plan with respect to the*
7 *provision of the advice.*

8 *“(B) CONTINUED DUTY OF PRUDENT SELEC-*
9 *TION OF ADVISER AND PERIODIC REVIEW.—Noth-*
10 *ing in subparagraph (A) shall be construed to*
11 *exempt a plan sponsor or other person who is a*
12 *fiduciary from any requirement of this part for*
13 *the prudent selection and periodic review of a fi-*
14 *duciary adviser with whom the plan sponsor or*
15 *other person enters into an arrangement for the*
16 *provision of advice referred to in section*
17 *3(21)(A)(ii). The plan sponsor or other person*
18 *who is a fiduciary has no duty under this part*
19 *to monitor the specific investment advice given*
20 *by the fiduciary adviser to any particular re-*
21 *cipient of the advice.*

22 *“(C) AVAILABILITY OF PLAN ASSETS FOR*
23 *PAYMENT FOR ADVICE.—Nothing in this part*
24 *shall be construed to preclude the use of plan as-*
25 *sets to pay for reasonable expenses in providing*

1 *investment advice referred to in section*
2 *3(21)(A)(ii).*

3 “(6) *DEFINITIONS.—For purposes of this sub-*
4 *section and subsection (b)(14)—*

5 “(A) *FIDUCIARY ADVISER.—The term ‘fidu-*
6 *ciary adviser’ means, with respect to a plan, a*
7 *person who is a fiduciary of the plan by reason*
8 *of the provision of investment advice by the per-*
9 *son to the plan or to a participant or beneficiary*
10 *and who is—*

11 “(i) *registered as an investment ad-*
12 *viser under the Investment Advisers Act of*
13 *1940 (15 U.S.C. 80b–1 et seq.) or under the*
14 *laws of the State in which the fiduciary*
15 *maintains its principal office and place of*
16 *business,*

17 “(ii) *a bank or similar financial insti-*
18 *tution referred to in section 408(b)(4), but*
19 *only if the advice is provided through a*
20 *trust department of the bank or similar fi-*
21 *ancial institution which is subject to peri-*
22 *odic examination and review by Federal or*
23 *State banking authorities,*

24 “(iii) *an insurance company qualified*
25 *to do business under the laws of a State,*

1 “(iv) a person registered as a broker or
2 dealer under the Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.),

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

6 “(vi) an employee, agent, or registered
7 representative of a person described in any
8 of clauses (i) through (v) who satisfies the
9 requirements of applicable insurance, bank-
10 ing, and securities laws relating to the pro-
11 vision of the advice.

12 “(B) *AFFILIATE*.—The term ‘affiliate’ of
13 another entity means an affiliated person of the
14 entity (as defined in section 2(a)(3) of the In-
15 vestment Company Act of 1940 (15 U.S.C. 80a-
16 2(a)(3))).

17 “(C) *REGISTERED REPRESENTATIVE*.—The
18 term ‘registered representative’ of another entity
19 means a person described in section 3(a)(18) of
20 the Securities Exchange Act of 1934 (15 U.S.C.
21 78c(a)(18)) (substituting the entity for the broker
22 or dealer referred to in such section) or a person
23 described in section 202(a)(17) of the Investment
24 Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17))

1 *(substituting the entity for the investment ad-*
2 *viser referred to in such section).”.*

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

5 **(1) EXEMPTION FROM PROHIBITED TRANS-**
6 *ACTIONS.—Subsection (d) of section 4975 of the Inter-*
7 *nal Revenue Code of 1986 (relating to exemptions*
8 *from tax on prohibited transactions) is amended—*

9 **(A) in paragraph (14), by striking “or” at**
10 *the end;*

11 **(B) in paragraph (15), by striking the pe-**
12 *riod at the end and inserting “; or”; and*

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

15 **“(16) any transaction described in subsection**
16 *(f)(7)(A) in connection with the provision of invest-*
17 *ment advice described in subsection (e)(3)(B), in any*
18 *case in which—*

19 **“(A) the investment of assets of the plan is**
20 *subject to the direction of plan participants or*
21 *beneficiaries,*

22 **“(B) the advice is provided to the plan or**
23 *a participant or beneficiary of the plan by a fi-*
24 *duciary adviser in connection with any sale, ac-*
25 *quisition, or holding of a security or other prop-*

1 *erty for purposes of investment of plan assets,*
 2 *and*

3 *“(C) the requirements of subsection (f)(7)(B)*
 4 *are met in connection with the provision of the*
 5 *advice.”.*

6 (2) *ALLOWED TRANSACTIONS AND REQUIRE-*
 7 *MENTS.—Subsection (f) of such section 4975 (relating*
 8 *to other definitions and special rules) is amended by*
 9 *adding at the end the following new paragraph:*

10 *“(7) PROVISIONS RELATING TO INVESTMENT AD-*
 11 *VICE PROVIDED BY FIDUCIARY ADVISERS.—*

12 *“(A) TRANSACTIONS ALLOWABLE IN CON-*
 13 *NECTION WITH INVESTMENT ADVICE PROVIDED*
 14 *BY FIDUCIARY ADVISERS.—The transactions re-*
 15 *ferred to in subsection (d)(16), in connection*
 16 *with the provision of investment advice by a fi-*
 17 *duciary adviser, are the following:*

18 *“(i) the provision of the advice to the*
 19 *plan, participant, or beneficiary;*

20 *“(ii) the sale, acquisition, or holding of*
 21 *a security or other property (including any*
 22 *lending of money or other extension of cred-*
 23 *it associated with the sale, acquisition, or*
 24 *holding of a security or other property)*
 25 *pursuant to the advice; and*

1 “(iii) the direct or indirect receipt of
2 fees or other compensation by the fiduciary
3 adviser or an affiliate thereof (or any em-
4 ployee, agent, or registered representative of
5 the fiduciary adviser or affiliate) in connec-
6 tion with the provision of the advice or in
7 connection with a sale, acquisition, or hold-
8 ing of a security or other property pursuant
9 to the advice.

10 “(B) REQUIREMENTS RELATING TO PROVI-
11 SION OF INVESTMENT ADVICE BY FIDUCIARY AD-
12 VISERS.—The requirements of this subparagraph
13 (referred to in subsection (d)(16)(C)) are met in
14 connection with the provision of investment ad-
15 vice referred to in subsection (e)(3)(B), provided
16 to a plan or a participant or beneficiary of a
17 plan by a fiduciary adviser with respect to the
18 plan in connection with any sale, acquisition, or
19 holding of a security or other property for pur-
20 poses of investment of amounts held by the plan,
21 if—

22 “(i) in the case of the initial provision
23 of the advice with regard to the security or
24 other property by the fiduciary adviser to
25 the plan, participant, or beneficiary, the fi-

1 *duciary adviser provides to the recipient of*
2 *the advice, at a time reasonably contem-*
3 *poraneous with the initial provision of the*
4 *advice, a written notification (which may*
5 *consist of notification by means of electronic*
6 *communication)—*

7 *“(I) of all fees or other compensa-*
8 *tion relating to the advice that the fi-*
9 *duciary adviser or any affiliate thereof*
10 *is to receive (including compensation*
11 *provided by any third party) in con-*
12 *nection with the provision of the advice*
13 *or in connection with the sale, acquisi-*
14 *tion, or holding of the security or other*
15 *property,*

16 *“(II) of any material affiliation*
17 *or contractual relationship of the fidu-*
18 *ciary adviser or affiliates thereof in the*
19 *security or other property,*

20 *“(III) of any limitation placed on*
21 *the scope of the investment advice to be*
22 *provided by the fiduciary adviser with*
23 *respect to any such sale, acquisition, or*
24 *holding of a security or other property,*

1 “(IV) of the types of services pro-
2 vided by the fiduciary advisor in con-
3 nection with the provision of invest-
4 ment advice by the fiduciary adviser,
5 and

6 “(V) that the adviser is acting as
7 a fiduciary of the plan in connection
8 with the provision of the advice,

9 “(ii) the fiduciary adviser provides ap-
10 propriate disclosure, in connection with the
11 sale, acquisition, or holding of the security
12 or other property, in accordance with all
13 applicable securities laws,

14 “(iii) the sale, acquisition, or holding
15 occurs solely at the direction of the recipient
16 of the advice,

17 “(iv) the compensation received by the
18 fiduciary adviser and affiliates thereof in
19 connection with the sale, acquisition, or
20 holding of the security or other property is
21 reasonable, and

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

1 “(C) *STANDARDS FOR PRESENTATION OF IN-*
2 *FORMATION.—The notification required to be*
3 *provided to participants and beneficiaries under*
4 *subparagraph (B)(i) shall be written in a clear*
5 *and conspicuous manner and in a manner cal-*
6 *culated to be understood by the average plan*
7 *participant and shall be sufficiently accurate*
8 *and comprehensive to reasonably apprise such*
9 *participants and beneficiaries of the information*
10 *required to be provided in the notification.*

11 “(D) *EXEMPTION CONDITIONED ON MAKING*
12 *REQUIRED INFORMATION AVAILABLE ANNUALLY,*
13 *ON REQUEST, AND IN THE EVENT OF MATERIAL*
14 *CHANGE.—The requirements of subparagraph*
15 *(B)(i) shall be deemed not to have been met in*
16 *connection with the initial or any subsequent*
17 *provision of advice described in subparagraph*
18 *(B) to the plan, participant, or beneficiary if,*
19 *at any time during the provision of advisory*
20 *services to the plan, participant, or beneficiary,*
21 *the fiduciary adviser fails to maintain the infor-*
22 *mation described in subclauses (I) through (IV)*
23 *of subparagraph (B)(i) in currently accurate*
24 *form and in the manner required by subpara-*
25 *graph (C), or fails—*

1 “(i) to provide, without charge, such
2 currently accurate information to the re-
3 cipient of the advice no less than annually,

4 “(ii) to make such currently accurate
5 information available, upon request and
6 without charge, to the recipient of the ad-
7 vice, or

8 “(iii) in the event of a material change
9 to the information described in subclauses
10 (I) through (IV) of subparagraph (B)(i), to
11 provide, without charge, such currently ac-
12 curate information to the recipient of the
13 advice at a time reasonably contempora-
14 neous to the material change in informa-
15 tion.

16 “(E) MAINTENANCE FOR 6 YEARS OF EVI-
17 DENCE OF COMPLIANCE.—A fiduciary adviser re-
18 ferred to in subparagraph (B) who has provided
19 advice referred to in such subparagraph shall, for
20 a period of not less than 6 years after the provi-
21 sion of the advice, maintain any records nec-
22 essary for determining whether the requirements
23 of the preceding provisions of this paragraph
24 and of subsection (d)(16) have been met. A trans-
25 action prohibited under subsection (c)(1) shall

1 *not be considered to have occurred solely because*
2 *the records are lost or destroyed prior to the end*
3 *of the 6-year period due to circumstances beyond*
4 *the control of the fiduciary adviser.*

5 “(F) *EXEMPTION FOR PLAN SPONSOR AND*
6 *CERTAIN OTHER FIDUCIARIES.—A plan sponsor*
7 *or other person who is a fiduciary (other than a*
8 *fiduciary adviser) shall not be treated as failing*
9 *to meet the requirements of this section solely by*
10 *reason of the provision of investment advice re-*
11 *ferred to in subsection (e)(3)(B) (or solely by*
12 *reason of contracting for or otherwise arranging*
13 *for the provision of the advice), if—*

14 “(i) *the advice is provided by a fidu-*
15 *ciary adviser pursuant to an arrangement*
16 *between the plan sponsor or other fiduciary*
17 *and the fiduciary adviser for the provision*
18 *by the fiduciary adviser of investment ad-*
19 *vice referred to in such section,*

20 “(ii) *the terms of the arrangement re-*
21 *quire compliance by the fiduciary adviser*
22 *with the requirements of this paragraph,*

23 “(iii) *the terms of the arrangement in-*
24 *clude a written acknowledgment by the fidu-*
25 *ciary adviser that the fiduciary adviser is a*

1 *fiduciary of the plan with respect to the*
2 *provision of the advice, and*

3 “(iv) *the requirements of part 4 of sub-*
4 *title B of title I of the Employee Retirement*
5 *Income Security Act of 1974 are met in*
6 *connection with the provision of such ad-*
7 *vice.*

8 “(G) *DEFINITIONS.—For purposes of this*
9 *paragraph and subsection (d)(16)—*

10 “(i) *FIDUCIARY ADVISER.—The term*
11 *‘fiduciary adviser’ means, with respect to a*
12 *plan, a person who is a fiduciary of the*
13 *plan by reason of the provision of invest-*
14 *ment advice by the person to the plan or to*
15 *a participant or beneficiary and who is—*

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

22 “(II) *a bank or similar financial*
23 *institution referred to in subsection*
24 *(d)(4),*

1 “(III) an insurance company
2 qualified to do business under the laws
3 of a State,

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

8 “(V) an affiliate of a person de-
9 scribed in any of subclauses (I)
10 through (IV), or

11 “(VI) an employee, agent, or reg-
12 istered representative of a person de-
13 scribed in any of subclauses (I)
14 through (V) who satisfies the require-
15 ments of applicable insurance, bank-
16 ing, and securities laws relating to the
17 provision of the advice.

18 “(ii) *AFFILIATE*.—The term ‘affiliate’
19 of another entity means an affiliated person
20 of the entity (as defined in section 2(a)(3)
21 of the Investment Company Act of 1940 (15
22 U.S.C. 80a–2(a)(3))).

23 “(iii) *REGISTERED REPRESENTA-*
24 *TIVE*.—The term ‘registered representative’
25 of another entity means a person described

1 *in section 3(a)(18) of the Securities Ex-*
2 *change Act of 1934 (15 U.S.C. 78c(a)(18))*
3 *(substituting the entity for the broker or*
4 *dealer referred to in such section) or a per-*
5 *son described in section 202(a)(17) of the*
6 *Investment Advisers Act of 1940 (15 U.S.C.*
7 *80b-2(a)(17)) (substituting the entity for*
8 *the investment adviser referred to in such*
9 *section).”.*

10 **SEC. 106. STUDY REGARDING IMPACT ON RETIREMENT SAV-**
11 **INGS OF PARTICIPANTS AND BENEFICIARIES**
12 **BY REQUIRING FIDUCIARY CONSULTANTS**
13 **FOR INDIVIDUAL ACCOUNT PLANS.**

14 *(a) STUDY.—As soon as practicable after the date of*
15 *the enactment of this Act, the Secretary of Labor shall un-*
16 *dertake a study of the costs and benefits to participants and*
17 *beneficiaries of requiring independent fiduciary consultants*
18 *to advise plan fiduciaries in connection with individual ac-*
19 *count plans. In conducting such study, the Secretary shall*
20 *consider—*

21 *(1) the benefits to plan participants and bene-*
22 *ficiaries of engaging independent fiduciary advisers*
23 *to provide investment advice regarding the assets of*
24 *the plan to persons who have fiduciary duties with re-*
25 *spect to the management or disposition of such assets,*

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

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

5 (4) *the availability of qualified independent fi-*
6 *duciary consultants to serve the needs of individual*
7 *account plans in the United States,*

8 (5) *the impact of the additional fiduciary duty*
9 *of an independent advisor on the strict fiduciary obli-*
10 *gations of plan fiduciaries,*

11 (6) *the impact of new requirements (consulting*
12 *fees, reporting requirements, and new plan duties to*
13 *prudently identify and contract with qualified inde-*
14 *pendent fiduciary consultants) on the availability of*
15 *individual account plans, and*

16 (7) *the impact of a new requirement on the plan*
17 *administration costs per participant for small and*
18 *mid-size employers and the pension plans they spon-*
19 *sor.*

20 (b) *REPORT.—Not later than 1 year after the date of*
21 *the enactment of this Act, the Secretary of Labor shall re-*
22 *port the results of the study undertaken pursuant to this*
23 *section, together with any recommendations for legislative*
24 *changes, to the Committee on Education and the Workforce*

1 *of the House of Representatives and the Committee on*
2 *Health, Education, Labor, and Pensions of the Senate.*

3 **SEC. 107. INSIDER TRADES DURING PENSION PLAN SUS-**
4 **PENSION PERIODS PROHIBITED.**

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

8 *“(h) INSIDER TRADES DURING PENSION PLAN SUS-*
9 *PENSION PERIODS PROHIBITED.—*

10 *“(1) PROHIBITION.—It shall be unlawful for any*
11 *such beneficial owner, director, or officer of an issuer,*
12 *directly or indirectly, to purchase (or otherwise ac-*
13 *quire) or sell (or otherwise transfer) any equity secu-*
14 *rity of such issuer (other than an exempted security),*
15 *during any pension plan suspension period with re-*
16 *spect to such equity security.*

17 *“(2) REMEDY.—Any profit realized by such ben-*
18 *eficial owner, director, or officer from any purchase*
19 *(or other acquisition) or sale (or other transfer) in*
20 *violation of this subsection shall inure to and be re-*
21 *coverable by the issuer irrespective of any intention*
22 *on the part of such beneficial owner, director, or offi-*
23 *cer in entering into the transaction.*

24 *“(3) RULEMAKING PERMITTED.—The Commis-*
25 *sion may issue rules to clarify the application of this*

1 *subsection, to ensure adequate notice to all persons af-*
2 *ected by this subsection, and to prevent evasion there-*
3 *of.*

4 “(4) *DEFINITIONS.—For purposes of this*
5 *subsection—*

6 “(A) *PENSION PLAN SUSPENSION PERIOD.—*

7 *The term ‘pension plan suspension period’*
8 *means, with respect to an equity security, any*
9 *period during which the ability of a participant*
10 *or beneficiary under an applicable individual*
11 *account plan maintained by the issuer to direct*
12 *the investment of assets in his or her individual*
13 *account away from such equity security is sus-*
14 *pending by the issuer or a fiduciary of the plan.*
15 *Such term does not include any limitation or re-*
16 *striction that may govern the frequency of trans-*
17 *fers between investment vehicles to the extent*
18 *such limitation and restriction is disclosed to*
19 *participants and beneficiaries through the sum-*
20 *mary plan description or materials describing*
21 *specific investment alternatives under the plan.*

22 “(B) *APPLICABLE INDIVIDUAL ACCOUNT*

23 *PLAN.—The term ‘applicable individual account*
24 *plan’ has the meaning provided such term in*

1 *section 3(42) of the Employee Retirement Income*
2 *Security Act of 1974.”*

3 **SEC. 108. EFFECTIVE DATES OF TITLE AND RELATED**
4 **RULES.**

5 *(a) IN GENERAL.—Except as provided in subsection*
6 *(b), the amendments made by sections 101, 102, 103, 104,*
7 *and 107 shall apply with respect to plan years beginning*
8 *on or after January 1, 2003.*

9 *(b) SPECIAL RULE FOR COLLECTIVELY BARGAINED*
10 *PLANS.—In the case of a plan maintained pursuant to 1*
11 *or more collective bargaining agreements between employee*
12 *representatives and 1 or more employers ratified on or be-*
13 *fore the date of the enactment of this Act, subsection (a)*
14 *shall be applied to benefits pursuant to, and individuals*
15 *covered by, any such agreement by substituting for “Janu-*
16 *ary 1, 2003” the date of the commencement of the first plan*
17 *year beginning on or after the earlier of—*

18 *(1) the later of—*

19 *(A) January 1, 2004, or*

20 *(B) the date on which the last of such collec-*
21 *tive bargaining agreements terminates (deter-*
22 *mined without regard to any extension thereof*
23 *after the date of the enactment of this Act), or*

24 *(2) January 1, 2005.*

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

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

11 (2) *such plan amendment applies retroactively to*
12 *the period after such amendments made by such sec-*
13 *tions take effect and before such first plan year.*

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

1 **TITLE II—ADDITIONAL**
2 **PROVISIONS**

3 **SEC. 201. AMENDMENTS TO RETIREMENT PROTECTION ACT**
4 **OF 1994.**

5 (a) *TRANSITION RULE MADE PERMANENT.*—Para-
6 *graph (1) of section 769(c) of the Retirement Protection Act*
7 *of 1994 is amended—*

8 (1) *by striking “transition” each place it ap-*
9 *pears in the heading and the text, and*

10 (2) *by striking “for any plan year beginning*
11 *after 1996 and before 2010”.*

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

15 “(2) *SPECIAL RULES.*—*The rules described in*
16 *this paragraph are as follows:*

17 “(A) *For purposes of section 302(d)(9)(A) of*
18 *the Employee Retirement Income Security Act of*
19 *1974, the funded current liability percentage for*
20 *any plan year shall be treated as not less than*
21 *90 percent.*

22 “(B) *For purposes of section 302(e) of the*
23 *Employee Retirement Income Security Act of*
24 *1974, the funded current liability percentage for*

1 *any plan year shall be treated as not less than*
2 *100 percent.*

3 “(C) *For purposes of determining unfunded*
4 *vested benefits under section 4006(a)(3)(E)(iii)*
5 *of the Employee Retirement Income Security Act*
6 *of 1974, the mortality table shall be the mor-*
7 *tality table used by the plan.*”.

8 (c) *EFFECTIVE DATE.*—*The amendments made by this*
9 *section shall apply to plan years beginning after December*
10 *31, 2001.*

11 **SEC. 202. NOTICE AND CONSENT PERIOD REGARDING DIS-**
12 **TRIBUTIONS.**

13 (a) *EXPANSION OF PERIOD.*—

14 (1) *AMENDMENT OF ERISA.*—

15 (A) *IN GENERAL.*—*Section 205(c)(7)(A) of*
16 *the Employee Retirement Income Security Act of*
17 *1974 (29 U.S.C. 1055(c)(7)(A)) is amended by*
18 *striking “90-day” and inserting “180-day”.*

19 (B) *MODIFICATION OF REGULATIONS.*—*The*
20 *Secretary of the Treasury shall modify the regu-*
21 *lations under part 2 of subtitle B of title I of the*
22 *Employee Retirement Income Security Act of*
23 *1974 to the extent that they relate to sections*
24 *203(e) and 205 of such Act to substitute “180*
25 *days” for “90 days” each place it appears.*

1 (2) *EFFECTIVE DATE.*—*The amendment made by*
2 *paragraph (1)(A) and the modification required by*
3 *paragraph (1)(B) shall apply to years beginning after*
4 *December 31, 2002.*

5 (b) *CONSENT REGULATION INAPPLICABLE TO CERTAIN*
6 *DISTRIBUTIONS.*—

7 (1) *IN GENERAL.*—*The Secretary of the Treasury*
8 *shall modify the regulations under section 205 of the*
9 *Employee Retirement Income Security Act of 1974 to*
10 *provide that the description of a participant’s right,*
11 *if any, to defer receipt of a distribution shall also*
12 *describe the consequences of failing to defer such re-*
13 *ceipt.*

14 (2) *EFFECTIVE DATE.*—

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

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

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

5 **SEC. 203. ANNUAL REPORT DISSEMINATION.**

6 (a) *REPORT AVAILABLE THROUGH ELECTRONIC*
7 *MEANS.*—Section 104(b)(3) of the Employee Retirement In-
8 come Security Act of 1974 (29 U.S.C. 1024(b)(3)) is amend-
9 ed by adding at the end the following new sentence: “The
10 requirement to furnish information under the previous sen-
11 tence with respect to an employee pension benefit plan shall
12 be satisfied if the administrator makes such information
13 reasonably available through electronic means or other new
14 technology.”.

15 (b) *EFFECTIVE DATE.*—The amendment made by this
16 section shall apply to reports for years beginning after De-
17 cember 31, 2002.

18 **SEC. 204. TECHNICAL CORRECTIONS TO SAVER ACT.**

19 Section 517 of the Employee Retirement Income Secu-
20 rity Act of 1974 (29 U.S.C. 1147) is amended—

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

24 (2) in subsection (b), by adding at the end the
25 following new sentence: “To effectuate the purposes of

1 *this paragraph, the Secretary may enter into a coop-*
2 *erative agreement, pursuant to the Federal Grant and*
3 *Cooperative Agreement Act of 1977 (31 U.S.C. 6301*
4 *et seq.), with any appropriate, qualified entity.”;*

5 *(3) in subsection (e)(2)—*

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

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

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

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

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

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

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

4 “(I) the Chairman and Ranking Member of
5 the Subcommittee on Employer-Employee Rela-
6 tions of the Committee on Education and the
7 Workforce of the House of Representatives; and”;
8 (4) in subsection (e)(3)—

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

15 (B) by striking “one-half shall be appointed
16 by the President,” in subparagraph (A)(i) and
17 inserting “not more than 100 participants shall
18 be appointed under this clause by the Presi-
19 dent,”;

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

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

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

5 “(B) *PRESIDENTIAL AUTHORITY FOR ADDI-*
6 *TIONAL APPOINTMENTS.—The President, in con-*
7 *sultation with the elected leaders of Congress re-*
8 *ferred to in subsection (a), may appoint under*
9 *this subparagraph additional participants to the*
10 *National Summit. The number of such addi-*
11 *tional participants appointed under this sub-*
12 *paragraph may not exceed the lesser of 3 percent*
13 *of the total number of all additional participants*
14 *appointed under this paragraph, or 10. Such ad-*
15 *ditional participants shall be appointed from*
16 *persons nominated by the organization referred*
17 *to in subsection (b)(2) which is made up of pri-*
18 *vate sector businesses and associations partnered*
19 *with Government entities to promote long term*
20 *financial security in retirement through savings*
21 *and with which the Secretary is required there-*
22 *under to consult and cooperate and shall not be*
23 *Federal, State, or local government employees.”;*

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

4 (6) in subsection (f)(1)(C), by inserting “, no
5 later than 90 days prior to the date of the commence-
6 ment of the National Summit,” after “comment”;

7 (7) in subsection (g), by inserting “, in consulta-
8 tion with the congressional leaders specified in sub-
9 section (e)(2),” after “report” the first place it ap-
10 pears;

11 (8) in subsection (i)—

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

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

16 “(3) *RECEPTION AND REPRESENTATION AUTHOR-*
17 *ITY.—The Secretary is hereby granted reception and*
18 *representation authority limited specifically to the*
19 *events at the National Summit. The Secretary shall*
20 *use any private contributions accepted in connection*
21 *with the National Summit prior to using funds ap-*
22 *propriated for purposes of the National Summit pur-*
23 *suant to this paragraph.”; and*

24 (9) in subsection (k)—

1 (A) by striking “shall enter into a contract
2 on a sole-source basis” and inserting “may enter
3 into a contract on a sole-source basis”; and

4 (B) by striking “in fiscal year 1998”.

5 **SEC. 205. MISSING PARTICIPANTS.**

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

11 “(c) *MULTIEMPLOYER PLANS.*—The corporation shall
12 prescribe rules similar to the rules in subsection (a) for mul-
13 tiemployer plans covered by this title that terminate under
14 section 4041A.

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

16 “(1) *TRANSFER TO CORPORATION.*—The plan ad-
17 ministrator of a plan described in paragraph (4) may
18 elect to transfer a missing participant’s benefits to the
19 corporation upon termination of the plan.

20 “(2) *INFORMATION TO THE CORPORATION.*—To
21 the extent provided in regulations, the plan adminis-
22 trator of a plan described in paragraph (4) shall,
23 upon termination of the plan, provide the corporation
24 information with respect to benefits of a missing par-
25 ticipant if the plan transfers such benefits—

1 “(A) to the corporation, or

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

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

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

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

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

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

18 “(i) to which the provisions of this sec-
19 tion do not apply (without regard to this
20 subsection), and

21 “(ii) which is not a plan described in
22 paragraphs (2) through (11) of section
23 4021(b), and

24 “(B) at the time the assets are to be distrib-
25 uted upon termination, the plan—

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

6 “(5) CERTAIN PROVISIONS NOT TO APPLY.—Sub-
7 sections (a)(1) and (a)(3) shall not apply to a plan
8 described in paragraph (4).”.

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

11 (1) by striking “title IV” and inserting “section
12 4050”; and

13 (2) by striking “the plan shall provide that,”.

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

19 **SEC. 206. REDUCED PBGC PREMIUM FOR NEW PLANS OF**
20 **SMALL EMPLOYERS.**

21 (a) IN GENERAL.—Subparagraph (A) of section
22 4006(a)(3) of the Employee Retirement Income Security
23 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

24 (1) in clause (i), by inserting “other than a new
25 single-employer plan (as defined in subparagraph

1 (F)) maintained by a small employer (as so de-
2 fined),” after “single-employer plan,”

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

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

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

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

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

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

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

12 (c) *EFFECTIVE DATE.*—The amendments made by this
13 section shall apply to plans established after December 31,
14 2001.

15 **SEC. 207. REDUCTION OF ADDITIONAL PBGC PREMIUM FOR**
16 **NEW AND SMALL PLANS.**

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

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

1 *For purposes of this clause, the term ‘applicable percentage’*
2 *means—*

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

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

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

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

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

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

18 *(b) SMALL PLANS.—Paragraph (3) of section 4006(a)*
19 *of the Employee Retirement Income Security Act of 1974*
20 *(29 U.S.C. 1306(a)), as amended by section 206(b), is*
21 *amended—*

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

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

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

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

18 (c) *EFFECTIVE DATES.—*

19 (1) *SUBSECTION (a).—The amendments made by*
20 *subsection (a) shall apply to plans established after*
21 *December 31, 2001.*

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

1 **SEC. 208. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
2 **PREMIUM OVERPAYMENT REFUNDS.**

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

6 (1) by striking “(b)” and inserting “(b)(1)”, and
7 (2) by inserting at the end the following new
8 paragraph:

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

15 (b) *EFFECTIVE DATE.*—The amendment made by sub-
16 section (a) shall apply to interest accruing for periods be-
17 ginning not earlier than the date of the enactment of this
18 Act.

19 **SEC. 209. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
20 **PLANS.**

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

25 “(5)(A) For purposes of this paragraph, the term ‘ma-
26 jority owner’ means an individual who, at any time during

1 *the 60-month period ending on the date the determination*
2 *is being made—*

3 “(i) *owns the entire interest in an unincor-*
4 *porated trade or business,*

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

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

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

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

20 “(i) *a fraction (not to exceed 1) the numerator*
21 *of which is the number of years from the later of the*
22 *effective date or the adoption date of the plan to the*
23 *termination date, and the denominator of which is*
24 *10, and*

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

4 **(b) MODIFICATION OF ALLOCATION OF ASSETS.—**

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

9 (2) Section 4044(b) of such Act (29 U.S.C.
10 1344(b)) is amended—

11 (A) by striking “(5)” in paragraph (2) and
12 inserting “(4), (5),”, and

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

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

1 *fits described in that subparagraph, the assets shall be*
2 *allocated pro rata among individuals on the basis of*
3 *the present value (as of the termination date) of their*
4 *respective benefits described in that subparagraph.”.*

5 *(c) CONFORMING AMENDMENTS.—*

6 *(1) Section 4021 of the Employee Retirement In-*
7 *come Security Act of 1974 (29 U.S.C. 1321) is*
8 *amended—*

9 *(A) in subsection (b)(9), by striking “as de-*
10 *finied in section 4022(b)(6)”*, and

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

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

17 *“(1) owns the entire interest in an unincor-*
18 *porated trade or business,*

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

23 *“(3) in the case of a corporation, owns, directly*
24 *or indirectly, more than 10 percent in value of either*

1 *the voting stock of that corporation or all the stock of*
2 *that corporation.*

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

7 *(2) Section 4043(c)(7) of such Act (29 U.S.C.*
8 *1343(c)(7)) is amended by striking “section*
9 *4022(b)(6)” and inserting “section 4021(d)”.*

10 *(d) EFFECTIVE DATES.—*

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

14 *(A) under section 4041(c) of the Employee*
15 *Retirement Income Security Act of 1974 (29*
16 *U.S.C. 1341(c)) with respect to which notices of*
17 *intent to terminate are provided under section*
18 *4041(a)(2) of such Act (29 U.S.C. 1341(a)(2))*
19 *after December 31, 2002, and*

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

23 *(2) CONFORMING AMENDMENTS.—The amend-*
24 *ments made by subsection (c) shall take effect on Jan-*
25 *uary 1, 2003.*

1 **SEC. 210. BENEFIT SUSPENSION NOTICE.**

2 (a) *MODIFICATION OF REGULATION.*—*The Secretary of*
3 *Labor shall modify the regulation under subparagraph (B)*
4 *of section 203(a)(3) of the Employee Retirement Income Se-*
5 *curity Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to provide*
6 *that the notification required by such regulation in connec-*
7 *tion with any suspension of benefits described in such*
8 *subparagraph—*

9 (1) *in the case of an employee who returns to*
10 *service described in section 203(a)(3)(B)(i) or (ii) of*
11 *such Act after commencement of payment of benefits*
12 *under the plan, shall be made during the first cal-*
13 *endar month or the first 4 or 5-week payroll period*
14 *ending in a calendar month in which the plan with-*
15 *holds payments, and*

16 (2) *in the case of any employee who is not de-*
17 *scribed in paragraph (1)—*

18 (A) *may be included in the summary plan*
19 *description for the plan furnished in accordance*
20 *with section 104(b) of such Act (29 U.S.C.*
21 *1024(b)), rather than in a separate notice, and*

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

24 (b) *EFFECTIVE DATE.*—*The modification made under*
25 *this section shall apply to plan years beginning after De-*
26 *cember 31, 2002.*

1 **SEC. 211. STUDIES.**

2 (a) *MODEL SMALL EMPLOYER GROUP PLANS*
3 *STUDY.*—As soon as practicable after the date of the enact-
4 ment of this Act, the Secretary of Labor, in consultation
5 with the Secretary of the Treasury, shall conduct a study
6 to determine—

7 (1) *the most appropriate form or forms of—*

8 (A) *employee pension benefit plans which*
9 *would—*

10 (i) *be simple in form and easily main-*
11 *tained by multiple small employers, and*

12 (ii) *provide for ready portability of*
13 *benefits for all participants and bene-*
14 *ficiaries,*

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

18 (C) *alternative arrangements providing*
19 *comparable benefits to which employees may con-*
20 *tribute in a manner independent of employer*
21 *sponsorship, and*

22 (2) *appropriate methods and strategies for mak-*
23 *ing pension plan coverage described in paragraph (1)*
24 *more widely available to American workers.*

25 (b) *MATTERS TO BE CONSIDERED.*—In conducting the
26 study under subsection (a), the Secretary of Labor shall con-

1 *sider the adequacy and availability of existing employee*
2 *pension benefit plans and the extent to which existing mod-*
3 *els may be modified to be more accessible to both employees*
4 *and employers.*

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

18 *(d) STUDY ON EFFECT OF LEGISLATION.—Not later*
19 *than 5 years after the date of the enactment of this Act,*
20 *the Secretary of Labor shall submit to the Committee on*
21 *Education and the Workforce of the House of Representa-*
22 *tives and the Committee on Health, Education, Labor, and*
23 *Pensions of the Senate a report on the effect of the provi-*
24 *sions of this Act and title VI of the Economic Growth and*

1 *Tax Relief Reconciliation Act of 2001 on pension plan cov-*
2 *erage, including any change in—*

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

5 (2) *the levels of pension plan benefits generally,*

6 (3) *the quality of pension plan coverage gen-*
7 *erally,*

8 (4) *workers' access to and participation in pen-*
9 *sion plans, and*

10 (5) *retirement security.*

11 **SEC. 212. INTEREST RATE RANGE FOR ADDITIONAL FUND-**
12 **ING REQUIREMENTS.**

13 (a) *SPECIAL RULE.—Subclause (III) of section*
14 *302(d)(7)(C)(i) of the Employee Retirement Income Secu-*
15 *rity Act of 1974 (29 U.S.C. 1082(d)(7)(C)(i)) is amended—*

16 (1) *by striking “2002 or 2003” in the text and*
17 *inserting “2001, 2002, or 2003”, and*

18 (2) *by striking “2002 AND 2003” in the heading*
19 *and inserting “2001, 2002, OR 2003”.*

20 (b) *PBGC.—Subclause (IV) of section*
21 *4006(a)(3)(E)(iii) of such Act (29 U.S.C.*
22 *1306(a)(3)(E)(iii)) is amended to read as follows—*

23 *“(IV) In the case of plan years beginning after*
24 *December 31, 2001, and before January 1, 2004, sub-*
25 *clause (II) shall be applied by substituting ‘100 per-*

1 *cent’ for ‘85 percent’ and by substituting ‘115 percent’*
2 *for ‘100 percent’. Subclause (III) shall be applied for*
3 *such years without regard to the preceding sentence.*
4 *Any reference to this clause or this subparagraph by*
5 *any other sections or subsections (other than sections*
6 *4005, 4010, 4011 and 4043) shall be treated as a ref-*
7 *erence to this clause or this subparagraph without re-*
8 *gard to this subclause.”.*

9 (c) *EFFECTIVE DATE.*—*The amendments made by this*
10 *section shall take effect as if included in the amendments*
11 *made by Section 405 of the Job Creation and Worker Assist-*
12 *ance Act of 2002.*

13 **SEC. 213. PROVISIONS RELATING TO PLAN AMENDMENTS.**

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

16 (1) *such plan or contract shall be treated as*
17 *being operated in accordance with the terms of the*
18 *plan for purposes of the Employee Retirement Income*
19 *Security Act of 1974 during the period described in*
20 *subsection (b)(2)(A); and*

21 (2) *except as provided by the Secretary of the*
22 *Treasury, such plan shall not fail to meet the require-*
23 *ments of section 204(g) of the Employee Retirement*
24 *Income Security Act of 1974 by reason of such*
25 *amendment.*

1 **(b) AMENDMENTS TO WHICH SECTION APPLIES.—**

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

5 **(A)** *pursuant to any amendment made by*
6 *this Act or title VI of the Economic Growth and*
7 *Tax Relief Reconciliation Act of 2001, or pursu-*
8 *ant to any regulation issued by the Secretary of*
9 *Labor under this Act or such title VI; and*

10 **(B)** *on or before the last day of the first*
11 *plan year beginning on or after January 1,*
12 *2005.*

13 *In the case of a governmental plan (as defined in sec-*
14 *tion 414(d) of the Internal Revenue Code of 1986),*
15 *this paragraph shall be applied by substituting*
16 *“2007” for “2005”.*

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

19 **(A)** *during the period—*

20 **(i)** *beginning on the date the legislative*
21 *or regulatory amendment described in para-*
22 *graph (1)(A) takes effect (or in the case of*
23 *a plan or contract amendment not required*
24 *by such legislative or regulatory amend-*

1 *ment, the effective date specified by the*
2 *plan); and*

3 *(ii) ending on the date described in*
4 *paragraph (1)(B) (or, if earlier, the date the*
5 *plan or contract amendment is adopted),*
6 *the plan or contract is operated as if such plan*
7 *or contract amendment were in effect; and*

8 *(B) such plan or contract amendment ap-*
9 *plies retroactively for such period.*

Union Calendar No. 233

107TH CONGRESS
2^D SESSION

H. R. 3762

[Report No. 107-383, Part I]

A BILL

To amend title I 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.

APRIL 9, 2002

The Committees on Ways and Means and Financial Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed