

108TH CONGRESS
2D SESSION

H. R. 5397

To improve the retirement security of American families.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2004

Mr. ANDREWS introduced the following bill; which was referred to the
Committee on Education and the Workforce

A BILL

To improve the retirement security of American families.

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 “Retirement Enhancement Act of 2004”.

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

Sec. 1. Short title and table of contents.

TITLE I—IMPROVED PARTICIPATION AND VESTING

Sec. 101. Minimum coverage requirements.

Sec. 102. Minimum participation requirements.

Sec. 103. Faster vesting of benefits under defined contribution plans.

Sec. 104. Prohibition of requests by plan sponsors for waiver of employee
rights.

Sec. 105. Model small employer group pension plan.

Sec. 106. Enforcement under ERISA of requirements for simplified employee pensions.

TITLE II—IMPROVED PENSION PROTECTIONS FOR WOMEN

Sec. 201. Elimination of integration with workers' compensation and similar benefits.

Sec. 202. Spousal consent required for distributions from defined contribution plans.

Sec. 203. Modification of joint and survivor annuity requirements.

Sec. 204. Division of pension benefits upon divorce.

Sec. 205. Periods of family and medical leave treated as hours of service for pension participation and vesting.

Sec. 206. Right of spouse to know distribution information.

Sec. 207. Repeal of reduction in military Survivor Benefit Plan annuities at age 62.

Sec. 208. Survivor annuities for widows, widowers, and former spouses of Federal employees who die before attaining age for deferred annuity under Civil Service Retirement System.

Sec. 209. Order of precedence for disposition of amounts remaining in the thrift savings account of a Federal employee (or former employee) who dies before making an effective election controlling such disposition.

Sec. 210. Amendments relating to effective date provision of the Civil Service Retirement Spouse Equity Act of 1984.

Sec. 211. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.

Sec. 212. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.

TITLE III—SIMPLIFIED INVESTMENT STANDARDS

Sec. 301. Exemption from prohibited transaction rules for certain aborted emergent transactions.

Sec. 302. Prohibited transaction exemption for the provision of investment advice.

Sec. 303. Participation of participants in trusteeship of single-employer plans providing for employee contributions.

Sec. 304. Diversification of investment of account assets held under individual account plans.

Sec. 305. Removal of \$500,000 cap on bonding requirement.

Sec. 306. Disclosure regarding investments and voting of proxies.

Sec. 307. Immediate warning of excessive stock holdings.

Sec. 308. Report to participants and beneficiaries of trades in employer securities.

TITLE IV—IMPROVEMENTS IN PENSION INFORMATION AND ENFORCEMENT

Sec. 401. Pension benefit information.

Sec. 402. Disclosures to Secretary of Labor relating to plan termination and relating to plan sponsors after acquisition or merger of plans.

Sec. 403. Disclosure of operating income of employers adjusted so as to exclude certain components mandated in FASB rules governing accounting for defined benefit pension plans.

- Sec. 404. Specific information regarding multiemployer plans included in annual report.
- Sec. 405. Limited scope audits.
- Sec. 406. Reporting and enforcement requirements for employee benefit plans.
- Sec. 407. Study of pension trends and characteristics.
- Sec. 408. Early resolution program for pension benefit claims.
- Sec. 409. Review of benefit determinations.
- Sec. 410. Allowable relief.
- Sec. 411. Assessment by Secretary of Labor of penalties for failures to meet disclosure requirements.
- Sec. 412. Missing participants and unclaimed benefits.
- Sec. 413. Fiduciary duties with respect to changes in investment options.
- Sec. 414. Office of Pension Participant Advocacy.
- Sec. 415. Exclusivity of powers and procedures applicable to rights or claims.

TITLE V—IMPROVED PENSION PROTECTIONS FOR THE CHANGING WORKFORCE

- Sec. 501. Loans from retirement plans for health insurance and job training expenses.
- Sec. 502. Automatic rollover upon mandatory distribution in excess of \$1,000.
- Sec. 503. Prompt distribution from defined contribution plans upon termination of participant's covered employment.

TITLE VI—GENERAL PROVISIONS

- Sec. 601. General effective date.
- Sec. 602. Plan amendments.

1 **TITLE I—IMPROVED** 2 **PARTICIPATION AND VESTING**

3 **SEC. 101. MINIMUM COVERAGE REQUIREMENTS.**

4 (a) IN GENERAL.—Part 2 of subtitle B of title I of
5 the Employee Retirement Income Security Act of 1974
6 (29 U.S.C. 201 et seq.) is amended by inserting after sec-
7 tion 201 the following new section:

8 “MINIMUM COVERAGE REQUIREMENTS

9 “SEC. 201A. (a) GENERAL RULE.—Each pension
10 plan maintained by an employer shall benefit all employees
11 of the employer.

12 “(b) EXCLUSION OF CERTAIN EMPLOYEES.—

1 “(1) IN GENERAL.—Subject to paragraph (2),
2 in determining, in the case of any plan, whether the
3 requirements of subsection (a) are met with respect
4 to the employees of the employer maintaining the
5 plan, there shall be excluded from consideration—

6 “(A) employees who are included in a unit
7 of employees covered by an agreement which, as
8 determined in accordance with regulations
9 issued by the Secretary, constitutes a collective
10 bargaining agreement between employee rep-
11 resentatives and the employer or 2 or more em-
12 ployers including the employer, if there is evi-
13 dence that retirement benefits were the subject
14 of good faith bargaining between the employee
15 representatives and the employer or employers,

16 “(B) in the case of a trust, forming a part
17 of the plan, which is established or maintained
18 pursuant to an agreement which, as determined
19 in accordance with regulations issued by the
20 Secretary, constitutes a collective bargaining
21 agreement between airline pilots represented in
22 accordance with title II of the Railway Labor
23 Act and the employer or 2 or more employers
24 including the employer, all employees not cov-
25 ered by the agreement, and

1 “(C) employees who are nonresident aliens
2 and who receive no earned income (within the
3 meaning of section 911(d)(2) of the Internal
4 Revenue Code of 1986) from the employer
5 which constitutes income from sources within
6 the United States (within the meaning of sec-
7 tion 861(a)(3) of such Code).

8 “(2) SPECIAL RULES.—

9 “(A) TREATMENT OF EMPLOYEES IN
10 UNITS COVERED BY COLLECTIVE BARGAINING
11 AGREEMENTS.—Subsection (a) shall apply sepa-
12 rately with respect to employees (of an em-
13 ployer referred to in paragraph (1)(A)) who are
14 in a unit of employees described in paragraph
15 (1)(A).

16 “(B) TREATMENT OF CERTAIN AIRLINE
17 EMPLOYEES.—Paragraph (1)(B) shall not apply
18 in the case of any plan (of which the trust re-
19 ferred to in paragraph (1)(B) forms a part) if
20 the plan provides for contributions or benefits
21 for employees whose principal duties are not
22 customarily performed aboard aircraft in flight.

23 “(c) EXCLUSION OF EMPLOYEES NOT MEETING AGE
24 AND SERVICE REQUIREMENTS.—

25 “(1) IN GENERAL.—If a plan—

1 “(A) prescribes, consistent with section
2 202(a), minimum age and service requirements
3 as a condition of participation, and

4 “(B) excludes all employees not meeting
5 such requirements from participation,
6 then such employees shall be excluded from consider-
7 ation for purposes of this section.

8 “(2) REQUIREMENTS MAY BE MET SEPARATELY
9 WITH RESPECT TO EXCLUDED GROUP.—If employees
10 not meeting the minimum age or service require-
11 ments of section 202(a)(1) (without regard to sub-
12 paragraph (B) thereof) are covered under a plan of
13 the employer which meets the requirements of sub-
14 section (a) separately with respect to such employ-
15 ees, such employees may be excluded from consider-
16 ation in determining whether any plan of the em-
17 ployer meets the requirements of subsection (a).

18 “(3) REQUIREMENTS NOT TREATED AS BEING
19 MET BEFORE ENTRY DATE.—An employee shall not
20 be treated as meeting the age and service require-
21 ments described in this subsection until the first
22 date on which, under the plan, any employee with
23 the same age and service would be eligible to com-
24 mence participation in the plan.

25 “(d) LINE OF BUSINESS EXCEPTION.—

1 “(1) IN GENERAL.—If, under section 414(r) of
2 the Internal Revenue Code of 1986, an employer is
3 treated as operating separate lines of business for a
4 year, the employer may apply the requirements of
5 this section for such year separately with respect to
6 employees in each separate line of business.

7 “(2) PLAN MUST BE NONDISCRIMINATORY.—
8 Paragraph (1) shall not apply with respect to any
9 plan maintained by an employer unless such plan
10 benefits such employees as qualify under a classifica-
11 tion set up by the employer and found by the Sec-
12 retary of the Treasury not to be discriminatory in
13 favor of highly compensated employees.

14 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
15 poses of this section—

16 “(1) HIGHLY COMPENSATED EMPLOYEE.—The
17 term ‘highly compensated employee’ has the mean-
18 ing given such term by section 414(q) of the Inter-
19 nal Revenue Code of 1986.

20 “(2) AGGREGATION RULES.—An employer may
21 elect to designate—

22 “(A) 2 or more trusts,

23 “(B) 1 or more trusts and 1 or more annu-
24 ity plans, or

25 “(C) 2 or more annuity plans,

1 as part of 1 plan to determine whether the require-
2 ments of this section are met with respect to such
3 plan.

4 “(3) SPECIAL RULES FOR CERTAIN DISPOSI-
5 TIONS OR ACQUISITIONS.—

6 “(A) IN GENERAL.—If a person becomes,
7 or ceases to be, a member of a group described
8 in subsection (b), (c), (m), or (o) of section 414
9 of such Code, then the requirements of this sec-
10 tion shall be treated as having been met during
11 the transition period with respect to any plan
12 covering employees of such person or any other
13 member of such group if—

14 “(i) such requirements were met im-
15 mediately before each such change, and

16 “(ii) the coverage under such plan is
17 not significantly changed during the transi-
18 tion period (other than by reason of the
19 change in members of a group) or such
20 plan meets such other requirements as the
21 Secretary of the Treasury may prescribe
22 by regulation.

23 “(B) TRANSITION PERIOD.—For purposes
24 of subparagraph (A), the term ‘transition pe-
25 riod’ means the period—

1 “(i) beginning on the date of the
2 change in members of a group, and

3 “(ii) ending on the last day of the 1st
4 plan year beginning after the date of such
5 change.

6 “(4) ELIGIBILITY TO CONTRIBUTE.—In the
7 case of contributions which are subject to section
8 401(k) or 401(m) of the Internal Revenue Code of
9 1986, employees who are eligible to contribute (or
10 elect to have contributions made on their behalf)
11 shall be treated as benefiting under the plan.

12 “(5) REGULATIONS.—The Secretary of the
13 Treasury shall prescribe such regulations as may be
14 necessary or appropriate to carry out the purposes
15 of this section.”.

16 (b) CLERICAL AMENDMENT.—The table of contents
17 in section 1 of such Act is amended by inserting after the
18 item relating to section 201 the following new item:

“Sec. 201A. Minimum coverage requirements.”.

19 **SEC. 102. MINIMUM PARTICIPATION REQUIREMENTS.**

20 (a) IN GENERAL.—Sections 202(a)(3), 203(b)(2),
21 and 204(b)(4) of the Employee Retirement Income Secu-
22 rity Act of 1974 (29 U.S.C. 1052(a)(3), 1053(b)(2), and
23 1054(b)(4)) are each amended by striking “1,000 hours”
24 each place it appears and inserting “750 hours”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Sections 202(a)(3)(D), 203(b)(2)(D), and
2 204(b)(4)(E) (29 U.S.C. 1052(a)(3)(D),
3 1053(b)(2)(D), and 1054(b)(4)(E)) are each amend-
4 ed by striking “125 days” and inserting “94 days”.

5 (2) Sections 202(b)(5)(B) and 203(b)(3)(E)(ii)
6 (29 U.S.C. 1052(b)(5)(B) and 1053(b)(3)(E)(ii))
7 are each amended by striking “501 hours” and in-
8 serting “376 hours”.

9 (3) Section 203(b)(3)(A) (29 U.S.C.
10 1053(b)(3)(A)) is amended by striking “500 hours”
11 and inserting “375 hours”.

12 **SEC. 103. FASTER VESTING OF BENEFITS UNDER DEFINED**
13 **CONTRIBUTION PLANS.**

14 Section 203(a) of the Employee Retirement Income
15 Security Act of 1974 (29 U.S.C. 1053(a)) is amended—

16 (1) by striking paragraph (2)(A) and inserting
17 the following:

18 “(A) A plan satisfies the requirements of
19 this subparagraph if an employee has a non-
20 forfeitable right to 100 percent of the employ-
21 ee’s accrued benefit derived from employer con-
22 tributions—

23 “(i) in the case of a defined benefit
24 plan, as of completion by the employee of
25 at least 5 years of service, or

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1 of such Act is amended—

3 (1) by striking the item relating to section 211;

4 and

5 (2) by inserting after the item relating to sec-
6 tion 210 the following new items:

“Sec. 211. Prohibition of requests by plan sponsors for waiver of employee
rights.

“Sec. 212. Effective dates.”.

7 **SEC. 105. MODEL SMALL EMPLOYER GROUP PENSION**
8 **PLAN.**

9 (a) IN GENERAL.—Section 206 of the Employee Re-
10 tirement Income Security Act of 1974 (29 U.S.C. 1056)
11 is amended by adding at the end the following new sub-
12 section:

13 “(g) MODEL SIMPLIFIED GROUP PENSION PLANS.—

14 “(1) ESTABLISHMENT OF MODEL PLAN.—The
15 Secretary, in consultation with the Secretary of the
16 Treasury, shall prescribe by regulations one or more
17 model simplified group pension plans which would—

18 “(A) provide simplicity and minimal ad-
19 ministrative responsibilities to employers and
20 provide adequate retirement benefits to employ-
21 ees upon adoption by an employer, including
22 models which could be established by a group of
23 small employers, an employee association, an
24 employer association, or a financial institution,

1 “(B) cover all employees of the employer,

2 “(C) accept contributions from successive
3 employers,

4 “(D) readily permit and accept rollovers to
5 and from other qualified plans (as defined in
6 section 203(e)(2)), and

7 “(E) constitute a plan meeting the require-
8 ments of this Act and Internal Revenue Code of
9 1986.

10 In devising a model pension plan, the Secretary shall
11 consider the adequacy of existing simplified em-
12 ployee pension plan alternatives and may make rec-
13 ommendations to adopt such plans as model sim-
14 plified plans.

15 “(2) ADVERTISEMENT OF MODEL PLAN.—The
16 Secretary, in consultation with the Secretary of the
17 Treasury and the Administrator of the Small Busi-
18 ness Administration, shall advertise the model plans
19 developed pursuant to paragraph (1), including
20 through contracts (to the extent provided in appro-
21 priation Acts) with applicable organizations, to en-
22 sure that small employers and their employees are
23 apprised of the availability of administratively simple
24 single and group pension plans.”.

1 (b) EXEMPTION OF PLAN SPONSOR FROM FIDU-
2 CIARY LIABILITY.—Section 404(a) of such Act (29 U.S.C.
3 1104(a)) is amended by adding at the end the following
4 new paragraph:

5 “(3) A plan sponsor of an employee benefit plan shall
6 not be liable under this part in connection with such plan
7 for any act or practice by such plan sponsor consistent
8 with the requirements of such plan if such plan conforms
9 to the terms of a model simplified group pension plan pre-
10 scribed pursuant to section 206(g).”.

11 (c) INITIAL REGULATIONS.—Regulations under sec-
12 tion 206(g) of the Employee Retirement Income Security
13 Act of 1974 (added by this section) for the first model
14 simplified pension plans shall be issued within 12 months
15 after the date of the enactment of this Act.

16 (d) STUDY.—Not later than 3 years after the date
17 of the enactment of this Act, the Secretary of Labor and
18 the Secretary of the Treasury shall conduct a joint study
19 to determine the feasibility of permitting non-highly com-
20 pensated employees whose employer does not cover them
21 under a pension plan, and other non-covered individuals,
22 to seek an automatic payroll deduction or other deferral
23 mechanism to make contributions to a pension plan con-
24 forming to the the requirements of a model simplified
25 group pension plan developed pursuant to section 206(g)

1 of the Employee Retirement Income Security Act of 1974
 2 or to similar pension plans. Such Secretaries shall submit
 3 a joint report to the Congress describing the results of
 4 such study and making such recommendations as the Sec-
 5 retaries determine necessary or appropriate.

6 **SEC. 106. ENFORCEMENT UNDER ERISA OF REQUIREMENTS**
 7 **FOR SIMPLIFIED EMPLOYEE PENSIONS.**

8 Subtitle A of title III of the Employee Retirement
 9 Income Security Act of 1974 is amended by adding after
 10 section 3004 (29 U.S.C. 1204) the following new section:

11 “TREATMENT OF SIMPLIFIED EMPLOYEE PENSIONS

12 “SEC. 3005. For purposes of part 5 of subtitle B of
 13 title I, the requirements of section 408(k) of the Internal
 14 Revenue Code of 1986 relating to simplified employee pen-
 15 sions (as defined in section 408(k)(1) of such Code) shall
 16 be treated as requirements of title I applicable to employee
 17 pension benefit plans (as defined in section 3(2)) which
 18 are such simplified employee pensions.”.

19 **TITLE II—IMPROVED PENSION**
 20 **PROTECTIONS FOR WOMEN**

21 **SEC. 201. ELIMINATION OF INTEGRATION WITH WORKERS’**
 22 **COMPENSATION AND SIMILAR BENEFITS.**

23 Section 206 of the Employee Retirement Income Se-
 24 curity Act of 1974 (as amended by section 105(a)) is
 25 amended further by adding at the end the following new
 26 subsection:

1 “(h) INTEGRATION WITH WORKERS’ COMPENSATION
2 AND SIMILAR BENEFITS PRECLUDED.—Benefits under an
3 employee pension benefit plan may not vary based on the
4 amount of benefits received by a participant or beneficiary
5 under an applicable worker’s compensation law, unemploy-
6 ment compensation law, or disability insurance law, or on
7 whether the participant or beneficiary is entitled to such
8 benefits.”.

9 **SEC. 202. SPOUSAL CONSENT REQUIRED FOR DISTRIBUTIONS FROM DEFINED CONTRIBUTION PLANS.**

12 (a) IN GENERAL.—Section 205(b) of the Employee
13 Retirement Income Security Act of 1974 (29 U.S.C.
14 1055(b)) is amended to read as follows:

15 “(b)(1) This section shall apply to any defined benefit
16 plan and to any individual account plan.

17 “(2) Notwithstanding paragraph (1), this section
18 shall not apply to a plan which the Secretary of the Treas-
19 ury or his delegate has determined is a plan described in
20 section 404(c) of the Internal Revenue Code of 1986 (or
21 a continuation thereof) in which participation is substan-
22 tially limited to individuals who, before January 1, 1976,
23 ceased employment covered by the plan.”.

1 (b) HARDSHIP DISTRIBUTION.—Section 205 of such
2 Act (29 U.S.C. 1055) is amended by adding at the end
3 the following new subsection:

4 “(m) This section shall not apply to a hardship dis-
5 tribution under section 401(k)(2)(B)(i)(IV) of the Internal
6 Revenue Code of 1986.”.

7 (c) SPECIAL RULE FOR CASH-OUTS.—Section 205(g)
8 of such Act (29 U.S.C. 1055(g)) is amended—

9 (1) by adjusting the margination of paragraph
10 (3) so as to align such paragraph with the
11 margination of paragraphs (1) and (2); and

12 (2) by adding at the end the following new
13 paragraph:

14 “(4) SPECIAL RULE FOR DEFINED CONTRIBUTION
15 PLANS.—

16 “(A) IN GENERAL.—In the case of an indi-
17 vidual account plan, notwithstanding paragraph (2),
18 if the present value of the qualified joint and sur-
19 vivor annuity or the qualified preretirement survivor
20 annuity exceeds \$10,000, the plan shall immediately
21 distribute 50 percent of the present value of such
22 annuity to each spouse, unless otherwise elected in
23 advance by the spouse in writing in accordance with
24 such regulations as the Secretary may prescribe.

25 Section 211 shall apply with respect to each spouse’s

1 rights under this paragraph as if such spouse were
2 an employee referred to in such section.

3 “(B) EXCEPTION.—The plan may distribute a
4 different percentage of the present value of an annu-
5 ity to each spouse if a court order or contractual
6 agreement between the spouses provides for such
7 different percentage.”.

8 **SEC. 203. MODIFICATION OF JOINT AND SURVIVOR ANNU-**
9 **ITY REQUIREMENTS.**

10 (a) OPTION TO ELECT QUALIFIED ALTERNATIVE
11 JOINT AND SURVIVOR ANNUITY FORM OF BENEFIT UPON
12 WAIVER OF QUALIFIED JOINT AND SURVIVOR ANNUITY
13 FORM OF BENEFIT.—

14 (1) IN GENERAL.—Section 205(c)(1)(A) of the
15 Employee Retirement Income Security Act of 1974
16 (29 U.S.C. 1055(c)(1)(A)) is amended to read as
17 follows:

18 “(A) under the plan, each participant—

19 “(i) may elect at any time during the
20 applicable election period to waive the
21 qualified joint and survivor annuity form
22 of benefit,

23 “(ii) may elect at any time during the
24 applicable election period to waive the

1 qualified preretirement survivor annuity
2 form of benefit,

3 “(iii) may elect at any time during the
4 applicable election period, in any case in
5 which the qualified joint and survivor an-
6 nuity form of benefit is not provided by
7 reason of a waiver under clause (i), to be
8 provided a qualified alternative joint and
9 survivor annuity form of benefit, and

10 “(iv) may revoke any such election at
11 any time during the applicable election pe-
12 riod, and”.

13 (2) QUALIFIED ALTERNATIVE JOINT AND SUR-
14 VIVOR ANNUITY DEFINED.—Section 205(d) of such
15 Act (29 U.S.C. 1055(d)) is amended—

16 (A) by redesignating paragraphs (1) and
17 (2) as subparagraphs (A) and (B), respectively;

18 (B) by inserting “(1)” after “(d)”; and

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

21 “(2)(A) For purposes of this section, the term ‘quali-
22 fied alternative joint and survivor annuity’ means an an-
23 nuity—

24 “(i) for the life of the participant with a sur-
25 vivor annuity for the life of the spouse which is

1 equal to the applicable percentage (determined under
2 subparagraph (B)) of (and not greater than 100
3 percent of) the amount of the annuity which is pay-
4 able during the joint lives of the participant and the
5 spouse, and

6 “(ii) which is the actuarial equivalent of a sin-
7 gular annuity for the life of the participant.

8 Such term also includes any annuity form having the ef-
9 fect of an annuity described in the preceding sentence.

10 “(B)(i) For purposes of subparagraph (A)—

11 “(I) if the base survivor annuity percent-
12 age is less than 75 percent, the applicable per-
13 centage is 75 percent, and

14 “(II) if the base survivor annuity percent-
15 age is equal to at least 75 percent, the applica-
16 ble percentage is 50 percent.

17 “(ii) For purposes of clause (i), the term ‘survivor
18 annuity percentage’ means the percentage which the sur-
19 vivor annuity under the plan’s qualified joint and survivor
20 annuity form of benefit bears to the annuity payable dur-
21 ing the joint lives of the participant and the spouse under
22 such form of benefit.”.

23 (b) EXEMPTION IN THE CASE OF PLANS OFFERING
24 FULLY SUBSIDIZED QUALIFIED JOINT AND SURVIVOR

1 ANNUITIES.—Section 205(c)(5) of such Act (29 U.S.C.
2 1055(c)(5)) is amended—

3 (1) by redesignating subparagraph (B) as sub-
4 paragraph (C); and

5 (2) by inserting after subparagraph (A) the fol-
6 lowing new subparagraph:

7 “(B) The requirements of this subsection shall not
8 apply with respect to the qualified alternative joint and
9 survivor annuity form of benefit if the plan fully subsidizes
10 the costs of the qualified joint and survivor annuity form
11 of benefit.”.

12 (c) ILLUSTRATION REQUIREMENT.—Clause (i) of
13 section 205(c)(3)(A) of such Act (29 U.S.C.
14 1055(c)(3)(A)) is amended to read as follows:

15 “(i) the terms and conditions of the qualified
16 joint and survivor annuity form of benefit offered by
17 the plan, the terms and conditions of the qualified
18 preretirement survivor annuity form of benefit of-
19 fered by the plan, and the terms and conditions of
20 the qualified alternative joint and survivor annuity
21 form of benefit offered by the plan, accompanied by
22 an illustration of the benefits under each such form
23 of benefit for the particular participant and spouse
24 and an acknowledgement form to be signed by the
25 participant and the spouse that they have read and

1 considered the illustration before any election is
 2 made pursuant to clause (i) or (ii) of subsection
 3 (c)(1)(A).”.

4 (d) **RULE OF CONSTRUCTION.**—For purposes of sec-
 5 tion 204(g) of the Employee Retirement Income Security
 6 Act of 1974 (29 U.S.C. 1054(g)), a plan shall not be treat-
 7 ed as having decreased the accrued benefit of a participant
 8 solely by reason of the adoption of a plan amendment
 9 under which a qualified alternative joint and survivor an-
 10 nuity form of benefit is added to the plan in accordance
 11 with section 205(c)(1)(A)(ii) of such Act (as amended by
 12 this section).

13 **SEC. 204. DIVISION OF PENSION BENEFITS UPON DIVORCE.**

14 (a) **IN GENERAL.**—Section 206(d)(3) of the Em-
 15 ployee Retirement Income Security Act of 1974 (29
 16 U.S.C. 1056(d)(3)) is amended by redesignating subpara-
 17 graph (N) as subparagraph (O) and by inserting after
 18 subparagraph (M) the following new subparagraph:

19 “(N) **SPECIAL RULES AND PROCEDURES FOR DO-**
 20 **MESTIC RELATIONS ORDERS NOT SPECIFYING DIVISION**
 21 **OF PENSION BENEFITS.**—

22 “(i) **IN GENERAL.**—In any case in which—

23 “(I) a domestic relations order (including
 24 an annulment or other order of marital dissolu-
 25 tion) relates to provision of marital property

1 with respect to a marriage of at least 5 years
2 duration between an individual who is a partici-
3 pant in a pension plan and such individual's
4 former spouse,

5 “(II) such order, and all prior orders (if
6 any) described in subclause (I) relating to such
7 marriage, do not specifically provide that pen-
8 sion benefits were considered by the parties and
9 that no division of such benefits is intended,

10 “(III) such order is not a qualified domes-
11 tic relations order (as determined without re-
12 gard to this subparagraph) and there is no
13 other prior qualified domestic relations order
14 issued in connection with the dissolution of the
15 marriage to which such order relates, and

16 “(IV) the former spouse notifies the plan
17 within the period prescribed under clause (vii)
18 that the former spouse is entitled to benefits
19 under the plan in accordance with the provi-
20 sions of this subparagraph,

21 such domestic relations order shall be treated as a
22 qualified domestic relations order for purposes of
23 this paragraph.

24 “(ii) AMOUNT OF BENEFIT.—Any domestic re-
25 lations order treated as a qualified domestic rela-

1 tions order under clause (i) shall be treated as speci-
2 fying that the former spouse is entitled to the appli-
3 cable percentage of the marital share of the partici-
4 pant's accrued benefit.

5 “(iii) MARITAL SHARE.—For purposes of clause
6 (ii), the marital share of a participant's accrued ben-
7 efit is an amount equal to the product of—

8 “(I) such benefit as of the date of the first
9 payment under the plan (to the extent such ac-
10 crued benefit is vested on the date of the dis-
11 solution of the marriage or any later date), and

12 “(II) a fraction, the numerator of which is
13 the period of participation by the participant
14 under the plan starting with the date of mar-
15 riage and ending with the date of dissolution of
16 marriage, and the denominator of which is the
17 total period of participation by the participant
18 under the plan.

19 “(iv) APPLICABLE PERCENTAGE.—For purposes
20 of clause (ii), the applicable percentage is—

21 “(I) except as provided in subclause (II),
22 50 percent, and

23 “(II) in the case of a participant who fails
24 to provide the plan with notice of a domestic re-

1 lations order within the time prescribed under
2 clause (v), 67 percent.

3 “(v) NOTICE BY PARTICIPANT.—Each partici-
4 pant in a pension plan shall, within 60 days after
5 the dissolution of the marriage of the participant—

6 “(I) notify the plan administrator of the
7 plan of such dissolution, and

8 “(II) provide to the plan administrator a
9 copy of the domestic relations order (including
10 an annulment or other order of marital dissolu-
11 tion) providing for such dissolution and the last
12 known address of the participant’s former
13 spouse.

14 “(vi) NOTICE BY PLAN ADMINISTRATOR.—Each
15 plan administrator receiving notice under clause (v)
16 shall promptly notify the former spouse of a partici-
17 pant of such spouse’s rights under this subpara-
18 graph, including the time period within which such
19 spouse is required to notify the plan of the spouse’s
20 intention to claim rights under this subparagraph.

21 “(vii) NOTICE BY FORMER SPOUSE.—A former
22 spouse may notify the plan administrator of such
23 spouse’s intent to claim rights under this subpara-
24 graph at any time before the last day of the 1-year
25 period following receipt of notice under clause (vi).

1 “(viii) COORDINATION WITH PLAN PROCE-
2 DURES.—The determination under subparagraph
3 (G)(i)(II) with respect to a domestic relations order
4 to which this subparagraph applies shall be made
5 within a reasonable period of time after the plan ad-
6 ministrator receives the notice described in clause
7 (vii).

8 “(ix) INTERPRETATION AS QUALIFIED DOMES-
9 TIC RELATIONS ORDER.—Each plan shall establish
10 reasonable rules for determining how any such
11 deemed domestic relations order is to be interpreted
12 under the plan so as to constitute a qualified domes-
13 tic relations order that satisfies subparagraphs (C)
14 through (E) (and a copy of such rules shall be pro-
15 vided to such former spouse promptly after delivery
16 of the divorce decree). Such rules—

17 “(I) may delay the effect of such an order
18 until the earlier of the date the participant is
19 fully vested or has terminated employment,

20 “(II) may allow distribution to the former
21 spouse to be made immediately,

22 “(III) shall permit the former spouse to be
23 paid not later than the earliest retirement age
24 under the plan or the participant’s death,

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

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

7 “(ii) The hours described in clause (i) shall be treated
8 as hours of service as provided in this subparagraph—

9 “(I) only in the year in which the absence from
10 work begins, if section 203(b)(2)(E)(ii)(I) requires
11 hours to be credited to the year in which the absence
12 from work begins, or

13 “(II) in any other case, in the immediately fol-
14 lowing year.”.

15 (2) COORDINATION WITH TREATMENT OF MA-
16 TERNITY AND PATERNITY ABSENCES UNDER BREAK
17 IN SERVICE RULES.—Subparagraph (A) of section
18 202(b)(5) of such Act (29 U.S.C. 1052(b)(5)(A)) is
19 amended by adding at the end the following new
20 sentence: “The preceding sentence shall apply to an
21 absence from work only if no part of such absence
22 is required to be given under the Family and Med-
23 ical Leave Act of 1993.”.

24 (b) VESTING.—

1 (1) IN GENERAL.—Paragraph (2) of section
2 203(b) of such Act (29 U.S.C. 1053(b)(2)) is
3 amended by adding at the end the following new
4 subparagraph:

5 “(E)(i) For purposes of this subsection, in the case
6 of an individual who is absent from work on leave required
7 to be given to such individual under the Family and Med-
8 ical Leave Act of 1993, the plan shall treat as hours of
9 service—

10 “(I) the hours of service which otherwise would
11 normally have been credited to such individual but
12 for such absence, or

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

16 “(ii) The hours described in clause (i) shall be treated
17 as hours of service as provided in this subparagraph—

18 “(I) only in the year in which the absence from
19 work begins, if the participant’s rights in his ac-
20 crued benefit derived from employer contributions
21 are to any extent not nonforfeitable and the partici-
22 pant would have a year of service solely because the
23 period of absence is treated as hours of service as
24 provided in clause (i); or

1 spouse is the same as the last known address of the partic-
2 ipant, the requirement of the preceding sentence shall be
3 treated as met if the copy referred to in the preceding
4 sentence is included in a single mailing made to such ad-
5 dress and addressed to both such participant and
6 spouse.”.

7 **SEC. 207. REPEAL OF REDUCTION IN MILITARY SURVIVOR**
8 **BENEFIT PLAN ANNUITIES AT AGE 62.**

9 (a) COMPUTATION OF ANNUITY FOR A SPOUSE,
10 FORMER SPOUSE, OR CHILD.—Subsection (a) of section
11 1451 of title 10, United States Code, is amended—

12 (1) in paragraph (1), by striking “shall be de-
13 termined as follows:” and all that follows and insert-
14 ing the following: “shall be the amount equal to 55
15 percent of the base amount.”;

16 (2) in paragraph (2), by striking “shall be de-
17 termined as follows:” and all that follows and insert-
18 ing the following: “shall be the amount equal to a
19 percentage of the base amount that is less than 55
20 percent and is determined under subsection (f).”.

21 (b) ANNUITIES FOR SURVIVORS OF CERTAIN PER-
22 SONS DYING DURING A PERIOD OF SPECIAL ELIGIBILITY
23 FOR SBP.—Subsection (c)(1) of such section is amended
24 by striking “shall be determined as follows:” and all that
25 follows and inserting the following: “shall be the amount

1 equal to 55 percent of the retired pay to which the member
2 or former member would have been entitled if the member
3 or former member had been entitled to that pay based
4 upon his years of active service when he died determined
5 as follows:

6 “(A) In the case of an annuity provided under
7 section 1448(d) of this title (other than in a case
8 covered by subparagraph (B)), such retired pay shall
9 be computed as if the member had been retired
10 under section 1201 of this title on the date of the
11 member’s death with a disability rated as total.

12 “(B) In the case of an annuity provided under
13 section 1448(d)(1)(A) of this title by reason of the
14 death of a member not in line of duty, such retired
15 pay shall be computed based upon the member’s
16 years of active service when he died.

17 “(C) In the case of an annuity provided under
18 section 1448(f) of this title, such retired pay shall be
19 computed based upon the member or former mem-
20 ber’s years of active service when he died computed
21 under section 12733 of this title.”.

22 (c) REPEAL OF REQUIREMENT FOR REDUCTION.—
23 Such section is further amended by striking subsection
24 (d).

1 (d) REPEAL OF UNNECESSARY SUPPLEMENTAL
 2 SBP.—(1) Subchapter III of chapter 73 of title 10,
 3 United States Code, is repealed.

4 (2) The table of subchapters at the beginning of such
 5 chapter is amended by striking the item relating to sub-
 6 chapter III.

7 (e) EFFECTIVE DATE.—The amendments made by
 8 this section shall take effect on October 1, 2005, and shall
 9 apply with respect to annuity payments for months begin-
 10 ning on or after that date.

11 **SEC. 208. SURVIVOR ANNUITIES FOR WIDOWS, WIDOWERS,**
 12 **AND FORMER SPOUSES OF FEDERAL EM-**
 13 **PLOYEES WHO DIE BEFORE ATTAINING AGE**
 14 **FOR DEFERRED ANNUITY UNDER CIVIL**
 15 **SERVICE RETIREMENT SYSTEM.**

16 (a) BENEFITS FOR WIDOW OR WIDOWER.—Section
 17 8341(f) of title 5, United States Code, is amended—

18 (1) in the matter preceding paragraph (1)—

19 (A) by inserting “a former employee sepa-
 20 rated from the service with title to deferred an-
 21 nuity from the Fund dies before having estab-
 22 lished a valid claim for annuity and is survived
 23 by a spouse, or if” before “a Member”; and

24 (B) by inserting “of such former employee
 25 or Member” after “the surviving spouse”;

1 (2) in paragraph (1)—

2 (A) by inserting “former employee or” be-
3 fore “Member commencing”; and

4 (B) by inserting “former employee or” be-
5 fore “Member dies”; and

6 (3) in the undesignated sentence following para-
7 graph (2)—

8 (A) in the matter preceding subparagraph
9 (A), by inserting “former employee or” before
10 “Member”; and

11 (B) in subparagraph (B), by inserting
12 “former employee or” before “Member”.

13 (b) BENEFITS FOR FORMER SPOUSE.—Section
14 8341(h) of title 5, United States Code, is amended—

15 (1) in paragraph (1), by inserting “former em-
16 ployee entitled to a deferred annuity under section
17 8338(a) of this title,” after “employee, Member, an-
18 nuitant,”; and

19 (2) in paragraph (2)—

20 (A) in subparagraph (A)(ii) by striking “or
21 annuitant,” and inserting “annuitant, or former
22 employee”; and

23 (B) in subparagraph (B)(iii) by inserting
24 “former employee or” before “Member”.

1 (c) PROTECTION OF SURVIVOR BENEFIT RIGHTS.—
 2 Section 8339(j)(3) of title 5, United States Code, is
 3 amended by adding at the end the following: “The Office
 4 shall provide by regulation for the application of this sub-
 5 section to the widow, widower, or surviving former spouse
 6 of a former employee who dies after having separated from
 7 the service with title to a deferred annuity under section
 8 8338(a) but before having established a valid claim for
 9 annuity.”.

10 (d) EFFECTIVE DATE.—The amendments made by
 11 this section shall take effect on the date of the enactment
 12 of this Act and shall apply only in the case of a former
 13 employee who dies on or after such date.

14 **SEC. 209. ORDER OF PRECEDENCE FOR DISPOSITION OF**
 15 **AMOUNTS REMAINING IN THE THRIFT SAV-**
 16 **INGS ACCOUNT OF A FEDERAL EMPLOYEE**
 17 **(OR FORMER EMPLOYEE) WHO DIES BEFORE**
 18 **MAKING AN EFFECTIVE ELECTION CONTROL-**
 19 **LING SUCH DISPOSITION.**

20 (a) IN GENERAL.—Section 8433(e) of title 5, United
 21 States Code, is amended—

- 22 (1) by striking “(e)” and inserting “(e)(1)”;
- 23 (2) by striking all that follows “paid” and in-
 24 serting “in accordance with paragraph (2).”; and
- 25 (3) by adding at the end the following:

1 “(2) An amount under paragraph (1) shall be paid
2 in a manner consistent with the provisions of section
3 8424(d), except that, in applying the order of precedence
4 under such provisions—

5 “(A) the widow or widower of the decedent shall
6 be the first party entitled to receive (instead of any
7 designated beneficiary); and

8 “(B) if there is no widow or widower, the party
9 next entitled to receive shall be the beneficiary or
10 beneficiaries designated by the employee or Member
11 (or former employee or Member) in accordance with
12 the procedures that would otherwise normally apply,
13 subject to such additional conditions as the Execu-
14 tive Director shall by regulation prescribe based on
15 section 205(c)(2) of the Employee Retirement In-
16 come Security Act of 1974 (relating to spousal con-
17 sent requirements).”.

18 (b) EFFECTIVE DATE.—This section and the amend-
19 ment made by this section shall take effect on the 90th
20 day after the date of the enactment of this Act, and shall
21 apply in the case of any individual who dies on or after
22 such 90th day.

1 **SEC. 210. AMENDMENTS RELATING TO EFFECTIVE DATE**
2 **PROVISION OF THE CIVIL SERVICE RETIRE-**
3 **MENT SPOUSE EQUITY ACT OF 1984.**

4 (a) **ELIMINATION OF CERTAIN BARS TO ELIGI-**
5 **BILITY.**—Section 4(b) of the Civil Service Retirement
6 Spouse Equity Act of 1984 (5 U.S.C. 8341 note) is
7 amended—

8 (1) in paragraph (1)(B)(i), by striking “after
9 September 14, 1978, and”; and

10 (2) by repealing paragraph (4).

11 (b) **NEW DEADLINE FOR APPLICATIONS.**—

12 (1) **IN GENERAL.**—Section 4(b)(1)(B)(iv) of the
13 Civil Service Retirement Spouse Equity Act of 1984
14 is amended by striking “May 7, 1989” and inserting
15 “May 7th of the year following the year in which the
16 Retirement Enhancement Act of 2004 is enacted”.

17 (2) **AUTHORITY TO WAIVE DEADLINE.**—Section
18 4(b) of the Civil Service Retirement Spouse Equity
19 Act of 1984 is amended by adding at the end the
20 following:

21 “(6)(A) The Director of the Office of Personnel Man-
22 agement may waive the deadline under paragraph
23 (1)(B)(iv) in any case in which the Director determines
24 that the circumstances so warrant.

25 “(B) In making a determination under this para-
26 graph, one of the factors which may be taken into account

1 is whether the individual involved has previously submitted
2 a timely application under this section—

3 “(i) which was denied; but

4 “(ii) which, based on criteria applied under this
5 section pursuant to changes in law subsequent to the
6 denial, would have been approved.”.

7 **SEC. 211. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**
8 **ROAD RETIREMENT ANNUITIES INDE-**
9 **PENDENT OF ACTUAL ENTITLEMENT OF EM-**
10 **PLOYEE.**

11 (a) IN GENERAL.—Section 2 of the Railroad Retire-
12 ment Act of 1974 (45 U.S.C. 231a) is amended—

13 (1) in subsection (c)(4)(i), by striking “(A) is
14 entitled to an annuity under subsection (a)(1) and
15 (B)”;

16 (2) in subsection (e)(5), by striking “or di-
17 vorced wife” the second place it appears.

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall take effect 1 year after the date of the
20 enactment of this Act.

1 **SEC. 212. EXTENSION OF TIER II RAILROAD RETIREMENT**
 2 **BENEFITS TO SURVIVING FORMER SPOUSES**
 3 **PURSUANT TO DIVORCE AGREEMENTS.**

4 (a) IN GENERAL.—Section 5 of the Railroad Retire-
 5 ment Act of 1974 (45 U.S.C. 231d) is amended by adding
 6 at the end the following:

7 “(d) Notwithstanding any other provision of law, the
 8 payment of any portion of an annuity computed under sec-
 9 tion 3(b) to a surviving former spouse in accordance with
 10 a court decree of divorce, annulment, or legal separation
 11 or the terms of any court-approved property settlement
 12 incident to any such court decree shall not be terminated
 13 upon the death of the individual who performed the service
 14 with respect to which such annuity is so computed unless
 15 such termination is otherwise required by the terms of
 16 such court decree.”.

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall take effect 1 year after the date of the
 19 enactment of this Act.

20 **TITLE III—SIMPLIFIED**
 21 **INVESTMENT STANDARDS**

22 **SEC. 301. EXEMPTION FROM PROHIBITED TRANSACTION**
 23 **RULES FOR CERTAIN ABORTED EMERGENT**
 24 **TRANSACTIONS.**

25 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 26 INCOME SECURITY ACT OF 1974.—Section 408 of the

1 Employee Retirement Income Security Act of 1974 (29
2 U.S.C. 1108) is amended by adding at the end the fol-
3 lowing new subsection:

4 “(g)(1) Pursuant to regulations issued by the Sec-
5 retary, in the case of a qualifying transaction between an
6 employee benefit plan and an eligible person which would,
7 but for this subsection, be in violation of a restriction im-
8 posed by section 406 or 407(a), if—

9 “(A) the eligible person submits to the Sec-
10 retary, not later than 60 days after the date of the
11 transaction, an application for an exemption under
12 subsection (a) from such restriction in the case of
13 such transaction,

14 “(B) the Secretary determines not to grant the
15 exemption, and

16 “(C) the transaction is reversed within 60 days
17 after the date of the Secretary’s determination,

18 then the transaction shall be exempted under subsection
19 (a) from treatment as a violation of such restriction.

20 “(2) For purposes of this subsection—

21 “(A) The term ‘qualifying transaction’ means,
22 in connection with an eligible person, a transaction
23 between an employee benefit plan and such eligible
24 person constituting the purchase or sale of a finan-
25 cial product, if—

1 “(i) prior to engaging in the transaction,
2 the plan acquires from the eligible person a suf-
3 ficient guarantee, consisting of a letter of credit
4 or other form of written guarantee, issued by a
5 bank or similar financial institution (other than
6 the eligible person requesting the exemption or
7 an affiliate) regulated and supervised by, and
8 subject to periodic examination by, an agency of
9 a State or of the Federal Government, in a
10 stated amount equal, as of the close of business
11 on the day preceding the transaction, to not
12 less than 100 percent of the amount of plan as-
13 sets involved in the transaction, plus interest on
14 that amount at a rate determined by the parties
15 to the transaction, or in the absence of such de-
16 termination, an interest rate equal to the un-
17 derpayment rate defined in section 6621(a)(2)
18 of the Internal Revenue Code of 1986,

19 “(ii) the eligible person receives in such
20 transaction not more than reasonable com-
21 pensation,

22 “(iii) such transaction is expressly ap-
23 proved by an independent fiduciary who has in-
24 vestment authority with respect to the plan as-
25 sets involved in the transaction, and

1 “(iv) immediately after the acquisition of
2 the financial product—

3 “(I) the fair market value of such fi-
4 nancial product does not exceed 1 percent
5 of the fair market value of the assets of
6 the plan, and

7 “(II) the aggregate fair market value
8 of all outstanding financial products ac-
9 quired by the plan from the eligible person
10 pursuant to this subsection does not exceed
11 5 percent of the fair market value of the
12 assets of the plan.

13 “(3) For purposes of this subsection—

14 “(A) A guarantee referred to in paragraph (2)
15 is ‘sufficient’ if such guarantee is irrevocable and,
16 under the terms of the guarantee, if the Secretary
17 determines not to grant the exemption, the plan has
18 the unconditional right to apply the amounts under
19 the guarantee to any losses suffered and to the pay-
20 ment of interest determined under the terms of the
21 transaction. A guarantee shall not be treated as fail-
22 ing to be ‘sufficient’ solely because, under the terms
23 of the guarantee, if the Secretary grants the exemp-
24 tion, the guarantee may expire without any pay-
25 ments made to the plan.

1 “(B) The term ‘eligible person’ means a person
2 that—

3 “(i) consists of—

4 “(I) a bank as defined in section
5 202(a)(2) of the Investment Advisers Act
6 of 1940,

7 “(II) an investment adviser registered
8 under the Investment Advisers Act of
9 1940,

10 “(III) an insurance company which is
11 qualified to do business in more than one
12 State, or

13 “(IV) a broker-dealer registered under
14 the Securities Exchange Act of 1934,

15 “(ii) has shareholders’ or partners’ equity
16 in excess of \$1,000,000, and

17 “(iii) is not described in section 411.”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 this section shall apply with respect to transactions occur-
20 ring after December 31, 2005.

21 **SEC. 302. PROHIBITED TRANSACTION EXEMPTION FOR THE**
22 **PROVISION OF INVESTMENT ADVICE.**

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

1 (1) IN GENERAL.—Section 408(b) of the Em-
2 ployee Retirement Income Security Act of 1974 (29
3 U.S.C. 1108(b)) is amended by adding at the end
4 the following new paragraph:

5 “(14)(A) Any transaction described in subpara-
6 graph (B) in connection with the provision of invest-
7 ment advice described in section 3(21)(A)(ii), in any
8 case in which—

9 “(i) the plan provides for individual ac-
10 counts and permits a participant or beneficiary
11 to exercise control over assets in his or her ac-
12 count,

13 “(ii) the advice is qualified investment ad-
14 vice provided to a participant or beneficiary of
15 the plan by a fiduciary adviser in connection
16 with any sale, acquisition, or holding of a secu-
17 rity or other property for purposes of invest-
18 ment of plan assets, and

19 “(iii) the requirements of subsection (g)
20 are met in connection with each instance of the
21 provision of the advice.

22 “(B) The transactions described in this sub-
23 paragraph are the following:

24 “(i) the provision of the advice to the par-
25 ticipant or beneficiary;

1 “(ii) the sale, acquisition, or holding of a
2 security or other property (including any lend-
3 ing of money or other extension of credit associ-
4 ated with the sale, acquisition, or holding of a
5 security or other property) pursuant to the ad-
6 vice; and

7 “(iii) the direct or indirect receipt of fees
8 or other compensation by the fiduciary adviser
9 or an affiliate thereof (or any employee, agent,
10 or registered representative of the fiduciary ad-
11 viser or affiliate) in connection with the provi-
12 sion of the advice.”.

13 (2) REQUIREMENTS.—Section 408 of such Act
14 is amended further by adding at the end the fol-
15 lowing new subsection:

16 “(g) REQUIREMENTS FOR EXEMPTION FROM PRO-
17 HIBITED TRANSACTIONS WITH RESPECT TO PROVISION
18 OF INVESTMENT ADVICE.—

19 “(1) IN GENERAL.—The requirements of this
20 subsection are met in connection with the provision
21 of qualified investment advice provided to a partici-
22 pant or beneficiary of an employee benefit plan by
23 a fiduciary adviser with respect to the plan in con-
24 nection with any sale, acquisition, or holding of a se-
25 curity or other property for purposes of investment

1 of amounts held by the plan, if the requirements of
2 the following subparagraphs are met:

3 “(A) WRITTEN DISCLOSURES.—At a time
4 contemporaneous with the provision of the ad-
5 vice in connection with the sale, acquisition, or
6 holding of the security or other property, the fi-
7 duciary adviser shall provide to the recipient of
8 the advice a clear and conspicuous notification,
9 written in a manner to be reasonably under-
10 stood by the average plan participant pursuant
11 to regulations which shall be prescribed by the
12 Secretary (including mathematical examples), of
13 the following:

14 “(i) INTERESTS HELD BY THE FIDU-
15 CIARY ADVISER.—Any interest of the fidu-
16 ciary adviser in, or any affiliation or con-
17 tractual relationship of the fiduciary ad-
18 viser (or affiliates thereof) with any third
19 party having an interest in, the security or
20 other property.

21 “(ii) RELATED FEES OR COMPENSA-
22 TION IN CONNECTION WITH THE PROVI-
23 SION OF THE ADVICE.—All fees or other
24 compensation relating to the advice (in-
25 cluding fees or other compensation

1 itemized with respect to each security or
2 other property with respect to which the
3 advice is provided) that the fiduciary ad-
4 viser (or any affiliate thereof) is to receive
5 (including compensation provided by any
6 third party) in connection with the provi-
7 sion of the advice or in connection with the
8 sale, acquisition, or holding of the security
9 or other property.

10 “(iii) ONGOING FEES OR COMPENSA-
11 TION IN CONNECTION WITH THE SECURITY
12 OR PROPERTY INVOLVED.—All fees or
13 other compensation that the fiduciary ad-
14 viser (or any affiliate thereof) is to receive,
15 on an ongoing basis, in connection with
16 any security or other property with respect
17 to which the fiduciary adviser gives the ad-
18 vice.

19 “(iv) APPLICABLE LIMITATIONS ON
20 SCOPE OF ADVICE.—Any limitation placed
21 (in accordance with the requirements of
22 this subsection) on the scope of the advice
23 to be provided by the fiduciary adviser with
24 respect to the sale, acquisition, or holding
25 of the security or other property.

1 “(v) TYPES OF SERVICES GENERALLY
2 OFFERED.—The types of services offered
3 by the fiduciary adviser in connection with
4 the provision of qualified investment advice
5 by the fiduciary adviser.

6 “(vi) FIDUCIARY STATUS OF THE FI-
7 DUCIARY ADVISER.—That the fiduciary ad-
8 visor is a fiduciary of the plan.

9 “(B) DISCLOSURE BY FIDUCIARY ADVISER
10 IN ACCORDANCE WITH APPLICABLE SECURITIES
11 LAWS.—The fiduciary adviser shall provide ap-
12 propriate disclosure, in connection with the sale,
13 acquisition, or holding of the security or other
14 property, in accordance with all applicable secu-
15 rities laws.

16 “(C) TRANSACTION OCCURRING SOLELY AT
17 DIRECTION OF RECIPIENT OF ADVICE.—The
18 sale, acquisition, or holding of the security or
19 other property shall occur solely at the direction
20 of the recipient of the advice.

21 “(D) REASONABLE COMPENSATION.—The
22 compensation received by the fiduciary adviser
23 and affiliates thereof in connection with the
24 sale, acquisition, or holding of the security or
25 other property shall be reasonable.

1 “(E) ARM’S LENGTH TRANSACTION.—The
2 terms of the sale, acquisition, or holding of the
3 security or other property shall be at least as
4 favorable to the plan as an arm’s length trans-
5 action would be.

6 “(2) CONTINUED AVAILABILITY OF INFORMA-
7 TION FOR AT LEAST 1 YEAR.—The requirements of
8 paragraph (1)(A) shall be deemed not to have been
9 met in connection with the initial or any subsequent
10 provision of advice described in paragraph (1) if, at
11 any time during the 1-year period following the pro-
12 vision of the advice, the fiduciary adviser fails to
13 maintain the information described in clauses (i)
14 through (iv) of subparagraph (A) in currently accu-
15 rate form or to make the information available, upon
16 request and without charge, to the recipient of the
17 advice.

18 “(3) EVIDENCE OF COMPLIANCE MAINTAINED
19 FOR AT LEAST 6 YEARS.—A fiduciary adviser re-
20 ferred to in paragraph (1) who has provided advice
21 referred to in such paragraph shall, for a period of
22 not less than 6 years after the provision of the ad-
23 vice, maintain any records necessary for determining
24 whether the requirements of the preceding provisions
25 of this subsection and of subsection (b)(14) have

1 been met. A transaction prohibited under section
2 406 shall not be considered to have occurred solely
3 because the records are lost or destroyed prior to the
4 end of the 6-year period due to circumstances be-
5 yond the control of the fiduciary adviser.

6 “(4) MODEL DISCLOSURE FORMS.—The Sec-
7 retary shall prescribe regulations setting forth model
8 disclosure forms to assist fiduciary advisers in com-
9 plying with the disclosure requirements of this sub-
10 section.

11 “(5) EXEMPTION FOR EMPLOYERS CON-
12 TRACTING FOR QUALIFIED INVESTMENT ADVICE.—

13 “(A) RELIANCE ON CONTRACTUAL AR-
14 RANGEMENTS.—Subject to subparagraph (B), a
15 plan sponsor or other person who is a fiduciary
16 (other than a fiduciary adviser) shall not be
17 treated as failing to meet the requirements of
18 this part solely by reason of the provision of
19 qualified investment advice (or solely by reason
20 of contracting for or otherwise arranging for
21 the provision of the investment advice), if—

22 “(i) the advice is provided by a fidu-
23 ciary adviser pursuant to an arrangement
24 between the plan sponsor or other fidu-
25 ciary and the fiduciary adviser for the pro-

1 vision by the fiduciary adviser of qualified
2 investment advice, and

3 “(ii) the terms of the arrangement re-
4 quire compliance by the fiduciary adviser
5 with the requirements of this subsection.

6 “(B) CONTINUED DUTY FOR EMPLOYER TO
7 PRUDENTLY SELECT AND REVIEW FIDUCIARY
8 ADVISERS.—Nothing in subparagraph (A) shall
9 be construed to exempt a plan sponsor or other
10 person who is a fiduciary from any requirement
11 of this part for the prudent selection and peri-
12 odic review of a fiduciary adviser with whom
13 the plan sponsor or other person enters into an
14 arrangement for the provision of qualified in-
15 vestment advice. The plan sponsor or other per-
16 son who is a fiduciary shall not be liable under
17 this part with respect to the specific qualified
18 investment advice given by the fiduciary adviser
19 to any particular recipient of the advice. Pursu-
20 ant to regulations which shall be prescribed by
21 the Secretary, the fiduciary adviser shall pro-
22 vide appropriate disclosures to the plan sponsor
23 to enable the plan sponsor to fulfill its fiduciary
24 responsibilities under this part. In connection
25 with the provision of the advice by a fiduciary

1 adviser on an ongoing basis, such regulations
2 shall provide for such disclosures on at least an
3 annual basis.

4 “(C) PLAN ASSETS MAY BE USED TO PAY
5 REASONABLE EXPENSES.—Nothing in this part
6 shall be construed to preclude the use of plan
7 assets to pay for reasonable expenses in pro-
8 viding qualified investment advice.

9 “(6) ANNUAL REVIEWS BY THE SECRETARY.—
10 The Secretary shall conduct annual reviews of ran-
11 domly selected fiduciary advisers providing qualified
12 investment advice to participants and beneficiaries.
13 In the case of each review, the Secretary shall review
14 the following:

15 “(A) COMPLIANCE BY ADVICE COMPUTER
16 MODELS WITH GENERALLY ACCEPTED INVEST-
17 MENT MANAGEMENT PRINCIPLES.—The extent
18 to which advice computer models employed by
19 the fiduciary adviser comply with generally ac-
20 cepted investment management principles.

21 “(B) COMPLIANCE WITH DISCLOSURE RE-
22 QUIREMENTS.—The extent to which disclosures
23 provided by the fiduciary adviser have complied
24 with the requirements of this subsection.

1 “(C) EXTENT OF VIOLATIONS.—The ex-
2 tent to which any violations of fiduciary duties
3 have occurred in connection with the provision
4 of the advice.

5 “(D) EXTENT OF REPORTED COM-
6 PLAINTS.—The extent to which complaints to
7 relevant agencies have been made in connection
8 with the provision of the advice.

9 Any proprietary information obtained by the Sec-
10 retary shall be treated as confidential.

11 “(7) DUTY OF CONFLICTED FIDUCIARY AD-
12 VISER TO PROVIDE FOR ALTERNATIVE INDE-
13 PENDENT ADVICE.—

14 “(A) IN GENERAL.—In connection with
15 any qualified investment advice provided by a
16 fiduciary adviser to a participant or beneficiary
17 regarding any security or other property, if the
18 fiduciary adviser—

19 “(i) has an interest in the security or
20 other property, or

21 “(ii) has an affiliation or contractual
22 relationship with any third party that has
23 an interest in the security or other prop-
24 erty,

1 the requirements of paragraph (1) shall be
2 treated as not met in connection with the advice
3 unless the fiduciary adviser has arranged, as an
4 alternative to the advice that would otherwise
5 be provided by the fiduciary advisor, for quali-
6 fied investment advice with respect to the secu-
7 rity or other property provided by at least one
8 alternative investment adviser meeting the re-
9 quirements of subparagraph (B).

10 “(B) INDEPENDENCE AND QUALIFICA-
11 TIONS OF ALTERNATIVE INVESTMENT AD-
12 VISER.—Any alternative investment adviser
13 whose qualified investment advice is arranged
14 for by a fiduciary adviser pursuant to subpara-
15 graph (A)—

16 “(i) shall have no material interest in,
17 and no material affiliation or contractual
18 relationship with any third party having a
19 material interest in, the security or other
20 property with respect to which the invest-
21 ment adviser is providing the advice, and

22 “(ii) shall meet the requirements of a
23 fiduciary adviser under paragraph (8)(A),
24 except that an alternative investment ad-
25 viser may not be a fiduciary of the plan

1 other than in connection with the provision
2 of the advice.

3 “(C) SCOPE AND FEES OF ALTERNATIVE
4 INVESTMENT ADVICE.—Any qualified invest-
5 ment advice provided pursuant to this para-
6 graph by an alternative investment adviser shall
7 be of the same type and scope, and provided
8 under the same terms and conditions (including
9 no additional charge to the participant or bene-
10 ficiary), as apply with respect to the qualified
11 investment advice to be provided by the fidu-
12 ciary adviser.

13 “(8) FIDUCIARY ADVISER DEFINED.—For pur-
14 poses of this subsection and subsection (b)(14)—

15 “(A) IN GENERAL.—The term ‘fiduciary
16 adviser’ means, with respect to a plan, a person
17 who—

18 “(i) is a fiduciary of the plan by rea-
19 son of the provision of qualified investment
20 advice by such person to a participant or
21 beneficiary,

22 “(ii) meets the qualifications of sub-
23 paragraph (B), and

24 “(iii) meets the additional require-
25 ments of subparagraph (C).

1 “(B) QUALIFICATIONS.—A person meets
2 the qualifications of this subparagraph if such
3 person—

4 “(i) is registered as an investment ad-
5 viser under the Investment Advisers Act of
6 1940 (15 U.S.C. 80b–1 et seq.),

7 “(ii) if not registered as an invest-
8 ment adviser under such Act by reason of
9 section 203A(a)(1) of such Act (15 U.S.C.
10 80b–3a(a)(1)), is registered under the laws
11 of the State in which the fiduciary main-
12 tains its principal office and place of busi-
13 ness, and, at the time the fiduciary last
14 filed the registration form most recently
15 filed by the fiduciary with such State in
16 order to maintain the fiduciary’s registra-
17 tion under the laws of such State, also
18 filed a copy of such form with the Sec-
19 retary,

20 “(iii) is registered as a broker or deal-
21 er under the Securities Exchange Act of
22 1934 (15 U.S.C. 78a et seq.),

23 “(iv) is a bank or similar financial in-
24 stitution referred to in section 408(b)(4),

1 “(v) is an insurance company quali-
2 fied to do business under the laws of a
3 State, or

4 “(vi) is any other comparable entity
5 which satisfies such criteria as the Sec-
6 retary determines appropriate.

7 “(C) ADDITIONAL REQUIREMENTS WITH
8 RESPECT TO CERTAIN EMPLOYEES OR OTHER
9 AGENTS OF CERTAIN ADVISERS.—A person
10 meets the additional requirements of this sub-
11 paragraph if every individual who is employed
12 (or otherwise compensated) by such person and
13 whose scope of duties includes the provision of
14 qualified investment advice on behalf of such
15 person to any participant or beneficiary is—

16 “(i) a registered representative of
17 such person,

18 “(ii) an individual described in sub-
19 clause (I), (II), or (III) of subparagraph
20 (A)(ii), or

21 “(iii) such other comparable qualified
22 individual as may be designated in regula-
23 tions of the Secretary.

24 “(9) ADDITIONAL DEFINITIONS.—For purposes
25 of this subsection and subsection (b)(14)—

1 “(A) QUALIFIED INVESTMENT ADVICE.—
2 The term ‘qualified investment advice’ means,
3 in connection with a participant or beneficiary,
4 investment advice referred to in section
5 3(21)(A)(ii) which—

6 “(i) consists of an individualized rec-
7 ommendation to the participant or bene-
8 ficiary with respect to the purchase, sale,
9 or retention of securities or other property
10 for the individual account of the partici-
11 pant or beneficiary, in accordance with
12 generally accepted investment management
13 principles, and

14 “(ii) takes into account all investment
15 options under the plan.

16 “(B) AFFILIATE.—The term ‘affiliate’ of
17 another entity means an affiliated person of
18 such entity (as defined in section 2(a)(3) of the
19 Investment Company Act of 1940 (15 U.S.C.
20 80a-2(a)(3))).

21 “(C) REGISTERED REPRESENTATIVE.—
22 The term ‘registered representative’ of another
23 entity means a person described in section
24 3(a)(18) of the Securities Exchange Act of
25 1934 (15 U.S.C. 78c(a)(18)) (substituting such

1 entity for the broker or dealer referred to in
2 such section) or a person described in section
3 202(a)(17) of the Investment Advisers Act of
4 1940 (15 U.S.C. 80b-2(a)(17)) (substituting
5 such entity for the investment adviser referred
6 to in such section).”.

7 (b) ENFORCEMENT.—

8 (1) LIABILITY FOR BREACH.—

9 (A) LIABILITY IN CONNECTION WITH INDI-
10 VIDUAL ACCOUNT PLANS.—Section 409 of such
11 Act (29 U.S.C. 1109) is amended by adding at
12 the end the following new subsection:

13 “(c)(1) In any case in which the provision by a fidu-
14 ciary adviser of qualified investment advice to a partici-
15 pant or beneficiary regarding any security or other prop-
16 erty consists of a breach described in subsection (a), the
17 fiduciary adviser shall be personally liable to make good
18 to the individual account of the participant or beneficiary
19 any losses to the individual account resulting from the
20 breach, and to restore to the individual account any profits
21 of the fiduciary adviser which have been made through use
22 of assets of the individual account by—

23 “(A) the fiduciary adviser, or

24 “(B) any other party with respect to whom a
25 material affiliation or contractual relationship of the

1 fiduciary adviser resulted in a violation of section
2 408(g)(1)(A) in connection with the advice.

3 “(2) In the case of any action under this title by a
4 participant or beneficiary against a fiduciary adviser for
5 relief under this subsection in connection with the provi-
6 sion of any qualified investment advice—

7 “(A) if the participant or beneficiary shows that
8 the fiduciary adviser had any interest in, or had any
9 affiliation or contractual relationship with a third
10 party having an interest in, the security or other
11 property, there shall be a presumption (rebuttable by
12 a preponderance of the evidence) that the fiduciary
13 adviser failed to meet the requirements of subpara-
14 graphs (A) and (B) of section 404(a)(1) in connec-
15 tion with the provision of the advice, and

16 “(B) the dispute may be settled by arbitration,
17 but only pursuant to terms and conditions estab-
18 lished by agreement entered into voluntarily by both
19 parties after the commencement of the dispute.

20 “(3) For purposes of this subsection, the terms ‘fidu-
21 ciary adviser’ and ‘qualified investment advice’ shall have
22 the meanings provided such terms in subparagraphs (A)
23 and (B), respectively, of section 406(g)(7).”.

1 (B) LIMITATION ON EXEMPTION FROM LI-
2 ABILITY.—Section 403(c) of such Act (29
3 U.S.C. 1104(c)) is amended—

4 (i) by redesignating paragraph (2) as
5 paragraph (3) (and by adjusting the
6 margination of such paragraph to full
7 measure and adjusting the margination of
8 subparagraphs (A) through (B) thereof ac-
9 cordingly); and

10 (ii) by inserting after paragraph (1)
11 the following new paragraph:

12 “(2)(A) In any case in which—

13 “(i) a participant or beneficiary exercises con-
14 trol over the assets in his or her account by means
15 of a sale, acquisition, or holding of a security or
16 other property with regard to which qualified invest-
17 ment advice was provided by a fiduciary adviser, and

18 “(ii) any transaction in connection with the ex-
19 ercise of such control is not a prohibited transaction
20 solely by reason of section 408(b)(14), paragraph
21 (1) shall not apply with respect to the fiduciary ad-
22 viser in connection with the provision of the advice.

23 “(B) For purposes of this subsection, the terms ‘fidu-
24 ciary adviser’ and ‘qualified investment advice’ shall have

1 the meanings provided such terms in subparagraphs (A)
2 and (B), respectively, of section 408(g)(7).”.

3 (2) ATTORNEY’S FEES.—Section 502(g) of such
4 Act (29 U.S.C. 1132(g)) is amended—

5 (A) in paragraph (1), by inserting “or (3)”
6 after “paragraph (2)”; and

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

9 “(3) In any action under this title by the participant
10 or beneficiary against a fiduciary adviser for relief under
11 section 409(c) in which the plaintiff prevails, the court
12 shall allow a reasonable attorney’s fee and costs of action
13 to the prevailing plaintiff.”.

14 (3) APPLICABILITY OF STATE FRAUD LAWS.—
15 Section 514(b) of such Act (29 U.S.C. 1144(b)) is
16 amended—

17 (A) by redesignating paragraph (9) as
18 paragraph (10); and

19 (B) by inserting after paragraph (8) the
20 following new paragraph:

21 “(9) Nothing in this title shall be construed to super-
22 sede any State action for fraud against a fiduciary adviser
23 for any act or failure to act by the fiduciary adviser consti-
24 tuting a violation of section 409(c).”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to advice referred to
3 in section 3(21)(A)(ii) of the Employee Retirement In-
4 come Security Act of 1974 provided on or after January
5 1, 2006.

6 **SEC. 303. PARTICIPATION OF PARTICIPANTS IN TRUSTEE-**
7 **SHIP OF SINGLE-EMPLOYER PLANS PRO-**
8 **VIDING FOR EMPLOYEE CONTRIBUTIONS.**

9 (a) IN GENERAL.—Section 403(a) of the Employee
10 Retirement Income Security Act of 1974 (29 U.S.C.
11 1103(a)) is amended—

12 (1) by redesignating paragraphs (1) and (2) as
13 subparagraphs (A) and (B), respectively;

14 (2) by inserting “(1)” after “(a)”; and

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

17 “(2)(A) Subject to subparagraph (B), the assets of
18 a pension plan which is a single-employer plan and under
19 which some or all of the assets are derived from employee
20 contributions shall be held in trust by a joint board of
21 trustees, which shall consist of two or more trustees rep-
22 resenting on an equal basis the interests of the employer
23 or employers maintaining the plan and the interests of the
24 participants and their beneficiaries.

1 “(B) This paragraph shall apply for any plan year
2 only if a majority of the participants of the plan indicates
3 to the plan administrator, in such form and manner as
4 shall be prescribed in regulations of the Secretary, its in-
5 tention to have this paragraph so apply.

6 “(C)(i) Except as provided in clause (ii), in any case
7 in which the plan is maintained pursuant to one or more
8 collective bargaining agreements between one or more em-
9 ployee organizations and one or more employers, the trust-
10 ees representing the interests of the participants and their
11 beneficiaries shall be designated by such employee organi-
12 zations.

13 “(ii) Clause (i) shall not apply with respect to a plan
14 described in such clause if the employee organization (or
15 all employee organizations, if more than one) referred to
16 in such clause file with the Secretary, in such form and
17 manner as shall be prescribed in regulations of the Sec-
18 retary, a written waiver of their rights under clause (i).

19 “(iii) In any case in which clause (i) does not apply
20 with respect to a single-employer plan because the plan
21 is not described in clause (i) or because of a waiver filed
22 pursuant to clause (ii), the trustee or trustees representing
23 the interests of the participants and their beneficiaries
24 shall be selected in accordance with regulations of the Sec-
25 retary. Such regulations may provide for selection of trust-

ees by the employer, but only from individuals who have been demonstrated to be independent and to have no conflict of interest. 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).

“(iv) The Secretary shall provide by regulation for the appointment of a neutral, 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 such amendments not later than 90 days after the date of the enactment of this Act.

SEC. 304. DIVERSIFICATION OF INVESTMENT OF ACCOUNT ASSETS HELD UNDER INDIVIDUAL ACCOUNT PLANS.

(a) IN GENERAL.—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:

1 “(e) DIVERSIFICATION OF INVESTMENT OF ACCOUNT
2 ASSETS HELD UNDER INDIVIDUAL ACCOUNT PLANS.—

3 “(1) IN GENERAL.—In the case of an individual
4 account plan under which a participant or bene-
5 ficiary is permitted to exercise control over assets in
6 his or her account, with respect to the assets in the
7 account to which the participant or beneficiary has
8 a nonforfeitable right and which consist of employer
9 securities which are readily tradable on an estab-
10 lished securities market, the plan shall meet the re-
11 quirements of paragraphs (2), (3), (4), (5), (6), and
12 (7).

13 “(2) ASSETS ATTRIBUTABLE TO EMPLOYEE
14 CONTRIBUTIONS.—In the case of any portion of the
15 account assets described in paragraph (1) which is
16 attributable to employee contributions, there shall be
17 no restrictions on the right of a participant or bene-
18 ficiary to allocate the assets in such portion to any
19 investment option provided under the plan.

20 “(3) ELECTIVE DEFERRALS INVESTED IN EM-
21 PLOYER SECURITIES.—

22 “(A) IN GENERAL.—In the case of the por-
23 tion of the account assets described in para-
24 graph (1) which is attributable to elective defer-
25 rals and is invested in employer securities, a

1 plan meets the requirements of this paragraph
2 if each applicable individual in such plan may
3 elect to direct the plan to divest any portion of
4 such securities in the individual's account and
5 to reinvest an equivalent amount in other in-
6 vestment options which meet the requirements
7 of paragraph (5). The preceding sentence shall
8 apply to the extent that the amount attributable
9 to such reinvested portion exceeds the amount
10 to which a prior election under this paragraph
11 or section 401(a)(28) of the Internal Revenue
12 Code of 1986 applies.

13 “(B) APPLICABLE INDIVIDUAL.—For pur-
14 poses of this paragraph, the term ‘applicable in-
15 dividual’ means—

16 “(i) any participant in the plan,

17 “(ii) any beneficiary who is an alter-
18 nate payee (within the meaning of section
19 206(d)(3)(K)) under an applicable quali-
20 fied domestic relations order (within the
21 meaning of section 206(d)(3)(B)(i)), and

22 “(iii) any beneficiary of a deceased
23 participant or alternate payee.

24 “(4) OTHER EMPLOYER CONTRIBUTIONS.—

1 “(A) IN GENERAL.—In the case of the por-
2 tion of the account assets described in para-
3 graph (1) which is attributable to employer con-
4 tributions (other than elective deferrals) and is
5 invested in employer securities, a plan meets
6 the requirements of this paragraph if each
7 qualified participant in the plan may elect to di-
8 rect the plan to divest any portion of such secu-
9 rities in the participant’s account and to rein-
10 vest an equivalent amount in other investment
11 options which meet the requirements of para-
12 graph (6). The preceding sentence shall apply
13 to the extent that the amount attributable to
14 such reinvested portion exceeds the amount to
15 which a prior election under this paragraph or
16 section 401(a)(28) of such Code applies.

17 “(B) QUALIFIED PARTICIPANT.—For pur-
18 poses of this paragraph, the term ‘qualified par-
19 ticipant’ means—

20 “(i) any participant in the plan who
21 has completed at least 3 years of service
22 (as determined under section 203(a))
23 under the plan,

24 “(ii) any beneficiary who, with respect
25 to a participant who met the service re-

1 requirement in clause (i), is an alternate
2 payee (within the meaning of section
3 206(d)(3)(K)) under an applicable quali-
4 fied domestic relations order (within the
5 meaning of section 206(d)(3)(B)(i)), and

6 “(iii) any beneficiary of a deceased
7 participant who met the service require-
8 ment in clause (i) or alternate payee de-
9 scribed in clause (ii).

10 “(5) INVESTMENT OPTIONS.—The requirements
11 of this paragraph are met if, with respect to the ac-
12 count assets described in paragraph (1), the plan of-
13 fers not less than 3 investment options (not incon-
14 sistent with regulations prescribed by the Secretary)
15 other than employer securities.

16 “(6) PROMPT COMPLIANCE WITH DIRECTIONS
17 TO ALLOCATE INVESTMENTS.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), a plan meets the require-
20 ments of this paragraph with respect to plan
21 assets described in paragraph (1) if the plan
22 provides that, within 5 days after the date of
23 any election by a participant or beneficiary allo-
24 cating any such assets to any investment option
25 provided under the plan, the plan administrator

1 shall take such actions as are necessary to ef-
2 fectuate such allocation.

3 “(B) SPECIAL RULE FOR PERIODIC ELEC-
4 TIONS.—In any case in which the plan provides
5 for elections periodically during prescribed peri-
6 ods, the 5-day period described in subparagraph
7 (A) shall commence at the end of each such
8 prescribed period.

9 “(7) NOTICE OF RIGHTS AND OF IMPORTANCE
10 OF DIVERSIFICATION.—A plan meets the require-
11 ments of this paragraph if the plan provides that,
12 not later than 30 days prior to the date on which
13 the right of a participant under the plan to his or
14 her accrued benefit becomes nonforfeitable, the plan
15 administrator shall provide to such participant and
16 his or her beneficiaries a written notice—

17 “(A) setting forth their rights under this
18 section with respect to the accrued benefit, and

19 “(B) describing the importance of diversi-
20 fying the investment of account assets.

21 “(8) PRESERVATION OF AUTHORITY OF PLAN
22 TO LIMIT INVESTMENT.—Nothing in this subsection
23 shall be construed to limit the authority of a plan to
24 impose limitations on the portion of plan assets in

1 any account which may be invested in employer se-
2 curities.

3 “(9) OTHER DEFINITIONS AND RULES.—For
4 purposes of this subsection—

5 “(A) EMPLOYER SECURITIES.—The term
6 ‘employer securities’ shall have the meaning
7 given such term by section 407(d)(1) of the
8 Employee Retirement Income Security Act of
9 1974.

10 “(B) ELECTIVE DEFERRALS.—The term
11 ‘elective deferrals’ means an employer contribu-
12 tion described in section 402(g)(3)(A) of such
13 Code and any employee contribution.

14 “(C) ELECTION.—Elections under this
15 subsection shall be not less frequently than
16 quarterly.

17 “(D) EMPLOYEE STOCK OWNERSHIP
18 PLAN.—The term ‘employee stock ownership
19 plan’ shall have the same meaning given to
20 such term by section 4975(e)(7) of such Code.”.

21 (b) RECOMMENDATIONS RELATING TO NON-PUB-
22 LICLY TRADED STOCK.—Within 1 year after the date of
23 the enactment of this Act, the Secretary of Labor shall
24 transmit to the Committee on Education and the Work-
25 force of the House of Representatives and the Committee

1 on Health, Education, Labor, and Pensions of the Senate
2 the Secretary's recommendations regarding legislative
3 changes relating to treatment, under section 404(e) of the
4 Employee Retirement Income Security Act of 1974 (added
5 by this section), of individual account plans under which
6 a participant or beneficiary is permitted to exercise control
7 over assets in his or her account, in cases in which such
8 assets do not include employer securities which are readily
9 tradable under an established securities market.

10 (c) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), the amendments made by this section
13 shall apply with respect to plan years beginning
14 after December 31, 2005.

15 (2) EXCEPTION.—The amendments made by
16 this section shall not apply to employer securities
17 held by an employee stock ownership plan which are
18 not subject to section 401(a)(28) of the Internal
19 Revenue Code of 1986 by reason of section
20 1175(a)(2) of the Tax Reform Act of 1986 (100
21 Stat. 2519).

22 (3) DELAYED EFFECTIVE DATE OF EXISTING
23 HOLDINGS.—In any case in which a portion of the
24 nonforfeitable accrued benefit of a participant or
25 beneficiary is held in the form of employer securities

1 (as defined in section 407(d)(1) of the Employee Re-
2 tirement Income Security Act of 1974) immediately
3 before the first date of the first plan year to which
4 the amendments made by this section apply, such
5 portion shall be taken into account only with respect
6 to plan years beginning on or after January 1, 2007.

7 **SEC. 305. REMOVAL OF \$500,000 CAP ON BONDING REQUIRE-**
8 **MENT.**

9 Section 412(a) of the Employee Retirement Income
10 Security Act of 1974 (29 U.S.C. 1112(a)) is amended, in
11 the matter following paragraph (2), by striking “nor more
12 than \$500,000” and all that follows through “preceding
13 sentence”.

14 **SEC. 306. DISCLOSURE REGARDING INVESTMENTS AND**
15 **VOTING OF PROXIES.**

16 (a) IN GENERAL.—Section 101 of the Employee Re-
17 tirement Income Security Act of 1974 (29 U.S.C. 1021)
18 is amended by inserting after subsection (e) the following
19 new subsection:

20 “(f) DISCLOSURE REGARDING INVESTMENTS AND
21 VOTING OF PROXIES.—

22 “(1) IN GENERAL.—Within 30 days after re-
23 ceipt by the plan administrator of a written request
24 by a participant or beneficiary for relevant and spe-
25 cific information regarding—

1 “(A) the nature or extent of any particular
2 investment of plan assets occurring on a par-
3 ticular date specified in the request, or

4 “(B) the manner in which any right to
5 vote in connection with such investment has
6 been exercised by or under the plan,

7 the plan administrator shall furnish such informa-
8 tion in writing to such participant or beneficiary.
9 The administrator may make a reasonable charge to
10 cover the cost of furnishing such information.

11 “(2) STANDARDS AND REVIEW.—The Secretary
12 shall by regulation prescribe—

13 “(A) standards which must be met by re-
14 quests made pursuant to this subsection, in-
15 cluding standards relating to relevancy and
16 specificity of the information requested, the
17 specificity by which the investment must be
18 identified in the request, and the reasonableness
19 of charges made for furnishing the information,
20 and

21 “(B) procedures by which plan administra-
22 tors may rely on such standards in declining re-
23 quests for information which fail to meet such
24 standards, including methods for obtaining
25 timely and binding determinations by the Sec-

1 retary regarding whether such standards are
2 being met by particular requests.”.

3 (b) CONFORMING AMENDMENT.—Section 101(h)(1)
4 of such Act (29 U.S.C. 1021(h)(1)) is amended by insert-
5 ing “or subsection (f)” after “this subsection”.

6 (c) EFFECTIVE DATE.—The amendments made by
7 this section shall apply with respect to written requests
8 received after December 31, 2005.

9 **SEC. 307. IMMEDIATE WARNING OF EXCESSIVE STOCK**
10 **HOLDINGS.**

11 Section 105 of the Employee Retirement Income Se-
12 curity Act of 1974 (29 U.S.C. 1025) is amended by adding
13 at the end the following new subsection:

14 “(e)(1) Upon receipt of information by the plan ad-
15 ministrator of an individual account plan indicating that
16 the individual account of any participant which had not
17 been excessively invested in employer securities is exces-
18 sively invested in such securities (or that such account,
19 as initially invested, is excessively invested in employer se-
20 curities), the plan administrator shall immediately provide
21 to the participant a separate, written statement—

22 “(A) indicating that the participant’s account
23 has become excessively invested in employer securi-
24 ties,

1 “(B) setting forth the notice described in sub-
2 section (e)(7), and

3 “(C) referring the participant to investment
4 education materials and investment advice which
5 shall be made available by or under the plan.

6 In any case in which such a separate, written statement
7 is required to be provided to a participant under this para-
8 graph, each statement issued to such participant pursuant
9 to subsection (a) thereafter shall also contain such sepa-
10 rate, written statement until the plan administrator is
11 made aware that such participant’s account has ceased to
12 be excessively invested in employer securities or the em-
13 ployee, in writing, waives the receipt of the notice and ac-
14 knowledges understanding the importance of diversifica-
15 tion.

16 “(2) Each notice required under this subsection shall
17 be provided in a form and manner which shall be pre-
18 scribed in regulations of the Secretary. Such regulations
19 shall provide for inclusion in the notice a prominent ref-
20 erence to the risks of large losses in assets available for
21 retirement from excessive investment in employer securi-
22 ties.

23 “(3) For purposes of paragraph (1), a participant’s
24 account is ‘excessively invested’ in employer securities if
25 more than 10 percent of the balance in such account is

1 invested in employer securities (as defined in section
2 407(d)(1)).”.

3 **SEC. 308. REPORT TO PARTICIPANTS AND BENEFICIARIES**
4 **OF TRADES IN EMPLOYER SECURITIES.**

5 (a) IN GENERAL.—Section 104 of the Employee Re-
6 tirement Income Security Act of 1974 (29 U.S.C. 1024)
7 is amended—

8 (1) by redesignating subsection (d) as sub-
9 section (e); and

10 (2) by inserting after subsection (c) the fol-
11 lowing new subsection:

12 “(d)(1) In any case in which assets in the individual
13 account of a participant or beneficiary under an individual
14 account plan include employer securities, if any person en-
15 gages in a transaction constituting a direct or indirect
16 purchase or sale of employer securities and—

17 “(A) such transaction is required under section
18 16 of the Securities Exchange Act of 1934 to be re-
19 ported by such person to the Securities and Ex-
20 change Commission, or

21 “(B) such person is a named fiduciary of the
22 plan,

23 such person shall comply with the requirements of para-
24 graph (2).

1 “(2) A person described in paragraph (1) complies
2 with the requirements of this paragraph in connection
3 with a transaction described in paragraph (1) if such per-
4 son provides to the plan administrator of the plan a writ-
5 ten notification of the transaction not later than 1 busi-
6 ness day after the date of the transaction.

7 “(3)(A) If the plan administrator is made aware, on
8 the basis of notifications received pursuant to paragraph
9 (2) or otherwise, that the proceeds from any transaction
10 described in paragraph (1), constituting direct or indirect
11 sales of employer securities by any person described in
12 paragraph (1), exceed \$100,000, the plan administrator
13 of the plan shall provide to each participant and bene-
14 ficiary a notification of such transaction. Such notification
15 shall be in writing, except that such notification may be
16 in electronic or other form to the extent that such form
17 is reasonably accessible to the participant or beneficiary.

18 “(B) In any case in which the proceeds from any
19 transaction described in paragraph (1) (with respect to
20 which a notification has not been provided pursuant to
21 this paragraph), together with the proceeds from any
22 other such transaction or transactions described in para-
23 graph (1) occurring during the preceding one-year period,
24 constituting direct or indirect sales of employer securities
25 by any person described in paragraph (1), exceed (in the

1 aggregate) \$100,000, such series of transactions by such
2 person shall be treated as a transaction described in sub-
3 paragraph (A) by such person.

4 “(C) Each notification required under this paragraph
5 shall be provided as soon as practicable, but not later than
6 3 business days after receipt of the written notification
7 or notifications indicating that the transaction (or series
8 of transactions) requiring such notice has occurred.

9 “(4) Each notification required under paragraph (2)
10 or (3) shall be made in such form and manner as may
11 be prescribed in regulations of the Secretary and shall in-
12 clude the number of shares involved in each transaction
13 and the price per share, and the notification required
14 under paragraph (3) shall be written in language designed
15 to be understood by the average plan participant. The Sec-
16 retary may provide by regulation, in consultation with the
17 Securities and Exchange Commission, for exemptions
18 from the requirements of this subsection with respect to
19 specified types of transactions to the extent that such ex-
20 emptions are consistent with the best interests of plan par-
21 ticipants and beneficiaries. Such exemptions may relate to
22 transactions involving reinvestment plans, stock splits,
23 stock dividends, qualified domestic relations orders, and
24 similar matters.

1 “(5) For purposes of this subsection, the term ‘em-
2 ployer security’ has the meaning provided in section
3 407(d)(1).”.

4 (b) EFFECTIVE DATE.—The amendments made by
5 this section shall apply with respect to transactions occur-
6 ring after 90 days after the date of the enactment of this
7 Act.

8 **TITLE IV—IMPROVEMENTS IN**
9 **PENSION INFORMATION AND**
10 **ENFORCEMENT**

11 **SEC. 401. PENSION BENEFIT INFORMATION.**

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

14 (1) IN GENERAL.—Subsection (a) of section
15 105 of the Employee Retirement Income Security
16 Act of 1974 (29 U.S.C. 1025(a)) is amended—

17 (A) by redesignating paragraphs (1) and
18 (2) as subparagraphs (A) and (B), respectively,
19 and by inserting “(1)” after “(a)”;

20 (B) by striking “shall furnish to any plan
21 participant or beneficiary who so requests in
22 writing, a statement” and inserting “shall, as
23 provided in paragraph (2), provide to plan par-
24 ticipants and beneficiaries statements”; and

1 (C) by adding at the end the following new
2 paragraphs:

3 “(2)(A) The statements described in paragraph
4 (1) shall be furnished—

5 “(i) in the case of a defined benefit plan,
6 at last once every 3 years to participants who
7 have attained age 35,

8 “(ii) in the case of an individual account
9 plan, at least annually to each participant, and

10 “(iii) to any participant or beneficiary who
11 so requests in writing.

12 “(B) Subparagraph (A)(i) shall not apply to a
13 plan to which more than 1 unaffiliated employer is
14 required to contribute.

15 “(3) Information furnished under paragraph
16 (1) to a participant in a defined benefit plan (other
17 than at the request of the participant) may be based
18 on reasonable estimates determined under regula-
19 tions prescribed by the Secretary.

20 “(4)(A) The Secretary of Labor shall develop a
21 model benefit statement which shall be used by plan
22 administrators in complying with the requirements
23 of paragraph (1). Such statement shall include—

1 “(i) the amount of nonforfeitable accrued
2 benefits as of the statement date which is pay-
3 able at normal retirement age under the plan,

4 “(ii) the amount of accrued benefits which
5 are forfeitable but which may become non-
6 forfeitable under the terms of the plan,

7 “(iii) the amount or percentage of any re-
8 duction due to integration of the benefit with
9 the participant’s Social Security benefits or
10 similar governmental benefits,

11 “(iv) information on early retirement ben-
12 efit and joint and survivor annuity reductions,

13 “(v) in the case of an individual account
14 plan, the percentage of the net return on invest-
15 ment of plan assets for the preceding plan year
16 (or, with respect to investments directed by the
17 participant, the net return on investment of
18 plan assets for such year so directed), itemized
19 with respect to each type of investment, and,
20 stated separately, the administrative and trans-
21 action fees incurred in connection with each
22 such type of investment, and

23 “(vi) in the case of an individual account
24 plan, the amount and percentage of assets in
25 the individual account that consists of employer

1 securities and employer real property (as de-
2 fined in paragraphs (1) and (2), respectively, of
3 section 407(d)), as determined as of the most
4 recent valuation date of the plan.

5 “(B) The Secretary shall also develop a sepa-
6 rate notice, which shall be included by the plan ad-
7 ministrator with the information furnished pursuant
8 to paragraph (1), which advises participants and
9 beneficiaries of generally accepted investment prin-
10 ciples, including principles of risk management and
11 diversification for long-term retirement security and
12 the risks of holding substantial assets in a single
13 asset such as employer securities.”.

14 (2) CONFORMING AMENDMENT.—Subsection (d)
15 of section 105 of such Act (29 U.S.C. 1025(d)) is
16 repealed.

17 (b) DISCLOSURE OF BENEFIT CALCULATIONS.—

18 (1) IN GENERAL.—Section 105 of such Act (as
19 amended by the preceding provisions of this section)
20 is amended further—

21 (A) by redesignating subsection (c) as sub-
22 section (d); and

23 (B) by inserting after subsection (b) the
24 following new subsection:

1 “(c)(1) In the case of a participant or beneficiary who
2 is entitled to a distribution of a benefit under an employee
3 pension benefit plan, the administrator of such plan shall
4 provide to the participant or beneficiary the information
5 described in paragraph (2) upon the written request of
6 the participant or beneficiary.

7 “(2) The information described in this paragraph in-
8 cludes—

9 “(A) a worksheet explaining how the amount of
10 the distribution was calculated and stating the as-
11 sumptions used for such calculation,

12 “(B) upon written request of the participant or
13 beneficiary, any documents relating to the calcula-
14 tion (if available), and

15 “(C) such other information as the Secretary
16 may prescribe.

17 Any information provided under this paragraph shall be
18 in a form calculated to be understood by the average plan
19 participant.”.

20 (2) CONFORMING AMENDMENTS.—

21 (A) Section 101(a)(2) of such Act (29
22 U.S.C. 1021(a)(2)) is amended by striking
23 “105(a) and (c)” and inserting “105(a), (c),
24 and (d)”.

1 (B) Section 106(b) of such Act (29 U.S.C.
2 1026(b)) is amended by striking “sections
3 105(a) and 105(c)” and inserting “section
4 105”.

5 (c) EFFECTIVE DATE.—

6 (1) IN GENERAL.—The amendments made by
7 this section shall take effect 60 days after the adop-
8 tion of rules or other guidance to carry out the
9 amendments made by this subsection, which shall in-
10 clude a model notice of generally accepted invest-
11 ment principles, including principles of risk manage-
12 ment and diversification.

13 (2) MODEL INVESTMENT PRINCIPLES.—For
14 purposes of paragraph (1), not later than 120 days
15 after the date of the enactment of this Act, the Sec-
16 retary of Labor shall issue rules or other guidance
17 and a model notice which meets the requirements of
18 section 105 of the Employee Retirement Income Se-
19 curity Act of 1974 added by this section.

1 **SEC. 402. DISCLOSURES TO SECRETARY OF LABOR RELAT-**
2 **ING TO PLAN TERMINATION AND RELATING**
3 **TO PLAN SPONSORS AFTER ACQUISITION OR**
4 **MERGER OF PLANS.**

5 (a) IN GENERAL.—Section 104 of the Employee Re-
6 tirement Income Security Act of 1974 (29 U.S.C. 1024)
7 is amended—

8 (1) by redesignating subsection (d) as sub-
9 section (e); and

10 (2) by inserting after subsection (c) the fol-
11 lowing new subsection:

12 “(d)(1) The administrator of any employee benefit
13 plan subject to this part shall file with the Secretary a
14 written notice of—

15 “(A) the termination of the plan, or

16 “(B) in connection with any plan that is ac-
17 quired by or merged with another plan, the name
18 and address of the sponsor of the acquired or
19 merged plan.

20 “(2) The notice required under paragraph (1) shall
21 be filed with the Secretary not later than 60 days after
22 the effective date of the termination, acquisition, or merg-
23 er.”.

24 (b) EFFECTIVE DATE.—The amendments made by
25 this section shall apply with respect to terminations, acqui-
26 sitions, and mergers occurring after December 31, 2005.

1 **SEC. 403. DISCLOSURE OF OPERATING INCOME OF EM-**
2 **LOYERS ADJUSTED SO AS TO EXCLUDE CER-**
3 **TAIN COMPONENTS MANDATED IN FASB**
4 **RULES GOVERNING ACCOUNTING FOR DE-**
5 **FINED BENEFIT PENSION PLANS.**

6 (a) MATTERS TO BE INCLUDED IN ANNUAL RE-
7 PORT.—Section 103(c) of the Employee Retirement In-
8 come Security Act of 1974 (29 U.S.C. 1023(c)) is amend-
9 ed—

10 (1) by redesignating paragraph (5) as para-
11 graph (6); and

12 (2) by inserting after paragraph (4) the fol-
13 lowing new paragraph:

14 “(5) In the case of a pension plan that is a de-
15 fined benefit plan, the amount of the annual oper-
16 ating income of each employer maintaining the plan,
17 as shown on the employer’s most recent annual fi-
18 nancial statement, together with such amount as ad-
19 justed by excluding all components of net benefit
20 cost other than the service cost component.”.

21 (b) INFORMATION TO BE PROVIDED ANNUALLY TO
22 PARTICIPANTS AND BENEFICIARIES.—Section 104(b)(3)
23 of such Act (29 U.S.C. 1024(b)(3)) is amended by adding
24 at the end the following new sentence: “In the case of a
25 defined benefit plan, such other material shall include the
26 information described in paragraph (5) of section 103(c),

1 **SEC. 405. LIMITED SCOPE AUDITS.**

2 Subparagraph (C) of section 103(a)(3) of the Em-
3 ployee Retirement Income Security Act of 1974 (29
4 U.S.C. 1023(a)(3)(C)) is amended to read as follows:

5 “(C)(i) Subject to clause (ii), the opinion required by
6 subparagraph (A) need not be expressed as to any state-
7 ments required by subsection (b)(3)(G) prepared by a
8 bank or similar institution or insurance carrier regulated
9 and supervised and subject to periodic examination by a
10 State or Federal agency if no less than 95 percent of the
11 plan’s assets have a readily ascertainable market value at
12 the end of the plan year for which the opinion is being
13 offered, and if such statements—

14 “(I) are certified by the bank, similar insti-
15 tution, or insurance carrier as complete and ac-
16 curate,

17 “(II) certify the current value of each
18 asset,

19 “(III) include a representation that, within
20 the 18-month month period preceding the date
21 of its certification, an independent, qualified
22 public accountant who has satisfied the require-
23 ments of subsection (D), has issued a report, in
24 accordance with generally accepted auditing
25 standards, to the bank or similar institution or
26 insurance carrier, stating that its internal con-

1 trolls and procedures or the internal controls
2 and procedures of any affiliated entity, as they
3 pertain to the execution, maintenance of ac-
4 countability, recording and processing of trans-
5 actions related to plan or participant record-
6 keeping, are adequate, and

7 “(IV) are made a part of the annual re-
8 port.

9 “(ii) To the extent that the processing of trans-
10 actions related to plan or participant recordkeeping
11 is performed by an entity unaffiliated with the bank
12 or similar institution or insurance carrier, clause (i)
13 shall not apply unless the plan has obtained a rep-
14 resentation from the entity that, within the 18-
15 month period preceding the date of the opinion, an
16 independent, qualified public accountant who has
17 satisfied the requirements of subparagraph (D), has
18 issued a report, in accordance with generally accept-
19 ed auditing standards, to the entity stating that its
20 internal controls and procedures, as they pertain to
21 the execution, maintenance of accountability, record-
22 ing, and processing of transactions related to plan or
23 participant recordkeeping, are adequate.

24 “(iii) For purposes of clause (i), the term ‘read-
25 ily ascertainable market value’ means a value that

1 can be readily determined on an established securi-
2 ties market or in accordance with regulations pro-
3 mulgated by the Secretary.”.

4 **SEC. 406. REPORTING AND ENFORCEMENT REQUIREMENTS**
5 **FOR EMPLOYEE BENEFIT PLANS.**

6 (a) IN GENERAL.—Part 1 of subtitle B of title I of
7 the Employee Retirement Income Security Act of 1974
8 (29 U.S.C. 1021 et seq.) is amended—

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

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

13 “DIRECT REPORTING OF CERTAIN EVENTS

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

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

22 “(A) notify the Secretary of the irregu-
23 larity in writing; and

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

1 “(2) NOTIFICATIONS BY ACCOUNTANT.—

2 “(A) IN GENERAL.—An accountant en-
3 gaged by the administrator of an employee ben-
4 efit plan under section 103(a)(3)(A), within 5
5 business days after the accountant in connec-
6 tion with such engagement determines that
7 there is evidence that an irregularity may have
8 occurred with respect to the plan, shall—

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

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

17 “(B) NOTIFICATION UPON FAILURE OF
18 PLAN ADMINISTRATOR TO NOTIFY.—If an ac-
19 countant who has provided notification to the
20 plan administrator pursuant to subparagraph
21 (A)(i) does not receive a copy of the administra-
22 tor’s notification to the Secretary required
23 under paragraph (1)(B) within the 5-business-
24 day period specified therein, the accountant
25 shall furnish to the Secretary a copy of the ac-

1 countant’s notification made to the plan admin-
2 istrator on the next business day following such
3 period.

4 “(3) IRREGULARITY DEFINED.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(d) IMMUNITY FOR GOOD FAITH NOTIFICATION.—
23 Except as provided in this Act, no accountant or plan ad-
24 ministrator shall be liable to any person for any finding,
25 conclusion, or statement made in any notification made

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

4 (b) CLERICAL AMENDMENTS.—

5 (1) Section 514(d)(29 U.S.C. 114(d)) is amend-
6 ed by striking “111” and inserting “112”.

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

“Sec. 111. Direct reporting of certain events.

“Sec. 112. Repeal and effective date.”.

10 (c) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to any irregularity or
12 termination of engagement described in the amendments,
13 but only if the 5-day period described in the amendments
14 in connection with the irregularity or termination com-
15 mences at least 90 days after the date of the enactment
16 of this Act.

17 **SEC. 407. STUDY OF PENSION TRENDS AND CHARACTERIS-**
18 **TICS.**

19 (a) IN GENERAL.—Section 513 of the Employee Re-
20 tirement Income Security Act of 1974 (29 U.S.C. 1143)
21 is amended by adding at the end the following new sub-
22 section:

23 “(d) PENSION SURVEYS.—

1 “(1) IN GENERAL.—The Secretary shall submit
2 to each House of the Congress, before the close of
3 the second session of each Congress, a report, based
4 on a study of current statistical and survey data,
5 which describes dominant and emerging trends and
6 characteristics of the private pension system, so as
7 to ensure that the Congress is provided with periodic
8 and timely information regarding such system.

9 “(2) INCLUDED INFORMATION.—Each report
10 submitted pursuant to paragraph (1) shall include,
11 but not be limited to, information relating to exist-
12 ing pension plans regarding—

13 “(A) the types of such plans,

14 “(B) the level of employer and employee
15 contributions,

16 “(C) vesting status,

17 “(D) accrued benefits,

18 “(E) benefit receipt, and

19 “(F) form of benefit payments.

20 Such information shall be presented by category in
21 connection with cohorts defined on the basis of ap-
22 propriate attributes of the participants involved, in-
23 cluding gender, age, race, and income.

24 “(3) IDENTIFICATION OF BARRIERS TO PEN-
25 SION RECEIPT.—Each report submitted pursuant to

1 paragraph (1) shall also include information which
2 summarizes the types of problems that plan partici-
3 pants and beneficiaries experience in connection with
4 the receipt of promised retirement benefits.”.

5 (b) INITIAL REPORT.—The initial report submitted
6 pursuant to section 513(d) of the Employee Retirement
7 Income Security Act of 1974 shall be submitted not later
8 than December 31, 2005.

9 **SEC. 408. EARLY RESOLUTION PROGRAM FOR PENSION**
10 **BENEFIT CLAIMS.**

11 (a) IN GENERAL.—Section 503 of the Employee Re-
12 tirement Income Security Act of 1974 (29 U.S.C. 1133)
13 is amended—

14 (1) by adding at the end of the heading the fol-
15 lowing: “AND EARLY RESOLUTION OF PENSION
16 CLAIMS”;

17 (2) by inserting “(a) IN GENERAL.—” after
18 “Sec. 503.”; and

19 (3) by adding at the end the following new sub-
20 section:

21 “(b) EARLY RESOLUTION PROGRAM FOR PENSION
22 BENEFIT CLAIMS.—

23 “(1) IN GENERAL.—The Secretary shall estab-
24 lish, in consultation with national bar and arbitra-
25 tion associations and other interested organizations,

1 an early resolution program for mediation of dis-
2 putes regarding claims for benefits which have been
3 denied under pension plans.

4 “(2) MEDIATORS.—The program shall provide
5 for recruitment of mediators to serve under the pro-
6 gram from individuals who have the requisite exper-
7 tise for such service. The program shall provide for
8 ongoing training for all mediators in employee bene-
9 fits law as determined necessary. Upon submission
10 of a claim to mediation proceedings under this sub-
11 section, the program shall provide for appointment
12 of a mediator, from the roster of mediators serving
13 under the program, to act as the mediator with re-
14 gard to the claim. Such appointment shall be
15 through a random selection procedure which shall be
16 prescribed in regulations.

17 “(3) FEES.—The Secretary shall assess fees as
18 necessary from each party to cover the costs of par-
19 ticipation in the program. The Secretary may reduce
20 or waive a fee on the basis of inability to pay.

21 “(4) INITIATION OF PROCEEDINGS.—A claim-
22 ant with a dispute which is eligible under the pro-
23 gram for submission to mediation thereunder may
24 elect to commence proceedings under the program
25 by means of filing under the program an election for

1 mediation of the dispute. An election to commence
2 mediation proceedings under the program shall be in
3 such form and manner as the Secretary may pre-
4 scribe. Any such election shall in all cases be vol-
5 untary, and any provision of the plan or other ar-
6 rangement which has the effect of providing for the
7 commencement of such proceedings other than by
8 means of voluntary election by the claimant shall be
9 null and void as a matter of law.

10 “(5) PARTICIPATION IN PROCEEDINGS.—Upon
11 receipt of the election to commence proceedings, the
12 program shall provide for participation by all rel-
13 evant parties. Each such party shall participate, and
14 cooperate fully, in the proceedings. The plan admin-
15 istrator shall ensure that a copy of the written
16 record of any claims procedure completed by the
17 plan pursuant to subsection (a) and all relevant plan
18 documents are presented to the mediator within 30
19 days after commencement of the proceedings. The
20 program shall provide for appropriate confidentiality
21 of the proceedings.

22 “(6) TIME LIMIT FOR PROCEEDINGS.—The me-
23 diation proceedings under the program with respect
24 to the claim in dispute shall be completed within 30

1 days after compilation of all relevant plan documents
2 relating to the claim has been achieved.

3 “(7) PROCESS NONBINDING.—Findings and
4 conclusions made in the mediation proceedings
5 under the program shall be treated as advisory in
6 nature and nonbinding. Except as provided in para-
7 graph (8), the rights of the parties under this title
8 shall not be affected by participation in the medi-
9 ation proceedings under the program.

10 “(8) RESOLUTION THROUGH SETTLEMENT
11 AGREEMENT.—If a case is settled through participa-
12 tion in the mediation proceedings under the pro-
13 gram, the mediator shall assist the parties in draw-
14 ing up an agreement which shall constitute, upon
15 signature of the parties, a binding contract between
16 the parties, which shall be enforceable under section
17 502 as if the terms of such agreement were terms
18 of the plan.

19 “(9) OVERSIGHT.—The Secretary shall provide
20 for ongoing oversight of the program so as to ensure
21 that proceedings are conducted equitably and that
22 mediators meet prescribed standards of performance.
23 The Secretary shall monitor and record the results
24 of mediation proceedings conducted under the pro-
25 gram so as to enable comprehensive evaluation of

1 the effectiveness of the program as a means of alter-
2 native dispute resolution.

3 “(10) NOTICE.—The Secretary shall—

4 “(A) notify individuals of the program or
5 other sources of assistance in resolving benefits
6 claim disputes, and

7 “(B) provide model information with re-
8 spect to the program to be included in all sum-
9 mary plan descriptions and benefit determina-
10 tions.”.

11 (b) EFFECTIVE DATE.—The amendments made by
12 this section shall apply with respect to claims arising on
13 or after December 31, 2005.

14 **SEC. 409. REVIEW OF BENEFIT DETERMINATIONS.**

15 (a) DE NOVO REVIEW.—

16 (1) INTERNAL REVIEW.—Section 503 of the
17 Employee Retirement Income Security Act of 1974
18 (as amended by section 408) is amended further—

19 (A) by redesignating subsection (b) as sub-
20 section (c); and

21 (B) by inserting after subsection (a) the
22 following new subsection:

23 “(b) REVIEW REQUIREMENTS.—Any review required
24 under subsection (a)(2)—

25 “(1) shall be de novo, and

1 “(2) shall be conducted by an individual who did not
2 make the initial decision denying the claim and who is au-
3 thorized to approve payment of the claim.”.

4 (2) COURT REVIEW.—Section 502(e) of such
5 Act (29 U.S.C. 1132(e)) is amended by adding at
6 the end the following new paragraph:

7 “(3) Notwithstanding any provision by the plan for
8 the exercise by a fiduciary of discretionary authority with
9 respect to any benefit determination, in any action under
10 paragraph (1)(B) or (3) of subsection (a) or in any other
11 action under this section to review a final benefit deter-
12 mination under the plan, the review by the court shall be
13 de novo, and the court may review all evidence pre-
14 sented.”.

15 (b) APPLICATION OF COMMON LAW PRINCIPLES OF
16 CONTRACT INTERPRETATION.—Section 502(e) of such
17 Act (as amended by subsection (a)(2)) is amended further
18 by adding at the end the following new paragraph:

19 “(4) In interpreting the terms of an employee benefit
20 plan under this section, the court shall employ such com-
21 mon law principles of contract interpretation as are deter-
22 mined appropriate by the court. Nothing in this title shall
23 preclude the Federal courts from developing and applying
24 Federal common law for purposes of this paragraph which
25 is consistent with the provisions of this title.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 this section shall apply with respect to causes of action
3 arising after December 31, 2005.

4 **SEC. 410. ALLOWABLE RELIEF.**

5 (a) PRE-JUDGMENT INTEREST, ATTORNEY FEES,
6 AND COSTS OF ACTION.—

7 (1) PRE-JUDGMENT INTEREST ON UNPAID BEN-
8 EFITS.—Section 502(a)(1)(B) of the Employee Re-
9 tirement Income Security Act of 1974 (29 U.S.C.
10 1132(a)(1)(B)) is amended by inserting “(together
11 with reasonable pre-judgment interest on unpaid
12 pension plan benefits)” after “to recover benefits
13 due to him under the terms of his plan”.

14 (2) ATTORNEY FEES AND COSTS OF ACTION.—
15 Section 502(g) of such Act (29 U.S.C. 1132(g)) is
16 amended—

17 (A) in paragraph (1), by inserting “or (3)”
18 after “paragraph (2)”; and

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

21 “(3) In any action or settlement proceeding under
22 this title with respect to an employee pension benefit plan
23 brought by a participant or beneficiary under such plan
24 in which the participant or beneficiary prevails or substan-
25 tially prevails, the participant or beneficiary shall be enti-

1 tled to reasonable attorney’s fees, reasonable expert wit-
2 ness fees, and other reasonable costs relating to the ac-
3 tion.”.

4 (b) ALLOWANCE FOR LEGAL RELIEF.—Section
5 502(a) of such Act (29 U.S.C. 1132(a)) is amended, in
6 paragraphs (3)(B), (5)(B), and (8)(B), by inserting “legal
7 or” before “equitable” each place it appears.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply with respect to causes of action
10 arising after December 31, 2005.

11 **SEC. 411. ASSESSMENT BY SECRETARY OF LABOR OF PEN-**
12 **ALTIES FOR FAILURES TO MEET DISCLOSURE**
13 **REQUIREMENTS.**

14 (a) IN GENERAL.—Section 502(c) of the Employee
15 Retirement Income Security Act of 1974 (29 U.S.C.
16 1132(c)) is amended to read as follows:

17 “(c)(1) The Secretary may assess a civil penalty
18 against any person of up to \$1,000 a day from the date
19 of any failure or refusal by such person described in para-
20 graph (2).

21 “(2) A failure or refusal described in this paragraph
22 is any of the following:

23 “(A) A failure or refusal by a plan adminis-
24 trator to comply with a request for any information
25 which such administrator is required by this title to

1 furnish to a participant or beneficiary by mailing the
2 material requested to the last known address of the
3 requesting participant or beneficiary within 30 days
4 after such request.

5 “(B) A failure or refusal by a plan adminis-
6 trator to file the annual report required to be filed
7 with the Secretary under section 101(b)(4). For pur-
8 poses of this subparagraph, an annual report that
9 has been rejected under section 104(a)(4) for failure
10 to provide material information shall not be treated
11 as having been filed with the Secretary.

12 “(C) A failure or refusal by an employer main-
13 taining a plan to meet the notice requirement of sec-
14 tion 101(d) with respect to any participant or bene-
15 ficiary.

16 “(D) A failure or refusal by a plan adminis-
17 trator to meet the requirements of section 101(e)(1)
18 with respect to a participant or beneficiary.

19 “(E) A failure or refusal by an employer main-
20 taining a plan to meet the requirements of section
21 101(e)(2) with respect to any person.

22 “(F) A failure or refusal by any person to meet
23 the requirements of section 101(f)(1).

24 “(G) A failure or refusal by any person to file
25 the information required to be filed by such person

1 with the Secretary under regulations prescribed pur-
2 suant to section 101(g).

3 “(H) A failure or refusal by a plan adminis-
4 trator to provide notice to participants and bene-
5 ficiaries in accordance with section 101(i).

6 “(I) A failure or refusal by a plan adminis-
7 trator to furnish documents to the Secretary, as re-
8 quested by the Secretary under section 104(a)(6),
9 within 30 days after such a request.

10 “(J) A failure or refusal by a plan adminis-
11 trator to meet the requirements of paragraph (1) or
12 (4) of section 606.

13 “(3) For purposes of this subsection, each violation
14 described in subparagraph (A), (C), (D), (E), (F), (H),
15 or (J) of paragraph (2) with respect to any single partici-
16 pant, beneficiary, or other person shall be treated as a
17 separate violation.

18 “(4) In the case of any failure or refusal described
19 in paragraph subparagraph (A), (C), or (J) of paragraph
20 (2) by any administrator or employer with respect to any
21 participant, beneficiary, or other person, such adminis-
22 trator or employer may, in the court’s discretion, be liable
23 to such participant, beneficiary, or other person in the
24 amount of up to \$1,000 a day from the date of such fail-

1 ure or refusal. Any liability under this paragraph shall be
2 in addition to any liability imposed under paragraph (1).

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

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

11 “(6) In addition to any liability imposed under para-
12 graph (1), (4), or (5), the court may in its discretion order
13 such other relief as it deems proper.

14 “(7) No liability may be imposed on any person under
15 this subsection for any failure resulting from matters rea-
16 sonably beyond the control of such person.

17 “(8) The Secretary and the Secretary of Health and
18 Human Services shall maintain such ongoing consultation
19 as may be necessary and appropriate to coordinate en-
20 forcement under this subsection with enforcement under
21 section 1144(c)(8) of the Social Security Act.”.

22 (b) CONFORMING AMENDMENT.—Section 502(a)(6)
23 of such Act (29 U.S.C. 1132(a)(6)) is amended by striking
24 “under paragraph (2), (4), (5), (6), or (7) of subsection

1 (c) or under subsection (i) or (l)” and inserting “under
2 subsection (e), (i), or (l)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to failures and refus-
5 als occurring after December 31, 2005.

6 **SEC. 412. MISSING PARTICIPANTS AND UNCLAIMED BENE-**
7 **FITS.**

8 (a) TREATMENT OF MISSING PARTICIPANTS OF
9 MULTIEMPLOYER PLANS AND CERTAIN PLANS NOT OTH-
10 ERWISE COVERED.—Section 4050 of the Employee Retire-
11 ment Income Security Act of 1974 (29 U.S.C. 1350) is
12 amended—

13 (1) by redesignating subsections (b) and (c) as
14 subsections (f) and (g), respectively; and

15 (2) by inserting after subsection (a) the fol-
16 lowing new subsections:

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

21 “(c) ELECTIVE TRANSFER OF MISSING PARTICI-
22 PANT’S BENEFITS TO THE CORPORATION BY CERTAIN
23 OTHER PLANS UPON TERMINATION.—

24 “(1) IN GENERAL.—The plan administrator of
25 a plan described in paragraph (4) may elect to

1 transfer a missing participant's benefits to the cor-
2 poration upon termination of the plan.

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

10 “(A) to the corporation, or

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

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

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

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

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

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

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

6 “(ii) which is not a plan described in
7 paragraphs (2) through (11) of section
8 4021(b), and

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

11 “(i) has missing participants, and

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

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

19 (b) TREATMENT OF UNCLAIMED BENEFITS IN CASES
20 NOT INVOLVING TERMINATION OR IN CASES OF CERTAIN
21 PLANS.—

22 (1) IN GENERAL.—Section 4050 of such Act
23 (as amended by subsection (a)) is amended further
24 by inserting after subsection (c) the following new
25 subsection:

1 “(d) TREATMENT OF UNCLAIMED BENEFITS IN
2 CASES NOT INVOLVING TERMINATION OR IN CASES OF
3 CERTAIN PLANS.—

4 “(1) ELECTIVE TRANSFER OF UNCLAIMED BEN-
5 EFITS TO THE CORPORATION.—The plan adminis-
6 trator of a plan described in paragraph (6) may
7 elect to transfer unclaimed benefits to the corpora-
8 tion.

9 “(2) INFORMATION TO THE CORPORATION.—
10 The corporation may impose such conditions on
11 transfers of unclaimed benefits to the corporation as
12 the corporation determines are necessary to facilitate
13 administration of this subsection and are not incon-
14 sistent with the purposes of this subsection. Such
15 conditions may include requirements that the trans-
16 ferring plan provide to the corporation specified in-
17 formation and documentation.

18 “(3) PAYMENT TO THE CORPORATION.—With
19 respect to any participant, any transfer of an un-
20 claimed benefit to the corporation shall—

21 “(A) in the case of a defined benefit plan,
22 be a transfer of the participant’s designated
23 benefit, or

1 “(B) in the case of an individual account
2 plan, be a transfer of the participant’s vested
3 account balance under the plan.

4 “(4) PAYMENT BY THE CORPORATION.—Subject
5 to such reasonable restrictions as may be prescribed
6 in regulations of the corporation (relating to invest-
7 ment limitations and otherwise)—

8 “(A) unclaimed benefits of a participant or
9 beneficiary which are transferred to the cor-
10 poration pursuant to this subsection shall be
11 distributed by the corporation to the participant
12 or beneficiary not later than upon application
13 filed by the participant or beneficiary with the
14 corporation in such form and manner as may
15 be prescribed in regulations of the corporation,
16 and

17 “(B) such benefits shall—

18 “(i) in the case of an individual ac-
19 count plan, be paid in a single sum (plus
20 interest) or in such other form as is speci-
21 fied in regulations of the corporation, or

22 “(ii) in the case of a defined benefit
23 plan, be paid—

24 “(I) in an amount based on the
25 designated benefit and the assump-

1 tions prescribed by the corporation at
2 the time that the corporation received
3 the benefit, and

4 “(II) in a form determined under
5 regulations of the corporation.

6 “(5) NOTICE.—Any transfer of unclaimed bene-
7 fits of a participant or beneficiary to the corporation
8 pursuant to this subsection may occur only after
9 reasonable advance notice of such transfer is pro-
10 vided by the plan administrator to the participant or
11 beneficiary. The plan administrator shall also pro-
12 vide to the participant or beneficiary notice of any
13 such transfer not later than 30 days after the date
14 of the transfer. Notice mailed to the last known ad-
15 dress of the participant or beneficiary shall be treat-
16 ed as a notice to the participant or beneficiary for
17 purposes of this paragraph. Any such notice shall in-
18 clude information regarding procedures for obtaining
19 the distribution of benefits from the corporation in
20 accordance with paragraph (4).

21 “(6) PLANS DESCRIBED.—A plan is described
22 in this paragraph if the plan is a pension plan (with-
23 in the meaning of section 3(2)—

24 “(A)(i) which has neither terminated nor is
25 in the process of terminating, or

1 “(ii) in the case of an unclaimed benefit to
2 which section 401(a)(31)(B) of the Internal
3 Revenue Code of 1986 applies (other than an
4 unclaimed benefit of a missing participant),
5 which has terminated or is in the process of ter-
6 minating, and

7 “(B) which is not a plan described in para-
8 graphs (2) through (11) of section 4021(b).

9 “(7) CERTAIN PROVISIONS NOT TO APPLY.—
10 Subsection (a) shall not apply to a plan described in
11 paragraph (6).”.

12 (2) UNCLAIMED BENEFIT DEFINED.—Sub-
13 section (f) of section 4050 of such Act (as redesign-
14 ated by subsection (a)(1)) is amended by adding at
15 the end the following paragraph:

16 “(3) UNCLAIMED BENEFIT.—The term ‘un-
17 claimed benefit’ means—

18 “(A) any benefit of a participant or bene-
19 ficiary which is distributable under the terms of
20 the plan to the participant or beneficiary, if the
21 distribution of the benefit has not commenced
22 within 1 year after the later of the date on
23 which the benefit first became so distributable
24 or the participant’s severance from employment;

1 “(B) any benefit or other amount of a par-
2 ticipant or beneficiary which is distributable
3 under the terms of the plan with respect to a
4 missing participant, or

5 “(C) any benefit to which section
6 401(a)(31)(B) of the Internal Revenue Code of
7 1986 applies or would apply if subclause (I) of
8 section 401(a)(31)(B)(i) of such Code did not
9 require the distribution to exceed \$1,000.

10 A benefit otherwise described in subparagraph (A)
11 shall not be treated as an unclaimed benefit under
12 subparagraph (A) if the participant or beneficiary
13 elects not to have such treatment apply. Any such
14 participant or beneficiary shall be given reasonable
15 notice of the opportunity to make such an election.
16 If the participant or beneficiary fails to make such
17 an election within a reasonable period specified in
18 the notice, any subsequent election shall not be given
19 effect and the benefit shall be treated as an un-
20 claimed benefit. A notice mailed to the last known
21 address of the participant or beneficiary shall be
22 treated as a notice to the participant or beneficiary
23 for purposes of this paragraph.”.

24 (3) CONFORMING AMENDMENT.—Section
25 4021(b) of such Act (29 U.S.C. 1321(b)(1)) is

1 amended by striking “This” and inserting “Except
2 to the extent provided in subsections (c) and (d) of
3 section 4050, this”.

4 (c) TREATMENT OF TRANSFERRED ASSETS.—Sec-
5 tion 4050 of such Act (as amended by the preceding provi-
6 sions of this section) is amended further—

7 (1) in subsection (a), by striking paragraph (2)
8 and redesignating paragraph (3) as paragraph (2);
9 and

10 (2) by inserting after subsection (d) the fol-
11 lowing new subsection:

12 “(e) TREATMENT OF TRANSFERRED ASSETS.—A
13 transfer to the corporation under this section shall be
14 treated as a transfer of assets from a terminated plan to
15 the corporation as trustee, and shall be held with assets
16 of terminated plans for which the corporation is trustee
17 under section 4042, subject to the rules set forth in that
18 section.”.

19 (d) ESCHEAT LAWS SUPERSEDED.—Section 514(b)
20 of such Act (29 U.S.C. 1144(b)) is amended—

21 (1) by redesignating paragraph (9) as para-
22 graph (10), and

23 (2) by inserting after paragraph (8) the fol-
24 lowing new paragraph:

1 “(9) Any escheat or similar law of any State
2 shall be superseded to the extent inconsistent with
3 any transfer or other treatment of unclaimed bene-
4 fits (as defined in section 4050(e)(3)) permitted
5 under section 4050(d).”.

6 (e) EFFECTIVE DATES AND RELATED RULES.—

7 (1) IN GENERAL.—The amendments made by
8 subsection (a) shall apply to terminations occurring
9 after December 31, 2005. the amendments made by
10 subsections (b) and (c) shall apply with respect to
11 transfers occurring after such date. The amend-
12 ments made by subsection (d) shall apply with re-
13 spect to transfers or treatment of unclaimed benefits
14 occurring after such date.

15 (2) REGULATIONS.—The Pension Benefit Guar-
16 anty Corporation shall issue regulations necessary to
17 carry out the amendments made by this section not
18 later than December 31, 2005.

19 **SEC. 413. FIDUCIARY DUTIES WITH RESPECT TO CHANGES**
20 **IN INVESTMENT OPTIONS.**

21 (a) IN GENERAL.—Section 404(c) of the Employee
22 Retirement Income Security Act of 1974 (29 U.S.C.
23 1104(c)) is amended—

1 (1) by adjusting the margination of paragraphs
2 (2) and (3) so as to align them with paragraph (1);
3 and

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

6 “(4) For purposes of paragraph (1), in the case of
7 any pension plan amendment changing investment options
8 under the plan, the plan shall not be treated as permitting
9 a participant or beneficiary to exercise control over assets
10 in his or her account unless, under the terms of such
11 amendment, the participant or beneficiary is permitted to
12 retain any existing investment option with respect to any
13 assets in his or her account invested pursuant to such op-
14 tion until such assets are otherwise invested by the partici-
15 pant or beneficiary.”.

16 (b) EFFECTIVE DATE.—The amendment made by
17 this section shall apply with respect to plan amendments
18 adopted after the date of the enactment of this Act.

19 **SEC. 414. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

20 (a) IN GENERAL.—Title III of the Employee Retire-
21 ment Income Security Act of 1974 (29 U.S.C. 3001 et
22 seq.) is amended by adding at the end the following:

1 **“Subtitle D—Office of Pension**
2 **Participant Advocacy**

3 **“SEC. 3051. OFFICE OF PENSION PARTICIPANT ADVOCACY.**

4 “(a) ESTABLISHMENT.—

5 “(1) IN GENERAL.—There is established in the
6 Department of Labor an office to be known as the
7 ‘Office of Pension Participant Advocacy’.

8 “(2) PENSION PARTICIPANT ADVOCATE.—The
9 Office of Pension Participant Advocacy shall be
10 under the supervision and direction of an official to
11 be known as the ‘Pension Participant Advocate’ who
12 shall—

13 “(A) have demonstrated experience in the
14 area of pension participant assistance, and

15 “(B) be selected by the Secretary after
16 consultation with pension participant advocacy
17 organizations.

18 The Pension Participant Advocate shall report di-
19 rectly to the Secretary and shall be entitled to com-
20 pensation at the same rate as the highest rate of
21 basic pay established for the Senior Executive Serv-
22 ice under section 5382 of title 5, United States
23 Code.

24 “(b) FUNCTIONS OF OFFICE.—It shall be the func-
25 tion of the Office of Pension Participant Advocacy to—

1 “(1) assist participants and beneficiaries in un-
2 derstanding their rights to benefits under employee
3 benefit plans, and, to the extent feasible, assist par-
4 ticipants in obtaining such benefits,

5 “(2) evaluate the efforts of the Federal Govern-
6 ment, business, and financial, professional, retiree,
7 labor, women’s, and other appropriate organizations
8 in assisting and protecting pension plan participants,
9 including—

10 “(A) serving as a focal point for, and ac-
11 tively seeking out, the receipt of information
12 with respect to the policies and activities of the
13 Federal Government, business, and such organi-
14 zations which affect such participants,

15 “(B) identifying significant problems for
16 pension plan participants and the capabilities of
17 the Federal Government, business, and such or-
18 ganizations to address such problems, and

19 “(C) developing proposals for changes in
20 such policies and activities to correct such prob-
21 lems, and communicating such changes to the
22 appropriate officials,

23 “(3) promote the expansion of pension plan cov-
24 erage and the receipt of promised benefits by in-
25 creasing the awareness of the general public of the

1 value of pension plans and by protecting the rights
2 of pension plan participants, including—

3 “(A) enlisting the cooperation of the public
4 and private sectors in disseminating informa-
5 tion, and

6 “(B) forming private-public partnerships
7 and other efforts to assist pension plan partici-
8 pants in receiving their benefits,

9 “(4) advocate for the full attainment of the
10 rights of pension plan participants, including by
11 making pension plan sponsors and fiduciaries aware
12 of their responsibilities,

13 “(5) give priority to the special needs of low
14 and moderate income participants, and

15 “(6) develop needed information with respect to
16 pension plans, including information on the types of
17 existing pension plans, levels of employer and em-
18 ployee contributions, vesting status, accumulated
19 benefits, benefits received, and forms of benefits.

20 “(c) REPORTS.—

21 “(1) ANNUAL REPORT.—Not later than Decem-
22 ber 31 of each calendar year, the Pension Partici-
23 pant Advocate shall report to the Committees on
24 Education and the Workforce and Ways and Means
25 of the House of Representatives and the Committees

1 on Health, Education, Labor, and Pensions and Fi-
2 nance of the Senate on its activities during the fiscal
3 year ending in the calendar year. Such report
4 shall—

5 “(A) identify significant problems the Ad-
6 vocate has identified,

7 “(B) include specific legislative and regu-
8 latory changes to address the problems, and

9 “(C) identify any actions taken to correct
10 problems identified in any previous report.

11 The Advocate shall submit a copy of such report to
12 the Secretary and any other appropriate official at
13 the same time it is submitted to the committees of
14 Congress.

15 “(2) SPECIFIC REPORTS.—The Pension Partici-
16 pant Advocate shall report to the Secretary or any
17 other appropriate official any time the Advocate
18 identifies a problem which may be corrected by the
19 Secretary or such official.

20 “(3) REPORTS TO BE SUBMITTED DIRECTLY.—
21 The report required under paragraph (1) shall be
22 provided directly to the committees of Congress
23 without any prior review or comment by the Sec-
24 retary or any other Federal officer or employee.

25 “(d) SPECIFIC POWERS.—

1 “(1) RECEIPT OF INFORMATION.—Subject to
2 such confidentiality requirements as may be appro-
3 priate, the Secretary and other Federal officials
4 shall, upon request, provide such information (in-
5 cluding plan documents) as may be necessary to en-
6 able the Pension Participant Advocate to carry out
7 the Advocate’s responsibilities under this section.

8 “(2) APPEARANCES.—The Pension Participant
9 Advocate may represent the views and interests of
10 pension plan participants before any Federal agency,
11 including, upon request of a participant, in any pro-
12 ceeding involving the participant.

13 “(3) CONTRACTING AUTHORITY.—In carrying
14 out responsibilities under subsection (b)(5), the Pen-
15 sion Participant Advocate may, in addition to any
16 other authority provided by law—

17 “(A) contract with any person to acquire
18 statistical information with respect to pension
19 plan participants, and

20 “(B) conduct direct surveys of pension
21 plan participants.”.

22 (b) CONFORMING AMENDMENT.—The table of con-
23 tents for title III of such Act is amended by adding at
24 the end the following:

“Subtitle C—Office of Pension Participant Advocacy

“3051. Office of Pension Participant Advocacy.”.

1 (c) EFFECTIVE DATE AND TRANSITION RULES.—

2 (1) EFFECTIVE DATE.—The amendment made
3 by this section shall take effect on January 1, 2005.

4 (2) ABOLISHMENT OF THE OFFICE OF PARTICI-
5 PANT ASSISTANCE AND COMMUNICATIONS AND RE-
6 LATED TRANSITION RULES.—Effective January 1,
7 2005, the Office of Participant Assistance and Com-
8 munications in the Department of Labor is abol-
9 ished, and the Secretary of Labor shall provide for
10 the transfer, as appropriate, of the functions and
11 personnel of such Office to the Office of Pension
12 Participant Advocacy established under subtitle D of
13 title III of the Employee Retirement Income Secu-
14 rity Act of 1974 (as added by this Act).

15 **SEC. 415. EXCLUSIVITY OF POWERS AND PROCEDURES AP-**
16 **PLICABLE TO RIGHTS OR CLAIMS.**

17 Section 502 of the Employee Retirement Income Se-
18 curity Act of 1974 (29 U.S.C. 1132) is amended by adding
19 at the end the following new subsection:

20 “(n) Notwithstanding any Federal statute of general
21 applicability that would modify any of the powers and pro-
22 cedures expressly applicable to a right or claim arising
23 under this title and that is not expressly incorporated by
24 a provision of this title, such powers and procedures shall

1 be the exclusive powers and procedures applicable to such
2 right or such claim unless after such right or such claim
3 arises the claimant voluntarily enters into an agreement
4 to resolve such right or such claim through arbitration or
5 another procedure.”.

6 **TITLE V—IMPROVED PENSION**
7 **PROTECTIONS FOR THE**
8 **CHANGING WORKFORCE**

9 **SEC. 501. LOANS FROM RETIREMENT PLANS FOR HEALTH**
10 **INSURANCE AND JOB TRAINING EXPENSES.**

11 (a) IN GENERAL.—Section 206 of the Employee Re-
12 tirement Income Security Act of 1974 (29 U.S.C. 1056)
13 (as amended by sections 105 and 201) is amended further
14 by adding at the end the following new subsection:

15 “(i) LOANS FROM RETIREMENT PLANS FOR HEALTH
16 INSURANCE AND JOB TRAINING EXPENSES.—

17 “(1) IN GENERAL.—Notwithstanding any other
18 provision of this subsection, a pension plan shall
19 provide that a participant or beneficiary who is in-
20 voluntarily separated from employment may, on the
21 date of such separation, obtain a loan from the plan
22 the proceeds of which are to be used within 6
23 months after the date of such loan—

1 “(A) for payments for insurance which
2 constitutes medical care for the participant and
3 the participant’s spouse and dependents, or

4 “(B) for job training expenses.

5 “(2) QUALIFIED LOAN.—For purposes of this
6 subsection, the term ‘qualified loan’ means a loan—

7 “(A) which by its terms requires interest
8 on the loan to accrue not less frequently than
9 monthly,

10 “(B) which by its terms requires—

11 “(i) repayment to begin not later than
12 18 months after the date of the loan, and

13 “(ii) repayment in full not later the
14 date which is 36 months after the date of
15 the loan, and

16 “(C) which bears interest from the date of
17 the loan at a rate not less than 2 percentage
18 points below, and not more than 2 percentage
19 points above, the rate for comparable United
20 States Treasury obligations on such date.

21 “(3) LIMITATION ON AMOUNT OF LOANS.—The
22 aggregate amount of borrowings for a plan year
23 shall not exceed the sum of the amount of accruals
24 (other than contributions) during the plan year prior
25 to the plan year in which the loan is made.

1 “(4) LIMITATION ON NUMBER OF LOANS.—Not
2 more than 3 loans to an individual under this sub-
3 section may be outstanding at any time.

4 “(5) DELINQUENCIES TREATED AS DISTRIBU-
5 TION.—Any amount required to be paid by a partici-
6 pant or beneficiary under paragraph (2)(B) during
7 any plan year which is not paid at the time required
8 to be paid, and any amount remaining unpaid as of
9 the beginning of the plan year beginning after the
10 period described in paragraph (2)(B)(ii), shall be
11 treated as distributed during such plan year to the
12 participant or beneficiary.”.

13 (b) PROHIBITED TRANSACTION EXEMPTION.—Sec-
14 tion 408(b) of such Act (29 U.S.C. 1108(b)) is amended
15 by adding at the end the following new paragraph:

16 “(14) Any loan made by the plan to a disquali-
17 fied person who is a participant or beneficiary of the
18 plan if such loan—

19 “(A) is for the payment of health insur-
20 ance premiums or job training expenses, and

21 “(B) meets the requirements of section
22 206(i).”.

23 (c) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to loans made after the effective
25 date specified in section 601.

1 **SEC. 502. AUTOMATIC ROLLOVER UPON MANDATORY DIS-**
2 **TRIBUTION IN EXCESS OF \$1,000.**

3 Section 206 of the Employee Retirement Income Se-
4 curity Act of 1974 (29 U.S.C. 1056) (as amended by sec-
5 tions 105, 201, and 501) is amended further by adding
6 at the end the following new subsection:

7 “(j) DIRECT TRANSFERS OF MANDATORY DISTRIBU-
8 TIONS IN EXCESS OF \$1,000.—

9 “(1) IN GENERAL.—A pension plan shall pro-
10 vide that, if—

11 “(A) a distribution described in paragraph
12 (2) is made, and

13 “(B) the distributee does not elect to have
14 such distribution paid directly to an eligible re-
15 tirement plan and does not elect to receive the
16 distribution directly,

17 the plan administrator shall make such transfer to
18 an individual retirement plan of a designated trustee
19 or issuer and shall notify the distributee in writing
20 (either separately or as part of a notice required
21 under section 402(f) of the Internal Revenue Code
22 of 1986) that the distribution may be transferred to
23 another individual retirement plan.

24 “(2) DISTRIBUTION DESCRIBED.—A distribu-
25 tion from a plan is described in this paragraph if
26 such distribution is an immediate distribution of the

1 entire nonforfeitable accrued benefit of the partici-
2 pant and is in excess of \$1,000.

3 “(3) DEFINITIONS.—For purposes of this sub-
4 section—

5 “(A) ELIGIBLE RETIREMENT PLAN.—The
6 term ‘eligible retirement plan’ has the meaning
7 given such term by section 402(c)(8)(B) of the
8 Internal Revenue Code of 1986, except that a
9 qualified trust under section 401(a) of such
10 Code shall be considered an eligible retirement
11 plan only if it is a defined contribution plan,
12 the terms of which permit the acceptance of
13 rollover distributions.

14 “(B) INDIVIDUAL RETIREMENT PLAN.—
15 The term ‘individual retirement plan’ has the
16 meaning given such term by section
17 7701(a)(37) of the Internal Revenue Code of
18 1986.”.

19 **SEC. 503. PROMPT DISTRIBUTION FROM DEFINED CON-**
20 **TRIBUTION PLANS UPON TERMINATION OF**
21 **PARTICIPANT’S COVERED EMPLOYMENT.**

22 Section 206(a) of the Employee Retirement Income
23 Security Act of 1974 (29 U.S.C. 1056(a)) is amended—

1 (1) by redesignating paragraphs (1), (2), and
2 (3) as subparagraphs (A), (B), and (C), respectively,
3 and by inserting “(1)” after “(a)”;

4 (2) in the first sentence, by striking “pension
5 plan” and inserting “defined benefit plan”;

6 (3) in the second sentence, by striking “In the
7 case of a plan” and inserting “In the case of a de-
8 fined benefit plan”; and

9 (4) by adding at the end the following new
10 paragraph:

11 “(2)(A) Except as provided in subparagraph (B),
12 each defined contribution plan shall provide that, unless
13 the participant otherwise elects—

14 “(i) the payment of benefits under the plan to
15 the participant will begin not later than the 60th
16 day after the close of the plan year in which occurs
17 the date on which the participant attains the earlier
18 of age 65 or the normal retirement age specified
19 under the plan, and

20 “(ii) in any case in which the participant termi-
21 nates his service with the employer prior to the date
22 described in clause (i), the participant’s accrued ben-
23 efit shall be distributed, in the form of one or more
24 rollover contributions under section 402(e),
25 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16) of

1 the Internal Revenue Code of 1986, not later than
2 the 60th day after the date of the participant's ter-
3 mination of such service.

4 “(B) In any case in which immediate valuation of the
5 participant's accrued benefit is not practicable, the plan
6 may provide for a period of more than 60 days in lieu
7 of the 60-day period described in clauses (i) and (ii) of
8 subparagraph (A), except that any such longer period pro-
9 vided by the plan may not extend beyond 60 days after
10 the applicable valuation date under the plan.”.

11 **TITLE VI—GENERAL** 12 **PROVISIONS**

13 **SEC. 601. GENERAL EFFECTIVE DATE.**

14 (a) IN GENERAL.—Except as otherwise provided in
15 this Act, and subject to subsection (b), the amendments
16 made by this Act shall apply with respect to plan years
17 beginning on or after January 1, 2006.

18 (b) SPECIAL RULE FOR COLLECTIVELY BARGAINED
19 PLANS.—In the case of a plan maintained pursuant to 1
20 or more collective bargaining agreements between em-
21 ployee representatives and 1 or more employers ratified
22 on or before the date of the enactment of this Act, sub-
23 section (a) shall be applied to benefits pursuant to, and
24 individuals covered by, any such agreement by substituting

1 for “January 1, 2002” the date of the commencement of
2 the first plan year beginning on or after the earlier of—

3 (1) the later of—

4 (A) January 1, 2007, or

5 (B) the date on which the last of such col-
6 lective bargaining agreements terminates (de-
7 termined without regard to any extension there-
8 of after the date of the enactment of this Act),
9 or

10 (2) January 1, 2008.

11 **SEC. 602. PLAN AMENDMENTS.**

12 If any amendment made by this Act requires an
13 amendment to any plan, such plan amendment shall not
14 be required to be made before the first plan year beginning
15 on or after January 1, 2006, if—

16 (1) during the period after such amendment
17 made by this Act takes effect and before such first
18 plan year, the plan is operated in accordance with
19 the requirements of such amendment made by this
20 Act, and

21 (2) such plan amendment applies retroactively
22 to the period after such amendment made by this
23 Act takes effect and such first plan year.

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